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Contents

Federal Register

Vol. 88, No. 203

Monday, October 23, 2023

Separate Parts In This Issue

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

8 CFR
Proposed Rules:
214 72870

19 CFR
24 (2 documents) 72675

21 CFR
1310 72680

30 CFR
Proposed Rules:
926 72699

31 CFR
Proposed Rules:
Ch. X 72701
Part 1010 72701

33 CFR
165 (2 documents) 72683

34 CFR
685 72685

40 CFR
52 (2 documents) 72686, 72688
55 72691
Proposed Rules:
51 72826
62 72723

49 CFR
Proposed Rules:
350 72727
365 72727
385 72727
386 72727
387 72727
395 72727

Rules and Regulations

Federal Register
Vol. 88, No. 203
Monday, October 23, 2023

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 24

[USCBP–2023–0025; CBP Dec. 23–13]

RIN 1515–AE81

Elimination of Debit Voucher Interest Accruing Before the Issuance of a Bill

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

ACTION: Interim final rule; solicitation of comments.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations to reflect the elimination of CBP's collection of interest specific to debit vouchers in order to enable CBP to efficiently include debit voucher bills in CBP's automated billing process in the Automated Commercial Environment. As a result of this change, CBP will automatically issue debit voucher bills, inclusive of all applicable interest accruing on such bills and dishonored payment fees. Interest on the debited amount will accrue from the date of the issuance of a debit voucher bill, and no longer from the date of the debit voucher.

DATES: This interim final rule is effective as of November 4, 2023; comments must be received by December 22, 2023.

ADDRESSES: Please submit comments, identified by docket number, by the following method:

Federal eRulemaking Portal: https://www.regulations.gov. Follow the instructions for submitting comments via docket number USCBP–2023–0025.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Steven J. Grayson, Program Manager, Investment Analysis Office, Office of Finance, U.S. Customs and Border Protection, (202) 579–4400, or *ACECollections@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this interim final rule. See **ADDRESSES** above for information on how to submit comments. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this regulatory change. Comments that will provide the most assistance to CBP will reference a specific portion of the rule, explain the reason for any recommended change, and include data, information or authority that supports such recommended change.

II. Background

A. Ongoing Modernization of the Collections System at U.S. Customs and Border Protection

U.S. Customs and Border Protection (CBP) is modernizing its collections system, allowing CBP to eventually retire the Automated Commercial System (ACS) and transfer all collections processes into the Automated Commercial Environment (ACE). This modernization effort, known as ACE Collections, includes the consolidation of the entire collections system into the ACE framework, which will enable CBP to utilize trade data from ACE modules, benefitting both the trade community and CBP with more streamlined and better automated payment processes. The new collections system in ACE will reduce costs for CBP, create a common framework that aligns with other initiatives to reduce manual collection processes, and provide additional flexibility to allow for future technological enhancements. ACE Collections will also provide the public with more streamlined and better automated payment processes with CBP, including better visibility into data regarding specific transactions.

ACE Collections supports the goals of the Customs Modernization Act (Pub. L. 103–182, 107 Stat. 2057, 2170, December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act), of modernizing the business processes that are essential to securing U.S. borders, speeding up the flow of legitimate shipments, and targeting illicit goods that require scrutiny. ACE Collections also fulfills the objectives of Executive Order 13659 (79 FR 10655, February 25, 2014), to provide the trade community with an integrated CBP trade system that facilitates trade, from entry of goods to receipt of duties, taxes, and fees.

CBP is implementing ACE Collections through phased releases in ACE. Release 1 was deployed on September 7, 2019, and dealt with statements integration, the collections information repository (CIR) framework, and automated clearinghouse (ACH) processing. *See* 84 FR 46749 and 84 FR 46678 (September 5, 2019), with a minor correction on September 23, 2019 (84 FR 49650).

Release 2 was deployed on February 5, 2021, and focused on non-ACH electronic receivables and collections, for Fedwire and *Pay.gov*, that included user fees, and Harbor Maintenance Fee (HMF) and Seized Assets and Case Tracking System (SEACATS) payments. All the changes in Release 2 were internal to CBP and did not affect the trade community; as such, no notice was published.

Release 3 was deployed on May 1, 2021, and primarily implemented technical changes to the liquidation process, and deferred tax bills, which were internal to CBP. *See* 86 FR 22696 (April 29, 2021). Release 3 also harmonized the determination of the due date for deferred tax payments with the entry summary date, streamlined the collections system, and provided importers of record with more flexibility and access to data when making deferred payments of internal revenue taxes owed on distilled spirits, wines,

and beer imported into the United States.

Release 4 was deployed on October 18, 2021, and primarily implemented technical changes to the production and management of the internal CBP processes for supplemental bills, certain reimbursable bills, and non-reimbursable/miscellaneous bills issued by CBP to the public. *See* 86 FR 56968 (October 13, 2021). Release 4 also made available to importers of record, licensed customs brokers, and other ACE account users, an option to electronically view certain, unpaid, open bill details as reports in ACE Reports and adopted a new, enhanced format for the CBP Bill Form.

Release 5 was deployed on March 21, 2022, and implemented internal technical changes to the production, tracking, and management of overdue bills and delinquent accounts and the bonds associated with them, including enhancements to the unpaid, open bill details reports in ACE Reports. *See* 87 FR 14899 (March 16, 2022). Release 5 also included a May 1, 2022 delayed deployment of minor modifications to the mailed Formal Demand on Surety for Payment of Delinquent Amounts Due (also informally referred to as the 612 Report) and the ability to electronically view 612 Reports in ACE Reports.

Most recently, Release 6 was deployed on August 29, 2022. Release 6 focused on the management of refunds, and included mainly internal, technical changes to the ability to search, create, and review/certify those refunds. *See* 87 FR 49600 (August 11, 2022). Release 6 also included enhancements that improve transparency and access to information through ACE for ACE account users who have sought refunds from CBP to view certain information regarding the ACE account user's own refunds.

As explained more fully below, Release 7 will be deployed on November 4, 2023. Release 7 will enhance CBP's budget clearing account (BCA) [1] management, reducing processing times for clearing collections off the BCA and allowing for improved reconciliation of open receivables. This release will further integrate the port collections process into ACE Collections to allow for the full entry lifecycle to be contained in one system. The remaining ACS functionalities, including Point of Sale (POS), Treasury and port reconciliations, Deposits in Transit (DIT), debit voucher [2] processing, collections in transit, serial numbered forms (SNF) and system transfers, will also be moved to ACE. Specifically for debit vouchers, Release 7 will streamline the tracking and notification process for debit vouchers within ACE by transitioning the entire debit voucher process (from bill creation to payment application) from a manual to an automated process. This transition is accomplished by including debit vouchers in CBP's general billing process and making several regulatory changes to the debit voucher interest accrual provision. All changes, except the change to debit voucher processing, are internal to CBP and will not affect the trade community. The completion of this release will enable CBP to retire the ACS mainframe and move all ACS functionality to ACE. CBP will announce the retirement of ACS by notice in the **Federal Register** once ready to do so.

B. Overview of CBP's Debit Voucher Process

CBP is authorized to collect duties, taxes, and fees arising from customs activities from individuals or entities. *See generally* 19 U.S.C. 58a, 58b, 58b–1, 58c, 1505, and 26 U.S.C. 4461. The regulations found in part 24 of title 19 of the Code of Federal Regulations (CFR) address the financial and accounting procedures for when CBP collects these duties, taxes, fees, interest, and other applicable charges. *See generally* 19 CFR 24.1–24.36. CBP collects and manages numerous types of bills and uses several systems and processes to manage them. CBP separates the bills it collects into broad categories, which include accrual bills, supplemental bills, reimbursable bills, non-reimbursable/miscellaneous bills, debit vouchers, and fines, penalties, and forfeiture bills. *See generally* § 24.3a. Supplemental bills constitute the majority of bills that CBP generates for collection purposes. These bills arise from liquidation or reliquidation processes and are generated because of the nonpayment or underpayment of duties, taxes, and fees at the time of entry for imported merchandise. In most cases, debit voucher bills (covered by §§ 24.3(e) and 24.3a(b)(2)(i)(C)) resulting from dishonored payments [3] such as dishonored checks or dishonored ACH [4] transactions, function similarly to supplemental bills in their purpose, *i.e.,* nonpayment or underpayment of duties, taxes, and fees. Thus, debit voucher bills are included in the provisions regarding bill payment, due date and interest accrual for supplemental bills, although the due date and interest assessment for debit vouchers differ from supplemental bills. *See* §§ 24.3(e) and 24.3a(b)(2)(ii).

Section 24.3a contains detailed provisions regarding CBP bills for supplemental duties, taxes, and fees, vessel repair duties with interest, reimbursable services, and miscellaneous amounts. Specifically, § 24.3a(a) discusses the due date for these CBP bills and refers to the due date calculation set forth in § 24.3(e). Section 24.3(e) states that bills resulting from dishonored checks or dishonored ACH transactions are due and payable within 15 days of the date of the issuance of the bill, whereas all other bills are due and payable within 30 days of the date of the issuance of the bill.

CBP assesses interest on the nonpayment or underpayment of estimated duties, taxes, and fees, or interest, owed by an individual or entity, as set forth in § 24.3a(b). *See* also 19 U.S.C. 1505(c). Section 24.3a(b)(1) concerns interest charges due to the late payment of bills for vessel repair duties, reimbursable services and miscellaneous amounts, whereas paragraph (b)(2) describes the procedures for charging interest due to the underpayment of supplemental duties, taxes, fees, and interest. Section 24.3a(b)(2) is divided into paragraph (i) dealing with interest on initial underpayments, and paragraph (ii) involving interest on overdue bills. Paragraph (b)(2)(i) is further broken out into paragraphs (A) through (C) covering factual situations that arise under current CBP transactions and produce variations in the interest computation period under the basic statutory rule of 19 U.S.C. 1505(d). Paragraph (A) concerns excessive refunds by CBP prior to liquidation or reliquidation, paragraph (B) describes three scenarios involving additional deposits made by an individual or entity prior to liquidation or reliquidation, and paragraph (C) concerns situations where CBP receives a debit voucher indicating that a payment to CBP was not made because of a dishonored check or dishonored ACH transaction.

[1] A budget clearing account records unidentifiable transactions and credits pending transfer to the applicable receipt or expenditure account. *See* 31 U.S.C. 3513.

[2] A bank issues a debit voucher on Form SF 5515 notifying CBP that a CBP account is being debited due to a dishonored payment.

[3] Even though §§ 24.3(e) and 24.3a(b)(2)(i)(C) mention only checks and ACH transactions, every payment type may result in a debit voucher, with dishonored checks and dishonored ACH transactions being the majority of dishonored payments that CBP processes.

[4] For additional information on the ACH debit and ACH credit processes, please see 19 CFR 24.25 and 24.26.

According to § 24.3a(b)(2)(i)(C), if a depository bank notifies CBP by a debit voucher that a CBP account is being debited due to a dishonored check or dishonored ACH transaction, interest will accrue on the debited amount from the date of the debit voucher to either the date of the payment of the debt represented by the debit voucher or the date of the issuance of a bill for payment, whichever date is earlier. Thus, interest begins to accrue on a debit voucher from the date of the debit voucher. If the debit voucher is paid before CBP generates a bill, interest accrues from the date of the debit voucher to the date of payment. If the debit voucher is not paid before CBP generates a bill, interest accrues on the amount of the debit voucher until the date the bill is generated. CBP charges this debit voucher interest in addition to any interest accrued on the underlying underpayment of duties, taxes, and fees as prescribed by 19 U.S.C. 1505(c) or 1677g.

Section 24.3a(b)(2)(ii) involves interest on overdue bills, and states that if duties, taxes, fees, and interest are not paid in full within the applicable period specified in § 24.3(e), any unpaid balance will be considered delinquent and will bear interest until the full balance is paid. As noted above, § 24.3(e) provides that, generally, a debtor has 30 days after the bill date (also known as the date of issuance of the bill) to make payment. On the 31st day after the bill date, the bill is considered delinquent, and interest will accrue in 30-day periods. In the case of debit vouchers, § 24.3(e) provides that a debtor has 15 days after the bill date to make payment, and on the 16th day after the bill date, the bill is considered delinquent. Initial interest accrues on the debit voucher bill within the 15-day period, and in 30-day periods thereafter. *See generally* 19 U.S.C. 1505(d); 19 CFR 24.3a.

For CBP, the current debit voucher process is very labor-intensive. Because the interest calculation for debit vouchers differs from that for other CBP bills, debit voucher bills cannot be automated along with other CBP bills. Therefore, CBP accounting technicians are tasked with manually creating draft debit voucher bills for only the amount of the debit voucher in ACS, manually calculating interest outside of the system for each debit voucher, and manually creating and mailing to the individual or entity a letter notifying of the debit voucher interest and any amount owed on the debit voucher. This bill, in the form of a letter, is mailed to notify the debtor of the amount owed on a particular debt.[5] Payments that are made on debit voucher bills are posted to the BCA until payment and bill are manually matched up and payment is applied to the bill. If payment is not made, subsequent letters with any remaining amount owed, plus additional accrued interest, must be manually created and mailed every 30 days, consistent with § 24.3(e) and § 24.3a(c)(3).

The banking industry practice regarding debit vouchers has changed significantly since CBP first implemented debit voucher interest through regulatory amendments in 1999.[6] Debit vouchers were historically mailed to payees (resulting in a delay of days or weeks before a bill could be issued) but are now transmitted electronically such that CBP receives near-immediate electronic notice when a payment is dishonored. Consequently, debit vouchers are paid and resolved or billed by CBP within a day or two of receiving electronic notice of the dishonored payment. Thus, the accrued interest on debit vouchers in this short time frame is minimal, in contrast to the significant time and resources CBP must spend manually processing debit vouchers and issuing bills for their payment. In addition, the individual or entity may receive a dunning letter despite having already made payment in full because CBP has not processed the payment yet, *i.e.,* matched up and applied the payment to the bill, before mailing the letter, thus resulting in inaccurate billing.

III. Discussion of Changes to 19 CFR 24.3 and 24.3a

As described above, the current regulatory requirement in § 24.3a(b)(2)(i)(C) to assess debit voucher interest prior to the creation of the debit voucher bill inhibits CBP's ability to automate the debit voucher billing process and align it with the billing process for the majority of bills issued by CBP. In order to address the problems posed by the manual debit voucher process, CBP is amending its regulations to eliminate the requirement in § 24.3a(b)(2)(i)(C) to assess interest on debit vouchers for the period between the date of the debit voucher and the date of the creation of the debit voucher bill. Instead, interest will only accrue on the amount of the debit voucher from the date of issuance of the debit voucher bill, resulting in the same starting point for the interest calculation for debit voucher bills as all other bills.

As part of Release 7, debit voucher bills will be processed automatically like other bills, inclusive of all applicable interest accruing on such bills and dishonored payment fees. The system (ACE) will generate an initial debit voucher bill due 15 days from the date of issuance of the bill, and subsequent bills every 30 days from the due date. To enable this automation of the debit voucher process, CBP is reorganizing § 24.3a(b) by moving the debit voucher provision in paragraph (b)(2)(i)(C) to a new paragraph (b)(3) titled, ''Interest accrual on debit vouchers.'' As debit voucher bills will be included in CBP's automated billing process, the debit voucher provision under paragraph (b)(2)(i)(C) is no longer considered an exception to the general rule in § 24.3a(b)(2)(i). Moreover, the debit voucher provision deals with a specific scenario of dishonored payments on any type of debt owed to CBP, whereas paragraph (b)(2) in general describes situations arising in the context of liquidation or reliquidation, thus, the placement of the debit voucher provision in a separate paragraph will fit better within the structure of CBP's billing regulations.

The new paragraph (b)(3) will set forth the rules for interest accrual on debit vouchers and will state that if a depository bank notifies CBP by a debit voucher that a CBP account is being debited due to a dishonored payment (*e.g.,* check or ACH transaction), interest will accrue on the debited amount from the date of the bill. Further, if payment is not received by CBP on or before the late payment date appearing on the bill, interest charges will be assessed on the debited amount. The initial late payment date is the date 15 days after the interest computation date. The interest computation date is the date from which interest is calculated and is initially the bill date. New paragraph (b)(3) will further state that no interest charge will be assessed if the individual or entity timely pays the debt at the location designated on the bill within the initial 15-day period (consistent with § 24.3a(c)(3), which similarly provides that no interest will be assessed for the initial 30-day period in which timely payment is made on a CBP bill). Finally, after the initial 15-day period, interest will be assessed in 30-day periods pursuant to paragraph § 24.3a(c)(3).

[5] It is common practice for CBP accounting technicians to create draft debit voucher bills without interest as soon as CBP is notified of the debit voucher to keep the accruing debit voucher interest low; the debit voucher interest is frequently calculated at a later time and mailed subsequently in a dunning letter.

[6] CBP published an interim final rule in the **Federal Register** on October 20, 1999 (64 FR 56433) amending regulations regarding interest on underpayments and overpayments of customs duties, taxes, fees, and interest.

To account for the removal of paragraph (b)(2)(i)(C) in § 24.3a(b)(2)(i), CBP is also removing the reference to paragraph (b)(2)(i)(C) from the introductory text of § 24.3a(b)(2)(i), leaving only paragraphs (b)(2)(i)(A) and (b)(2)(i)(B) as the exceptions to the general interest accrual rule in paragraph (b)(2)(i). In addition, CBP is modifying § 24.3(e) to clarify that a debit voucher may be generated for different types of dishonored payments, including checks and ACH transactions as examples of two payment types. The revision includes a more general reference to dishonored payments followed by a parenthetical reading, ''(*e.g.,* check or Automated Clearinghouse (ACH) transaction).'' Lastly, in the second sentence of § 24.3(e), CBP is adding ''and payable'' after the word ''due'' to be consistent with the same phrase used in the preceding sentence.

Despite forgoing a small amount of interest that accrues between the debit voucher date and the issuance of a bill or the payment of the debit voucher (whichever is earlier), eliminating this interest assessment in § 24.3a(b)(2)(i)(C) will bring about major efficiency gains for CBP, significantly decreasing manual processing of debit vouchers, and thereby improving revenue-collecting operations and better utilizing resources currently spent on manual processing. The trade community will also benefit from improved visibility into specific debit voucher debts as CBP will no longer mail multiple bills (in the form of a letter) for the amount of the debit voucher and interest to the individual or entity on the debts owed, and payment by the individual or entity on a debit voucher will be reflected automatically on the bill record in ACE. In addition, the trade community will receive periodic reminders in the form of subsequent bills following the initial bill until the debt is paid.

As a result of these changes, most debit voucher bills will be created and mailed automatically, decreasing the volume of manual processing significantly. Some manual processing will still occur to finalize debit voucher bills for dishonored ACH credit and check payments. Payments through ACH debit represent the majority of dishonored transactions, and for debit vouchers received on these debts, the system will automatically create a full debit voucher record and create and mail the bill(s) with the information populated from the original dishonored payment. For dishonored ACH credit and check payments, the system will prepare a draft bill, as not all information that is needed to create a final bill is available in ACE, *e.g.,* what debt is being paid and who is responsible for the debt. CBP accounting technicians will fill in the missing information to complete the record using outside research. Once a full debit voucher record is created, a bill will be automatically generated, with interest automatically calculated by the system, and mailed. The trade community will receive notification of the total amount owed, due within 15 days, on an initial bill, with automatic subsequent notifications following in 30-day periods. Most payments on debit vouchers will be posted directly to the bill, and no longer to the BCA, as system limitations that exist in ACS will be eliminated with Release 7.

IV. Statutory and Regulatory Requirements

A. Executive Orders 13563 and 12866 Analysis

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This interim final rule has not been designated as a ''significant regulatory action'' under Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed this regulation.

This interim final rule is part of ACE Collections Release 7. CBP is amending its regulations in 19 CFR 24.3a to reflect the elimination of debit voucher interest that CBP currently charges to align debit voucher processing with CBP's automated billing process. CBP has prepared the following analysis to help inform stakeholders of the impacts of this interim final rule.

1. Purpose of Rule

This interim final rule will eliminate a requirement in current regulations relating to the accrual of interest on dishonored payments. When a payment to CBP, whether paper or electronic, is dishonored for lack of funds, the bank issues a debit voucher and notifies CBP. Regulation currently requires CBP to assess interest on the dishonored payment amount between the date of a debit voucher to either the date of the payment or the date of the issuance of the bill. This interim final rule will eliminate this initial period in which interest accrues. Under this interim final rule, interest will instead accrue from the date of the bill, initially for 15 days, and then in 30-day periods until the bill is paid, in alignment with CBP practices for other payments.

2. Background

In the course of doing business, CBP bills individuals and entities for duties, taxes, fees, interest, or other charges. When an individual's or entity's payment is dishonored, CBP may charge additional interest. Current 19 CFR 24.3(b)(2)(i)(C) states:

> If a depository bank notifies CBP by a debit voucher that a CBP account is being debited due to a dishonored check or dishonored Automated Clearinghouse (ACH) transaction, interest will accrue on the debited amount from the date of the debit voucher to either the date of payment of the debt represented by the debit voucher or the date of issuance of a bill for payment, whichever date is earlier.

Before electronic banking was widely available, notification of a dishonored payment could take days to weeks, as the affected bank had to notify CBP via a paper debit voucher. After receipt of notice, CBP would calculate the interest owed on the dishonored amount based on the date of the debit voucher, create a bill with just the amount of the debit voucher in ACS, place a hold on that bill, and mail a letter containing the amount of the debit voucher and interest to the individual or entity. With the advent of electronic payments and messaging, the time between a debit voucher's creation and the bank's notification to CBP is significantly reduced, usually taking no more than three days. Often, the individual or entity has become aware of the problem and made the payment before CBP receives notification or calculates the interest and issues a bill, or the individual or entity makes the payment after the bill is generated but before it is received, causing confusion. As CBP's debit voucher process has not yet been automated, CBP accounting technicians must continue to process debit vouchers manually by checking for a (late) payment, calculating interest, and generating a bill. If the individual or entity continues to fail to pay after the initial bill, CBP may mail subsequent letters as interest accrues in further 30-day periods, but because the process is handled manually, subsequent letters are rarely mailed.

CBP seeks to automate the debit voucher process as a part of ACE Collections Release 7 to better serve the trade community, promote efficiency,

and improve collections. However, because of the structure of CBP's electronic systems, processing of debit vouchers can only be automated if CBP eliminates the requirement to assess interest between the date of the debit voucher to either the date of the payment or the date of the issuance of the bill. Under an automated system made possible through this interim final rule, CBP will systemically mail the CBP bill inclusive of all applicable interest accruing on the bill and dishonored payment fees. Thus, payments for a debit voucher will automatically be posted to the individual's or entity's bill record in CBP systems instead of requiring manual processing by an accounting technician to adjust remaining interest and the bill record after payment has been made. The debit voucher process will be completely electronic, with both initial and subsequent bills mailed automatically if payment is not made.

3. Costs of the Rule

CBP does not anticipate any costs resulting from this interim final rule. Although CBP has invested resources into automating the debit voucher process, those costs were borne regardless of this interim final rule as CBP modernizes its financial systems and moves most business activities to ACE. CBP's ACE Collections effort is large and ongoing, and the debit voucher process represents a minor part. The trade community will see no costs from this interim final rule and will likely save time in the payment and billing process as electronic payment and automatic account updates make settling accounts quicker and easier.

4. Benefits of the Rule

CBP considers this interim final rule to be beneficial to both CBP and the trade community. Automating debit voucher processing will bring clarity and efficiency to the interest accrual and collection environment, making it clear to the individuals and entities involved how much they owe and when, and allowing them to make payments quickly. Individuals and entities will no longer receive bills for payments they may have already made and CBP's accounting technicians will no longer need to spend time calculating interest and generating bills for every debit voucher received by CBP. Automation will also allow for better collection of interest accrued after the initial bill. Under current manual practice, subsequent bills are rarely generated and mailed. Under this interim final rule, that process will be automated, enabling CBP to pursue payment.[7]

5. Transfers

CBP will likely see a small reduction in the amount of interest charged to and collected from individuals and entities because, as part of Release 7, interest will start accruing at a later date—at the time the debit voucher bill is issued rather than at the time of the debit voucher itself. This reduction is not counted as a cost of this interim final rule but as a transfer, as the reduction in CBP's income will be equal to the corresponding increase in funds retained by the individual or entity paying the debit voucher bill. As the total resources available to society will not change, this is a transfer and not a cost.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires agencies to assess the impact of regulations on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business concern per the Small Business Act); a small organization (defined as any not-for-profit enterprise which is independently owned and operated and is not dominant in its field); or a small governmental jurisdiction (defined as a locality with fewer than 50,000 people). Since a general notice of proposed rulemaking is not necessary for this rule, CBP is not required to prepare a regulatory flexibility analysis for this interim final rule.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3507), an agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. There are no information collections associated with this rule.

[7] Note that some individuals and entities that owe CBP interest on their longer-term dishonored payments will, in practice, pay more interest since subsequent bills with updated accruing interest amounts will be mailed with better regularity. CBP does not consider this a cost of this interim final rule as it is a cost of compliance with current regulations.

D. Inapplicability of Notice and Comment Requirement and Delayed Effective Date

The Administrative Procedure Act (APA) requirements in 5 U.S.C. 553 govern agency rulemaking procedures. Section 553(b) of the APA generally requires notice and public comment before issuance of a final rule. In addition, section 553(d) of the APA requires that a final rule have a 30-day delayed effective date. The APA, however, provides exceptions from the prior notice and public comment requirement and the delayed effective date requirement, when an agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest. *See* 5 U.S.C. 553(b)(B) and (d)(3).

Pursuant to 5 U.S.C. 553(b)(B), CBP has determined for good cause that prior notice and comment are unnecessary because the interim final rule mainly changes CBP's internal accounting procedures and does not negatively affect the substantive rights of the members of the trade community. As explained in more detail above, the elimination of the debit voucher interest and the automation of the debit voucher billing process will bring clarity as to the debts owed and efficiency as to the debit voucher process itself, benefitting both the trade community and CBP. For the same reasons, CBP finds that good cause exists pursuant to section 553(d)(3) of the APA to issue this interim final rule effective upon publication.

Signing Authority

This document is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the authority of the Secretary of the Treasury (or her/his delegate) to approve regulations related to certain customs revenue functions.

Troy A. Miller, Senior Official Performing the Duties of the Commissioner, having reviewed and approved this document, has delegated the authority to electronically sign this document to the Director (or Acting Director, if applicable) of the Regulations and Disclosure Law Division of CBP, for purposes of publication in the **Federal Register**.

List of Subjects in 19 CFR Part 24

Accounting, Claims, Exports, Freight, Harbors, Reporting and recordkeeping requirements, Taxes.

Amendments to the Regulations

For the reasons stated above, part 24 of title 19 of the Code of Federal Regulations (19 CFR part 24) is amended as set forth below:

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

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

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 3717, 9701; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

* * * * *

■ 2. Revise § 24.3(e) to read as follows:

§ 24.3 Bills and accounts; receipts.

* * * * *

(e) Except for bills resulting from dishonored payments (*e.g.,* a check or Automated Clearinghouse (ACH) transaction), all other bills for duties, taxes, fees, interest, or other charges are due and payable within 30 days of the date of the issuance of the bill. Bills resulting from dishonored payments are due and payable within 15 days of the date of the issuance of the bill.

■ 3. In § 24.3a:

■ a. Revise the first sentence of the introductory text of paragraph (b)(2)(i);

■ b. Remove paragraph (b)(2)(i)(C); and

■ c. Add a new paragraph (b)(3).

The revision and addition read as follows:

§ 24.3a CBP bills; interest assessment on bills; delinquency; notice to principal and surety.

* * * * *

(b) * * *

(2) * * *

(i) *Initial interest accrual.* Except as otherwise provided in paragraphs (b)(2)(i)(A) and (b)(2)(i)(B) of this section, interest assessed due to an underpayment of duties, taxes, fees, or interest will accrue from the date the importer of record is required to deposit estimated duties, taxes, fees, and interest to the date of liquidation or reliquidation of the applicable entry or reconciliation. * * *

* * * * *

(3) *Interest accrual on debit vouchers.* If a depository bank notifies CBP by a debit voucher that a CBP account is being debited due to a dishonored payment (*e.g.,* a check or Automated Clearinghouse (ACH) transaction), interest will accrue on the debited amount from the date of the bill resulting from the dishonored payment. If payment is not received by CBP on or before the late payment date appearing on the bill, interest charges will be assessed on the debited amount. The initial late payment date is the date 15 days after the interest computation date. The interest computation date is the date from which interest is calculated and is initially the bill date. No interest charge will be assessed where the payment is actually received at the ''Send Payment To'' location designated on the bill within the initial 15-day period. After the initial 15-day period, interest will be assessed in 30-day periods pursuant to paragraph (c) of this section.

* * * * *

Robert F. Altneu,

Director, Regulations & Disclosure Law Division, Regulations & Rulings, Office of Trade, U.S. Customs and Border Protection.

Thomas C. West, Jr.,

Deputy Assistant Secretary of the Treasury for Tax Policy.

[FR Doc. 2023–23305 Filed 10–20–23; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

[Docket No. DEA–1118]

Additions to Listing of Exempt Chemical Mixtures

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Direct final rule.

SUMMARY: Under this direct final rule, the Drug Enforcement Administration (DEA) is updating the Table of Exempt Chemical Mixtures to include the listing of nine additional preparations. This action is in response to DEA's review of new applications for exemption. Having reviewed applications and relevant information, DEA has found that these preparations meet the applicable exemption criteria. Therefore, this rule amends the regulations to codify that these products are exempted from the application of certain provisions of the Controlled Substances Act.

DATES: This direct final rule is effective December 22, 2023 without further action, unless DEA receives adverse comment by DEA no later than November 22, 2023. If any comments or objections raise significant issues regarding any findings of fact or conclusions of law upon which this rule is based, the Administrator will withdraw this direct final rule and will issue a new rule, after she has reconsidered the issues in light of the comments and objections filed.

Written comments must be postmarked and electronic comments must be submitted on or before November 22, 2023. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–1118'' on all correspondence, including any attachments.

• *Electronic comments:* The Drug Enforcement Administration encourages 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 to attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon completion of your submission you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov*. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

• *Paper comments:* Paper comments that duplicate the electronic submission are not necessary and are discouraged. Should you wish to mail a paper comment *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Terrence L. Boos, Ph.D., Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 362–3249.

SUPPLEMENTARY INFORMATION: Any interested person may file comments or objections to this order, on or before November 22, 2023. If any such comments or objections raise significant issues regarding any findings of fact or conclusions of law upon which the rule is based, the Administrator will withdraw this direct final rule. The Administrator may reconsider the application in light of the comments and objections filed and reinstate, terminate, or amend the original order as deemed appropriate.

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying

information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov.* Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the Drug Enforcement Administration's (DEA) public docket file. Please note that the Freedom of Information Act applies to all comments received.

New Exempt Chemical Mixtures

The manufacturers of nine chemical mixtures listed below have applied for an exemption pursuant to 21 CFR 1310.13. DEA has reviewed the applications, as well as any additional information submitted by the respective manufacturers. DEA has found that: (1) each of these chemical mixtures is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance; and (2) the listed chemical(s) contained in these chemical mixtures cannot be readily recovered. Therefore, DEA has determined that each of the applications should be granted, and previously issued a letter to this effect. This regulatory action conforms DEA regulations to the exemptions previously issued.

Background

Under 21 CFR 1310.13(a), the Administrator may, by publication of a final rule in the **Federal Register**, exempt from the application of all or any part of the Controlled Substances Act (CSA) a chemical mixture consisting of two or more chemical components, at least one of which is not a list I or list II chemical. Each manufacturer must apply for such an exemption (21 CFR 1310.13) to ensure that each manufacturer's product warrants an exemption by demonstrating that:

(1) The mixture is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance; and

(2) The listed chemical or chemicals contained in the chemical mixture cannot be readily recovered.

Any manufacturer seeking an exemption for a chemical mixture, not automatically exempt under 21 CFR 1310.12, may apply to the Administrator by submitting an application for exemption which contains the information required by 21 CFR 1310.13(c):

(1) The name, address, and registration number, if any, of the applicant;

(2) The date of the application;

(3) The exact trade name(s) of the applicant's chemical mixture;

(4) The complete qualitative and quantitative composition of the chemical mixture (including all listed and all non-listed chemicals); or if a group of mixtures, the concentration range for the listed chemical and a listing of all non-listed chemicals with respective concentration ranges;

(5) The chemical and physical properties of the mixture and how they differ from the properties of the listed chemical or chemicals; and if a group of mixtures, how the group's properties differ from the properties of the listed chemical;

(6) A statement that the applicant believes justifies an exemption for the chemical mixture or group of mixtures. The statement must explain how the chemical mixture(s) meets the exemption criteria;

(7) A statement that the applicant accepts the right of the Administrator to terminate exemption from regulation for the chemical mixture(s) granted exemption under 21 CFR 1310.13; and

(8) The identification of any information on the application that is considered by the applicant to be a trade secret or confidential and entitled to protection under U.S. laws restricting the public disclosure of such information.

The Administrator may require the applicant to submit such additional documents or written statements of fact relevant to the application that he deems necessary for determining if the application should be granted.

21 CFR 1310.13 further specifies that within a reasonable period of time after the receipt of an application for an exemption, the Administrator will notify the applicant of acceptance or rejection of the application for filing. If the application is not accepted for filing, an explanation will be provided. The Administrator is not required to accept an application if any information required pursuant to 21 CFR 1310.13 is lacking or not readily understood. The applicant may, however, amend the application to meet the requirements of this section.

If the exemption is granted, the applicant shall be notified in writing and the Administrator shall issue, and publish in the **Federal Register**, an order on the application. This order shall specify the date on which it shall take effect. The Administrator shall permit any interested person to file written comments on or objections to the order. If any comments or objections raise significant issues regarding any findings of fact or conclusions of law upon which the order is based, the Administrator may suspend the effectiveness of the order until he has reconsidered the application in light of the comments and objections filed. Thereafter, the Administrator shall reinstate, terminate, or amend the original order as deemed appropriate.

A formulation granted exemption by publication in the **Federal Register** will not be exempted for all manufacturers. The current Table of Exempt Chemical Mixtures lists those products that have been granted exempt status prior to this update. That table can be viewed online at*: http://www.deadiversion.usdoj.gov/schedules/exempt/exempt_list.htm.*

Findings

Having considered the information provided in each of the below listed applications, I find that each of the referenced chemical mixtures meets the requirements for exemption under 21 CFR 1310.13(a). Therefore, each of these mixtures is exempt from the application of sections 302, 303, 310, 1007, and 1008 of the CSA (21 U.S.C. 822, 823, 830, 957 and 958).

DEA is updating the table in 21 CFR 1310.13(i) to include each of these exempt chemical mixtures.

Regulatory Analyses

Administrative Procedure Act

An agency may find good cause to exempt a rule from prior public notice provisions of the Administrative Procedure Act (5 U.S.C. 553(b)(B)), if it

is determined to be unnecessary, impracticable, or contrary to the public interest. DEA finds that it is unnecessary to engage in notice and comment procedures because this rulemaking grants exemptions for the below listed products in accordance with standards set by existing DEA regulations. Each of these manufacturers has previously received a letter from DEA granting exempted status for the specific products. This regulatory action hereby conforms DEA regulations to the exemptions previously considered and issued.

Executive Orders 12866 and 13563, Regulatory Planning and Review, Improving Regulation and Regulatory Review, and Reducing Regulation and Controlling Regulatory Costs

This direct final rule was developed in accordance with the principles of Executive Orders (E.O.) 12866 and 13563. E.O. 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). E.O. 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in E.O. 12866. E.O. 12866 classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB), as any regulatory action that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. DEA has determined that this direct final rule is not a ''significant regulatory action'' under E.O. 12866, section 3(f).

Executive Order 12988, Civil Justice Reform

The Administrator further certifies that this rulemaking meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This rulemaking does not have federalism implications warranting the application of E.O. 13132. The rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This rule does not have tribal implications warranting the application of E.O. 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Regulatory Flexibility Act

The Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities. This regulation will not have a significant impact upon firms who distribute these products. In fact, the approval of Exempt Chemical Mixture status for these products reduces the regulatory requirements for distribution of these materials.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.,* the DEA has determined that this action will not result in any Federal mandate that may result ''in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted for inflation) in any one year. Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information requirement under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521. This action does not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act (CRA), 5 U.S.C. 804. However, pursuant to the CRA, DEA is submitting a copy of this direct final rule to both Houses of Congress and to the Comptroller General.

Signing Authority

This document of the Drug Enforcement Administration was signed on October 16, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

List of Subjects in 21 CFR Part 1310

Drug traffic control, Exports, Imports, Reporting and recordkeeping requirements.

Scott Brinks,

Federal Register Liaison Officer, Drug Enforcement Administration.

Under the authority vested in the Attorney General by section 102(39)(A)(vi) of the Act (21 U.S.C. 802(39)(A)(vi)) and delegated to the Administrator of the Drug Enforcement Administration by regulations of the Department of Justice (28 CFR 0.100), the Administrator hereby amends 21 CFR part 1310 as set forth below.

PART 1310—RECORDS AND REPORTS OF LISTED CHEMICALS AND CERTAIN MACHINES

■ 1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 827(h), 830, 871(b), 890.

■ 2. In § 1310.13, table 1 to paragraph (i) is amended by adding the following entries in alphabetical order by Manufacturer to read as follows:

§ 1310.13 Exemption of chemical mixtures; application.

* * * * *

(i) * * *

TABLE 1 TO PARAGRAPH (i)—EXEMPT CHEMICAL MIXTURES

Manufacturer	Product name [1]	Form	Approval date
* *	* *	* *	*
Dr. Haces, L.L.C	PodoPhylis, Podiatric Insole	Polyurethane Iodine Insole	12/15/2021
* *	* *	* *	*
Mitsubishi Chemical Corporation	Aquamicron AKX	Liquid	04/08/2021
Mitsubishi Chemical Corporation	Aquamicron AS	Liquid	04/08/2021
Mitsubishi Chemical Corporation	Aquamicron Titrant SS 1 mg	Liquid	04/08/2021
Mitsubishi Chemical Corporation	Aquamicron Titrant SS 3 mg	Liquid	04/08/2021
Mitsubishi Chemical Corporation	Aquamicron Titrant SS 10 mg	Liquid	04/08/2021
Mitsubishi Chemical Corporation	Aquamicron Titrant SS–Z 1 mg	Liquid	09/01/2020
Mitsubishi Chemical Corporation	Aquamicron Titrant SS–Z 3 mg	Liquid	09/01/2020
Mitsubishi Chemical Corporation	Aquamicron Titrant SS–Z 5 mg	Liquid	04/08/2021
* *	* *	* *	*

[1] Designate product line if a group.

[FR Doc. 2023–23315 Filed 10–20–23; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2023–0837]

Safety Zone; Fireworks Displays Within the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for a fireworks display at The Wharf DC on October 25, 2023, to provide for the safety of life on navigable waterways during this event. Our regulation for Fireworks Displays within the Fifth Coast Guard District identifies the safety zone for this event in Washington, DC. During the enforcement period, vessels may not enter, remain in, or transit through the safety zone unless authorized to do so by the COTP or his representative, and vessels in the vicinity must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

DATES: The regulation in 33 CFR 165.506 will be enforced for the location identified in line no. 1 of table 2 to 33 CFR 165.506(h)(2) from 8:30 p.m. until 10 p.m. on October 25, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email MST2 Hollie Givens, Sector Maryland-NCR, Waterways Management Division, U.S. Coast Guard: telephone 410–57–2596, email *MDNCRMarineEvents@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone regulation for a fireworks display at The Wharf DC from 8:30 p.m. to 10 p.m. on October 25, 2023. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for Fireworks Displays within the Fifth Coast Guard District, § 165.506, specifies the location of the safety zone for the fireworks show, which encompasses portions of the Washington Channel in the Upper Potomac River. During the enforcement period, as reflected in § 165.506(b), if you are the operator of a vessel in the vicinity of the safety zone, you may not enter, remain in, or transit through the safety zone unless authorized to do so by the COTP or his representative, and you must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts.

Dated: October 18, 2023.

David E. O'Connell,

Captain, U.S. Coast Guard, Captain of the Port, Sector Maryland-National Capital Region.

[FR Doc. 2023–23376 Filed 10–20–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0769]

RIN 1625–AA87

Security Zone; Watson Bayou, Panama City, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone for navigable waters of Watson Bayou, Panama City FL, within an area bound by the following points: 30°08′17.8″ N, 85°38′6.6″ W (Diamond Point), thence northeast toward 30°08′34.6″ N, 85°37′55.7″ W (Eastern Shipbuilding), thence east to the South East Avenue Bridge. The security zone is needed to protect the official party, the public, and the surrounding waterway from terrorist acts, sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Sector Mobile Captain of the Port (COTP).

DATES: This rule is effective from 1:30 p.m. on October 27, 2023, through 5 p.m. on November 27, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0769 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 about this rule, call or email MSTC Stacy Stevenson,

Waterways Management Division, U.S. Coast Guard; telephone 251–382–8653, 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 rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to public interest to delay the effective date of this rule. The security zone must be established by October 27, 2023, to mitigate potential terrorist acts, and enhance public and maritime safety and security. The Coast Guard was unable to publish an NPRM due to the short period between the time of the request for Coast Guard enforcement and the actual event. The request for enforcement was received on September 11, 2023. Furthermore, delaying the effective date would be contrary to the security zone's intended objectives of protecting government officials and dignitaries, mitigating potential terrorists acts, and enhancing maritime safety and security.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action to restrict vessel traffic is needed to protect life and property and mitigate potential maritime threats.

III. Legal Authority and Need for Rule

The Coast Guard may issue security zone regulations under authority in 46 U.S.C. 70051 and 70124. The COTP has determined that a security zone is necessary for the protection of government officials and dignitaries during an official visit to Watson Bayou, Panama City, FL, in the vicinity of Eastern Shipbuilding. This rule is needed to protect personnel and vessels in the navigable waters within the security zone.

IV. Discussion of the Rule

This rule establishes a security zone on certain navigable waters of Watson Bayou, Panama City FL from 1:30 p.m. October 27, 2023, through 5 p.m. November 27, 2023. The security zone will be enforced from 1:30 p.m. through 5 p.m. on October 27, 2023. If the event is delayed, the security zone will be enforcement on a subsequent date before November 27, 2023, for approximately 3.5 hours. The duration of the zone is intended to protect personnel, vessels, and ensure maritime security in these navigable waters during a visit of government personnel and dignitaries. No vessel or person will be permitted to enter the security 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, duration, and time-of-day of the security zone. This security zone would impact a small, designated area of Watson Bayou, in the vicinity of Eastern Shipbuilding, for approximately 3.5 hours or less during a period when vessel traffic is typically relatively slow. In addition, vessel traffic will be able to transit Watson Bayou Channel to the west of the security zone. Moreover, the Coast Guard would 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 security 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 security zone lasting only 3.5 hours that will prohibit entry on a portion of Watson Bayou, in the vicinity of Eastern Shipbuilding. 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.

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.T08–0769 to read as follows:

§ 165.T08–0769 Security Zone; Watson Bayou, Panama City, FL.

(a) *Location.* The following area is a security zone: All navigable waters of Watson Bayou, Panama City FL, within an area bound by the following points: 30°08′17.8″ N, 85°38′6.6″ W (Diamond Point), thence northeast toward 30° 08′34.6″ N, 85°37′55.7″ W (Eastern Shipbuilding), then east to the South East Avenue Bridge, and back to the point of origin.

(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 Sector Mobile Captain of the Port (COTP) in the enforcement of the security zone.

(c) *Regulations.* (1) Under the general security zone regulations in subpart D of this part, you may not enter the security 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 on VHF–CH 16. Those in the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section is effective from 1:30 p.m. on October 27, 2023, through 5 p.m. on November 27, 2023. The security zone will be enforced from 1:30 p.m. through 5 p.m. on October 27, 2023. If the event is delayed, the security zone will be enforcement on a subsequent date before November 27, 2023, for approximately 3.5 hours. If the COTP determines no further need to enforce the security zone, the COTP will issue a general permission to enter via a Broadcast Notice to Mariners to indicate that the zone will no longer be subject to enforcement. If the COTP determines the need to enforce the section at a subsequent time, the COTP will provide the public with notice of enforcement of the security zone by marine broadcast, local notice to mariners, on-scene notice by a designated representative, or other appropriate means in accordance with 33 CFR 165.7.

Dated: October 16, 2023.

U.S. Mullins,

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

[FR Doc. 2023–23318 Filed 10–20–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Part 685

[Docket ID ED–2023–OPE–0004]

RIN 1840–AD81

Improving Income Driven Repayment for the William D. Ford Federal Direct Loan Program and the Federal Family Education Loan (FFEL) Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Announcement of early implementation date.

SUMMARY: The U.S. Department of Education (Department) designates a regulatory provision in its final rule related to income-driven repayment for early implementation.

DATES: October 23, 2023. For the implementation dates of the regulatory provision, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Bruce Honer, U.S. Department of Education, 400 Maryland Avenue SW, 5th Floor, Washington, DC 20202. Telephone: (202) 987–0750. Email: *Bruce.Honer@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: Section 482(c)(1) of the Higher Education Act of 1965, as amended (HEA), requires that regulations affecting programs under title IV of the HEA be published in final form by November 1 prior to the start of the award year (July 1) to which they apply. Section 482(c)(2) of the HEA also

permits the Secretary to designate any regulatory provision as one that an entity subject to the provision may choose to implement earlier and to outline the conditions for early implementation.

On July 10, 2023, the Department published in the **Federal Register** a final rule amending regulations related to income-driven repayment (88 FR 43820). In that final rule, we designated certain provisions for early implementation.

The Secretary is exercising his authority under section 482(c) of the HEA to designate an additional regulatory change made in that final rule for early implementation beginning on October 23, 2023.

The Secretary is designating for early implementation the change to the process for a borrower re-enrolling in the Revised Pay As You Earn (REPAYE) repayment plan, which is now also known as the Saving on a Valuable Education (SAVE) repayment plan, after previously being enrolled in a different plan. Under current 34 CFR 685.209(c)(4)(vi)(D) and (E), a borrower returning to REPAYE must provide documentation of income for the years in which the borrower was not on REPAYE. Section 685.209(e) of the final rule, which will become effective on July 1, 2024, employs a simpler process that does not require documentation of prior years' income information. *See* 88 FR 43820, 43901. On October 23, 2023, the Department will implement § 685.209(e), to the extent it eliminates the requirement for borrowers returning to SAVE after having previously been on REPAYE to provide prior years' income. The Secretary is designating only the removal of this requirement for early implementation, rather than all of § 685.209(e).

While documentation of income for years in which a borrower was not enrolled in REPAYE is no longer required, a borrower will still need to provide documentation of their income information to allow the Department to calculate the borrower's current monthly payment amount under the SAVE plan.

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.

Miguel A. Cardona,

Secretary of Education.

[FR Doc. 2023–23334 Filed 10–20–23; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2022–0605; FRL–11128–02–R6]

Air Plan Approval; Arkansas; Excess Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA, the Act), the Environmental Protection Agency (EPA) is approving two revisions to the Arkansas State Implementation Plan (SIP) submitted by the Governor on May 12, 2022, and November 1, 2022. These SIP revisions were submitted in response to EPA's June 12, 2015, finding of substantial inadequacy and SIP call concerning excess emissions during periods of startup, shutdown, and malfunction (SSM) events. EPA is approving these SIP revisions and finds that the revisions correct the inadequacies identified in Arkansas' SIP in the June 12, 2015, SIP call.

DATES: This rule is effective on November 22, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2022–0605. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: James E. Grady, EPA Region 6 Office, Regional Haze and SO_2 Section, (214) 665–6745; *grady.james@epa.gov.* Please call or email Mr. Grady above or call Mr. Bill Deese at 214–665–7253 if you need alternative access to material indexed but not provided in the docket.

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

I. Background

The background for this action is discussed in detail in our July 21, 2023, proposed action (88 FR 47095). In that document we proposed to approve revisions to the Arkansas SIP which were submitted on May 12, 2022, and November 1, 2022, subsequent to EPA's January 12, 2022, finding of failure to submit concerning excess emissions during periods of SSM.[1] We proposed to approve the removal of two SSM provisions identified as substantially inadequate in the June 12, 2015, SIP call.[2] Specifically, we proposed to approve the removal of Regulation 19.602-Emergency Conditions and Regulation 19.1004(H)-Malfunctions, Breakdowns, Upsets from the Arkansas SIP. We also proposed to determine that such SIP revisions correct the substantial inadequacies in the Arkansas SIP as identified in the June 2015 SIP call and in response to EPA's January 2022 finding of failure to submit.

II. Response to Comments

The public comment period for our proposed approval and determination expired on August 21, 2023, and no adverse comments were received. We received one comment from Sierra Club and Environmental Integrity Project supporting removal of Regulation 19.602 and Regulation 19.1004(H) from the Arkansas SIP. Therefore, we are finalizing our action as proposed.

III. Final Action

The EPA is approving the revisions to the Arkansas SIP submitted by the State

[1] Findings of Failure to Submit State Implementation Plan Revisions in Response to the 2015 Findings of Substantial Inadequacy and SIP Calls To Amend Provisions Applying To Excess Emissions During Periods of Startup, Shutdown, and Malfunction, 87 FR 1680 (Jan. 12, 2022), available at *www.regulations.gov,* Docket ID No. EPA–HQ–OAR–2021–0863.

[2] 80 FR 33839 (June 12, 2015).

of Arkansas on May 12, 2022, and November 1, 2022, in response to EPA's national SIP call of June 12, 2015, concerning excess emissions during periods of SSM. Specifically, we are approving the removal of Regulation 19.602—Emergency Conditions and Regulation 19.1004(H)—Malfunctions, Breakdowns, Upsets of Rule 19 from the Arkansas SIP. We are approving these revisions in accordance with section 110 of the Act. EPA is also determining that these SIP revisions correct the substantial inadequacies in the Arkansas SIP as identified in the June 12, 2015, SSM SIP Action and in response to EPA's January 12, 2022, finding of failure to submit.

IV. Environmental Justice Considerations

As stated in the proposed action for informational purposes only, EPA provided additional information regarding potentially impacted populations living within Pulaski County as well as the State of Arkansas as a whole.[3] As discussed in the proposal, this action is intended to ensure that all communities and populations across Arkansas, and downwind areas, receive the full human health and environmental protection provided by the CAA. The removal of impermissible automatic exemptions or impermissible affirmative defense provisions from the SIP is necessary to preserve the enforcement structure of the CAA, to preserve the jurisdiction of courts to adjudicate questions of liability and remedies in judicial enforcement actions and to preserve the potential for enforcement by the EPA and other parties under the citizen suit provision as an effective deterrent to violations. There is nothing in the record which would indicate that this action will have disproportionately high or adverse human health or environmental effects on communities with environmental justice concerns.

V. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is removing the incorporation by reference of certain sections of ''Regulation 19'' in 40 CFR 52.170, as described in section III of this Final Action. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for removal from the Arkansas SIP, have been removed from incorporation by reference by EPA into that plan, are no longer federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and incorporation by reference will be removed in the next update to the SIP compilation.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For 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 14094 (88 FR 21879, April 11, 2023);
- 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- 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 CAA.
- Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 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.''

The air agency 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. The EPA performed an environmental justice analysis, as is described above in the section titled, ''Environmental Justice Considerations.'' The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area by removal of an automatic exemption provision and an affirmative defense provision from the Arkansas SIP. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

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

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action

[3] *https://www.census.gov/quickfacts/fact/table/pulaskicountyarkansas,AR,US/PST045222.*

is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 22, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: October 16, 2023.

Earthea Nance,

Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart E—Arkansas

■ 2. In § 52.170, the table in paragraph (c) titled ''EPA-Approved Regulations in the Arkansas SIP'' is amended under the heading for Regulation 19 by:

■ a. Removing the entry for Reg. 19.602 under the heading for Chapter 6; and

■ b. Revising the entry for Reg. 19.1004 under the heading for Chapter 10.

The revision reads as follows:

§ 52.170 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE ARKANSAS SIP

State citation	Title/subject	State submittal/effective date	EPA approval date	Explanation
Regulation No. 19: Regulations of the Arkansas Plan of Implementation for Air Pollution Control				
*	*	*	*	*
Chapter 10: Regulations for the Control of Volatile Organic Compounds in Pulaski County				
*	*	*	*	*
Reg. 19.1004	General Provisions	1/25/2009, 5/12/2022.	3/4/2015, 80 FR 11573, 10/23/2023, [Insert **Federal Register** citation].	Reg. 19.1004(H) is no longer in SIP, 10/23/2023.
*	*	*	*	*

* * * * *

[FR Doc. 2023–23256 Filed 10–20–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2023–0206; FRL–11037–02–R3]

Air Plan Disapproval; Delaware; Removal of Excess Emissions Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action.

SUMMARY: The Environmental Protection Agency (EPA) is disapproving certain portions of a state implementation plan (SIP) revision submitted by the State of Delaware, through the Delaware Department of Natural Resources and Environmental Control (DNREC), on November 22, 2016. The revision was submitted by Delaware in response to a national finding of substantial inadequacy and SIP call published on June 12, 2015, which included certain provisions in the Delaware SIP related to excess emissions during startup, shutdown, and malfunction (SSM) events. EPA is disapproving certain portions of the SIP revision and determining that such SIP revision does not correct the remaining deficiencies in Delaware's SIP identified in the June 12, 2015, SIP call in accordance with the requirements for SIP provisions under the Clean Air Act (CAA or Act). This action addresses the remaining deficiencies identified in EPA's June 2015 SIP call that have not yet been addressed by prior EPA actions on Delaware's November 2016 SIP submission.

DATES: This final action is effective on November 22, 2023.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2023–0206. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Mallory Moser, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215)

814–2030. Ms. Moser can also be reached via electronic mail at *moser.mallory@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 12, 2015, pursuant to CAA section 110(k)(5), the EPA finalized ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,'' [1] hereafter referred to as the ''2015 SSM SIP Action.'' The 2015 SSM SIP Action clarified, restated, and updated the EPA's interpretation that SSM exemptions (whether automatic or discretionary) and affirmative defense SIP provisions are inconsistent with CAA requirements. The 2015 SSM SIP Action found that certain SIP provisions in 36 states were substantially inadequate to meet CAA requirements and issued a SIP call to those states to submit SIP revisions to address the inadequacies. EPA established an 18-month deadline by which the affected states had to submit such SIP revisions. States were required to submit corrective revisions to their SIPs in response to the SIP calls by November 22, 2016.

With respect to the Delaware SIP, in the 2015 SSM SIP Action, EPA determined that the following 7 provisions were substantially inadequate to meet CAA requirements: Title 7 of Delaware's Administrative Code (7 DE Admin. Code) 1104 Section (§) 1.5, 7 DE Admin. Code 1105 § 1.7, 7 DE Admin. Code 1108 § 1.2, 7 DE Admin. Code 1109 § 1.4, 7 DE Admin. Code 1114 § 1.3, 7 DE Admin. Code 1124 § 1.4 and 7 DE Admin. Code 1142 § 2.3.1.6. Delaware submitted a SIP revision on November 22, 2016, in response to the SIP call issued in the 2015 SSM SIP Action. Delaware's submission noted that the deficiency highlighted in 7 DE Admin. Code 1108 § 1.2 was corrected by a previous SIP revision submitted to EPA on July 10, 2013. A final rule acting on this 2013 submission and remedying 7 DE Admin. Code 1108 § 1.2 published in the **Federal Register** on July 11, 2022.[2] Delaware's submission also requested that EPA revise the Delaware SIP by removing 7 DE Admin. Code 1124 § 1.4 and 7 DE Admin. Code 1142 § 2.3.1.6 in their entirety, thereby removing these provisions, and their deficiencies, from the Delaware SIP. A final rulemaking remedying 7 DE Admin. Code 1124 § 1.4 and 7 DE Admin. Code 1142 § 2.3.1.6 published in the **Federal Register** on February 14, 2023.[3]

II. Summary of SIP Revision and EPA Analysis

On June 21, 2023, EPA published a notice of proposed rulemaking (NPRM) related to the remaining four provisions identified in EPA's June 2015 SIP call that had not yet been addressed by prior EPA actions.[4] In that document, EPA proposed disapproval of the remainder of Delaware's 2016 submittal for multiple reasons. With regards to 7 DE Admin. Code 1104 and 7 DE Admin. Code 1105, Delaware's 2016 submittal requested EPA replace both two-hour averaging periods for particulate emission limits with 30-day rolling averages with no change to the level of the limit. The increases in averaging times were not supported by a sufficient analysis explaining why these changes meet the requirements of CAA section 110(l). Additionally, Delaware did not provide an explanation or analysis of how increasing the averaging time of the affected limits without any adjustment to their levels would or would not affect attainment or maintenance of the national ambient air quality standards (NAAQS). With regards to 7 DE Admin. Code 1109 and 7 DE Admin. Code 1114, Delaware's 2016 submission requested the removal of these regulations from the SIP and instead noted that other requirements, including the CAA New Source Performance Standards (NSPS), are adequate to protect the NAAQS. This is problematic because the specific NSPS which Delaware cited allow for periods of excess emissions during SSM events. Also, these changes were not supported by a sufficient analysis explaining how these changes meet the requirements of CAA section 110(l). A more complete explanation of the reasons for the proposed disapproval can be found in the June 21, 2023, NPRM.

III. EPA's Response to Comments Received

EPA received two comments which can be found in the docket. One comment, from the State of Delaware, notes the State is reviewing the record and preparing a path forward to respond to the concerns found within the NPRM. EPA acknowledges Delaware's comment. The other comment, from the Sierra Club and Environmental Integrity Project (EIP), was partially adverse, and the adverse portions are discussed below.

Comment 1: The commenters, Sierra Club and EIP, expressed support for EPA's proposed disapproval action on the remaining provisions in Delaware's 2016 submittal, while disagreeing with EPA's position in the NPRM that a properly set longer-term averaging period can be protective of a shorter-term NAAQS. Commenters also urged EPA to propose a Federal Implementation Plan (FIP) to address the remaining disapproved provisions of Delaware's 2016 submittal.

Response 1: While EPA acknowledges commenters' support of this action, EPA continues to believe that in appropriate cases properly set longer-term emission limits can be protective of a shorter-term NAAQS. EPA has explained in the 2014 Guidance for 1-Hour Sulfur dioxide (SO_2) Nonattainment Area SIP Submissions (2014 SO_2 Guidance) [5] how a short-term rate that is shown to be NAAQS protective for a given source can be converted to a comparably stringent longer-term limit that is also NAAQS protective. The 1-hour SO_2 Guidance recommends that emission limits be expressed as short-term averages, but also describes the option to use emission limits with longer averaging times of up to 30 days so long as the state meets various suggested criteria to adjust the longer-term limit downward to account for the variability of the source's emissions. EPA has approved several SO_2 SIPs relying on longer term average limits derived according to the methods found in the 2014 SO_2 guidance. See, for example, 83 FR 4591 (February 1, 2018) (approval of Illinois SO_2 SIP); 83 FR 25922 (June 5, 2018) (approval of New Hampshire SO_2 SIP); 84 FR 8813 (March 12, 2019) (approval of Arizona SO_2 SIP); 84 FR 30920 (June 28, 2019) (approval of Kentucky SO_2 SIP); 84 FR 51988 (October 1, 2019) (approval of Pennsylvania SO_2 SIP for the Beaver County area); 85 FR 22593 (April 23, 2020 (approval of Pennsylvania SO_2 SIP for the Allegheny County area), and 85 FR 49967 (August 17, 2020) (approval of Indiana SO_2 SIP). The principles found in the 2014 SO_2 Guidance can be applied to other NAAQS pollutants with short-term averaging times, such as particulate matter, if adequately demonstrated in a specific case. With an appropriate analysis, a properly set longer-term averaging period can be protective of a shorter-term NAAQS;

[1] 80 FR 33839, June 12, 2015.

[2] See 87 FR 41074.

[3] See 88 FR 9399.

[4] See 88 FR 40136.

[5] The 2014 SO_2 Guidance can be found at the following web address: *https://www.epa.gov/sites/default/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf.*

however, in this matter Delaware merely lengthened the averaging time for the limit without adjusting the limit's value in accordance with the SIP Guidance. As such, a critical portion of the demonstration is lacking so EPA is not yet prepared to apply this methodology in this specific action.

In response to the request that EPA promulgate a FIP, EPA acknowledges this comment and recognizes the Agency's statutory obligation to promulgate a FIP within 24 months of a final disapproval of a SIP submission unless the State corrects the deficiency, and EPA approves the plan or plan revision, before EPA promulgates the FIP.

IV. Final Action

For the reasons discussed in detail in the proposed rulemaking and summarized herein, EPA is disapproving the portion of Delaware's November 22, 2016, SIP submission addressing 7 DE Admin. Code 1104 § 1.5, 7 DE Admin. Code 1105 § 1.7, 7 DE Admin. Code 1109 § 1.4, and 7 DE Admin. Code 1114 § 1.3.

As a result of our disapproval, CAA section 110(c)(1) would require EPA to promulgate a FIP within 24 months of the effective date of the final disapproval action, unless EPA first approves a complete SIP revision that corrects the deficiencies in 7 DE Admin. Code 1104 Section (§) 1.5, 7 DE Admin. Code 1105 § 1.7, 7 DE Admin. Code 1109 § 1.4 and 7 DE Admin. Code 1114 § 1.3, within such time. In addition, final disapproval could trigger mandatory sanctions under CAA section 179 and 40 CFR 52.31 unless the State submits, and EPA approves, a complete SIP revision that corrects the identified deficiencies within 18 months of the effective date of the final disapproval action.[6]

[6] The offset sanction in CAA section 179(b)(2) would be triggered 18 months after the effective date of a final disapproval, and the highway funding sanction in CAA section 179(b)(1) would be triggered 24 months after the effective date of a final disapproval. Although the sanctions clock would begin to run from the effective date of a final disapproval, mandatory sanctions under CAA section 179 generally apply only in designated nonattainment areas. This includes areas designated as nonattainment after the effective date of a final disapproval. As discussed in the 2015 SSM SIP Action, EPA will evaluate the geographic scope of potential sanctions at the time it makes a determination that the air agency has failed to make a complete SIP submission in response to the 2015 SIP call, or at the time it disapproves such a SIP submission. The appropriate geographic scope for sanctions may vary depending upon the SIP provisions at issue. See the 2015 SSM SIP Action at 80 FR 33839, 33930 (June 12, 2015) EPA Docket ID No. EPA–HQ–OAR–2012–0322 available at *www.regulations.gov.*

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, if they meet the criteria of the CAA. Accordingly, this final action disapproving portions of Delaware's SIP revision merely ascertains that these State law provisions do not meet Federal requirements and does not impose additional requirements beyond those imposed by state law. Additional information about these statutes and Executive Orders can be found at *www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' as defined by Executive Order 12866 and was therefore not submitted to the Office of Management and Budget for review.

B. Paperwork Reduction Act (PRA)

This proposed action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action merely proposes to disapprove a portion of a SIP submission as not meeting the CAA.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action does not apply on any Indian reservation land, any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, or non-reservation areas of Indian country. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it merely proposes to disapprove a portion of a SIP submission as not meeting the CAA.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 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.''

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

The air agency 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. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. 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 merely proposes to disapprove a SIP submission as not meeting the CAA.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the 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).

L. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 16, 2023. Filing a petition for reconsideration by the Administrator of this final action 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 action. This action pertaining to the disapproval of these portions of Delaware's November 22, 2016, submittal, 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, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Volatile organic compounds.

Adam Ortiz,

Regional Administrator, Region III.

[FR Doc. 2023–23242 Filed 10–20–23; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA–R03–OAR–2021–0767; FRL–9366–02–R3]

Outer Continental Shelf Air Regulations; Consistency Update for Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is updating a portion of the Outer Continental Shelf (OCS) Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by the Clean Air Act (CAA). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which Virginia is the designated COA. The Commonwealth of Virginia's requirements discussed in this document will be incorporated by reference into the Code of Federal Regulations (CFR) and listed in the appendix to the Federal OCS air regulations.

DATES: This final rule is effective on November 22, 2023. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of November 22, 2023.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2021–0767. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *www.regulations.gov,* or at the U.S. Environmental Protection Agency, EPA Region 3 Regional Office, Air and Radiation Division, Four Penn Center, 1600 JFK Blvd., Philadelphia, PA 19103. EPA requests that you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Supplee, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2763. Ms. Supplee can also be reached via electronic mail at *supplee.gwendolyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background and Purpose

On September 4, 1992, EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from OCS sources in order to attain and maintain Federal and state ambient air quality standards and to comply with the provisions of part C of title I of the CAA. The regulations at 40 CFR part 55 apply to all OCS sources offshore of the states except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the CAA requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as

[1] The reader may refer to the notice of proposed rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792), for further background and information on the OCS regulations.

necessary to maintain consistency with onshore requirements.

On February 10, 2022 (87 FR 7790), EPA published a notice of proposed rulemaking (NPRM) proposing to incorporate various Virginia air pollution control requirements into 40 CFR part 55. Pursuant to 40 CFR 55.12, consistency reviews will occur: (1) at least annually; (2) upon receipt of a Notice of Intent (NOI) under 40 CFR 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in 40 CFR part 55. EPA's NPRM proposed to approve an annual update pursuant to 40 CFR 55.12(b). Subsequent to EPA's February 10, 2022, NPRM, Virginia amended state regulations relevant to the OCS, effective March 15, 2023. EPA intends to address these post-NPRM state amendments in its next annual update consistent with 40 CFR 55.12. This action addresses only those regulations identified for incorporation in NPRM, namely the Virginia regulations that were updated as of September 8, 2021.

EPA reviewed the Virginia Department of Environmental Quality (''Virginia DEQ'') air rules for inclusion in 40 CFR part 55 in this action to ensure that they are rationally related to the attainment or maintenance of Federal or state ambient air quality standards and compliance with part C of title I of the CAA, that they are not designed expressly to prevent exploration and development of the OCS, and that they are potentially applicable to OCS sources. See 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. See 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules,[2] and requirements that regulate toxics which are not related to the attainment and maintenance of Federal and state ambient air quality standards.

Section 328(a) of the CAA requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into 40 CFR part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into 40 CFR part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the CAA. Consistency updates may result in the inclusion of state or local rules or regulations into 40 CFR part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the CAA for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

The specific requirements of the consistency update and the rationale for EPA's action are explained in the February 10, 2022, NPRM. No comments were received on the NPRM.

II. Public Comments and EPA Responses

EPA did not receive any comments on the February 10, 2022, NPRM, 87 FR 7790.

III. Final Action

EPA is taking final action to incorporate the rules potentially applicable to OCS sources for which the Commonwealth of Virginia will be the COA. The rules that EPA is taking final action to incorporate are applicable provisions of the Virginia Administrative Code (VAC). The Virginia regulatory changes that EPA is taking final action to incorporate are (1) Chapter 20, General Provisions—9VAC5–20–21, Documents incorporated by reference; (2) Chapter 50, New and Modified Stationary Sources—9VAC5–50–400. General; (3) Chapter 60, Hazardous Air Pollutant Sources—9VAC5–60–60. General; (4) Chapter 60, Hazardous Air Pollutant Sources—9VAC5–60–90, as amended through September 8, 2021. The rules that EPA is taking final action to incorporate will replace the rules identified in the February 10, 2022, NPRM and previously incorporated into ''Commonwealth of Virginia Requirements Applicable to OCS Sources,'' dated February 20, 2019. See 84 FR 56121; October 21, 2019. This action will have no effect on any provisions that were not subject to changes by Virginia and were also previously incorporated by reference into 40 CFR part 55 through EPA's October 21, 2019 (84 FR 56121) final rule.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of ''Commonwealth of Virginia Requirements Applicable to OCS Sources,'' dated September 8, 2021, which provides the text of the Virginia DEQ air rules in effect as of September 8, 2021, that would apply to OCS sources. EPA has made, and will continue to make, these materials available through *www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore air pollution control requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore. See 42 U.S.C. 7627(a)(1); 40 CFR 55.12. Thus, in promulgating OCS consistency updates, EPA's role is to maintain consistency between OCS regulations and the regulations of onshore areas, provided that they meet the criteria of the CAA. Accordingly, this action simply updates the existing OCS requirements to make them consistent with requirements onshore, without the exercise of any policy direction by EPA. 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

[2] Each COA which has been delegated the authority to implement and enforce part 55 will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce 40 CFR part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. See 40 CFR 55.14(c)(4).

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 CAA.

Additionally, Executive Order 12898 (59 FR 7629, February 16, 1994) directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color and/or Indigenous peoples) and low-income populations.

EPA believes that this specific action does not concern human health or environmental conditions and therefore cannot be evaluated with respect to potentially disproportionate and adverse effects on people of color, low-income populations and/or Indigenous peoples. This action simply fulfills EPA's statutory mandate to ensure regulatory consistency between the COA and inner OCS consistent with the stated objectives of CAA section 328(a)(1). Specifically, section 328(a)(1) requires EPA to establish requirements to control air pollution from OCS sources ''to attain and maintain Federal and State ambient air quality standards and to comply with the provisions of part C of [title I of the CAA]'' and, for inner OCS sources (located within 25 miles of the seaward boundary of such states), to establish requirements that are ''the same as would be applicable if the source were located in the COA.'' This section of the Act also states that ''the Administrator shall update such requirements as necessary to maintain consistency with onshore regulations and this chapter.'' As noted in the preamble, compliance with this requirement limits EPA's discretion in deciding what will be incorporated into 40 CFR part 55.

From the time of EPA's last consistency update for Virginia (84 FR 56121, October 21, 2019) to the publication of the NPRM (87 FR 7790, February 10, 2022), state regulations relevant to the OCS were simply amended to update references to the CFR. This action incorporates into the CFR those minor updates to state regulations, which are already effective onshore, to ensure regulatory consistency with the COA as mandated by CAA section 328(a)(1). This is a routine and ministerial consistency update that does not directly affect any human health or environmental conditions in the commonwealth of Virginia. In addition, EPA provided for meaningful public involvement on this rule through the notice and comment process, through which EPA received no comments. This rule was in addition to the State-level notice and comment process held by Virginia.

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, nor does it impose substantial direct compliance costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the 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 December 22, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).).

This action does not impose any new information collection burden under the Paper Reduction Act (PRA). See 44 U.S.C 3501. The Office of Management and Budget (OMB) has previously approved the information collection activities contained in the existing regulations at 40 CFR part 55 and, by extension, this update to part 55, and has assigned OMB control number 2060–0249.[3] This action does not impose a new information burden under PRA because this action only updates the state rules that are incorporated by reference into 40 CFR part 55, appendix A.

List of Subjects in 40 CFR Part 55

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

Adam Ortiz,

Regional Administrator, Region III.

Part 55 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

■ 1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Pub. L. 101–549.

■ 2. Section 55.14 is amended by revising paragraph (e)(22)(i)(A) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.

* * * * *

(e) * * *

(22) * * *

(i) * * *

(A) Commonwealth of Virginia Requirements Applicable to OCS Sources, September 8, 2021.

* * * * *

■ 3. Appendix A to part 55 is amended by revising paragraph (a)(1) under the heading ''Virginia'' to read as follows:

Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

Virginia:

(a) * * *

[3] OMB's approval of the information collection requirement (ICR) can be viewed at *www.reginfo.gov.*

(1) The following Commonwealth of Virginia requirements are applicable to OCS Sources, September 8, 2021, Commonwealth of Virginia—Virginia Department of Environmental Quality.

The following sections of Virginia Regulations for the Control and Abatement of Air Pollution Control (VAC), Title 9, Agency 5:

Chapter 10—General Definitions

(Effective 05/19/2017)
9VAC5–10–10. General.
9VAC5–10–20. Terms defined.
9VAC5–10–30. Abbreviations.

Chapter 20—General Provisions

(Effective 02/19/2018 Except Where Noted)

Part I—Administrative

9VAC5–20–10. Applicability.
9VAC5–20–21. Documents incorporated by reference. (Effective 11/11/2020).
9VAC5–20–50. Variances.
9VAC5–20–70. Circumvention.
9VAC5–20–80. Relationship of state regulations to Federal regulations.
9VAC5–20–121. Air quality program policies and procedures.

Part II—Air Quality Programs

9VAC5–20–160. Registration.
9VAC5–20–170. Control programs.
9VAC5–20–180. Facility and control equipment maintenance or malfunction.
9VAC5–20–200. Air quality control regions.
9VAC5–20–203. Maintenance areas.
9VAC5–20–204. Nonattainment areas.
9VAC5–20–205. Prevention of significant deterioration areas.
9VAC5–20–206. Volatile organic compound and nitrogen oxides emission control areas.
9VAC5–20–220. Shutdown of a stationary source.
9VAC5–20–230. Certification of documents.

Chapter 30—Ambient Air Quality Standards

(Effective 05/15/2017)
9VAC5–30–10. General.
9VAC5–30–15. Reference conditions.
9VAC5–30–30. Sulfur oxides (sulfur dioxide).
9VAC5–30–40. Carbon monoxide.
9VAC5–30–50. Ozone (1-hour).
9VAC5–30–55. Ozone (8-hour, 0.08 ppm).
9VAC5–30–56. Ozone (8-hour, 0.075 ppm).
9VAC5–30–57. Ozone (8-hour, 0.070 ppm).
9VAC5–30–60. Particulate matter (PM_{10}).
9VAC5–30–65. Particulate matter ($PM_{2.5}$).
9VAC5–30–66. Particulate matter ($PM_{2.5}$).
9VAC5–30–67. Particulate matter ($PM_{2.5}$).
9VAC5–30–70. Oxides of nitrogen with nitrogen dioxide as the indicator.
9VAC5–30–80. Lead.

Chapter 40—Existing Stationary Sources

Part I—Special Provisions

(Effective 12/12/2007)
9VAC5–40–10. Applicability.
9VAC5–40–20. Compliance.
9VAC5–40–21. Compliance schedules.
9VAC5–40–22. Interpretation of emission standards based on process weight-rate tables.
9VAC5–40–30. Emission testing.
9VAC5–40–40. Monitoring.
9VAC5–40–41. Emission monitoring procedures for existing sources.
9VAC5–40–50. Notification, records and reporting.

Part II—Emission Standards

Article 1—Visible Emissions and Fugitive Dust/Emissions

(Effective 02/01/2003)
9VAC5–40–60. Applicability and designation of affected facility.
9VAC5–40–70. Definitions.
9VAC5–40–80. Standard for visible emissions.
9VAC5–40–90. Standard for fugitive dust/emissions.
9VAC5–40–100. Monitoring.
9VAC5–40–110. Test methods and procedures.
9VAC5–40–120. Waivers.

Article 4—General Process Operations

(Effective 12/15/2006)
9VAC5–40–240. Applicability and designation of affected facility.
9VAC5–40–250. Definitions.
9VAC5–40–260. Standard for particulate matter (AQCR 1–6).
9VAC5–40–270. Standard for particulate matter (AQCR 7).
9VAC5–40–280. Standard for sulfur dioxide.
9VAC5–40–290. Standard for hydrogen sulfide.
9VAC5–40–320. Standard for visible emissions.
9VAC5–40–330. Standard for fugitive dust/emissions.
9VAC5–40–360. Compliance.
9VAC5–40–370. Test methods and procedures.
9VAC5–40–380. Monitoring.
9VAC5–40–390. Notification, records and reporting.
9VAC5–40–400. Registration.
9VAC5–40–410. Facility and control equipment maintenance or malfunction.
9VAC5–40–420. Permits.

Article 7—Incinerators

(Effective 01/01/1985)
9VAC5–40–730. Applicability and designation of affected facility.
9VAC5–40–740. Definitions.
9VAC5–40–750. Standard for particulate matter.
9VAC5–40–760. Standard for visible emissions.
9VAC5–40–770. Standard for fugitive dust/emissions.
9VAC5–40–800. Prohibition of flue-fed incinerators.
9VAC5–40–810. Compliance.
9VAC5–40–820. Test methods and procedures.
9VAC5–40–830. Monitoring.
9VAC5–40–840. Notification, records and reporting.
9VAC5–40–850. Registration.
9VAC5–40–860. Facility and control equipment maintenance or malfunction.
9VAC5–40–870. Permits.

Article 8—Fuel Burning Equipment

(Effective 01/01/2002)
9VAC5–40–880. Applicability and designation of affected facility.
9VAC5–40–890. Definitions.
9VAC5–40–900. Standard for particulate matter.
9VAC5–40–910. Emission allocation system.
9VAC5–40–920. Determination of collection equipment efficiency factor.
9VAC5–40–930. Standard for sulfur dioxide.
9VAC5–40–940. Standard for visible emissions.
9VAC5–40–950. Standard for fugitive dust/emissions.
9VAC5–40–980. Compliance.
9VAC5–40–990. Test methods and procedures.
9VAC5–40–1000. Monitoring.
9VAC5–40–1010. Notification, records and reporting.
9VAC5–40–1020. Registration.
9VAC5–40–1030. Facility and control equipment maintenance or malfunction.
9VAC5–40–1040. Permits.

Article 14—Sand-Gravel Processing; Stone Quarrying & Processing

(Effective 01/01/1985)
9VAC5–40–1820. Applicability and designation of affected facility.
9VAC5–40–1830. Definitions.
9VAC5–40–1840. Standard for particulate matter.
9VAC5–40–1850. Standard for visible emissions.
9VAC5–40–1860. Standard for fugitive dust/emissions.
9VAC5–40–1890. Compliance.
9VAC5–40–1900. Test methods and procedures.
9VAC5–40–1910. Monitoring.
9VAC5–40–1920. Notification, records and reporting.
9VAC5–40–1930. Registration.
9VAC5–40–1940. Facility and control equipment maintenance or malfunction.
9VAC5–40–1950. Permits.

Article 17—Woodworking Operations

(Effective 01/01/1985)
9VAC5–40–2250. Applicability and designation of affected facility.
9VAC5–40–2260. Definitions.
9VAC5–40–2270. Standard for particulate matter.
9VAC5–40–2280. Standard for visible emissions.
9VAC5–40–2290. Standard for fugitive dust/emissions.
9VAC5–40–2320. Compliance.
9VAC5–40–2330. Test methods and procedures.
9VAC5–40–2340. Monitoring.
9VAC5–40–2350. Notification, records and reporting.
9VAC5–40–2360. Registration.
9VAC5–40–2370. Facility and control equipment maintenance or malfunction.
9VAC5–40–2380. Permits.

Article 18—Primary and Secondary Metal Operations

(Effective 01/01/1985)
9VAC5–40–2390. Applicability and designation of affected facility.
9VAC5–40–2400. Definitions.
9VAC5–40–2410. Standard for particulate matter.

9VAC5–40–2420. Standard for sulfur oxides.
9VAC5–40–2430. Standard for visible emissions.
9VAC5–40–2440. Standard for fugitive dust/emissions.
9VAC5–40–2470. Compliance.
9VAC5–40–2480. Test methods and procedures.
9VAC5–40–2490. Monitoring.
9VAC5–40–2500. Notification, records and reporting.
9VAC5–40–2510. Registration.
9VAC5–40–2520. Facility and control equipment maintenance or malfunction.
9VAC5–40–2530. Permits.

Article 19—Lightweight Aggregate Process Operations

(Effective 01/01/1985)
9VAC5–40–2540. Applicability and designation of affected facility.
9VAC5–40–2550. Definitions.
9VAC5–40–2560. Standard for particulate matter.
9VAC5–40–2570. Standard for sulfur oxides.
9VAC5–40–2580. Standard for visible emissions.
9VAC5–40–2590. Standard for fugitive dust/emissions.
9VAC5–40–2620. Compliance.
9VAC5–40–2630. Test methods and procedures.
9VAC5–40–2640. Monitoring.
9VAC5–40–2650. Notification, records and reporting.
9VAC5–40–2660. Registration.
9VAC5–40–2670. Facility and control equipment maintenance or malfunction.
9VAC5–40–2680. Permits.

Article 24—Solvent Metal Cleaning Operations

(Effective 03/24/2004)
9VAC5–40–3260. Applicability and designation of affected facility.
9VAC5–40–3270. Definitions.
9VAC5–40–3280. Standard for volatile organic compounds.
9VAC5–40–3290. Control technology guidelines.
9VAC5–40–3300. Standard for visible emissions.
9VAC5–40–3310. Standard for fugitive dust/emissions.
9VAC5–40–3340. Compliance.
9VAC5–40–3350. Test methods and procedures.
9VAC5–40–3360. Monitoring.
9VAC5–40–3370. Notification, records and reporting.
9VAC5–40–3380. Registration.
9VAC5–40–3390. Facility and control equipment maintenance or malfunction.
9VAC5–40–3400. Permits.

Article 25—VOC Storage & Transfer Operations

(Effective 07/01/1991)
9VAC5–40–3410. Applicability and designation of affected facility.
9VAC5–40–3420. Definitions.
9VAC5–40–3430. Standard for volatile organic compounds.
9VAC5–40–3440. Control technology guidelines.
9VAC5–40–3450. Standard for visible emissions.
9VAC5–40–3460. Standard for fugitive dust/emissions.
9VAC5–40–3490. Compliance.
9VAC5–40–3500. Test methods and procedures.
9VAC5–40–3510. Monitoring.
9VAC5–40–3520. Notification, records and reporting.
9VAC5–40–3530. Registration.
9VAC5–40–3540. Facility and control equipment maintenance or malfunction.
9VAC5–40–3550. Permits.

Article 34—Miscellaneous Metal Parts/Products Coating Application

(Effective 02/01/2016)
9VAC5–40–4760. Applicability and designation of affected facility.
9VAC5–40–4770. Definitions.
9VAC5–40–4780. Standard for volatile organic compounds.
9VAC5–40–4790. Control technology guidelines.
9VAC5–40–4800. Standard for visible emissions.
9VAC5–40–4810. Standard for fugitive dust/emissions.
9VAC5–40–4840. Compliance.
9VAC5–40–4850. Test methods and procedures.
9VAC5–40–4860. Monitoring.
9VAC5–40–4870. Notification, records and reporting.
9VAC5–40–4880. Registration.
9VAC5–40–4890. Facility and control equipment maintenance or malfunction.
9VAC5–40–4900. Permits.

Article 37—Petroleum Liquid Storage and Transfer Operations

(Effective 07/30/2015)
9VAC5–40–5200. Applicability and designation of affected facility.
9VAC5–40–5210. Definitions.
9VAC5–40–5220. Standard for volatile organic compounds.
9VAC5–40–5230. Control technology guidelines.
9VAC5–40–5240. Standard for visible emissions.
9VAC5–40–5250. Standard for fugitive dust/emissions.
9VAC5–40–5280. Compliance.
9VAC5–40–5290. Test methods and procedures.
9VAC5–40–5300. Monitoring.
9VAC5–40–5310. Notification, records and reporting.
9VAC5–40–5320. Registration.
9VAC5–40–5330. Facility and control equipment maintenance or malfunction.
9VAC5–40–5340. Permits.

Article 41—Mobile Sources

(Effective 08/01/1991)
9VAC5–40–5650. Applicability and designation of affected facility.
9VAC5–40–5660. Definitions.
9VAC5–40–5670. Motor vehicles.
9VAC5–40–5680. Other mobile sources.
9VAC5–40–5690. Export/import of motor vehicles.

Article 45—Commercial/Industrial Solid Waste Incinerators

(Effective 11/16/2016)
9VAC5–40–6250. Applicability and designation of affected facility.
9VAC5–40–6260. Definitions.
9VAC5–40–6270. Standard for particulate matter.
9VAC5–40–6360. Standard for visible emissions.
9VAC5–40–6370. Standard for fugitive dust/emissions.
9VAC5–40–6400. Operator training and qualification.
9VAC5–40–6410. Waste management plan.
9VAC5–40–6420. Compliance schedule.
9VAC5–40–6430. Operating limits.
9VAC5–40–6440. Facility and control equipment maintenance or malfunction.
9VAC5–40–6450. Test methods and procedures.
9VAC5–40–6460. Compliance.
9VAC5–40–6470. Monitoring.
9VAC5–40–6480. Recordkeeping and reporting.
9VAC5–40–6490. Requirements for air curtain incinerators.
9VAC5–40–6500. Registration.
9VAC5–40–6510. Permits.
9VAC5–40–6520. Documents Incorporated by Reference.

Article 46—Small Municipal Waste Combustors

(Effective 05/04/2005)
9VAC5–40–6550. Applicability and designation of affected facility.
9VAC5–40–6560. Definitions.
9VAC5–40–6570. Standard for particulate matter.
9VAC5–40–6580. Standard for carbon monoxide.
9VAC5–40–6590. Standard for dioxins/furans.
9VAC5–40–6600. Standard for hydrogen chloride.
9VAC5–40–6610. Standard for sulfur dioxide.
9VAC5–40–6620. Standard for nitrogen oxides.
9VAC5–40–6630. Standard for lead.
9VAC5–40–6640. Standard for cadmium.
9VAC5–40–6650. Standard for mercury.
9VAC5–40–6660. Standard for visible emissions.
9VAC5–40–6670. Standard for fugitive dust/emissions.
9VAC5–40–6700. Operator training and certification.
9VAC5–40–6710. Compliance schedule.
9VAC5–40–6720. Operating requirements.
9VAC5–40–6730. Compliance.
9VAC5–40–6740. Test methods and procedures.
9VAC5–40–6750. Monitoring.
9VAC5–40–6760. Recordkeeping.
9VAC5–40–6770. Reporting.
9VAC5–40–6780. Requirements for air curtain incinerators that burn 100 percent yard waste.
9VAC5–40–6790. Registration.
9VAC5–40–6800. Facility and control equipment maintenance or malfunction.
9VAC5–40–6810. Permits.

Article 47—Solvent Cleaning

(Effective 03/24/2004)
9VAC5–40–6820. Applicability and designation of affected facility.

9VAC5–40–6830. Definitions.
9VAC5–40–6840. Standard for volatile organic compounds.
9VAC5–40–6850. Standard for visible emissions.
9VAC5–40–6860. Standard for fugitive dust/emissions.
9VAC5–40–6890. Compliance.
9VAC5–40–6900. Compliance schedules.
9VAC5–40–6910. Test methods and procedures.
9VAC5–40–6920. Monitoring.
9VAC5–40–6930. Notification, records and reporting.
9VAC5–40–6940. Registration.
9VAC5–40–6950. Facility and control equipment maintenance or malfunction.
9VAC5–40–6960. Permits.

Article 48—Mobile Equipment Repair and Refinishing

(Effective 10/01/2013)
9VAC5–40–6970. Applicability and designation of affected facility.
9VAC5–40–6975. Exemptions.
9VAC5–40–6980. Definitions.
9VAC5–40–6990. Standard for volatile organic compounds.
9VAC5–40–7000. Standard for visible emissions.
9VAC5–40–7010. Standard for fugitive dust/emissions.
9VAC5–40–7040. Compliance.
9VAC5–40–7050. Compliance schedule.
9VAC5–40–7060. Test methods and procedures.
9VAC5–40–7070. Monitoring.
9VAC5–40–7080. Notification, records and reporting.
9VAC5–40–7090. Registration.
9VAC5–40–7100. Facility and control equipment maintenance or malfunction.
9VAC5–40–7110. Permits.

Article 51—Stationary Sources Subject to Case-by-Case RACT Determinations

(Effective 12/02/2015)
9VAC5–40–7370. Applicability and designation of affected facility.
9VAC5–40–7380. Definitions.
9VAC5–40–7390. Standard for volatile organic compounds (1-hour ozone standard).
9VAC5–40–7400. Standard for volatile organic compounds (8-hour ozone standard).
9VAC5–40–7410. Standard for nitrogen oxides (1-hour ozone standard).
9VAC5–40–7420. Standard for nitrogen oxides (8-hour ozone standard).
9VAC5–40–7430. Presumptive reasonably available control technology guidelines for stationary sources of nitrogen oxides.
9VAC5–40–7440. Standard for visible emissions.
9VAC5–40–7450. Standard for fugitive dust/emissions.
9VAC5–40–7480. Compliance.
9VAC5–40–7490. Test methods and procedures.
9VAC5–40–7500. Monitoring.
9VAC5–40–7510. Notification, records and reporting.
9VAC5–40–7520. Registration.
9VAC5–40–7530. Facility and control equipment maintenance or malfunction.
9VAC5–40–7540. Permits.

Article 54—Large Municipal Waste Combustors

(Effective 07/01/2003)
9VAC5–40–7950. Applicability and designation of affected facility.
9VAC5–40–7960. Definitions.
9VAC5–40–7970. Standard for particulate matter.
9VAC5–40–7980. Standard for carbon monoxide.
9VAC5–40–7990. Standard for cadmium.
9VAC5–40–8000. Standard for lead.
9VAC5–40–8010. Standard for mercury.
9VAC5–40–8020. Standard for sulfur dioxide.
9VAC5–40–8030. Standard for hydrogen chloride.
9VAC5–40–8040. Standard for dioxin/furan.
9VAC5–40–8050. Standard for nitrogen oxides.
9VAC5–40–8060. Standard for visible emissions.
9VAC5–40–8070. Standard for fugitive dust/emissions.
9VAC5–40–8100. Compliance.
9VAC5–40–8110. Compliance schedules.
9VAC5–40–8120. Operating practices.
9VAC5–40–8130. Operator training and certification.
9VAC5–40–8140. Test Methods and Procedures.
9VAC5–40–8150. Monitoring.
9VAC5–40–8160. Notification, Records and Reporting.
9VAC5–40–8170. Registration.
9VAC5–40–8180. Facility and control equipment maintenance or malfunction.
9VAC5–40–8190. Permits.

Chapter 50—New and Modified Stationary Sources

Part I—Special Provisions

(Effective 12/12/2007)
9VAC5–50–10. Applicability.
9VAC5–50–20. Compliance.
9VAC5–50–30. Performance testing.
9VAC5–50–40. Monitoring.
9VAC5–50–50. Notification, records and reporting.

Part II—Emission Standards

Article 1—Visible Emissions and Fugitive Dust/Emissions

(Effective 02/01/2003)
9VAC5–50–60. Applicability and designation of affected facility.
9VAC5–50–70. Definitions.
9VAC5–50–80. Standard for visible emissions.
9VAC5–50–90. Standard for fugitive dust/emissions.
9VAC5–50–100. Monitoring.
9VAC5–50–110. Test methods and procedures.
9VAC5–50–120. Waivers.

Article 4—Stationary Sources

(Effective 11/07/2012)
9VAC5–50–240. Applicability and designation of affected facility.
9VAC5–50–250. Definitions.
9VAC5–50–260. Standard for stationary sources.
9VAC5–50–270. Standard for major stationary sources (nonattainment areas).
9VAC5–50–280. Standard for major stationary sources (prevention of significant deterioration areas).
9VAC5–50–290. Standard for visible emissions.
9VAC5–50–300. Standard for fugitive dust/emissions.
9VAC5–50–330. Compliance.
9VAC5–50–340. Test methods and procedures.
9VAC5–50–350. Monitoring.
9VAC5–50–360. Notification, records and reporting.
9VAC5–50–370. Registration.
9VAC5–50–380. Facility and control equipment maintenance or malfunction.
9VAC5–50–390. Permits.

Article 5—EPA Standards of Performance for New Stationary Sources (Rule 5–5)

(Effective 02/20/2019 Except Where Noted)
9VAC5–50–400. General. (Effective 11/11/2020).
9VAC5–50–405. Authority to implement and enforce standards as authorized by EPA.
9VAC5–50–410. Designated standards of performance.
9VAC5–50–420. Word or phrase substitutions.

Chapter 60—Hazardous Air Pollutant Sources

Part I—Special Provisions

(Effective 08/01/2002)
9VAC5–60–10. Applicability.
9VAC5–60–20. Compliance.
9VAC5–60–30. Emission testing.
9VAC5–60–40. Monitoring.
9VAC5–60–50. Notification, records and reporting.

Part II—Emission Standards

Article 1—EPA National Emission Standards for Hazardous Air Pollutants (Rule 6–1)

(Effective 02/20/2019 Except Where Noted)
9VAC5–60–60. General. (Effective 11/11/2020).
9VAC5–60–65. Authority to implement and enforce standards as authorized by EPA.
9VAC5–60–70. Designated emission standards.
9VAC5–60–80. Word or phrase substitutions.

Article 2—EPA National Emission Standards for Hazardous Air Pollutants for Source Categories (Rule 6–2)

(Effective 03/02/2011 Except Where Noted)
9VAC5–60–90. General. (Effective 11/11/2020).
9VAC5–60–95. Authority to implement and enforce standards as authorized by EPA.
9VAC5–60–100. Designated emission standards.
9VAC5–60–110. Word or phrase substitutions.

Article 3—Control Technology Determinations for Major Sources of Hazardous Air Pollutants

(Effective 07/01/2004)
9VAC5–60–120. Applicability.
9VAC5–60–130. Definitions.
9VAC5–60–140. Approval process for new and existing affected sources.

9VAC5–60–150. Application content for case-by-case MACT determinations.
9VAC5–60–160. Preconstruction review procedures for new affected sources subject to 9VAC5–60–140 C 1.
9VAC5–60–170. Maximum achievable control technology (MACT) determinations for affected sources subject to case-by-case determination of equivalent emission limitations.
9VAC5–60–180. Requirements for case-by-case determination of equivalent emission limitations after promulgation of a subsequent MACT standard.

Chapter 70—Air Pollution Episode Prevention

(Effective 04/01/1999)
9VAC5–70–10. Applicability.
9VAC5–70–20. Definitions.
9VAC5–70–30. General.
9VAC5–70–40. Episode determination
9VAC5–70–50. Standby emission reduction plans.
9VAC5–70–60. Control requirements.
9VAC5–70–70. Local air pollution control agency participation.

Chapter 80—Permits for Stationary Sources

Part II—Permit Procedures

Article 1—Federal (Title V) Operating Permits for Stationary Sources

(Effective 11/16/2016)
9VAC5–80–50. Applicability.
9VAC5–80–60. Definitions.
9VAC5–80–70. General.
9VAC5–80–80. Applications.
9VAC5–80–90. Application information required.
9VAC5–80–100. Emission caps.
9VAC5–80–110. Permit content.
9VAC5–80–120. General permits.
9VAC5–80–130. Temporary sources.
9VAC5–80–140. Permit shield.
9VAC5–80–150. Action on permit application.
9VAC5–80–160. Transfer of permits.
9VAC5–80–170. Permit renewal and expiration.
9VAC5–80–180. Permanent shutdown for emissions trading.
9VAC5–80–190. Changes to permits.
9VAC5–80–200. Administrative permit amendments.
9VAC5–80–210. Minor permit modifications.
9VAC5–80–220. Group processing of minor permit modifications.
9VAC5–80–230. Significant modification procedures.
9VAC5–80–240. Reopening for cause.
9VAC5–80–250. Malfunction.
9VAC5–80–260. Enforcement.
9VAC5–80–270. Public participation.
9VAC5–80–280. Operational flexibility.
9VAC5–80–290. Permit review by EPA and affected states.
9VAC5–80–300. Voluntary inclusions of additional state-only requirements as applicable state requirements in the permit.

Article 2—Permit Program (Title V) Fees for Stationary Sources

(Effective 01/01/2018)
9VAC5–80–310. Applicability.
9VAC5–80–320. Definitions.
9VAC5–80–330. General.
9VAC5–80–340. Annual permit program fee calculation prior to January 1, 2018.
9VAC5–80–342. Annual Permit program emissions fee calculation on and after January 2, 2018.
9VAC5–80–350. Annual permit program emissions fee payment.

Article 4—Insignificant Activities

(Effective 01/01/2001)
9VAC5–80–710. General.
9VAC5–80–720. Insignificant activities.

Article 5—State Operating Permits

(Effective 12/31/2008)
9VAC5–80–800. Applicability.
9VAC5–80–810. Definitions.
9VAC5–80–820. General.
9VAC5–80–830. Applications.
9VAC5–80–840. Application information required.
9VAC5–80–850. Standards and conditions for granting permits.
9VAC5–80–860. Action on permit application.
9VAC5–80–870. Application review and analysis.
9VAC5–80–880. Compliance determination and verification by testing.
9VAC5–80–890. Monitoring requirements.
9VAC5–80–900. Reporting requirements.
9VAC5–80–910. Existence of permit no defense.
9VAC5–80–920. Circumvention.
9VAC5–80–930. Compliance with local zoning requirements.
9VAC5–80–940. Transfer of permits.
9VAC5–80–950. Termination of permits.
9VAC5–80–960. Changes to permits.
9VAC5–80–970. Administrative permit amendments.
9VAC5–80–980. Minor permit amendments.
9VAC5–80–990. Significant amendment procedures.
9VAC5–80–1000. Reopening for cause.
9VAC5–80–1010. Enforcement.
9VAC5–80–1020. Public participation.
9VAC5–80–1030. General permits.
9VAC5–80–1040. Review and evaluation of article.

Article 6—Permits for New and Modified Stationary Sources

(Effective 03/27/2014)
9VAC5–80–1100. Applicability.
9VAC5–80–1105. Permit Exemptions.
9VAC5–80–1110. Definitions.
9VAC5–80–1120. General.
9VAC5–80–1140. Applications.
9VAC5–80–1150. Application information required.
9VAC5–80–1160. Action on permit application.
9VAC5–80–1170. Public participation.
9VAC5–80–1180. Standards and conditions for granting permits.
9VAC5–80–1190. Application review and analysis.
9VAC5–80–1200. Compliance determination and verification by performance testing.
9VAC5–80–1210. Permit invalidation, suspension, revocation and enforcement.
9VAC5–80–1220. Existence of permit no defense.
9VAC5–80–1230. Compliance with local zoning requirements.
9VAC5–80–1240. Transfer of permits.
9VAC5–80–1250. General permits.
9VAC5–80–1255. Actions to combine permit terms and conditions.
9VAC5–80–1260. Actions to change permits.
9VAC5–80–1270. Administrative permit amendments.
9VAC5–80–1280. Minor permit amendments.
9VAC5–80–1290. Significant amendment procedures.
9VAC5–80–1300. Reopening for cause.

Article 7—Permits for New and Reconstructed Major Sources of HAPs

(Effective 12/31/2008)
9VAC5–80–1400. Applicability.
9VAC5–80–1410. Definitions.
9VAC5–80–1420. General.
9VAC5–80–1430. Applications.
9VAC5–80–1440. Application information required.
9VAC5–80–1450. Action on permit application.
9VAC5–80–1460. Public participation.
9VAC5–80–1470. Standards and conditions for granting permits.
9VAC5–80–1480. Application review and analysis.
9VAC5–80–1490. Compliance determination and verification by performance testing.
9VAC5–80–1500. Permit invalidation, rescission, revocation and enforcement.
9VAC5–80–1510. Existence of permit no defense.
9VAC5–80–1520. Compliance with local zoning requirements.
9VAC5–80–1530. Transfer of permits.
9VAC5–80–1540. Changes to permits.
9VAC5–80–1550. Administrative permit amendments.
9VAC5–80–1560. Minor permit amendments.
9VAC5–80–1570. Significant amendment procedures.
9VAC5–80–1580. Reopening for cause.
9VAC5–80–1590. Requirements for constructed or reconstructed major sources subject to a subsequently promulgated MACT standard or MACT requirements.

Article 8—Permits for Major Stationary Sources and Modifications—PSD Areas

(Effective 08/13/2015)
9VAC5–80–1605. Applicability.
9VAC5–80–1615. Definitions.
9VAC5–80–1625. General.
9VAC5–80–1635. Ambient air increments.
9VAC5–80–1645. Ambient air ceilings.
9VAC5–80–1655. Applications.
9VAC5–80–1665. Compliance with local zoning requirements.
9VAC5–80–1675. Compliance determination and verification by performance testing.
9VAC5–80–1685. Stack heights.
9VAC5–80–1695. Exemptions.
9VAC5–80–1705. Control technology review.
9VAC5–80–1715. Source impact analysis.
9VAC5–80–1725. Air quality models.
9VAC5–80–1735. Air quality analysis.
9VAC5–80–1745. Source information.
9VAC5–80–1755. Additional impact analyses.
9VAC5–80–1765. Sources affecting Federal class I areas–additional requirements.

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Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SATS No. MT–044–FOR; Docket ID: OSM–2023–0009; S1D1S SS08011000 SX064A000 231S180110; S2D2S SS08011000 SX064A000 23XS501520]

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the Montana regulatory program (hereinafter, the Montana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Montana submitted this proposed amendment to us, on its own initiative, following the passage of a Montana House Bill during the 2023 legislative session. Montana proposes several changes to the Montana Code Annotated (MCA). Montana adds a new section detailing the procedures a permittee must follow when applying for a ''minor revision'' to its permit. Montana adds several new definitions and removes the current procedures for a permit revision application. Furthermore, Montana adds clarifying language regarding ''minor revisions'' of permits. Lastly, Montana adds contingencies that will not be codified into law but that will apply to the proposed amendment: ''Codification Instructions'' and ''Contingent Termination.'' This document gives the times and locations that the Montana program and this proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., Mountain Daylight Time (M.D.T.) November 22, 2023. If requested, we may hold a public hearing or meeting on the amendment on November 17, 2023. We will accept requests to speak at a hearing until 4 p.m., M.D.T. on November 7, 2023.

ADDRESSES: You may submit comments, identified by SATS No. MT–042–FOR, by any of the following methods:

- *Mail/Hand Delivery:* OSMRE, Attn: Jeffrey Fleischman, P.O. Box 11018, 100 East B Street, Room 4100, Casper, Wyoming 82602.
- *Fax:* (307) 261–6552.
- *Federal eRulemaking Portal:* The amendment has been assigned Docket ID: OSM–2023–0009. If you would like to submit comments, go to *https://www.regulations.gov*. Follow the instructions for submitting comments.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than the ones listed above will be included in the docket for this rulemaking and considered.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the *Public Comment Procedures* heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Montana program, this amendment, a listing of any scheduled public hearings or meetings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE's Casper Field Office or the full text of the program amendment is available for you to read at *www.regulations.gov*.

Attn: Jeffrey Fleischman, Field Office Director, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Casper, Wyoming 82602, Telephone: (307) 261–6550, Email: *jfleischman@osmre.gov*.

In addition, you may review a copy of the amendment during regular business hours at the following location:

Attn: Dan Walsh, Mining Bureau Chief, Coal and Opencut Mining Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, MT 59601–0901, Telephone: (406) 444–6791, Email: *dwalsh@mt.gov*.

FOR FURTHER INFORMATION CONTACT:

Attn: Jeffrey Fleischman, Field Office Director, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Casper, Wyoming 82602, Telephone: (307) 261–6550, Email: *jfleischman@osmre.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background on the Montana Program

Subject to OSMRE's oversight, section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its approved, State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7).

On the basis of these criteria, the Secretary of the Interior approved the Montana program on October 24, 1980. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program in the October 24, 1980, **Federal Register** (45 FR 70445). You can also find later actions concerning the Montana program and program amendments at 30 CFR 926.25.

II. Description of the Proposed Amendment

By letter dated July 13, 2023 (Administrative Record No. MT–044–01), Montana sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). We found Montana's proposed amendment to be administratively complete on July 14, 2023. Montana submitted this proposed amendment to us, on its own initiative, following the passage of Montana House Bill 656 (HB 656) during the 2023 legislative session.

Montana proposes several changes to title 82, chapter 4, part 2 of the MCA. First, Montana proposes to add a new section titled ''Minor Revisions—application—exemptions,'' which tells a permittee what must be included in minor permit revision applications and provides a timeline for the Montana Department of Environmental Quality's (DEQ) review of said applications.

Second, Montana proposes to add four new entries to 82–4–203 MCA—Definitions: (5) Amendment, (28) Incidental Boundary Revision, (33) Major Revision, and (39) Minor Revision. Due to the new definitions, Montana also proposes to update the numbers listed for existing definitions.

Third, Montana proposes to amend 82–4–221 MCA—Mining Permit Required. Here, Montana proposes to remove language that gives direction to a permittee when it files an application to revise its permit. It also removes language that outlines DEQ's timeline for reviewing minor revision applications.

Fourth, Montana proposes to amend 82–4–225 MCA—Application for increase or reduction in permit area amendment. Montana amends the title of this section to be ''Application for permit amendment.'' Montana then removes two occurrences of the phrase ''area of land affected,'' replacing one with ''permit area'' and the other with ''permit boundary.'' Montana also removes language that allows a permittee to apply to ''reduce'' its permit area, and removes language that allows an operator to apply, at any time, to increase or reduce its area of land affected. Lastly, Montana adds ''minor revisions'' to the list of permit revision applications that do not follow the same procedures as original permit applications.

Finally, HB 656 adds two contingencies that affect the amended sections above, but that are not codified into the MCA. Section 5 of HB 656 states that the changes proposed through HB 656 are intended to be codified into title 82, chapter 4, part 2 of the MCA. Section 6 of HB 656 states that HB 656 will terminate if OSMRE disapproves the proposed changes made in the bill. The date of termination would be the date DEQ certifies to the Montana code commissioner that OSMRE disapproved the proposed changes.

The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at *www.regulations.gov*.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Electronic or Written Comments

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

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.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., M.D.T. on November 7, 2023. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review, Executive Order 13563—Improving Regulation and Regulatory Review, and 14094—Modernizing Regulatory Review

Executive Order (E.O.) 12866, as amended by E.O. 14094, provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program and/or AML plan amendments is exempted from OMB review under Executive Order 12866, as amended by E.O. 14094. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment.

We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and Executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 926

State regulatory program approval, State-Federal cooperative agreement, Required program amendments.

David A. Berry,

Regional Director, Unified Regions 5, 7–11.

[FR Doc. 2023–23034 Filed 10–20–23; 8:45 am]

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DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

RIN 1506–AB64

Proposal of Special Measure Regarding Convertible Virtual Currency Mixing, as a Class of Transactions of Primary Money Laundering Concern

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: FinCEN is issuing a notice of proposed rulemaking (NPRM), pursuant to section 311 of the USA PATRIOT Act, that proposes requiring domestic financial institutions and domestic financial agencies to implement certain recordkeeping and reporting requirements relating to transactions involving convertible virtual currency (CVC) mixing.

DATES: Written comments on the notice of proposed rulemaking must be submitted on or before January 22, 2024.

ADDRESSES: Comments must be submitted by one of the following methods:

- *Federal E-rulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Refer to Docket Number FINCEN–2023–0016 in the submission.
- *Mail:* Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN–2023–0016 in the submission.

Please submit comments by one method only, and note that comments submitted in responses to this NPRM will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Support Section at 1–800–767–2825 or electronically at *frc@fincen.gov.*

SUPPLEMENTARY INFORMATION:

I. Statutory Provisions

Section 311 of the USA PATRIOT Act (section 311), codified at 31 U.S.C. 5318A, grants the Secretary of the Treasury (Secretary) authority, upon finding that reasonable grounds exist for concluding that one or more classes of transactions within or involving a jurisdiction outside of the United States is of primary money laundering concern, to require domestic financial institutions and domestic financial agencies to take certain ''special measures.'' [1] The authority of the Secretary to administer section 311 and the Bank Secrecy Act (BSA) has been delegated to FinCEN.[2]

The five special measures set out in section 311 are prophylactic safeguards that may be employed to defend the United States financial system from money laundering and terrorist financing risks. The Secretary may impose one or more of these special measures in order to protect the U.S. financial system from such threats. Through special measure one, the Secretary may require domestic financial institutions and domestic financial agencies to maintain records, file reports, or both, concerning the aggregate amount of transactions or individual transactions.[3] Through special measures two through four, the Secretary may impose additional recordkeeping, information collection, and reporting requirements on covered domestic financial institutions and domestic financial agencies.[4] Through special measure five, the Secretary may prohibit, or impose conditions upon, the opening or maintaining in the United States of correspondent or payable-through accounts for or on behalf of a foreign banking institution, if the class of transactions found to be of primary money laundering concern may be conducted through such correspondent account or payable-through account.[5]

Before making a finding that reasonable grounds exist for concluding that a class of transactions is of primary money laundering concern, the Secretary is required to consult with both the Secretary of State and the Attorney General.[6] The Secretary is also required to consider such information as the Secretary determines to be relevant, including the following potentially relevant factors:

- The extent to which such class of transactions is used to facilitate or promote money laundering in or through a jurisdiction outside the United States, including any money laundering activity by organized criminal groups, international terrorists, or entities involved in the proliferation of weapons of mass destruction (WMD) or missiles;
- The extent to which such class of transactions is used for legitimate business purposes in the jurisdiction; and
- The extent to which such action is sufficient to ensure that the purposes of section 311 are fulfilled and to guard against international money laundering and other financial crimes.[7]

Upon finding that a class of transactions is of primary money laundering concern, the Secretary may require covered financial institutions to take one or more special measures. In selecting one or more special measures, the Secretary ''shall consult with the Chairman of the Board of Governors of the Federal Reserve System, any other appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act), the Secretary of State, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the National Credit Union Administration Board, and in the sole discretion of the Secretary, such other agencies and interested parties as the Secretary may find appropriate.'' [8]

In addition, the Secretary is required to consider the following factors when selecting special measures:

- Whether similar action has been or is being taken by other nations or multilateral groups;
- Whether the imposition of any particular special measure would create a significant competitive disadvantage, including any undue cost or burden associated with compliance, for financial institutions organized or licensed in the United States;
- The extent to which the action or the timing of the action would have a significant adverse systemic impact on the international payment, clearance, and settlement system, or on legitimate

[1] On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107–56 (USA PATRIOT Act). Title III of the USA PATRIOT Act amended the anti-money laundering (AML) provisions of the Bank Secrecy Act (BSA) to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. The BSA, as amended, is the popular name for a collection of statutory authorities that FinCEN administers that is codified at 12 U.S.C. 1829b, 1951–1960 and 31 U.S.C. 5311–5314, 5316–5336, and includes other authorities reflected in notes thereto. Regulations implementing the BSA appear at 31 CFR Chapter X.

[2] Pursuant to Treasury Order 180–01 (Jan. 14, 2020), the authority of the Secretary to administer the BSA, including, but not limited to, 31 U.S.C. 5318A, has been delegated to the Director of FinCEN.

[3] 31 U.S.C. 5318A(b)(1).

[4] 31 U.S.C. 5318A(b)(2)–(b)(4).

[5] 31 U.S.C. 5318A(b)(5).

[6] 31 U.S.C. 5318A(c)(1).

[7] 31 U.S.C. 5318A(c)(2)(B).

[8] 31 U.S.C. 5318A(a)(4)(A).

business activities involving the particular jurisdiction, institution, class of transactions, or type of account; and

- The effect of the action on United States national security and foreign policy.[9]

II. Summary of NPRM

Convertible Virtual Currency (CVC) mixing entails the facilitation of CVC[10] transactions in a manner that obfuscates the source, destination, or amount involved in one or more transactions.[11] Because CVC mixing is intended to make CVC transactions untraceable and anonymous, CVC mixing is ripe for abuse by, and frequently used by, illicit foreign actors that threaten the national security of the United States and the U.S. financial system. By obscuring the connection between the CVC wallet addresses used to receive illicit CVC proceeds and the CVC wallet addresses from which illicit CVC is transferred to CVC-to-fiat[12] currency exchangers, other CVC users, or CVC exchanges, CVC mixing transactions can play a central role in facilitating the laundering of CVC derived from a variety of illicit activity.

Indeed, CVC mixing transactions are frequently used by criminals and state actors to facilitate a range of illicit activity, including, but not limited to, money laundering, sanctions evasion and WMD proliferation by the Democratic People's Republic of Korea (DPRK or North Korea), Russian-associated ransomware attacks,[13] and illicit darknet markets. Further, a recent assessment by FinCEN determined that the percentage of CVC transactions processed by CVC mixers that originated from likely illicit sources is increasing.[14] CVC mixing often involves foreign jurisdictions because persons who facilitate or engage in CVC mixing transactions are often located abroad, including notable recent CVC mixing activity involving DPRK-affiliated threat actors, Russian ransomware actors, and buyers and sellers on Russian darknet markets.

Accordingly, because CVC mixing provides foreign illicit actors with enhanced anonymity that allows them to launder their illicit proceeds, FinCEN assesses that transactions involving CVC mixing within or involving a jurisdiction outside the United States are of primary money laundering concern, and, having undertaken the necessary consultations, also finds that imposing additional recordkeeping and reporting requirements would assist in mitigating the risks posed by such transactions. Such reporting will assist law enforcement with identifying the perpetrators behind illicit transactions and preventing, investigating, and prosecuting illegal activity, as well as rendering such transactions—through increased transparency—less attractive and useful to illicit actors. This NPRM (1) sets forth FinCEN's finding that transactions involving CVC mixing within or involving jurisdictions outside the United States are a class of transactions that are of primary money laundering concern; and (2) proposes, under special measure one, requiring covered financial institutions to implement certain recordkeeping and reporting requirements on transactions that covered financial institutions know, suspect, or have reason to suspect involve CVC mixing within or involving jurisdictions outside the United States.

III. Background

Although the United States supports innovation and advances in digital and distributed ledger technology for financial services, it must also consider the substantial implications that such technology has for national security and mitigate the attendant risks for consumers, businesses, national security, and the integrity of the broader U.S. financial system.[15] CVC can be used for legitimate and innovative purposes. However, it is not without its risks and, in particular, the use of CVC to anonymize illicit activity undermines the legitimate and innovative uses of CVC.

A. CVC Mixing and Its Mechanisms

The term ''virtual currency'' refers to a medium of exchange that can operate like currency but does not have all the attributes of ''real,'' or fiat, currency. CVC is a type of virtual currency that either has an equivalent value as currency or acts as a substitute for currency and is therefore a type of ''value that substitutes for currency.'' The label applies to any particular type of CVC, such as ''digital currency,'' ''cryptocurrency,'' ''cryptoasset,'' and ''digital asset.'' [16] [17]

The public nature of most CVC blockchains,[18] which provide a permanent, recorded history of all previous transactions, make it possible to know someone's entire financial history on the blockchain. Anonymity enhancing tools, including ''mixers,'' are used to avoid this. To provide enhanced anonymity, CVC mixers provide a service—CVC mixing—that is intended to obfuscate transactional information, allowing users to obscure their connection to the CVC.

There are a number of ways to conduct CVC mixing transactions—one of the most common of which is the use of CVC mixers. CVC mixers can accomplish this through a variety of mechanisms, including: pooling or aggregating CVC from multiple individuals, wallets, or accounts into a single transaction or transactions; splitting an amount into multiple amounts and transmitting the CVC as a series of smaller independent transactions; or leveraging code to coordinate, manage, or manipulate the structure of the transaction; among other methods. Through such mechanisms, CVC mixers can functionally simulate a customer depositing funds from an anonymous account into a financial institution's omnibus account and withdrawing funds into a separate anonymous account.[19] For example, a

[9] 31 U.S.C. 5318A(a)(4)(B).

[10] For the purposes of this NPRM, the term ''CVC'' is defined as a medium of exchange that either has an equivalent value as currency or acts as a substitute for currency, but lacks legal tender status. Although Bitcoin has legal tender status in at least two jurisdictions, the term ''CVC'' includes Bitcoin.

[11] A more detailed definition of this term is provided in Section IX of this NPRM.

[12] Fiat currency refers to traditional currency such as the U.S. dollar.

[13] Notwithstanding the use of ''attack'' as a legal term of art in certain settings, FinCEN here and throughout intends only the colloquial meaning of the term.

[14] A more detailed examination of analysis is below in Section IV.A.3 of this NPRM.

[15] White House, *Executive Order on Ensuring Responsible Development of Digital Assets Fact Sheet,* Mar. 9, 2022, *available at https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/09/fact-sheet-president-biden-to-sign-executive-order-on-ensuring-responsible-innovation-in-digital-assets/.*

[16] *See, e.g.,* FinCEN, FIN–2019–G001, *Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies,* May 9, 2019, *available at https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf* (FinCEN 2019 CVC Guidance).

[17] FinCEN notes that CVC or ''virtual currency'' by itself does not meet the definition of a ''currency'' under 31 CFR 1010.100(m). Additionally, potential characterization of CVC as currency, securities, commodities, or derivatives for the purposes of any other legal regime, such as the Federal securities laws or the Commodity Exchange Act, is outside the scope of this proposed rule. However, as described in the FinCEN 2019 CVC Guidance, if assets that other regulatory frameworks defined as commodities, securities, or futures contracts were to be specifically issued or later repurposed to serve as a currency substitute, then the asset itself could be a type of value that substitutes for currency and be defined as CVC for the purposes of this proposed rule, in addition to being subject to other applicable regulatory frameworks.

[18] Blockchain refers to a type of distributed ledger technology (DLT) that cryptographically signs transactions that are grouped into blocks. For more information on blockchain, *see* National Institute of Science and Technology, *Blockchain, available at https://www.nist.gov/blockchain.*

[19] *See* U.S. Department of the Treasury (Treasury), *DeFi Risk Assessment,* Apr. 2023, at p.

criminal actor could take the illicit proceeds of their crime, send the CVC to a CVC mixer, and then on to an account they hold at a virtual asset service provider (VASP). At this point, the VASP would take custody of the illicitly sourced CVC, thereby allowing illicit funds to enter their omnibus account, all while being unaware of the origin of the illicit CVC. The critical challenge is that CVC mixing services rarely, if ever, provide to regulators or law enforcement the resulting transactional chain or information collected as part of the transaction.

CVC mixing does not, however, wholly rely on the use of CVC mixers. There are certain methods that CVC users—and CVC mixers—often employ in an effort to obfuscate their transactions. These methods include:

a. *Pooling or aggregating CVC from multiple persons, wallets, addresses, or accounts:* This method involves combining CVC from two or more persons into a single wallet or smart contract and, by pooling or aggregating that CVC, obfuscating the identity of both parties to the transaction by decreasing the probability of determining both intended persons for each unique transaction.

b. *Splitting CVC for transmittal and transmitting the CVC through a series of independent transactions:* This method involves splitting a single transaction from sender to receiver into multiple, smaller transactions, in a manner similar to structuring, to make transactions blend in with other, unrelated transactions on the blockchain occurring at the same time so as to not stand out, thereby decreasing the probability of determining both intended persons for each unique transaction.

c. *Using programmatic or algorithmic code to coordinate, manage, or manipulate the structure of a transaction:* This method involves the use of software that coordinates two or more persons' transactions together in order to obfuscate the individual unique transactions by providing multiple potential outputs from a coordinated input, decreasing the probability of determining both intended persons for each unique transaction.

d. Creating and using single-use wallets, addresses, or accounts and sending CVC through these wallets, addresses, or accounts in a series of transactions: This method involves the use of single-use wallets, addresses, or accounts—colloquially known as a ''peel chain''—in a series of unnatural transactions that have the purpose or effect of obfuscating the source and destination of funds by volumetrically increasing the number of involved transactions, thereby decreasing the probability of determining both intended persons for each unique transaction.

e. *Exchanging between types of CVC, or other digital assets:* This method involves exchanges between two or more types of CVC or other digital assets—colloquially referred to as ''chain hopping''—to facilitate transaction obfuscation by converting one CVC into a different CVC at least once before moving the funds to another service or platform thereby decreasing the probability of determining both intended persons for each unique transaction.[20]

f. *Facilitating user-initiated delays in transactional activity:* This method involves the use of software, programs, or other technology that programmatically carry out pre-determined timed-delay of transactions by delaying the output of a transaction in order to make that transaction appear to be unrelated to transactional input, thereby decreasing the probability of determining both intended persons for each unique transaction.

B. Use of CVC Mixing by Illicit Foreign Actors

Illicit actors use enhanced anonymity on the blockchain to avoid detection by authorities as they launder their illicit proceeds. By obfuscating identity and preventing the attribution of ownership of CVC,[21] CVC mixing allows illicit actors, such as cyber threat actors carrying out ransomware attacks or cyber heists, to launder their CVC and convert it into fiat currency, minimizing the risk of being detected by involved financial institutions, including VASPs, or relevant authorities. Because wallet addresses are pseudonymous and CVC mixing severs the connection between the identity of users sending and receiving CVC, illicit actors are able to exploit vulnerabilities in anti-money laundering and countering the financing of terrorism (AML/CFT) regulatory frameworks,[22] threatening the effectiveness of rules which require financial institutions to, among other things, know the identity of their customers and report suspicious activity to FinCEN.

Over the past few years, Treasury has monitored, and expressed concern with, the increasing use of CVC mixing by illicit actors, including North Korea-affiliated cyber threat actors, ransomware actors, and darknet market[23] participants, to transfer and launder their illicit proceeds. In particular, the DPRK—already under pressure from robust United States, European Union, United Kingdom, and United Nations sanctions—relies upon CVC mixing to launder the proceeds of cyber heists in order to finance the DPRK's WMD program.[24] The Axie Infinity Ronin Bridge (Axie Infinity) heist—committed in March 2022, worth almost $620 million and carried out by the DPRK-controlled Lazarus Group—remains, for instance, the largest cyber heist to date,[25] and made high profile use of at least two mixers to launder the proceeds of the theft—Blender.io and Tornado Cash.[26]

19, *available at https://home.treasury.gov/system/files/136/DeFi-Risk-Full-Review.pdf* (Treasury April 2023 Defi Risk Assessment).

[20] FinCEN, Financial Trend Analysis, *Ransomware Trends in Bank Secrecy Act Data Between January 2021 and June 2021,* Oct. 15, 2021, at p. 13, *available at https://www.fincen.gov/sites/default/files/2021-10/Financial%20Trend%20Analysis_Ransomware%20508%20FINAL.pdf* (FinCEN October 2021 FTA).

[21] Users employ digital wallets to hold their CVC. These wallets appear on the blockchain as a string of alphanumeric characters, but can be created using software at will, and are not directly tied to any individual person's identity.

[22] *See* Treasury April 2023 Defi Risk Assessment, at pp. 3–4, 28.

[23] ''Darknet'' is a term used to refer to networks that are only accessible through the use of specific software or network configurations. Darknet content is not indexed by web search engines, and is often accessed via anonymized, encrypted systems like the software The Onion Router (TOR). Darknet markets are online markets only accessible with the use of software like TOR, and because they are not indexed, can only be found if the domain name and URL are already known to the user. As a result of the inherent anonymity of the darknet infrastructure, darknets facilitate criminal activity because of the difficulty involved for law enforcement in identifying users, infrastructure, and even domains associated with the sale of illicit goods and services. FinCEN's August 2021 publicly available assessment of a civil money penalty against an exchange noted that darknet marketplaces actively promote CVC mixers as the primary method for obfuscating CVC transactions.

[24] United Nations, *UN Panel of Experts Letter,* S/2023/171, Mar. 7, 2023, at p. 4, *available at https://documents-dds-ny.un.org/doc/UNDOC/GEN/N23/037/94/PDF/N2303794.pdf?OpenElement (UN March 2023 Experts Letter); see* Wall Street Journal, *North Korea Suspected of Plundering Crypto to Fund Weapons Programs,* July 1, 2022, *available at https://www.wsj.com/articles/north-korea-suspected-of-plundering-crypto-to-fund-weapons-programs-11656667802.*

[25] Office of Foreign Assets Control (OFAC), *U.S. Treasury issues First Ever Sanctions on Virtual Currency Mixer, Targets DPRK Cyber Threats,* May 6, 2022, *available at https://home.treasury.gov/news/press-releases/jy0768* (U.S. Treasury May 2022 Press Release); *see* Elliptic, *North Korea's Lazarus Group Identified as Exploiters Behind $540 Million Ronin Bridge Heist,* Apr. 14, 2022, *available at https://www.elliptic.co/blog/540-million-stolen-from-the-ronin-defi-bridge.*

[26] OFAC, *Treasury Designates DPRK Weapons Representative,* Nov. 8, 2022, *available at https://home.treasury.gov/news/press-releases/jy1087* (U.S. Treasury November 2022 Press Release).

CVC mixing is also commonly used to obfuscate the source of CVC obtained through other illicit activities, such as ransomware attacks and the use and operation of darknet markets. For example, between January 2021 and June 2021, the top 10 most common ransomware variants reported in suspicious activity report (SAR) data, including several Russian-affiliated variants, sent approximately $35.2 million to CVC mixers and $252 million to darknet markets.[27] Indeed, darknet marketplaces actively promote CVC mixers as the primary method for obfuscating related transactions, and, indeed, multiple CVC mixers historically interacted with Hydra, the former Russian darknet market that accounted for approximately 80 percent of all darknet market CVC transactions in 2021 before being shut down by United States and German law enforcement.[28] Because darknet marketplaces are fundamentally illicit in nature, FinCEN assesses that illicit actors using darknet markets to purchase or sell illicit goods favor the ability to reduce the odds of being identified and leverage CVC mixing to enhance anonymity to that end. Similarly, ransomware actors also prefer an opportunity to successfully launder their illicit funds by using CVC mixing to enhance anonymity.

The multiple U.S. Government actions against CVC mixers, often in coordination with international partners, demonstrate that CVC mixing provides illicit actors with enhanced anonymity in CVC transactions, allowing them to more easily launder their illicit proceeds in CVC.[29]

IV. Finding That Transactions That Involve CVC Mixing Within or Involving a Jurisdiction Outside the United States Are a Class of Transactions of Primary Money Laundering Concern

Pursuant to 31 U.S.C. 5318A(a)(1), FinCEN finds that reasonable grounds exist for concluding that transactions involving CVC mixing within or involving a jurisdiction outside the United States are a class of transactions that is of primary money laundering concern. In making this finding, FinCEN considered the following statutory factors: (1) the extent to which the class of transactions is used to facilitate or promote money laundering in or through a jurisdiction outside of the United States, including money laundering activity with connections to international terrorism, organized crime, and proliferation of WMDs and missiles; (2) the extent to which a class of transactions is used for legitimate business purposes; and (3) the extent to which action by FinCEN would guard against international money laundering and other financial crimes.

A. The Extent to Which the Class of Transactions Is Used To Facilitate or Promote Money Laundering in or Through a Jurisdiction Outside the United States, Including Any Money Laundering Activity by Organized Criminal Groups, International Terrorists, or Entities Involved in the Proliferation of WMD and Missiles

FinCEN assesses that foreign CVC mixing transactions are used to facilitate or promote money laundering in or through jurisdictions outside the United States, including by organized criminal groups, international terrorists, or entities involved in the proliferation of WMD and missiles. FinCEN based this assessment on information available to the agency, including both public and non-public reporting, and after thorough consideration of each of the following factors: (1) that transactions involving CVC mixing often occur within, or involve, jurisdictions outside of the United States; (2) that CVC mixing is used to launder proceeds of large-scale CVC theft and heists, and support the proliferation of WMD, in particular, by the DPRK; and (3) that CVC mixing is similarly used by ransomware actors and darknet markets to launder illicit proceeds.

1. CVC Mixing Transactions Often Occur Within or Involve Jurisdictions Outside the United States

CVC mixers conduct business with opaque operational structures and take steps to avoid the discovery of where they and their users are located. CVC mixers commonly obscure their locations, including (1) employing The Onion Router (TOR) to conceal the location of their servers; [30] (2) failing to register as a business in any jurisdiction; and (3) failing to maintain any activity logs. Based on public and non-public information, FinCEN assesses that CVC mixing activity often occurs within or involves numerous jurisdictions outside the United States and, indeed, throughout the world. The U.S. Department of Justice (DOJ) and open source reporting identified an increase in the use of CVC in terror finance, including by Hamas and the Islamic State of Iraq and Syria (ISIS), and the use of CVC mixers to obfuscate source of funds to protect the identity of their donors.[31] In addition, FinCEN has identified the use of CVC mixing services as a prevalent money laundering typology for the top 10 ransomware strains identified in BSA data from January 2021 to June 2021, and, notably, open source analysis of CVC payments indicates that up to 74 percent of ransomware activity is associated with Russia.[32]

The global nature of the problem is further demonstrated by the fact that no CVC mixers are currently registered with FinCEN. CVC mixers are required to register with FinCEN if they do business as money transmitters wholly or in substantial part within the United States.[33] To the extent foreign CVC mixers are operating beyond United States jurisdiction, they are not subject to U.S. regulations that require financial institutions to, among other things, know the identity of their customers and report suspicious activity to FinCEN. Nevertheless, FinCEN assesses that other forms of CVC mixing, that do not involve the use of CVC mixers, do occur within the United States.

Recent U.S. and foreign enforcement actions also reflect CVC mixing transactions within or involving numerous foreign jurisdictions, including DPRK, Russia, Luxembourg,

[27] *See* FinCEN October 2021 FTA, at p. 17.

[28] U.S. Department of Justice (DOJ), *Justice Department Investigation Leads To Shutdown Of Largest Online Darknet Marketplace,* Apr. 5, 2022, *available at https://www.justice.gov/usao-ndca/pr/justice-department-investigation-leads-shutdown-largest-online-darknet-marketplace.*

[29] FinCEN, *First Bitcoin ''Mixer'' Penalized by FinCEN for Violating Anti-Money Laundering Laws,* Oct. 19, 2020, *available at https://www.fincen.gov/news/news-releases/first-bitcoin-mixer-penalized-fincen-violating-anti-money-laundering-laws* (First Bitcoin ''Mixer'' Penalized by FinCEN, October 19, 2020); DOJ, *Ohio Resident charged operating darknet based bitcoin mixer laundered over 300 million,* Feb. 13, 2020, *available at https://www.justice.gov/opa/pr/ohio-resident-charged-operating-darknet-based-bitcoin-mixer-which-laundered-over-300-million;* DOJ, *Justice Department Investigation leads to takedown of Darknet cryptocurrency mixer processed over $3 billion of unlawful transactions,* Mar. 15, 2023, *available at https://www.justice.gov/opa/pr/justice-department-investigation-leads-takedown-darknet-cryptocurrency-mixer-processed-over-3* (DOJ March 2023 Press Release); U.S. Treasury November 2022 Press Release.

[30] *See* DOJ March 2023 Press Release.

[31] DOJ, *Four Defendants Charged with Conspiring to Provide Cryptocurrency to ISIS,* Dec. 14, 2022, *available at https://www.justice.gov/usao-edny/pr/four-defendants-charged-conspiring-provide-cryptocurrency-isis;* TRM Labs, *Terrorist Financing Six Crypto Related Trends to Watch in 2022,* Feb. 16, 2023, *available at https://www.trmlabs.com/post/terrorist-financing-six-crypto-related-trends-to-watch-in-2023.*

[32] Chainalysis, *Russian Cybercriminals Drive Significant Ransomware and Cryptocurrency-based Money Laundering Activity,* Feb. 14, 2022, *available at https://www.chainalysis.com/blog/2022-crypto-crime-report-preview-russia-ransomware-money-laundering/.*

[33] 31 CFR 1010.100(ff).

the Netherlands, and Vietnam. Office of Foreign Assets Control (OFAC) actions in 2022, for instance, highlighted the links between the DPRK and CVC mixers Blender.io [34] and Tornado Cash [35]—through their respective involvement in the Axie Infinity heist [36] in March 2022 and Tornado Cash's involvement in the Harmony Horizon Bridge (Harmony) heist [37] in June 2022.[38] The coordinated international takedown of ChipMixer, a darknet CVC ''mixing'' service operated by Vietnamese national Minh Quôc Nguyên in Hanoi, Vietnam, by the DOJ and the German Federal Criminal Police (Bundeskriminalamt or BKA) on March 15, 2023, and shutdown of Bestmixer.io and associated seizure of servers located in the Netherlands and Luxembourg by the Dutch Fiscal Information and Investigation Service (FIOD), in close cooperation with Europol and Luxembourg authorities on May 22, 2019,[39] similarly demonstrate the international character of CVC mixing transactions—spanning jurisdictions across Europe and Asia.

2. CVC Mixing Is Used To Launder Proceeds of Large-Scale CVC Theft and Heists

FinCEN assesses that CVC mixing is used to launder the proceeds of large-scale CVC theft and heists by both state and non-state sponsored actors. Whether heists are carried out by state or non-state actors, the need for CVC mixing is the same—illicit CVC must be laundered, and CVC mixing provides the enhanced anonymity to separate illicitly obtained CVC from the underlying illicit activity.

Non-state-affiliated actors commonly use CVC mixing services to launder their proceeds from large scale heists. The proceeds from the heists that targeted a CVC exchanger [40] and cross-chain bridge Nomad [41] were, for instances, laundered using the Tornado Cash CVC mixer.

In addition to the use of CVC mixing by non-state-affiliated actors, FinCEN assesses that, based on public and non-public reporting, DPRK state-sponsored or -affiliated cyber threat actors are responsible for a substantial portion of illicit or stolen CVC funds sent to CVC mixers,[42] and that the DPRK utilized CVC mixing to launder proceeds in an attempt to obfuscate its connection to those funds. The DPRK uses the mixed proceeds of these thefts to support its WMD program.[43] [44] A publicly available analysis in February 2021 determined that individuals acting for or on behalf of the North Korean government laundered more than 65 percent of stolen CVC through CVC mixers—an increase from 42 percent in 2020 and 21 percent in 2019.[45] Further, publicly available analysis in February 2022 assessed that the DPRK is a systematic money launderer and that its use of multiple CVC mixers is a calculated attempt to obscure the origins of its ill-gotten CVCs while converting them into fiat currency.[46] In the same year, there was a notable increase in large scale heists carried out by, or in support of, the DPRK, with associated use of CVC mixing and CVC mixers. OFAC sanctioned two CVC mixers, Blender.io and Tornado Cash, used to launder illicit proceeds of the March 2022 Axie Infinity heist and the June 2022 Harmony heist, both of which were carried out by North Korea's Lazarus Group.[47] [48] In addition, DOJ has determined that ChipMixer processed over $700 million in Bitcoin associated with wallet addresses identified as containing stolen CVC, including CVC related to the Axie Infinity and the Harmony heists.[49] The Federal Bureau of Investigation (FBI) has also determined that North Korean cyber actors laundered over $60 million worth of Ethereum stolen during the Harmony heist through RAILGUN, a United Kingdom-based CVC mixer.[50] [51] [52] Importantly, DPRK-sponsored and -affiliated actors' desire to rely on CVC mixing appears unlikely to abate. Most recently, in August 2023 the FBI attributed the June 2023 Atomic Wallet heist to the Lazarus Group, and open-source reporting indicates that the Lazarus Group used specific services including Sinbad, a CVC mixer, to launder the stolen CVC.[53] [54]

In brief, non-state actors and, significantly, DPRK state-sponsored or -affiliated cyber threat actors have

[34] *See* U.S. Treasury May 2022 Press Release.

[35] *See* U.S. Treasury November 2022 Press Release.

[36] Federal Bureau of Investigation (FBI), *FBI Statement of Attribution of Malicious Cyber Activity Posed by the Democratic People's Republic of Korea,* Apr. 14, 2022, *available at https://www.fbi.gov/news/pressrel/press-releases/fbi-statement-on-attribution-of-malicious-cyber-activity-posed-by-the-democratic-peoples-republic-of-korea.*

[37] FBI, *FBI Confirms Lazarus Group, APT 38 Cyber Actors Responsible for Harmony's Horizon Bridge Currency Theft,* Jan. 23, 2023, *available at https://www.fbi.gov/news/press-releases/fbi-confirms-lazarus-group-cyber-actors-responsible-for-harmonys-horizon-bridge-currency-theft* (FBI January 23, 2023 Press Release).

[38] *See* Dutch Fiscal Information and Investigation Service, *Arrest of suspected developer of Tornado Cash,* Aug. 12, 2022, *available at https://www.fiod.nl/arrest-of-suspected-developer-of-tornado-cash/;* DOJ, *Tornado Cash Founders Charged with Money Laundering and Sanctions Violations,* Aug. 23, 2023, *available at https://www.justice.gov/usao-sdny/pr/tornado-cash-founders-charged-money-laundering-and-sanctions-violations;* OFAC, *Treasury Designates Roman Semenov, Co-Founder of Sanctioned Virtual Currency Mixer Tornado Cash,*Aug. 23, 2023, *available at https://home.treasury.gov/news/press-releases/jy1702;* OFAC, *Sanctions List Search,* Aug. 24, 2023, *available at https://sanctionssearch.ofac.treas.gov/Details.aspx?id=44718.*

[39] The European Union Agency for Law Enforcement Cooperation (Europol), *Multi-million euro cryptocurrency laundering service Bestmixer.io taken down,* May 22, 2019, *available at https://www.europol.europa.eu/media-press/newsroom/news/multi-million-euro-cryptocurrency-laundering-service-bestmixerio-taken-down; DOJ March 2023 Press Release.*

[40] CoinDesk, *Crypto.com's Stolen Ether Being Mixed Through Tornado Cash* (Updated May 11, 2023), *available at https://www.coindesk.com/business/2022/01/18/cryptocoms-stolen-ether-being-laundered-via-tornado-cash/; see* Halborn, *Explained: the Crypto.com Hack (January 2022),* Jan. 24, 2022, *available at https://halborn.com/explained-the-crypto-com-hack-january-2022/* (accessed Nov. 15, 2022).

[41] *See* U.S. Treasury November 2022 Press Release; Reuters, *U.S. crypto firm Nomad hit by $190 million theft,* Aug. 3, 2022, *available at https://www.reuters.com/technology/us-crypto-firm-nomad-hit-by-190-million-theft-2022-08-02/.*

[42] *See* Chainalysis, *The Crypto Crime Report 2023, available at https://go.chainalysis.com/2023-crypto-crime-report.html (*The 2023 Crypto Crime Report).

[43] *See* U.S. Treasury November 2022 Press Release; *see also* FinCEN, *Imposition of Special Measure Against North Korea as a Jurisdiction of Primary Money Laundering Concern,* 81 FR 78715, Nov. 9, 2016, *available at https://www.fincen.gov/sites/default/files/shared/2016-27049.pdf* (FinCEN 2016 Imposition of Special Measure Against North Korea).

[44] *See* UN March 2023 Experts Letter, at p. 4.

[45] Chainalysis, Crypto Money Laundering: Four Exchange Deposit Addresses Received Over $1 Billion in Illicit Funds in 2022, Jan. 26, 2023, *available at https://blog.chainalysis.com/reports/crypto-money-laundering-2022/.* (Crypto Money Laundering: Four Exchange).

[46] Chainalysis, *The 2022 Crypto Crime Report,* Feb. 2022, *available at https://go.chainalysis.com/2022-crypto-crime-report.html* (The 2022 Crypto Crime Report); *see* Chainalysis, *North Korean Hackers Have Prolific Year as Their Unlaundered Cryptocurrency Holdings Reach All-time High,* Jan. 13, 2022, *available at https://blog.chainalysis.com/reports/north-korean-hackers-have-prolific-year-as-their-total-unlaundered-cryptocurrency-holdings-reach-all-time-high/.*

[47] *See* U.S. Treasury May 2022 Press Release.

[48] *See* U.S. Treasury November 2022 Press Release.

[49] *See* DOJ March 2023 Press Release.

[50] According to open-source reporting, RAILGUN is headquartered in London, England.

[51] FinCEN assesses that RAILGUN falls under the umbrella of CVC mixing, as defined by this NPRM, because it uses its privacy protocol to manipulate the structure of the transaction to appear as being sent from the RAILGUN contract address, thus obscuring the true originator.

[52] *See* FBI January 23, 2023 Press Release.

[53] FBI, *FBI Identifies Cryptocurrency Funds Stolen by DPRK,* Aug. 22, 2023, *available at https://www.fbi.gov/news/press-releases/fbi-identifies-cryptocurrency-funds-stolen-by-dprk.*

[54] Elliptic, *North Korea's Lazarus Group likely responsible for $35 Million Atomic Crypto Theft,* June 6, 2023, *available at https://hub.elliptic.co/analysis/north-korea-s-lazarus-group-likely-responsible-for-35-million-atomic-crypto-theft/#:~:text=Elliptic's%20analysis%20suggests%20that%20North,with%20five%20million%20users%20worldwide.*

repeatedly used, and continue to use, CVC mixing to launder illicit proceeds from large-scale CVC theft and heists.

3. CVC Mixing Is Used by Ransomware and Darknet Markets

CVC mixing services that obfuscate blockchain trails are attractive for cybercriminals looking to launder illegal proceeds from malicious cyber-enabled activities, including ransomware attacks.[55] FinCEN assesses that threat actors avoiding reusing wallets, using CVC mixing services, and ''chain hopping'' have been prevalent associated money laundering typologies.[56] Open-source analysis in July 2022 reported that nearly 10 percent of all CVC sent from addresses tied to illicit activity were sent to CVC mixers, while no other service type exceeded a 0.3 percent CVC mixer sending share.[57] FinCEN's analysis of the top 10 CVC mixers by volume per commercially available data determined that approximately 33 percent of all deposits as of August 2022 were attributed to high risk sources, with 13 percent of all deposits coming from known illicit activities.[58] More significantly, only a portion of the activity in the CVC ecosystem with exposure to CVC mixing is captured by BSA reporting. As a result, FinCEN assesses that high-risk deposits into CVC mixers are likely underreported, and the percent of CVC tied to illicit activity is likely higher.

The relationship between CVC mixing and malicious cyber-enabled and other criminal activities is evident through the reliance of ransomware actors on CVC mixing. The Financial Action Task Force (FATF) identified this connection, noting in 2022 the ongoing and growing threat of criminal misuse of CVC for the receipt and laundering of illicit proceeds from ransomware attacks, expressing particular concern that ransomware cybercriminals are increasingly using CVC mixers to launder their illicit proceeds.[59] Similarly, between January and June 2021, FinCEN observed the use of CVC mixing services (as reflected in BSA reporting of suspicious activity) with the top 10 ransomware strains identified as sending approximately $35.2 million to CVC mixers. During this same time period FinCEN also observed ''chain hopping'' by ransomware actors to obfuscate the orgin of their proceeds as well as that ransomware actors layered funds through multiple wallet addresses and avoided reusing wallet addresses for each attack. The most prevalent ransomware variants observed by FinCEN between January and June 2021 were Russia-affiliated REvil/Sodinokibi, and Conti,[60] and Russian-speaking DarkSide, Avaddon, and Phobos.[61] [62]

The relationship between CVC mixing and illicit activities is likewise prevalent in transactions involving darknet markets. CVC mixing services often deliberately operate opaquely and advertise their services as a way to pay anonymously for illicit items such as illegal narcotics, firearms, and child sexual abuse material.[63] According to DOJ, the mixer Bitcoin Fog—the longest running Bitcoin money laundering service on the darknet—laundered CVC from darknet marketplaces tied to illegal narcotics, computer fraud and abuse activities, and identity theft.[64] Additionally, according to the Government Accountability Office and DOJ, the dismantled darknet market Alphabay allegedly not only sold and purchased various illegal drugs, illicit goods, and services with CVC, but also allegedly provided mixing services, via the CVC mixer Helix, to obfuscate CVC transactions on the site.[65] [66]

As these examples demonstrate, illicit actors of all types conducting illicit cyber activity, including ransomware attacks and transactions on darknet markets, frequently seek out services that mask their illicit transactions and favor the enhanced anonymity provided by CVC mixing. Furthermore, FinCEN assesses that the percentage of mixing activity attributed to illicit activity is increasing. According to publicly available analysis reported in January 2023, the total amount of CVC sent to CVC mixers fell significantly, likely due to OFAC designation of two CVC mixers, Blender.io and Tornado Cash. However, the analysis noted the CVC that was sent to CVC mixers in 2022 was more likely to come from illicit sources than in previous years—24 percent of the $7.8 billion[67] processed by mixers in 2022 versus 10 percent of the $11.5 billion processed by mixers in 2021.[68] This shift constitutes a 62.78 percent increase in the illicit value flowing through CVC mixers, year over year.[69]

B. The Extent to Which the Class of Transactions Is Used for Legitimate Business Purposes

FinCEN recognizes that there are legitimate reasons why responsible actors might want to conduct financial transactions in a secure and private manner given the amount of information available on public blockchains. FinCEN also recognizes that, in addition to illicit purposes, CVC mixing may be used for legitimate purposes, such as privacy enhancement for those who live under repressive regimes or wish to conduct licit transactions anonymously.[70] Still, CVC mixing presents an acute money laundering risk because it shields information from

[55] Europol, *One of the darkweb's largest cryptocurrency laundromats washed out,* Mar. 15, 2023, *available at https://www.europol.europa.eu/media-press/newsroom/news/one-of-darkwebs-largest-cryptocurrency-laundromats-washed-out.*

[56] *See* FinCEN October 2021 FTA. FinCEN examined ransomware-related SARs filed between January 1, 2021, and June 30, 2021, to determine trends. The full data set consisted of 635 SARs reporting $590 million in suspicious activity. From this data, FinCEN identified the top 10 most common ransomware variants and analyzed their indicators of compromise through commercially available analytics tools. USD figures cited in this analysis are based on the value of BTC when the transactions occurred.

[57] Chainalysis, *Crypto Mixer Usage Reaches All-time Highs in 2022 With Nation State Actors and Cybercriminals Contributing Significant Volume,* July 14, 2022, *available at https://blog.chainalysis.com/reports/cryptocurrency-mixers/.*

[58] In August 2022, FinCEN analyzed 10 mixers, finding that these services processed more than $20 billion in total volume between January 2011 and August 2022. The majority of this total occurred between January 2021 and August 2022. FinCEN assessed what sources constituted high risk and illicit activites based on commercial source attributions of entities.

[59] FATF, *Targeted Update On Implementation Of The FATF Standards On Virtual Assets And Virtual Asset Service Providers,* June 2022, p. 24, *available at https://www.fatf-gafi.org/media/fatf/documents/recommendations/Targeted-Update-Implementation-FATFStandards-VirtualAssets-VASPs.pdf.*

[60] *See* U.S. Treasury May 2022 Press Release. OFAC identified Conti and Sodinokibi as Russian-linked malign ransomware groups in their designation of Blender.io on May 6, 2022.

[61] *Id.*

[62] *See* FinCEN October 2021 FTA.

[63] *See* First Bitcoin ''Mixer'' Penalized by FinCEN, October 19, 2020.

[64] DOJ, *Individual Arrested and Charged with Operating Notorious Darknet Cryptocurrency 'Mixer',* Apr. 28, 2021, *available at https://www.justice.gov/opa/pr/individual-arrested-and-charged-operating-notorious-darknet-cryptocurrency-mixer.*

[65] United States Government Accountability Office, *VIRTUAL CURRENCIES Additional Information Could Improve Federal Agency Efforts to Counter Human and Drug Trafficking,* Dec. 2021, p. 29, *available at https://www.gao.gov/assets/gao-22-105462.pdf.*

[66] DOJ, *Ohio Resident Pleads Guilty to Operating Darknet-Based Bitcoin 'Mixer' That Laundered Over $300 Million,* Aug. 18, 2021, *available at https://www.justice.gov/opa/pr/ohio-resident-pleads-guilty-operating-darknet-based-bitcoin-mixer-laundered-over-300-million.*

[67] *See* The 2023 Crypto Crime Report, p. 46.

[68] *See* Crypto Money Laundering: Four Exchange.

[69] Although this analysis assessed only CVC sent to CVC mixers without considering other forms of CVC mixing (as identified by this NPRM), its findings are nevertheless instructive.

[70] Chainalysis, *Crypto Mixers and AML Compliance,* August 23, 2022, *available at https://blog.chainalysis.com/reports/crypto-mixers/; see* Elliptic, *What are Bitcoin Mixers & Are They Compliant With AML Standards?,* May 7, 2018, *available at https://elliptic.co/blog/bitcoin-mixers-assessing-risk-bitcoin-transactions.*

responsible third parties, such as financial institutions and law enforcement.

FinCEN is concerned that CVC mixing makes CVC flows untraceable by law enforcement and makes potentially suspicious transactions unreportable by responsible financial institutions—thereby fostering illicit activity as described elsewhere in this document. More importantly, FinCEN assesses that the percentage of CVC mixing activity attributed to illicit activity is increasing. At the same time, because of the lack of available transactional information, FinCEN cannot fully assess the extent to which, or quantity thereof, CVC mixing activity is attributed to legitimate business purposes.

Thus, the legitimate applications of CVC mixing must be carefully weighed against the exposure of the U.S. financial system to ongoing illicit use of CVC mixing. Given the substantial risks posed by CVC mixing, the fact that CVC mixing can be used for some legitimate business purposes does not alter FinCEN's conclusion that this class of transactions is of primary money laundering concern.

C. The Extent to Which Action by FinCEN Would Guard Against International Money Laundering and Other Financial Crimes

Given the threats posed to U.S. national security and the U.S. financial system by obfuscation of illicit proceed flows through CVC mixing, FinCEN believes that imposing recordkeeping and reporting requirements under special measure one would guard against international money laundering and other financial crimes by increasing transparency in these transactions, and thus render them less attractive to illicit actors while also providing additional information to support law enforcement investigations.

This additional transparancy would serve two purposes. First, it would enable investigations by law enforcement and regulators to support money laundering investigations, including cases against North Korean and Russian cybercriminals that pose a threat to U.S national security and the U.S. financial system. Second, it would highlight the risks and deter illicit actors' use of CVC mixing services, including by foreign state-sponsored or -affiliated cyber actors' laundering proceeds of CVC theft to facilitate WMD proliferation, ransomware attackers' laundering of ransoms, and obfuscation of transactions associated with the use of illicit darknet markets.

V. Proposed Enhanced Recordkeeping and Reporting by Covered Financial Institutions Where a Covered Financial Institution Knows, Suspects, or Has Reason To Suspect a Transaction Involves CVC Mixing Within or Involving a Jurisdiction Outside the United States

Having found that transactions involving CVC mixing within or involving a jurisdiction outside the United States are a class of transactions that are of primary money laundering concern, FinCEN proposes imposing recordkeeping and reporting obligations on covered financial institutions under special measure one. Such recordkeeping and reporting obligations would require covered financial institutions to report certain information when they know, suspect, or have reason to suspect a CVC transaction involves the use of CVC mixing within or involving a jurisdiction outside the United States.

FinCEN believes that this special measure is the best available tool to mitigate the risks posed by CVC mixing. It would appropriately collect information, which will discourage the use of CVC mixing by illicit actors, and is necessary to better understand the illicit finance risk posed by CVC mixing and investigate those who seek to use CVC mixing for illicit ends. At the same time, this special measure will minimize the burden upon financial institutions and those who seek to use mixing for legitimate purposes. The reporting obligations under this special measure apply to covered financial institutions that directly engage with CVC transactions, such as exchangers, and do not encompass indirect fiat transactions by covered U.S. financial institutions, such as a bank sending funds on behalf of a CVC exchanger that is acting on behalf of a customer purchasing CVC previously processed through a CVC mixer.

As proposed by FinCEN, special measure one would require recordkeeping and reporting of biographical and transactional information related to transactions involving CVC mixing, increasing transparency and thereby rendering the use of CVC mixing services by illicit actors less attractive. Furthermore, the information generated by this special measure would support investigations into illicit activities by actors who make use of CVC mixing to launder their ill-gotten CVC by law enforcement. At present, there is no similar or equivalent mechanism possessed by law enforcement to readily collect such information, depriving investigators of the information necessary to more effectively understand, investigate, and hold illicit actors accountable. Collectively, the outcomes of the proposed recordkeeping and reporting requirement—discouraging the use of CVC mixing by illicit actors and closing the information gap in service of increased investigation of those illicit actors who continue to make use of CVC mixing—will aid in the protection of the U.S. financial system.

FinCEN has determined that imposition of special measure one would most appropriately collect necessary information while limiting the burden placed on covered financial institutions and users of CVC mixing. As set out further below in Section V.B., FinCEN believes that the existing risk-based approach to AML/CFT compliance used by covered financial institutions already largely encompasses the information FinCEN is requesting. Despite this ready availability of information, covered financial institutions do not, and often need not, universally report that information to FinCEN at present. The proposed reporting requirement would address this reporting gap.

FinCEN considered the other special measures available under section 311. As discussed further in Section V.E. below, it determined that none of them would appropriately balance the interests in permitting secure and private financial transactions while addressing the risks posed by CVC mixing, or were otherwise ill-suited to CVC-related transactions, and thus incapable of collecting information necessary to add transparency to them. Moreover, FinCEN also considered the appropriate scope of the proposed recordkeeping and reporting requirements, and determined that the proposed approach would best capture necessary information and mitigate risks associated with CVC mixing and facilitate investigations of illicit actors, while preserving legitimate actors' ability to continue conducting secure and private financial transactions.

In proposing this special measure, FinCEN consulted with the Chairman of the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Secretary of State, certain staff of the Securities and Exchange Commission, the Commodity Futures Trading Commission, the National Credit Union Administration Board, the Federal Deposit Insurance Corporation, and the Attorney General. These consultations involved obtaining interagency views on the imposition of the proposed recordkeeping and reporting

requirements and the effect that such a recordkeeping and reporting requirements would have on the domestic and international financial system.

Below is a discussion of the relevant statutory factors FinCEN considered in proposing these recordkeeping and reporting requirements.

A. Whether Similar Action Has Been or Is Being Taken by Other Nations or Multilateral Groups

FinCEN is not aware of any other nation or multilateral group that has imposed, or is currently imposing, similar recordkeeping and reporting requirements relating to transactions involving CVC mixing. However, having likewise identified the significant money laundering threat that CVC mixing poses, numerous other nations and certain multilateral groups have issued public statements regarding the risks presented by CVC mixing, called for appropriate regulation, and/or taken action against specific CVC mixers. Several countries—such as Australia, Canada, and Seychelles—and multilateral groups, such as FATF and Europol, have identified CVC mixing as a risk indicator for money laundering or terrorist financing and have found that CVC mixing can make it more difficult for law enforcement to trace and attribute transactions, complicating investigations.[71] Japan requires information from VASPs on their exposure to CVC mixing services to assess their risk exposure and assign risk ratings.[72] Moreover, as discussed above, numerous countries have investigated and prosecuted individual CVC mixers and associated persons engaged in or facilitating illicit activities. These efforts are generally not as expansive as FinCEN's proposed rule would be. However, FinCEN's identification of CVC mixing as a class of transactions of primary laundering concern and proposed special measure may support efforts of other countries by clearly outlining the illicit finance risks associated with CVC mixing and demonstrating means of enhancing transparency as well as mitigating these risks.

B. Whether the Imposition of Any Particular Special Measure Would Create a Significant Competitive Disadvantage, Including Any Undue Cost or Burden Associated With Compliance, for Financial Institutions Organized or Licensed in the United States

While FinCEN assesses that the recordkeeping and reporting requirements proposed in this NPRM will place some cost and burden on domestic financial institutions, these burdens are neither undue nor inappropriate in view of the threat posed by the obfuscation of illicit activity enabled by CVC mixing. The existing risk-based approach to AML/CFT compliance used by covered financial institutions already largely encompasses the information FinCEN is requesting. While the information is available to covered financial institutions, at present it is not universally reported to FinCEN. That is to say, FinCEN assesses that covered financial institutions already possess customer information and can identify when their customers engage in a covered transaction. This proposed rule would compel covered financial institutions to attribute a covered transaction to the involved customer(s) and report this information to FinCEN. Accordingly, the collection of the information in question would not create any undue costs or burdens on covered financial institutions. Covered domestic financial institutions may need to modify or replace the current systems in place used to detect other types of illicit activity in virtual currency transactions, such as sanctions compliance systems, to detect transactions involving CVC mixing. Such burdens are commensurate with established AML/CFT protocols.

C. The Extent to Which the Action or the Timing of the Action Would Have a Significant Adverse Systemic Impact on the International Payment, Clearance, and Settlement System, or on Legitimate Business Activities Involving CVC Transactions

FinCEN assesses that imposition of the proposed special measure would have minimal impact upon the international payment, clearance, and settlement system, or on legitimate business activities involving CVC transactions. As noted in the February 16, 2022, Financial Stability Board's Assessment of Risks to Financial Stability, direct connections between CVC and systemically important financial institutions and core financial markets are limited at present.[73] Volatility and disruptions in the CVC ecosystem have been contained within the CVC markets and have not significantly spilled over to financial markets and infrastructures.

D. The Effect of the Proposed Action on United States National Security and Foreign Policy

As described above, CVC mixers are used by DPRK-affiliated and Russia-affiliated threat actors, among others, to facilitate illicit activities ranging from WMD proliferation to ransomware attacks affecting victims in both the United States and around the world, and whose interests are adversarial to the national security interests of the United States. Imposing recordkeeping and reporting requirements on transactions that involve CVC mixing will enhance financial intelligence on the identity of illicit users who rely upon mixers to obfuscate their identities and sources of CVC, as well as provide insight into those CVC mixers that facilitate such illicit activity. Such a rule would therefore best serve the national security interests of the United States and support efforts to protect the United States financial system from illicit finance threats.

E. Consideration of Alternative Special Measures

In assessing the appropriate special measure to impose, FinCEN considered alternatives to imposing recordkeeping and reporting requirements under special measure one. However, FinCEN believes that recordkeeping and reporting requirements under special measure one would most effectively safeguard the U.S. financial system from

[71] *See* AUSTRAC, *Preventing the Criminal Abuse of Digital Currencies Financial Crime Guide,* Apr. 2022, pp. 1, 15–17, *available at https://www.austrac.gov.au/sites/default/files/2022-04/AUSTRAC_FCG_PreventingCriminalAbuseOfDigitalCurrencies_FINAL.pdf;* Government of Canada, *Updated Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada,* Mar. 2023, *available at https://www.canada.ca/en/department-finance/programs/financial-sector-policy/updated-assessment-inherent-risks-money-laundering-terrorist-financing-canada.html;* Republic of Seychelles, *ML/TF Overall National Risk Assessment for VA & VASPs,* July 2022, pp. 32, 43, *available at https://www.cbs.sc/Downloads/publications/aml/ReportSeychellesONRAML-TFofVAandVASP-26.08.2022.pdf;* Europol, *Seizing the Opportunity: 5 Recommendations For Crypto-Assets Related Crime And Money Laundering* (2022), p. 6, *available at https://www.europol.europa.eu/cms/sites/default/files/documents/2022_Recommendations_Joint_Working_Group_on_Criminal_Finances_and_Cryptocurrencies_.pdf;* FATF, Updated Guidance for a Risk-Based Approach, Oct. 2021.

[72] *See* FATF, Updated Guidance for a Risk-Based Approach, Oct. 2021, at p. 94.

[73] Financial Stability Board, *Assessment of Risks to Financial Stability from Crypto-assets,* Feb. 16, 2022, at p. 5, *available at https://www.fsb.org/wp-content/uploads/P160222.pdf.*

the illicit finance risks posed by CVC mixing.

In particular, none of the other special measures available under section 311 would appropriately balance the interests in permitting secure and private financial transactions while addressing the risks posed by CVC mixing or would be suited to CVC-related transactions. For instance, FinCEN considered special measure two, which is designed to obtain beneficial ownership information relating to accounts opened in the United States by certain foreign persons or their agents. However, FinCEN determined that such a special measure would fail to collect key information of interest relating to CVC transactions that involve CVC mixing such as the identity of the participants and beneficial owners of the CVC involved. FinCEN also considered special measures three through five, which are focused upon transactions conducted through payable-through accounts and correspondent banking relationships and determined that these are less relevant in the context of CVC transactions, including those that involve CVC mixing, as CVC transactions are conducted outside of the traditional banking system.

More broadly, FinCEN also considered the appropriate scope of the proposed recordkeeping and reporting requirements. Of note, FinCEN considered issuing a rule pursuant to section 311 that would have been narrowly scoped to address terror finance involving Hamas and ISIS and/or North Korea-sponsored and -affiliated actors. However, FinCEN determined that such a narrow approach would be insufficient to address the relevant risks detailed elsewhere in this action. Given the nature and use of CVC mixing, covered financial institutions would typically have insufficient information to determine whether the CVC transaction was initiated North Korean-affiliated actors. FinCEN believes this would be true of any similarly narrow approach, regardless of the actors involved. Therefore, FinCEN has determined that additional recordkeeping and reporting requirements set forth in this proposed rule would best mitigate the risks associated with CVC mixing, deter illicit actors, facilitate law enforcement investigations into illicit activity, and adequately protect the U.S. financial system from the illicit financial risk posed by CVC transactions that involve CVC mixing, while preserving legitimate actors' ability to conduct secure and private financial transactions.

VI. Section-by-Section Analysis of Proposed Regulations

The goal of this proposed rule is to implement an effective and efficient reporting regime to combat and deter money laundering associated with CVC mixing and increase transparency in a sector of the United States virtual currency ecosystem with identified illicit finance risks.

A. Definitions

1. Definition of Convertible Virtual Currency

The term ''convertible virtual currency'' or CVC, means a medium of exchange that either has an equivalent value as currency, or acts as a substitute for currency, but lacks legal tender status.[74] Although Bitcoin has legal tender status in at least two jurisdictions, the term CVC includes Bitcoin for the purposes of this proposed rule.

2. Definition of CVC Mixing

The term ''CVC mixing'' means the facilitation of CVC transactions in a manner that obfuscates the source, destination, or amount involved in one or more transactions, regardless of the type of protocol or service used, such as: (1) pooling or aggregating CVC from multiple persons, wallets, addresses, or accounts; (2) using programmatic or algorithmic code to coordinate, manage, or manipulate the structure of a transaction; (3) splitting CVC for transmittal and transmitting the CVC through a series of independent transactions; (4) creating and using single-use wallets, addresses, or accounts, and sending CVC through such wallets, addresses, or accounts through a series of independent transactions; (5) exchanging between types of CVC or other digital assets; or (6) facilitating user-initiated delays in transactional activity.

This definition excepts the use of internal protocols or processes to execute transactions by banks, broker-dealers, or money services businesses, including VASPs, that would otherwise constitute CVC mixing, provided that these financial institutions preserve records of the source and destination of CVC transactions when using such internal protocols and processes, and provide such records to regulators and law enforcement, where required by law. This exemption is designed to avoid capturing transactions with known VASPs that use these internal protocols or processes as part of their business purpose and that are positioned to appropriately respond to inquiries by law enforcement and other relevant authorities. However, if the covered financial institution is unsure if these processes are used as part of a business purpose, they should collect the recordkeeping and reporting information.

FinCEN is seeking to address the primary money laundering concern posed by CVC mixing. The proposed definition of CVC mixing is designed to capture methodologies used by illicit actors to break the traceability of their illicit proceeds and create a mechanism on which which covered businesses would be required to report when they observe CVC mixing transactions. The exception to the definition is crafted to avoid imposing undue burden on covered businesses, provided they are also taking appropriate steps to ensure information is being retained as prescribed by law.

3. Definition of CVC Mixer

The term ''CVC mixer'' means any person, group, service, code, tool, or function that facilitates CVC mixing. FinCEN acknowledges this definition is relatively broad; however, given the nature of CVC mixing, FinCEN deems the breadth of this definition to be necessary.

4. Definition of Covered Financial Institution

The proposed rule defines ''covered financial institution'' as the term is defined 31 CFR 1010.100(t), which in general includes the following:

- A bank (except bank credit card systems);
- A broker or dealer in securities;
- A money services business, as defined in 31 CFR 1010.100 (ff). This would include VASPs and other persons that provide money transmission services, which ''. . . means the acceptance of . . . value that substitutes for currency from one person and the transmission of . . . value that substitutes for currency to another

[74] As noted in note 17, FinCEN notes that CVC or ''virtual currency'' by itself does not meet the definition of a ''currency'' under 31 CFR 1010.100(m). Additionally, the potential characterization of CVC as currency, securities, commodities, or derivatives for the purposes of any other legal regime, such as the Federal securities laws or the Commodity Exchange Act, is outside the scope of this proposed rule. However, as described in the FinCEN 2019 CVC Guidance, if assets that other regulatory frameworks defined as commodities, securities, or futures contracts were to be specifically issued or later repurposed to serve as a currency substitute, then the asset itself could be a type of value that substitutes for currency and be defined as CVC for the purposes of this proposed rule, in addition to being subject to other applicable regulatory frameworks.

location or person by any means . . .'';[75]

- A telegraph company;
- A casino;
- A card club;
- A person subject to supervision by any state or Federal bank supervisory authority;
- A futures commission merchant or an introducing broker-commodities; and
- A mutual fund.

5. Definition of Covered Transaction

The term ''covered transaction'' means a transaction as defined in 31 CFR 1010.100(bbb)(1) in CVC by, through, or to the covered financial institution that the covered financial institution knows, suspects, or has reason to suspect involves CVC mixing within or involving a jurisdiction outside the United States. The reference to FinCEN's definition of ''transaction'' means that a covered transaction includes the following: a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, security, contract of sale of a commodity for future delivery, option on any contract of sale of a commodity for future delivery, option on a commodity, purchase or redemption of any money order, payment or order for any money remittance or transfer, purchase or redemption of casino chips or tokens, or other gaming instruments or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected. To this end, FinCEN would expect covered financial institutions to employ a risk-based approach to compliance of this proposed rule, and more broadly, the Bank Secrecy Act, including by using the variously available free and paid blockchain analytic tools commonly available.[76]

The limitation to transactions ''in CVC'' means that the reporting obligations under this special measure apply to covered financial institutions that directly engage with CVC transactions, such as a CVC exchange. It also means that covered transactions do not include transactions that are only indirectly related to CVC, such as when a CVC exchanger sends the non-CVC proceeds of a sale of CVC that was previously processed through a CVC mixer from the CVC exchanger's bank account to the bank account of the customer selling CVC.

It is critical that all financial institutions, including those with visibility into CVC flows, such as CVC exchangers—generally considered money services businesses (MSBs) under the Bank Secrecy Act—identify and quickly report suspicious activity, and conduct appropriate risk-based customer due diligence or, where required, enhanced due diligence. For example, in appropriately conducting a review to identify suspicious activity associated with potential sanctions evasion and to comply with existing FinCEN 311s on Iran and DPRK, financial institutions must know if transactions originate from or are destined to prohibited jurisdictions, such as Iran[77] or DPRK.[78] Indeed, FinCEN can, and has, assessed civil monetary penalties on covered financial institutions that have failed to conduct such due diligence, including, recently, in enforcement actions against Bittrex[79] and BitMex.[80] In light of the existing compliance practices of covered financial institutions, FinCEN expects that complying with this proposed rule should not add a significant additional burden. FinCEN invites public comment on this assessment.

B. Reporting and Recordkeeping Requirements

1. Information To Be Reported

Although FinCEN recognizes much of the information that would be collected under this proposed rule is already provided to the most frequent reporters in the CVC ecosystem, imposing additional recordkeeping and reporting requirements is necessary to address the money laundering threat posed by CVC mixing because, at present, covered financial institutions do not regularly report when their customers send or receive CVC in transactions with indicia of CVC mixing. Reporting that links customers to the CVC mixing transactions will aid law enforcement and national security investigations of illicit activity involving CVC. The following addresses the types of information the rulemaking proposes to collect.

(i) Reportable Information Regarding the Covered Transaction

In connection with all covered transactions, FinCEN proposes to collect the following information:

- *The amount of any CVC transferred, in both CVC and its U.S. dollar equivalent when the transaction was initiated:* The amount of CVC transferred would aid in performing analysis using a risk-based approach. The proposed rule would require the amount in CVC and U.S. dollar equivalent when the transaction was initiated to account for volatile CVC prices and aid in consistent monitoring and risk management purposes.
- *CVC type:* The proposed rule would require reporting of the type of CVC used in a covered transaction. The type of CVC used would allow for trend analysis of preferred usage of different types of CVC, as well as ensure the correct blockchain analysis can be done given each CVC exists on different blockchains. Taken together with the amount of any CVC transferred, this information would inform trend analysis and allow for an improved understand of laundering typologies.
- *The CVC mixer used, if known:* The proposed rule would require reporting of the CVC mixer used in the covered transaction. That information would assist in understanding trends of mixing activity as well as aid in understanding the quantity of CVC mixers in the CVC ecosystem.
- *CVC wallet address associated with the mixer:* The proposed rule would require reporting of the CVC wallet address of the CVC mixer, if one is used, to aid in understanding of addresses associated with each CVC mixer. This information would assist with understanding the size, scale, and methodologies of CVC mixers by facilitating aggregate analysis of transactional data of CVC mixers.
- *CVC wallet address associated with the customer:* The proposed rule would require reporting of the CVC wallet address of the customer to assist in the investigation of the covered transaction, including blockchain analysis to

[75] 31 CFR 1010.100(ff)(5)(A).

[76] FinCEN is not, at this time, proposing that covered financial instutitons would be required to perform a lookback to identify covered transactions that occurred prior to issuance of a final rule.

[77] *See* FinCEN, *Imposition of Fifth Special Measure against the Islamic Republic of Iran as a Juridiction of Primary Money Laundering Concern,* 84 FR 59302, Nov. 4, 2019, *available at https://www.fincen.gov/sites/default/files/shared/2019-23697.pdf.*

[78] *See* FinCEN 2016 Imposition of Special Measure Against North Korea.

[79] *See* FinCEN, *FinCEN Announces $29 million Enforcement Action Against Virtual Asset Service Provider Bittrex for Willful Violations of the Bank Secrecy Act,* Oct. 11, 2022, *available at https://www.fincen.gov/news/news-releases/fincen-announces-29-million-enforcement-action-against-virtual-asset-service.*

[80] *See* FinCEN, *FinCEN Announces $100 Million Enforcement Action Against Unregistered Futures Commission Merchant BitMEX for Willful Violations of the Bank Secrecy Act,* Aug. 10, 2021, *available at https://www.fincen.gov/news/news-releases/fincen-announces-100-million-enforcement-action-against-unregistered-futures#:~:text=Despite%20BitMEX's%20public%20representation%20that,trading%20platform%20and%20circumvent%20internet.*

determine if the wallet is associated with illicit activities.

• *Transaction hash:* The proposed rule would require reporting of the transaction hash, which will allow an investigation of the specific transaction and assist in the identification of specific wallet addresses involved in the transaction(s), as well as more specific transactional meta data such as the date and time the transaction was completed.

• *Date of transaction:* The proposed rule would require reporting of the date of transaction, which would assist in enforcing the proposed regulation, as well as assist in corroborating other reported information.

• *IP addresses and time stamps associated with the covered transaction:* The proposed rule would require reporting of the IP address to obtain geographical information related to the covered transaction, which would assist trend analysis of patterns of covered transactions by geographic location.

• *Narrative:* The proposed rule would require a description of activity observed by the covered financial institution, including a summary of investigative steps taken, provide additional context of the behavior, or other such information the covered financial institution believes would aid follow on investigations of the activity. As the covered financial institution would have insight into the normal pattern of its customers' transactions, this narrative would assist with understanding if there is an uncharacteristic change in pattern of behavior.

Importantly, under the proposed rule, covered financial institutions would continue to have an obligation to file a SAR when warranted, regardless of whether the covered financial institutions also filed a report required under the proposed rule.

(ii) Reportable Information Regarding the Customer Associated With the Covered Transaction

In respect of customers associated with covered transactions, FinCEN proposes to collect the following information:

• *Customer's full name:* The proposed rule would require reporting of the full name of the covered financial institution's customer, as it appears in the customer's proof of identification and related documents, such as passport or driver's license or non-driver identification card, used by the customer when they validated their identity with the covered financial institution.

• *Customer's date of birth:* The proposed rule would require reporting of the full date of birth of the covered financial institution's customer, as it appears in the customers onboarding file.

• *Address:* The proposed rule would require reporting of the most appropriate address (residential or business) of the customer engaged in a covered transaction. Specifically, if the customer is a business, the business address would be reported, and, if the customer is an individual, the residential address would be reported.

• *Email Address associated with any and all accounts from which or to which the CVC was transferred:* The proposed rule would require email address(es) used by a customer involved in a covered transaction and known to the covered institution.

• *Unique identifying number:* For individuals, the proposed rule requires reporting of customers' Internal Revenue Service (IRS) Taxpayer Identification Number (TIN) or, if the individual does not have one, a foreign equivalent. If the customer has neither a TIN nor a foreign equivalent, the proposed rule would require reporting of a non-expired United States or foreign passport number or other government-issued photo identification number, such as a driver's license. For entities, the proposed rule would require reporting of the entity's IRS TIN or, if the entity does not have one, a foreign equivalent or a foreign registration number. TINs and other unique identifying numbers provide law enforcement with the most efficient means to identify individuals potentially involved in illicit activity.

2. Filing Procedures

The proposed regulation would require a covered financial institution to collect, maintain records of, and report to FinCEN within 30 calendar days of initial detection of a covered transaction, in the manner that FinCEN may prescribe, certain information regarding covered transactions that involve CVC mixing. This includes certain information the covered financial institution shall provide with respect to each covered transaction which is examined in detail below. This proposed reportable information is similar to the information already collected by financial institutions to comply with their AML/CFT obligations; however, at present covered businesses would not necessarily report such information. Notably, the proposed regulation only requires a covered financial institution to report information in its possession, and thus does not require a covered institution to reach out to the transactional counterparty to collect additional information on the CVC mixing transaction.

3. Recordkeeping Requirements

Pursuant to the proposed rule, covered financial institutions would be required to maintain any records documenting compliance with the requirements of this regulation.

VII. Request for Comments

FinCEN invites comments on all aspects of the proposed rule, including the following *specific matters:*

A. CVC Mixing as a Class of Transactions of Primary Money Laundering Concern

1. What impact would this proposed rule have on legitimate activity conducted by persons in the course of conducting financial transactions?

2. What impact would the proposed rule have on blockchain privacy or pseudonymity, noting that filings reported to FinCEN are not publicly releasable and the similarities of this proposal to the recordkeeping and reporting requirements of transactions using the traditional financial system, such as with wire or Automated Clearing House (ACH) transactions?

3. Does the impact on privacy and legitimate applications identified in Section IV.B potentially outweigh the risks posed by illicit activity facilitated by CVC mixing?

4. What challenges are anticipated with respect to identifying the foreign nexus of a CVC mixing transaction?

5. Are there any other methods that covered financial institutions can use to be able to readily determine if covered transactions stemming from non-mixer CVC mixing have a foreign nexus?

6. Are there sufficient tools available, either free or paid, that would aid covered financial instutitions to determine if covered transactions occurred outside the United States?

7. Are there any other methods that covered financial institutions can use to be able to readily determine if covered transactions stemming from non-mixer CVC mixing have a foreign nexus?

8. Has FinCEN appropriately weighed the legitimate and illicit activities associated with the use of CVC mixing? What other factors should be considered?

B. Definitions

1. Please provide suggested revisions to the proposed definitions that would better tailor the intended recordkeeping and reporting obligations to the objectives and uses described in this proposal. Where possible, please

provide information or examples to illustrate how the recommended revisions improve upon the definitions as proposed.

2. Does the proposed definition of CVC mixing adequately capture the activity of concern? If not, please provide suggested revisions to the proposed definition that would better capture such activity. Where possible, please provide information or examples to illustrate how the recommended revisions would improve upon the definition as proposed.

3. Does the proposed exception to the definition of CVC mixing adequately account for legitimate activity conducted by VASPs and other financial institutions? If not, please provide suggested revisions to the proposed definition that would better capture such activity. Where possible, please provide information or examples to illustrate how the recommended revisions would improve upon the definition as proposed.

C. Alternatives

1. Is FinCEN's proposal of enhanced recordkeeping under section 311's special measure one most appropriate to the objectives of this proposed rule? Where possible, please provide suggestions for alternative means of achieving the objectives and illustrate how such means would work in practice.

2. Would section 311's special measures two through five be more appropriate to apply? If so, please explain why.

D. Recordkeeping and Reporting

1. Is the scope of the recordkeeping requirement appropriate?

2. Is the list of information to be collected and reported appropriate to address the stated primary money laundering concern?

3. Is the proposed mechanism for submission appropriate for the purpose of this proposed rule?

4. Are there any alternative methods of submitting reports in an efficient and effective manner that FinCEN should consider utilizing?

5. Are the proposed reporting and recordkeeping requirements discussed in Section VI.B.1 and 3 appropriately scoped? Are there additional types of information regarding reportable transactions or customers that should be collected?

6. Should the proposed reporting and recordkeeping requirements apply to covered financial institutions that are the originator institution, the beneficiary institution, or both?

7. In cases where the customer of a covered financial institution is a legal entity, should the implementation of special measure one also require the beneficial ownership of that legal entity be reported, in addition to the other proposed reporting requirements?

E. Burden and Other Impacts of This Proposed Rule

1. Does FinCEN accurately account for the burden and impact of this proposed rule when a covered financial institution knows, suspects, or has reason to suspect a transaction involves CVC mixing?

2. Is there a less burdensome way of collecting information regarding the details of a CVC transaction, which the BSA's AML/CFT objectives require financial institutions to collect, including know-your-customer and customer due diligence?

3. Would the adoption of special measure one reporting and recordkeeping requirements, as proposed, impose expected costs to covered financial institutions; state, local, or tribal governments; or the private sector in excess of $177 million annually? $200 million annually? Where possible, please provide data or studies from an identifiable source that would support the response or describe why a source cannot be identified.

4. To what extent should FinCEN consider the potential costs to currently unregistered or otherwise non-reporting entities that, if compliant, would incur costs if special measure one is adopted as proposed? If possible, please illustrate either quantitatively or qualitatively (by way of example or anecdote) how the recommended level of consideration would improve FinCEN's estimate of regulatory impact.

5. Are there any material facts, data, circumstances, or other considerations that, had they been included in FinCEN's regulatory impact analysis, would have both improved the precision and accuracy of the analysis and substantially altered the assessment of the proposed rule's impact? If so, please provide, including attribution to the sources of such information, where possible.

6. Would the adoption of special measure one reporting and recordkeeping requirements, as proposed, impose significant costs on covered financial institutions that are small entities? On other small entities that are not covered financial institutions? Where possible, please provide data or studies from an identifiable source that would support the response or describe why a source cannot be identified.

7. Are the due diligence requirements appropriately scoped in this proposed rule?

8. What impact will this proposal have on augmenting law enforcement's ability to track and trace CVC derived from cyber heists, ransomware, or similar illicit activity to aid the return of victim's CVC?

9. Are there any international efforts to address illicit finance risks stemming from mixing not addressed in the NPRM?

10. What effect would the proposed rule have on international efforts to address the illicit use of CVC mixing?

11. Are there specific examples of ''covered transactions'' or sample scenarios that FinCEN could have provided to assist financial institutions and other affected parties in further understanding the intended applicability of the proposed definition of ''covered transactions''? Alternatively, are there other clarifications to the definitions in this NPRM, or other modifications to the proposed regulatory text that would meaningfully clarify when a covered transaction occurs that would warrant reporting? If so, please describe.

12. Is FinCEN correct in its assessment that covered financial institutions would have access to reasonable and appropriate services or tools, whether free or paid, to be able to effectively identify covered transactions? If not, what are impediments to accessing such tools, and what costs would be associated with gaining access?

13. To what extent could public guidance or other informational materials regarding compliance with the requirements of proposed special measure one (such as FAQs, pre-recorded instructional audio-visual resources, or in-person presentations with industry groups) meaningfully reduce costs to covered financial institutions? Please describe any preferred method(s), as well as any qualitative or quantitive estimates of the extent to which costs are expected to be reduced.

VIII. Regulatory Impact Analysis

FinCEN has analyzed this proposed rule under Executive Orders 12866, 13563, and 14094, the Regulatory Flexibility Act,[81] the Unfunded Mandates Reform Act,[82] and the Paperwork Reduction Act.[83]

[81] 5 U.S.C. 603.

[82] 12 U.S.C. 1532, Public Law 104–4 (Mar. 22, 1995).

[83] 44 U.S.C. 3507(a)(1)(D).

As discussed above,[84] the intended effects of the imposition of special measure one to CVC mixing are twofold. The rule is expected to: (1) facilitate the investigation and prosecution of illicit activities by parties using CVC mixing in furtherance of their unlawful objectives[85] and, in many cases,[86] consequent private enrichment; and (2) disincentivize the use of CVC mixing in connection with money laundering and other financial crimes by reducing the likelihood that such CVC mixing will adequately insulate the underlying transactions from identification and traceability.[87] In the analysis below, FinCEN discusses the economic effects that are expected to accompany adoption of the rule as proposed and assess such expectations in more granular detail. This discussion includes a detailed explanation of certain ways FinCEN's conclusions may be sensitive to methodological choices and underlying assumptions made in drawing inferences from available data. Throughout, these have been outlined so that the public may review and provide comment.[88]

A. Assessment of Impact

By requiring covered financial institutions to implement special measure one, the proposed rule would impose additional obligations on these institutions to report transactions that they know, suspect, or have reason to suspect involve CVC mixing because FinCEN has determined that CVC mixing, as a class of transactions, is of primary money laundering concern.

The imposition of this special measure may require a shift in reporting practices, particularly with regard to the determination a covered financial institution would otherwise first need to make: that a transaction involving CVC mixing is suspicious and therefore reportable under the applicable SAR Rule.[89] The reporting and recordkeeping requirements under special measure one would instead guide a covered financial institution to presume transactions that involve CVC mixing are inherently of primary money laundering concern. Therefore, under this proposal, the implied burden would shift from determining when a CVC transaction is reportable to determining when it is not reportable.

FinCEN has considered the regulatory impact of the proposed rule and the economic consequences these changes would entail. The subsequent analysis details FinCEN's finding that, in proportion to the thousands of covered financial institutions subject to FinCEN's general reporting and recordkeeping requirements, relatively few are exposed to CVC mixing and, additionally, proportionally few transactions per exposed financial institution covered under the proposed rule are likely to trigger the new recordkeeping and reporting requirements, of which fewer still may provide actionable information. However, any one reportable transaction, by nature of the underlying illicit and potentially dangerous activity it facilitates, could provide large benefits to FinCEN and law enforcement if identified, or, alternatively framed, could impose substantial costs and serious national security risks if unreported.[90]

1. Broad Economic Considerations

At present, in the absence of an obligation to comply with special measure one requirements, a covered financial institution may determine that a financial transaction exposed, directly[91] or indirectly,[92] to CVC mixing bears indicia of illicit activity. Given the potential link to illicit activity, this financial institution might file a SAR in compliance with existing BSA requirements. However, there are a number of potential reasons why any one individual institution may not file such a report, including that in terms of economic fundamentals, such reporting may not be privately optimal. Consequently, the absence of the proposed special measure one reporting requirement might naturally result in systematic underreporting of CVC mixing-related suspicious activity, particularly when the exposure to CVC mixing does not involve a CVC mixer. As discussed above, preliminary evidence suggests that this underreporting occurs.[93]

In terms of economic fundamentals, reporting on transactions exposed to CVC mixing produces a positive externality insofar as the reporting entity incurs expenses in connection with such reporting that are not directly, fully compensated. As such, the marginal social benefit of reporting exceeds the private costs. Consequently, in the absence of imposing a social (compliance-related) cost to non-reporting, the entity-specific equilibrium level of reporting will always be less than the social optimum. Furthermore, from a microeconomic- or a more industrial-organization-level of analysis, there are competitive reasons why, absent a uniform reporting requirement, no single covered financial institution that knows, suspects, or has reason to suspect CVC mixing would benefit from competing lower on the perceived level of quality in privacy. In such a setting, achieving the socially optimal level of reporting would again be unobtainable in the absence of a policy intervention (such as the proposed reporting and recordkeeping requirements).

In this proposal, FinCEN is mindful that certain unintended, responsive changes in behavior may reduce the efficacy of this rule or otherwise attenuate the intended net benefits by limiting the scope of benefits or by increasing the costs of compliance. Additionally, the attendant costs and benefits per reported transaction may not be uniformly distributed across the affected covered financial institutions. There may also be broader programmatic costs or repercussions to: (1) the specific framing of CVC mixing and CVC mixers as proposed;[94] (2) the framing of CVC mixing activity as categorically foreign-state-operated, -located, or otherwise -adjacent; (3) the reporting and recordkeeping requirements being applicable to domestic financial institutions only; and (4) allowing an in-the-course-of-business exemption to covered financial institutions, that each remain unquantified in the following impact analysis. Nevertheless, FinCEN has made a studied[95] and advised[96] determination that these considerations are outweighed by the primary money laundering concern that animates this proposal and are therefore not further incorporated in the subsequent discussion.

[84] *See, specifically* discussion *supra* Section IV. C. *See generally* discussion *supra* Section II.

[85] *See, e.g.,* discussion of Axie Infinity heist *supra* Section III.B.

[86] *See, e.g.,* discussion of use in connection with darknet market transactions and laundering the proceeds of ransomware attacks *supra* Sections III.B and IV.A.

[87] *See* discussion *supra* Section IV.C.

[88] *See* Section VII.E.

[89] *See, e.g.,* FinCEN 2019 CVC Guidance *supra* note 16 and FinCEN, *Reporting Suspicious Activity A Quick Reference Guide for Money Services Businesses,* September, 2007, *available at https://www.fincen.gov/sites/default/files/shared/report_reference.pdf.*

[90] *See, e.g.,* discussion *supra* Sections III.B and IV.A.

[91] *See infra* note 121.

[92] *See infra* note 122.

[93] *See* discussion *supra* Section IV.A.3.

[94] *See* invitation for public comment on potential costs and repercussions *supra* Section VII.B.

[95] 31 U.S.C. 5318A(a)(4)(B). *See* discussion *supra* Section I.

[96] *See* discussion of 31 U.S.C. 5318A(c)(1) requirements *supra* Section I. *See also* discussion of 31 U.S.C. 5318A(a)(4)(A) *supra* Sections I and V.

2. Institutional Baseline and Affected Parties

In proposing this rule, FinCEN considered the incremental impacts of imposing special measure one relative to the current state of the affected markets and their participants. This baseline analysis of the parties that would be affected by the proposed rule, their current obligations, and common activities satisfies certain analytical best practices [97] by detailing the implied alternative of not pursuing the proposed, or any other, regulatory action. This baseline also forms the counterfactual against which the quantifiable effects of the rule are measured; therefore, substantive errors in or omissions of relevant data, facts, or other information may affect the conclusions formed regarding the general and/or economically significant impacts of the rule. Additionally, because it is unclear that the imposition of special measure one would, independently, alter the registration and compliance choices already made by such affected parties, quantitative portions of the subsequent analysis have not attempted to estimate the number of, or magnitude of effects on, unregistered or otherwise non-compliant entities that FinCEN qualitatively might expect to be affected by the rule. Because both these considerations may have first-order effects on the expected magnitude of certain outcomes, the public is invited to provide further insights or information—particularly, data or quantitative studies—that could contribute to a more precise or more accurate estimation of impact.[98]

(i) Baseline of Affected Parties

(A) Covered Financial Institutions

The parties expected to comply with the special measure one include any and all domestic covered financial institutions as defined in 31 CFR 1010.100(t).[99] Table 1 (below) reports an annual maximum of potentially affected entities based on FinCEN's most recent estimates of the total number of entities that meet the respective regulatory definitions.[100] Estimates of potentially affected money services businesses by subcategories as defined in 31 CFR 1010.100(ff) are intended to aid in subsequent discussion, which details our assumptions about differences in expected compliance burdens by group. Estimates in parentheses reflect the total number of registered money services businesses that self-identified their business by the given service subcategory as defined in 31 CFR 1010.100(ff), among others.[101] Money services business subcategory estimates outside parentheses represent the number of entities that self-identified as registering (and reporting) singularly due to the requirements for that subcategory.

TABLE 1—ESTIMATES OF AFFECTED FINANCIAL INSTITUTIONS BY TYPE

Financial institution type [a]	Number of entities
Bank [b]	[c] 9,850
Broker/Dealer in Securities [d]	[e] 3,540
Money Services Business [f]	[g] 25,710
Dealer in Foreign Exchange [h]	[i] 190 (3,000)
Check Casher [j]	[k] 5,960 (21,970)
Issuer/Seller of Traveler's Checks/Money Orders [l]	[m] 380
Provider of Prepaid Access [n]	[o] 20 (130)
Seller of Prepaid Access [p]	[q] 40 (2,220)
U.S. Postal Service [r]	[s] 0
Money Transmitter [t]	[u] 450 (16,460)
Telegraph Company [v]	[w] 0
Casino [x]	[y] 990
Card Club [z]	[aa] 270
Person subject to supervision by any State or Federal Bank Supervisory Authority [bb]	[cc] N/A
Futures Commission Merchant [dd]	[ee] 60
Introducing Broker in Commodities [ff]	[gg] 970
Mutual Fund [hh]	[ii] 1,380

[a] As typographically grouped in 31 CFR X 1010.100(t) and (ff), respectively.
[b] *See* 31 CFR 1010.100(t)(1); *see also* 31 CFR 1010.100(d).
[c] Counts of certain types of banks, savings associations, thrifts, and trust companies are from Q1 2023 Federal Financial Institutions Examination Council (FFIEC) Call Report data, *available at https://cdr.ffiec.gov/public/pws/downloadbulkdata.aspx.* Data for institutions that are not insured, are insured under non-FDIC deposit insurance regimes, or do not have a Federal functional regulator are from the FDIC's Research Information System, *available at https://www.fdic.gov/foia/ris/index.html.* Credit union data are from the NCUA for Q1 2023, *available at https://www.ncua.gov/analysis/credit-union-corporate-call-report-data.*
[d] 31 CFR 1010.100(t)(2).
[e] According to the SEC, the number of brokers or dealers in securities for the fiscal year 2022 is 3,538. *See* Securities and Exchange Commission, *Fiscal Year 2024 Congressional Budget Justification,* p. 32, *available at https://www.sec.gov/files/fy-2024-congressional-budget-justification_final-3-10.pdf.*
[f] 31 CFR 1010.100(t)(3).
[g] From FinCEN's publicly available MSB data (*https://www.fincen.gov/msb-registrant-search*) as of September 1, 2023.
[h] 31 CFR 1010.100(ff)(1).
[i] Value in parentheses reflects all entries in data downloaded from *https://www.fincen.gov/msb-registrant-search* on August 1, 2023, including MSB Activities key 415. Alternative value reflects entries with exclusively key 415.
[j] 31 CFR 1010.100(ff)(2).
[k] Value in parentheses reflects all entries in data downloaded from *https://www.fincen.gov/msb-registrant-search* on August 1, 2023, including MSB Activities key 408. Alternative value reflects entries with exclusively key 408.

[97] *See specifically* E.O. 12866 Section 1(a) (''In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating.'').

[98] *See, e.g., supra* Section VII.E.

[99] *See* discussion *supra* Section VI.A.4; *see also* proposed amendment 31 CFR 1010.662(a)(4) *infra* Section IX.

[100] Numbers presented here may differ slightly from those presented in other, concurrent agency rulemaking because estimates in this analysis are rounded to the nearest ten for ease of aggregation. Such differences are not expected to be economically meaningful.

[101] For the full list of non-exclusive subcategories a money services business may use to self-identify when submitting a registration *see msb.fincen.gov/definitions/msbKey.php*.

[l] 31 CFR 10101.100(ff)(3).
[m] Value reflects all entries in data downloaded from *https://www.fincen.gov/msb-registrant-search* on August 1, 2023 with, exclusively, one of the MSB Activities keys 401 (Issuer of traveler's checks), 402 (Seller of traveler's checks), 404 (Issuer of money orders), or 405(Seller of money orders). Because of the numerous (134) alternative combinations of at least one of the 4 keys with at least one of the other three keys and, in some cases, other keys as self-reported by registrants, no suitable alternative combination of key values could be determined as most appropriately and uniquely representative in light of concerns about multiplicative counting of affected parties. FinCEN estimates therefore default to the upper bound of all MSB registrants for this category of parties collectively incurring a regulatory compliance burden.
[n] 31 CFR 1010.100(ff)(7)(i)–(ii).
[o] Value in parentheses reflects all entries in data downloaded from *https://www.fincen.gov/msb-registrant-search* on August 1, 2023 including MSB Activities key 414(Provider of prepaid access). Alternative value reflects entries with exclusively key 414.
[p] 31 CFR 1010.100(ff)(4)(i)–(iii).
[q] Value in parentheses reflects all entries in data downloaded from *https://www.fincen.gov/msb-registrant-search* including MSB Activities key 413. Alternative value reflects entries with exclusively key 413.
[r] 31 CFR 1010.100(ff)(6).
[s] FinCEN does not expect the U.S. Postal Service, as defined in 31 CFR 1010.100(ff)(6) to incur any recordkeeping or reporting obligations in connection with this rule.
[t] 31 CFR 1010.100(ff)(5).
[u] Value in parentheses reflects all entries in data downloaded from *https://www.fincen.gov/msb-registrant-search* including MSB Activities key 409. Alternative value reflects entries with exclusively key 409.
[v] 31 CFR 1010.100(t)(4).
[w] As an estimate of uniquely registered, potentially affected entities, FinCEN expects this category to contain no additional persons or organizations not already included in other counts, particularly as money transmitters.
[x] 31 CFR 1010.100(t)(5)(i)–(iii).
[y] According to the American Gaming Association (AGA), there are 468 commercial casinos and 523 tribal casinos as of Dec. 31, 2022. *See* American Gaming Association, *State of the States: annual report,* May 2023, *available at https://www.americangaming.org/wp-content/uploads/2023/05/AGA-State-of-the-States-2023.pdf* p. 16.
[z] 31 CFR 1010.100(t)(6)(i)–(ii).
[aa] According to the American Gaming Association (AGA), there are 266 card rooms as of Dec. 31, 2022.
[bb] 31 CFR 1010.100(t)(7).
[cc] It is unclear to FinCEN at this time whether any entities exist in this category that for purposes of being counted towards unique affected parties incurring burdens associated with the rule, if adopted as proposed, are not already captured by concurrent status in another category of financial institution under the 31 CFR 1010.100(t) definition. To the extent that additional data can better inform this estimate, public comment is invited.
[dd] 31 CFR 1010.100(t)(8).
[ee] There are 60 futures commission merchants as of June 30, 2023, according to the CFTC website. See Commodity Futures Trading Commission, *Financial Data for FCMs, available at https://www.cftc.gov/MarketReports/financialfcmdata/index.htm.*
[ff] 31 CFR 1010.100(t)(9).
[gg] According to CFTC, there are 969 introducing brokers in commodities as of April 30, 2023.
[hh] 31 CFR 1010.100(t)(10).
[ii] According to the SEC, as of December 2022 (including filings made through Jan 20, 2023) there are 1,378 open-end registered investment companies that report on Form N–CEN.

Based on these estimates, it is possible that up to approximately 42,800 covered financial institutions could incur new recordkeeping and reporting costs in complying with special measure one. However, the extent to which any of these institutions is expected to be economically impacted is limited insofar as they would need to engage in transactions [102] that involve CVC, and thereby the possibility of CVC mixing. This prerequisite [103] (that a transaction be in CVC) is expected to preclude many entities from experiencing any significant economic effects from the rule.[104] For example, FinCEN does not anticipate any direct effects to the U.S. Postal Service or to any registered telegraph company. Further, FinCEN analysis of public and non-public sources of information suggests that, categorically, domestic mutual funds, casinos, and card clubs have low exposure to CVC transactions. For the same reasons, money services businesses that provide services exclusively in one or more of the following subcategories are not expected to experience any substantial change to compliance burdens: dealer in foreign exchange, check casher, issuer/seller of traveler's checks or money orders, provider of prepaid access, and seller of prepaid access. Thus, FinCEN expects approximately 9,300 fewer than the total estimate of potentially affected entities to reasonably anticipate any noticeable effect.

On the other hand, the categories of affected parties that include the largest proportion of VASPs are expected to face the highest levels of potential exposure to CVC mixing. These entities are most concentrated in the money transmitter subcategory of money services businesses and futures commission merchants. In each case, these VASPs are a proper subset of their respective groups, and while they are expected to be the most directly affected by the rule because they have the highest exposure, the incremental burden of the rule is expected to be lowest for these entities because it imposes the least adaptation from current compliance practices and processes.

The covered financial institutions that are expected to face the greatest incremental burden as a consequence of the proposed recordkeeping and reporting requirements would be those with both higher likelihoods of being exposed to CVC mixing and lower tailoring of existing compliance programs because, for instance, virtual asset service provision has not historically been integral to the entity's core business function or model. FinCEN expects that this may characterize certain banks, or persons subject to supervision by a state or federal bank supervisory authority, broker/dealers, and introducing brokers in commodities. However, as these types of financial institutions are already heavily regulated and typically already feature robust monitoring and compliance programs, even as they may face the largest incremental burden, this economic impact might still be low.[105]

(B) CVC Mixing Service Providers [106]

While the proposed application of special measure one does not expressly

[102] 31 CFR 1010.100(bbb)(1).
[103] *See* discussion *supra* Section VI.A.5; *see also* proposed amendment 31 CFR 1010.662(a)(5) *infra* Section IX.
[104] *See* discussion of expected economic effects on covered financial institutions *infra* Section VIII.A.4.
[105] FinCEN is requesting comment on the reasonable bases for this expectation. *See* requests for comment *supra* Section VII.A and Section VII.E.
[106] In this section, FinCEN uses the term 'CVC mixer' as used in common parlance, noting this may commonly be understood to refer to only a proper subset of the entities/parties that would meet the definition of 'CVC mixer' as defined in this proposed rule. *See* discussion *supra* Section

Continued

impose requirements on CVC mixers that are not covered financial institutions or those able to rely on the proposed exemption,[107] it is reasonable to expect that the relative attractiveness of engaging with CVC mixers or the number of those who avail themselves of CVC mixing services might be affected. As a baseline matter of market structure, the centralized mixing services industry is expected to be characterized by large network externalities: the value of a CVC mixer should increase as the number of users increases, because the greater the number of parties that use a particular CVC mixer, the easier it becomes for the mixer to anonymize each participant in a mixing transaction. This characterization is consistent with observable market behavior. Because network externalities generally reinforce high levels of market concentration, it may be reasonable to expect that the number of CVC mixers that can concurrently achieve and maintain a sustainable scale to continue operations is unlikely to grow. It may also imply that, to the extent that the demand for CVC mixing services remains relatively constant over time, in the event that any one CVC mixing service provider ceases to remain active, another active or new CVC mixer could greatly benefit from the subsequent increase in demand for its services.

(C) Clients of Primary Affected Parties

In the course of compliance with special measure one, covered financial institutions may be required to submit reports and retain records containing certain unique identifiers [108] and other personal information [109] of a party, or parties, to a CVC mixing-exposed transaction.[110] Based on a recent report,[111] this could affect more than 300 million users of unhosted CVC wallets insofar as a user's personal information may be reported if their wallet is deemed by a covered financial institution to be involved in a covered transaction. Because there is no restriction on the number of wallets an individual may have, this number may overestimate the number of unique individuals whose personal information may be required. To the extent that previously reported estimates [112] regarding the distribution of CVC mixer users by type—privacy-oriented versus abusers of anonymity—are usable for inference, special measure one could require the reporting of personal information in connection with up to approximately 66 (87) percent of CVC mixer deposits in the absence of any other identifiable connection to high risk (illicit) activity.

FinCEN has weighed these considerations against the broader economic concern of systematic underreporting in the absence of special measure one requirements,[113] and concluded that the associated costs to privacy-oriented clients of covered financial institutions and CVC mixers are small in both relative [114] and absolute [115] terms. Further, there is no reason to believe the required records and personal information contained therein would be subject to any greater risk of improper access, use, or exposure than any other record or report filed with a federal agency or maintained by a covered financial institution.

(D) Other Affected Parties

FinCEN further anticipates second order economic effects of the proposed rule on parties ancillary to transactions between covered financial institutions, CVC mixing service providers, and clients of either or both, such as counsel, advisors, external forensic firms, independent auditors, IT services, and other compliance facilitators or third-party service providers. In particular, FinCEN expects the proposed requirements may affect the demand for services by third party blockchain analytics companies.[116] Such companies provide transaction screening and risk rating services to financial institutions that may hire them in lieu of, or to complement, similar functions performed in-house. Because of the specialized experience and expertise required to build a program, reporting in near real time, that not only monitors multiple blockchains, but also incorporates a multitude of additional data sources to enrich a given blockchain's transaction- and transaction party-related information, few such companies exist and the market is consequently concentrated to fewer than ten main entities.

Separately, because the proposed rule is limited in scope to only the mixing of CVC, to the extent that digital token mixing and its service providers are considered viable substitutes for CVC mixing or could otherwise be employed to obfuscate CVC mixing, the demand for token mixing and its service providers may increase as a consequence of adopting the rule as proposed.

(ii) Regulatory and Market Baseline

(A) Current Requirements

The ten categories of financial institutions covered by the proposed rule, as defined in 31 CFR 1010.100(t) are expected to already be compliant with the required activities as outlined in 31 CFR 1020 (Banks), 1021 (Casinos and Card Clubs), 1022 (Money Service Businesses), 1023 (Brokers or Dealers in Securities), 1024 (Mutual Funds), and 1026 (Futures Commission Merchants and Introducing Brokers in Commodities), as applicable. These rules include requirements for financial institutions to: (1) create and maintain compliance policies, procedures, and internal controls; (2) engage in customer identification verification; (3) file reports with FinCEN; (4) create and retain records; and (5) respond to law enforcement requests, and have guided financial institutions' understanding of FinCEN's expectations of compliant reporting and recordkeeping activity since before the advent of virtual currency. Where the original rules are silent on the application of, or compliance with, these requirements with respect to CVC, FinCEN and OFAC

VII.A.3; *see also* proposed amendment 31 CFR 1010.662(a)(2) *infra* Section IX.

[107] At the time of this proposal, FinCEN observes no CVC mixers that meet either or both of these criteria.

[108] Including name (*see* proposed amendment 31 CFR 1010.662(b)(1)(ii)(A) *infra* Section IX) and government issued (alpha)numeric identifier (*see* proposed amendment 31 CFR 1010.662(b)(1)(ii)(F) *infra* Section IX); *see also* discussion *supra* Section VI.

[109] Including a customer's CVC wallet address (*see* proposed amendment 31 CFR 1010.662(b)(1)(i)(E) *infra* Section IX), date of birth (*see* proposed amendment 31 CFR 1010.662(b)(1)(ii)(B) *infra* Section IX), address (*see* proposed amendment 31 CFR 1010.662(b)(1)(ii)(C) *infra* Section IX), and email address (*see* proposed amendment 31 CFR 1010.662(b)(1)(ii)(D) *infra* Section IX); *see also* discussion *supra* Section VI.

[110] *See* Section VI.B.1.

[111] Chainalysis Report, *On-Chain User Segmentation for Crypto Exchanges,* June 22, 2023, *available at https://www.chainalysis.com/blog/crypto-exchanges-on-chain-user-segmentation-guide/.*

[112] *See* discussion *supra* Section IV.A.3; *see also supra* note 58.

[113] *See* discussion *supra* Section IV.A.3; *see also* Section VIII.A.1.

[114] FinCEN considered costs here proportionally to the value of the information collected and reported in connection with illicit finance-related transactions. *See* discussion *supra* Section VIII.A; *see also supra* note 90.

[115] FinCEN considered here the aggregate potential informational exposure, which depends jointly on (1) the quanta of personal information collected and reported and (2) the expected number of instances in which access to that personal information is granted in the course of a legitimate investigative or prosecutorial activity.

[116] At present, it is unclear to FinCEN whether, in light of the proposed requirements, a covered financial institution would be more likely to treat these third party services as a substitute or a complement to in-house screening and risk-management activities. Therefore while there is an expected change to demand for these third party services, the direction of this change remains unsigned.

have historically provided successive, iterative guidance [117] and other information [118] that clarifies expectations with respect to required practices. Furthermore, FinCEN has historically issued advisories and press releases based on FATF guidance to financial institutions,[119] including VASPs, concerning processes and legal obligations that apply to transactions involving high risk and sanctioned juridictions.

Preliminarily, evidence suggests that at least some covered financial institutions have long anticipated and appreciated the applicability of SAR and currency transaction reporting requirements to transactions involving CVC: the first SAR including language specific to a CVC was filed thirteen years ago in 2010, predating FinCEN's 2013 Guidance, and the first SAR filed by a VASP, approximately two months after the 2013 Guidance was issued, is already a decade old. Since the issuance of that guidance, FinCEN has received CVC-related SARs from approximately 4,500 distinct filers. As such, the reporting and recordkeeping requirements that would be introduced by the proposed rule may build incrementally onto an existing regulatory compliance framework, inclusive of CVC, that is well understood, and where a nontrivial proportion of covered financial institutions demonstrate willingness and ability to meet existing reporting and recordkeeping obligations.

(B) Current Market Practices

When assessing relevant baseline elements of current market practice against which to forecast the regulatory and economic impacts of special measure one requirements as proposed, FinCEN—in addition to the current regulatory requirements—also considered certain factors of current practices including: (1) the extent to which covered financial institutions are identifiably exposed to CVC mixing; and (2) the availability of reliable tools and methods with which to detect the kinds of CVC mixing exposure that would trigger the proposed reporting and recordkeeping requirements.

As a component of this analysis, FinCEN conducted an independent historical review of CVC mixing exposure occurring in the ordinary course of business at the largest registered CVC exchanges from their respective first trade dates until present.[120] As these are some of the affected covered financial institutions with highest expected exposure to CVC mixing, their relative volumes of CVC mixing-exposed transactions is likely to present a reasonable upper-bound on the proportion of currently identifiable transactions that could incur additional record-keeping and reporting requirements in connection with the imposition of the first special measure. This study found that during the period reviewed, mean (median) daily transaction volume with observable direct exposure [121] was approximately 0.010 percent (0.009 percent), while mean (median) observable indirect exposure [122] was approximately 0.234 percent (0.168 percent) of daily transaction volume. The analysis yielded comparable results when proportions were based on share of total transactions instead of U.S. Dollar value equivalent. It would therefore appear that, to the extent that future CVC mixing exposure is consistent with past and current trends, the number of transactions that would require reporting and recordkeeping as a unique consequence of adopting special measure one as proposed is extremely low in relative terms.

FinCEN also reviewed the availability of tools, other than the use of third party blockchain analytics companies, that a financial institution currently has the option to employ to detect exposure to CVC mixing transactions in the course of complying with existing SAR and/or CTR related requirements. CVC mixing exposure can occur (directly [123] or indirectly [124]) in the process of sending CVC to, or receiving CVC from, a covered financial institution (such as a CVC exchange) and can be detected via a range of free and paid commercial software programs.[125] Free programs, such as common block explorers, can easily reveal direct [126] exposure to a CVC mixer if the CVC mixer infrastructure is relatively stable and well known, such as in the case of many Ethereum-based CVC mixers. Indirect [127] exposure may be also discoverable using these programs but might require supplementary manual investigative work to uncover. Paid commercial programs employ suites of heuristics to more comprehensively identify CVC mixers, and market themselves on their ability to automatically detect bi-directional indirect [128] and direct [129] exposure to CVC mixing activity for any blockchain address supported by the service. On blockchains supporting native smart contract capability, these automated attribution capabilities can be easily defeated if a user routes funds through token contracts or other digital asset entities providing on-chain exchange services. In such cases, analysts can still perform manual blockchain forensic tracing to identify the origin of funds.

3. Description of the Proposed Reporting and Recordkeeping Requirements of the First Special Measure

Imposing special measure one as proposed would introduce novel but, in many cases, incrementally modest additional recordkeeping and reporting obligations, requiring the collection and transmission of certain information in its possession when a covered financial institution knows, suspects, or has reason to suspect a transaction occurred

[117] *See* FIN–2013–G001, *Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies,* Mar. 18, 2013, *available at https://www.fincen.gov/sites/default/files/guidance/FIN-2013-G001.pdf* (2013 Guidance); *see also* FinCEN 2019 CVC Guidance.

[118] *See generally* OFAC, *Questions on Virtual Currency, available at https://ofac.treasury.gov/faqs/topic/1626; see, specifically* OFAC, *Sanctions Compliance Guidance for the Virtual Currency Industry,* Oct. 2021, *available at https://ofac.treasury.gov/media/913571/download?inline.*

[119] *See, e.g.,* FinCEN, *Financial Action Task Force Identifies Jurisdictions with Anti-Money Laundering and Combating the Financing of Terrorism and Counter-Proliferation Deficiencies,* June 29, 2023, *available at https://www.fincen.gov/news/news-releases/financial-action-task-force-identifies-jurisdictions-anti-money-laundering-and-4;* FIN–2021–A003 ''Advisory on the Financial Action Task Force-Identified Jursdictions with Anti-Money Laundering and Combating the Financing of Terrorism and Counter-Proliferations Deficiencies'' *available at https://www.fincen.gov/sites/default/files/advisory/2021-03-11/FATF%20February%202021%20Advisory%20FINAL%20508.pdf.*

[120] This study incorporated both public and non-public data as well as certain proprietary and non-proprietary computer programs to analyze transactions occurring between calendar year 2010 at the earliest (given that each exchange has a unique start date) and the date the study was concluded (August 3, 2023).

[121] Direct exposure refers to transactions where CVC is sent from one CVC wallet address to another CVC wallet address, without the use of an intermediary. For example, if a VASP received funds from—or sent funds to—a CVC mixer without first going through an intermediary, that VASP has direct exposure to CVC mixing.

[122] Indirect exposure refers to transactions where CVC is sent from a CVC wallet address through at least one other wallet address to arrive at the intended recipient. For example, if CVC was sent from a CVC mixer to a CVC wallet address and then to a VASP, that VASP has indirect exposure to CVC mixing. Similarly, if CVC sent from a VASP to a CVC wallet address was subsequently send to a CVC mixer, it would be indirectly exposed to CVC mixing.

[123] *See* definition *supra* note 121.

[124] *See* definition *supra* note 122.

[125] FinCEN notes that the extent to which exclusive use of any of these tools (free or commercial software programs) would fully satisfy either existing reporting and recordkeeping requirements, or those imposed by the proposed special measure one, is a matter of facts and circumstances.

[126] *Id.* at note 121.

[127] *Id.* at note 122.

[128] *Id.* at 122.

[129] *Id.* ar 121.

that involved the use of CVC mixing within or involving a jurisdiction outside the United States.[130] The affected institution at which a covered transaction is conducted or attempted would need to collect required information about the covered transaction and, within 30 days of initial detection of a covered transaction, provide a report to FinCEN containing as much of the reportable required information as available to the affected institution—via electronic filing or other agency-prescribed manner.[131]

Additionally, for a specified period of time (five years [132]) after filing its report, each covered financial institution would engage in new recordkeeping activities because it would need to document its compliance with the filing procedures and the reporting requirements by: (1) maintaining a copy of any records related to CVC mixing transactions they have filed; and (2) obtaining and recording copies of documentation relating to compliance with the regulation.[133]

The required information would identify and describe certain unique features and characteristics of both the reportable covered transaction and the customer associated with the covered transaction. The required informational components concerning the covered transaction pertain to the CVC when transferred (currency type,[134] amount,[135] and U.S.-dollar equivalent [136]), the CVC mixer (identity [137] and/or wallet address [138]), and the transaction (hash,[139] date,[140] IP addresses and timestamps,[141] and narrative description [142]), while the required informational components concerning the associated customer include name [143], date of birth [144], addresses (physical,[145] CVC wallet,[146] and associated email [147]), phone number,[148] and an entity-specific government-issued (alpha)numeric identifier.[149]

4. Expected Economic Effects on Covered Financial Institutions

As discussed above, the parties expected to incur an economic burden as they comply with the first special measure include all financial institutions as defined in 31 CFR 1010.100(t) insofar as they engage in CVC transactions that could be exposed to CVC mixing within or involving a jurisdiction outside the United States.[150] In light of FinCEN's review of the anticipated differential effects on covered financial institutions due to variations in both expected exposure and preexisting monitoring and detection infrastructure, as well as FinCEN's assessment of current market practices,[151] FinCEN expects that the largest portion of the novel costs incurred in complying with the first special measure will be associated with indirect [152] exposure to CVC mixing at financial institutions not currently operating primarily in the provision of virtual asset services and cases where the jurisdictions involved or under which CVC mixing occurs are particularly difficult to ascertain. However, it is unclear whether this proportion of expected novel compliance costs would itself be large because it would be difficult to uniquely identify expenses incurred distinctly as a function of special measure one compliance from expenses incurred in the course of pre-existing BSA requirements,[153] as both would largely rely on use of the same activities, technology, and services.

It is also unclear whether future relative distributions of direct [154] versus indirect [155] exposure would continue in the same pattern as historically observed, but at present do not have empirical evidence that would suggest substantial changes are imminent. Detecting indirect [156] exposure may require certain financial institutions to newly obtain commercial programs and/or services to facilitate compliance with the rule as proposed as CVC mixing practices continue to evolve. The cost of these services, based on current market prices, could run in excess of tens of thousands of dollars per license and would require analysts to remain continually engaged in blockchain tracing to stay up to date with emerging trends in the rapidly developing digital asset industry. It is unclear at this time whether financial institutions or third party service providers would incur the majority of costs associated with analytical updating as CVC mixing practices evolve, or the extent to which these cost increases may be passed through to a financial institution's customers. It is also unclear how these compliance-related costs might scale with the proposed increased reporting and recordkeeping requirements because it requires speculation about how the potential for new entrants to the third party mixing detection service market and/or technological advancements (that would not occur but for the proposed compliance obligations making them economically attractive investments) would affect costs.[157]

FinCEN acknowledges to that to the extent that a covered transaction might require the filing of both a SAR and special measure one related report, concurrent satisfaction of both sets of reporting and recordkeeping requirements might result in some duplicative costs related to any overlap.

[130] *See* Section VI. *See also* Section IX.

[131] *See* discussion *supra* Section VI.B.2; *see also* proposed amendment 31 CFR 1010.662(b)(2) *infra* Section IX.

[132] 31 CFR 1010.430

[133] *See* discussion *supra* Section VI.B.3; *see also* proposed amendment 31 CFR 1010.662(b)(3) *infra* Section IX.

[134] *See* discussion *supra* Section VI.B.1(i); *see also* proposed amendment 31 CFR 1010.662(b)(1)(i)(B) *infra* Section IX.

[135] *See* discussion *supra* Section VI.B.1(i); *see also* proposed amendment 31 CFR 1010.662(b)(1)(i)(A) *infra* Section IX.

[136] *Id.*

[137] *See* discussion *supra* Section VI.B.1(i); *see also* proposed amendment 31 CFR 1010.662(b)(1)(i)(C) *infra* Section IX.

[138] *See* discussion *supra* Section VI.B.1(i); *see also* proposed amendment 31 CFR 1010.662(b)(1)(i)(D) *infra* Section IX.

[139] *See* discussion *supra* Section VI.B.1(i); *see also* proposed amendment 31 CFR 1010.662(b)(1)(i)(F) *infra* Section IX.

[140] *See* discussion *supra* Section VI.B.1(i); *see also* proposed amendment 31 CFR 1010.662(b)(1)(i)(G) *infra* Section IX.

[141] *See* discussion *supra* Section VI.B.1(i); *see also* proposed amendment 31 CFR 1010.662(b)(1)(i)(H) *infra* Section IX.

[142] *See* discussion *supra* Section VI.B.1(i); *see also* proposed amendment 31 CFR 1010.662(b)(1)(i)(I) *infra* Section IX.

[143] *See* discussion *supra* Section VI.B.1(ii); *see also* proposed amendment 31 CFR 1010.662(b)(1)(ii)(A) *infra* Section IX.

[144] *See* discussion *supra* Section VI.B.1(ii); *see also* proposed amendment 31 CFR 1010.662(b)(1)(ii)(B) *infra* Section IX.

[145] *See* discussion *supra* Section VI.B.1(ii); *see also* proposed amendment 31 CFR 1010.662(b)(1)(ii)(C) *infra* Section IX.

[146] *See* discussion *supra* Section VI.B.1(i); *see also* proposed amendment 31 CFR 1010.662(b)(1)(i)(E) *infra* Section IX.

[147] *See* discussion *supra* Section VI.B.1(ii); *see also* proposed amendment 31 CFR 1010.662(b)(1)(ii)(D) *infra* Section IX.

[148] *See* discussion *supra* Section VI.B.1(ii); *see also* proposed amendment 31 CFR 1010.662(b)(1)(ii)(E) *infra* Section IX.

[149] *See* discussion *supra* Section VI.B.1(ii); *see also* proposed amendment 31 CFR 1010.662(b)(1)(ii)(F) *infra* Section IX.

[150] *See* discussion of covered financial transactions (clarifying the definitional requirement that a reportable transaction must occur in CVC) *supra* Section VI.A.4,

[151] *See* discussion of anticipated differential effects *supra* Section VIII.A.2(i)(A); s*ee also* discussion of current market practices *supra* Section VIII.A.2(ii)(B).

[152] *Id.* at note 122.

[153] *See* discussion of existing BSA requirements regarding identification and monitoring of financial transaction associations with foreign jurisdictions and geographic locations *supra* Section VI.A.5. *See also* discussion of FinCEN requirements under FATF guidance *supra* Section VIII.A.2(ii)(A).

[154] *Id.* at note 121.

[155] *Id.* at note 122.

[156] *Id.*

[157] *See* discussion *supra* Section VIII.A.2(i)(D).

To the extent that the forgoing analysis has failed to take into consideration any material facts, data, circumstances, or other considerations that, had they been considered, would have substantially altered the balance of costs and benefits attendant to the proposed special measure(s), FinCEN has invited public comment.[158]

5. Economic Consideration of Available Regulatory Alternatives

FinCEN has considered a number of alternative policies that could have been proposed to accomplish the same objectives.[159] These policies included the selection of one, or a combination of, other special measure(s) or, alternatively the selection of the same special measure with a narrower scope.

(i) Special Measure Two: Beneficial Ownership Information Requirements

Instead of recordkeeping and reporting requirements, FinCEN could have pursued the application of special measure two, which would have required domestic financial institutions and agencies to obtain and retain the beneficial ownership information of any account at a depository institution opened or maintained by a foreign person or their representative that the institution or agency knows, suspects, or has reason to suspect is involved in a CVC mixing transaction. While this information about beneficial ownership related to CVC mixing transaction participants could be similar to certain elements required under the current proposal and hence of comparable value, the alternative focus of special measure two on the ownership of accounts instead of the nature of transactions is expected to impose similar compliance costs with lower attendant benefits both in quantity of useful information obtained and in scope of financial institutions to whom the information-gathering requirements would apply. As such, the imposition of special measure two instead of special measure one would be strictly less efficient in addressing the class of transactions of primary money laundering concern.

(ii) Special Measures Three Through Five

Alternatively, FinCEN could have proposed to impose special measure three, four, five, or some combination thereof. Special measures three and four would simply require domestic financial institutions and agencies to obtain certain identifying information regarding the customer or their representative as a condition to open or maintain a payable-through [160] or correspondent [161] account, respectively, if the financial institution or agency knows, suspects, or has reason to suspect the account and transactions conducted through it involve CVC mixing. More severely, special measure five could have imposed prohibitions or conditions [162] on the opening or maintenance of a correspondent or payable-through account if the domestic covered financial institution or agency knows, suspects, or has reason to suspect that transactions conducted through the account involve CVC mixing.

Because the expected results of imposing special measures three, four, or both, absent special measure five would likely be similar to expectations with respect to special measure two, that analysis is not repeated here. Instead, an approach that would impose special measures three or four, or both, in conjunction with special measure five is considered. As discussed above,[163] FinCEN determined that these special measures are less relevant in the context of CVC transactions, including those that involve CVC mixing, as CVC transactions are conducted outside of the traditional banking system. Therefore, expected benefits would also be lower than under proposed special measure one requirements due to the limited intersection between transactions in CVC and the foreign use of domestic traditional bank accounts. Given these considerations, this alternative approach was rejected.

(iii) Alternate Specification of Special Measure One: Specified Terror Finance-Related Actors and Transactions Only

Finally, FinCEN considered an alternative that would employ the same special measure but with greater specificity of covered transactions that would limit the scope of interest in CVC mixing-exposed transactions to only those identifiably sponsored by or affiliated with terror finance by Hamas, ISIS, or the DPRK. This alternative is expected to incur higher costs related to, among other things, the additional burden a financial institution would have in making a determination about a transaction's connection to an identifiable source or affiliate of the applicable terrorist organization. It would also limit the potential informational benefits of the measure by discarding similar reports and records that may be of equal or greater value to investigating, prosecuting, or disincentivizing CVC mixing supported illicit activities but lack an identifiable connection to Hamas, ISIS, or the DPRK. Because of these dual inefficiencies, special measure one as proposed is considered to strike a more appriopriate balance.

B. Executive Orders

Executive Orders 12866, 13563, and 14094 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

It has been determined that this proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, as amended. However, in light of the nature of this proposed rule, FinCEN has prepared an economic analysis to help inform its consideration of the impacts of the proposed rule.

C. Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to ''prepare and make available for public comment an initial regulatory flexibility analysis''(IRFA) that will ''describe the impact of the proposed rule on small entities.'' [164] However, Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

1. Estimate of the Number of Small Entities to Whom the Proposed Rule Will Apply

The reporting and recordkeeping requirements proposed under the first special measure requires certain covered financial institutions to report to FinCEN information associated with transactions or attempted transactions involving CVC mixing and maintain certain related records for a fixed period of time.[165] Table 2 (below) presents FinCEN estimates of the number of affected institutions that may be deemed

[158] *See* Sections VII.A. and VII.E.

[159] *See* discussion *supra* Section V.E.

[160] 31 U.S.C. 5318A(b)(3)

[161] 31 U.S.C. 5318A(b)(4)

[162] 31 U.S.C. 5318(b)(5)

[163] *See* Section V.E.

[164] 5 U.S.C. 603(a).

[165] See discussion supra Section VIII.A.2–3.

small entities. To identify whether a financial institution is small, FinCEN generally uses the Small Business Administration's (SBA) latest annual size standards for small entities in a given industry, unless otherwise noted.[166] FinCEN also uses the U.S. Census Bureau's publicly available 2017 Statistics of U.S. Businesses survey data (Census survey data).[167] FinCEN applies SBA size standards to the corresponding industry's receipts in the 2017 Census survey data and determines what proportion of a given industry is deemed small, on average. FinCEN considers a financial institution to be small if it has total annual receipts less than the annual SBA small entity size standard for the financial institution's industry. FinCEN applies these estimated proportions to FinCEN's current financial institution counts for brokers/dealers in securities, money services businesses, casinos, card clubs, futures commission merchants, introducing brokers in commodities, and mutual funds to determine the proportion of current small financial institutions in those industries. Numbers have been rounded as in Section VIII.A.2(i)(A) to facilitate aggregation.

TABLE 2—ESTIMATES OF SMALL AFFECTED FINANCIAL INSTITUTIONS BY TYPE

Financial institution type [a]	Number of entities
Bank [b]	[c] 7,970
Broker/Dealer in Securities [d]	[e] 3,450
Money Services Businesses [f]	[g] 24,010
Telegraph Company [h]	[i] 0
Casino [j]	[k] 930
Card Club [l]	[m] 250
Person subject to supervision by any State or Federal Bank Supervisory Authority [n]	[o] N/A
Futures Commission Merchant [p]	[q] 56
Introducing Broker in Commodities [r]	[s] 900
Mutual Fund [t]	[u] 1,380

[a] As typographically grouped in 31 CFR 1010.100(t).

[b] *See* 31 CFR 1010.100(t)(1); *see also* 31 CFR 1010.100(d). The SBA currently defines small entity size standards for banks as follows: less than $850 million in total assets for commercial banks, savings institutions, and credit unions.

[c] Counts of certain types of banks, savings associations, thrifts, trust companies are from Q1 2023 Federal Financial Institutions Examination Council (FFIEC) Call Report data, *available a https://cdr.ffiec.gov/public/pws/downloadbulkdata.aspx.* Data for institutions that are not insured, are insured under non-FDIC deposit insurance regimes, or do not have a Federal functional regulator are from the FDIC's Research Information System, *available at https://www.fdic.gov/foia/ris/index.html.* Credit union data are from the NCUA for Q1 2023, *available at https://www.ncua.gov/analysis/credit-union-corporate-call-report-data.* Because data accessed through FFIEC and NCUA Call Report data provides information about asset size for banks, trusts, savings and loans, credit unions, etc., FinCEN is able to directly determine how many banks and credit unions are small by SBA size standards. Because the Call Report data does not include institutions that are not insured, are insured under non-FDIC deposit insurance regimes, or that do not have a Federal financial regulator, FinCEN assumes that all such entities listed in the FDIC's Research Information System data are small, unless they are controlled by a holding company that does not meet the SBA's definition of a small entity, and includes them in the count of small banks. Consistent with the SBA's General Principles of Affiliation, 13 CFR 121.103(a), FinCEN aggregates the assets of affiliated financial institutions using FFIEC financial data reported by bank holding companies on forms Y–9C, Y–9LP, and Y–9SP, *available at https://www.ffiec.gov/npw/FinancialReport/FinancialDataDownload,* and ownership data, *available at https://www.ffiec.gov/npw/FinancialReport/DataDownload,* when determining if an institution should be classified as small. FinCEN uses four quarters of data reported by holding companies, banks, and credit unions because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* U.S. Small Business Administration's Table of Size Standards, p. 38 n.8, *https://www.sba.gov/sites/sbagov/files/2023-06/Table%20of%20Size%20Standards_Effective%20March%2017%2C%202023%20%282%29.pdf.* FinCEN recognizes that using SBA size standards to identify small credit unions differs from the size standards applied by the NCUA. However, for consistency in this analysis, FinCEN applies the SBA-defined size standards.

[d] 31 CFR 1010.100(t)(2).

[e] The SBA currently defines small entity size standards for investment banking and securities intermediation as less than $47 million in average annual receipts. *See* paragraph preceding table for details of analysis.

[f] 31 CFR 1010.100(t)(3).

[g] The SBA currently defines small entity size standards for financial transactions processing, reserve, and clearinghouse activities as less than $47 million in average annual receipts. See paragraph preceding table for details of analysis.

[h] 31 CFR 1010.100(t)(4).

[i] As an estimate of uniquely registered, potentially affected small entities, FinCEN expect this category to contain no additional persons or organizations not already included in other counts, particularly as money transmitters.

[j] 31 CFR 1010.100(t)(5)(i)–(iii).

[k] The SBA currently defines small entity size standards for casinos as less than $34 million in average annual receipts. See paragraph preceding table for details of analysis.

[l] 31 CFR 1010.100(t)(6)(i)–(ii).

[m] The SBA currently defines small entity size standards for other gambling industries as less than $40 million in average annual receipts. See paragraph preceding table for details of analysis.

[n] 31 CFR 1010.100(t)(7).

[o] It is unclear to FinCEN at this time whether any entities exist in this category that for purposes of being counted towards unique affected parties incurring burdens associated with the rule, if adopted as proposed, are not already captured by concurrent status in another category of financial institution under the 31 CFR 1010.100(t) definition. To the extent that additional data can better inform this estimate, public comment is invited.

[p] 31 CFR 1010.100(t)(8).

[q] The SBA currently defines small entity size standards for commodity contracts intermediation as less than $47 million in average annual receipts. See paragraph preceding table for details of analysis.

[r] 31 CFR 1010.100(t)(9).

[s] *Supra* note q.

[166] *See* U.S. Small Business Administration's *Table of Size Standards, available at https://www.sba.gov/sites/sbagov/files/2023-06/Table%20of%20Size%20Standards_Effective%20March%2017%2C%202023%20%282%29.pdf.*

[167] *See* U.S. Census Bureau, *U.S. & states, NAICS, detailed employment sizes (U.S., 6-digit and states, NAICS sectors)* (2017), *available at https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html.* The Census survey documents the number of firms and establishments, employment numbers, and annual payroll by State, industry, and enterprise every year. Receipts data, which FinCEN uses as a proxy for revenues, is available only once every five years, with 2017 being the most recent survey year with receipt data.

[t] 31 CFR 1010.100(t)(10).
[u] The SBA currently defines small entity size standards for open-end investment funds as less than $40 million in average annual receipts. See paragraph preceding table for details of analysis.

2. Expectation of Impact

For the reasons discussed above in Section VIII.A, FinCEN does not expect all potentially affected financial institutions to be equally affected by the proposed rule.[168] These expectations of differential effects are of first-order relevance because, for the purposes of the IRFA, a rulemaking must be jointly impactful in both its breadth (substantial number) and depth (significant economic impact) on small entities to require additional, tailored analysis. FinCEN's categorical analysis of the financial institutions defined in 31 CFR 1010.100(t) does not support the need for an initial regulatory flexibility analysis because it determined that, in cases where a substantial number of financial institutions are small entities, the economic impact of the rule is not expected to be significant. Conversely, in cases where the economic impact is expected to be its most significant, it is not clear that a substantial number of affected institutions would meet the criteria to qualify as small entities.

To the extent that other small entities that are not financial institutions may be economically affected by the proposed rulemaking,[169] FinCEN did not include any estimates of affected parties or calculations of effects in this IRFA because those effects, for most non-financial institutions, are primarily expected to be benefits in the form of potential increases in demands for services. An attempt to quantify increased operating costs accompanying these increases in demand generally, and for small entities specifically, would be so speculative as to be uninformative. In the event that a more precise forecast could be reliably formed with available data and would alter the conclusions of this analysis, FinCEN is requesting information from the public.

3. Certification

When viewed as a whole, FinCEN does not anticipate that the proposals contained in this rulemaking will have a significant impact on a substantial number of small financial institutions or other potentially affected businesses. Accordingly, FinCEN certifies that this rule will not have a significant economic impact on a substantial number of small entities. FinCEN invites comments from members of the public who believe there will be a significant economic impact on small entities from the imposition of the first special measure regarding CVC mixers.[170]

D. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 [171] (Unfunded Mandates Reform Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that may result in expenditure by the state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, adjusted for inflation.[172] If a budgetary impact statement is required, section 202 of the Unfunded Mandates Reform Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.[173]

As discussed in the foregoing analysis,[174] it is unclear if either the gross or net cost of compliance to the private sector would exceed $177 million annually.[175] In the event that this is so, FinCEN has performed the preliminary analysis above to address the potential need to satisfy the requirements of the Unfunded Mandates Reform Act.[176] FinCEN is additionally soliciting comments—preferably including data, studies, or other forms of quantitative analysis—that would specifically inform our quantification of expected compliance related expenditures by state, local, and tribal governments and/or the private sector in the event that such costs would, in light of more complete information, be demonstrably expected to exceed the annual $100 million threshold, adjusted for inflation ($177 million).

E. Paperwork Reduction Act

The recordkeeping and reporting requirements contained in this proposed rule will be submitted by FinCEN to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 [177] (PRA). Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Written comments and recommendations for the proposed information collection can be submitted by visiting *www.reginfo.gov/public/do/PRAMain.* Find this particular document by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Comments are welcome and must be received by [90 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]. In accordance with requirements of the PRA and its implementing regulations, 5 CFR part 1320, the following information concerning the collection of information as required by 31 CFR 1010.662 is presented to assist those persons wishing to comment on the information collections.

The provisions in this proposed rule pertaining to the collection of information can be found in section 1010.662(b)(1). The information required to be reported in section 1010.662(b)(1) will be used by the U.S. Government to monitor the class of transactions of primary money laundering concern. The information required to be maintained by section 1010.662(b)(3) will be used by federal agencies and certain self-regulatory organizations to verify compliance by covered financial institutions with the provisions of 31 CFR 1010.662. The class of financial transactions affected by the reporting requirement is identical to the class of financial transactions affected by the recordkeeping requirement. The collection of information is mandatory.

Frequency: Covered financial institutions would be required to file within 30 days of detecting a covered transaction.[178] As nothing prevents a covered financial institution from optimizing with respect to scale by

[168] *See* discussion *supra* Section VIII.A.2(i)(A).

[169] *See, e.g.,* discussion *supra* Section VIII.A.2(i)(D).

[170] *See* Section VII.E.

[171] Public Law 104–4 (March 22, 1995).

[172] *Id.*

[173] *Id.*

[174] *See* Section VIII.A.4.

[175] The Unfunded Mandates Reform Act requires an assessment of mandates that will result in an annual expenditure of $100 million or more, adjusted for inflation. The U.S. Bureau of Economic Analysis reports the annual value of the gross domestic product (GDP) deflator in 1995, the year of the Unfunded Mandates Reform Act, as 71.823, and as 127.224 in 2022. *See* U.S. Bureau of Economic Analysis, ''Table 1.1.9. Implicit Price Deflators for Gross Domestic Product'' (accessed Friday, June 2, 2023) *available at https://apps.bea.gov/iTable/?reqid=19&step=3&isuri=1&1921=survey&1903=13t.* Thus, the inflation adjusted estimate for $100 million is 127.224/71.823 × 100 = $177 million.

[176] *See generally,* discussion *supra* Section VIII.A; *see specifically,* discussion of alternatives considered *supra* Section V.E. and Section VIII.A.5.

[177] 44 U.S.C. 3507(d).

[178] 31 CFR 1010.662(b)(2).

filing later, while still within the 30-day limit, it is foreseeable that despite a distinct filing obligation per covered transaction, some entities may elect to file all required reports still within the same 30-day window at a single time, effectively reducing the frequency of filing.

Description of Affected Financial Institutions: Only those covered financial institutions defined in section 1010.662(a)(4) with engagement in the covered financial transactions as defined in section 1010.662(a)(5) would be affected.

Estimated Number of Affected Financial Institutions: Approximately 15,000.[179]

Estimated Average Annual Burden in Hours per Affected Financial Institution: 98.[180]

Estimated Total Annual Burden: 1,470,000 hours.

FinCEN specifically invites comments on: (a) whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information would have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information required to be maintained; (d) ways to minimize the burden of the required collection of information, including through the use of automated collection techniques or other forms of information technology; (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to report the information.

IX. Regulatory Text

List of Subjects in 31 CFR Part 1010

Administrative practice and procedure, Banks, Banking, Brokers, Crime, Foreign banking, Terrorism.

Authority and Issuance

For the reasons set forth in the preamble, FinCEN proposes amending 31 CFR part 1010 as follows:

[179] This estimate is informed by public and non-public data sources regarding both an expected maximum number of entities that may be affected and the number of active, or currently reporting, registered financial institutions and takes into consideration the possibility of voluntary reporting by certain parties without an express obligation to file reports. *See* Section VIII.A.2(i)(A).

[180] Assumes, on average, one full work-day per 30-day period is required to complete reporting and recordkeeping related tasks. Due to the anticipated skew in expected annual burden hours, this average is unlikely to represent a meaningful approximation for most covered financial institutions.

PART 1010—GENERAL PROVISIONS

■ 1. The authority citation for part 1010 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C.5311–5314, 5316–5336; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307; sec. 2006, Pub. L. 114–41, 129 Stat. 458–459; sec. 701 Pub. L. 114–74, 129 Stat. 599; sec. 6403, Pub. L. 116–283, 134 Stat. 3388.

■ 2. Add § 1010.662 to read as follows:

§ 1010.662 Special measures regarding CVC mixing transactions.

(a) *Definitions.* For purposes of this section, the following terms have the following meanings.

(1) *Convertible Virtual Currency (CVC*). The term ''convertible virtual currency (CVC)'' means a medium of exchange that either has an equivalent value as currency, or acts as a substitute for currency, but lacks legal tender status. Although Bitcoin has legal tender status in at least two jurisdictions, the term CVC includes Bitcoin for the purpose of this section.

(2) *CVC Mixer.* The term ''CVC mixer'' means any person, group, service, code, tool, or function that facilitates CVC mixing.

(3) *CVC mixing.* (i) The term ''CVC mixing'' means the facilitation of CVC transactions in a manner that obfuscates the source, destination, or amount involved in one or more transactions, regardless of the type of protocol or service used, such as:

(A) Pooling or aggregating CVC from multiple persons, wallets, addresses, or accounts;

(B) Using programmatic or algorithmic code to coordinate, manage, or manipulate the structure of a transaction;

(C) Splitting CVC for transmittal and transmitting the CVC through a series of independent transactions;

(D) Creating and using single-use wallets, addresses, or accounts, and sending CVC through such wallets, addresses, or accounts through a series of independent transactions;

(E) Exchanging between types of CVC or other digital assets; or

(F) Facilitating user-initiated delays in transactional activity.

(ii) *Exception.* Notwithstanding paragraph (a)(3)(i) of this section, CVC mixing does not include the use of internal protocols or processes to execute transactions by banks, broker-dealers, or money services businesses, including virtual asset service providers that would otherwise constitute CVC mixing, provided that these financial institutions preserve records of the source and destination of CVC transactions when using such internal protocols and processes; and provide such records to regulators and law enforcement, where required by law.

(4) *Covered financial institution.* The term ''covered financial institution'' has the same meaning as ''financial institution'' in 31 CFR 1010.100(t).

(5) *Covered transaction.* The term ''covered transaction'' means a transaction as defined in 31 CFR 1010.100(bbb)(1) in CVC by, through, or to the covered financial institution that the covered financial institution knows, suspects, or has reason to suspect involves CVC mixing within or involving a jurisdiction outside the United States.[181]

(b) *Reporting and recordkeeping requirements.* Covered financial institutions are required to report information in accordance with paragraph (b)(1) of ths section and maintain records demonstrating compliance in accordance with paragraph (b)(3) of this section.

(1) *Reporting*—(i) Reportable *information regarding the covered transaction.* The covered financial institution shall provide the following reportable information in its possession, with respect to each covered transaction, within 30 calendar days of initial detection of a covered transaction:

(A) The amount of any CVC transferred, in both CVC and its U.S. dollar equivalent when the transaction was initiated;

(B) The CVC type;

(C) The CVC mixer used, if known;

(D) CVC wallet address associated with the mixer;

(E) CVC wallet address associated with the customer;

(F) Transaction hash;

(G Date of transaction;

(H) The IP addresses and time stamps associated with the covered transaction; and

(I) Narrative

(ii) *Reportable information regarding the customer associated with the covered transaction.* The covered financial institution shall provide the following reportable information in its possession, regarding the customer associated with each covered transaction:

(A) Customer's full name;

(B) Customer's date of birth;

(C) Customer's address;

(D) Email address associated with any and all accounts from which or to which the CVC was transferred;

[181] This requirement would be independent of any recordkeeping requirement pursuant to 31 CFR 1010.410.

(E) Phone number associated with any and all accounts from which or to which the CVC was transferred;

(F) Internal Revenue Service or foreign tax identification number, or if none are available, a non-expired United States or foreign passport number or other government-issued photo identification number, such as a driver's license; and

(2) *Filing procedures.* The reports required under paragraph (b)(1) of this section shall be filed with FinCEN 30 calendar days from the date of detection in the manner that FinCEN prescribes.

(3) *Recordkeeping.* A covered financial institution is required to document its compliance with the requirements of this section.

Dated: October 19, 2023.

Andrea M. Gacki,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2023–23449 Filed 10–20–23; 8:45 a.m.]

BILLING CODE 4810–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R06–OAR–2022–0984; FRL–11401–01–R6]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Arkansas; Negative Declaration for Existing Sulfuric Acid Plants; Plan Revision for Existing Kraft Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve the CAA section 111(d) state plan revision submitted by the State of Arkansas for existing kraft pulp mills subject to the Kraft Pulp Mills Emission Guidelines (EG). The Arkansas section 111(d) plan revision for kraft pulp mills contains administrative changes to the state regulations and also aligns compliance testing requirements to be consistent with EPA's kraft pulp mills new source performance standards. EPA is also notifying the public that we have received a CAA section 111(d) negative declaration from Arkansas for existing sulfuric acid plants subject to the Sulfuric Acid Plants EG. This negative declaration certifies that existing sulfuric acid plants subject to the Sulfuric Acid Plants EG and the requirements of sections 111(d) of the CAA do not exist within Arkansas. The EPA is proposing to approve the state plan revision for existing kraft pulp mills, accept the negative declaration for existing sulfuric acid plants and withdraw approval of the Arkansas state plan for existing sulfuric acid plants, and amend the agency regulations in accordance with the requirements of the CAA.

DATES: Written comments must be received on or before November 22, 2023.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2022–0984, at *https://www.regulations.gov* or via email to *ruan-lei.karolina@epa.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact Karolina Ruan Lei, (214) 665–7346, *ruan-lei.karolina@epa.gov*. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets*.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov*. While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Karolina Ruan Lei, EPA Region 6 Office, Air and Radiation Division—State Planning and Implementation Branch, (214) 665–7346, *ruan-lei.karolina@epa.gov*. We encourage the public to submit comments via *https://www.regulations.gov*. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. Background

A. Clean Air Act Section 111(d) Requirements

Section 111 of the CAA, ''Standards of Performance for New Stationary Sources,'' directs the EPA to establish emission standards for stationary sources of air pollution that could potentially endanger public health or welfare. These standards are referred to as New Source Performance Standards (NSPS). Section 111(d) addresses the process by which the EPA and states regulate standards of performance for existing [1] sources. When NSPS are promulgated for new sources, section 111(d) and EPA regulations require that the EPA publish an Emission Guideline (EG) to regulate the same pollutants from existing facilities. While NSPS are directly applicable to new sources, EG for existing sources (designated facilities) are intended for states to use to develop a state plan to submit to the EPA.

State plan submittals and revisions under CAA section 111(d) must be consistent with the applicable EG and the requirements of 40 CFR part 60, subpart B, and part 62, subpart A. The regulations at 40 CFR part 60, subpart B, contain general provisions applicable to the adoption and submittal of state plans and plan revisions under CAA section 111(d). Additionally, 40 CFR part 62, subpart A, provides the procedural framework by which the EPA will approve or disapprove such plans and plan revisions submitted by a state. Once approved by the EPA, the state plan or plan revision becomes federally enforceable. If a state does not submit an approvable state plan to the EPA, the EPA is responsible for developing, implementing, and enforcing a Federal plan. However, 40 CFR 60.23(b) and 62.06 provide that if there are no existing sources of the designated pollutant in the state, the state may submit a letter of certification to that effect (*i.e.,* negative declaration) in lieu of a plan. The negative declaration exempts the state from the requirements of subpart B that require the submittal of a CAA section 111(d) plan.

[1] In this context and for purposes under CAA section 111(d), the term ''existing'' source is synonymous with designated facility. These are sources that were constructed, reconstructed, or modified on or before the date specified in the emission guideline the source applies to.

B. Emission Guidelines for Kraft Pulp Mills and Sulfuric Acid Plants

Under CAA section 111(d), EPA has issued EGs regulating specific pollutants from specified source categories that remain in effect, including EGs for the control of total reduced sulfur (TRS) emissions from kraft pulp mills and the control of sulfuric acid mist emissions from sulfuric acid plants. TRS emissions [2] are considered a welfare-related pollutant, while sulfuric acid mist emissions are considered a health-related pollutant under section 111(d) and 40 CFR part 60, subpart B. The Kraft Pulp Mills EG applies to kraft pulp mills [3] that commenced construction, reconstruction, or modification on or before September 24, 1976, while the Sulfuric Acid Plants EG applies to sulfuric acid plants [4] that commenced construction or modification on or before August 17, 1971. The EGs for kraft pulp mills and sulfuric acid plants have not been revised since their issuance.

New kraft pulp mills and sulfuric acid plants that commenced construction, reconstruction, or modification after the specified dates are subject to stricter standards under their respective NSPS at 40 CFR part 60, subpart BB or BBa, and subpart H. For more information, see ''Kraft Pulp Mills, Notice of Availability of Final Guideline Document,'' 44 FR 29828 (May 22, 1979),[5] and ''Standards of Performance for New Stationary Sources; Emission Guideline for Sulfuric Acid Mist,'' 42 FR 55796 (October 18, 1977).[6]

C. Arkansas CAA Section 111(d) Plan Approval History

Arkansas followed EPA's EGs and guidance documents when developing its CAA section 111(d) plans. Arkansas's section 111(d) plan for the control of sulfuric acid mist emissions from sulfuric acid plants was approved by EPA on May 12, 1982 (47 FR 20490). Arkansas's section 111(d) plan for control of TRS emissions from kraft pulp mills was approved by EPA on September 12, 1984 (49 FR 35771); the compliance schedule for the kraft pulp mills plan was separately approved on November 10, 1986 (51 FR 40802). Revisions to Arkansas's section 111(d) plans for sulfuric acid plants and kraft pulp mills were approved on March 10, 1998 (63 FR 11608).

D. Arkansas CAA Section 111(d) Submittals for This Rulemaking

Arkansas Department of Energy and Environment's Division of Environmental Quality (ADEQ) submitted revisions to Arkansas's CAA section 111(d) plan on June 20, 2022, and supplemented its submittal on August 24, 2022, and August 31, 2022.[7] In its section 111(d) submittal, Arkansas provided for EPA's review (1) Arkansas's state plan for existing municipal solid waste (MSW) landfills, which addressed the 2016 MSW landfills EG requirements; (2) revisions to Arkansas's plan for existing sulfuric acid plants, which include a request for EPA to withdraw approval of that plan and accept the State's negative declaration for those types of facilities; and (3) revisions to Arkansas's plan for existing kraft pulp mills. EPA took separate action to approve Arkansas's section 111(d) plan for existing MSW landfills on December 29, 2022 (87 FR 80076). This proposed rulemaking is acting on the portion of the June 20, 2022 submittal pertaining to revisions to Arkansas's section 111(d) plans for existing kraft pulp mills and sulfuric acid plants, as well as the associated negative declaration for existing sulfuric acid plants.

II. The EPA's Evaluation

A. Sulfuric Acid Plants Negative Declaration and Withdrawal of Approval of Sulfuric Acid Plan

Arkansas Pollution Control and Ecology Commission (APC&EC) Rule 19: ''Rules of the Arkansas Plan of Implementation for Air Pollution Control'', Chapter 8: ''111(d) Designated Facilities'' originally contained Arkansas's provisions for implementing certain CAA section 111(d) EGs, including the Sulfuric Acid Plants EG. In its June 20, 2022 submittal, Arkansas removed the provisions in Rule 19.803, which were specific to the Sulfuric Acid Plants EG, and provided a negative declaration for existing sulfuric acid plants.

The Arkansas plan for existing sulfuric acid plants, as approved by the EPA on May 12, 1982 had two designated facilities subject to that plan at the time, the Olin Corporation and the Monsanto Company (now El Dorado Chemical Company). A 1998 plan revision was approved to remove the Olin Corporation, which had closed, and reflect a name change for the El Dorado Chemical Company. The El Dorado facility later underwent reconstruction and is now subject to the NSPS for sulfuric acid plants at 40 CFR part 60, subpart H. Since the El Dorado Chemical Company is no longer subject to the EG for existing sulfuric acid plants, and because there are no longer any subject facilities in Arkansas, Arkansas requests that EPA withdraw approval of the Arkansas section 111(d) plan for sulfuric acid plants and accept the negative declaration for existing sulfuric acid plants.

EPA proposes to agree with Arkansas's determination that due to the reconstruction of the El Dorado Chemical Company, this facility is no longer considered a designated facility subject to the Sulfuric Acid Plants EG. EPA also proposes that approval of the Arkansas section 111(d) plan for sulfuric acid plants can be withdrawn as there are no longer any existing sulfuric acid plants in the State of Arkansas.

B. Kraft Pulp Mills Plan Revision

The Arkansas regulations implementing the requirements of the Kraft Pulp Mills EG are codified in APC&EC Rule 19, Chapter 8, with specific requirements for existing kraft pulp mills outlined in Rule 19.804. Since the Arkansas plan and plan revision for existing kraft pulp mills were approved by EPA on September 12, 1984, and March 10, 1998, Arkansas made additional changes to the state regulations implementing the Kraft Pulp Mills EG requirements at APC&EC Rule 19, Chapter 8. Changes to APC&EC Rule 19, Chapter 8, as adopted through January 28, 2022 by APC&EC, were submitted to EPA for review in Arkansas's June 20, 2022 submittal.

The amendments to APC&EC Rule 19, Chapter 8 include name changes and

[2] As defined under 40 CFR 60.281(c): ''*Total reduced sulfur (TRS)* means the sum of the sulfur compounds hydrogen sulfide, methyl mercaptan, dimethyl sulfide, and dimethyl disulfide, that are released during the kraft pulping operation and measured by Method 16.''

[3] As defined under 40 CFR 60.281(a): ''*Kraft pulp mill* means any stationary source which produces pulp from wood by cooking (digesting) wood chips in a water solution of sodium hydroxide and sodium sulfide (white liquor) at high temperature and pressure. Regeneration of the cooking chemicals through a recovery process is also considered part of the kraft pulp mill.''

[4] As defined under 40 CFR 60.81(a): ''*Sulfuric acid production unit* means any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, organic sulfides and mercaptans, or acid sludge, but does not include facilities where conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.''

[5] See also ''Kraft Pulping, Control of TRS Emissions from Existing Mills'', US EPA, Office of Air Quality Planning and Standards (OAQPS), EPA–45012–78–003b, March 1979 (''Kraft Pulp Mills Emission Guidelines (EG)'').

[6] See also ''Final Guideline Document: Control of Sulfuric Acid Mist Emission From Existing Sulfuric Acid Production Units'', EPA–450/2–77–019, OAQPS No. 1.2–078, September 1977 (''Sulfuric Acid Plants Emission Guidelines (EG)''). The Sulfuric Acid Plants EG are also codified at 40 CFR part 60, subpart Cd, ''Emissions Guidelines and Compliance Times for Sulfuric Acid Production Units''.

[7] The Arkansas plans submitted by ADEQ does not cover sources located in Indian country.

removal of the International Paper Company, Camden Facility (permit voided March 1, 2001), from the list of sources subject to the requirements as the facility is permanently closed. The amendments also realign the frequency of TRS compliance testing from annually to every five years, consistent with the requirements for new kraft pulp mills under 40 CFR, part 60, subpart BBa. EPA notes that the kraft pulp mills provisions in Arkansas's revised plan provide that compliance testing is not required for units with a continuous TRS emissions monitor, and that these facilities are required by the plan to have equipment installed for continuous emissions monitoring (CEM) for TRS. This provision to require CEM for existing kraft pulp mills and waiving of compliance testing requirements for units with CEM has not changed from the previously EPA-approved plan for existing kraft pulp mills. The amendments adopted into Rule 19 also include additional non-substantive stylistic and formatting changes.

EPA's detailed discussion and rationale of the Arkansas kraft pulp mill plan revision can be found in in the EPA Technical Support Document (TSD) for this proposed rule, which is available in the docket. The TSD also contains a comparison of the 1998 EPA-approved Arkansas kraft pulp mills plan provisions and the June 20, 2022 plan provisions. EPA proposes to approve the revisions to the Arkansas kraft pulp mills plan submitted on June 20, 2022 as meeting applicable Federal requirements under the Kraft Pulp Mills EG and the implementing regulations at 40 CFR part 60, subpart B.

III. Proposed Action

We are proposing to approve the state plan revision for existing kraft pulp mills, accept the negative declaration for existing sulfuric acid plants and withdraw approval of the Arkansas state plan for existing sulfuric acid plants, and amend the agency regulations at 40 CFR part 62, subpart E, in accordance with the requirements of the CAA. EPA proposes that this action meets CAA section 111(d) requirements for plan revisions, negative declarations, and plan approval withdrawals in accordance with 40 CFR part 60, subpart B, 40 CFR part 62, subpart A, and the applicable guidance and EG requirements.

IV. Environmental Justice Considerations

Information on Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) and how EPA defines environmental justice can be found in the section titled ''Statutory and Executive Order Reviews'' in this proposed rule. EPA is providing additional analysis of environmental justice associated with this action. The results of this analysis are being provided for informational and transparency purposes, not as a basis of our proposed action.

EPA conducted screening analyses using EJSCREEN, an environmental justice mapping and screening tool that provides EPA with a nationally consistent dataset and approach for combining various environmental and demographic indicators.[8] The EJSCREEN tool presents these indicators at a Census block group (CBG) level or a larger user-specified ''buffer'' area that covers multiple CBGs.[9] An individual CBG is a cluster of contiguous blocks within the same census tract and generally contains between 600 and 3,000 people. EJSCREEN is not a tool for performing in-depth risk analysis, but is instead a screening tool that provides an initial representation of indicators related to environmental justice and is subject to uncertainty in some underlying data (*e.g.,* some environmental indicators are based on monitoring data which are not uniformly available; others are based on self-reported data).[10] To help mitigate this uncertainty, we have summarized EJSCREEN data within larger ''buffer'' areas covering multiple block groups and representing the average resident within the buffer areas surrounding the sources. We present EJSCREEN environmental indicators to help screen for locations where residents may experience a higher overall pollution burden than would be expected for a block group with the same total population. These indicators of overall pollution burden include estimates of ambient particulate matter ($PM_{2.5}$) and ozone concentration, a score for traffic proximity and volume, percentage of pre-1960 housing units (lead paint indicator), and scores for proximity to Superfund sites, risk management plan (RMP) sites, and hazardous waste facilities.[11] EJSCREEN also provides information on demographic indicators, including percent low-income, communities of color, linguistic isolation, and education.

The EPA prepared EJSCREEN reports covering a buffer area of approximately 3-mile radii and 6-mile radii for areas with insufficient population data around each of the existing kraft pulp mills identified by ADEQ as subject to the CAA section 111(d) plan for kraft pulp mills. Table 1 presents a summary of results from the EPA's screening-level analysis for the areas surrounding each existing kraft pulp mill in Arkansas compared to the U.S. as a whole, where the kraft pulp mill was located in an area where more than one of the EJ indices were greater than the 80th percentiles. The full, detailed EJSCREEN report is provided in the docket for this rulemaking.

TABLE 1—EJSCREEN ANALYSIS SUMMARY FOR EXISTING ARKANSAS KRAFT PULP MILLS WITH EJ INDICES ABOVE 80%ILE

Variables	Values for buffer areas (radius) for each kraft pulp mill and the U.S. (percentile within U.S. where indicated)				
	Evergreen Packing (Jefferson, 3 miles)	Twin Rivers Pine Bluff (Jefferson, 3 miles)	Georgia-Pacific Corporation (Ashley, 3 miles)	Domtar A.W. (Little River, 3 miles)	U.S.
Pollution Burden Indicators:					

[8] The EJSCREEN tool is available at *https://www.epa.gov/ejscreen.*

[9] *See https://www.census.gov/programs-surveys/geography/about/glossary.html.*

[10] In addition, EJSCREEN relies on the five-year block group estimates from the U.S. Census American Community Survey. The advantage of using five-year over single-year estimates is increased statistical reliability of the data (*i.e.,* lower sampling error), particularly for small geographic areas and population groups. For more information, see *https://www.census.gov/content/dam/Census/library/publications/2020/acs/acs_general_handbook_2020.pdf.*

[11] For additional information on environmental indicators and proximity scores in EJSCREEN, *see* ''EJSCREEN Environmental Justice Mapping and Screening Tool: EJSCREEN Technical Documentation,'' Chapter 3 (October 2022) at *https://www.epa.gov/sites/default/files/2021-04/documents/ejscreen_technical_document.pdf.*

TABLE 1—EJSCREEN ANALYSIS SUMMARY FOR EXISTING ARKANSAS KRAFT PULP MILLS WITH EJ INDICES ABOVE 80%ILE—Continued

Variables	Values for buffer areas (radius) for each kraft pulp mill and the U.S. (percentile within U.S. where indicated)				
	Evergreen Packing (Jefferson, 3 miles)	Twin Rivers Pine Bluff (Jefferson, 3 miles)	Georgia-Pacific Corporation (Ashley, 3 miles)	Domtar A.W. (Little River, 3 miles)	U.S.
Particulate matter ($PM_{2.5}$), annual average.	9.33 µg/m³ (72nd %ile).	9.36 µg/m³ (72nd %ile).	9.21 µg/m³ (68th %ile).	9.72 µg/m³ (80th %ile).	8.67 µg/m³ (—).
Ozone, summer seasonal average of daily 8-hour max.	40.1 ppb (32nd %ile).	40.3 ppb (33rd %ile)	38.3 ppb (22nd %ile).	40.8 ppb (36th %ile)	42.5 ppb (—).
Traffic proximity and volume score*.	180 (44th %ile)	210 (47th %ile)	48 (23rd %ile)	75 (29th %ile)	760 (—).
Lead paint (percentage pre-1960 housing).	0.21% (49th %ile) ...	0.27% (55th %ile) ...	0.38% (64th %ile) ...	0.17% (44th %ile) ...	0.27% (—).
Superfund proximity score*.	0.013 (8th %ile)	0.014 (9th %ile)	0.027 (26th %ile)	0.035 (33rd %ile)	0.13 (—).
RMP proximity score*	0.14 (25th %ile)	0.29 (48th %ile)	0.88 (72nd %ile)	0.65 (65th %ile)	0.77 (—).
Hazardous waste proximity score*.	0.23 (34th %ile)	1.1 (58th %ile)	1.7 (67th %ile)	0.041 (7th %ile)	2.2 (—).
Demographic Indicators:					
People of color population	79% (83rd %ile)	82% (84th %ile)	40% (59th %ile)	40% (59th %ile)	40% (—).
Low-income population	52% (82nd %ile)	57% (86th %ile)	49% (79th %ile)	47% (77th %ile)	30% (—).
Linguistically isolated population.	0% (0th %ile)	0% (0th %ile)	0% (0th %ile)	0% (0th %ile)	5% (—).
Population with less than high school education.	9% (51st %ile)	16% (73rd %ile)	14% (68th %ile)	10% (57th %ile)	12% (—).
Population under 5 years of age.	4% (39th %ile)	7% (66th %ile)	4% (39th %ile)	8% (76th %ile)	6%.
Population over 64 years of age.	16% (53rd %ile)	10% (27th %ile)	22% (72nd %ile)	21% (70th %ile)	16% (—).

*The traffic proximity and volume indicator is a score calculated by daily traffic count divided by distance in meters to the road. The Superfund proximity, RMP proximity, and hazardous waste proximity indicators are all scores calculated by site or facility counts divided by distance in kilometers.

This proposed action is proposing to approve Arkansas's June 20, 2022 CAA section 111(d) plan revision [12] for kraft pulp mills and accept Arkansas's negative declaration for existing sulfuric acid plants; changes from the previously approved Arkansas plan for kraft pulp mills are discussed under the section titled ''The EPA's Evaluation'' in this proposed rule. As mentioned previously in this rulemaking, total reduced sulfur (TRS) is considered a welfare-related pollutant. Information on TRS and its relationship to negative health impacts can be found at the **Federal Register** document titled ''Kraft Pulp Mills, Notice of Availability of Final Guideline Document'' (44 FR 29828, May 22, 1979).[13] We expect that this action will generally have neutral environmental and health impacts on all populations, including people of color and low-income populations, in Arkansas that are located near an existing kraft pulp mill. At a minimum, this action would not worsen any existing air quality and is expected to ensure the area is meeting requirements to attain air quality standards. Further, there is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

V. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Arkansas regulations as described in the section titled ''Proposed Action'' in this proposed rule. The Arkansas regulations at APC&EC Rule 19, Chapter 8, 111(d) Designated Facilities, contain Arkansas's CAA section 111(d) plan provisions for existing kraft pulp mills. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a CAA section 111(d) submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7411(d); 42 U.S.C. 7429; 40 CFR part 60, subparts B and Cf; and 40 CFR part 62, subpart A. Thus, in reviewing CAA section 111(d) state plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act and implementing regulations. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason:

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is not a significant regulatory action as defined in Executive Order 12866 (58 FR 51735, October 4, 1993), as amended by Executive Order 14094 (88 FR 21879, April 11, 2023), and was therefore not

[12] As supplemented on August 24, 2022, and August 31, 2022.

[13] See also, the Kraft Pulp Mills EG.

subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA (44 U.S.C. 3501 *et seq.*) because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

This action is certified to not have a significant economic impact on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This action will approve plan revisions and accept negative declarations pursuant to CAA section 111(d) and will therefore have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any State, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action will not 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 rulemaking 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).

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definitions of ''covered regulatory action'' in section 2–202 of the Executive order. Therefore, this action is not subject to Executive Order 13045 because it approves a state program.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution and Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards. This action is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 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.''

The air agency did not evaluate environmental justice considerations as part of its submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA performed an environmental justice analysis, as described in the section titled ''Environmental Justice Considerations'' in this proposed rule. The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral impact on the air quality of the affected area. In addition, there is no information in the record upon which this action is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements.

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

Dated: October 16, 2023.

Earthea Nance,

Regional Administrator, Region 6.

[FR Doc. 2023–23254 Filed 10–20–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 350, 365, 385, 386, 387, and 395

[Docket No. FMCSA–2022–0003]

RIN 2126–AC52

Safety Fitness Determinations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking (ANPRM); extension of comment period.

SUMMARY: FMCSA extends the comment period for its August 29, 2023, ANPRM requesting public comment on the need for a rulemaking to revise the regulations prescribing the safety fitness determination (SFD) process; the available science or technical information to analyze regulatory alternatives for determining the safety fitness of motor carriers; feedback on the Agency's current SFD regulations, including the process and impacts; the available data and costs for regulatory alternatives reasonably likely to be considered as part of this rulemaking; and the specific questions in the ANPRM. FMCSA extends the comment period for 30 days until November 29, 2023.

DATES: The comment period for the proposed rule published August 29, 2023, at 88 FR 59489, is extended. Comments should be received on or before November 29, 2023.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2022–0003 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov/docket/FMCSA-2022-0003/document.* Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Stacy Ropp, (609) 661–2062, *SafetyFitnessDetermination@dot.gov.* If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for the ANPRM (FMCSA–2022–0003) and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *https://www.regulations.gov/document/FMCSA-2022-0003-0005,* click ''Comment,'' and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

FMCSA will consider all comments and material received during the comment period.

Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the ANPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the ANPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as ''PROPIN'' to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the ANPRM. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 at *brian.g.dahlin@dot.gov.* At this time, you need not send a duplicate hardcopy of your electronic CBI submissions to FMCSA headquarters. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this rulemaking.

B. Viewing Comments and Documents

To view any documents mentioned as being available in the docket, go to *https://www.regulations.gov/docket/FMCSA-2022-0003/document* and choose the document to review. To view comments, click the ANPRM, then click ''Browse Posted Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy

In accordance with 49 U.S.C. 13301(a) and 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory 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 (Federal Docket Management System (FDMS)), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

FMCSA published an ANPRM on August 29, 2023, with a comment deadline of October 30, 2023 (88 FR 59489). That ANPRM discussed current SFD procedure, the 2016 notice of proposed rulemaking (NPRM),[1] relevant legislation, and the status of the Safety Measurement System Program, and it requested answers to twelve specific questions along with other public comment.

As of October 10, 2023, three commenters to the docket filed comments requesting extensions of the comment period: The American Trucking Associations (ATA)(*https://www.regulations.gov/comment/FMCSA-2022-0003-0014*), the Commercial Vehicle Safety Alliance (CVSA) (*https://www.regulations.gov/comment/FMCSA-2022-0003-0016*), and the American Bus Association (ABA) (*https://www.regulations.gov/comment/FMCSA-2022-0003-0015*).

ATA and CVSA requested 30-day extensions, and the ABA requested a 60-day extension. These associations cited the ''complexity and breadth'' of questions, and the timing of the request. ATA specifically cited a conference occurring towards the end of the current comment period at which it planned to solicit input from its members.

The comment period for the ANPRM is scheduled to close on October 30, 2023. FMCSA believes it is in the public interest to allow for public comment for an extended period. Accordingly, FMCSA extends the comment period for all comments on the ANPRM and its related documents for 30 days, until November 29, 2023.

Issued under authority delegated in 49 CFR 1.87.

Larry W. Minor,

Associate Administrator, Office of Policy.

[FR Doc. 2023–23303 Filed 10–20–23; 8:45 am]

BILLING CODE 4910–EX–P

[1] On January 21, 2016, FMCSA published in the **Federal Register** an NPRM titled ''Carrier Safety Fitness Determination'' (81 FR 3562, available at *https://www.regulations.gov/document/FMCSA-2015-0001-0076*). That NPRM proposed SFDs based on the carrier's on-road safety data; an investigation; or a combination of on-road safety data and investigation information.

Notices

Federal Register
Vol. 88, No. 203
Monday, October 23, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Analysis of Service Contract Inventory for FY 2021 and the Planned Analysis of the FY 2022 Inventory; Notice of Availability

AGENCY: United States Agency for International Development (USAID).

ACTION: Notice of public availability.

SUMMARY: Acting in compliance with section 743 of Division C of the Consolidated Appropriations Act of 2010, requiring civilian agencies to prepare and analyze inventories of their service contracts, the United States Agency for International Development (USAID) is publishing this notice to advise the public of the availability of the FY 2022 Service Contract Inventory found at *https://www.acquisition.gov/content/service-contract-inventory,* and the posting of the Analysis of Service Contract Inventory for FY 2021 and the Planned Analysis of the FY 2022 Inventory found at: *https://www.usaid.gov/results-and-data/budget-spending/official-service-contract-inventory.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Eileen Simoes, Chief, Policy Division, Bureau for Management Policy, Budget and Performance, U.S. Agency for International Development, (202) 921–5090, *esimoes@usaid.gov*.

Susan C. Radford,

Management and Program Analyst, Bureau for Management Policy, Budget and Performance, U.S. Agency for International Development.

[FR Doc. 2023–23336 Filed 10–20–23; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–SC–23–0044]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension and revision to the approved forms and information collection for marketing orders covering various vegetables and specialty crops.

DATES: Comments on this notice are due by December 22, 2023 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice. Comments must be sent to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or online at *https://www.regulations.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *https://www.regulations.gov.* All comments submitted in response to this notice will be included in the record and will be made available to the public. Please be advised that the identity of individuals or entities submitting the comments will be made available to the public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Matthew Pavone, Branch Chief, Rulemaking Services Branch, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Room 1406–S, Washington, DC 20250–0237; Telephone: (202) 720–8085; Fax: (202) 720–8938; or Email: *matthew.pavone@usda.gov.*

Small businesses may request information on this notice by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Room 1406–S, Washington, DC 20250–0237; Telephone (202) 720–8085; Fax: (202) 720–8938; or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Fruit Crops.

OMB Number: 0581–0189.

Expiration Date of Approval: December 31, 2023.

Type of Request: Extension and Revision of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in specified production areas, to work together to solve marketing problems that cannot be solved individually. This notice covers the following marketing order citations: 7 CFR parts 905 (Florida citrus), 906 (Texas citrus), 915 (Florida avocados), 920 (California kiwifruit), 923 (Washington cherries), 925 (California table grapes), 927 (Oregon/Washington pears), and 929 (Cranberries grown in 10 States).

Marketing Order 922 (Apricots) has been terminated since the last three-year renewal period of this information collection package.

Marketing order requirements help ensure adequate supplies of high-quality product and adequate returns to producers. Marketing orders are authorized under the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674). The Secretary of Agriculture is authorized to oversee the marketing order operations and issue regulations recommended by a committee of representatives from each commodity industry.

The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the marketing orders. Under the Act, marketing orders may authorize: Production and marketing research, including paid advertising; volume regulation; reserves, including pools and producer allotments; container requirements; and quality control. Assessments are levied on handlers regulated under the marketing orders. Section 8e of the Act requires

imports of 14 commodities to meet certain standards. Included among these commodities are some covered in this forms package: avocados, grapefruit, kiwifruit, oranges, and table grapes.

USDA requires several forms to be filed to enable the administration of each marketing order. These include forms covering the selection process for industry members to serve on a marketing order's committee or board and ballots used in referenda to amend or continue marketing orders.

Under Federal marketing orders, producers and handlers are nominated by their peers to serve as representatives on a committee or board which administers each program. Nominees must provide information on their qualifications to serve on the committee or board. Qualified nominees are then appointed by the Secretary. Amendments to marketing orders made through Formal rulemaking must be approved in referenda conducted by USDA and the Secretary. For the purposes of this action, ballots are considered information collections and are subject to the Paperwork Reduction Act. If a marketing order is amended, handlers are asked to sign an agreement indicating their willingness to abide by the provisions of the amended marketing order.

Some forms are required to be filed with the committee or board. The marketing orders authorize the respective committee or board, the agencies responsible for local administration of the marketing orders, to require handlers and producers to submit certain information. Much of the information is compiled in aggregate and provided to the respective industries to assist in marketing decisions. The committees and boards developed forms as a means for persons to file required information relating to supplies, shipments, and dispositions of their respective commodities, and other information needed to effectively carry out the purpose of the Act and their respective orders, and these forms are utilized accordingly.

The forms covered under this information collection require respondents to provide the minimum information necessary to effectively carry out the requirements of the marketing orders, and use of these forms is necessary to fulfill the intent of the Act as expressed in the marketing orders.

The information collected is used only by authorized employees of the committees and authorized representatives of the USDA, including AMS, Specialty Crops Program's regional and headquarters' staff. Authorized committee or board employees are the primary users of the information and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.3 hours per response.

Respondents: Producers, handlers, processors, dehydrators, cooperatives, manufacturers, importers, and public members.

Estimated Number of Respondents: 4,535.

Estimated Number of Responses: 21,838.

Estimated Number of Responses per Respondent: 4.82.

Estimated Total Annual Burden on Respondents: 6,595 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) 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, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–23316 Filed 10–20–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

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

Comments regarding this information collection received by November 22, 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.

Animal and Plant Health Inspection Service

Title: Scrapie in Sheep and Goats; Interstate Movement Restrictions and Indemnity Program.

OMB Control Number: 0579–0101.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. The Secretary may also prohibit or restrict import or export of any such animal or related material if necessary to prevent spread of any livestock or poultry pest or disease. The AHPA is contained in title X, subtitle E, sections 10401–18 of Public Law 107–171, May 13, 2002, the Farm Security and Rural Investment Act of 2002. Scrapie is a progressive, degenerative, and eventually fatal disease affecting the central nervous system of sheep and goats. Its control is complicated because the disease has an extremely long incubation period without clinical signs of disease, and there is no test for the disease and/or known treatment. The Animal and Plant Health Inspection Service (APHIS) restricts the interstate movement of certain sheep and goats to

help prevent the spread of scrapie within the United States. APHIS has regulations at 9 CFR part 54 for an indemnity program to compensate owners of sheep and goats destroyed because of scrapie.

Need and Use of the Information: The regulations necessitate the use of a number of information collection activities including, but not limited to, applications for participation in the Scrapie Flock Certification Program; various plans for infected and source flocks; scrapie test records; application for indemnity payments; certificates; permits; and applications for APHIS-approved eartags, backtags, or tattoos, etc. Without this information, APHIS' efforts to more aggressively prevent the spread of scrapie would be severely hindered.

Description of Respondents: Business or other for-profit; Not for Profit; and State, Local, or Tribal Government.

Number of Respondents: 174,851.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 828,878.

Animal Plant and Health Inspection Service

Title: Environmental Monitoring Form.

OMB Control Number: 0579–0117.

Summary of Collection: The mission of the Animal and Plant Health Inspection Service (APHIS) is to provide leadership in ensuring the health and care of animals and plants, to improve the agricultural productivity and competitiveness, and to contribute to the national economy and the public health. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* and the regulations of the Council on Environmental Quality implement the procedural aspects of NEPA (40 CFR 1500–1508). APHIS' regulations require APHIS to implement environmental monitoring for certain activities conducted for pest and disease, control and eradication programs. APHIS Form 2060, Environmental Monitoring Form, will be used to collect information concerning the effects of pesticide used in sensitive habitats.

Need and Use of the Information: APHIS will collect information on the number of collected samples, description of the samples, the environmental conditions at the collection site including wind speed and direction, temperature, and topography. The supporting information contained on the APHIS form 2060 is vital for interpreting the laboratory tests APHIS conducts on its collected samples. If a sample was not accompanied by this form, APHIS would have no way of knowing from which site the sample was taken. Failure to collect this information would prevent APHIS from actively monitoring the effects of pesticides in areas where the inappropriate use of these chemicals could eventually produce disastrous results for vulnerable habitats and species. If information is not collected frequently enough, APHIS' ability to effectively monitor chemical residues in the environment is compromised.

Description of Respondents: State, Local or Tribal Government; Business or other for-profit.

Number of Respondents: 11.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 6.

Animal and Plant Health Inspection Service

Title: Importation of Beef and Ovine Meat from Uruguay and Beef from Argentina and Brazil.

OMB Control Number: 0579–0372.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 (7 U.S.C. 8301), is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. The agency charged with carrying out this disease prevention mission is the Animal and Plant Health Inspection Service (APHIS). Disease prevention is the most effective method for maintaining a healthy animal population and enhancing APHIS' ability to compete globally in animal and animal product trade. APHIS import regulations in sections 9 CFR 94.1, 9 CFR 94.11, and 9 CFR 94.29 place certain restrictions on the importation of beef and ovine meat from Uruguay into the United States. APHIS must collect information, prepared by an authorized certified official of the Government of Uruguay, certifying that specific conditions for importation have been met.

Need and Use of the Information: Imports of fresh beef and beef products from northern Argentina and from specific regions in Brazil must be accompanied by a foreign meat inspection certificate that is completed and signed by an authorized veterinary official of the Governments of Uruguay, Argentina, and Brazil. Without the information, APHIS would be unable to establish an effective defense against the entry and spread of foot-and-mouth disease and other animal diseases from Uruguay beef and ovine product imports as well as imports of beef and beef products from Argentina and Brazil.

Description of Respondents: Federal Government; Business or Other for Profit.

Number of Respondents: 13,100.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 18,514.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–23326 Filed 10–20–23; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Northwest Forest Plan Area Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Northwest Forest Plan Area Advisory Committee will hold a public meeting according to the details shown below. The Committee is authorized under the National Forest Management Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the Committee is to provide advice and pragmatic recommendations regarding potential regional scale land management planning approaches and solutions in the Northwest Forest Plan Area within the context of the 2012 planning rule.

DATES: An in-person meeting, that permits committee members to participate virtually if needed, will be held on November 14, 2023, 08:30 a.m.–5 p.m. Pacific Standard Time (PST), November 15, 2023, 08:30 a.m.–5 p.m. PST, and November 16, 2023, 08:00–11 a.m.

Written and Oral Comments: Anyone wishing to provide in-person oral comments must pre-register by 11:59 p.m. PST on November 7, 2023. Written public comments will be accepted through 11:59 p.m. PST on November 7, 2023. Comments submitted after this date will be provided to the Forest Service, but the Committee may not have adequate time to consider those comments prior to the meeting.

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

ADDRESSES: This meeting will be held in person, at the Edgewater Hotel, 2411 Alaskan Way, Seattle, WA 98121. Committee information and meeting details can be found at the following

website: *https://www.fs.usda.gov/detail/r6/landmanagement/planning/?cid=fseprd1076013 or* by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments: Written comments must be sent by email to *sm.fs.nwfp_faca@usda.gov or* via mail (*i.e.,* postmarked) to John Dow, FACA Coordinator, 1220 Southwest 3rd Avenue, Room 1A, Portland, OR 97204. The Forest Service strongly prefers comments be submitted electronically.

Oral Comments: Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. PST, November 7, 2023, and speakers can only register for one speaking slot. Requests to pre-register for oral comments must be sent by email to *sm.fs.nwfp_faca@usda.gov* or via mail (*i.e.,* postmarked) to John Dow, FACA Coordinator, 1220 Southwest 3rd Avenue, Room 1A, Portland, OR 97204.

FOR FURTHER INFORMATION CONTACT: Liz Berger, Designated Federal Officer (DFO), by phone at 971–260–7808 or email at *Elizabeth.Berger@usda.gov* or John Dow, FACA Coordinator, at 719–250–5311 or email at *John.Dow@usda.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Review subcommittee considerations regarding priorities for updates to the Northwest Forest Plan;
2. Consider information provided by forest managers and others regarding implementation of the Northwest Forest Plan; and
3. Schedule the next meeting.

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

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

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

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

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

Dated: October 17, 2023.

Egypt Simon,

Acting USDA Committee Management Officer.

[FR Doc. 2023–23313 Filed 10–20–23; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials and Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials and Equipment Technical Advisory Committee will meet on November 16, 2023, 10:00 a.m., Eastern Standard Time, in the Herbert C. Hoover Building, Room 3884, 1401 Constitution Avenue NW, Washington, DC (enter through Main Entrance on 14th Street between Constitution and Pennsylvania Avenues). The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology. The purpose of the meeting is to have Committee members and U.S. Government representatives mutually review updated technical data and policy-driving information that has been gathered.

Agenda

Open Session

1. Opening Remarks and Introduction by BIS Senior Management.
2. Report from working groups.
3. Report by regime representatives.

Closed Session

4. Discussion of matters determined to be exempt from the open meeting and public participation requirements found in sections 1009(a)(1) and 1009(a)(3) of the Federal Advisory Committee Act (FACA) (5 U.S.C. 1001–1014). The exemption is authorized by section 1009(d) of the FACA, which permits the closure of advisory committee meetings, or portions thereof, if the head of the agency to which the advisory committee reports determines such meetings may be closed to the public in accordance with subsection (c) of the Government in the Sunshine Act (5 U.S.C. 552b(c)). In this case, the applicable provisions of 5 U.S.C. 552b(c) are subsection 552b(c)(4), which permits closure to protect trade secrets and commercial or financial information that is privileged or confidential, and subsection 552b(c)(9)(B), which permits closure to protect information that would be likely to significantly frustrate implementation of a proposed agency action were it to be disclosed prematurely. The closed session of the meeting will involve committee discussions and guidance regarding U.S. Government strategies and policies.

The open session will be accessible via teleconference. To join the conference, submit inquiries to Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than November 9, 2023.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel,

formally determined on April 12, 2023, pursuant to 5 U.S.C. chapter 10 of the FACA, (5 U.S.C. 1009(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. 1009(a)(1) and 1009(a)(3). The remaining portions of the meeting will be open to the public.

For more information, contact Ms. Springer.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2023–23364 Filed 10–20–23; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Transportation and Related Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Transportation and Related Equipment Technical Advisory Committee will meet on November 15, 2023, 9:30 a.m., Eastern Standard Time, in the Herbert C. Hoover Building, Room 3884, 1401 Constitution Avenue NW, Washington, DC (enter through Main Entrance on 14th Street between Constitution and Pennsylvania Avenues). The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology. The purpose of the meeting is to have Committee members and U.S. Government representatives mutually review updated technical data and policy-driving information that has been gathered.

Agenda

Public Session

1. Welcome and Introductions.
2. Status reports by working group chairs.
3. Public comments and Proposals.

Closed Session

4. Discussion of matters determined to be exempt from the open meeting and public participation requirements found in sections 1009(a)(1) and 1009(a)(3) of the Federal Advisory Committee Act (FACA) (5 U.S.C. 1001–1014). The exemption is authorized by section 1009(d) of the FACA, which permits the closure of advisory committee meetings, or portions thereof, if the head of the agency to which the advisory committee reports determines such meetings may be closed to the public in accordance with subsection (c) of the Government in the Sunshine Act (5 U.S.C. 552b(c)). In this case, the applicable provisions of 5 U.S.C. 552b(c) are subsection 552b(c)(4), which permits closure to protect trade secrets and commercial or financial information that is privileged or confidential, and subsection 552b(c)(9)(B), which permits closure to protect information that would be likely to significantly frustrate implementation of a proposed agency action were it to be disclosed prematurely. The closed session of the meeting will involve committee discussions and guidance regarding U.S. Government strategies and policies.

The open session will be accessible via teleconference. To join the conference, submit inquiries to Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than November 8, 2023.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on April 12, 2023, pursuant to 5 U.S.C. 1009(d) of the FACA, that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. 1009(a)(1) and 1009(a)(3). The remaining portions of the meeting will be open to the public.

For more information, contact Ms. Springer.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2023–23366 Filed 10–20–23; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Emerging Technology Technical Advisory Committee; Notice of Partially Closed Meeting

The Emerging Technology Technical Advisory Committee (ETTAC) will meet on November 8 and 9, 2023, at 9 a.m., (Eastern Standard Time) in the Herbert C. Hoover Building, Room 3884, 1401 Constitution Avenue NW, Washington, DC (enter through Main Entrance on 14th Street between Constitution and Pennsylvania Avenues). The Committee advises the Office of the Assistant Secretary for Export Administration on the identification of emerging and foundational technologies with potential dual-use applications as early as possible in their developmental stages both within the United States and abroad. The purpose of the meeting is to have Committee members and U.S. Government representatives mutually review updated technical data and policy-driving information that has been gathered.

Agenda

November 8, 2023

Closed Session: 9 a.m.–3:30 p.m.

1. Discussion of matters determined to be exempt from the open meeting and public participation requirements found in sections 1009(a)(1) and 1009(a)(3) of the Federal Advisory Committee Act (FACA) (5 U.S.C. 1001–1014).

Open Session: 3:30 p.m.–4:30 p.m.

2. Welcome and Introductions.
3. Presentation: Twist Bioscience.

November 9, 2023

Closed Session: 9 a.m.–11:30 a.m.

4. Discussion of matters determined to be exempt from the open meeting and public participation requirements found in sections 1009(a)(1) and 1009(a)(3) of the Federal Advisory Committee Act (FACA) (5 U.S.C. 1001–1014). The exemption is authorized by section 1009(d) of the FACA, which permits the closure of advisory committee meetings, or portions thereof, if the head of the agency to which the advisory committee reports determines such meetings may be closed to the public in accordance with subsection (c) of the Government in the Sunshine Act (5 U.S.C. 552b(c)). In this case, the applicable provisions of 5 U.S.C. 552b(c) are subsection 552b(c)(4), which permits closure to protect trade secrets and commercial or financial information that is privileged or confidential, and subsection 552b(c)(9)(B), which permits closure to protect information that would be likely to significantly frustrate implementation of a proposed agency action were it to be disclosed prematurely. The closed session of the meeting will involve committee discussions and guidance regarding U.S. Government strategies and policies.

The open session will be accessible via teleconference. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than November 1, 2023.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on October 20, 2022, pursuant to 5 U.S.C. chapter 10 of the FACA, (5 U.S.C. 1009(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. 1009(a)(1) and 1009(a)(3). The remaining portions of the meeting will be open to the public.

For more information, contact Ms. Springer via email.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2023–23363 Filed 10–20–23; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

Announcement of Approved International Trade Administration Trade Mission

AGENCY: International Trade Administration, Department of Commerce.

SUMMARY: The United States Department of Commerce, International Trade Administration (ITA), is announcing one upcoming trade mission that will be recruited, organized, and implemented by ITA. This mission is: Global Diversity Export Initiative (GDEI) Trade Mission to Panama, Costa Rica and Colombia in Conjunction with the ''Opportunities for Women-Owned Businesses in the Americas'' Conference—March 10–15, 2024. A summary of the mission is found below. Application information and more detailed mission information, including the commercial setting and sector information, can be found at the trade mission website: *https://www.trade.gov/trade-missions.* For each mission, recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*https://www.trade.gov/trade-missions-schedule*) and other internet websites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

FOR FURTHER INFORMATION CONTACT: Jeffrey Odum, Events Management Task Force, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6397 or email *Jeffrey.Odum@trade.gov.*

SUPPLEMENTARY INFORMATION: The Following Conditions for Participation Will Be Used for the Mission:

Applicants must submit a completed and signed mission application and supplemental application materials, including adequate information on their products and/or services, primary market objectives, and goals for participation that is adequate to allow the Department of Commerce to evaluate their application. If the Department of Commerce receives an incomplete application, the Department of Commerce may either: reject the application, request additional information/clarification, or take the lack of information into account when evaluating the application. If the requisite minimum number of participants is not selected for a particular mission by the recruitment deadline, the mission may be cancelled.

Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, are marketed under the name of a U.S. firm and have at least 51% U.S. content by value. In the case of a trade association or organization, the applicant must certify that, for each firm or service provider to be represented by the association/organization, the products and/or services the represented firm or service provider seeks to export are either produced in the United States or, if not, marketed under the name of a U.S. firm and have at least 51% U.S. content by value.

A trade association/organization applicant must certify and agree to the above for every company it seeks to represent on the mission. In addition, each applicant must:

- Certify that the products and services that it wishes to market through the mission would be in compliance with U.S. export controls and regulations;
- Certify that it has identified any matter pending before any bureau or office in the Department of Commerce;
- Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and
- Sign and submit an agreement that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with a company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

In the case of a trade association/organization, the applicant must certify that each firm or service provider to be represented by the association/organization can make the above certifications.

The Following Selection Criteria Will Be Used for the Mission

Targeted mission participants are U.S. firms, services providers and trade associations/organizations providing or promoting U.S. products and services that have an interest in entering or expanding their business in the mission's destination country. The following criteria will be evaluated in selecting participants:

- Suitability of the applicant's (or in the case of a trade association/organization, represented firm's or service provider's) products or services to these markets;
- The applicant's (or in the case of a trade association/organization, represented firm's or service provider's) potential for business in the markets, including likelihood of exports resulting from the mission; and
- Consistency of the applicant's (or in the case of a trade association/organization, represented firm's or service provider's) goals and objectives with the stated scope of the mission. Balance of company size and location may also be considered during the review process.

Referrals from a political party or partisan political group or any information, including on the application, containing references to political contributions or other partisan political activities will be excluded from the application and will not be considered during the selection process. The sender will be notified of these

exclusions. The Department of Commerce will evaluate applications and inform applicants of selection decisions on a rolling basis until the maximum number of participants has been selected.

Definition of Small and Medium-Sized Enterprise

For purposes of assessing participation fees, an applicant is a small and medium-sized enterprise (SME) if it qualifies as a ''small business'' under the Small Business Administration's (SBA) size standards (*https://www.sba.gov/document/support--table-size-standards*), which vary by North American Industry Classification System (NAICS) Code. The SBA Size Standards Tool (*https://www.sba.gov/size-standards*) can help you determine the qualifications that apply to your company.

Mission List: (additional information about trade missions can be found at *https://www.trade.gov/trade-missions*).

Global Diversity Export Initiative (GDEI) Trade Mission to Panama, Costa Rica and Colombia in Conjunction With the ''Opportunities for Women-Owned Businesses in the Americas'' Conference—March 10–15, 2024

Summary

The United States Department of Commerce, International Trade Administration (ITA), is organizing a Global Diversity Export Initiative (GDEI) Trade Mission to Panama, Costa Rica, and Colombia from March 10–15, 2024, that will include the ''Opportunities for Woman-Owned Businesses in the Americas'' Conference in Panama City, Panama on March 10–11, 2024. The mission is horizontal, with various industries and sectors represented and will be based on best prospects and growth potential for U.S. companies in Panama, Costa Rica and Colombia.

Recruitment and consideration will be extended to all export-ready U.S. companies, including small businesses, trade associations and other exporting organizations that meet the established criteria for participation in the mission. In keeping with the U.S. Department of Commerce's Equity Action Plan, ITA seeks to improve outreach to and representation of businesses with owners and/or leaders from underserved communities, including through the Global Diversity Export Initiative of the U.S. Commercial Service. This mission will expand access to export opportunities to U.S. small and medium-sized businesses, including those founded, led, operated or owned by women from industries with growing potential in Panama, Costa Rica, and Colombia.

This mission is in alignment with Executive Order 13985 on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 25, 2021) (E.O. 13985), Executive Order 14091 on Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (February 22, 2022) (E.O. 14091), Executive Order 14020 on the Establishment of the White House Gender Policy Council (March 11, 2021) (E.O. 14020), and the Global Diversity Export Initiative of the U.S. Commercial Service. For the purposes of the trade mission, ITA adopts the definition of ''underserved communities'' in E.O. 14020, incorporated into E.O. 14091: ''populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the preceding definition of ''equity.'' ''Equity'' is defined as ''the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as women and girls; Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.'' This trade mission is also designed to be responsive to the priorities stated by Secretary of Commerce Gina Raimondo and outlined in the Equity Action Plan released in April 2022 which aspires to ''harness the talents and strengths of all parts of the country, including women, people of color, and others who are too often left behind'' including by ''[s]trengthen[ing] small businesses in underserved communities by helping them be successful exporters''.

Women own 12 million businesses in the United States, employing more than 10 million workers.[1] According to the U.S. Small Business Administration (citing the 2018 Census Bureau's Annual Business Survey, latest data available), women-owned businesses contributed $2.1 trillion in total sales to the U.S. economy and $388 billion in annual payroll. The 2020 Census Bureau's Annual Business Survey included three top sectors for women-owned employer firms as: (1) healthcare and social assistance (216,000 women-owned employer firms); (2) professional, scientific and technical services (207,000 women-owned employer firms); and (3) retail trade (137,000 women-owned employer firms).[2]

Despite these promising statistics, women-owned businesses face unique obstacles in accessing overseas markets, including difficulty obtaining financing and lack of knowledge about export opportunities. By including attendance at the ''Opportunities for Woman-Owned Businesses in the Americas'' Conference in Panama City, Panama on March 10–11, 2024, this mission will assist U.S. small and medium-sized businesses, including those founded, led, operated or owned by women to find partners and begin or expand exports in Panama, Costa Rica and Colombia. Each country benefits from a free trade agreement with the United States.

Trade mission participants will arrive in Panama City, Panama on March 10 to attend the opening reception for the ''Opportunities for Woman-Owned Businesses in the Americas'' Conference, which is also open to U.S. companies not participating in the trade mission. The Businesses Conference will focus on regional and industry-specific sessions and will gather experts on market entry strategies, logistics, procurement, trade financing, access to capital, and other important topics to assist women business exporters. The registration fee for the business conference is included in the trade mission costs.

On Sunday, March 10, trade mission participants will participate in one-on-one meetings (U.S. diplomats and/or industry specialists from 15 U.S. Embassies from the region will be available), a trade mission briefing, and a networking reception. On Monday, March 11, participants will engage in the business conference that will include a morning plenary session, a networking lunch, afternoon workshops and one-on-one meetings with key service providers and U.S. diplomats and/or industry specialists, information and material on trade-related resources, and an evening networking reception. On Tuesday, March 12, selected participants will engage in business-to-

[1] *https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/27/fact-sheet-president-biden-announces-new-resources-to-support-women-small-businesses-owners-continued-commitment-to-supporting-americas-entrepreneurs/.*

[2] *https://advocacy.sba.gov/2023/03/21/facts-about-small-business-women-ownership-statistics/.*

business (B2B) meetings in Panama City or travel to Costa Rica or Colombia to engage in B2B appointments in those markets. B2B meetings will be conducted with pre-screened potential buyers, agents, distributors or joint-venture partners, in the selected city/stop in Panama, and/or Costa Rica, and/or Colombia. The combination of the ''Opportunities for Woman-Owned Businesses in the Americas'' Conference and the B2B matchmaking opportunities in Panama, Costa Rica, and Colombia will provide participants with substantive information on strategies for entering or expanding their business in Panama, Costa Rica, and Colombia, key contacts with Commercial Service officers and local staff, and networking opportunities to build vital business relationships.

Best Prospects

The mission is horizontal, with various industries and sectors represented, based on best prospects for U.S. companies in Panama, Costa Rica and Colombia. Best prospect sectors include: Agricultural Products; Automotive Parts, Accessories and Service Equipment; Construction Equipment; Cosmetics; Cybersecurity; Defense & Security; Disposable Medical Supplies; eCommerce; Education; Electric Power and Renewable Energy Systems; Information and Communication Technology (ICT); Infrastructure; Medical Devices and Equipment; Oil and Gas Exploration and Production Equipment; Processed Food and Beverages; Solar Energy Products; and Travel and Tourism.

Other Products and Services

Applications from companies exporting products or services within the scope of this mission, but not specifically identified, will be considered and evaluated by the U.S. Department of Commerce. Companies whose products or services do not fit the scope of the mission may contact their local U.S. Commercial Service office to learn about other business development missions and services that may provide more targeted export opportunities. Companies may visit *https://www.trade.gov/contact-us* to obtain such information. This information also may be found on the website: *https://www.trade.gov/.*

Proposed Timetable

*** Note:** The final schedule and potential site visits will depend on the availability of host government and business officials, specific goals of mission participants, and ground transportation.

Saturday, March 09, 2024	Travel Day/Arrival in Panama City, Panama.
Sunday, March 10, 2024	Panama. Business Conference. Afternoon: Registration, U.S. Embassy Officer Meetings and Market Briefings. Evening: Networking Reception.
Monday, March 11, 2024	Panama. Business Conference. Morning: Registration. Plenary Session. Afternoon: U.S. Embassy Officer Meetings and Workshops. Evening: Networking Reception.

B2B Meeting Options

Tuesday–Friday, March 12–15, 2024.	Travel to Business-to-Business Meetings in (up to two markets): Option (A) Panama. Option (B) Costa Rica. Option (C) Colombia.

Participation Requirements

All parties interested in participating in the U.S. Department of Commerce GDEI Trade Mission to Panama, Costa Rica and Colombia must complete and submit an application package for consideration by the U.S. Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below.

A minimum of 20 and a maximum of 40 firms and/or trade associations will be selected to participate in the mission on a first come, first served basis.

All selected participants will attend the Business Conference in Panama City and will have the opportunity for B2B meetings in up to two markets (Panama and/or Costa Rica, and/or Colombia). The number of firms that may be selected for B2B meetings in each country is as follows: 20 companies for Panama; 20 companies for Costa Rica; 20 companies for Colombia.

During the registration process, applicants will be able to select the countries for which they would like to receive a brief market assessment. Upon receipt of market assessment reports, they will be able to select up to two stops for B2B meetings.

The trade mission is open to U.S. firms already doing business, and seeking to expand market share, in Panama, Costa Rica and Colombia and to those U.S. firms new to these markets.

Fees and Expenses

After a firm or trade association is selected to participate in the mission, a payment to the Department of Commerce in the form of a participation fee is required. The fees are as follow:

If one stop/country is selected for B2B meetings, the participation fee will be $2,800 for a small and medium-sized enterprises (SME) (see above definition of SMEs) and $4,000 for large firms.

If two stops/countries are selected for B2B meetings, the participation fee will be $3,800 for a small and medium-sized enterprises (SME) (see above definition of SMEs) and $5,000 for large firms.

The mission participation fees above include the ''Opportunities for Woman-Owned Businesses in the Americas'' Conference registration fee of $500, which covers one participant per firm. Ground transportation to B2B meetings will be provided for trade mission delegation participants if meetings are conducted outside the hotel where the Business Conference will take place.

If and when an applicant is selected to participate in this mission, a payment to the Department of Commerce in the amount of the designated participation fee above is required. Upon notification of acceptance, those selected have five business days to submit payment or the acceptance may be revoked.

Participants selected for a trade mission will be expected to pay for the cost of personal expenses, including, but not limited to, international travel, lodging, meals, transportation, communication, and incidentals, unless otherwise noted. Participants will, however, be able to take advantage of U.S. Government rates for hotel rooms. In the event that the mission is cancelled, no personal expenses paid in anticipation of a mission will be reimbursed. However, participation fees for a cancelled mission will be reimbursed to the extent they have not already been expended in anticipation of the mission.

If a visa is required to travel on a particular mission, applying for and obtaining such a visa will be the responsibility of the mission participant. Government fees and processing expenses to obtain such a visa are not included in the participation fee. However, the Department of Commerce will provide instructions to each participant on the procedures required to obtain business visas.

Trade mission members participate in trade missions and undertake mission-related travel at their own risk. The nature of the security situation in any given foreign market at a given time cannot be guaranteed. The U.S. Government does not make any representations or guarantees as to the safety or security of participants. The U.S. Department of State issues U.S. Government international travel alerts and warnings for U.S. citizens available at *https://travel.state.gov/content/passports/en/alertswarnings.html.* Any question regarding insurance coverage must be resolved by the participant and its insurer of choice.

Travel and in-person activities are contingent upon the safety and health conditions in the United States and the mission countries. Should safety or health conditions not be appropriate for travel and/or in-person activities, the Department will consider postponing the event or offering a virtual program in lieu of an in-person agenda. In the event of a postponement, the Department will notify the public, and applicants previously selected to participate in this mission will need to confirm their availability but need not reapply. Should the decision be made to organize a virtual program, the Department will adjust fees accordingly, prepare an agenda for virtual activities, and notify the previously selected applicants with the option to opt-in to the new virtual program.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*https://www.trade.gov/trade-missions*) *http://www.trade.gov/,* the Trade Americas web page (*https://www.trade.gov/trade-americas-events*) and other internet websites, press releases to the general and trade media, direct mail and broadcast fax, notices by industry trade associations and other multiplier groups, and announcements at industry meetings, symposia, conferences, and trade shows.

Recruitment for the mission will begin immediately and conclude no later than Friday, December 29, 2023. The U.S. Department of Commerce will review applications and make selection decisions on a rolling basis until the maximum of 40 participants are selected. After Friday, December 29, 2023, companies will be considered only if space and scheduling constraints permit.

Contacts

U.S. Trade Americas Team Contact Information

Diego Gattesco, Director/Trade Americas Team Leader, U.S. Commercial Service Wheeling, WV, Email: *Diego.Gattesco@trade.gov,* Tel: 304–243–5493

Sara E. Hagigh, Senior International Trade Specialist, Multilateral & Strategic Initiatives Team, Office of Western Hemisphere, U.S. Department of Commerce, International Trade Administration, Washington, DC, Email: *Sara.Hagigh@trade.gov,* Tel: 202–482–5405

Commercial Service Panama Contact Information

Timothy Cannon, Senior Commercial Officer, U.S. Embassy Panama City, Panama, Email: *Timothy.Cannon@trade.gov,* Tel: (507) 6612–3606

Commercial Service Costa Rica Contact Information

Ryan Hollowell, Senior Commercial Officer, U.S. Embassy San Jose, Costa Rica, Email: *Ryan.Hollowell@trade.gov,* Tel: (506) 2519–2293

Commercial Service Colombia Contact Information

Lisa White, Commercial Officer, U.S. Embassy Bogota, Colombia, Email: *Lisa.White@trade.gov,* Tel: (+57) 321–843–6314

Gemal Brangman,

Director, Trade Events Management Task Force.

[FR Doc. 2023–23365 Filed 10–20–23; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–893–002, A–487–001, A–546–001, A–533–919, A–475–845, A–803–001, A–201–859, A–565–804, A–455–807, A–856–002, A–469–826, A–583–873]

Mattresses From Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, the Philippines, Poland, Slovenia, Spain, and Taiwan: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable October 23, 2023.

FOR FURTHER INFORMATION CONTACT: Amaris Wade (Bosnia and Herzegovina) at (202) 482–6334; TJ Worthington (Bulgaria) at (202) 482–4567; Ajay Menon (Burma) at (202) 482–0208; Steven Seifert (India) at (202) 482–3350; Caroline Carroll (Italy) at (202) 482–4948; Sean Carey (Kosovo) at (202) 482–3964; Benjamin Blythe (Mexico) at (202) 482–3457; Emily Halle (the Philippines) at (202) 482–0176; Dakota Potts (Poland) at (202) 482–0223; Andrew Hart (Slovenia) at (202) 482–1058; Matthew Palmer (Spain) at (202) 482–1678; and Terre Keaton (Taiwan) at (202) 482–1280, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 17, 2023, the U.S. Department of Commerce (Commerce) initiated less-than-fair-value (LTFV) investigations of imports of Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, the Philippines, Poland, Slovenia, Spain, and Taiwan.[1] Currently, the preliminary determinations are due no later than January 4, 2024.

Postponement of Preliminary Determinations

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in an LTFV investigation within 140 days after the date on which Commerce initiated the investigation. However, section 733(c)(1)(A)(b)(1) of

[1] *See Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, the Philippines, Poland, Slovenia, Spain, and Taiwan: Initiation of Less-Than-Fair-Value Investigations,* 88 FR 57433 (August 23, 2023) (*Initiation Notice*).

the Act permits Commerce to postpone the preliminary determination until no later than 190 days after the date on which Commerce initiated the investigation if: (A) the petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On October 5, 2023, the petitioners [2] submitted a timely request that Commerce postpone the preliminary determinations in the LTFV investigations of mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, the Philippines, Poland, Slovenia, Spain, and Taiwan.[3] The petitioners stated that they request postponement given the complexity of the investigations, the extensions of time Commerce granted to respondents, and the recent selection of additional respondents, to allow the petitioners adequate time to comment on responses and Commerce adequate time to issue supplemental questionnaires and conduct a thorough analysis in these investigations.[4]

For the reasons stated above and because there are no compelling reasons to deny the request, Commerce, in accordance with section 733(c)(1)(A) of the Act, is postponing the deadline for the preliminary determinations by 50 days (*i.e.,* 190 days after the date on which these investigations were initiated). As a result, Commerce will issue its preliminary determinations no later than February 23, 2024. In accordance with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations of these investigations will continue to be 75 days after the date of the preliminary determinations, unless postponed at a later date.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: October 17, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–23358 Filed 10–20–23; 8:45 am]

BILLING CODE 3510–DS–P

[2] The petitioners are Brooklyn Bedding LLC; Carpenter Company; Corsicana Mattress Company; Future Foam, Inc.; FXI, Inc.; Kolcraft Enterprises Inc.; Leggett & Platt, Incorporated; Serta Simmons Bedding Inc.; Southerland Inc.; Tempur Sealy International, Inc.; the International Brotherhood of Teamsters; and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO (collectively, the petitioners).

[3] *See* Petitioners' Letter, ''Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, Philippines, Poland, Slovenia, Spain, and Taiwan: Request to Extend Preliminary Results for Antidumping Duty Investigations,'' dated October 5, 2023.

[4] *Id.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD477]

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

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

ACTION: Notice; public meeting.

SUMMARY: The MAFMC will hold a public meeting (webinar) of its Mackerel, Squid, and Butterfish (MSB) Monitoring Committee. See **SUPPLEMENTARY INFORMATION** for agenda details.

DATES: The meeting will be held on Monday, November 6, 2023, from 10 a.m. to 11 a.m.

ADDRESSES: Webinar connection information will be posted to the MAFMC's website calendar prior to the meeting at *www.mafmc.org.*

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

SUPPLEMENTARY INFORMATION: The main purpose of the meeting is for the MSB Monitoring Committee to develop recommendations for future Atlantic mackerel specifications. Public comments will also be taken.

Special Accommodations

The meeting is 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: October 18, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–23359 Filed 10–20–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD472]

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

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

ACTION: Notice of SEDAR 74 Review Workshop for Gulf of Mexico Red Snapper.

SUMMARY: The SEDAR 74 assessment process of Gulf of Mexico red snapper will consist of a Data Workshop, and a series of assessment webinars, and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 74 Review Workshop will be held from 8:30 a.m. on December 12, 2023, until 6 p.m. on December 15, 2023. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

ADDRESSES:

Meeting address: The SEDAR 74 Review Workshop will be held at the Gulf of Mexico Fishery Management Council Office, 4107 West Spruce Street Suite 200, Tampa, FL 33607; phone: (888) 833–1844.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data/

Assessment Workshop, and (2) a series of webinars. The product of the Data/Assessment Workshop is a report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses, and describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the Review Workshop are as follows:

Participants will evaluate the stock id, data, and assessment reports, as specified in the Terms of Reference for the workshop and determine if they are scientifically sound.

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 these meetings. 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

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

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

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

Dated: October 18, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–23343 Filed 10–20–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD468]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

ACTION: Notice. Issuance of letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that a Letter of Authorization (LOA) has been issued to WesternGeco for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

DATES: The LOA is effective from October 17, 2023 through April 30, 2024.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Jenna Harlacher, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance which: (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively ''industry operators''), in U.S. waters of the Gulf of Mexico (GOM) over the course of 5 years (86 FR 5322, January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under § 217.186 (e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take

authorized under the LOA is of no more than small numbers.

Summary of Request and Analysis

WesternGeco plans to conduct a three-dimensional (3D) ocean bottom node (OBN) survey in the Green Canyon and Walker Ridge protraction areas, including approximately 795 lease blocks. Approximate water depths of the survey area range from 1,000 to 3,000 meters (m). See section F of the LOA application for a map of the area.

WesternGeco anticipates using two source vessels, towing low-frequency airgun sources known as Gemini (also referred to as a dual barbell source) or conventional airgun sources consisting of 28 elements, with a total volume of 5,240 cubic inches (in^3). Please see WesternGeco's application for additional detail.

The Gemini source was not included in the acoustic exposure modeling developed in support of the rule. However, our rule anticipated the possibility of new and unusual technologies (NUT) and determined they would be evaluated on a case-by case basis (86 FR 5322, 5442, January 19, 2021). This source was previously evaluated as a NUT in 2020 (prior to issuance of the 2021 final rule) pursuant to the requirements of NMFS' 2020 Biological Opinion on BOEM's Gulf of Mexico oil and gas program as well as the issuance of the rule. An associated report produced by Jasco Applied Sciences (Grooms *et al.,* 2019) provides information related to the acoustic output of the Gemini source, which informs our evaluation here.

The Gemini source operates on the same basic principles as a traditional airgun source in that it uses compressed air to create a bubble in the water column which then goes through a series of collapses and expansions creating primarily low-frequency sounds. However, the Gemini source consists of one physical element with two large chambers of 4,000 (in^3) each (total volume of 8,000 in^3). This creates a larger bubble resulting in more of the energy being concentrated in low frequencies, with a fundamental frequency of 3.7 Hertz. In addition to concentrating energy at lower frequencies, the Gemini source is expected to produce lower overall sound levels than the conventional airgun proxy source. The number of airguns in an array is highly influential on overall sound energy output, because the output increases approximately linearly with the number of airgun elements. In this case, because the same air volume is used to operate two very large guns, rather than tens of smaller guns, the array produces lower sound levels than a conventional array of equivalent total volume.

The modeled distances described in the aforementioned Jasco report show expected per-pulse sound pressure level threshold distances to the 160-dB level of 4.29 kilometers (km). When frequency-weighted, *i.e.,* considering the low frequency output of the source relative to the hearing sensitivities of different marine mammal hearing groups, the estimated distance is decreased to approximately 1 km for the low-frequency cetacean hearing group and to de minimis levels for mid- and high-frequency cetacean hearing groups, significantly less than comparable modeled distances for the proxy 72-element, 8,000 in^3 array evaluated in the rule.

These factors lead to a conclusion that take by Level B harassment associated with use of the Gemini source would be less than would occur for a similar survey instead using the modeled airgun array as a sound source. Based on the foregoing, we have determined there will be no effects of a magnitude or intensity different from those evaluated in support of the rule. Moreover, use of modeling results relating to use of the 72 element, 8,000 in^3 airgun array are expected to be significantly conservative as a proxy for use in evaluating potential impacts of use of the Gemini source.

Consistent with the preamble to the final rule, the survey effort proposed by WesternGeco in its LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in the preamble (86 FR 5398, January 19, 2021). In order to generate the appropriate take numbers for authorization, the following information was considered: (1) survey type; (2) location (by modeling zone [1]); (3) number of days; and (4) season.[2] The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species, specific to each modeled survey type in each zone and season.

No 3D OBN surveys were included in the modeled survey types, and use of existing proxies (*i.e.,* two-dimensional (2D), 3D narrow-azimuth (NAZ), 3D wide-azimuth (WAZ), Coil) is generally conservative for use in evaluation of 3D OBN survey effort, largely due to the greater area covered by the modeled proxies. Summary descriptions of these modeled survey geometries are available in the preamble to the proposed rule (83 FR 29220, June 22, 2018). Coil was selected as the best available proxy survey type in this case because the spatial coverage of the planned survey is most similar to the coil survey pattern.

The planned 3D OBN survey will involve two source vessels sailing along survey lines averaging 83 km in length. The coil survey pattern was assumed to cover approximately 144 kilometers squared (km^2) per day (compared with approximately 795 km^2, 199 km^2, and 845 km^2 per day for the 2D, 3D NAZ, and 3D WAZ survey patterns, respectively). Among the different parameters of the modeled survey patterns (*e.g.,* area covered, line spacing, number of sources, shot interval, total simulated pulses), NMFS considers area covered per day to be most influential on daily modeled exposures exceeding Level B harassment criteria. Although WesternGeco is not proposing to perform a survey using the coil geometry, its planned 3D OBN survey is expected to cover approximately 99.6 km^2 per day, meaning that the coil proxy is most representative of the effort planned by WesternGeco in terms of predicted Level B harassment exposures. In addition, all available acoustic exposure modeling results assume use of a 72-element, 8,000 in^3 array. Thus, as discussed above, estimated take numbers for this LOA are considered conservative due to differences between the acoustic source planned for use (Gemini or 28 element, 5,240 in^3 airgun array) and the proxy array modeled for the rule.

The survey will take place over approximately 85 days, including 65 days of sound source operation. The survey plan includes approximately half the days within Zone 5 and half the days within Zone 7. We modeled 33 days in each zone for take estimates. The seasonal distribution of survey days is not known in advance. Therefore, the take estimates for each species are based on the season that produces the greater value.

For some species, take estimates based solely on the modeling yielded results that are not realistically likely to occur when considered in light of other relevant information available during the rulemaking process regarding marine mammal occurrence in the GOM. The approach used in the acoustic exposure modeling, in which seven modeling zones were defined over the U.S. GOM, necessarily averages fine-scale information about marine mammal distribution over the large area of each

[1] For purposes of acoustic exposure modeling, the GOM was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

[2] For purposes of acoustic exposure modeling, seasons include winter (December–March) and summer (April–November).

modeling zone. This can result in unrealistic projections regarding the likelihood of encountering particularly rare species and/or species not expected to occur outside particular habitats. Thus, although the modeling conducted for the rule is a natural starting point for estimating take, our rule acknowledged that other information could be considered (*e.g.,* 86 FR 5322, January 19, 2021), discussing the need to provide flexibility and make efficient use of previous public and agency review of other information and identifying that additional public review is not necessary unless the model or inputs used differ substantively from those that were previously reviewed by NMFS and the public). For this survey, NMFS has other relevant information reviewed during the rulemaking that indicates use of the acoustic exposure modeling to generate a take estimate for Rice's whales and killer whales produces results inconsistent with what is known regarding their occurrence in the GOM. Accordingly, we have adjusted the calculated take estimates for those species as described below.

NMFS' final rule described a ''core habitat area'' for Rice's whales (formerly known as GOM Bryde's whales) [3] located in the northeastern GOM in waters between 100 and 400 m depth along the continental shelf break (Rosel *et al.,* 2016). However, whaling records suggest that Rice's whales historically had a broader distribution within similar habitat parameters throughout the GOM (Reeves *et al.,* 2011; Rosel and Wilcox, 2014). In addition, habitat-based density modeling identified similar habitat (*i.e.,* approximately 100–400 m water depths along the continental shelf break) as being potential Rice's whale habitat (Roberts *et al.,* 2016), although the core habitat area contained approximately 92 percent of the predicted abundance of Rice's whales. See discussion provided at, *e.g.,* 83 FR 29228, June 22, 2018; 83 FR 29280, June 22, 2018; 86 FR 5418, January 19, 2021.

Although Rice's whales may occur outside of the core habitat area, we expect that any such occurrence would be limited to the narrow band of suitable habitat described above (*i.e.,* 100–400 m) and that, based on the few available records, these occurrences would be rare. WesternGeco's planned activities will occur in water depths of approximately 1,000–3,000 m in the central GOM. Thus, NMFS does not expect there to be the reasonable potential for take of Rice's whale in association with this survey and, accordingly, does not authorize take of Rice's whale through the LOA.

Killer whales are the most rarely encountered species in the GOM, typically in deep waters of the central GOM (Roberts *et al.,* 2015; Maze-Foley and Mullin, 2006). As discussed in the final rule, the density models produced by Roberts *et al.* (2016) provide the best available scientific information regarding predicted density patterns of cetaceans in the U.S. GOM. The predictions represent the output of models derived from multi-year observations and associated environmental parameters that incorporate corrections for detection bias. However, in the case of killer whales, the model is informed by few data, as indicated by the coefficient of variation associated with the abundance predicted by the model (0.41, the second-highest of any GOM species model; Roberts *et al.,* 2016). The model's authors noted the expected non-uniform distribution of this rarely-encountered species (as discussed above) and expressed that, due to the limited data available to inform the model, it ''should be viewed cautiously'' (Roberts *et al.,* 2015). NOAA surveys in the GOM from 1992 to 2009 reported only 16 sightings of killer whales, with an additional 3 encounters during more recent survey effort from 2017 to 2018 (Waring *et al.,* 2013; *https://www.boem.gov/gommapps*). Two other species were also observed on fewer than 20 occasions during the 1992–2009 NOAA surveys (Fraser's dolphin and false killer whale [4]). However, observational data collected by protected species observers (PSO) on industry geophysical survey vessels from 2002 to 2015 distinguish the killer whale in terms of rarity. During this period, killer whales were encountered on only 10 occasions, whereas the next most rarely encountered species.[4] However, note that these species have been observed over a greater range of water depths in the GOM than have killer whales. (Fraser's dolphin) was recorded on 69 occasions (Barkaszi and Kelly, 2019). The false killer whale and pygmy killer whale were the next most rarely encountered species, with 110 records each. The killer whale was the species with the lowest detection frequency during each period over which PSO data were synthesized (2002–2008 and 2009–2015). This information qualitatively informed our rulemaking process, as discussed at 86 FR 5322 and 86 FR 5334 (January 19, 2021), and similarly informs our analysis here.

The rarity of encounter during seismic surveys is not likely to be the product of high bias on the probability of detection. Unlike certain cryptic species with high detection bias, such as *Kogia spp.* or beaked whales, or deep-diving species with high availability bias, such as beaked whales or sperm whales, killer whales are typically available for detection when present and are easily observed. Roberts *et al.* (2015) stated that availability is not a major factor affecting detectability of killer whales from shipboard surveys, as they are not a particularly long-diving species. Baird *et al.* (2005) reported that mean dive durations for 41 fish-eating killer whales for dives greater than or equal to 1 minute in duration was 2.3–2.4 minutes, and Hooker *et al.* (2012) reported that killer whales spent 78 percent of their time at depths between 0 and 10 m. Similarly, Kvadsheim *et al.* (2012) reported data from a study of 4 killer whales, noting that the whales performed 20 times as many dives 1–30 m in depth than to deeper waters, with an average depth during those most common dives of approximately 3 m.

In summary, killer whales are the most rarely encountered species in the GOM and typically occur only in particularly deep water. This survey would take place in deep waters that would overlap with depths in which killer whales typically occur. While this information is reflected through the density model informing the acoustic exposure modeling results, there is relatively high uncertainty associated with the model for this species, and the acoustic exposure modeling applies mean distribution data over areas where the species is in fact less likely to occur. In addition, as noted above in relation to the general take estimation methodology, the assumed proxy source (72-element, 8,000-in^3 array) results in a significant overestimate of the actual potential for take to occur. NMFS' determination in reflection of the information discussed above, which informed the final rule, is that use of the generic acoustic exposure modeling results for killer whales will generally result in estimated take numbers that are inconsistent with the assumptions made in the rule regarding expected killer whale take (86 FR 5322, January 19, 2021; 86 FR 5403, January 19, 2021).

In past authorizations, NMFS has often addressed situations involving the low likelihood of encountering a rare species such as killer whales in the

[3] The final rule refers to the GOM Bryde's whale (*Balaenoptera edeni*). These whales were subsequently described as a new species, Rice's whale (*Balaenoptera ricei*) (Rosel *et al.,* 2021).

[4] However, note that these species have been observed over a greater range of water depths in the GOM than have killer whales.

GOM through authorization of take of a single group of average size (*i.e.,* representing a single potential encounter). See 83 FR 63268, December 7, 2018; 86 FR 29090, May 28, 2021; 85 FR 55645, September 9, 2020. For the reasons expressed above, NMFS determined that a single encounter of killer whales is more likely than the model-generated estimates and has authorized take associated with a single group encounter (*i.e.,* up to seven animals for killer whales).

Based on the results of our analysis, NMFS has determined that the level of taking authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations for the affected species or stocks of marine mammals. See Table 1 in this notice and Table 9 of the rule (86 FR 5322, January 19, 2021).

Small Numbers Determination

Under the GOM rule, NMFS may not authorize incidental take of marine mammals in an LOA if it will exceed ''small numbers.'' In short, when an acceptable estimate of the individual marine mammals taken is available, if the estimated number of individual animals taken is up to, but not greater than, one-third of the best available abundance estimate, NMFS will determine that the numbers of marine mammals taken of a species or stock are small. For more information please see NMFS' discussion of the MMPA's small numbers requirement provided in the final rule (86 FR 5438, January 19, 2021).

The take numbers for authorization are determined as described above in the Summary of Request and Analysis section. Subsequently, the total incidents of harassment for each species are multiplied by scalar ratios to produce a derived product that better reflects the number of individuals likely to be taken within a survey (as compared to the total number of instances of take), accounting for the likelihood that some individual marine mammals may be taken on more than 1 day (see 86 FR 5404, January 19, 2021). The output of this scaling, where appropriate, is incorporated into adjusted total take estimates that are the basis for NMFS' small numbers determinations, as depicted in Table 1.

This product is used by NMFS in making the necessary small numbers determinations through comparison with the best available abundance estimates (see discussion at 86 FR 5322, January 19, 2021; 86 FR 5391, January 19, 2021). For this comparison, NMFS' approach is to use the maximum theoretical population, determined through review of current stock assessment reports (SAR; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-species-stock*) and model-predicted abundance information (*https://seamap.env.duke.edu/models/Duke/GOM/*). For the latter, for taxa where a density surface model could be produced, we use the maximum mean seasonal (*i.e.,* 3-month) abundance prediction for purposes of comparison as a precautionary smoothing of month-to-month fluctuations and in consideration of a corresponding lack of data in the literature regarding seasonal distribution of marine mammals in the GOM. Information supporting the small numbers determinations is provided in Table 1.

TABLE 1—TAKE ANALYSIS

Species	Authorized take	Scaled take [1]	Abundance [2]	Percent abundance
Rice's whale	0	n/a	51	n/a
Sperm whale	1,043	441	2,207	20.0
Kogia spp.	[3] 426	129	4,373	3.5
Beaked whales	5,374	543	3,768	14.4
Rough-toothed dolphin	946	271	4,853	5.6
Bottlenose dolphin	3,129	898	176,108	0.5
Clymene dolphin	2,611	749	11,895	6.3
Atlantic spotted dolphin	1,247	358	74,785	0.5
Pantropical spotted dolphin	15,927	4,571	102,361	4.5
Spinner dolphin	2,430	697	25,114	2.8
Striped dolphin	1,117	321	5,229	6.1
Fraser's dolphin	332	95	1,665	5.7
Risso's dolphin	667	197	3,764	5.2
Melon-headed whale	1,706	503	7,003	7.2
Pygmy killer whale	524	155	2,126	7.3
False killer whale	725	214	3,204	6.7
Killer whale	7	n/a	267	2.6
Short-finned pilot whale	391	115	1,981	5.8

[1] Scalar ratios were applied to ''Authorized Take'' values as described at 86 FR 5322 and 86 FR 5404 (January 19, 2021) to derive scaled take numbers shown here.

[2] Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Roberts *et al.,* 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available. For Rice's whale and the killer whale, the larger estimated SAR abundance estimate is used.

[3] Includes 26 takes by Level A harassment and 400 takes by Level B harassment. Scalar ratio is applied to takes by Level B harassment only; small numbers determination made on basis of scaled Level B harassment take plus authorized Level A harassment take.

Based on the analysis contained herein of WesternGeco's proposed survey activity described in its LOA application and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the affected species or stock sizes (*i.e.,* less than one-third of the best available abundance estimate) and therefore the taking is of no more than small numbers.

Authorization

NMFS has determined that the level of taking for this LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. Accordingly, we have issued an LOA to WesternGeco authorizing the take of

marine mammals incidental to its geophysical survey activity, as described above.

Dated: October 17, 2023.

Kim Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–23298 Filed 10–20–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army

Program Comment Plan for Preservation of Pre-1919 Historic Army Housing, Associated Buildings and Structures, and Landscape Features

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army (Army) is making its *Program Comment Plan for Preservation of Pre-1919 Historic Army Housing, Associated Buildings and Structures, and Landscape Features* (Army Program Comment Plan) available for public review. The Army Program Comment Plan is located on the Army's website: *https://denix.osd.mil/army-pre1919-pchh/.* This notice of availability for public review of the Army Program Comment Plan initiates the Army's public participation requirements for the Army's proposed *Program Comment for Preservation of Pre-1919 Historic Army Housing, Associated Buildings and Structures, and Landscape Features* (Program Comment).

DATES: Consideration will be given to all comments on the Army Program Comment Plan that are received within 30 days following the date of this publication.

ADDRESSES: Written comments identified by ''Army Program Comment Plan'' should be submitted to: Office of the Assistant Secretary of the Army for Installations, Energy and Environment, ATTN: DASA–ESOH (Dr. David Guldenzopf), 110 Army Pentagon, Room 3E464, Washington, DC 20310, or by email to *david.b.guldenzopf.civ@army.mil.*

FOR FURTHER INFORMATION CONTACT: Dr. David Guldenzopf, Department of the Army Federal Preservation Officer, (703) 459–7756, *david.b.guldenzopf.civ@army.mil.*

SUPPLEMENTARY INFORMATION: Program Comment Plan for Preservation of Pre-1919 Historic Army Housing, Associated Buildings and Structures, and Landscape Features.

On 19 September 2023, the Department of the Army Federal Preservation Officer notified the Advisory Council on Historic Preservation (ACHP) of the Army's intent to request a Program Comment for Preservation of Pre-1919 Historic Army Housing, Associated Buildings and Structures, and Landscape Features in accordance with the National Historic Preservation Act (NHPA) 54 U.S.C. 306108, and 36 CFR 800.14(e). The goal of the Program Comment is to provide the Army compliance with the National Historic Preservation Act (NHPA) 54 U.S.C. 306108, for the repetitive management actions occurring on this large inventory of historic properties by means of the procedures in 36 CFR 800.14(e), in lieu of conducting individual projects reviews under 36 CFR 800.3 through 800.7.

James W. Satterwhite Jr.,

Army Federal Register Liaison Officer.

[FR Doc. 2023–23342 Filed 10–20–23; 8:45 am]

BILLING CODE 3711–02–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–100–000]

Adams Solar LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Adams Solar LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 6, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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: October 16, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–23289 Filed 10–20–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1494–461]

Grand River Dam Authority; Notice of Waiver Period for Water Quality Certification Application

On September 25, 2023, Grand River Dam Authority submitted to the Federal Energy Regulatory Commission (Commission) a copy of its application for a Clean Water Act section 401(a)(1) water quality certification filed with Oklahoma Department of Environmental Quality (Oklahoma DEQ), in conjunction with the above captioned project. Pursuant to 40 CFR 121.6 and section [4.34(b)(5), 5.23(b), 153.4, or 157.22] of the Commission's regulations,[1] we hereby notify the Oklahoma DEQ of the following:

Date of Receipt of the Certification Request: September 25, 2023.

Reasonable Period of Time to Act on the Certification Request: September 25, 2024.

If Oklahoma DEQ fails or refuses to act on the water quality certification request on or before the above date, then the agency certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: October 17, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–23331 Filed 10–20–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–97–000]

Kaiser Aluminum Washington, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Kaiser Aluminum Washington, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 6, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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: October 16, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–23292 Filed 10–20–23; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR [4.34(b)(5)/5.23(b)/153.4/157.22].

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 Instituting Proceedings

Docket Numbers: PR24–4–000.

Applicants: The Peoples Gas Light and Coke Company.

Description: § 284.123(g) Rate Filing: Petition for Rate Approval to be effective 11/1/2023.

Filed Date: 10/16/23.

Accession Number: 20231016–5092.

Comment Date: 5 p.m. ET 11/6/23.

Protest Date: 5 p.m. ET 12/15/23.

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 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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Dated: October 16, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–23294 Filed 10–20–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–116–000]

Rhythm Ops, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Rhythm Ops, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 6, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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Dated: October 17, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–23352 Filed 10–20–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–102–000]

Caden Energix Endless Caverns LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Caden Energix Endless Caverns LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 6, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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Dated: October 16, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–23291 Filed 10–20–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–114–000]

BCD 2024 Fund 1 Lessee, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of BCD 2024 Fund 1 Lessee, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 6, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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Dated: October 17, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–23353 Filed 10–20–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–119–000.

Applicants: Sojitz Corporation of America, AL Blueway Holdings, LLC.

Description: Supplement to August 11, 2023, Application for Authorization Under Section 203 of the Federal Power Act of Sojitz Corporation of America, et al.

Filed Date: 10/13/23.

Accession Number: 20231013–5206.

Comment Date: 5 p.m. ET 10/23/23.

Docket Numbers: EC24–6–000.

Applicants: Plains End, LLC, Plains End II, LLC, Rathdrum Power, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Plains End, LLC, et al.

Filed Date: 10/13/23.

Accession Number: 20231013–5209.

Comment Date: 5 p.m. ET 11/3/23.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24–7–000.

Applicants: Salt Creek Township Solar, LLC.

Description: Salt Creek Township Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 10/16/23.

Accession Number: 20231016–5061.

Comment Date: 5 p.m. ET 11/6/23.

Docket Numbers: EG24–8–000.

Applicants: BCD 2024 Fund 1 Lessee, LLC.

Description: BCD 2024 Fund 1 Lessee, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 10/16/23.

Accession Number: 20231016–5065.

Comment Date: 5 p.m. ET 11/6/23.

Docket Numbers: EG24–9–000.

Applicants: South Cheyenne Solar, LLC.

Description: South Cheyenne Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 10/16/23.

Accession Number: 20231016–5139.

Comment Date: 5 p.m. ET 11/6/23.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL24–3–000.

Applicants: Missouri River Energy Services v. Southwest Power Pool, Inc.

Description: Complaint of Missouri River Energy Services v. Southwest Power Pool, Inc.

Filed Date: 10/13/23.

Accession Number: 20231013–5205.

Comment Date: 5 p.m. ET 11/2/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–714–005.

Applicants: Whitetail Solar 1, LLC.

Description: Refund Report: Refund Report.

Filed Date: 10/16/23.
Accession Number: 20231016–5068.
Comment Date: 5 p.m. ET 11/6/23.
Docket Numbers: ER20–1851–006.
Applicants: Whitetail Solar 3, LLC.
Description: Refund Report: Refund Report Under Docket ER20–1851 to be effective N/A.
Filed Date: 10/16/23.
Accession Number: 20231016–5073.
Comment Date: 5 p.m. ET 11/6/23.
Docket Numbers: ER21–936–003.
Applicants: Whitetail Solar 2, LLC.
Description: Refund Report: Refund Report Under Docket ER21–936 to be effective N/A.
Filed Date: 10/16/23.
Accession Number: 20231016–5070.
Comment Date: 5 p.m. ET 11/6/23.
Docket Numbers: ER21–1633–003.
Applicants: Elk Hill Solar 2, LLC.
Description: Refund Report: Refund Report Under Docket ER21–1633 to be effective N/A.
Filed Date: 10/16/23.
Accession Number: 20231016–5074.
Comment Date: 5 p.m. ET 11/6/23.
Docket Numbers: ER23–2760–001.
Applicants: Omnis Pleasants, LLC.
Description: Notice of Change in Status of Omnis Pleasants, LLC.
Filed Date: 10/13/23.
Accession Number: 20231013–5208.
Comment Date: 5 p.m. ET 11/3/23.
Docket Numbers: ER24–100–000.
Applicants: Adams Solar LLC.
Description: Baseline eTariff Filing: Adams Solar LLC—Petition for Blanket MBR Authorization with Waivers to be effective 12/1/2023.
Filed Date: 10/13/23.
Accession Number: 20231013–5175.
Comment Date: 5 p.m. ET 11/3/23.
Docket Numbers: ER24–101–000.
Applicants: Waverly Solar, LLC.
Description: Baseline eTariff Filing: Waverly Solar, LLC—Petition for Blanket MBR Authorization with Waivers to be effective 11/2/2023.
Filed Date: 10/13/23.
Accession Number: 20231013–5177.
Comment Date: 5 p.m. ET 11/3/23.
Docket Numbers: ER24–102–000.
Applicants: Caden Energix Endless Caverns LLC.
Description: Baseline eTariff Filing: CE Endless Caverns LLC—Petition for Blanket MBR Authorization with Waivers to be effective 12/1/2023.
Filed Date: 10/13/23.
Accession Number: 20231013–5180.
Comment Date: 5 p.m. ET 11/3/23.
Docket Numbers: ER24–103–000.
Applicants: Duke Energy Florida, LLC.
Description: § 205(d) Rate Filing: DEF–SECI SA 143 Amended and Restated NITSA to be effective 10/1/2023.
Filed Date: 10/13/23.
Accession Number: 20231013–5182.
Comment Date: 5 p.m. ET 11/3/23.
Docket Numbers: ER24–104–000.
Applicants: Golden Spread Electric Cooperative, Inc.
Description: § 205(d) Rate Filing: WPC Amendments M1–3 and AECC Depr to be effective 12/15/2023.
Filed Date: 10/16/23.
Accession Number: 20231016–5020.
Comment Date: 5 p.m. ET 11/6/23.
Docket Numbers: ER24–105–000.
Applicants: Deseret Generation & Transmission Co-operative, Inc.
Description: § 205(d) Rate Filing: 2024 Rate Change Filing to be effective 1/1/2024.
Filed Date: 10/16/23.
Accession Number: 20231016–5027.
Comment Date: 5 p.m. ET 11/6/23.
Docket Numbers: ER24–106–000.
Applicants: Metropolitan Edison Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Metropolitan Edison Company submits tariff filing per 35.13(a)(2)(iii: Met-Ed Amends 10 ECSAs (5790 5791 5918 5921 5927 5930 6042 6052 6136 6146) to be effective 12/31/9998.
Filed Date: 10/16/23.
Accession Number: 20231016–5081.
Comment Date: 5 p.m. ET 11/6/23.
Docket Numbers: ER24–107–000.
Applicants: Midcontinent Independent System Operator, Inc., Ameren Transmission Company of Illinois.
Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): 2023–10–16_SA 4174 ATXI–WVPA TIA to be effective 12/15/2023.
Filed Date: 10/16/23.
Accession Number: 20231016–5088.
Comment Date: 5 p.m. ET 11/6/23.
Docket Numbers: ER24–108–000.
Applicants: PacifiCorp.
Description: § 205(d) Rate Filing: WAPA Telecommunications Sharing Contract to be effective 12/16/2023.
Filed Date: 10/16/23.
Accession Number: 20231016–5097.
Comment Date: 5 p.m. ET 11/6/23.
Docket Numbers: ER24–109–000.
Applicants: Caden Energix Axton LLC.
Description: Baseline eTariff Filing: Caden Energix Axton LLC—Petition for Blanket MBR Authorization with Waivers to be effective 11/2/2023.
Filed Date: 10/16/23.
Accession Number: 20231016–5102.
Comment Date: 5 p.m. ET 11/6/23.
Docket Numbers: ER24–110–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Satilla Source Energy LGIA Filing to be effective 10/1/2023.
Filed Date: 10/16/23.
Accession Number: 20231016–5106.
Comment Date: 5 p.m. ET 11/6/23.
Docket Numbers: ER24–111–000.
Applicants: Southern Power Company.
Description: Initial rate filing: Old Hayneville Solar Affected System Agreement Filing to be effective 9/28/2023.
Filed Date: 10/16/23.
Accession Number: 20231016–5107.
Comment Date: 5 p.m. ET 11/6/23.
Docket Numbers: ER24–112–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2023–10–16_Tariff Clean-Up Filing to be effective 12/16/2023.
Filed Date: 10/16/23.
Accession Number: 20231016–5123.
Comment Date: 5 p.m. ET 11/6/23.
Docket Numbers: ER24–113–000.
Applicants: Salt Creek Township Solar, LLC.
Description: Baseline eTariff Filing: Salt Creek Township Solar, LLC MBR Tariff to be effective 12/16/2023.
Filed Date: 10/16/23.
Accession Number: 20231016–5124.
Comment Date: 5 p.m. ET 11/6/23.
Docket Numbers: ER24–114–000.
Applicants: BCD 2024 Fund 1 Lessee, LLC.
Description: Baseline eTariff Filing: BCD 2024 Fund 1 Lessee, LLC MBR Tariff to be effective 12/16/2023.
Filed Date: 10/16/23.
Accession Number: 20231016–5126.
Comment Date: 5 p.m. ET 11/6/23.
Docket Numbers: ER24–115–000.
Applicants: ISO New England Inc.
Description: Compliance filing: Req. to Defer Eff. Date of Binary Storage Facility DARD Regulation to be effective N/A.
Filed Date: 10/16/23.
Accession Number: 20231016–5128.
Comment Date: 5 p.m. ET 11/6/23.
Docket Numbers: ER24–116–000.
Applicants: Rhythm Ops, LLC.
Description: Baseline eTariff Filing: Rhythm Ops LLC MBR Application Filing to be effective 12/16/2023.
Filed Date: 10/16/23.
Accession Number: 20231016–5132.
Comment Date: 5 p.m. ET 11/6/23.
Docket Numbers: ER24–117–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, SA No. 7114; Queue No. AF1–130 and Cancellation of SA No. 6327 to be effective 9/14/2023.

Filed Date: 10/16/23.

Accession Number: 20231016–5164.

Comment Date: 5 p.m. ET 11/6/23.

Docket Numbers: ER24–118–000.

Applicants: Citizens Sycamore-Penasquitos Transmission LLC.

Description: § 205(d) Rate Filing: Annual TRBAA Filing for 2023 to be effective 1/1/2024.

Filed Date: 10/16/23.

Accession Number: 20231016–5166.

Comment Date: 5 p.m. ET 11/6/23.

Docket Numbers: ER24–119–000.

Applicants: Citizens Sunrise Transmission LLC.

Description: § 205(d) Rate Filing: Annual TRBAA Filing October 2023 to be effective 1/1/2024.

Filed Date: 10/16/23.

Accession Number: 20231016–5171.

Comment Date: 5 p.m. ET 11/6/23.

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: October 16, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–23272 Filed 10–20–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–113–000]

Salt Creek Township Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Salt Creek Township Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 6, 2023.

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In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission'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: October 17, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–23354 Filed 10–20–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a

summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket Nos.	File date	Presenter or requester
Prohibited:		
NONE.		
Exempt:		
1. P–2736–046	10–16–2023	FERC Staff [1]

Dated: October 17, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–23351 Filed 10–20–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas and Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP24–42–000.

Applicants: Equitrans, L.P.

Description: § 4(d) Rate Filing: Expired Negotiated Rate Agreements—10/16/2023 to be effective 11/17/2023.

Filed Date: 10/17/23.

Accession Number: 20231017–5005.

Comment Date: 5 p.m. ET 10/30/23.

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.

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.

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Dated: October 17, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–23355 Filed 10–20–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC24–7–000.

Applicants: GC PGR AssetCo, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of GC PGR AssetCo, LLC.

Filed Date: 10/16/23.

Accession Number: 20231016–5245.

Comment Date: 5 p.m. ET 11/6/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23–2112–001.

Applicants: Sandy Ridge Wind 2, LLC.

Description: Sandy Ridge Wind 2, LLC submits Response to the August 4, 2023 Deficiency Letter re the June 9, 2023 Federal Power Act Section 205 filing.

Filed Date: 10/5/23.

Accession Number: 20231005–5160.

Comment Date: 5 p.m. ET 10/26/23.

Docket Numbers: ER23–2398–001.

Applicants: Arizona Public Service Company.

Description: Compliance filing: Interconnection Reforms—Compliance Filing to be effective 9/30/2023.

Filed Date: 10/17/23.

[1] Memo dated 10/16/23 with the Shoshone Bannock Tribes.

Accession Number: 20231017–5100.
Comment Date: 5 p.m. ET 11/7/23.

Docket Numbers: ER23–2673–001.
Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.
Description: Tariff Amendment: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.17(b): 2023–10–17_SA 4155 Ameren IL-Coles Wind Substitute E&P (J2128) to be effective 8/22/2023.
Filed Date: 10/17/23.
Accession Number: 20231017–5006.
Comment Date: 5 p.m. ET 11/7/23.

Docket Numbers: ER24–120–000.
Applicants: Public Service Company of Colorado.
Description: Tariff Amendment: 2023–10–16—SWF Info–2020–9—NOC to be effective 10/17/2023.
Filed Date: 10/16/23.
Accession Number: 20231016–5176.
Comment Date: 5 p.m. ET 11/6/23.

Docket Numbers: ER24–121–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX–BRP BLUE TOPAZ 6 Generation Interconnection Agreements to be effective 9/22/2023.
Filed Date: 10/16/23.
Accession Number: 20231016–5188.
Comment Date: 5 p.m. ET 11/6/23.

Docket Numbers: ER24–122–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Notice of Cancellation of Service Agreement Nos. 6651/6652; Queue No. AG1–080 to be effective 12/16/2023.
Filed Date: 10/16/23.
Accession Number: 20231016–5191.
Comment Date: 5 p.m. ET 11/6/23.

Docket Numbers: ER24–123–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, SA No. 7117; Queue No. AF2–122 & Cancellation of IISA, SA No. 6166 to be effective 9/14/2023.
Filed Date: 10/16/23.
Accession Number: 20231016–5196.
Comment Date: 5 p.m. ET 11/6/23.

Docket Numbers: ER24–124–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 7120; Queue No. AE2–089 to be effective 9/14/2023.
Filed Date: 10/16/23.
Accession Number: 20231016–5209.
Comment Date: 5 p.m. ET 11/6/23.

Docket Numbers: ER24–125–000.
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): NEP; Rev. to Fixed Exp. Amt. for Transmission-Related Post-Retirement Benefits to be effective 1/1/2024.
Filed Date: 10/17/23.
Accession Number: 20231017–5076.
Comment Date: 5 p.m. ET 11/7/23.

Docket Numbers: ER24–126–000.
Applicants: Public Service Company of Colorado.
Description: Tariff Amendment: 2023–10–17—NEXR—PLGIA—610 NOC 0.1.0 to be effective 10/18/2023.
Filed Date: 10/17/23.
Accession Number: 20231017–5082.
Comment Date: 5 p.m. ET 11/7/23.

Docket Numbers: ER24–127–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: Anniston Solar LGIA Termination Filing to be effective 10/17/2023.
Filed Date: 10/17/23.
Accession Number: 20231017–5099.
Comment Date: 5 p.m. ET 11/7/23.

Docket Numbers: ER24–128–000.
Applicants: Duke Energy Ohio, Inc.
Description: § 205(d) Rate Filing: DEO-Nestlewood RS No. 282 to be effective 12/15/2023.
Filed Date: 10/17/23.
Accession Number: 20231017–5123.
Comment Date: 5 p.m. ET 11/7/23.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF24–54–000.
Applicants: Peoples Natural Gas Company LLC.
Description: Form 556 of Peoples Natural Gas Company LLC.
Filed Date: 10/17/23.
Accession Number: 20231017–5091.
Comment Date: 5 p.m. ET 11/7/23.

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: October 17, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–23356 Filed 10–20–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–101–000]

Waverly Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding Waverly Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 6, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic

service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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Dated: October 16, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–23290 Filed 10–20–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–11462–01–OA]

Science Advisory Board; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office is announcing a public meeting of the chartered Science Advisory Board. The purpose of the meeting is to: conduct a quality review of the draft SAB report titled: *Review of BenMAP and Benefits Methods;* discuss the draft SAB report on the proposed rule titled *Greenhouse Gas Reporting Rule: Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems* (RIN 2060–AV83); and discuss recommendations received from the SAB Work Group for Review of Science Supporting EPA Decisions concerning SAB review of EPA planned regulatory actions.

DATES:

Public meeting: The chartered Science Advisory Board will meet on Thursday, November 30, 2023, from 1:30–5:30 p.m. Eastern Time.

Comments: See the section titled ''Procedures for providing public input'' under **SUPPLEMENTARY INFORMATION** for instructions and deadlines.

ADDRESSES: The meeting will be conducted virtually. Please refer to the SAB website at *https://sab.epa.gov* for information on how to attend the meeting.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning this notice may contact Dr. Thomas Armitage, Designated Federal Officer (DFO), via telephone (202) 564–2155, or email at *armitage.thomas@epa.gov.* General information about the SAB, as well as any updates concerning the meeting announced in this notice, can be found on the SAB website at *https://sab.epa.gov.*

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the EPA Administrator on the scientific and technical basis for agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S. Code 10. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the chartered Science Advisory Board will hold a public meeting to discuss the following topics. (1) The SAB will conduct a quality review of a draft report developed by an SAB panel. The draft report is titled: *Review of BenMAP and Benefits Methods.* The SAB quality review process ensures that draft reports developed by SAB panels, committees, or workgroups are reviewed by the Chartered SAB before being finalized and transmitted to the EPA Administrator. (2) The SAB will discuss a draft report developed by an SAB workgroup on the proposed rule titled *Greenhouse Gas Reporting Rule: Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems* (RIN 2060–AV83). (3) The SAB will discuss recommendations received from the SAB Workgroup for Review of Science Supporting EPA Decisions concerning SAB review of EPA planned regulatory actions. Under the SAB's authorizing statute, the SAB ''may make available to the Administrator, within the time specified by the Administrator, its advice and comments on the adequacy of the scientific and technical basis'' of proposed rules. The SAB Workgroup for Review of Science Supporting EPA Decisions (SAB SSD Workgroup) is charged with identifying EPA planned actions that may warrant SAB review.

Availability of meeting materials: All meeting materials, including the agenda, will be available on the SAB web page at *https://sab.epa.gov.*

Procedures for providing public input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to the EPA. Members of the public can submit relevant comments pertaining to the committee's charge or meeting materials. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for the SAB to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to

provide comments should follow the instruction below to submit comments.

Oral statements: In general, individuals or groups requesting an oral presentation will be limited to three minutes. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Persons interested in providing oral statements should contact the DFO, in writing (preferably via email) at the contact information noted under **FOR FURTHER INFORMATION CONTACT**, by November 21, 2023, to be placed on the list of registered speakers.

Written statements: Written statements will be accepted throughout the advisory process; however, for timely consideration by SAB members, statements should be submitted to the DFO by November 21, 2023, for consideration at the November 30, 2023, meeting. Written statements should be supplied to the DFO at the contact information above via email. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its websites. Members of the public should be aware that their personal contact information if included in any written comments, may be posted to the SAB website. Copyrighted material will not be posted without the explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact the DFO, at the contact information noted above, preferably at least ten days before the meeting, to give the EPA as much time as possible to process your request.

V. Khanna Johnston,

Deputy Director, Science Advisory Board Staff Office.

[FR Doc. 2023–23296 Filed 10–20–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2021–0015; FRL–10982–01–OCSPP]

Product Cancellation Order for Certain Pesticide Registrations; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA issued a notice in the **Federal Register** of April 2, 2021, concerning the cancellations voluntarily requested by the registrants and accepted by the Agency. This notice is being issued to correct the cancellation order in Table 1 of Unit II by removing the registration numbers, 1007–99, 1007–100, 1007–101, and by removing EPA company number 1007 in Table 2 of Unit II. Also, by removing (Item A. For Products 1007–99, 1007–100, and 1007–101) and associated text from (Item VI. Provisions for Disposition of Existing Stocks).

FOR FURTHER INFORMATION CONTACT: Christopher Green, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–2707; email address: *green.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION: The registrant previously requested to cancel these registrations with the request to sell existing stocks until May 31, 2021; however, the registrant submitted a withdrawal of their request, then resubmitted the requests without the request to sell existing stocks until May 31, 2021, FR Doc. 2021–06851, which was published in the **Federal Register** on April 02, 2021 (86 FR 17382) (FRL–10021–91); therefore, 1007–99, 1007–100, & 1007–101 are being removed from the cancellation order.

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may 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–OPP–2021–0015, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (202) 566–1744. Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets.*

II. What does this correction do?

This notice is being issued to correct the cancellation order in Table 1 of Unit II, by removing the registration numbers, 1007–99, 1007–100, and 1007–101. And by removing EPA company number 1007, in Table 2 of Unit II. Also, by removing (Item A. For Products 1007–99, 1007–100, and 1007–101) and associated text, from (Item VI. Provisions for Disposition of Existing Stocks). FR Doc. 2021–06845, published in the **Federal Register** on April 02, 2021 (86 FR 17385) (FRL–10022–13).

Authority: 7 U.S.C. 136 *et seq.*

Dated: October 13, 2023.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2023–23321 Filed 10–20–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0351; FRL–11516–01–OCSPP]

Notice of Receipt of Requests To Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registration has been cancelled only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before November 22, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2008–0351, 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: Alexandra McKee, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–1939; email address: *mckee.alex@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting 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/comments.html*.

II. What action is the Agency taking?

This notice announces receipt by the Agency of requests from three registrants to cancel nine pesticide products registered under FIFRA section 3 (7 U.S.C. 136a) or 24(c) (7 U.S.C. 136v(c)). These registrations are listed in sequence by registration number (or company number and 24(c) number) in Table 1 of this unit.

Unless the Agency determines that there are substantive comments that warrant further review of the requests or the registrants withdraw their requests, EPA intends to issue orders in the **Federal Register** canceling all of the affected registrations.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Company No.	Product name	Active ingredients
66222–10	66222	Diazinon 50W	Diazinon.
TX040026	66222	Diazinon AG500	Diazinon.
ID070003	66222	Diazinon AG600 WBC Insecticide	Diazinon.
ID030018	66222	Diazinon AG500	Diazinon.
CA050002	66222	Diazinon AG500	Diazinon.
ID020003	5905	Diazinon AG500	Diazinon.
GA020002	5905	Diazinon AG500	Diazinon.
GA020003	5905	Diazinon AG500	Diazinon.
19713–492	19713	Drexel Diazinon 50WP	Diazinon.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in this unit.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company name and address
66222	Adama US, 8601 Six Forks Road, Suite 300, Raleigh, NC 27615.
19713	Drexel Chemical Company, 1700 Channel Avenue, P.O. Box 13327, Memphis, TN 38113.
5905	Helena Agri-Enterprises, LLC, 225 Schilling Boulevard, Suite 300, Collierville, TN 38017.

III. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA (7 U.S.C. 136d(f)(1)(B)) requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) (7 U.S.C. 136d(f)(1)(C)) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The registrants in Table 2 of Unit II. have requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 30-day comment period on the proposed requests.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation should submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous cancellation action, the effective date of

cancellation and all other provisions of any earlier cancellation action are controlling.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Because the Agency has identified no significant potential risk concerns associated with these pesticide products, upon cancellation of the products identified in Table 1 of Unit II., EPA anticipates allowing registrants to sell and distribute existing stocks of these products for 1 year after publication of the Cancellation Order in the **Federal Register**. Thereafter, registrants will be prohibited from selling or distributing the pesticides identified in Table 1 of Unit II., except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal. Persons other than registrants will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

Authority: 7 U.S.C. 136 *et seq.*

Dated: October 17, 2023.

Mary Elissa Reaves,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2023–23349 Filed 10–20–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–11456–01–OA]

Science Advisory Board Environmental Justice Science and Analysis Review Panel; Nominations Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office requests public nominations of scientific experts to form a panel to review the revised Technical Guidance for Assessing Environmental Justice in Regulatory Analysis (Environmental Justice Technical Guidance or EJTG) and develop a self-initiated commentary outlining recommendations on advancing environmental justice science in rulemaking. The SAB Environmental Justice Science and Analysis Review Panel will review the revised EJTG to be released publicly in 2023, as well as other information to be provided by the EPA. The Panel will provide recommendations and expert input on both advisory activities.

DATES: Nominations should be submitted by November 13, 2023 per the instructions below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Notice and the request for nominations may contact Dr. Suhair Shallal, Designated Federal Officer (DFO), EPA Science Advisory Board Staff Office by telephone/voice mail (202) 564–2057, or email at *shallal.suhair@epa.gov.* General information concerning the EPA SAB can be found at the EPA SAB website at *https://sab.epa.gov.*

SUPPLEMENTARY INFORMATION:

Background: The SAB (42 U.S.C. 4365) is a chartered Federal Advisory Committee that provides independent scientific and technical peer review, advice, and recommendations to the EPA Administrator on the technical basis for EPA actions. As a Federal Advisory Committee, the SAB conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S. Code 10) and related regulations. The SAB Staff Office is forming an expert panel, the Environmental Justice Science and Analysis Review Panel, under the auspices of the Chartered SAB. The Environmental Justice Science and Analysis Review Panel will provide advice through the chartered SAB. The SAB and the Environmental Justice Science and Analysis Review Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

The SAB Environmental Justice Science and Analysis Review Panel will conduct a review of the revised Technical Guidance for Assessing Environmental Justice in Regulatory Analysis (Environmental Justice Technical Guidance or EJTG) and develop a self-initiated commentary outlining recommendations on advancing environmental justice science in rulemaking. The SAB Environmental Justice Science and Analysis Review Panel will consider the revised EJTG as well as other information to be provided by the EPA. The Panel will provide recommendations and expert input on both advisory activities.

The revised EJTG is a document that provides EPA analysts with broad guidance on how to assess disproportionate and adverse human health and environmental impacts of proposed rules and actions on vulnerable and overburdened populations in a variety of regulatory contexts. The 2016 EJ Technical Guidance was peer reviewed by the SAB in 2014. EPA is currently revising the EJ Technical Guidance, that will be released publicly in late 2023. The Panel will also identify key findings about the current state of environmental justice science utilized across EPA in the context of regulations and develop a commentary with actionable recommendations for potential methodological and technical improvements of environmental justice analyses utilized to support regulatory actions.

Request for Nominations: The SAB Staff Office is seeking nominations of nationally and internationally recognized scientists with demonstrated expertise in the following disciplines: environmental exposure, fate and transport, human health risk assessment, toxicology, public health, social and behavioral sciences, data visualization, environmental justice screening tools and modeling; environmental pollution and/or contaminants; environmental economics, including cost-benefit analysis; sociology; environmental stressors; exposure and dose-response assessment; epidemiology; demographics; geospatial analyses; spatial mathematics or distributional analysis; decision-making science; statistics; traditional ecological knowledge, and risk communication. Specifically, we are seeking experts with experience in assessing impacts related to environmental justice concerns, and conducting scientific analyses conducted to inform regulatory impacts. Strongest consideration will be given to individuals with demonstrated experience working with overburdened and vulnerable communities, or communities with EJ concerns in addition to the disciplines listed above (as documented in their curriculum vitae, resume, and/or publication history).

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate qualified individuals in the areas of expertise described above for possible service on the SAB Panel. Individuals may self-nominate. Nominations should be submitted in electronic format (preferred) using the online nomination form on the SAB website at *https://sab.epa.gov* (see the ''Public Input on Membership'' list under ''Committees, Panels, and Membership'' following the

instructions for ''Nominating Experts to Advisory Panels and Ad Hoc Committees Being Formed,'' provided on the SAB website (see the ''Nomination of Experts'' link under ''Current Activities'' at *https://sab.epa.gov*). To be considered, nominations should include the information requested below. EPA values and welcomes diversity. All qualified candidates are encouraged to apply regardless of sex, race, disability, or ethnicity. Nominations should be submitted in time to arrive no later than November 13, 2023.

The following information should be provided on the nomination form: contact information for the person making the nomination; contact information for the nominee; and the disciplinary and specific areas of expertise of the nominee. Nominees will be contacted by the SAB Staff Office and will be asked to provide a recent curriculum vitae and a narrative biographical summary that includes current position, educational background; research activities; sources of research funding for the last two years; and recent service on other national advisory committees or national professional organizations. Persons having questions about the nomination procedures, or who are unable to submit nominations through the SAB website, should contact the DFO at the contact information noted above. The names and biosketches of qualified nominees identified by respondents to this **Federal Register** Notice, and additional experts identified by the SAB Staff Office, will be posted in a List of Candidates for the Panel on the SAB website at *https://sab.epa.gov.* Public comments on the List of Candidates will be accepted for 21 days. The public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates.

For the EPA SAB Staff Office, a balanced review panel includes candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. In forming the expert panel, the SAB Staff Office will consider public comments on the Lists of Candidates, information provided by the candidates themselves, and background information independently gathered by the SAB Staff Office. Selection criteria to be used for panel membership include: (a) scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a loss of impartiality; (e) skills working in committees, subcommittees and advisory panels; and (f) for the panel as a whole, diversity of expertise and scientific points of view.

The SAB Staff Office's evaluation of an absence of financial conflicts of interest will include a review of the ''Confidential Financial Disclosure Form for Environmental Protection Agency Special Government Employees'' (EPA Form 3110–48). This confidential form is required and allows government officials to determine whether there is a statutory conflict between a person's public responsibilities (which include membership on an EPA federal advisory committee) and private interests and activities, or the appearance of a loss of impartiality, as defined by federal regulation. The form may be viewed and downloaded through the ''Ethics Requirements for Advisors'' link on the SAB website at *https://sab.epa.gov.* This form should not be submitted as part of a nomination.

V. Khanna Johnston,

Deputy Director, Science Advisory Board Staff Office.

[FR Doc. 2023–23295 Filed 10–20–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–11428–01–OLEM]

Forty-Fourth Update of the Federal Agency Hazardous Waste Compliance Docket

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Since 1988, the Environmental Protection Agency (EPA) has maintained a Federal Agency Hazardous Waste Compliance Docket (''Docket'') under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). CERCLA requires EPA to establish a Docket that contains certain information reported to EPA by Federal facilities that manage hazardous waste or from which a reportable quantity of hazardous substances has been released. This notice identifies the Federal facilities not previously listed on the Docket and identifies Federal facilities reported to EPA since the last update on April 24, 2023. In addition to the list of additions to the Docket, this notice includes a section with revisions of the previous Docket list and a section of Federal facilities that are to be deleted from the Docket. Thus, the revisions in this update include three additions, two deletions, and zero corrections to the Docket since the previous update.

DATES: This list is current as of September 18, 2023.

FOR FURTHER INFORMATION CONTACT: Electronic versions of the Docket and more information on its implementation can be obtained at *https://www.epa.gov/fedfac/federal-agency-hazardous-waste-compliance-docket* by clicking on the link for *Cleanups at Federal Facilities* or by contacting Jonathan Tso (*Tso.Jonathan@epa.gov*), Federal Agency Hazardous Waste Compliance Docket Coordinator, Federal Facilities Restoration and Reuse Office. Additional information on the Docket and a complete list of Docket sites can be obtained at: *https://www.epa.gov/fedfac/federal-agency-hazardous-waste-compliance-docket-1.*

SUPPLEMENTARY INFORMATION:

Table of Contents

1.0 Introduction

Section 120(c) of CERCLA, 42 U.S.C. 9620(c), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires EPA to establish the Federal Agency Hazardous Waste Compliance Docket. The Docket contains information on Federal facilities that manage hazardous waste and such information is submitted by Federal agencies to EPA under sections 3005, 3010, and 3016 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6925, 6930, and 6937. Additionally, the Docket contains information on Federal facilities with a reportable quantity of hazardous substances that has been released and such information is submitted by Federal agencies to EPA under section 103 of CERCLA, 42 U.S.C. 9603. Specifically, RCRA section 3005 establishes a permitting system for certain hazardous waste treatment, storage, and disposal (TSD) facilities; RCRA section 3010 requires waste generators, transporters and TSD facilities to notify EPA of their

hazardous waste activities; and RCRA section 3016 requires Federal agencies to submit biennially to EPA an inventory of their Federal hazardous waste facilities. CERCLA section 103(a) requires the owner or operator of a vessel or onshore or offshore facility to notify the National Response Center (NRC) of any spill or other release of a hazardous substance that equals or exceeds a reportable quantity (RQ), as defined by CERCLA section 101. Additionally, CERCLA section 103(c) requires facilities that have ''stored, treated, or disposed of'' hazardous wastes and where there is ''known, suspected, or likely releases'' of hazardous substances to report their activities to EPA.

CERCLA section 120(d) requires EPA to take steps to assure that a Preliminary Assessment (PA) be completed for those sites identified in the Docket and that the evaluation and listing of sites with a PA be completed within a reasonable time frame. The PA is designed to provide information for EPA to consider when evaluating the site for potential response action or inclusion on the National Priorities List (NPL).

The Docket serves three major purposes: (1) To identify all Federal facilities that must be evaluated to determine whether they pose a threat to human health and the environment sufficient to warrant inclusion on the National Priorities List (NPL); (2) to compile and maintain the information submitted to EPA on such facilities under the provisions listed in section 120(c) of CERCLA; and (3) to provide a mechanism to make the information available to the public. Previous Docket updates are available at *https://www.epa.gov/fedfac/previous-federal-agency-hazardous-waste-compliance-docket-updates.*

This notice provides some background information on the Docket. Additional information on the Docket requirements and implementation are found in the Docket Reference Manual, Federal Agency Hazardous Waste Compliance Docket found at *http://www.epa.gov/fedfac/docket-reference-manual-federal-agency-hazardous-waste-compliance-docket-interim-final* or obtained by calling the Regional Docket Coordinators listed below. This notice also provides changes to the list of sites included on the Docket in three areas: (1) Additions, (2) Deletions, and (3) Corrections. Specifically, additions are newly identified Federal facilities that have been reported to EPA since the last update and now are included on the Docket; the deletions section lists Federal facilities that EPA is deleting from the Docket.[1] The information submitted to EPA on each Federal facility is maintained in the Docket repository located in the EPA Regional office of the Region in which the Federal facility is located; for a description of the information required under those provisions, *see* 53 FR 4280 (February 12, 1988). Each repository contains the documents submitted to EPA under the reporting provisions and correspondence relevant to the reporting provisions for each Federal facility.

In prior updates, information was also provided regarding No Further Remedial Action Planned (NFRAP) status changes. However, information on NFRAP and NPL status is no longer being provided separately in the Docket update as it is now available at: *http://www.epa.gov/fedfacts/federal-facility-cleanup-sites-searchable-list* or by contacting the EPA HQ Docket Coordinator at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

2.0 Regional Docket Coordinators

Contact the following Docket Coordinators for information on Regional Docket repositories:

- *US EPA Region 1.* Alyssa Sierra (HBS), 5 Post Office Square, Suite 100, Mail Code: 01–5, Boston, MA 02109–3912, (617) 918–1603.
- *US EPA Region 2.* James Desir, 290 Broadway, New York, NY 10007–1866, (212) 637–4342.
- *US EPA Region 3.* Joseph Vitello (3HS12), 1650 Arch Street, Philadelphia, PA 19107, (215) 814–3354.
- *US EPA Region 3.* Dawn Fulsher (3HS12), 1650 Arch Street, Philadelphia, PA 19107, (215) 814–3270.
- *US EPA Region 4.* Emily Jones (9T25), 61 Forsyth St. SW, Atlanta, GA 30303, (404) 562–8334.
- *US EPA Region 5.* David Brauner (SR–6J), 77 W Jackson Blvd., Chicago, IL 60604, (312) 886–1526.
- *US EPA Region 6.* Philip Ofosu (6SF–RA), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–3178.
- *US EPA Region 7.* Todd H Davis (SUPRERSB), 11201 Renner Blvd., Lenexa, KS 66219, (913) 551–7749.
- *US EPA Region 8.* Ryan Dunham (EPR–F), 1595 Wynkoop Street, Denver, CO 80202, (303) 312–6627.
- *US EPA Region 9.* Leslie Ramirez (SFD–6–1), 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3978.
- *US EPA Region 10.* Stephen Nguyen, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–1073.

[1] See section 3.2 for the criteria for being deleted from the Docket.

3.0 Revisions of the Previous Docket

This section includes a discussion of the additions, deletions and corrections to the list of Docket facilities since the previous Docket update.

3.1 Additions

These Federal facilities are being added primarily because of new information obtained by EPA (for example, recent reporting of a facility pursuant to RCRA sections 3005, 3010, or 3016 or CERCLA section 103). CERCLA section 120, as amended by the Defense Authorization Act of 1997, specifies that EPA take steps to assure that a Preliminary Assessment (PA) be completed within a reasonable time frame for those Federal facilities that are included on the Docket. Among other things, the PA is designed to provide information for EPA to consider when evaluating the site for potential response action or listing on the NPL. This notice includes three additions.

3.2 Deletions

There are no statutory or regulatory provisions that address deletion of a facility from the Docket. However, if a facility is incorrectly included on the Docket, it may be deleted from the Docket. The criteria EPA uses in deleting sites from the Docket include: a facility for which there was an incorrect report submitted for hazardous waste activity under RCRA (*e.g.,* 40 CFR 262.44); a facility that was not Federally-owned or operated at the time of the listing; a facility included more than once (*i.e.,* redundant listings); or when multiple facilities are combined under one listing. (*See* Docket Codes (*Reasons for Deletion of Facilities*) for a more refined list of the criteria EPA uses for deleting sites from the Docket.) Facilities being deleted no longer will be subject to the requirements of CERCLA section 120(d). This notice includes two deletions.

3.3 Corrections

Changes necessary to correct the previous Docket are identified by both EPA and Federal agencies. The corrections section may include changes in addresses or spelling, and corrections of the recorded name and ownership of a Federal facility. In addition, changes in the names of Federal facilities may be made to establish consistency in the Docket or between the Superfund Enterprise Management System (SEMS) and the Docket. For the Federal facility for which a correction is entered, the original entry is as it appeared in previous Docket updates. The corrected update is shown directly below, for easy

comparison. This notice includes zero corrections.

4.0 Process for Compiling the Updated Docket

In compiling the newly reported Federal facilities for the update being published in this notice, EPA extracted the names, addresses, and identification numbers of facilities from four EPA databases—the WebEOC, the Biennial Inventory of Federal Agency Hazardous Waste Activities, the Resource Conservation and Recovery Act Information System (RCRAInfo), and SEMS—that contain information about Federal facilities submitted under the four provisions listed in CERCLA section 120(c).

EPA assures the quality of the information on the Docket by conducting extensive evaluation of the current Docket list and contacts the other Federal Agency (OFA) with the information obtained from the databases identified above to determine which Federal facilities were, in fact, newly reported and qualified for inclusion on the update. EPA is also striving to correct errors for Federal facilities that were previously reported. For example, state-owned or privately-owned facilities that are not operated by the Federal government may have been included. Such problems are sometimes caused by procedures historically used to report and track Federal facilities data. Representatives of Federal agencies are asked to contact the EPA HQ Docket Coordinator at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice if revisions of this update information are necessary.

5.0 Facilities Not Included

Certain categories of facilities may not be included on the Docket, such as: (1) Federal facilities formerly owned by a Federal agency that at the time of consideration was not Federally-owned or operated; (2) Federal facilities that are small quantity generators (SQGs) that have not, more than once per calendar year, generated more than 1,000 kg of hazardous waste in any single month; (3) Federal facilities that are very small quantity generators (VSQGs) that have never generated more than 100 kg of hazardous waste in any month; (4) Federal facilities that are solely hazardous waste transportation facilities, as reported under RCRA section 3010; and (5) Federal facilities that have mixed mine or mill site ownership.

An EPA policy issued in June 2003 provided guidance for a site-by-site evaluation as to whether ''mixed ownership'' mine or mill sites, typically created as a result of activities conducted pursuant to the General Mining Law of 1872 and never reported under section 103(a) of CERCLA, should be included on the Docket. For purposes of that policy, mixed ownership mine or mill sites are those located partially on private land and partially on public land. This policy is found at *http://www.epa.gov/fedfac/policy-listing-mixed-ownership-mine-or-mill-sites-created-result-general-mining-law-1872.* The policy of not including these facilities may change; facilities now omitted may be added at some point if EPA determines that they should be included.

6.0 Facility NPL Status Reporting, Including NFRAP Status

EPA tracks the NPL status of Federal facilities listed on the Docket. An updated list of the NPL status of all Docket facilities, as well as their NFRAP status, is available at *https://www.epa.gov/fedfacts/federal-facility-cleanup-sites-searchable-list* or by contacting the EPA HQ Docket Coordinator at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. In prior updates, information regarding NFRAP status changes was provided separately.

7.0 Information Contained on Docket Listing

The information is provided in three tables. The first table is a list of additional Federal facilities that are being added to the Docket. The second table is a list of Federal facilities that are being deleted from the Docket. The third table is for corrections.

The Federal facilities listed in each table are organized by the date reported. Under each heading is listed the name and address of the facility, the Federal agency responsible for the facility, the statutory provision(s) under which the facility was reported to EPA, and a code.[2]

The statutory provisions under which a Federal facility is reported are listed in a column titled ''Reporting Mechanism.'' Applicable mechanisms are listed for each Federal facility: for example, Sections 3005, 3010, 3016, 103(c), or Other. ''Other'' has been added as a reporting mechanism to indicate those Federal facilities that otherwise have been identified to have releases or threat of releases of hazardous substances. The National Contingency Plan at 40 CFR 300.405 addresses discovery or notification, outlines what constitutes discovery of a hazardous substance release, and states that a release may be discovered in several ways, including: (1) A report submitted in accordance with section 103(a) of CERCLA, *i.e.,* reportable quantities codified at 40 CFR part 302; (2) a report submitted to EPA in accordance with section 103(c) of CERCLA; (3) investigation by government authorities conducted in accordance with section 104(e) of CERCLA or other statutory authority; (4) notification of a release by a Federal or state permit holder when required by its permit; (5) inventory or survey efforts or random or incidental observation reported by government agencies or the public; (6) submission of a citizen petition to EPA or the appropriate Federal facility requesting a preliminary assessment, in accordance with section 105(d) of CERCLA; (7) a report submitted in accordance with section 311(b)(5) of the Clean Water Act; and (8) other sources. As a policy matter, EPA generally believes it is appropriate for Federal facilities identified through the CERCLA discovery and notification process to be included on the Docket.

The complete list of Federal facilities that now make up the Docket and the NPL and NFRAP status are available to interested parties and can be obtained at *https://www.epa.gov/fedfacts/federal-facility-cleanup-sites-searchable-list* or by contacting the EPA HQ Docket Coordinator at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. As of the date of this notice, the total number of Federal facilities that appear on the Docket is 2,393.

Gregory Gervais,

Director, Federal Facilities Restoration and Reuse Office, Office of Land and Emergency Management.

7.1 Docket Codes/Reasons for Deletion of Facilities

- *Code 1.* Small-Quantity Generator and Very Small Quantity Generator. Show citation box.
- *Code 2.* Never Federally Owned and/or Operated.
- *Code 3.* Formerly Federally Owned and/or Operated but not at time of listing.
- *Code 4.* No Hazardous Waste Generated.
- *Code 5.* (This code is no longer used.)
- *Code 6.* Redundant Listing/Site on Facility.
- *Code 7.* Combining Sites Into One Facility/Entries Combined.
- *Code 8.* Does Not Fit Facility Definition.

[2] Each Federal facility listed in the update has been assigned a code that indicates a specific reason for the addition or deletion. The code precedes this list.

7.2 Docket Codes/Reasons for Addition of Facilities

• *Code 15.* Small-Quantity Generator with either a RCRA 3016 or CERCLA 103 Reporting Mechanism.

• *Code 16.* One Entry Being Split Into Two (or more)/Federal Agency Responsibility Being Split.

• *Code 16A.* NPL site that is part of a Facility already listed on the Docket.

• *Code 17.* New Information Obtained Showing That Facility Should Be Included.

• *Code 18.* Facility Was a Site on a Facility That Was Disbanded; Now a Separate Facility.

• *Code 19.* Sites Were Combined Into One Facility.

• *Code 19A.* New Currently Federally Owned and/or Operated Facility Site.

7.3 Docket Codes/Types of Corrections of Information About Facilities

• *Code 20.* Reporting Provisions Change.

• *Code 20A.* Typo Correction/Name Change/Address Change.

• *Code 21.* Changing Responsible Federal Agency. (If applicable, new responsible Federal agency submits proof of previously performed PA, which is subject to approval by EPA.)

• *Code 22.* Changing Responsible Federal Agency and Facility Name. (If applicable, new responsible Federal Agency submits proof of previously performed PA, which is subject to approval by EPA.)

• *Code 24.* Reporting Mechanism Determined To Be Not Applicable After Review of Regional Files.

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #44—ADDITIONS

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code	Date
US COAST GUARD BASE BOSTON.	427 COMMERCIAL STREET.	BOSTON	MA	02109	HOMELAND SECURITY.	RCRA 3010	17	UPDATE #44.
US VETERANS AFFAIRS MEDICAL CENTER.	718 SMYTH ROAD	MANCHESTER	NH	03104	VETERANS AFFAIRS.	RCRA 3010	17	UPDATE #44.
CHARLESTON IINTERNATIONAL AIRPORT VOR.	5775 S AVIATION AVENUE.	NORTH CHARLESTON.	SC	29406	TRANSPORTATION	RCRA 3010	17	UPDATE #44.

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #44—DELETIONS

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code	Date
ME ARNG OMS#1	772 STEVENS AVENUE.	PORTLAND	ME	04103	ARMY	RCRA 3010	2	UPDATE #44.
USDA FS WENATCHEE NF: HOLDEN MINE.	T31N R17E SEC 7 WM.	HOLDEN	WA	98816	AGRICULTURE	RCRA 3016	2	UPDATE #44.

[FR Doc. 2023–21765 Filed 10–20–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–091]

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 October 6, 2023 10 a.m. EST Through October 16, 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. 20230138, Final, USACE, CO, Halligan Water Supply Project, Review Period Ends: 11/22/2023, Contact: Cody S. Wheeler 720–922–3846.

EIS No. 20230139, Draft, BLM, OR, Hult Reservoir and Dam Safety, Comment Period Ends: 12/7/2023, Contact: Dianne Olson 971–213–4970.

EIS No. 20230140, Final, USACE, MS, Memphis Metropolitan Stormwater North DeSoto County Feasibility Study, DeSoto County, Mississippi, Review Period Ends: 11/22/2023, Contact: Joshua Koontz 901–544–3975.

EIS No. 20230141, Draft, USACE, FL, North of Lake Okeechobee Storage Reservoir Section 203 Study, Comment Period Ends: 12/7/2023, Contact: Dr. Gretchen Ehlinger 904–232–1665.

EIS No. 20230142, Draft Supplement, BLM, AK, Ambler Road Draft Supplemental Environmental Impact Statement, Comment Period Ends: 12/22/2023, Contact: Stacie McIntosh 907–378–3815.

Dated: October 16, 2023.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2023–23385 Filed 10–19–23; 11:15 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX; FR ID 179305]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents,

including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written PRA comments should be submitted on or before December 22, 2023. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

OMB Control Number: 3060–XXXX.

Title: Request for Religious Accommodation.

Form Number: FCC Form–5652.

Type of Review: New Collection.

Respondents: Individuals or households; Federal Government.

Number of Respondents and Responses: 3 respondents; 3 responses.

Estimated Time per Response: 2.5 hours.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Voluntary. Statutory authority for this information collection is contained Title VII of the Civil Rights Act of 1964, as amended, 29 U.S.C. part 1605; U.S. Equal Employment Opportunity Commission's Compliance Manual, Section 12: Religious Discrimination (January 15, 2021); U.S. Equal Employment Opportunity Commission's Questions and Answers: Religious Discrimination in the Workplace (July 22, 2008); U.S. Office of Personnel Management's Fact Sheet: Adjustment of Work Schedules for Religious Observances.

Total Annual Burden: 8 Hours.

Total Annual Cost: $600.

Needs and Uses: In order to file a religious accommodation request, requesters must provide certain information to allow the FCC's Office of Workplace Diversity to determine that the employee or applicant satisfies the requirements of the Title VII of the Civil Rights Act of 1964 for filing a request. The information requested in the Religious Accommodation Form assists requesters to provide information to ascertain if the requesters sincerely held religious beliefs, observances or practices conflict with a specific task or requirement of the position or an application process. Specifically, the FCC Form 5652, the Religious Accommodation Request Form provides information regarding the type of accommodation or modification requested, the requesters sincerely held belief, and which FCC requirement, policy, or practice that conflicts with the requesters sincerely held religious observance, practice, or belief.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–23306 Filed 10–20–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1248; FR ID 179524]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written PRA comments should be submitted on or before December 22, 2023. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

OMB Control Number: 3060–1248.

Title: Transition from TTY to Real-Time Text Technology, CG Docket No. 16–145 and GN Docket No. 15–178.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents and Responses: 600 respondents; 4,358 responses.

Estimated Time per Response: 0.2 hours (12 minutes) to 60 hours.

Frequency of Response: Annual, ongoing, and semiannual reporting requirements; recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefit. The statutory authority can be found at §§ 4(i), 225, 255, 301, 303(r), 316, 403, 715, and 716 of the Communications Act of 1934, as amended, and § 106 of the Twenty-First Century Communications and Video Accessibility Act of 2010, 47 U.S.C. 154(i), 225, 255, 301, 303(r), 316, 403, 615c, 616, 617; Public Law No. 111–260, 106, 124 Stat. 2751, 2763 (2010).

Total Annual Burden: 71,142 hours.

Total Annual Cost: No cost.

Needs and Uses: Text telephone (TTY) technology provides a way for people with disabilities to send and receive text communications over the public switched telephone network (PSTN). Changes to communications networks, particularly ongoing technology transitions from circuit switched to IP-based networks and from copper to wireless and fiber infrastructure, have affected the quality and utility of TTY technology, prompting discussions on transitioning to an alternative advanced communications technology for text

communications. Accordingly, on December 16, 2016, the Commission released *Transition from TTY to Real-Time Text Technology,* Report and Order, document FCC 16–169, 82 FR 7699, January 23, 2017, amending its rules that govern the obligations of wireless service providers and manufacturers to support TTY technology to permit such providers and manufacturers to provide support for real-time text (RTT) over wireless IP-based networks to facilitate an effective and seamless transition to RTT in lieu of continuing to support TTY technology.

In document FCC 16–169, the Commission adopted measures requiring the following:

(a) Each wireless provider and manufacturer that voluntarily transitions from TTY technology to RTT over wireless IP-based networks and services is encouraged to develop consumer and education efforts that include (1) the development and dissemination of educational materials that contain information pertinent to the nature, purpose, and timelines of the RTT transition; (2) internet postings, in an accessible format, of information about the TTY to RTT transition on the websites of covered entities; (3) the creation of a telephone hotline and an online interactive and accessible service that can answer consumer questions about RTT; and (4) appropriate training of staff to effectively respond to consumer questions. All consumer outreach and education should be provided in accessible formats including, but not limited to, large print, Braille, videos in American Sign Language and that are captioned and video described, emails to consumers who have opted to receive notices in this manner, and printed materials. Service providers and manufacturers are also encouraged to coordinate with consumer, public safety, and industry stakeholders to develop and distribute education and outreach materials. The information will inform consumers of alternative accessible technology available to replace TTY technology that may no longer be available to the consumer through their provider or on their device.

(b) Each wireless provider that requested or will request and receive a waiver of the requirement to support TTY technology over wireless IP-based networks and services must apprise its customers, through effective and accessible channels of communication, that (1) until TTY is sunset, TTY technology will not be supported for calls to 911 services over IP-based wireless services, and (2) there are alternative PSTN-based and IP-based accessibility solutions for people with disabilities to reach 911 services. These notices must be developed in coordination with public safety answering points (PSAPs) and national consumer organizations, and include a listing of text-based alternatives to 911, including, but not limited to, TTY capability over the PSTN, various forms of PSTN-based and IP-based TRS, and text-to-911 (where available). The notices will inform consumers on the loss of the use of TTY for completing 911 calls over the provider's network and alert them to alternatives service for which TTY may be used.

(c) Once every six months, each wireless provider that requests and receives a waiver of the requirement to support TTY technology must file a report with the Commission and inform its customers regarding its progress toward and the status of the availability of new IP-based accessibility solutions. Such reports must include (1) information on the interoperability of the provider's selected accessibility solution with the technologies deployed or to be deployed by other carriers and service providers, (2) the backward compatibility of such solution with TTYs, (3) a showing of the provider's efforts to ensure delivery of 911 calls to the appropriate PSAP, (4) a description of any obstacles incurred towards achieving interoperability and steps taken to overcome such obstacles, and (5) an estimated timetable for the deployment of accessibility solutions. The information will inform consumers of the progress towards the availability of alternative accessible means to replace TTY, and the Commission will be able to evaluate the reports to determine if any changes to the waivers are warranted or of any impediments to progress that it may be in a position to resolve.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–23307 Filed 10–20–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–24–1329; Docket No. CDC–2023–0085]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Promoting Adolescent Health through School-Based HIV/STD Prevention Reporting Templates. The data collection is designed to obtain detailed, specific, and consistent reporting measures to ensure that the Division of Adolescent and School Health (DASH) can determine the context, process, and effectiveness of program activities.

DATES: CDC must receive written comments on or before December 22, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2023–0085 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and

Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

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. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

Promoting Adolescent Health through School-Based HIV/STD Prevention Reporting Templates (OMB Control No. 0920–1329, Exp. 3/31/2024)—Revision—National Center for HIV, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) requests a one-year OMB approval to extend and revise the information collection titled, Promoting Adolescent Health through School-Based HIV/STD Prevention Reporting Templates. PS18–1807 Promoting Adolescent Health through School-Based HIV/STD Prevention was awarded August 1, 2018 with a six-year project period. It is funded through the Division of Adolescent and School Health (DASH).

Health behaviors during adolescence set the stage for behaviors and health into adulthood. In 2017, 40% of high school students in the US had ever had sexual intercourse and 29% were currently sexually active. Among currently sexually active students, 46% did not use a condom, and 14% did not use any method to prevent pregnancy the last time they had sexual intercourse. In 2016, young people aged 13–24 accounted for an estimated 21% of all new HIV diagnoses in the United States. Half of the nearly 20 million new STDs reported each year were among young people aged 15–24.

Schools have direct contact with over 50 million students for at least six hours a day over 13 key years of their social, physical, and intellectual development. Schools can help understand and prevent adolescent risk for HIV, STD, and teen pregnancy. Schools play an important role in HIV/STD prevention and can influence students' risk for HIV infection and other STDs through parental engagement, health education, connection to physical and mental health services, and connecting youth to each other and important adults.

The PS18–1807 award supports implementation of activities at multiple levels of the education system to achieve health goals. School curricula, policies, and services are generally locally determined by local education agencies (LEA), or local school districts, with guidance from state education agencies (SEA). LEA and SEA both provide training, resources, and technical assistance to schools. SEA establish supportive state environments for local decision making about school policies and practices. LEA support implementation of school-based strategies through district level actions and decisions. Recognizing the importance of locally tailoring approaches, PS18–1807 uses priority schools within a district, or LEA, as a natural laboratory for working through program implementation details before scaling up—or diffusing—activities to all schools in a district. This approach supports close connections with decision-makers responsible for educational options and school environments at each of these levels. Additional support from organizations with specialized expertise and capacity for national reach will be used to increase the impact of SEA and LEA strategies. They provide a range of highly trained experts for professional development and technical assistance to advance HIV/STD prevention work.

There are separate templates and work plans for Component 1 reporting and for Component 2 reporting. A total of 80 sites will be filling out the Component 1 reporting template and work plan; 25 sites will be filling out the Component 2 reporting template and work plans (required programmatic activities work plan and professional development work plan). CDC will add one additional question to the reporting template. The additional question is: ''(If applicable) Publications: List publications resulting from the project, as well as plans for further publications.'' The work plan template will not be modified.

The Component 1 information collection uses a self-administered reporting template to assess surveillance activities conducted by recipient education and health agencies funded by CDC/DASH under Component 1 of PS18–1807 Promoting Adolescent Health through School-Based HIV/STD Prevention. This data collection will provide DASH with data to generate internal reports that will identify successful and problematic surveillance areas. In addition, the information collection will allow DASH to determine if recipient agencies are completing the required activities of the NOFO on time, as well as identifying problems in implementation. With this information, DASH can ascertain if additional technical assistance is needed to help recipients improve their surveillance implementation if necessary. The reporting template will include questions on the following topics: Youth Risk Behavior Survey completion, and School Health Profiles (Profiles) completion. No personally identifiable information will be collected.

The Component 2 information collection uses a self-administered reporting template to assess HIV and STD prevention efforts conducted by local education agencies (LEA) funded by CDC/DASH under Component 2 of PS18–1807 Promoting Adolescent Health through School-Based HIV/STD Prevention. This data collection will provide DASH with data to generate internal reports that will identify successful and problematic programmatic areas. In addition, both information collections will allow DASH to determine if recipient agencies are completing the required activities of the NOFO on time, as well as identifying problems in implementation. With this information, DASH can ascertain if additional

technical assistance is needed to help recipients improve their program implementation if necessary. In addition, the findings continue to allow CDC to determine the potential impact of currently recommended strategies and make changes to those recommendations if necessary. DASH was able to refine and target the technical assistance provided to recipient agencies to better ensure they completed their work plans and spent funds according to the original Notice of Funding Opportunity. The reporting template will include sections on the following topics: sexual health education (SHE), sexual health services (SHS), safe and supportive environments (SSE) required and additional activities. No personally identifiable information will be collected.

The estimated burden per response ranges from eight hours for Component 1 to 14 hours for Component 2. Recipients will complete the reporting templates every six months and the work plan templates once a year under this approval. Annualizing the collection over one year results in an estimated annualized burden of 3,320 burden hours for respondents. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Surveillance Recipients (Program Managers).	Promoting Adolescent Health through School-Based HIV/STD Prevention Component 1 Reporting Template and Work Plan.	80	3	8	1,920
Local education agency HIV prevention recipients (Program Managers).	Promoting Adolescent Health through School-Based HIV/STD Prevention Component 2 Reporting Template and Work Plans (required programmatic activities work plan and professional development work plan).	25	4	14	1,400
Total					3,320

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–23340 Filed 10–20–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-24–1289]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Sealant Efficiency Assessment for Locals and States (SEALS)'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on June 5, 2023 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Sealant Efficiency Assessment for Locals and States (SEALS) (OMB Control No. 0920–1289)—Reinstatement—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

By age 19, 67% of U.S. adolescents living in poverty have experienced tooth decay and 27% have at least one decayed tooth needing treatment. School sealant programs provide dental sealants, which protect against 80% of cavities for two years, and continue to protect against 50% of cavities for up to

four years. CDC requests information from states regarding children's cavity risk, one-year sealant retention rate, sealant program services delivered, and school sealant program cost and quantity of resources used at each school event. This data will allow CDC and states to monitor the performance and efficiency of their school sealant programs, which will improve and extend program delivery to more children.

CDC requests OMB approval for a Reinstatement of a previously approved data collection. The total estimated annualized burden hours requested are 1,388. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
State Sealant Administrator	Add Program and Add User	18	1	45/60
SSP Local Administrator	Add User and Add School	162	1	43/60
SSP Local Administrator	Program Options and Cost Options	162	1	46/60
SSP Local Administrator	Add Event	162	20	21/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–23339 Filed 10–20–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–4488]

Animal Drug User Fee Rates and Payment Procedures for Fiscal Year 2024

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the fee rates and payment procedures for fiscal year (FY) 2024 animal drug user fees. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Animal Drug User Fee Amendments of 2023 (ADUFA V), authorizes FDA to collect user fees for certain animal drug applications and supplemental animal drug applications, for certain animal drug products, for certain establishments where such products are made, and for certain sponsors of such animal drug applications and/or investigational animal drug submissions. This notice establishes the fee rates for FY 2024.

DATES: The application fee rates are effective for applications submitted on or after October 1, 2023, and will remain in effect through September 30, 2024.

FOR FURTHER INFORMATION CONTACT: Visit FDA's website at *https://www.fda.gov/ForIndustry/UserFees/AnimalDrugUserFeeActADUFA/default.htm* or contact Lisa Kable, Center for Veterinary Medicine (HFV–10), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–6888, *Lisa.Kable@fda.hhs.gov.* For general questions, you may also email FDA's Center for Veterinary Medicine (CVM) at: *cvmadufa@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 740 of the FD&C Act (21 U.S.C. 379j–12), as amended by ADUFA V, establishes four different types of user fees: (1) fees for certain types of animal drug applications and supplemental animal drug applications; (2) annual fees for certain animal drug products; (3) annual fees for certain establishments where such products are made; and (4) annual fees for certain sponsors of animal drug applications and/or investigational animal drug submissions (21 U.S.C. 379j–12(a)). When certain conditions are met, FDA will waive or reduce fees (21 U.S.C. 379j–12(d)).

For FYs 2024 through 2028, the FD&C Act establishes the base revenue amount for each fiscal year (21 U.S.C. 379j–12(b)(1)). Beginning in FY 2025, the base revenue amount is subject to adjustment for inflation and workload (21 U.S.C. 379j–12(c)(2) and (3)). Also beginning in FY 2025, ADUFA V provides for an operating reserve adjustment to allow FDA to adjust the fee revenue amount to maintain a specified operating reserve of carryover user fees (21 U.S.C. 379j–12(c)(4)). FDA may increase the fee revenue amount to maintain a 12-week minimum. If FDA has an excess operating reserve, FDA will decrease the fee revenue amount so that FDA has 22 weeks of operating reserve for FY 2025, 20 weeks for FY 2026, 18 weeks for FY 2027, and 16 weeks for FY 2028.

Fees for applications, establishments, products, and sponsors are to be established each year by FDA so that the percentages of the total revenue that are derived from each type of user fee will be as follows: (1) revenue from application fees shall be 20 percent of total fee revenue; (2) revenue from product fees shall be 27 percent of total fee revenue; (3) revenue from establishment fees shall be 26 percent of total fee revenue; and (4) revenue from sponsor fees shall be 27 percent of total fee revenue (21 U.S.C. 379jndash;12(b)(2)). The fee revenue amount for FY 2024 is $33,500,000 (21 U.S.C. 379j–12(b)(1)). The target revenue amounts for each fee category for FY 2024 are as follows: for application fees, the target revenue amount is $6,700,000; for product fees, the target revenue amount is $9,045,000; for establishment fees, the target revenue amount is $8,710,000; and for sponsor fees, the target revenue amount is $9,045,000.

For FY 2024, the animal drug user fee rates are: $683,673 for an animal drug application; $341,837 for a supplemental animal drug application for which safety or effectiveness data are required, for an animal drug application subject to the criteria set forth in section 512(d)(4) of the FD&C Act (21 U.S.C. 360b(d)(4)), and for an application for conditional approval under section 571 of the FD&C Act (21 U.S.C. 360ccc) for which an animal drug application submitted under section 512(b)(1) of the FD&C Act has been previously approved under section 512(d)(1) of the FD&C Act for another intended use; $12,459 for the annual product fee; $174,200 for the annual establishment fee; and $153,305 for the annual sponsor fee. FDA will issue invoices for FY 2024 product, establishment, and sponsor fees by December 31, 2023, and payment will be due by January 31, 2024. The application fee rates are effective for applications submitted on or after October 1, 2023, and will remain in effect through September 30, 2024.

Applications will not be accepted for review until FDA has received full payment of application fees and any other animal drug user fees owed under the ADUFA program.

II. Revenue Amount for FY 2024

A. Statutory Fee Revenue Amounts

ADUFA V, Title III of Public Law 118–15, specifies that the aggregate base fee revenue amount for FY 2024 for all animal drug user fee categories is $33,500,000 (21 U.S.C. 379j–12(b)(1)).

B. Inflation Adjustment to Fee Revenue Amount

ADUFA V specifies that the annual fee revenue amount is to be adjusted for inflation increases for FY 2025 and subsequent fiscal years (21 U.S.C. 379j–12(c)(2)). Since ADUFA V does not adjust for inflation until FY 2025, there is no inflation adjustment for FY 2024.

C. Workload Adjustment to Inflation Adjusted Fee Revenue Amount

The fee revenue amounts established in ADUFA V for FY 2025 and subsequent fiscal years are also subject to adjustment to account for changes in FDA's review workload (21 U.S.C. 379j–12(c)(3)). Since ADUFA V does not adjust for workload until FY 2025, there is no workload adjustment for FY 2024.

D. Operating Reserve Adjustment

For fiscal year 2025 and each subsequent fiscal year, after the fee revenue amount established under section 740(b) of the FD&C Act is adjusted for inflation and workload, the Secretary shall increase the fee revenue amount for such fiscal year, if necessary to provide an operating reserve of not less than 12 weeks. If the operating reserve is in excess of the number of weeks specified in section 740(c)(4)(C) of the FD&C Act for that fiscal year, the Secretary shall decrease the fee revenue amount to provide not more than the number of weeks specified for that fiscal year. Since ADUFA V does not adjust for the operating reserve until FY 2025, there is no adjustment for FY 2024.

E. FY 2024 Fee Revenue Amounts

The fee revenue amount for FY 2024 is $33,500,000. ADUFA V specifies that this revenue amount is to be divided as follows: 20 percent, or a total of $6,700,000, is to come from application fees; 27 percent, or a total of $9,045,000, is to come from product fees; 26 percent, or a total of $8,710,000 is to come from establishment fees; and 27 percent, or a total of $9,045,000 is to come from sponsor fees (21 U.S.C. 379j–12(b)).

III. Application Fee Calculations for FY 2024

A. Application Fee Revenues and Numbers of Fee-Paying Applications

Each person that submits an animal drug application or a supplemental animal drug application shall be subject to an application fee, with limited exceptions (see 21 U.S.C. 379j–12(a)(1)). The term ''animal drug application'' means an application for approval of any new animal drug submitted under section 512(b)(1) of the FD&C Act or an application for conditional approval of a new animal drug submitted under section 571 of the FD&C Act (see section 739(1) of the FD&C Act (21 U.S.C. 379j–11(1)). A ''supplemental animal drug application'' is defined as a request to FDA to approve a change in an approved animal drug application, or a request to FDA to approve a change to an application approved under section 512(c)(2) of the FD&C Act for which data with respect to safety or effectiveness are required. Such applications are subject to ADUFA fees, except those fees may be waived if the application is intended solely to provide for a minor use or minor species (MUMS) indication (see 21 U.S.C. 379j–12(d)(1)(D)).

Furthermore, ADUFA V continues to provide an exception from application fees for animal drug applications submitted under section 512(b)(1) of the FD&C Act by a sponsor who previously applied for conditional approval under section 571 of the FD&C Act for the same product and paid an application fee at the time they applied for conditional approval. The purpose of this exception is to prevent sponsors of conditionally approved products from having to pay a second application fee at the time they apply for full approval of their products under section 512(b)(1) of the FD&C Act, provided the sponsor's application for full approval is filed consistent with the timeframes established in section 571(h) of the FD&C Act (see 21 U.S.C. 379j–12(a)(1)(C)(ii)).

The application fees are to be set so that they will generate $6,700,000 in fee revenue for FY 2024. The fee for a supplemental animal drug application for which safety or effectiveness data are required, for an animal drug application subject to criteria set forth in section 512(d)(4) of the FD&C Act, and for an application for conditional approval under section 571 of the FD&C Act of a new animal drug for which an animal drug application submitted under section 512(b)(1) of the FD&C Act has been previously approved under section 512(d)(1) for another intended use is to be set at 50 percent of the animal drug application fee (21 U.S.C. 379j–12(a)(1)(A)(ii)).

To set animal drug application fees and supplemental animal drug application fees to realize $6,700,000, FDA must first make some assumptions about the number of fee-paying applications and supplemental applications the Agency will receive in FY 2024.

The Agency knows the number of applications that have been submitted in previous fiscal years. That number fluctuates annually. In estimating the fee revenue to be generated by animal drug application fees in FY 2024, FDA is assuming that the number of applications for which fees will be paid in FY 2024 will equal the average number of applications over the 5 most recently completed fiscal years of the ADUFA program (FY 2018 to FY 2022).

Over the 5 most recently completed fiscal years, the average number of animal drug applications subject to the full fee was 5.20. Over this same period, the average number of supplemental applications for which safety or effectiveness data are required, applications subject to the criteria set forth in section 512(d)(4) of the FD&C Act, and applications for conditional approval of a new animal drug for which a section 512(b)(1) application has been previously approved for another intended use subject to half of the full fee was 9.20.

Based on the previous assumptions, FDA is estimating that it will receive a total of 9.80 fee-paying animal drug applications in FY 2024 (5.20 applications paying a full fee and 9.20 applications paying a half fee).

B. Application Fee Rates for FY 2024

FDA must set the fee rates for FY 2024 so that the estimated 9.80 applications that pay the fee will generate a total of $6,700,000. To generate this amount, the fee for an animal drug application, rounded to the nearest dollar, will have to be $683,673, and the fee for a supplemental animal drug application for which safety or effectiveness data are required, for applications subject to the criteria set forth in section 512(d)(4) of the FD&C Act, and for an application for conditional approval under section 571 of the FD&C Act of a new animal drug for which an animal drug application submitted under section 512(b)(1) of the FD&C Act has been previously approved under section 512(d)(1) for another intended use will have to be $341,837.

IV. Animal Drug Product Fee Calculations for FY 2024

A. Product Fee Revenues and Numbers of Fee-Paying Products

The animal drug product fee must be paid annually by the person named as the applicant in a new animal drug application or supplemental new animal drug application for an animal drug product submitted for listing under section 510 of the FD&C Act (21 U.S.C. 360) and who had an animal drug application or supplemental animal drug application pending at FDA after September 1, 2003 (21 U.S.C. 379j–12(a)(2)). The term ''animal drug product'' means each specific strength or potency of a particular active ingredient or ingredients in final dosage form marketed by a particular manufacturer or distributor, which is uniquely identified by the labeler code and product code portions of the National Drug Code, and for which an animal drug application or a supplemental animal drug application has been approved (21 U.S.C. 379j–11(3)). The product fees are to be set so that they will generate $9,045,000 in fee revenue for FY 2024.

To set animal drug product fees to realize $9,045,000, FDA must make some assumptions about the number of products for which these fees will be paid in FY 2024. FDA developed data on all animal drug products that have been submitted for listing under section 510 of the FD&C Act and matched this to the list of all persons who had an animal drug application or supplemental animal drug application pending after September 1, 2003. As of May 2023, FDA estimates that there are 733 products submitted for listing by persons who had an animal drug application or supplemental animal drug application pending after September 1, 2003. Based on this, FDA estimates that a total of 733 products will be subject to this fee in FY 2024.

In estimating the fee revenue to be generated by animal drug product fees in FY 2024, FDA is assuming that 1 percent of the products invoiced, or seven, will not pay fees in FY 2024, due to fee waivers and reductions. FDA has made this estimate at 1 percent this year, based on historical data over the past 5 completed fiscal years of the ADUFA program.

Accordingly, the Agency estimates that a total of 726 (733 minus 7) products will be subject to product fees in FY 2024.

B. Product Fee Rates for FY 2024

FDA must set the fee rates for FY 2024 so that the estimated 726 products for which fees are paid will generate a total of $9,045,000. To generate this amount will require the fee for an animal drug product, rounded to the nearest dollar, to be $12,459.

V. Animal Establishment Fee Calculations for FY 2024

A. Establishment Fee Revenues and Numbers of Fee-Paying Establishments

The animal drug establishment fee must be paid annually by the person who: (1) owns or operates, directly or through an affiliate, an animal drug establishment; (2) is named as the applicant in an animal drug application or supplemental animal drug application for an animal drug product submitted for listing under section 510 of the FD&C Act; (3) had an animal drug application or supplemental animal drug application pending at FDA after September 1, 2003; and (4) whose establishment engaged in the manufacture of the animal drug product during the fiscal year (see 21 U.S.C. 379j–12(a)(3)). An establishment subject to animal drug establishment fees is assessed only one such fee per fiscal year. The term ''animal drug establishment'' is defined as a foreign or domestic place of business at one general physical location, consisting of one or more buildings, all of which are within 5 miles of each other, at which one or more animal drug products are manufactured in final dosage form (21 U.S.C. 379j–11(4)). The establishment fees are to be set so that they will generate $8,710,000 in fee revenue for FY 2024.

To set animal drug establishment fees to realize $8,710,000, FDA must make some assumptions about the number of establishments for which these fees will be paid in FY 2024. FDA developed data on all animal drug establishments and matched this to the list of all persons who had an animal drug application or supplemental animal drug application pending after September 1, 2003. As of May 2023, FDA estimates that there are a total of 53 establishments owned or operated by persons who had an animal drug application or supplemental animal drug application pending after September 1, 2003. Based on this, FDA believes that 53 establishments will be subject to this fee in FY 2024.

In estimating the fee revenue to be generated by animal drug establishment fees in FY 2024, FDA is assuming that 6 percent of the establishments invoiced, or three, will not pay fees in FY 2024 due to fee waivers and reductions. FDA has made this estimate at 6 percent this year, based on historical data over the past 5 completed fiscal years.

Accordingly, the Agency estimates that a total of 50 establishments (53 minus 3) will be subject to establishment fees in FY 2024.

B. Establishment Fee Rates for FY 2024

FDA must set the fee rates for FY 2024 so that the fees paid for the estimated 50 establishments will generate a total of $8,710,000. To generate this amount will require the fee for an animal drug establishment, rounded to the nearest dollar, to be $174,200.

VI. Animal Drug Sponsor Fee Calculations for FY 2024

A. Sponsor Fee Revenues and Numbers of Fee-Paying Sponsors

The animal drug sponsor fee must be paid annually by each person who: (1) is named as the applicant in an animal drug application, except for an approved application for which all subject products have been removed from listing under section 510 of the FD&C Act, or has submitted an investigational animal drug submission that has not been terminated or otherwise rendered inactive and (2) had an animal drug application, supplemental animal drug application, or investigational animal drug submission pending at FDA after September 1, 2003 (see 21 U.S.C. 379j–11(6) and 379j–12(a)(4)). An animal drug sponsor is subject to only one such fee each fiscal year (see 21 U.S.C. 379j–12(a)(4)). The sponsor fees are to be set so that they will generate $9,045,000 in fee revenue for FY 2024.

To set animal drug sponsor fees to realize $9,045,000, FDA must make some assumptions about the number of sponsors who will pay these fees in FY 2024. FDA developed data on all animal drug sponsors and matched this to the list of all sponsors who had pending submissions and applications after September 1, 2003. As of May, 2023, FDA estimates that a total of 179 sponsors will meet this definition in FY 2024.

In estimating the fee revenue to be generated by animal drug sponsor fees in FY 2024, FDA is assuming that 67 percent of the sponsors invoiced, or 120, will not pay sponsor fees in FY 2024 due to fee waivers and reductions. FDA has made this estimate at 67 percent this year, based on historical data over the past 5 completed fiscal years of the ADUFA program.

Accordingly, the Agency estimates that a total of 59 sponsors (179 minus 120) will be subject to and pay sponsor fees in FY 2024.

B. Sponsor Fee Rates for FY 2024

FDA must set the fee rates for FY 2024 so that the estimated 59 sponsors that pay fees will generate a total of $9,045,000. To generate this amount will require the fee for an animal drug sponsor, rounded to the nearest dollar, to be $153,305.

VII. Fee Schedule for FY 2024

The fee rates for FY 2024 are summarized in table 1.

TABLE 1—FY 2024 FEE RATES

Animal drug user fee category	Fee rate for FY 2024
Animal Drug Application Fees:	
Animal Drug Application	$683,673
Supplemental Animal Drug Application for Which Safety or Effectiveness Data are Required, Animal Drug Application Subject to the Criteria Set Forth in Section 512(d)(4) of the FD&C Act, or Application for Conditional Approval Under Section 571 of the FD&C Act for Which an Animal Drug Application Submitted Under Section 512(b)(1) of the FD&C Act Has Been Previously Approved Under Section 512(d)(1) for Another Intended Use	341,837
Animal Drug Product Fee	12,459
Animal Drug Establishment Fee [1]	174,200
Animal Drug Sponsor Fee [2]	153,305

[1] An animal drug establishment is subject to only one such fee each fiscal year.
[2] An animal drug sponsor is subject to only one such fee each fiscal year.

VIII. Fee Waiver or Reduction; Exemption From Fees

The types of fee waivers, fee reductions, and exemptions from fees that applied during ADUFA IV still exist in ADUFA V, with one exception. No longer available is the exemption for a supplemental animal drug application relating to a new animal drug application approved under section 512 of the FD&C Act, solely to add the application number to the labeling of the drug in the manner specified in section 503(w) of the FD&C Act (21 U.S.C. 352(w)).

Remaining waivers and reductions apply for the following: barriers to innovation; where fees will exceed the cost to review the animal drug application; if the application is related to certain free-choice medicated feeds; if the application is solely for a MUMS indication; or if the sponsor is a small business submitting its first animal drug application. See section 740(d)(1) of the FD&C Act.

A. Barrier to Innovation Waivers or Fee Reductions

Under section 740(d)(1)(A) of the FD&C Act, an animal drug applicant may qualify for a waiver or reduction of one or more ADUFA fees if the fee would present a significant barrier to innovation because of limited resources available to the applicant or other circumstances. CVM's guidance for industry (GFI) #170, entitled ''Animal Drug User Fees and Fee Waivers and Reductions,'' [1] states that the Agency interprets this provision to mean that a waiver or reduction is appropriate when: (1) the product for which the waiver is being requested is innovative, or the requestor is otherwise pursuing innovative animal drug products or technology, and (2) the fee would be a significant barrier to the applicant's ability to develop, manufacture, or market the innovative product or technology. Only those applicants that meet both of these criteria will qualify for a waiver or reduction in user fees under this provision (see GFI #170 at pp. 6–8). For purposes of determining whether the second criterion would be met on the basis of limited financial resources available to the applicant, FDA has determined an applicant with financial resources of less than $20,000,000 (including the financial resources of the applicant's affiliates), adjusted annually for inflation, has limited resources available. Using the Consumer Price Index for urban consumers (U.S. city average; not seasonally adjusted; all items; annual index), the inflation-adjusted level for FY 2024 will be $22,796,000; this level represents the financial resource ceiling that will be used to determine if there are limited resources available to an applicant requesting a Barrier to Innovation waiver on financial grounds for FY 2024. Requests for a waiver need to be submitted to FDA each fiscal year not later than 180 days from when the fees are due. A waiver granted on Barrier to Innovation grounds (or any of the other grounds listed in section 740(d)(1) of the FD&C Act) is only valid for 1 fiscal year. If a sponsor is not granted a waiver, they are liable for the fees.

B. Exemption or Exception From Fees

In addition to the waivers and fee reductions described above, one fee exemption and two exceptions still apply in ADUFA V.

If an animal drug application, supplemental animal drug application, or investigational submission involves the intentional genomic alteration of an animal that is intended to produce a human medical product, any person who is the named applicant or sponsor of that application or submission will not be subject to sponsor, product, or establishment fees under ADUFA based solely on that application or submission (21 U.S.C. 379j–12(d)(4)).

There is an exception from application fees for animal drug applications submitted under section 512(b)(1) of the FD&C Act by a sponsor who previously applied for conditional approval under section 571 of the FD&C Act for the same product and paid an application fee at the time they applied for conditional approval, provided the sponsor has submitted the application under section 512(b)(1) of the FD&C Act within the timeframe specified in section 571(h) of the FD&C Act. There is also an exception from application fees for previously filed applications that were not approved or were withdrawn (without waiver or refund). Both exceptions are detailed in section 740(a)(1)(C) of the FD&C Act.

IX. Procedures for Paying the FY 2024 Fees

A. Application Fees and Payment Instructions

The FY 2024 fee established in the new fee schedule must be paid for an animal drug application or supplement subject to fees under ADUFA V that is submitted on or after October 1, 2023. The payment must be made in U.S. currency from a U.S. bank by one of the following methods: wire transfer,

[1] CVM's GFI #170 is located at: *https://www.fda.gov/downloads/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/UCM052494.pdf.*

electronically, check, bank draft, or U.S. postal money order made payable to the Food and Drug Administration. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay,* or the *Pay.gov* payment option is available to you after you submit a cover sheet. (Note: Only full payments are accepted. No partial payments can be made online.) Once you search for and find your invoice, select ''Pay Now'' to be redirected to *www.pay.gov.* Electronic payment options are based on the balance due. Payment by credit card is available only for balances that are less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards.

When paying by check, bank draft, or U.S. postal money order, please write your application's unique Payment Identification Number (PIN), beginning with the letters AD, on the upper right-hand corner of your completed Animal Drug User Fee Cover Sheet. Also write the FDA's post office box number (P.O. Box 979033) and PIN on the enclosed check, bank draft, or money order. Mail the payment and a copy of the completed Animal Drug User Fee Cover Sheet to: Food and Drug Administration, P.O. Box 979033, St. Louis, MO 63197–9000. Note: In no case should the payment for the fee be submitted to FDA with the application.

When paying by wire transfer, the invoice number or PIN needs to be included. Without the invoice number or PIN, the payment may not be applied, and the invoice amount would be referred to collections. The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee, it is required to add that amount to the payment to ensure that the invoice is paid in full.

Use the following account information when sending a payment by wire transfer: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Account Name: Food and Drug Administration, Account Number: 75060099, U.S. Department of the Treasury routing/transit number: 021030004, SWIFT Number: FRNYUS33.

To send a check by a courier such as FedEx, the courier must deliver the check and printed copy of the cover sheet to U.S. Bank: U.S. Bank, Attn: Government Lockbox 979033, 3180 Rider Trail S., Earth City, MO 63045. (Note: This address is for courier delivery only. If you have any questions concerning courier delivery, contact U.S. Bank at 314–418–4013. This telephone number is only for questions about courier delivery.)

It is important that the fee arrives at the bank at least a day or two before the application arrives at FDA's CVM. FDA records the official application receipt date as the later of the following: the date the application was received by CVM, or the date U.S. Bank notifies FDA that your payment in the full amount has been received, or when the U.S. Department of the Treasury notifies FDA of receipt of an electronic or wire transfer payment. U.S. Bank and the U.S. Department of the Treasury are required to notify FDA within 1 working day, using the PIN described previously.

The tax identification number of FDA is 53–0196965.

B. Application Cover Sheet Procedures

Step One: Create a user account and password. Log on to the ADUFA website at *https://www.fda.gov/industry/animal-drug-user-fee-act-adufa/animal-drug-user-fee-cover-sheet* and, under Application Submission Information, click on ''Create ADUFA User Fee Cover Sheet.'' For security reasons, each firm submitting an application will be assigned an organization identification number, and each user will also be required to set up a user account and password the first time you use this site. Online instructions will walk you through this process.

Step Two: Create an Animal Drug User Fee Cover Sheet, transmit it to FDA, and print a copy. After logging into your account with your username and password, complete the steps required to create an Animal Drug User Fee Cover Sheet. One cover sheet is needed for each animal drug application or supplement. Once you are satisfied that the data on the cover sheet are accurate and you have finalized the cover sheet, you will be able to transmit it electronically to FDA and you will be able to print a copy of your cover sheet showing your unique PIN.

Step Three: Send the payment for your application as described in section IX.A.

Step Four: Submit your application.

C. Product, Establishment, and Sponsor Fees

By December 31, 2023, FDA will issue invoices and payment instructions for product, establishment, and sponsor fees for FY 2024 using this fee schedule. Payment will be due by January 31, 2024. FDA will issue invoices in November 2024 for any products, establishments, and sponsors subject to fees for FY 2024 that qualify for fees after the December 2023 billing.

Dated: October 18, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–23373 Filed 10–20–23; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–4468]

Animal Generic Drug User Fee Program Rates and Payment Procedures for Fiscal Year 2024

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the fee rates and payment procedures for fiscal year (FY) 2024 generic new animal drug program user fees. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Animal Generic Drug User Fee Amendments of 2023 (AGDUFA IV), authorizes FDA to collect user fees for certain abbreviated applications for generic new animal drugs, for certain generic new animal drug products, for certain sponsors of such abbreviated applications for generic new animal drugs and/or investigational submissions for generic new animal drugs, and for certain submissions related to generic investigational new animal drug (JINAD) files. This notice establishes the fee rates for FY 2024.

DATES: The application fee rates are effective for all abbreviated applications for a generic new animal drug submitted on or after October 1, 2023, and will remain in effect through September 30, 2024. The fee rates for requests to establish a JINAD file, and for certain submissions to JINAD files established prior to October 1, 2023, are effective on October 1, 2023, and will remain in effect through September 30, 2024.

FOR FURTHER INFORMATION CONTACT: Lisa Kable, Center for Veterinary Medicine (HFV–10), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–6888, *Lisa.Kable@fda.hhs.gov,* or visit FDA's website at *https://www.fda.gov/ForIndustry/UserFees/AnimalGenericDrugUserFeeActAGDUFA/default.htm.* For general questions, you may also email the Center for Veterinary

Medicine (CVM) at *cvmagdufa@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 741 of the FD&C Act (21 U.S.C. 379j–21) establishes four different types of user fees: (1) fees for certain types of abbreviated applications for generic new animal drugs; (2) annual fees for certain generic new animal drug products; (3) annual fees for certain sponsors of abbreviated applications for generic new animal drugs and/or investigational submissions for generic new animal drugs; and (4) JINAD file fees (21 U.S.C. 379j–21(a)). When certain conditions are met, FDA will waive or reduce fees for generic new animal drugs intended solely to provide for a minor use or minor species indication (21 U.S.C. 379j–21(d)).

For FYs 2024 through FY 2028, the FD&C Act establishes a base revenue amount for each fiscal year (21 U.S.C. 379j–21(b)(1)). Base revenue amounts established for fiscal years after FY 2024 are subject to adjustment for inflation and workload. Workload increases will be adjusted for excess collections after FY 2025 (21 U.S.C. 379j–21(c)). Fees are to be established each year by FDA so that the percentage allocations for each of the fee categories is as follows: 20 percent shall be derived from fees for abbreviated applications for a generic new animal drug and JINAD file fees; 40 percent shall be derived from fees for generic new animal drug products; and 40 percent shall be derived from fees for generic new animal drug sponsors (21 U.S.C. 379j–21(b)). The target revenue amounts for each fee category for FY 2024, are as follows: for application and/or JINAD file fees, the target revenue amount is $5,000,000; for product fees, the target revenue amount is $10,000,000; and for sponsor fees, the target revenue amount is $10,000,000.

For FY 2024, the AGDUFA rates are: $126,582 for each abbreviated application for a generic new animal drug other than those subject to the criteria in section 512(d)(4) of the FD&C Act (21 U.S.C. 360b(d)(4)); $63,291 for each abbreviated application for a generic new animal drug subject to the criteria in section 512(d)(4) of the FD&C Act; $50,000 for each JINAD file request or certain submissions to established JINAD files; $16,393 for each generic new animal drug product; $258,331 for each generic new animal drug sponsor paying 100 percent of the sponsor fee; $193,748 for each generic new animal drug sponsor paying 75 percent of the sponsor fee; and $129,166 for each generic new animal drug sponsor paying 50 percent of the sponsor fee. FDA will issue invoices for FY 2024 product and sponsor fees by December 31, 2023, and payment will be due by January 31, 2024. The application fee rates are effective for all abbreviated applications for a generic new animal drug submitted on or after October 1, 2023, and will remain in effect through September 30, 2024. The fee rate for requests to establish a JINAD file, and for certain submissions to JINAD files established prior to October 1, 2023, is effective on October 1, 2023, and will remain in effect through September 30, 2024.

Applications will not be accepted for review until FDA has received full payment of application fees and any other fees owed under the AGDUFA program. Similarly, a request to establish a JINAD file will not be accepted for action by FDA until FDA has received full payment of all fees owed under the AGDUFA program. (21 U.S.C. 379j–21(e)).

II. Revenue Amount for FY 2024

A. Statutory Fee Revenue Amount

AGDUFA IV, Title III of Public Law 118–15, specifies that the aggregate base fee revenue amount for FY 2024 for all user fee categories is $25,000,000 (21 U.S.C. 379j–21(b)(1)).

B. Inflation Adjustment to Fee Revenue Amount

AGDUFA IV specifies that the annual fee revenue amount is to be adjusted for inflation increases for FY 2025 and subsequent fiscal years. (21 U.S.C. 379j–21(c)(2)). Since AGDUFA IV does not adjust for inflation until FY 2025, there is no inflation adjustment for FY 2024.

C. Workload Adjustment to Inflation Adjusted Fee Revenue Amount

The fee revenue amounts established in AGDUFA IV for FY 2025 and subsequent fiscal years are also subject to adjustment to account for changes in FDA's review workload (21 U.S.C. 379j–21(c)(3)(A)). Since AGDUFA IV does not adjust for workload until FY 2025, there is no workload adjustment for FY 2024.

D. FY 2024 Fee Revenue Amounts

AGDUFA IV specifies that the revenue amount of $25,000,000 for FY 2024 is to be divided as follows: 20 percent, or a total of $5,000,000, is to come from application and/or JINAD file fees; 40 percent, or a total of $10,000,000, is to come from product fees; and 40 percent, or a total of $10,000,000, is to come from sponsor fees (21 U.S.C. 379j–21(b)).

III. Abbreviated Application Fee and JINAD File Fee Calculations for FY 2024

A. Fee Revenues and Numbers of Fee-Paying Applications and Submissions

Each person who submits an abbreviated application for a generic new animal drug shall be subject to an application fee, with limited exceptions (21 U.S.C. 379j–21(a)(1)). The term ''abbreviated application for a generic new animal drug'' means an abbreviated application for the approval of any generic new animal drug submitted under section 512(b)(2) of the FD&C Act. FDA will also assess fees related to JINAD files. FDA will assess a fee under section 741(a)(4)(A)(i) of the FD&C Act when a person submits a request to establish a new JINAD file. FDA will assess a fee under section 741(a)(4)(A)(ii) of the FD&C Act for a person's first submission, as described below, to a JINAD file on or after October 1, 2023, where the JINAD file had been established prior to that date. The JINAD file fee is set in accordance with section 741(c)(1)(C) of the FD&C Act at $50,000. FDA will set the abbreviated application fee so that such fees combined with the JINAD file fees will generate a combined total of $5,000,000 in fee revenue for FY 2024.

To set fees for abbreviated applications for generic new animal drugs, FDA must first make some assumptions about the number of fee-paying abbreviated applications it will receive during FY 2024, the number of requests to establish new JINAD files it will receive during FY 2024, and the number of existing (prior to October 1, 2023) JINAD files to which it will receive submissions during FY 2024.

Regarding the fee for a person's first submission to an existing (prior to October 1, 2023) JINAD file on or after October 1, 2023, FDA intends to assess a fee only for the first data (or ''P'') submission to the Bioequivalence (BE) or Chemistry, Manufacturing, and Controls (CMC) technical sections of the JINAD file. The Agency has selected P submissions to the BE or CMC technical sections as the basis for assessing this fee because P submissions to these sections consistently entail the substantial use of FDA review hours during the phased review process.

The Agency knows the numbers of applications and submissions that have been submitted in previous years. Those numbers fluctuate annually. In estimating the fee revenue to be generated by application and submission fees in FY 2024, FDA is assuming that the number of applications and submissions for which

fees will be paid in FY 2024 will equal the average number of applications and submissions over the 5 most recently completed fiscal years of the AGDUFA program (FY 2018 through FY 2022).

Also, under AGDUFA IV an abbreviated application for a generic new animal drug subject to the criteria in section 512(d)(4) of the FD&C Act and submitted on or after October 1, 2013, shall be subject to 50 percent of the fee applicable to all other abbreviated applications for a generic new animal drug (21 U.S.C. 379j–21(a)(1)(C)(ii)).

The average number of original submissions of abbreviated applications for generic new animal drugs over the 5 most recently completed fiscal years is 12.6 applications not subject to the criteria in section 512(d)(4) of the FD&C Act and 6.4 submissions subject to the criteria in section 512(d)(4). Each of the submissions described under section 512(d)(4) of the FD&C Act pays 50 percent of the fee paid by the other applications and will be counted as one half of a fee. Adding all of the applications not subject to the criteria in section 512(d)(4) of the FD&C Act and 50 percent of the number that are subject to such criteria results in a total of 15.80 anticipated full fees.

Based on the previous assumptions, FDA is estimating that it will receive a total of 15.80 fee-paying generic new animal drug applications in FY 2024 (12.6 original applications paying a full fee and 6.4 applications paying a half fee).

For estimating the number of requests to establish a new JINAD file and the number of P submissions to the BE or CMC section of an existing (prior to October 1, 2023) JINAD file the Agency will receive in FY 2024, FDA took the average annual number of new JINAD file requests and P submissions to the BE or CMC section of an existing JINAD file received over the last 5 completed fiscal years. The average annual number of requests to establish new JINAD files and P submissions to the BE or CMC section of existing JINAD files over the 5 most recently completed fiscal years is 60.

Based on the previous assumptions, FDA is estimating that it will receive a total of 60 fee-paying JINAD file submissions in FY 2024 (including both requests to establish new JINAD files and first P submissions to the BE or CMC section of existing (prior to October 1, 2023) JINAD files).

B. Application Fee Rates for FY 2024

FDA must set the fee rates for FY 2024 so that the estimated 15.80 abbreviated application fees and 60 JINAD file fees will generate a total of $5,000,000. The fee for a new JINAD file request or the first submission to an existing (prior to October 1, 2023) JINAD file is $50,000 under section 741(c)(1)(C) of the FD&C Act. Therefore, the JINAD fees will generate a total of $3,000,000. Abbreviated application fees will have to generate a total of $2,000,000.

To generate this amount, the fee for a generic new animal drug application will have to be $126,582 and for those applications that are subject to the criteria set forth in section 512(d)(4) of the FD&C Act, 50 percent of that amount, or $63,291.

IV. Generic New Animal Drug Product Fee Calculations for FY 2024

A. Product Fee Revenues and Numbers of Fee-Paying Products

The generic new animal drug product fee must be paid annually by the person named as the applicant in an abbreviated application or supplemental abbreviated application for a generic new animal drug product submitted for listing under section 510 of the FD&C Act (21 U.S.C. 360), and who had an abbreviated application or supplemental abbreviated application for a generic new animal drug product pending at FDA after September 1, 2008 (see 21 U.S.C. 379j–21(a)(2)). The term ''generic new animal drug product'' means each specific strength or potency of a particular active ingredient or ingredients in final dosage form marketed by a particular manufacturer or distributor, which is uniquely identified by the labeler code and product code portions of the National Drug Code, and for which an abbreviated application for a generic new animal drug or supplemental abbreviated application for a generic new animal drug has been approved (21 U.S.C. 379j–21(k)(6)). The product fees are to be set so that they will generate $10,000,000 in fee revenue for FY 2024.

To set generic new animal drug product fees to realize $10,000,000, FDA must make some assumptions about the number of products for which these fees will be paid in FY 2024. FDA gathered data on all generic new animal drug products that have been submitted for listing under section 510 of the FD&C Act and matched this to the list of all persons who FDA estimated would have a generic new animal drug application or supplemental abbreviated application pending after September 1, 2008. As of May 2023, FDA estimates that there is a total of 616 products submitted for listing by persons who had an abbreviated application for a generic new animal drug or supplemental abbreviated application for a generic new animal drug pending after September 1, 2008. Based on this, FDA believes that a total of 616 products will be subject to this fee in FY 2024.

In estimating the fee revenue to be generated by generic new animal drug product fees in FY 2024, FDA is estimating that 1 percent of the products invoiced, or 6 products, will qualify for minor use/minor species fee waiver (see 21 U.S.C. 379j–21(d)). FDA has made this estimate at 1 percent this year, based on historical data over the past 5 completed fiscal years of the AGDUFA program.

Accordingly, the Agency estimates that a total of 610 (616 minus 6) products will be subject to product fees in FY 2024.

B. Product Fee Rates for FY 2024

FDA must set the fee rates for FY 2024 so that the estimated 610 products for which fees are paid will generate a total of $10,000,000. To generate this amount will require the fee for a generic new animal drug product, rounded to the nearest dollar, to be $16,393.

V. Generic New Animal Drug Sponsor Fee Calculations for FY 2024

A. Sponsor Fee Revenues and Numbers of Fee-Paying Sponsors

The generic new animal drug sponsor fee must be paid annually by each person who: (1) is named as the applicant in an abbreviated application for a generic new animal drug, except for an approved application for which all subject products have been removed from listing under section 510 of the FD&C Act, or has submitted an investigational submission for a generic new animal drug that has not been terminated or otherwise rendered inactive and (2) had an abbreviated application for a generic new animal drug, supplemental abbreviated application for a generic new animal drug, or investigational submission for a generic new animal drug pending at FDA after September 1, 2008 (see 21 U.S.C. 379j–21(k)(7) and 379j–21(a)(3)).

A generic new animal drug sponsor is subject to only one such fee each fiscal year (see 21 U.S.C. 379j–21(a)(3)(C)). Applicants with more than 6 approved abbreviated applications will pay 100 percent of the sponsor fee; applicants with more than 1 and fewer than 7 approved abbreviated applications will pay 75 percent of the sponsor fee; and applicants with 1 or fewer approved abbreviated applications will pay 50 percent of the sponsor fee (see 21 U.S.C. 379j–21(a)(3)(C)). The sponsor fees are to be set so that they will generate $10,000,000 in fee revenue for FY 2024.

To set generic new animal drug sponsor fees to realize $10,000,000, FDA must make some assumptions about the number of sponsors who will pay these fees in FY 2024. FDA developed data on all generic new animal drug sponsors and matched this to the list of all sponsors who had pending submissions and applications after September 1, 2008. As of May, 2023, FDA estimates that in FY 2024, 12 sponsors will pay 100 percent fees, 18 sponsors will pay 75 percent fees, and 28 sponsors will pay 50 percent fees. The total of these figures is the equivalent of 39.5 full sponsor fees (12 times 100 percent or 12, plus 18 times 75 percent or 13.5 plus 28 times 50 percent or 14).

FDA estimates that about 2 percent of all of these sponsors, or 0.79, may qualify for a minor use/minor species fee waiver (see 21 U.S.C. 379j–21(d)). FDA has made the estimate of the percentage of sponsors that will not pay fees at 2 percent this year, based on historical data over the past 5 completed fiscal years of the AGDUFA program.

Accordingly, the Agency estimates that the equivalent of 38.71 full sponsor fees (39.5 minus 0.79) are likely to be paid in FY 2024.

B. Sponsor Fee Rates for FY 2024

FDA must set the fee rates for FY 2024 so that the estimated equivalent of 38.71 full sponsor fees will generate a total of $10,000,000. To generate this amount will require the 100 percent fee for a generic new animal drug sponsor, rounded to the nearest dollar, to be $258,331. Accordingly, the fee for those paying 75 percent of the full sponsor fee will be $193,748, and the fee for those paying 50 percent of the full sponsor fee will be $129,166.

VI. Fee Schedule for FY 2024

The fee rates for FY 2024 are summarized in table 1.

TABLE 1—FY 2024 FEE RATES

User fee category	Fee rate for FY 2024
Abbreviated Application Fee for Generic New Animal Drug except those subject to the criteria in section 512(d)(4) of the FD&C Act	$126,582
Abbreviated Application Fee for Generic New Animal Drug subject to the criteria in section 512(d)(4) of the FD&C Act	63,291
JINAD File Fee	50,000
Generic New Animal Drug Product Fee	$16,393
100% Generic New Animal Drug Sponsor Fee [1]	258,331
75% Generic New Animal Drug Sponsor Fee [1]	193,748
50% Generic New Animal Drug Sponsor Fee [1]	129,166

[1] An animal drug sponsor is subject to only one fee each fiscal year.

VII. Fee Waiver or Reduction; Exemption From Fees

The types of fee waivers and reductions that applied last fiscal year still exist for FY 2024 (see 21 U.S.C. 379j–21(d)(1)). However, there is no longer an exemption for any person who submits to CVM a supplemental abbreviated application relating to a generic new animal drug approved under section 512 of the FD&C Act, solely to add the application number to the labeling of the drug in the manner specified in section 502(w)(3) of the FD&C Act (21 U.S.C. 352(w)(3)). This exemption was added in AGDUFA III, but is not a part of AGDUFA IV.

VIII. Procedures for Paying FY 2024 Fees

A. Abbreviated Application Fees, JINAD File Fees, and Payment Instructions

The FY 2024 fees established in the new fee schedule must be paid for the following applications/submissions that are subject to fees under AGDUFA IV and submitted on or after October 1, 2023: a generic new animal drug application, a submission requesting to establish a JINAD file, or the first BE or CMC submission to a JINAD file that was established prior to October 1, 2023. The payment must be made in U.S. currency from a U.S. bank by one of the following methods: wire transfer, electronically, check, bank draft, or U.S. postal money order made payable to the Food and Drug Administration. The preferred payment method is online using electronic check (Automated Clearing House (ACH), also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay* or the *Pay.gov* payment option is available to you after you submit a cover sheet. (*Note:* only full payments are accepted. No partial payments can be made online.) Once you find your invoice, select ''Pay Now'' to be redirected to *Pay.gov.* Electronic payment options are based on the balance due. Payment by credit card is available only for balances that are less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards.

When paying by check, bank draft, or U.S. postal money order, please write your application's unique Payment Identification Number (PIN), beginning with the letters ''AG'', on the upper right-hand corner of your completed Animal Generic Drug User Fee Cover Sheet. Also write FDA's post office box number (P.O. Box 979033) and PIN on the enclosed check, bank draft, or money order. Mail the payment and a copy of the completed Animal Generic Drug User Fee Cover Sheet to: Food and Drug Administration, P.O. Box 979033, St. Louis, MO 63197–9000. *Note:* In no case should the payment for the fee be submitted to FDA with the application or JINAD file submission.

When paying by wire transfer, the invoice number or PIN needs to be included. Without the invoice number or PIN, the payment may not be applied, and the invoice amount would be referred to collections. The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee, it is required to add that amount to the payment to ensure that the invoice is paid in full. Use the following account information when sending a payment by wire transfer: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Account Name: Food and Drug Administration, Account Number: 75060099, U.S. Department of the Treasury routing/transit number: 021030004, SWIFT Number: FRNYUS33.

To send a check by a courier such as FedEx, the courier must deliver the check and printed copy of the cover sheet to U.S. Bank: U.S. Bank, Attn: Government Lockbox 979033, 3180

Rider Trail South, Earth City, MO 63045. (*Note:* This address is for courier delivery only. If you have any questions concerning courier delivery, contact U.S. Bank at 314–418–4013. This telephone number is only for questions about courier delivery.)

It is important that the fee arrives at the bank at least a day or two before the abbreviated application arrives at FDA's CVM. FDA records the official abbreviated application receipt date as the later of the following: the date the application was received by CVM, or the date U.S. Bank notifies FDA that your payment in the full amount has been received, or when the U.S. Department of the Treasury notifies FDA of payment. U.S. Bank and the U.S. Department of the Treasury are required to notify FDA within 1 working day, using the PIN described previously.

The tax identification number of FDA is 53–0196965.

B. Application and JINAD File Submission Cover Sheet Procedures

Step One: Create a user account and password. Log onto the AGDUFA website at *https://www.fda.gov/ForIndustry/UserFees/AnimalGenericDrugUserFeeActAGDUFA/ucm137049.htm* and, under Application Submission Information, click on ''Create AGDUFA User Fee Cover Sheet'' and follow the directions. For security reasons, each firm submitting an application and/or a JINAD file submission will be assigned an organization identification number, and each user will also be required to set up a user account and password the first time you use this site. Online instructions will walk you through this process.

Step Two: Create an Animal Generic Drug User Fee Cover Sheet, transmit it to FDA, and print a copy. After logging into your account with your username and password, complete the steps required to create an Animal Generic Drug User Fee Cover Sheet. One cover sheet is needed for each abbreviated application for a generic new animal drug or JINAD file submission. Once you are satisfied that the data on the cover sheet is accurate and you have finalized the cover sheet, you will be able to transmit it electronically to FDA and you will be able to print a copy of your cover sheet showing your unique PIN.

Step Three: Send the payment for your application or JINAD file submission as described in section VIII.A.

Step Four: Submit your application or JINAD file submission.

C. Product and Sponsor Fees

By December 31, 2023, FDA will issue invoices and payment instructions for product and sponsor fees for FY 2024 using this fee schedule. Payment will be due by January 31, 2024. FDA will issue invoices in November 2024 for any products and sponsors subject to fees for FY 2024 that qualify for fees after the December 2023 billing.

Dated: October 18, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–23374 Filed 10–20–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular Sciences.

Date: November 16, 2023.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Margaret Chandler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7814, Bethesda, MD 20892, (301) 435–1743, *margaret.chandler@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Infection Immunology, Immune Tolerance, and Transplantation.

Date: November 20, 2023.

Time: 12:00 p.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Xinrui Li, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–2084, *xinrui.li@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Nephrology and Urology.

Date: December 7, 2023.

Time: 9:00 a.m. to 8:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Stacey Nicole Williams, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 867–5309, *stacey.williams@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR: Countermeasures Against Chemical Threats Exploratory/Developmental and Full Projects.

Date: December 7–8, 2023.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jodie Michelle Fleming, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 812R, Bethesda, MD 20892, (301) 867–5309, *flemingjm@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 17, 2023.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–23325 Filed 10–20–23; 8:45 am]

BILLING CODE 4140–01–P

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.

Proposed Project: Survey of Current and Alumni SAMHSA Fellows of the Minority Fellowship Program (MFP) (OMB No. 0930–0304)—Revision

In 1973, in response to a substantial lack of ethnic and racial minorities in the mental health professions, the Center for Minority Health at the National Institute of Mental Health established the MFP. Since the MFP's transition to SAMHSA in 1992, the program has continued to facilitate the entry of graduate students and psychiatric residents into mental health careers and has increased the number of psychology, psychiatry, nursing, and social work professionals trained to provide mental health and substance abuse services to minority groups. The traditional MFP offers sustained grants to six national behavioral health professional associations: the American Association of Marriage and Family Therapy (AAMFT), American Nurses Association (ANA), American Psychiatric Association (APsychA), American Psychological Association (APA), Council on Social Work Education (CSWE), and National Board for Certified Counselors (NBCC) which administers the program for the NBCC and the Association for Addiction Professionals (NAADAC). A seventh program, offered after the previously approved surveys, is referred to as The Interdisciplinary Minority Fellowship Program and is administered by the American Psychological Association.

This data collection includes two survey instruments, the Survey of Current SAMHSA MFP Fellows and the Survey of Alumni SAMHSA MFP Fellows. The two online surveys (with the option for a hard copy mailed through the U.S. Postal Service) will be used with the following stakeholders in the MFP grant programs:

1. *Current SAMHSA MFP Fellows (n=411)*

a. *Current MFP fellows* (doctoral-level fellows) and *master's-level fellows* currently receiving support during their doctoral-level, master's-level, psychiatric residency, or certificate training programs will be asked about their experiences in the MFP (learning opportunities and mentoring experiences in the program through their participation in professional development and other various activities provided by the grantees), plans for their career beyond the MFP, and suggestions for improvement of their MFP experience.

2. *MFP Alumni (n=1,280)*

a. *MFP Alumni* who participated in the MFP during the time the program was administered by SAMHSA will be asked about their previous experiences as fellows in the MFP, their subsequent involvement and leadership in their professions, and ways in which the MFP prepared them for their current positions.

The information gathered by these two surveys will be used to document contributions and impacts of current and former MFP fellows. The current fellows survey includes questions to assess the following measures: background items on training specialty and demographics, practicum and internship experiences, professional development activities (*e.g.,* number of certifications obtained, types of professional development/contributions to the field such as number of presentations or publications), and learning opportunities related to MFP fellows' preparation to provide culturally competent mental and substance use disorder services to underserved populations. The alumni fellows survey includes questions to measure: background items on specialization and demographics, status of degree completion, employment experiences and settings where providing culturally competent mental and substance use disorder services to underserved populations, contributions to the field, application of MFP learning opportunities in current employment experiences, mentoring and other support received during the MFP, satisfaction with their preparation during MFP for their current employment or educational placement, intentions to stay in or leave the behavioral health field, and suggestions for improving the MFP.

This request amends the OMB approval that expired August 31, 2019, by omitting questions that gathered information on number of mentors and total mentored hours; as well as self-reported impacts on current and alumni fellows such as increased knowledge, skills, and aptitude. Both the current and alumni fellows' surveys are revised accordingly. For the alumni survey, the respondent pool has been limited only to those who have completed the MFP within the past five years. Additionally, to further streamline this data collection SAMHSA has also deleted eleven other questions that are not critical to assessing the program's progress. In turn, the following questions have been added to the survey instruments to help better assess the program's progress with meeting stated goals and plan for future cohorts of fellows:

(1) Specialization

Response choices were modified and added to align with position titles in HRSA's annual behavioral workforce survey.

My specialization would best prepare me/prepared me for positions such as those held by (check more than one if applicable):

[ ] Adult psychiatrists
[ ] Child and adolescent psychiatrists
[ ] Psychiatric nurse practitioners
[ ] Physician assistants
[ ] Psychologists
[ ] Social workers
[ ] Marriage and family therapists
[ ] Addictions counselors
[ ] Mental health counselors
[ ] School counselors
[ ] Other: *Please specify* [text box]

(2) Personal Background

Items and response choices were added or revised to align with how these are asked in federal national data collections (*e.g.,* American Community Survey or NIH's PhenX Toolkit).

The next set of questions will help SAMHSA understand the variation in responses based on characteristics of MFP fellows.

(5) What is your gender?
[ ] Male
[ ] Female
[ ] Non-binary, ...
[ ] Two-Spirit
[ ] TF (Transgender Female)
[ ] TM (Transgender Male)/
[ ] Other *(please specify):* [text box] *
[ ] Prefer not to answer

*(6) Are you of Hispanic, Latina/Latino, or Spanish origin? **
[ ] No, not of Hispanic, Latino, or Spanish origin
[ ] Yes
  [ ] Mexican, Mexican Am., Chicano
  [ ] Puerto Rican
  [ ] Cuban
  [ ] Another Hispanic, Latino, or Spanish origin—for example, Salvadoran, Dominican, Colombian, Guatemalan, Spaniard, Ecuadorian,

etc.) [text box] *
[ ] Prefer not to answer

*(7) What is your race? For this survey (as in the U.S. Census), Hispanic origins are not races. Check all that apply.**
[ ] White—for example, German, Irish, English, Italian, Lebanese, Egyptian, etc.
[ ] Black, African American, or African—for example, African American, Jamaican, Haitian, Nigerian, Ethiopian, Somali, etc.
[ ] American Indian or Alaska Native—Print name of enrolled or principal tribe(s), for example, Navajo Nation, Blackfeet Tribe, Mayan, Aztec, Native Village of Barrow Inupiat Traditional Government, Nome Eskimo Community, etc.
[ ] Asian or Asian American
[ ] Chinese
[ ] Filipino
[ ] Asian Indian
[ ] Vietnamese
[ ] Korean
[ ] Japanese
[ ] Other Asian—for example, Pakistani, Cambodian, Hmong, etc.
[ ] Native Hawaiian, Samoan, Chamorro, Other Pacific Islander—for example, Tongan, Fijian, Marshallese, etc.
[ ] Some other race—specify race or origin:
[ ] Prefer not to answer

The following items will help us understand the immigrant status of our trainees and the extent to which we are diversifying our trainees to respond to the growing needs of immigrant families.

(8) Are you from an immigrant family?
[ ] NO
[ ] YES
[ ] Prefer not to answer
a. Was either of your parents born outside of the U.S.?
[ ] YES, one parent
[ ] YES, both parents
[ ] NO, neither parent
[ ] Prefer not to answer
b. Was at least one of your grandparents born outside of the U.S.?
[ ] YES
[ ] NO
[ ] Prefer not to answer
c. Were you born outside of the U.S.?
[ ] YES
[ ] NO
[ ] Prefer not to answer

(9) List any language(s), other than English, in which you have at least minimum professional speaking proficiency (i.e., can participate effectively in most formal and informal conversations on practical and professional topics). Check all that apply.*
[ ] English only
[ ] African-other than Amharic (please specify below)
[ ] Amharic
[ ] Chinese-Mandarin
[ ] Chinese-Other
[ ] French
[ ] German
[ ] Hindi
[ ] Japanese
[ ] Korean
[ ] Kreyol
[ ] Portuguese
[ ] Russian
[ ] Spanish
[ ] Other language *(please specify):* [text box]
[ ] Prefer not to answer

*(10) Do you have a disability or require accommodations to perform essential professional functions?**
[ ] Yes
[ ] No
[ ] Prefer not to answer

(3) Learning Opportunities

Added items or response choices (*e.g.,* use of telehealth) to reflect changes in behavioral practices and service delivery due to COVID–19 restrictions.

20. During the past MFP year, as part of your program, please check the types of learning opportunities you had for each of the following topics.

(a) Working with individuals from racially and ethnically diverse backgrounds? (Please select all that apply.)
[ ] Opportunities to learn via telehealth
[ ] Observation of clinical encounters in-person
[ ] Observation of clinical encounters via telehealth
[ ] Clinical experience with the population(s)
[ ] Education about the CLAS standards and their impact on the delivery of care
[ ] Instruction in cultural humility/competence and its impact on the delivery of care
[ ] Distance learning (virtual learning, web-based learning)
[ ] Supervision of the clinical experience with the population(s)

(4) Intentions to Stay/Leave Behavioral Health Field (Alumni Only)

Additional items were added to better understand how the stress and burnout being witnessed in the health care workforce generally and behavioral health workforce in particular (due to COVID–19 pandemic) may have impacted alumni fellows' intentions to stay in or leave the field.

The following questions ask about your intentions to stay in the mental or behavioral health field. Using the scales provided, indicate how often you think about leaving and the likelihood that you would leave.

(31) Do you consider your current job/practice/training as in the mental and behavioral health field?
__ No: *Which field are you in?* TEXT BOX (then skip to Q34)
__ Yes (ANSWER INTENTIONS 1 and 2 below)

31. Intentions—1	1—Never	2—A few times a year or less	3—Once a month or less	4—A few times a month	5—Once a week	6—A few times a week	7—Every day
a. How often do you think about leaving your job/training program?	☐	☐	☐	☐	☐	☐	☐
b. How often do you think about leaving for another job/training program in the field?	☐	☐	☐	☐	☐	☐	☐

32. Intentions—2	1—Extremely unlikely	2—Very unlikely	3—Somewhat unlikely	4—Neutral/Unsure	5—Somewhat likely	6—Very likely	7—Extremely likely
a. How likely is it that you will search for a job in the same primary role—e.g., clinical care, practice, teaching, research, prevention, administration/policy development?	☐	☐	☐	☐	☐	☐	☐
b. How likely is it that you will actually leave the mental and behavioral health field next year?	☐	☐	☐	☐	☐	☐	☐

(33) If you are considering leaving the mental and behavioral health field, what is/are the primary driver(s)?

(34) What changes are needed that would convince you to stay? [Limit characters to 450]

Burden Estimate

The total annual burden estimate for conducting the surveys is shown below:

Survey name	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total burden hours
SAMHSA MFP Current Fellows Survey	411	1	411	0.42	173
SAMHSA MFP Alumni Survey	1,280	1	1,280	0.42	538
Totals	[a] 1,691		1,691		711

[a] This is an unduplicated count of total respondents.

Send comments to Carlos Graham, SAMHSA Reports Clearance Officer, Room 15–E57, 5600 Fishers Lane, Rockville, MD 20857 *OR* email a copy at *carlos.graham@samhsa.hhs.gov.* Written comments should be received by December 22, 2023.

Alicia Broadus,

Public Health Advisor

[FR Doc. 2023–23319 Filed 10–20–23; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R4–ES–2023–0198; FXES11140400000–234–FF04EF4000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Florida Scrub-Jay and Sand Skink; Lake County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Founders Ridge Development, LLC and Founders Ridge Development II, LLC (Minneola Town Center) (applicants) for an incidental take permit (ITP) under the Endangered Species Act. The applicants request the ITP to take federally listed Florida scrub-jays (*Aphelocoma coerulescens*) and sand skinks (*Neoseps reynoldsi*) incidental to the construction of a mixed-use development in Lake County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that the proposed permitting action may be eligible for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations, the Department of the Interior's (DOI) NEPA regulations, and the DOI Departmental Manual. To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review. We invite comment from the public and local, State, Tribal, and Federal agencies.

DATES: We must receive your written comments on or before November 22, 2023.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents online in Docket No. FWS–R4–ES–2023–0198; at *https://www.regulations.gov.*

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by one of the following methods:

- *Online: https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R4–ES–2023–0198.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–R4–ES–2023–0198; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Erin Gawera, by U.S. mail (see **ADDRESSES**), by telephone at 904–731–3121 or via email at *erin_gawera@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), announce receipt of an application from Founders Ridge Development, LLC and Founders Ridge Development II, LLC (Minneola Town Center) (applicants) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicants request the ITP to take federally listed Florida scrub-jays (*Aphelocoma coerulescens*) (scrub-jays) and sand skinks (*Neoseps reynoldsi*) (skinks) incidental to the construction and operation of a mixed-use

development in Lake County, Florida. We request public comment on the application, which includes the applicants habitat conservation plan (HCP), and on the Service's preliminary determination that this proposed ITP qualifies as low-effect, and may qualify for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (40 CFR 1501.4), the Department of the Interior's (DOI) NEPA regulations (43 CFR 46), and the DOI's Departmental Manual (516 DM 8.5(C)(2)). To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review.

Proposed Project

The applicants request a 15-year ITP to take scrub jays and skinks via the conversion of approximately 20.25 acres (ac) of occupied nesting, foraging, and sheltering scrub-jay habitat and 6.82 ac of occupied nesting, foraging, and sheltering skink habitat incidental to the construction and operation of a mixed use development on 325.54 ac on Lake County Property Appraiser Alternate Key Numbers 3839022, 3839020, 3853668, 3853667, and 3839020 in Sections 5 and 6, Township 22 South, and Range 26 East, Lake County, Florida. The applicants propose to mitigate for take of the scrub-jays and skinks through funding contributed in 2008 for a previous ITP (TE137074–0) obtained for this same property. The actions authorized under ITP (TE137074–0) did not occur, however, the mitigation was completed. A total of $427,242 was provided and approved by USFWS to restore habitat within the Ocala National Forest at a 2:1 ratio for 63.4 ac. This mitigation will now be applied towards the take of scrub-jays on 20.25± ac of occupied scrub-jay habitat and the take of sand skinks on the 6.82± ac of occupied sand skink habitat at a 2:1 ratio. A remaining 9.26± ac of mitigation that was paid for will not be applied to any impact for listed wildlife species.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's proposed project, including the construction of the mixed-use development and associated infrastructure (*e.g.,* electric, water, and sewer lines), would individually and cumulatively have a minor or negligible effect on the scrub-jays and sand skink and the environment. Therefore, we have preliminarily determined that the proposed ESA section 10(a)(1)(B) permit would be a low-effect ITP that individually or cumulatively would have a minor effect on the scrub-jay and sand skink and may qualify for application of a categorical exclusion pursuant to the Council on Environmental Quality's NEPA regulations, DOI's NEPA regulations, and the DOI Departmental Manual. A low-effect incidental take permit is one that would result in (1) minor or nonsignificant effects on species covered in the HCP; (2) nonsignificant effects on the human environment; and (3) impacts that, when added together with the impacts of other past, present, and reasonably foreseeable actions, would not result in significant cumulative effects to the human environment.

Next Steps

The Service will evaluate the application and the comments to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding and other matters, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number PER0863404 to Founders Ridge Development, LLC and Founders Ridge Development II, LLC (Minneola Town Center).

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment, including your personal identifying information, may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Authority

The Service provides this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.32) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1500–1508 and 43 CFR 46).

Robert L. Carey,

Manager, Division of Environmental Review, Florida Ecological Services Field Office.

[FR Doc. 2023–23335 Filed 10–20–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R4–ES–2023–0194; FXES11140400000–234–FF04EF4000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Florida Scrub-Jay; Volusia County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Hector Aponte (2098 Laredo Drive) (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed Florida scrub-jay (*Aphelocoma coerulescens*) incidental to the construction of a single-family home in Volusia County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that the proposed permitting action may be eligible for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations, the Department of the Interior's (DOI) NEPA regulations, and the DOI Departmental Manual. To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review. We invite comment from the public and local, State, Tribal, and Federal agencies.

DATES: We must receive your written comments on or before November 22, 2023.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents online in Docket No. FWS–R4–ES–2023–0194 at *https://www.regulations.gov.*

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by one of the following methods:

- *Online: https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R4–ES–2023–0194.
- *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS–R4–ES–2023–0194; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Erin Gawera, by U.S. mail (see **ADDRESSES**), by telephone at 904–731–3121 or via email at *erin_gawera@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), announce receipt of an application from Hector Aponte (2098 Laredo Drive) (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take federally listed Florida scrub-jays (*Aphelocoma coerulescens*) incidental to the construction and operation of a single-family home in Volusia County. We request public comment on the application, which includes the applicant's habitat conservation plan (HCP), and on the Service's preliminary determination that this proposed ITP qualifies as low effect, and may qualify for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (40 CFR 1501.4), the Department of the Interior's (DOI) NEPA regulations (43 CFR 46), and the DOI's Departmental Manual (516 DM 8.5(C)(2)). To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review.

Proposed Project

The applicant requests a 10-year ITP to take scrub-jays via the conversion of approximately 0.20 acres (ac) of occupied nesting, foraging, and sheltering scrub-jay habitat incidental to the construction and operation of a single-family home on 1.6 ac on Volusia County Alt Key Parcel 2576812 in Section 13, Township 18 S, Range 31 E, Volusia County. Prior to any clearing activities, the applicant proposes to mitigate for take of the scrub-jays through the contribution of $6,399.54 to the Florida Scrub-jay Conservation Fund administered by The Nature Conservancy. The Service would require the applicant to make this contribution prior to engaging in any phase of the project.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's proposed project, including the construction of the buildings and associated infrastructure (*e.g.,* electric, water, and sewer lines), would individually and cumulatively have a minor or negligible effect on the scrub-jays and the environment. Therefore, we have preliminarily determined that the proposed ESA section 10(a)(1)(B) permit would be a low-effect ITP that individually or cumulatively would have a minor effect on the scrub-jays and may qualify for application of a categorical exclusion pursuant to the Council on Environmental Quality's NEPA regulations, DOI's NEPA regulations, and the DOI Departmental Manual. A low-effect incidental take permit is one that would result in (1) minor or nonsignificant effects on species covered in the HCP; (2) nonsignificant effects on the human environment; and (3) impacts that, when added together with the impacts of other past, present, and reasonably foreseeable actions, would not result in significant cumulative effects to the human environment.

Next Steps

The Service will evaluate the application and the comments to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding and other matters, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number PER 3184250 to Hector Aponte (2098 Laredo Drive).

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment, including your personal identifying information, may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Authority

The Service provides this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.32) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1500–1508 and 43 CFR 46).

Robert L. Carey,

Manager, Division of Environmental Review, Florida Ecological Services Field Office.

[FR Doc. 2023–23338 Filed 10–20–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R4–ES–2023–0193; FXES11140400000–234–FF04EF4000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sand Skink; Orange County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Orange County Parks and Recreation Division (Horizon West Regional Park, applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed sand skink (*Neoseps reynoldsi*) incidental to the construction of a recreational park in Orange County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that the proposed permitting action may be eligible for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations, the Department of the Interior's (DOI) NEPA regulations, and the DOI Departmental Manual. To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review. We invite comment from the public and local, State, Tribal, and Federal agencies.

DATES: We must receive your written comments on or before November 22, 2023.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents online in Docket No. FWS–R4–ES–2023–0193 at *https://www.regulations.gov.*

Submitting Comments: If you wish to submit comments on any of the

documents, you may do so in writing by one of the following methods:

- *Online: https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R4–ES–2023–0193.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–R4–ES–2023–0193; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Erin Gawera, by U.S. mail (see **ADDRESSES**), by telephone at 904–731–3121 or via email at *erin_gawera@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), announce receipt of an application from Orange County Parks and Recreation Division (Horizon West Regional Park, applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take federally listed sand skinks (*Neoseps reynoldsi*) (skink) incidental to the construction and operation of a recreational park in Orange County, Florida. We request public comment on the application, which includes the applicant's habitat conservation plan (HCP), and on the Service's preliminary determination that this proposed ITP qualifies as low effect, and may qualify for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (40 CFR 1501.4), the Department of the Interior's (DOI) NEPA regulations (43 CFR 46), and the DOI's Departmental Manual (516 DM 8.5(C)(2)). To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review.

Proposed Project

The applicant requests a 5-year ITP to take skinks via the conversion of approximately 11.73 acres (ac) of occupied nesting, foraging, and sheltering skink habitat incidental to the construction and operation of a recreational park on 40.65 acres within a 211.90-ac site, Parcel #272309000000006 in Sections 16, 17, and 21, Township 23 South, Range 27 East, Orange County, Florida. The applicant proposes to mitigate for take of the skinks by purchasing credits equivalent to 23.46 ac of skink-occupied habitat within the Lake Livingston Conservation Bank or another Service-approved conservation bank. The Service would require the applicant to purchase the credits prior to engaging in any construction phase of the project.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's proposed project, including the construction of the buildings and associated infrastructure (*e.g.,* electric, water, and sewer lines), would individually and cumulatively have a minor effect on the skinks and the environment. Therefore, we have preliminarily determined that the proposed ESA section 10(a)(1)(B) permit would be a low-effect ITP that individually or cumulatively would have a minor effect on the sand skink and may qualify for application of a categorical exclusion pursuant to the Council on Environmental Quality's NEPA regulations, DOI's NEPA regulations, and the DOI Departmental Manual. A low-effect incidental take permit is one that would result in (1) minor or nonsignificant effects on species covered in the HCP; (2) nonsignificant effects on the human environment; and (3) impacts that, when added together with the impacts of other past, present, and reasonably foreseeable actions, would not result in significant cumulative effects to the human environment.

Next Steps

The Service will evaluate the application and the comments to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding and other matters, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number PER 3877804 to Orange County Parks and Recreation Division (Horizon West Regional Park).

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment, including your personal identifying information, may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Authority

The Service provides this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.32) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1500–1508 and 43 CFR 46).

Robert L. Carey,

Manager, Division of Environmental Review, Florida Ecological Services Field Office.

[FR Doc. 2023–23337 Filed 10–20–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[245A2100DD/AAKC001030/A0A501010.999900]

Self-Governance PROGRESS Act Negotiated Rulemaking Committee; Notice of Meeting

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Self-Governance PROGRESS Act Negotiated Rulemaking Committee (Committee), will hold their ninth public meeting to negotiate and advise the Secretary of the Interior (Secretary) on a proposed rule to implement the Practical Reforms and Other Goals To Reinforce the Effectiveness of Self-Governance and Self-Determination for Indian Tribes Act of 2019 (PROGRESS Act).

DATES:

- *Meeting:* The meeting is open to the public and to be held virtually on Monday, November 6, 2023, from 1 p.m. to 5 p.m. Eastern Standard Time. Please see **SUPPLEMENTARY INFORMATION** below for details on how to participate.
- *Comments:* Interested persons are invited to submit comments on or before December 7, 2023. Please see **ADDRESSES** below for details on how to submit written comments.

ADDRESSES: Send your comments to the Designated Federal Officer, Vickie Hanvey, by any of the following methods:

- *Preferred method:* Email to *comments@bia.gov* with ''PROGRESS Act'' in subject line.
- Mail, hand-carry or use an overnight courier service to the Designated Federal Officer, Ms. Vickie

Hanvey, Office of Self-Governance, Office of the Assistant Secretary—Indian Affairs, 1849 C Street NW, Mail Stop 3624, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Vickie Hanvey, Designated Federal Officer, *comments@bia.gov,* (918) 931–0745. Individuals in the United States who are deaf, blind, 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: This meeting is being held under the authority of the PROGRESS Act (Pub. L. 116–180), the Negotiated Rulemaking Act (5 U.S.C. 561 *et seq.*), and the Federal Advisory Committee Act (5 U.S.C. ch. 10). The Committee is to negotiate and reach consensus on recommendations for a proposed rule that will replace the existing regulations at 25 CFR part 1000. The Committee will be charged with developing proposed regulations for the Secretary's implementation of the PROGRESS Act's provisions regarding the Department of the Interior's (DOI) Self-Governance Program.

The PROGRESS Act amends subchapter I of the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. 5301 *et seq.,* which addresses Indian Self-Determination, and subchapter IV of the ISDEAA, which addresses DOI's Tribal Self-Governance Program. The PROGRESS Act also authorizes the Secretary to adapt negotiated rulemaking procedures to the unique context of self-governance and the government-to-government relationship between the United States and Indian Tribes. The **Federal Register** (87 FR 30256) notice published on May 18, 2022, discussed the issues to be negotiated and the members of the Committee.

Meeting Agenda

These meetings are open to the public. Detailed information about the Committee, including meeting agendas can be accessed at *https://www.bia.gov/service/progress-act.* Topics for this meeting will include Committee priority setting, drafting subcommittee assignments, subcommittee reports, negotiated rulemaking process, schedule and agenda setting for future meetings, Committee caucus, and public comment. The Committee meetings will begin at 1 p.m. Eastern Standard Time on Monday, November 6, 2023. Members of the public wishing to attend the meeting should visit *https://gcc02.safelinks.protection.outlook.com/ap/t-59584e83/?url=https%3A%2F%2Fteams.microsoft.com%2Fl%2Fmeetup-join%2F19%253ameeting_MWExMzhmOTktNzU4Ny00ODVkLWE4NGYtNjNlNDFhNDkyNTYx%2540thread.v2%2F0%3Fcontext%3D%257B%2522Tid%2522%253A%25220693b5ba-4b18-4d7b-9341-f32f400a5494%2522%252C%2522Oid%2522%253A%252213321130-a12b-4290-8bcf-30387057bd7b%2522%252C%2522IsBroadcastMeeting%2522%253Atrue%252C%2522role%2522%253A%2522a%2522%257D%26btype%3Da%26role%3Da&data=05%7C01%7CVickie.Hanvey%40bia.gov%7C8261721fbd394e7c021408dbce770a1d%7C0693b5ba4b184d7b9341f32f400a5494%7C0%7C0%7C638330782883221393%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=xGxZuKWrg9SEMM9BCpyWB9JMVnzm9E0gpveOq0%2FVYtI%3D&reserved=0` for virtual access.

Meeting Accessibility/Special Accommodations

Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least seven (7) business days prior to the meeting to give DOI sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Public Comments

Depending on the number of people who want to comment and the time available, the amount of time for individual oral comments may be limited. Requests to address the Committee during the meeting will be accommodated in the order the requests are received. Individuals who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written comments to the Designated Federal Officer up to 30 days following the meeting. Written comments may be sent to Vickie Hanvey listed in the **ADDRESSES** section above.

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: 5 U.S.C. ch. 10.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2023–23371 Filed 10–20–23; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036756; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of California, Davis, Davis, 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, Davis (UC Davis) 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 Amador County, CA.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after November 22, 2023.

ADDRESSES: Megon Noble, NAGPRA Project Manager, University of California, Davis, 412 Mrak Hall, One Shields Avenue, Davis, CA 95616, telephone (530) 752–8501, email *mnoble@ucdavis.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 UC Davis. 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 UC Davis.

Description

Human remains representing, at minimum, 39 individuals were removed from Amador County, CA. Jerald Johnson, a graduate student at the Department of Anthropology directed a salvage excavation at CA–AMA–56 in 1965. There are 1,822 associated funerary objects. Of that number, 1,657 funerary objects have been located and 165 objects are currently missing. UC Davis continues to look for the missing associated funerary objects. The 1,657 located associated funerary objects are 122 lots consisting of worked shell (including Olivella and haliotis beads, pendants, ornaments, and other worked shell); 141 lots consisting of worked bone (including beads, awls/needles/pins, tubes, incised bone, and other worked bone); 34 lots consisting of worked stone (including pendants, beads, a charmstone, a steatite bowl fragment, and other worked stone); 33 lots consisting of projectile points; 677 lots consisting of chipped stone (including bifaces, blades, cores, drills, knives, and debitage); three lots consisting of worked horn; 40 lots consisting of groundstones; 16 lots consisting of quartz crystals; 74 lots consisting of ochre; two lots consisting of ash; five lots consisting of charcoal; seven lots consisting of baked clay; 17 lots consisting of historic items; 240 lots consisting of unmodified animal bones; 126 lots consisting of unmodified shells; three lots consisting of hull fragments; and 117 lots consisting of unmodified stones (including fire-affected rock). The 165 currently missing associated funerary objects are 73 lots consisting of worked shell (including Olivella shell beads and other worked shell); two lots consisting of worked stone; one bone pin; one miscellaneous worked bone; 46 lots consisting of projectile points; 30 lots consisting of chipped stone (including bifaces, knives, and debitage); two lots consisting of groundstones; one lot consisting of ochre; one lot consisting of miscellaneous minerals; three lots consisting of unmodified animal bones; three lots consisting of unmodified shells; one lot consisting of ''associated material''; and one lot consisting of miscellaneous unknown/missing material.

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, archaeological, biological, geographical, historical, linguistic, and oral traditional.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, UC Davis has determined that:

- The human remains described in this notice represent the physical remains of 39 individuals of Native American ancestry.
- The 1,822 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 Buena Vista Rancheria of Me-Wuk Indians of California; California Valley Miwok Tribe, California; Chicken Ranch Rancheria of Me-Wuk Indians of California; Ione Band of Miwok Indians of California; Jackson Band of Miwuk Indians; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; United Auburn Indian Community of the Auburn Rancheria of California; and the Wilton Rancheria, 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 November 22, 2023. If competing requests for repatriation are received, UC Davis 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. UC Davis 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: October 11, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–23279 Filed 10–20–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036763; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: California State University, Sacramento, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), California State University, Sacramento 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 Sutter County, CA.

DATES: Repatriation of the human remains in this notice may occur on or after November 22, 2023.

ADDRESSES: Dr. Dianne Hyson, Dean of the College of Social Sciences and Interdisciplinary Studies, California State University, Sacramento, 6000 J Street, Sacramento, CA 95819, telephone (916) 278–6504, email *dhyson@csus.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 California State University, Sacramento. 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 California State University, Sacramento.

Description

In 1964, human remains representing, at minimum, two individuals, were removed from CA–SUT–32 in Sutter County, CA. The age of this site is not known. Likewise, how or when the human remains came into the possession of California State University, Sacramento is unknown. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archeological, folkloric, geographical, historical, kinship, linguistic, 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, California State University, Sacramento 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 and associated funerary objects described in this notice and the Ione Band of Miwok Indians of California; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; United Auburn Indian Community of the Auburn Rancheria of California; and the Wilton Rancheria, 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 in this notice to a requestor may occur on or after November 22, 2023. If competing requests for repatriation are received, California State University, Sacramento 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. California State University, Sacramento 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: October 11, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–23285 Filed 10–20–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036757; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: California Department of Transportation, Sacramento, CA, and California State University, Sacramento, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the California Department of Transportation (Caltrans), with the assistance of California State University, Sacramento, has completed an inventory of associated funerary objects and has determined that there is a cultural affiliation between an associated funerary object and Indian Tribes or Native Hawaiian organizations in this notice. The associated funerary object was removed from Sacramento County, CA.

DATES: Repatriation of the associated funerary object in this notice may occur on or after November 22, 2023.

ADDRESSES: Lisa Bright, California Department of Transportation, 703 B Street, Marysville, CA 95901, telephone (530) 812–4569, email *Lisa.Bright@dot.ca.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 Caltrans. 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 Caltrans.

Description

Between 1959 and 1997, several different excavations were carried out at CA–SAC–166 in Sacramento County, CA, and were detailed in a Notice of Inventory Completion published in the **Federal Register** on April 22, 2021. After repatriation of the published collection occurred, an additional associated funerary object was discovered. The one associated funerary object is a groundstone.

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 types of information were used to reasonably trace the relationship: anthropological, archeological, geographical, historical, linguistical, 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 Caltrans has determined that:

- 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 associated funerary object described in this notice and the Buena Vista Rancheria of Me-Wuk Indians of California; Ione Band of Miwok Indians of California; Jackson Band of Miwuk Indians; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; United Auburn Indian Community of the Auburn Rancheria of California; and the Wilton Rancheria, California.

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 November 22, 2023. If competing requests for repatriation are received, Caltrans 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. Caltrans 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: October 11, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–23281 Filed 10–20–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036764; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: California State University, Sacramento, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), California State University, Sacramento 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 Yuba County, CA.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after November 22, 2023.

ADDRESSES: Dr. Dianne Hyson, Dean of the College of Social Sciences and Interdisciplinary Studies, California State University, Sacramento, 6000 J Street Sacramento, CA 95819, telephone (916) 278–6504, email *dhyson@csus.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 California State University, Sacramento. 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 California State University, Sacramento.

Description

In the 1970s, human remains representing, at minimum, seven individuals were removed from CA–YUB–27 in Yuba County, CA, by a Yuba College field class. The collection was transferred to California State University, Sacramento in 1993. The age of the site is not known. The 12 associated funerary objects are the following individual lots: flaked stones; groundstones; modified stones; thermally-altered rocks; unmodified stones; modified shells; modified bones; faunal remains; baked clay objects; floral remain; historic materials; and uncatalogued materials.

In 1977, human remains representing, at minimum, five individuals were removed from CA–YUB–751 in Yuba County, CA, by a Yuba College field class. The collection was transferred to California State University, Sacramento in 1993. The age of the site is not known. The 11 associated funerary objects are the following individual lots: flaked stones; groundstones; modified stones; thermally-altered rocks; unmodified stones; modified shells; modified bones; faunal remains; floral remains; historic materials; and uncatalogued materials.

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, folkloric, geographical, historical, kinship, linguistic, 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, California State University, Sacramento has determined that:

- The human remains described in this notice represent the physical remains of 12 individuals of Native American ancestry.
- The 23 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 Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; United Auburn Indian Community of the Auburn Rancheria of California; and the Wilton Rancheria, 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 November 22, 2023. If competing requests for repatriation are received, California State University, Sacramento 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. California State University, Sacramento 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: October 11, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–23286 Filed 10–20–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036750; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Field Museum, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Field 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 Palm Beach County, FL.

DATES: Repatriation of the human remains in this notice may occur on or after November 22, 2023.

ADDRESSES: Helen Robbins, Repatriation Director, Field Museum, 1400 S Lake Shore Drive, Chicago, IL 60605, telephone (312) 665–7317, email *hrobbins@fieldmuseum.org.*

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 Field 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 Field Museum.

Description

Human remains representing, at minimum, two individuals were removed from Palm Beach County, FL. James Arango Armour, the lighthouse keeper at Jupiter Station, removed the human remains from Lake Worth at an unknown time. On April 13, 1876, Armour wrote to A.W. Ward describing the human remains as ''mound builder skulls.'' Ward purchased the human remains from Armour on June 19, 1876, and on October 31, 1893, he sold them to the Field Museum as part of a larger collection. A detailed assessment of the human remains was made by Field Museum staff in consultation with representatives of the Seminole Tribe of Florida. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: 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 Field Museum 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 Seminole Tribe of Florida.

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 November 22, 2023. If competing requests for repatriation are received, the Field 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 Field 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: October 11, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–23276 Filed 10–20–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036752; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Field Museum, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Field 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 collected from individuals at one or more unknown locations.

DATES: Repatriation of the human remains in this notice may occur on or after November 22, 2023.

ADDRESSES: Helen Robbins, Repatriation Director, Field Museum, 1400 S. Lake Shore Drive, Chicago, IL 60605, telephone (312) 665–7317, email *hrobbins@fieldmuseum.org.*

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 Field 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 Field Museum.

Description

Human remains were collected from two individuals at one or more unknown locations. The human remains are hair clippings identified with the tribal designation ''Coquielle'' and ''Coquille.'' (the hair clippings are represented by Field Museum catalog numbers 193214.8 and 193215.3.)

Museum staff believe these hair clippings were collected under the direction of Franz Boas and Frederick Ward Putnam for the 1893 World's Columbian Exposition. They were accessioned into the collection in 1939. No information regarding the individual's name, sex, age, or geographic location has been found. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: historical.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Field Museum 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 Coquille 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 November 22, 2023. If competing requests for repatriation are received, the Field 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 Field Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations 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: October 11, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–23275 Filed 10–20–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036759; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Montana, Missoula, MT

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Montana 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 McKenzie County, ND.

DATES: Repatriation of the human remains in this notice may occur on or after November 22, 2023.

ADDRESSES: Courtney Little Axe, University of Montana, Missoula, MT 59812, telephone (406) 243–2693 or (406) 243–5660, email *courtney.littleaxe@umt.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 Montana. 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 Montana.

Description

Sometime during the mid-20th century, human remains representing, at minimum, four individuals were removed from McKenzie County, ND, during the Smithsonian River Basin Survey, which preceded the construction of dams in the Upper Missouri River Basin, including Garrison Dam. One individual is represented by an upper jawbone (right juvenile maxilla) with one ochre-stained tooth. Associated records state ''PN–29/PN–31, Garrison Dam Survey'' (PN numbers appear to represent a field inventory reference system). Two additional individuals are represented by two foot bones whose distinctly different discoloration indicates two different burial contexts. The fourth individual is represented by a mandibular central incisor. Notes associated with the latter three individuals use the same ''PN–29/PN–31'' reference system. The notes also indicate these human remains had been collected during the Garrison Dam Survey from site ''32MZ0001/Crow Flies High'' and placed together in a specimen bag, and that a cultural connection existed between the remains and the Hidatsa. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological and geographical.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the University of Montana has determined that:

- The human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

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 November 22, 2023. If competing requests for repatriation are received, the University of Montana 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 University of Montana 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: October 11, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–23287 Filed 10–20–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036760; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Staten Island Institute of Arts and Sciences, Staten Island, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Staten Island Institute of Arts and Sciences (SIIAS) 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 Richmond County, NY.

DATES: Repatriation of the human remains in this notice may occur on or after November 22, 2023.

ADDRESSES: Colleen Evans, Staten Island Institute of Arts and Sciences, 1000 Richmond Terrace Building A, Staten Island, NY 10301, telephone (718) 483–7104, email *cevans@statenislandmuseum.org.*

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 SIIAS. 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 SIIAS.

Description

In 1897, human remains representing, at minimum, two individuals were removed from Burial Ridge in Tottenville, Staten Island, Richmond County, NY, during excavations led by Colonel Robert D. Wainwright. One skull was given to William T. Davis, who donated the individual to SIIAS in 1942. Stored along with this skull are five bags and three boxes containing the fragmentary human remains of at least one additional individual. Most likely, these human remains, too, derive from Col. Wainwright's excavation. No associated funerary objects are present.

In June 1927, human remains representing, at minimum, one individual were removed from Burial Ridge in Tottenville, Staten Island, Richmond County, NY, by J. Otis Swift, who gave them to the SIIAS. The human remains consist of 16 human bone fragments. No associated funerary objects are present.

During the spring of 1960, human remains representing, at minimum, one individual were removed from Burial Ridge in Tottenville, Staten Island, Richmond County, NY, by Jerome Jacobsen, an archeologist working with Columbia University. The University donated the individual to SIIAS in 1961. The human remains belong to an adult female. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: geographical, oral traditional, and historical.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the SIIAS has determined that:

- The human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Delaware Nation, Oklahoma; Delaware Tribe of Indians; and the Stockbridge Munsee Community, Wisconsin.

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 November 22, 2023. If competing requests for repatriation are received, the SIIAS 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 SIIAS 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: October 11, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–23280 Filed 10–20–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036751; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Field Museum, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Field 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 collected from individuals at one or more unknown locations.

DATES: Repatriation of the human remains in this notice may occur on or after November 22, 2023.

ADDRESSES: Helen Robbins, Repatriation Director, Field Museum, 1400 S Lake Shore Drive, Chicago, IL 60605, telephone (312) 665–7317, email *hrobbins@fieldmuseum.org.*

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 Field 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 Field Museum.

Description

Human remains were collected from seven individuals at one or more unknown locations. The human remains are hair clippings identified with the tribal designation ''Delaware.'' (The hair clippings are represented by Field Museum catalog numbers 193207.5, 193208.10, 193209.1, 193209.11, 193210.3, 193210.5, 103213.5.) Museum staff believe they were collected under the direction of Franz Boas and Frederick Ward Putnam for the 1893 World's Columbian Exposition. They were accessioned into the collection in 1939. No information regarding the individual's name, sex, age, or geographic location has been found. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: historical.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Field Museum has determined that:

- The human remains described in this notice represent the physical remains of seven 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 Delaware Nation, Oklahoma, and the Delaware Tribe of Indians.

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 and, if joined to a request from one or more of the Indian Tribes, the Munsee-Delaware Nation or the Eelünaapéewi Lahkéewiit, both non-federally recognized Indian groups.
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 November 22, 2023. If competing requests for repatriation are received, the Field 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 Field Museum 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: October 11, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–23277 Filed 10–20–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036761; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: California State University, Sacramento, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the California State University, Sacramento intends to repatriate certain cultural items that meet the definition of objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from Placer and Yuba Counties, CA.

DATES: Repatriation of the cultural items in this notice may occur on or after November 22, 2023.

ADDRESSES: Dr. Dianne Hyson, Dean of the College of Social Sciences and Interdisciplinary Studies, California State University, Sacramento, 6000 J Street, Sacramento, CA 95819, telephone (916) 278–6504, email *dhyson@csus.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 California State University, Sacramento. 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 summary or related records held by the California State University, Sacramento.

Description

During the 1960s–1980's, California State University, Sacramento students and faculty surveyed and investigated sites along creeks and ravines in Placer County, CA, ahead of several development projects (CA–PLA–47, PLA–63, PLA–64, PLA–66, PLA–67, PLA–69, PLA–70, PLA–71, PLA–72, PLA–73, PLA–74, PLA–75, PLA–76, PLA–77, PLA–78, PLA–80, PLA–81, PLA–83, PLA–90, PLA–92, PLA–93, PLA–94, PLA–95, PLA–99, PLA–105, PLA–106, PLA–107/H, PLA–225, PLA–271/H, PLA–663/H, and four sites without a designated name or trinomial (31–109, 31–60, 31–108, 31–78)). As a result, 13 cultural items were collected from several of the sites. The 13 objects of cultural patrimony consist of the following individual lots: flaked stones; groundstones; unmodified stones; thermally-altered rocks; modified stones; modified shells; modified bones; historic materials; faunal remains; floral remains; baked clay objects; soil samples; and uncatalogued materials.

At an unknown date, 10 cultural items were collected from CA–PLA–292, PLA–293, and another, unknown location (31–62) by an individual who subsequently donated them to California

State University, Sacramento, most likely in the 1960s. The 10 objects of cultural patrimony consist of the following individual lots: flaked stones; groundstones; unmodified stones; modified stones; modified shells; faunal remains; floral remains; historic materials; soil samples; and uncatalogued materials.

In the 1960s and 1970s, American River Junior College (ARJC) conducted investigations at several sites in Placer and Yuba Counties (CA–PLA–2907, CA–PLA–2908, possibly PLA–38, and CA–YUB–05), which resulted in the collection of 12 cultural items. In 1977, the collections from these sites were transferred to California State University, Sacramento along with other ARJC collections. The 12 objects of cultural patrimony consist of the following individual lots: flaked stones; groundstones; modified bones; modified shells; modified stones; thermally-altered rocks; unmodified stones; baked clay objects; floral remains; faunal remains; historic materials; and uncatalogued materials.

At an unknown date, one cultural item was collected from a quarry site near Bowman, CA, and was donated to California State University, Sacramento. The object of cultural patrimony is one lot consisting of uncatalogued materials.

Sometime during the 1920s and 1930s, Anthony Zallio, a private collector, collected two cultural items from sites in Placer County, CA. In 1951, Zallio's collection was posthumously donated to the Department of Anthropology at Sacramento State College, CA (now California State University, Sacramento). The two objects of cultural patrimony are a flaked stone and a modified stone.

In the 1970s, a cultural item was donated to the Anthropology Museum at California State University, Sacramento that was said to have been found on the North Fork of the American River, possibly near CA–PLA–34. The one object of cultural patrimony is a steatite pipe.

In the 1970s, cultural items were collected from an unknown location near Bowman, CA, and at an unknown date, they were donated to California State University, Sacramento. The five objects of cultural patrimony consist of the following individual lots: flaked stones; modified shells; faunal remains; historic materials; and uncatalogued materials.

In 1990, one cultural item was collected at historic Virginiatown, in Placer County, CA, during a California State University, Sacramento-sponsored field school. The object of cultural patrimony is one lot consisting of archaeologically recovered Native American objects.

At an unknown date, two cultural items were removed from CA–PLA–36 in Placer County, CA. The circumstances surrounding their recovery and curation at California State University, Sacramento are not known. The two objects of cultural patrimony are one lot consisting of flaked stones and one lot consisting of groundstones.

At an unknown date, five cultural items were removed from CA–PLA–2879, in Placer County, CA. The circumstances surrounding their recovery and curation at California State University, Sacramento are not known. The five objects of cultural patrimony consist of the following individual lots: worked shells; faunal remains; flaked stones; unmodified stones; and historic materials.

At an unknown date, one cultural item was collected from an unknown site in Yuba County, CA, by Charles McKee. Subsequently, this item was donated to California State University, Sacramento by his estate. The object of cultural patrimony is a modified stone.

Cultural Affiliation

The cultural items 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, kinship, linguistic, 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 California State University, Sacramento has determined that:

- The 53 cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and the United Auburn Indian Community of the Auburn Rancheria of California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by 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 cultural items in this notice to a requestor may occur on or after November 22, 2023. If competing requests for repatriation are received, the California State University, Sacramento must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The California State University, Sacramento 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 10.8, 10.10, and 10.14.

Dated: October 11, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–23283 Filed 10–20–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036762; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: California State University, Sacramento, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), California State University, Sacramento 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 Placer County, CA.

DATES: Repatriation of the human remains and associated funerary objects

in this notice may occur on or after November 22, 2023.

ADDRESSES: Dr. Dianne Hyson, Dean of the College of Social Sciences and Interdisciplinary Studies, California State University, Sacramento, 6000 J Street, Sacramento, CA 95819, telephone (916) 278–6504, email: *dhyson@csus.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 California State University, Sacramento. 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 California State University, Sacramento.

Description

In 1966, human remains representing, at minimum, one individual were removed from CA–PLA–14 in Placer County, CA, by a graduate student of California State University, Sacramento. Primary occupation of PLA–14 is estimated to occurred during the Late Horizon through Historic Periods (roughly A.D. 1100 to early 1800s). The 12 associated funerary objects are the following individual lots: baked clay objects; faunal remains; flaked stones; groundstones; modified stones; modified bones; modified shells; thermally-altered rocks; unmodified stones; floral remains; historic materials; and uncatalogued materials.

In the 1960s, human remains representing, at minimum, three individuals were removed from CA–PLA–41 in Placer County, CA, by a California State University, Sacramento field class. Occupation of PLA–41 is estimated to have occurred during the Middle to Late Horizons (roughly 550 BC through A.D. 1700s). The 15 associated funerary objects are the following individual lots: faunal remains; flaked stones; groundstones; modified stones; modified bones; modified shells; unmodified stones; thermally-altered rocks; baked clay objects; ash; floral remains; soil samples; historic materials; unidentified stones; and uncatalogued materials.

In 1963, human remains representing, at minimum, 10 individuals were removed from CA–PLA–68 in Placer County, CA, by American River Junior College. The collection was transferred to California State University, Sacramento at an unknown date. Occupation of the site is estimated to have occurred from A.D. 700–900 onward. The six associated funerary objects are the following individual lots: faunal remains; flaked stones; groundstones; modified shells; floral remains; and uncatalogued materials.

In the 1960s, human remains representing, at minimum, one individual were removed from CA–PLA–85 in Placer County, CA, during a survey by a California State University, Sacramento student. Occupation of PLA–85 is estimated to have occurred during the Late Horizon (roughly A.D. 1100–1700s), with other periods of occupation possible. The four associated funerary objects are the following individual lots: flaked stones; groundstones; faunal remains; and uncatalogued materials.

In the 1960s, human remains representing, at minimum, one individual were removed from CA–PLA–86 in Placer County, CA, during a survey by a California State University, Sacramento student. Occupation of PLA–86 is estimated to have occurred during the Late Horizon (roughly A.D. 1100–1700s), with other periods of occupation possible. The five associated funerary objects are the following individual lots: flaked stones; groundstones; faunal remains; unmodified stones; and uncatalogued materials.

In the 1960s, human remains representing, at minimum, one individual were removed from CA–PLA–87 in Placer County, CA, during a survey by a California State University, Sacramento student. The age of the site is not known. The five associated funerary objects are the following individual lots: flaked stones; groundstones; unmodified stones; faunal remains; and uncatalogued materials.

In the 1960s, human remains representing, at minimum, eight individuals were removed from CA–PLA–142 in Placer County, CA, during several different excavations. In 1962–1963, American River Junior College (ARJC) conducted excavations at the site. The collection was transferred to California State University, Sacramento at an unknown date. In 1963, California State University, Sacramento was contacted by local police to recover archeological materials discovered during waterline work. A collection made by a local citizen prior to the ARJC excavation was donated to Sacramento State in 2005. Occupation of PLA–142 is estimated to have occurred during the Late Horizon (roughly A.D. 1100–1700s), with possible use during the Historic Period. The 11 associated funerary objects are the following individual lots: flaked stones; groundstones; faunal remains; unmodified stones; thermally-altered rocks; modified stones; modified bones; modified shells; floral remains; historic materials; and uncatalogued materials.

In the 1960's, human remains representing, at minimum, one individual were removed from CA–PLA–194 in Placer County, CA, by American River Junior College (ARJC). The collection was transferred to California State University, Sacramento in 1977. Occupation of PLA–194 is estimated to have occurred during the Late Horizon (roughly A.D. 1100–1700s), with possible use during the Historic Period. The 12 associated funerary objects are the following individual lots: baked clay objects; flaked stones; groundstones; faunal remains; unmodified stones; thermally-altered rocks; modified stones; modified bones; modified shells; floral remains; historic materials; and uncatalogued materials.

At an unknown date, human remains representing, at minimum, one individual were removed from school property in Placer County, CA. There is little documentation for the collection. The associated funerary objects include one lot consisting of flaked stones.

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, folkloric, geographical, historical, kinship, linguistic, 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, California State University, Sacramento has determined that:

- The human remains described in this notice represent the physical remains of 27 individuals of Native American ancestry.
- The 71 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 Ione Band of Miwok Indians of California; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; United Auburn Indian Community of the Auburn Rancheria of California; and the Wilton Rancheria, 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 November 22, 2023. If competing requests for repatriation are received, California State University, Sacramento 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. California State University, Sacramento 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: October 11, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–23284 Filed 10–20–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036748; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: The Filson Historical Society, Louisville, KY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Filson Historical Society 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 Jefferson County, KY.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after November 22, 2023.

ADDRESSES: Kelly Hyberger, The Filson Historical Society, 1310 South 3rd Street, Louisville, KY 40208, telephone (502) 635–5083, email *khyberger@filsonhistorical.org.*

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 Filson Historical Society. 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 Filson Historical Society.

Description

Human remains representing, at minimum, one individual were removed from Jefferson County, KY. In 1931, Edward Rutledge Lilly collected this individual between Goose Creek and Harrod's Creek, near River Road, in Louisville, KY. Lilly donated this ancestor to the Filson Historical Society in 1981. The 15 associated funerary objects are six stone blanks, one stone drill, six projectile points, one scraper, and one piece of rounded stone.

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: archeological, geographical, and oral traditional.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Filson Historical Society has determined that:

• The human remains described in this notice represent the physical remains of one individual 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 Cherokee Nation; Eastern Band of Cherokee Indians; Shawnee Tribe; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

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 November 22, 2023. If competing requests for repatriation are received, the Filson Historical Society 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 Filson Historical Society 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: October 11, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–23273 Filed 10–20–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036749; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Hastings Museum, Hastings, NE

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Hastings Museum intends to repatriate a certain cultural item that meets the definition of an unassociated funerary object and that has a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural item was removed from Bartow County, GA.

DATES: Repatriation of the cultural item in this notice may occur on or after November 22, 2023.

ADDRESSES: Dan Brosz, Hastings Museum, 1330 N Burlington Avenue, Hastings, NE 68901, telephone (402) 462–2399, email *dbrosz@cityofhastings.org.*

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 Hastings 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 summary or related records held by the Hastings Museum.

Description

At an unknown date, one cultural item was removed from an unidentified mound in Bartow County, GA, by R.E. Dodge. This unassociated funerary object came to the Hastings Museum between 1926 and 1931. The unassociated funerary object is an earring made from animal bone, and it is 1.25 inches in length.

Cultural Affiliation

The cultural item 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 types of information were 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 Hastings Museum has determined that:

- The one cultural item described above 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 and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural item and The Muscogee (Creek) Nation.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by 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 cultural item in this notice to a requestor may occur on or after November 22, 2023. If competing requests for repatriation are received, the Hastings Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural item are considered a single request and not competing requests. The Hastings 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 10.8, 10.10, and 10.14.

Dated: October 11, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–23274 Filed 10–20–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036765; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Cobb Institute of Archaeology, Mississippi State University, Mississippi State, MS

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Cobb Institute of Archaeology, Mississippi State University (CIA) 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 Oktibbeha County, MS.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after November 22, 2023.

ADDRESSES: Jimmy Hardin, CIA Director; Tony Boudreaux, CIA Curator; and Shawn Lambert, Assistant Professor and NAGPRA Coordinator, Cobb Institute of Archaeology, 340 Lee Boulevard, Mississippi State, MS 39762, telephone (662) 325–3826, email *sl2042@msstate.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 Cobb Institute of Archaeology. 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 Cobb Institute of Archaeology.

Description

Human remains representing, at minimum, 157 individuals were removed from Oktibbeha County, MS. Lyon's Bluff (22OK520) is a mound and village complex located in the Black Prairie region in northeastern Oktibbeha County, MS. The site was first occupied between A.D. 1100 and 1650. During archeological work in 2021, a second Choctaw occupation, dating from the late 1700s to circa 1850, was discovered.

In the summers of 1934 and 1935, Moreau Chambers, in association with

the Mississippi Department of Archives and History (MDAH), undertook the first excavations at Lyon's Bluff. Chambers never formally documented the field work, and the finds he recovered were thought to be lost. Recently, human remains belonging to five individuals removed by Chambers were discovered at MDAH, and in 2022, they were transferred to the Cobb Institute of Archaeology.

In 1965, Richard Marshall, an archeologist at Mississippi State University, together with members of the Mississippi Archaeological Association (MAA) in Oktibbeha County, excavated a midden area in the northeast areas of the site. In 1967, Marshall and others from Mississippi State University and the University of Mississippi conducted a joint field school, during which two large blocks were excavated and the human remains of, at minimum, 67 individuals were removed and sent to Mississippi State University. Marshall continued to excavate at Lyon's Bluff throughout the late 1960s and early 1970s, during which he removed additional burials.

Following Marshall's excavations, Mississippi State University continued to hold field schools at Lyon's Bluff, in 2001 and 2003. Most recently, in the summer of 2021, Shawn Lambert, Assistant Professor at Mississippi State University, in collaboration with the Choctaw, led an archeological survey and excavation at the site. Their work revealed a significant historic Choctaw component overlying three pre-European Contact house mounds.

The 442 associated funerary objects are 75 lots consisting of ceramics sherds, 56 shell fragments, 143 lots consisting of faunal remains, 25 pieces of lithic debitage, 10 stone tools, 45 lots consisting of daub, one worked fossil, eight charcoal samples, seven soil samples, five bone awls, three pieces of fired clay, two drilled bear teeth, one charred corn cob, two pieces of limestone, two turtle shells, one necklace composed of shell beads and bear teeth, four ceramic ear plugs, one stone, three ground stones, two shell beads, three charred acorns, one charred seed, 10 pieces of sandstone, 11 worked shells, two greenstone celts, six bone tools, four ceramic discoidals, two shell gorgets, one fire-cracked rock, one partial stone palette, one nail, one gorget composed of incised turtle shell, one stone ear plug, one nutting stone, and one utilized deer antler.

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: archeological, oral traditional, and other information or expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Cobb Institute of Archaeology has determined that:

- The human remains described in this notice represent the physical remains of 157 individuals of Native American ancestry.
- The 442 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 Jena Band of Choctaw Indians; Mississippi Band of Choctaw Indians; and The Choctaw Nation of Oklahoma.

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 November 22, 2023. If competing requests for repatriation are received, the Cobb Institute of Archaeology 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 Cobb Institute of Archaeology 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: October 11, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–23288 Filed 10–20–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036758; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion Amendment: California State University, Sacramento, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice; amendment.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), California State University, Sacramento has amended a Notice of Inventory Completion published in the **Federal Register** on March 2, 2023. This notice amends the number of associated funerary objects in a collection removed from Sacramento County, CA.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after November 22, 2023.

ADDRESSES: Dr. Dianne Hyson, Dean of the College of Social Sciences and Interdisciplinary Studies, California State University, Sacramento, 6000 J Street, Sacramento, CA 95819, telephone (916) 278–6504, email *dhyson@csus.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 California State University, Sacramento. The National Park Service is not responsible for the determinations in this notice. Additional information on the amendments and determinations in this notice, including the results of consultation, can be found in the inventory or related records held by California State University, Sacramento.

Amendment

This notice amends the determinations published in a Notice of

Inventory Completion in the **Federal Register** (88 FR 13147–13148, March 2, 2023). Repatriation of the items in the original Notice of Inventory Completion has not occurred. Three additional associated funerary objects from one of the sites listed in that notice, CA–SAC–127, were identified in another collection that was donated to the University by the estate of Charles McKee.

From CA–SAC–127 in Sacramento County, CA, the 24,853 associated funerary objects (previously identified as 24,850 associated funerary objects) include baked clay; faunal and floral remains; flaked and ground stones; historic materials; modified shells, bones, stone, and wood; non-cultural items; soil samples; ash; charcoal; pigment; unidentified materials; unmodified stones; and thermally altered rocks. Of this number, 136 objects are currently missing from the collection. California State University, Sacramento continues to look for these 136 missing objects.

Determinations (as Amended)

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, California State University, Sacramento has determined that:

- The human remains represent the physical remains of 379 individuals of Native American ancestry.
- The 25,176 objects described in this amended 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 and the Buena Vista Rancheria of Me-Wuk Indians of California; Chicken Ranch Rancheria of Me-Wuk Indians of California; Ione Band of Miwok Indians of California; Jackson Band of Miwuk Indians; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; United Auburn Indian Community of the Auburn Rancheria of California; and the Wilton Rancheria, 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 November 22, 2023. If competing requests for repatriation are received, California State University, Sacramento 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. California State University, Sacramento 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, 10.13, and 10.14.

Dated: October 11, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–23282 Filed 10–20–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036753; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Field Museum, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Field 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 collected from individuals at one or more unknown locations.

DATES: Repatriation of the human remains in this notice may occur on or after November 22, 2023.

ADDRESSES: Helen Robbins, Repatriation Director, Field Museum, 1400 S Lake Shore Drive, Chicago, IL 60605, telephone (312) 665–7317, email *hrobbins@fieldmuseum.org.*

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 Field 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 Field Museum.

Description

Human remains were collected from 10 individuals at one or more unknown locations. The human remains are hair clippings identified with the tribal designation ''Menominee'' (Field Museum catalog numbers 193207.8, 193208.1, 193211.8, 193213.11, 193214.6, 193214.7, 193216.2, 193216.3, 193216.4, 193216.7). Field Museum staff believe they were collected under the direction of Franz Boas and Frederick Ward Putnam for the 1893 World's Columbian Exposition in Chicago. The hair clippings were accessioned into the Field Museum's collection in 1939. No information regarding the individual's name, sex, age, or geographic location has been found. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: historical.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Field Museum has determined that:

- The human remains described in this notice represent the physical remains of 10 individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Menominee Indian Tribe of Wisconsin.

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 November 22, 2023. If competing requests for repatriation are received, the Field 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 Field 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: October 11, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–23278 Filed 10–20–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–GATE–36747; PPNEGATEB0, PPMVSCS1Z.Y00000]

Notice of Cancellation and Rescheduling of the Public Meeting of the Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The National Park Service published in the **Federal Register** on October 2, 2023, a notice of public meeting of the Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee scheduled for November 16, 2023. The document contained an incorrect date. The date of the meeting is November 9, 2023.

FOR FURTHER INFORMATION CONTACT: Daphne Yun, Acting Public Affairs Officer, Gateway National Recreation Area, 210 New York Avenue, Staten Island, New York 10305, by telephone (718) 815–3651, or by email *daphne_yun@nps.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of October 2, 2023, in FR Doc. 2023–21579 (88 FR 67796), on page 67796, in the third column, correct the date of the Committee meeting to read: ''Thursday, November 9, 2023.''

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2023–23360 Filed 10–20–23; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–23–050]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: October 26, 2023 at 9:30 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. No. 731–TA–921 (Fourth Review) (Folding Gift Boxes from China). The Commission currently is scheduled to complete and file its determinations and views of the Commission on November 3, 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: October 19, 2023.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2023–23419 Filed 10–19–23; 11:15 am]

BILLING CODE 7020–02–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Vacancy

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Request for applications.

SUMMARY: The Joint Board for the Enrollment of Actuaries (Joint Board), established under the Employee Retirement Income Security Act of 1974 (ERISA), is responsible for the enrollment of individuals who wish to perform actuarial services under ERISA. To assist in its examination duties mandated by ERISA, the Joint Board has established the Advisory Committee on Actuarial Examinations (Advisory Committee) in accordance with the provisions of the Federal Advisory Committee Act (FACA). The current Advisory Committee members' terms expire on February 28, 2025. Recently, a vacancy became available on the Advisory Committee, and the Joint Board seeks applications to fill that vacancy. This notice describes the Advisory Committee and invites applications from those interested in serving on the Advisory Committee for the period March 1, 2024–February 28, 2025.

DATES: Applications for membership on the Advisory Committee must be received by December 1, 2023.

ADDRESSES: Send applications electronically with APPLICATION FOR ADVISORY COMMITTEE inserted in subject line to *NHQJBEA@irs.gov.* See **SUPPLEMENTARY INFORMATION** for application requirements.

FOR FURTHER INFORMATION CONTACT: Elizabeth Van Osten, Designated Federal Officer, Advisory Committee on Actuarial Examinations, at 202–317–3648 or *elizabeth.j.vanosten@irs.gov.*

SUPPLEMENTARY INFORMATION:

1. Background

To qualify for enrollment to perform actuarial services under ERISA, an applicant must satisfy certain experience and knowledge requirements, which are set forth in the Joint Board's regulations. An applicant may satisfy the knowledge requirement by successful completion of Joint Board examinations in basic actuarial mathematics and methodology and in actuarial mathematics and methodology relating to pension plans qualifying under ERISA.

The Joint Board, the Society of Actuaries, and the American Society of Pension Professionals & Actuaries jointly offer examinations acceptable to

the Joint Board for enrollment purposes and acceptable to the other two actuarial organizations as part of their respective examination programs.

2. Scope of Advisory Committee Duties

The Advisory Committee plays an integral role in the examination program by assisting the Joint Board in offering examinations that enable examination candidates to demonstrate the knowledge necessary to qualify for enrollment. The Advisory Committee's duties, which are strictly advisory, include (1) recommending topics for inclusion on the Joint Board examinations, (2) developing and reviewing examination questions, (3) recommending proposed examinations, (4) reviewing examination results and recommending passing scores, and (5) providing other recommendations and advice relative to the examinations, as requested by the Joint Board.

3. Member Terms and Responsibilities

Generally, members are appointed for a 2-year term. However, the member selected pursuant to this notice will be appointed for 12 months, beginning March 1, 2024. Members may seek reappointment for additional consecutive terms.

Members are expected to attend approximately 4 meetings each calendar year and are reimbursed for travel expenses in accordance with applicable government regulations. For this appointment, the member is expected to attend approximately 4 meetings. Meetings may be held in-person or by teleconference. In general, members are expected to devote 125 to 175 hours, including meeting time, to the work of the Advisory Committee over the course of a year.

4. Member Selection

The Joint Board seeks to appoint an Advisory Committee that is fairly balanced in terms of points of view represented and functions to be performed. Every effort is made to ensure that most points of view extant in the enrolled actuary profession are represented on the Advisory Committee. To that end, the Joint Board seeks to appoint members from each of the main practice areas of the enrolled actuary profession, including small employer plans, large employer plans, and multiemployer plans. In addition, to ensure diversity of points of view, the Joint Board limits the number of members affiliated with any one actuarial organization or employed with any one firm.

Membership normally will be limited to actuaries currently enrolled by the Joint Board. However, individuals having academic or other special qualifications of particular value for the Advisory Committee's work also will be considered for membership. Federally registered lobbyists and individuals affiliated with Joint Board enrollment examination preparation courses are not eligible to serve on the Advisory Committee.

5. Member Designation

Advisory Committee members are appointed as Special Government Employees (SGEs). As such, members are subject to certain ethical standards applicable to SGEs. Upon appointment, each member will be required to provide written confirmation that he/she does not have a financial interest in a Joint Board examination preparation course. In addition, each member will be required to attend annual ethics training.

6. Application Requirements

To receive consideration, an individual interested in serving on the Advisory Committee must submit (1) a signed, cover letter expressing interest in serving on the Advisory Committee and describing his/her professional qualifications, and (2) a resume and/or curriculum vitae. Applications must be submitted electronically to *NHQJBEA@irs.gov*. The transmittal email should include APPLICATION FOR ADVISORY COMMITTEE in the subject line. Applications must be received by December 1, 2023.

Dated: October 18, 2023.

Thomas V. Curtin, Jr.,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 2023–23328 Filed 10–20–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1284]

Importer of Controlled Substances Application: Nexus Pharmaceuticals, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Nexus 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 November 22, 2023. Such persons may also file a written request for a hearing on the application on or before November 22, 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 September 20, 2023, Nexus Pharmaceuticals, Inc., 10300 128th Avenue, Pleasant Prairie, Wisconsin 53158–7336 applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Remifentanil	9739	II

The company plans to import the listed controlled substance for research and analytical testing 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. 2023–23320 Filed 10–20–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0013]

SolarPTL, LLC: Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of SolarPTL, LLC, for expansion of the scope of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the application.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before November 7, 2023.

ADDRESSES: Comments may be submitted as follows:

Electronically: You may submit comments, including attachments, electronically at *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA–2010–0013). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *https://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting information they do not want made available to the public, or submitting materials that contain personal information (either about themselves or others), such as Social Security numbers and birthdates.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Extension of comment period: Submit requests for an extension of the comment period on or before November 7, 2023 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2300 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

OSHA is providing notice that SolarPTL, LLC. (PTL), is applying for an expansion of current recognition as a NRTL. PTL requests the addition of one test standard to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition, as well as for an expansion or renewal of recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including PTL, which details that NRTL's scope of recognition. These pages are available from the OSHA website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

PTL currently has one facility (site) recognized by OSHA for product testing and certification, with the headquarters located at: SolarPTL, LLC, 1107 West Fairmont Drive, Tempe, Arizona 85282. A complete listing of PTL's scope of recognition is available at *https://www.osha.gov/nationally-recognized-testing-laboratory-program/solarptl.*

II. General Background on the Application

PTL submitted an application, dated June 1, 2021 (OSHA–2010–0013–0005), to expand recognition as a NRTL to include one additional test standard. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA performed an on-site assessment related to this application on August 16–17, 2022, where OSHA found nonconformances with the requirements of 29 CFR 1910. PTL addressed the nonconformances adequately and OSHA has no objection to the addition of this standard to the scope of recognition.

Table 1 shows the test standard found in PTL's application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED APPROPRIATE TEST STANDARD FOR INCLUSION IN PTL'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 3703	Standard for Solar Trackers.

III. Preliminary Finding on the Application

PTL submitted an acceptable application for expansion of the scope of recognition. OSHA's review of the application file and pertinent documentation preliminarily indicates that PTL can meet the requirements prescribed by 29 CFR 1910.7 for expanding its recognition to include the addition of the test standard shown in Table 1, above, for NRTL testing and certification. This preliminary finding does not constitute an interim or temporary approval of PTL's application.

OSHA seeks public comment on this preliminary determination.

V. Public Participation

OSHA welcomes public comment as to whether PTL meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL. Comments should consist of pertinent written documents and exhibits.

Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified.

To review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. These materials also are generally available online at *https://www.regulations.gov* under Docket No. OSHA–2010–0013 (for further information, see the ''*Docket*'' heading in the section of this notice titled **ADDRESSES**).

OSHA staff will review all comments to the docket submitted in a timely manner. After addressing the issues raised by these comments, staff will make a recommendation to the Assistant Secretary of Labor for Occupational Safety and Health on whether to grant PTL's application for expansion of the scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of the final decision in the **Federal Register**.

VI. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393; Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on October 17, 2023.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–23324 Filed 10–20–23; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2024–002]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: We are proposing to request an extension from the Office of Management and Budget (OMB) of one currently approved information collection used to obtain information from private foundations or other entities in order to design, construct and equip Presidential libraries. Pursuant to the Paperwork Reduction Act of 1995, we invite you to comment on this proposed combined information collection.

DATES: We must receive written comments on or before December 22, 2023.

ADDRESSES: Send comments to Paperwork Reduction Act Comments (MP), Room 4100; National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001, or email them to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Tamee Fechhelm, Paperwork Reduction Act Officer, by email at *tamee.fechhelm@nara.gov* or by telephone at 301.837.1694 with requests for additional information or copies of the proposed information collection and supporting statement.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we invite the public and other Federal agencies to comment on proposed information collections. If you have comments or suggestions, they should address one or more of the following points: (a) whether the proposed information collection is necessary for NARA to properly perform its functions; (b) our estimate of the burden of the proposed information collection and its accuracy; (c) ways we could enhance the quality, utility, and clarity of the information we collect; (d) ways we could minimize the burden on respondents of collecting the information, including through information technology; and (e) whether the collection affects small businesses.

We will summarize any comments you submit and include the summary in our request for OMB approval. All comments will become a matter of public record.

In this notice, we solicit comments concerning the following information collection:

Title: Presidential Library Facilities.

OMB number: 3095–0036.

Agency form number: None.

Type of review: Regular.

Affected public: Presidential library foundations or other entities proposing to transfer a Presidential library facility to NARA.

Estimated number of respondents: 1.

Estimated time per response: 31 hours.

Frequency of response: On occasion.

Estimated total annual burden hours: 31 hours.

Abstract: The information collection is required for NARA to meet its obligations under 44 U.S.C. 2112(a)(3) to submit a report to Congress before accepting a new Presidential library facility. The report contains information that can be furnished only by the foundation or other entity responsible

for building the facility and establishing the library endowment.

Sheena Burrell,

Executive for Information Services/CIO.

[FR Doc. 2023–23357 Filed 10–20–23; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Privacy Act of 1974; System of Records

AGENCY: National Science Foundation.

ACTION: Notice of a new system of records.

SUMMARY: The National Science Foundation (NSF) is creating a new system of records: NSF–80, Education and Training Application Data System (ETAP). This new system of records will contain records about individuals interested in participating in NSF education and training activities, and individuals engaged in the planning, management, and implementation of those activities. Records will bolster the agency's capacity to conduct robust evidence-building activities, including monitoring, targeted research, and rigorous evaluation of its education and training activities.

DATES: This system notice is effective as of October 23, 2023. The routine uses described in this notice will take effect on November 22, 2023, unless modified by a subsequent notice to incorporate comments received from the public. Submit comments on or before November 22, 2023.

ADDRESSES: You may submit comments, identified as ''SORN NSF–80 (ETAP),'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email:* Senior Agency Official for Privacy, Dorothy Aronson, *daronson@nsf.gov.* Include ''SORN NSF–80, ETAP'' in the subject line of the message.
- *Mail:* Dorothy Aronson, Senior Agency Official for Privacy, Office of Information and Resource Management, National Science Foundation, 2415 Eisenhower Ave., Alexandria, VA 22314.

Instructions: NSF will post all comments on the NSF's website (*https://www.nsf.gov*). All comments submitted in response to this Notice will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: If you wish to submit general questions about the proposed new system of records NSF–80, please contact Dorothy Aronson, Senior Agency Official for Privacy, at *daronson@nsf.gov* or 703–292–4299.

SUPPLEMENTARY INFORMATION: NSF supports students and early career professionals at all stages of their academic journey through a wide range of opportunities that foster professional growth, facilitating exposure to and induction into the practice of science. The new system of records, NSF–80, Education and Training Application Data System (ETAP), will be used to collect, maintain, and manage individual applications to education and training opportunities funded by NSF, allow tracking of participants' program experiences and career outcomes over time, and provide high-quality data that NSF can use to respond to Administration priorities, the Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act), the America COMPETES Reauthorization Act of 2010, and the CHIPS+ Act.

SYSTEM NAME AND NUMBER:

Education and Training Application Data System Records (ETAP), NSF–80.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

National Science Foundation, 2415 Eisenhower Ave., Alexandria, VA 22314.

SYSTEM MANAGER(S):

Chief Evaluation Officer and Division Director, Division of Information Systems, NSF.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 1862 & 1870; 44 U.S.C. 3101; Public Law 105–277, t. 4, sec. 414, as amended, codified at 8 U.S.C. 1101 note (NSF S–STEM Program); and other program statutes, including 42 U.S.C. 1862p–6, 42 U.S.C. 1862p–7, 42 U.S.C. 1862p–13, 42 U.S.C. 1862p–15, 42 U.S.C. 1862t, 42 U.S.C. 1869c, 42 U.S.C.1885a.

PURPOSE(S) OF THE SYSTEM:

(1) To provide high-quality data that NSF can use for robust evidence-building activities including monitoring, targeted research, and rigorous evaluations of its activities, including programs.

(2) To provide the public with a transparent, accessible, and centralized location of information on NSF education and training opportunities and reduce burden on individuals (mostly students), who will be able to use a common application to apply to multiple training opportunities funded by NSF.

(3) To lower barriers to entry into NSF programs for new and aspiring Principal Investigators (PIs), who will be able to leverage a robust and secure data collection system, free of charge, to manage applications to their projects, and reduce administrative costs for existing PIs.

(4) To provide NSF's community of stakeholders (including PIs, Co-PIs, and NSF program officers and leadership) with timely access to data analytics on applicants and participants to inform decision making and support improvement efforts.

(5) To enable longitudinal tracking of outputs and outcomes to assess the effectiveness of NSF's education and training activities and inform decisions.

(6) To provide demographic data that NSF can use to ensure equitable representation of groups that are traditionally underrepresented in science, technology, engineering, and mathematics (STEM).

(7) To recognize the achievements of distinguished individuals, their actions, products, or ideas and disseminate information of relevant opportunities to support individuals' careers in STEM.

(8) To support NSF efforts to disseminate information about the agency's education and training opportunities, as appropriate, and about the effectiveness of its activities.

(9) To provide data that may be used for NSF compliance with applicable laws and policies, and conflict of interest management.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains information on members of the public interested in participating in education and training opportunities supported by NSF. These include individuals who apply to, participate in, and/or are supported by NSF education and training programs, projects and activities, including but not limited to students, other youth and early career individuals, teachers, higher education faculty, mentors, administrators, and parents/legal guardians (where applicable). The system also maintains information on individuals engaged in the management and implementation of those opportunities, including PIs and Co-PIs of NSF awards and their designees involved in recruitment and selection of program participants. The system covers these individuals only to the extent that the records are about the individual and are retrieved from the system by that individual's name or other personally assigned identifier.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records vary by categories of individuals and, for applicants, the type of education and training opportunities to which they are applying. Records may include information such as individuals' names, contact information, date of birth, demographic information, parental education and occupation, higher education degree information, school/institution names, academic records, college financial aid information, prior research experiences, work experience (if a teacher: including school name, teaching grade and subject, years of teaching experience, teaching certification), awareness of a given program, opportunity applying for, preferences for data sharing with other NSF opportunities for which they have not applied, additional materials requested by PIs (which may include personal statement, transcripts, CV or résumé, references' contact information, and other materials), reference letters of support (relationship with applicant, applicant skills and abilities assessments, and letter of recommendation), admission decisions, acceptances, participation, and NSF funding, program experiences (weeks spent in program, support from faculty and staff, program activities, type of mentor, time spent with mentor, experiences with mentor, benefits of program, satisfaction with experience) and feedback, and employment information. In addition, records may include information about the opportunity, including its NSF award/proposal ID and its associated metadata, such as opportunity name, location, external website link, application window, application type (open competition or invitation-only), opportunity start and end date, description of the opportunity, eligibility requirements and certification, fields of study, and research topics or keywords.

RECORD SOURCE CATEGORIES:

Individuals registering with NSF (1) to apply and participate in NSF education and training opportunities (prospective applicants and participants), or (2) to create, manage, or administer such opportunities (PIs, Co-PIs, and their designated individuals, NSF staff and external qualified reviewers). System data on individuals may be collected from the individuals directly, from third-party individuals or entities, or be derived from other related NSF systems of records (*e.g.,* PI and reviewer files, see NSF–50 and –51, respectively).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The following NSF standard routine uses apply:

1. Members of Congress. Information from a system may be disclosed to congressional offices in response to inquiries from the congressional offices made at the request of the individual to whom the record pertains.

2. Freedom of Information Act/Privacy Act Compliance. Information from a system may be disclosed to the Department of Justice or the Office of Management and Budget in order to obtain advice regarding NSF's obligations under the Freedom of Information Act and the Privacy Act.

3. Counsel. Information from a system may be disclosed to NSF's legal representatives, including the Department of Justice and other outside counsel, where the agency is a party in litigation or has an interest in litigation and the information is relevant and necessary to such litigation, including when any of the following is a party to the litigation or has an interest in such litigation: (a) NSF, or any component thereof; (b) any NSF employee in his or her official capacity; (c) any NSF employee in his or her individual capacity, where the Department of Justice has agreed to, or is considering a request to, represent the employee; or (d) the United States, where NSF determines that litigation is likely to affect the agency or any of its components.

4. National Archives, General Services Administration. Information from a system may be disclosed to representatives of the General Services Administration and the National Archives and Records Administration (NARA) during the course of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

5. Response to an Actual or Suspected Compromise or Breach of Personally Identifiable Information. NSF may disclose information from the system to appropriate agencies, entities, and persons when: (1) NSF suspects or has confirmed that there has been a breach of the system of records; (2) NSF has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals; NSF (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 NSF efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm. Furthermore, NSF may disclose information from the system to another Federal agency or Federal entity, when NSF 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.

6. Courts. Information from a system may be disclosed to the Department of Justice or other agencies in the event of a pending court or formal administrative proceeding, when the information is relevant and necessary to that proceeding, for the purpose of representing the government, or in the course of presenting evidence, or the information may be produced to parties or counsel involved in the proceeding in the course of pre-trial discovery.

7. Contractors. Information from a system may be disclosed to contractors, agents, experts, consultants, or others performing work on a contract, service, cooperative agreement, job, or other activity for NSF and who have a need to access the information in the performance of their duties or activities for NSF.

8. Audit. Information from a system may be disclosed to government agencies and other entities authorized to perform audits, including financial and other audits, of the agency and its activities.

9. Law Enforcement. Information from a system may be disclosed, where the information indicates a violation or potential violation of civil or criminal law, including any rule, regulation or order issued pursuant thereto, to appropriate Federal, State, or local agencies responsible for investigating, prosecuting, enforcing, or implementing such statute, rule, regulation, or order.

10. Disclosure When Requesting Information. Information from a system may be disclosed to Federal, State, or local agencies which maintain civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

11. To the news media and the public when: (1) A matter has become public

knowledge, (2) the NSF Office of the Director determines that disclosure is necessary to preserve confidence in the integrity of NSF or is necessary to demonstrate the accountability of NSF's officers, employees, or individuals covered by this system, or (3) the Office of the Director determines that there exists a legitimate public interest in the disclosure of the information, except to the extent that the Office of the Director determines in any of these situations that disclosure of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

In addition to the above standard routine uses, information may be routinely disclosed:

12. To PIs, Co-Pis, and their designated individuals (for opportunities funded through NSF awards), and NSF staff and external qualified reviewers (for opportunities administered by NSF) for their assessment of applicants or nominees (and their application materials, where applicable), including in the case of individuals who have expressed interest in such opportunity or provided consent to be contacted by opportunities they have not applied for, as part of the application review process and to support operations; and to other Government agencies or other entities needing information regarding the applicants or nominees as part of a joint application review process, or in order to coordinate programs or policy.

13. To NSF partners, affiliates, or grantees, as well as other entities to merge records, to carry out studies for, or to otherwise assist NSF with program management, implementation, evaluation, or reporting.

14. To applicants (including the individual nominee or ultimate participant), their nominators or reference writers, and the institution they are applying to, attending, planning to attend, or employed by, who may be given information (such as name, field of study, and other information directly relating to the NSF opportunity, review status including the admission decision, time of participation, whether receiving international travel allowance or a mentoring assistantship), for purposes of facilitating application review and admissions decisions, administering the program or award, and supporting dissemination and student engagement activities.

15. To the Department of Treasury for preparation of checks or electronic fund transfer authorizations in the case of participants receiving stipends directly from the Government.

16. To the National Student Clearinghouse, for tracking applicants and participants through their postsecondary enrollment and graduation trajectories, and other third-party entities, for the purposes of validating contact information, disambiguating records, or cross-checking of information, and tracking education or employment outcomes.

17. To an agency or other organization, such as the National Center for Science and Engineering Statistics (NCSES), for the purposes of merging or linking needed data for monitoring, research, or evaluation purposes, to the extent authorized by applicable privacy and security laws, regulations, and NSF policies and guidance.

18. To the public, about an individual's involvement with NSF education and training programs (participant name, baccalaureate institution, current institution, and field of study) for purposes of media releases or other public announcements about these programs. Other information about the individual's involvement in these programs may be publicly disclosed with written consent of that individual (or, where applicable, the individual's legal guardian or other legal representative).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored on electronic digital media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by name, date of birth, email, identification number, zip code, state, or institution.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

This System of Records is governed by one or more general and/or NSF-specific (Record Group RG–0307) records retention schedules approved by the National Archives and Records Administration (NARA) and applicable to NSF proposal, reviewer, and grant files and related administrative records. These schedules can be found at *https://archives.gov.*

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The National Science Foundation's IT Security and Privacy program includes policies, plans, training, and technical safeguards to protect sensitive information, including personally identifiable information (PII). NSF routinely reviews PII in IT systems in addition to monitoring technical, physical, and administrative controls in place to assure that PII is appropriately protected. NSF's major applications and general support systems are assessed and authorized by NSF's continuous monitoring and ongoing authorization program. The authorization process requires a thorough security and privacy control review.

All NSF systems are covered by a system security plan, and major applications and general support systems are authorized to operate. Applications and devices hosted on the NSF network are subjected to extensive vulnerability scanning and compliance checking against standard security configurations. Robust virus protection capabilities, anti-malware, and network intrusion detection and prevention devices provide 24/7 protection against external threats. NSF's strong access controls ensure that resources are made available only to authorized users, programs, processes or systems by reference to rules of access that are defined by attributes and policies.

NSF uses the capabilities of a Trusted internet Connections (TIC) compliant provider for routing agency network traffic and uses the federally provided intrusion detection system (IDS), including advanced continuous monitoring and risk management analysis. NSF has a well-established computer security incident response program. NSF's incident response procedures include a strong digital forensics capability to investigate and review data and identify relevant evidence and malicious activity.

RECORD ACCESS PROCEDURES:

Follow the procedures found at 45 CFR part 613 (NSF Privacy Act Regulations).

CONTESTING RECORD PROCEDURES:

Follow the procedures found at 45 CFR part 613.

NOTIFICATION PROCEDURES:

See 45 CFR part 613.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

This is a new system of records and has not been previously published in the **Federal Register**.

Dated: October 17, 2023.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2023–23304 Filed 10–20–23; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register** and 121 responses from 32 organizations were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAmain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays). Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

NSF 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.

SUPPLEMENTARY INFORMATION:

Summary of Comments on the National Science Foundation Proposal and Award Policies and Procedures Guide and NSF's Responses

The draft NSF PAPPG was made available for review by the public on the NSF website at *http://www.nsf.gov/bfa/dias/policy/.* NSF received 121 responses from 32 organizations in response to the first **Federal Register** notice published on April 13, 2023, at 88 FR 22488. All comments have been considered in the development of the proposed version (please see *http://www.nsf.gov/bfa/dias/policy/*). A summary of the significant changes and clarifications to the PAPPG has been incorporated into the document.

Title of Collection: ''National Science Foundation Proposal & Award Policies & Procedures Guide.''

OMB Approval Number: 3145–0058.

Type of Request: Intent to seek approval to extend with revision an information collection for three years.

Proposed Project: The National Science Foundation Act of 1950 (Pub. L. 81–507) sets forth NSF's mission and purpose:

''To promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense. . . .''

The Act authorized and directed NSF to initiate and support:

- Basic scientific research and research fundamental to the engineering process;
- Programs to strengthen scientific and engineering research potential;
- Science and engineering education programs at all levels and in all the various fields of science and engineering;
- Programs that provide a source of information for policy formulation; and
- Other activities to promote these ends.

NSF's core purpose resonates clearly in everything it does: promoting achievement and progress in science and engineering and enhancing the potential for research and education to contribute to the Nation. While NSF's vision of the future and the mechanisms it uses to carry out its charges have evolved significantly over the last six decades, its ultimate mission remains the same.

Use of the Information: The regular submission of proposals to the Foundation is part of the collection of information and is used to help NSF fulfill this responsibility by initiating and supporting merit-selected research and education projects in all the scientific and engineering disciplines. In FY 2024, NSF expects to receive more than 46,500 proposals annually for new or renewal support for research in math/science/engineering/education projects and make approximately 12,900 new awards.

Support is made primarily through grants, contracts, and other agreements awarded to approximately 3,000 institutions of higher education (IHEs), K–12 school systems, for-profit organizations, informal science organizations and other research organizations throughout the U.S. The awards are based mainly on merit evaluations of proposals submitted to the Foundation.

Burden on the Public

It has been estimated that the public expends an average of approximately 120 burden hours for each proposal submitted. Since the Foundation expects to receive approximately 46,500 proposals in FY 2024, an estimated 5,580,000 burden hours will be placed on the public.

The Foundation has based its reporting burden on the review of approximately 46,500 new proposals expected during FY 2024. It has been estimated that anywhere from one hour to 20 hours may be required to review a proposal. We have estimated that approximately 5 hours are required to review an average proposal. Each proposal receives an average of 3 reviews, resulting in approximately 697,500 hours per year.

The information collected on the reviewer background questionnaire (NSF 428A) is used by managers to maintain an automated database of reviewers for the many disciplines represented by the proposals submitted to the Foundation. Information collected on gender, race, and ethnicity is used in meeting NSF needs for data to permit response to Congressional and other queries into equity issues. These data also are used in the design, implementation, and monitoring of NSF efforts to increase the participation of various groups in science, engineering, and education. The estimated burden for the Reviewer Background Information (NSF 428A) is estimated at 5 minutes per respondent with up to 10,000 potential new reviewers for a total of 833 hours.

The aggregate number of burden hours is estimated to be 6,278,333. The actual burden on respondents has not changed.

Dated: October 18, 2023.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2023–23375 Filed 10–20–23; 8:45 am]

BILLING CODE 7555–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–15 and CP2024–15]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 25, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2024–15 and CP2024–15; *Filing Title:* USPS Request to Add Priority Mail, USPS Ground Advantage, Parcel Select & Parcel Return Service Contract 1 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 17, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* October 25, 2023.

This Notice will be published in the **Federal Register**.

Mallory S. Richards,

Attorney-Advisor.

[FR Doc. 2023–23377 Filed 10–20–23; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–12 and CP2024–12; MC2024–13 and CP2024–13; MC2024–14 and CP2024–14]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 24, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s),

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2024–12 and CP2024–12; *Filing Title:* USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 29 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 16, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* October 24, 2023.

2. *Docket No(s).:* MC2024–13 and CP2024–13; *Filing Title:* USPS Request to Add Priority Mail Express International, Priority Mail International & Commercial ePacket Contract 2 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 16, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* October 24, 2023.

3. *Docket No(s).:* MC2024–14 and CP2024–14; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 10 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 16, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* October 24, 2023

This Notice will be published in the **Federal Register**.

Mallory S. Richards,

Attorney-Advisor.

[FR Doc. 2023–23308 Filed 10–20–23; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, October 26, 2023.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: October 19, 2023.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2023–23470 Filed 10–19–23; 4:15 pm]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before December 22, 2023.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to, Sharon Gurley, Director Program Review, Office of Government Contracting, Small Business Administration, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Sharon Gurley, Director Program Review, Office of Government Contracting, 202–205–7084 *sharon.gurley@sba.gov,* Curtis B. Rich, Agency Clearance Officer, 202–205–7030 *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION: The Small Business Administration needs to collect this information to determine an applicant's eligibility for admission into the 8(a) Business Development (BD) Program and for continued eligibility to participate in the Program. SBA also uses some of the information for an annual report to Congress on the 8(a) BD Program.

Respondents can be individuals and firms making applications to the 8(a) BD Program, or respondents can be individuals and Participant firms revising information related to the 8(a) BD Program Annual Review.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

OMB Control 3245–0331

Title: 8(A) SBD Paper and Electronic Application.''

Description of Respondents: Individuals and Participant firms.

Form Numbers: 1010–NHO, 1010–Business, 1010–CDC, 1010–AIT, 1010–ANC, 1010–IND, 1010—individual.

Annual Responses: 60,070.

Annual Burden: 15,248.

Curtis Rich,

Agency Clearance Officer.

[FR Doc. 2023–23361 Filed 10–20–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) requires Federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before December 22, 2023.

ADDRESSES: Send all comments to Paul Kirwin, Financial Analyst, Office Credit Risk Management, Small Business Administration, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Paul Kirwin, Financial Analyst, Office of Credit Risk Management, *paul.kirwin@sba.gov,* 202–205–7261 or Curtis B. Rich, Agency Clearance Officer, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: The information will be collected from lending institutions interested in becoming an SBA Supervised Lender. SBA will use the information regarding the institutions' financial condition, lending experience, credit policies, capital adequacy plan, financial statements, credit facilities, and loan risk ratings system, among other things, to determine their eligibility to participate in SBA's 7(a) Loan Program.

Solicitation of Public Comments

SBA is removing duplicate sale data, reformatting sale data for ease of use, and amending sections for clarity. SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

OMB Control Number: 3245–0410.

Title: SBA Supervised Lender.

Description of Respondents: SBA Lenders.

Form Number: SBA Forms 2498, 2499.

Total Estimated Annual Responses: 4.

Total Estimated Annual Hour Burden: 340.

Curtis Rich,

Agency Clearance Officer.

[FR Doc. 2023–23362 Filed 10–20–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) requires Federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before December 22, 2023.

ADDRESSES: Send all comments to Earnest Knott, Supervisory Surety Guarantees, Office Surety Guarantees, Small Business Administration.

FOR FURTHER INFORMATION CONTACT: Earnest Knott, Supervisory Surety Guarantees, *earnest.knott@sba.gov,* 202–401–6786, or Curtis B. Rich, Agency Clearance Officer, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: Small Business Administration Surety Bond Guarantee Program was created to encourage surety companies to provide bonding for small contractors. The information collected on the form from surety companies will be used to update the status of successfully completed contracts and to provide a final accounting of contractor and surety fees due to SBA.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

OMB Control Number: 3245–0395.

Title: Quarterly Contract Completion Report.

Description of Respondents: Surety companies.

Form Number: 2461.

Total Estimated Annual Responses: 92.

Total Estimated Annual Hour Burden: 92.

Curtis Rich,

Agency Clearance Officer.

[FR Doc. 2023–23367 Filed 10–20–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[License No. 05/05–0313]

Surrender of License of Small Business Investment Company; Monroe Capital Partners Fund II, L.P.

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under section 309 of the Act and Code of Federal Regulations under 13 CFR 107.1900 to function as a small business investment company under the Small Business Investment Company License No. 05/05–0313 issued to Monroe Capital Partners Fund II, L.P., said license is hereby declared null and void.

Bailey Devries,

Associate Administrator, Office of Investment and Innovation, United States Small Business Administration.

[FR Doc. 2023–23348 Filed 10–20–23; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0641]

Cephas Capital Partners II, L.P.; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under section 309 of the Act and Code of Federal Regulations under 13 CFR 107.1900 to function as a small business investment company under the Small Business Investment Company License No. 02/02–0641 issued to

Cephas Capital Partners II, L.P., said license is hereby declared null and void.

Bailey Devries,

Associate Administrator, Office of Investment and Innovation, United States Small Business Administration.

[FR Doc. 2023–23347 Filed 10–20–23; 8:45 am]

BILLING CODE

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2023–0034]

Cost-of-Living Increase and Other Determinations for 2024

AGENCY: Social Security Administration.

ACTION: Notice.

SUMMARY: Under title II of the Social Security Act (Act), there will be a 3.2 percent cost-of-living increase in Social Security benefits effective December 2023. In addition, the national average wage index for 2022 is $63,795.13. The cost-of-living increase and national average wage index affect other program parameters as described below.

FOR FURTHER INFORMATION CONTACT: Kathleen K. Sutton, Office of the Chief Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3000. Information relating to this announcement is available at *www.ssa.gov/oact/cola/index.html.* For information on eligibility or claiming benefits, call 1–800–772–1213 (TTY 1–800–325–0778) or visit *www.ssa.gov.*

SUPPLEMENTARY INFORMATION: Because of the 3.2 percent cost-of-living increase, the following items will increase for 2024:

(1) The maximum Federal Supplemental Security Income (SSI) monthly payment amounts for 2024 under title XVI of the Act will be $943 for an eligible individual; $1,415 for an eligible individual with an eligible spouse; and $472 for an essential person.

(2) The special benefit amount under title VIII of the Act for certain World War II (WWII) veterans will be $707.25 for 2024.

(3) The student earned income exclusion under title XVI of the Act will be $2,290 per month in 2024, but not more than $9,230 for all of 2024.

(4) The dollar fee limit for services performed as a representative payee will be $54 per month ($100 per month in the case of a beneficiary who is determined to be disabled, has an alcoholism or drug addiction condition, and is incapable of managing benefits) in 2024.

(5) The assessment (or ''user fee'') dollar limit on the administrative cost charged when the agency pays authorized representative fees directly out of a claimant's past due benefits will be $117, beginning in December 2023.

The national average wage index for 2022 is $63,795.13. This index affects the following amounts:

(1) The Old-Age, Survivors, and Disability Insurance (OASDI) contribution and benefit base will be $168,600 for remuneration paid in 2024 and self-employment income earned in tax years beginning in 2024.

(2) The monthly exempt amounts under the OASDI retirement earnings test for tax years ending in calendar year 2024 will be $1,860 for beneficiaries who will attain their Normal Retirement Age (NRA) (defined in the *Retirement Earnings Test Exempt Amounts* section below) after 2024 and $4,960 for those who attain NRA in 2024.

(3) The dollar amounts (bend points) used in the primary insurance amount (PIA) formula for workers who become eligible for benefits or who die before becoming eligible, in 2024, will be $1,174 and $7,078.

(4) The bend points used in the formula for computing maximum family benefits for workers who become eligible for retirement benefits, or who die before becoming eligible, in 2024, will be $1,500, $2,166, and $2,825.

(5) The taxable earnings a person must have in 2024 to be credited with a quarter of coverage will be $1,730.

(6) The ''old-law'' contribution and benefit base under title II of the Act will be $125,100 for 2024.

(7) The monthly amount of earnings deemed to constitute substantial gainful activity (SGA) for statutorily blind people in 2024 will be $2,590. The corresponding amount of earnings for non-blind people with a determined disability will be $1,550.

(8) The earnings threshold establishing a month as a part of a trial work period will be $1,110 for 2024.

(9) Coverage thresholds for 2024 will be $2,700 for domestic workers and $2,300 for election officials and election workers.

According to section 215(i)(2)(D) of the Act, we must publish the benefit increase percentage and the revised table of ''special minimum'' benefits within 45 days after the close of the third calendar quarter of 2023.

We must also publish the following by November 1: the national average wage index for 2022 (215(a)(1)(D)), the OASDI fund ratio for 2023 (section 215(i)(2)(C)(ii)), the OASDI contribution and benefit base for 2024 (section 230(a)), the earnings required to be credited with a quarter of coverage in 2024 (section 213(d)(2)), the monthly exempt amounts under the Social Security retirement earnings test for 2024 (section 203(f)(8)(A)), the formula for computing a PIA for workers who first become eligible for benefits or die in 2024 (section 215(a)(1)(D)), and the formula for computing the maximum benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 2024 (section 203(a)(2)(C)).

Cost-of-Living Increases

General

The cost-of-living increase is 3.2 percent for monthly benefits under title II and for monthly payments under title XVI of the Act. Under title II, OASDI monthly benefits will increase by 3.2 percent for individuals eligible for December 2023 benefits, payable in January 2024 and thereafter. We base this increase on the authority contained in section 215(i) of the Act.

Pursuant to section 1617 of the Act, Federal SSI benefit rates will also increase by 3.2 percent effective for payments made for January 2024 but paid on December 29, 2023.

Computation

Computation of the cost-of-living increase is based on an increase in a Consumer Price Index (CPI) produced by the Bureau of Labor Statistics. At the time the Act was amended to provide automatic cost-of-living increases starting in 1975, only one CPI existed, namely the index now referred to as CPI for Urban Wage Earners and Clerical Workers (CPI–W). Although the Bureau of Labor Statistics has since developed other CPIs, we follow precedent by continuing to use the CPI–W. We refer to this index in the following paragraphs as the CPI.

Section 215(i)(1)(B) of the Act defines a ''computation quarter'' to be a third calendar quarter in which the average CPI exceeded the average CPI in the previous computation quarter. The last cost-of-living increase, effective for those eligible to receive title II benefits for December 2022, was based on the CPI increase from the third quarter of 2021 to the third quarter of 2022. Therefore, the last computation quarter is the third quarter of 2022. The law states that a cost-of-living increase for benefits is determined based on the percentage increase, if any, in the CPI from the last computation quarter to the third quarter of the current year. Therefore, we compute the increase in the CPI from the third quarter of 2022 to the third quarter of 2023.

Section 215(i)(1) of the Act states that the CPI for a cost-of-living computation quarter is the arithmetic mean of this index for the 3 months in that quarter. In accordance with 20 CFR 404.275, we round the arithmetic mean, if necessary, to the nearest 0.001. The CPI for each month in the quarter ending September 30, 2022, the last computation quarter, is: for July 2022, 292.219; for August 2022, 291.629; and for September 2022, 291.854. The arithmetic mean for the calendar quarter ending September 30, 2022, is 291.901. The CPI for each month in the quarter ending September 30, 2023, is: for July 2023, 299.899; for August 2023, 301.551; and for September 2023, 302.257. The arithmetic mean for the calendar quarter ending September 30, 2023, is 301.236. The CPI for the calendar quarter ending September 30, 2023, exceeds that for the calendar quarter ending September 30, 2022, by 3.2 percent (rounded to the nearest 0.1). Therefore, beginning December 2023, a cost-of-living benefit increase of 3.2 percent is effective for benefits under title II of the Act.

Section 215(i) also specifies that a benefit increase under title II, effective for December of any year, will be limited to the increase in the national average wage index for the prior year if the OASDI fund ratio for that year is below 20.0 percent. The OASDI fund ratio for a year is the ratio of the combined asset reserves of the OASI and DI Trust Funds at the beginning of that year to the combined cost of the programs during that year. For 2023, the OASDI fund ratio is reserves of $2,829,887 million divided by estimated cost of $1,389,484 million, or 203.7 percent. Because the 203.7 percent OASDI fund ratio exceeds 20.0 percent, the benefit increase for December 2023 is not limited to the increase in the national average wage index.

Program Amounts That Change Based on the Cost-of-Living Increase

The following program amounts change based on the cost-of-living increase: (1) title II benefits; (2) title XVI payments; (3) title VIII benefits; (4) the student earned income exclusion; (5) the fee for services performed by a representative payee; and (6) the appointed representative fee assessment.

Title II Benefit Amounts

In accordance with section 215(i) of the Act, for workers and family members for whom eligibility for benefits (that is, the worker's attainment of age 62, or disability or death before age 62) occurred before 2024, benefits will increase by 3.2 percent beginning with benefits for December 2023, which are payable in January 2024. For those first eligible after 2023, the 3.2 percent increase will not apply.

For eligibility after 1978, we determine benefits using a formula provided by the Social Security Amendments of 1977 (Pub. L. 95–216), as described later in this notice.

For eligibility before 1979, we determine benefits by using a benefit table. The table is available at *www.ssa.gov/oact/ProgData/tableForm.html* or by writing to: Social Security Administration, Office of Public Inquiries and Communications Support, 1100 West High Rise, 6401 Security Boulevard, Baltimore, MD 21235.

Section 215(i)(2)(D) of the Act requires that, when we determine an increase in Social Security benefits, we will publish in the **Federal Register** a revision of the range of the PIAs and maximum family benefits based on the dollar amount and other provisions described in section 215(a)(1)(C)(i). We refer to these benefits as ''special minimum'' benefits. These benefits are payable to certain individuals with long periods of low earnings. To qualify for these benefits, an individual must have at least 11 years of coverage. To earn a year of coverage for purposes of the special minimum benefit, a person must earn at least a certain proportion of the old-law contribution and benefit base (described later in this notice). For years before 1991, the proportion is 25 percent; for years after 1990, it is 15 percent. In accordance with section 215(a)(1)(C)(i), the table below shows the revised range of PIAs and maximum family benefit amounts after the 3.2 percent benefit increase.

SPECIAL MINIMUM PIAS AND MAXIMUM FAMILY BENEFITS PAYABLE FOR DECEMBER 2023

Number of years of coverage	PIA	Maximum family benefit
11	$50.90	$77.80
12	104.30	158.20
13	157.90	238.70
14	211.10	318.50
15	264.10	398.20
16	318.00	478.70
17	371.50	559.40
18	424.80	639.20
19	478.20	719.60
20	531.90	799.00
21	585.40	880.10
22	638.40	959.80
23	692.80	1,041.40
24	746.10	1,120.80
25	799.00	1,200.50
26	853.40	1,281.80
27	906.10	1,361.90
28	959.60	1,441.70
29	1,013.20	1,522.50
30	1,066.50	1,601.70

Title XVI Payment Amounts

In accordance with section 1617 of the Act, the Federal benefit rates used in computing Federal SSI payments for the aged, blind, and disabled will increase by 3.2 percent effective January 2024. For 2023, we determined the monthly payment amounts to be—$914 for an eligible individual, $1,371 for an eligible individual with an eligible spouse, and $458 for an essential person. These amounts were derived from yearly, unrounded Federal SSI payment amounts of $10,970.44, $16,453.84, and $5,497.80, respectively. For 2024, these yearly unrounded amounts increase by 3.2 percent to $11,321.49, $16,980.36, and $5,673.73, respectively. We must round each of these resulting amounts, when not a multiple of $12, to the next lower multiple of $12. Therefore, the annual amounts, effective for 2024, are $11,316, $16,980, and $5,664. Dividing the yearly amounts by 12 gives the respective monthly amounts for 2024—$943, $1,415, and $472. For an eligible individual with an eligible spouse, we equally divide the amount payable between the two spouses.

Title VIII Benefit Amount

Title VIII of the Act provides for special benefits to certain WWII veterans who reside outside the United States. Section 805 of the Act provides that ''[t]he benefit under this title payable to a qualified individual for any month shall be in an amount equal to 75 percent of the Federal benefit rate [the maximum amount for an eligible individual] under title XVI for the month, reduced by the amount of the qualified individual's benefit income for the month.'' Therefore, the maximum monthly benefit for 2024 under this provision is 75 percent of $943, or $707.25.

Student Earned Income Exclusion

Children who are blind or have a determined disability can have limited earnings that do not count against their SSI payments if they are students regularly attending school, college, university, or a course of vocational or technical training. The maximum

amount of such income that we may exclude in 2023 is $2,220 per month, but not more than $8,950 in all of 2023. These amounts increase based on a formula set forth in regulation 20 CFR 416.1112.

To compute each of the monthly and yearly maximum amounts for 2024, we increase the unrounded amount for 2023 by the latest cost-of-living increase. If the calculated amount is not a multiple of $10, we round it to the nearest multiple of $10. The unrounded monthly amount for 2023 is $2,219.60. We increase this amount by 3.2 percent to $2,290.63, which we then round to $2,290. Similarly, we increase the unrounded yearly amount for 2023, $8,947.18, by 3.2 percent to $9,233.49 and round this to $9,230. Therefore, the maximum amount of the income exclusion applicable to a student in 2024 is $2,290 per month, but not more than $9,230 in all of 2024.

Fee for Services Performed as a Representative Payee

Sections 205(j)(4)(A)(i) and 1631(a)(2)(D)(i) of the Act permit a qualified organization to collect a monthly fee from a beneficiary for expenses incurred in providing services as the beneficiary's representative payee. In 2023, the fee is limited to the lesser of: (1) 10 percent of the monthly benefit involved; or (2) $52 each month ($97 each month when the beneficiary is entitled to disability benefits, has an alcoholism or drug addiction condition, and is incapable of managing such benefits). The dollar fee limits are subject to increase by the cost-of-living increase, with the resulting amounts rounded to the nearest whole dollar amount. Therefore, we increase the current amounts by 3.2 percent to $54 and $100 for 2024.

Appointed Representative Fee Assessment

Under sections 206(d) and 1631(d) of the Act, whenever the agency pays authorized representative fees directly out of a claimant's past due benefits, we must impose an assessment (or ''user fee'') to cover administrative costs. The user fee applied is the lower amount of 6.3 percent of the representative's authorized fee or a dollar amount that is subject to the cost-of-living increase. We derive the dollar limit for December 2023, by increasing the unrounded limit for December 2022, $113.62, by 3.2 percent, which is $117.26. We then round $117.26 to the next lower multiple of $1. The dollar limit effective for December 2023 is, therefore, $117.

National Average Wage Index for 2022

Computation

We determined the national average wage index for calendar year 2022. It is based on the 2021 national average wage index of $60,575.07, which was published in the **Federal Register** on October 24, 2022 (87 FR 64296), and on the percentage increase in average wages from 2021 to 2022, as measured by annual wage data. We tabulate the annual wage data, including contributions to deferred compensation plans, as required by section 209(k) of the Act. The average amounts of wages calculated from these data were $58,129.99 for 2021 and $61,220.07 for 2022. To determine the national average wage index for 2022 at a level consistent with the national average wage indexing series for 1951 through 1977 (published December 29, 1978, at 43 FR 61016), we multiply the 2021 national average wage index of $60,575.07 by the percentage increase in average wages from 2021 to 2022 (based on SSA-tabulated wage data) as follows. We round the result to the nearest cent.

National Average Wage Index Amount

Multiplying the national average wage index for 2021 ($60,575.07) by the ratio of the average wage for 2022 ($61,220.07) to that for 2021 ($58,129.99) produces the 2022 index, $63,795.13. The national average wage index for calendar year 2022 is about 5.32 percent higher than the 2021 index.

Program Amounts That Change Based on the National Average Wage Index

Under the Act, the following amounts change with annual changes in the national average wage index: (1) the OASDI contribution and benefit base; (2) the exempt amounts under the retirement earnings test; (3) the dollar amounts, or bend points, in the PIA formula; (4) the bend points in the maximum family benefit formula; (5) the earnings required to credit a worker with a quarter of coverage; (6) the old-law contribution and benefit base (as determined under section 230 of the Act as in effect before the 1977 amendments); (7) the substantial gainful activity (SGA) amount applicable to statutorily blind individuals; and (8) the coverage threshold for election officials and election workers. Additionally, under section 3121(x) of the Internal Revenue Code, the domestic employee coverage threshold is based on changes in the national average wage index.

Two amounts also increase under regulatory requirements—the SGA amount applicable to non-blind individuals with a determined disability, and the monthly earnings threshold that establishes a month as part of a trial work period for beneficiaries with a determined disability.

OASDI Contribution and Benefit Base

General

The OASDI contribution and benefit base is $168,600 for remuneration paid in 2024 and self-employment income earned in tax years beginning in 2024. The OASDI contribution and benefit base serves as the maximum annual earnings on which OASDI taxes are paid. It is also the maximum annual earnings used in determining a person's OASDI benefits.

Computation

Section 230(b) of the Act provides the formula used to determine the OASDI contribution and benefit base. Under the formula, the base for 2024 is the larger of: (1) the 1994 base of $60,600 multiplied by the ratio of the national average wage index for 2022 to that for 1992; or (2) the current base ($160,200). If the resulting amount is not a multiple of $300, we round it to the nearest multiple of $300.

OASDI Contribution and Benefit Base Amount

Multiplying the 1994 OASDI contribution and benefit base ($60,600) by the ratio of the national average wage index for 2022 ($63,795.13 as determined above) to that for 1992 ($22,935.42) produces $168,559.59. We round this amount to $168,600. Because $168,600 exceeds the current base amount of $160,200, the OASDI contribution and benefit base is $168,600 for 2024.

Retirement Earnings Test Exempt Amounts

General

We withhold Social Security benefits when a beneficiary under the NRA has earnings more than the applicable retirement earnings test exempt amount. The NRA is the age when retirement benefits (before rounding) are equal to the PIA. The NRA is age 66 for those born in 1943–54. It gradually increases to age 67 for those born in 1960 or later. A higher exempt amount applies in the year in which a person attains NRA, but only for earnings in months before such attainment. A lower exempt amount applies at all other ages below NRA. Section 203(f)(8)(B) of the Act provides formulas for determining the monthly exempt amounts. The annual exempt amounts are exactly 12 times the monthly amounts.

For beneficiaries who attain NRA in the year, we withhold $1 in benefits for every $3 of earnings over the annual exempt amount for months before NRA. For all other beneficiaries under NRA, we withhold $1 in benefits for every $2 of earnings over the annual exempt amount.

Computation

Under the formula that applies to beneficiaries attaining NRA after 2024, the lower monthly exempt amount for 2024 is the larger of: (1) the 1994 monthly exempt amount multiplied by the ratio of the national average wage index for 2022 to that for 1992; or (2) the 2023 monthly exempt amount ($1,770). If the resulting amount is not a multiple of $10, we round it to the nearest multiple of $10.

Under the formula that applies to beneficiaries attaining NRA in 2024, the higher monthly exempt amount for 2024 is the larger of: (1) the 2002 monthly exempt amount multiplied by the ratio of the national average wage index for 2022 to that for 2000; or (2) the 2023 monthly exempt amount ($4,710). If the resulting amount is not a multiple of $10, we round it to the nearest multiple of $10.

Lower Exempt Amount

Multiplying the 1994 retirement earnings test monthly exempt amount of $670 by the ratio of the national average wage index for 2022 ($63,795.13) to that for 1992 ($22,935.42) produces $1,863.61. We round this to $1,860. Because $1,860 exceeds the current exempt amount of $1,770, the lower retirement earnings test monthly exempt amount is $1,860 for 2024. The lower annual exempt amount is $22,320 under the retirement earnings test.

Higher Exempt Amount

Multiplying the 2002 retirement earnings test monthly exempt amount of $2,500 by the ratio of the national average wage index for 2022 ($63,795.13) to that for 2000 ($32,154.82) produces $4,960.00. We round this to $4,960. Because $4,960 exceeds the current exempt amount of $4,710, the higher retirement earnings test monthly exempt amount is $4,960 for 2024. The higher annual exempt amount is $59,520 under the retirement earnings test.

Primary Insurance Amount Formula

General

The Social Security Amendments of 1977 provided a method for computing benefits that generally applies when a worker first becomes eligible for benefits after 1978. This method uses the worker's average indexed monthly earnings (AIME) to compute the PIA. We adjust the formula each year to reflect changes in general wage levels, as measured by the national average wage index.

We also adjust, or index, a worker's earnings to reflect the change in the general wage levels that occurred during the worker's years of employment. Such indexing ensures that a worker's future benefit level will reflect the general rise in the standard of living that will occur during their working lifetime. To compute the AIME, we first determine the required number of years of earnings. We then select the number of years with the highest indexed earnings, add the indexed earnings for those years, and divide the total amount by the total number of months in those years. We then round the resulting average amount down to the next lower dollar amount. The result is the AIME.

Computing the PIA

The PIA is the sum of three separate percentages of portions of the AIME. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount above $1,085. We call the dollar amounts in the formula governing the portions of the AIME the bend points of the formula. Therefore, the bend points for 1979 were $180 and $1,085.

To obtain the bend points for 2024, we multiply each of the 1979 bend-point amounts by the ratio of the national average wage index for 2022 to that average for 1977. We then round these results to the nearest dollar. Multiplying the 1979 amounts of $180 and $1,085 by the ratio of the national average wage index for 2022 ($63,795.13) to that for 1977 ($9,779.44) produces the amounts of $1,174.21 and $7,077.88. We round these to $1,174 and $7,078. Therefore, the portions of the AIME to be used in 2024 are the first $1,174, the amount between $1,174 and $7,078, and the amount above $7,078.

Therefore, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 2024, or who die in 2024 before becoming eligible for benefits, their PIA will be the sum of:

(a) 90 percent of the first $1,174 of their AIME, plus (b) 32 percent of their AIME between $1,174 and $7,078, plus (c) 15 percent of their AIME above $7,078.

We round this amount to the next lower multiple of $0.10 if it is not already a multiple of $0.10. This formula and the rounding adjustment are stated in section 215(a) of the Act.

Maximum Benefits Payable to a Family

General

The 1977 amendments continued the policy of limiting the total monthly benefits that a worker's family may receive based on the worker's PIA. Those amendments also continued the relationship between maximum family benefits and PIAs but changed the method of computing the maximum benefits that may be paid to a worker's family. The Social Security Disability Amendments of 1980 (Pub. L. 96–265) established a formula for computing the maximum benefits payable to the family of a worker with a determined disability. This formula applies to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, and who first become eligible for these benefits after 1978. For workers with determined disabilities who are initially entitled to disability benefits before July 1980 or whose disability began before 1979, we compute the family maximum payable the same as the old-age and survivor family maximum.

Computing the Old-Age and Survivor Family Maximum

The formula used to compute the family maximum is similar to that used to compute the PIA. It involves computing the sum of four separate percentages of portions of the worker's PIA. In 1979, these portions were the first $230, the amount between $230 and $332, the amount between $332 and $433, and the amount above $433. We refer to such dollar amounts in the formula as the bend points of the family-maximum formula.

To obtain the bend points for 2024, we multiply each of the 1979 bend-point amounts by the ratio of the national average wage index for 2022 to that average for 1977. Then we round this amount to the nearest dollar. Multiplying the amounts of $230, $332, and $433 by the ratio of the national average wage index for 2022 ($63,795.13) to that for 1977 ($9,779.44) produces the amounts of $1,500.38, $2,165.77, and $2,824.63. We round these amounts to $1,500, $2,166, and $2,825. Therefore, the portions of the PIAs to be used in 2024 are the first $1,500, the amount between $1,500 and $2,166, the amount between $2,166 and $2,825, and the amount above $2,825.

So, for the family of a worker who becomes age 62 or dies in 2024 before age 62, we compute the total benefits payable to them so that it does not exceed:

(a) 150 percent of the first $1,500 of the worker's PIA, plus

(b) 272 percent of the worker's PIA between $1,500 and $2,166, plus

(c) 134 percent of the worker's PIA between $2,166 and $2,825, plus

(d) 175 percent of the worker's PIA above $2,825.

We then round this amount to the next lower multiple of $0.10 if it is not already a multiple of $0.10. This formula and the rounding adjustment are stated in section 203(a) of the Act.

Quarter of Coverage Amount

General

The earnings required for a quarter of coverage in 2024 is $1,730. A quarter of coverage is the basic unit for determining if a worker is insured under the Social Security program. For years before 1978, we generally credited an individual with (1) a quarter of coverage for each quarter in which they were paid wages of $50 or more or (2) four quarters of coverage for every tax year in which they earned $400 or more of self-employment income. Beginning in 1978, employers generally report wages annually instead of quarterly. With the change to yearly reporting, section 352(b) of the Social Security Amendments of 1977 amended section 213(d) of the Act to provide that a quarter of coverage would be credited for each $250 of an individual's total wages and self-employment income for calendar year 1978 up to a maximum of four quarters of coverage for the year. The amendment also provided a formula for years after 1978.

Computation

Under the prescribed formula, the quarter of coverage amount for 2024 is the larger of: (1) the 1978 amount of $250 multiplied by the ratio of the national average wage index for 2022 to that for 1976; or (2) the current amount ($1,640). Section 213(d) provides that if the resulting amount is not a multiple of $10, we round it to the nearest multiple of $10.

Quarter of Coverage Amount

Multiplying the 1978 quarter of coverage amount ($250) by the ratio of the national average wage index for 2022 ($63,795.13) to that for 1976 ($9,226.48) produces $1,728.59. We then round this amount to $1,730. Because $1,730 exceeds the current amount of $1,640, the quarter of coverage amount is $1,730 for 2024.

Old-Law Contribution and Benefit Base

General

The old-law contribution and benefit base for 2024 is $125,100. This base would have been effective under the Act without the enactment of the 1977 amendments.

The old-law contribution and benefit base is used by:

(a) the Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payments that correspond to basic Social Security benefits,

(b) the Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act (section 230(d) of the Act),

(c) Social Security to determine a year of coverage in computing the special minimum benefit, as described earlier, and

(d) Social Security to compute benefits for people who are also eligible and receiving pensions based on employment not covered under section 210 of the Act. We credit a year of coverage, for this purpose only, for each year in which earnings equal or exceed 25 percent of the old-law base.

Computation

The old-law contribution and benefit base is the larger of: (1) the 1994 old-law base ($45,000) multiplied by the ratio of the national average wage index for 2022 to that for 1992; or (2) the current old-law base ($118,800). If the resulting amount is not a multiple of $300, we round it to the nearest multiple of $300.

Old-Law Contribution and Benefit Base Amount

Multiplying the 1994 old-law contribution and benefit base ($45,000) by the ratio of the national average wage index for 2022 ($63,795.13) to that for 1992 ($22,935.42) produces $125,168.01. We round this amount to $125,100. Because $125,100 exceeds the current amount of $118,800, the old-law contribution and benefit base is $125,100 for 2024.

Substantial Gainful Activity Amounts

General

A finding of disability under titles II and XVI of the Act requires that a person, except for a child with a disability determined under title XVI, be unable to engage in SGA. A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly earnings considered as SGA depends on the nature of a person's disability. Section 223(d)(4)(A) of the Act specifies the formula for determining the SGA amount for statutorily blind individuals under title II while our regulations (20 CFR 404.1574 and 416.974) specify the formula for determining the SGA amount for non-blind individuals with a determined disability.

Computation

The monthly SGA amount for statutorily blind individuals under title II for 2024 is the larger of: (1) the amount for 1994 multiplied by the ratio of the national average wage index for 2022 to that for 1992; or (2) the amount for 2023. The monthly SGA amount for non-blind individuals with a determined disability for 2024 is the larger of: (1) the amount for 2000 multiplied by the ratio of the national average wage index for 2022 to that for 1998; or (2) the amount for 2023. In either case, if the resulting amount is not a multiple of $10, we round it to the nearest multiple of $10.

SGA Amount for Statutorily Blind Individuals

Multiplying the 1994 monthly SGA amount for statutorily blind individuals ($930) by the ratio of the national average wage index for 2022 ($63,795.13) to that for 1992 ($22,935.42) produces $2,586.81. We then round this amount to $2,590. Because $2,590 exceeds the current amount of $2,460, the monthly SGA amount for statutorily blind individuals is $2,590 for 2024.

SGA Amount for Non-Blind Individuals Who Have a Determined Disability

Multiplying the 2000 monthly SGA amount for non-blind individuals with a determined disability ($700) by the ratio of the national average wage index for 2022 ($63,795.13) to that for 1998 ($28,861.44) produces $1,547.28. We then round this amount to $1,550. Because $1,550 exceeds the current amount of $1,470, the monthly SGA amount for non-blind individuals with a determined disability is $1,550 for 2024.

Trial Work Period Earnings Threshold

General

During a trial work period of 9 months in a rolling 60-month period, a beneficiary receiving Social Security disability benefits may test their ability to work and still receive monthly benefit payments. To be considered a trial work period month, earnings must be over a certain level. In 2024, any month in which earnings exceed $1,110 is considered a month of services for an individual's trial work period.

Computation

The method used to determine the new amount is set forth in our regulations at 20 CFR 404.1592(b).

Monthly earnings in 2024, used to determine whether a month is part of a trial work period, is the larger of: (1) the amount for 2001 ($530) multiplied by the ratio of the national average wage index for 2022 to that for 1999; or (2) the amount for 2023. If the resulting amount is not a multiple of $10, we round it to the nearest multiple of $10.

Trial Work Period Earnings Threshold Amount

Multiplying the 2001 monthly earnings threshold ($530) by the ratio of the national average wage index for 2022 ($63,795.13) to that for 1999 ($30,469.84) produces $1,109.67. We then round this amount to $1,110. Because $1,110 exceeds the current amount of $1,050, the monthly earnings threshold is $1,110 for 2024.

Domestic Employee Coverage Threshold

General

The minimum amount a domestic worker must earn so that such earnings are covered under Social Security or Medicare is the domestic employee coverage threshold. For 2024, this threshold is $2,700. Section 3121(x) of the Internal Revenue Code provides the formula for increasing the threshold.

Computation

Under the formula, the domestic employee coverage threshold for 2024 is equal to the 1995 amount of $1,000 multiplied by the ratio of the national average wage index for 2022 to that for 1993. If the resulting amount is not a multiple of $100, we round it to the next lower multiple of $100.

Domestic Employee Coverage Threshold Amount

Multiplying the 1995 domestic employee coverage threshold ($1,000) by the ratio of the national average wage index for 2022 ($63,795.13) to that for 1993 ($23,132.67) produces $2,757.79. We then round this amount to $2,700. Therefore, the domestic employee coverage threshold amount is $2,700 for 2024.

Election Official and Election Worker Coverage Threshold

General

The minimum amount an election official and election worker must earn so the earnings are covered under Social Security or Medicare is the election official and election worker coverage threshold. For 2024, this threshold is $2,300. Section 218(c)(8)(B) of the Act provides the formula for increasing the threshold.

Computation

Under the formula, the election official and election worker coverage threshold for 2024 is equal to the 1999 amount of $1,000 multiplied by the ratio of the national average wage index for 2022 to that for 1997. If the amount we determine is not a multiple of $100, we round it to the nearest multiple of $100.

Election Official and Election Worker Coverage Threshold Amount

Multiplying the 1999 coverage threshold amount ($1,000) by the ratio of the national average wage index for 2022 ($63,795.13) to that for 1997 ($27,426.00) produces $2,326.08. We then round this amount to $2,300. Therefore, the election official and election worker coverage threshold amount is $2,300 for 2024.

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

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

Faye I. Lipsky,

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

[FR Doc. 2023–23317 Filed 10–20–23; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

U.S. Merchant Marine Academy Advisory Council; Public Meeting

AGENCY: Maritime Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: The U.S. Department of Transportation, Maritime Administration (MARAD) announces a public meeting of the U.S. Merchant Marine Academy (USMMA) Advisory Council (Council).

DATES: The public meeting will be held on Thursday, November 16, 2023, from 9 a.m. until 12 p.m. Requests to attend the meeting must be received no later than 5 p.m. EDT on Wednesday, November 8, 2023, to facilitate entry. Requests to submit written materials to be reviewed during the meeting must be received no later than November 3, 2023. Requests for accommodations for a disability must be received by November 10, 2023.

ADDRESSES: The public meeting will be held in-person at the USMMA. Meeting access information will be available no later than November 13, 2023. Information on who the Council members are can be found in MARAD's press release: *https://www.maritime.dot.gov/newsroom/secretary-buttigieg-appoints-members-us-merchant-marine-academy-advisory-council.*

FOR FURTHER INFORMATION CONTACT: The Council's Designated Federal Officer and Point of Contact, Will Sheehan, 202–366–4105 or *USMMAAdvisoryCouncil@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Council is established pursuant to 46 U.S.C. 51323. The Council operates in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. app. 2.

The objective and scope of the Council is to provide independent advice and recommendations to the Secretary of Transportation (Secretary) on matters relating to the USMMA including in the areas of curriculum development and training programs; diversity, equity, and inclusion; sexual assault prevention and response; infrastructure maintenance and redevelopment; midshipmen health and welfare; governance and administrative policies; and other matters.

II. Agenda

The agenda will be as follows:

1. Welcome, opening remarks, and introductions
2. Academy updates
3. Public comment
4. Administrative items

III. Public Participation

This meeting is open to the public and will be held in-person at the USMMA. MARAD 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 person listed in the **FOR FURTHER INFORMATION CONTACT** section. Seating will be limited and available on a first come first serve basis.

Any member of the public is permitted to file a written statement with the Council. Written statements

should be sent to the Designated Federal Officer listed in the **FOR FURTHER INFORMATION CONTACT** section no later than November 3, 2023.

Only written statements will be considered by the Council; no member of the public will be allowed to present questions or speak during the meeting unless requested to do so by a member of the Council.

(Authority: 46 U.S.C. 51323; 5 U.S.C. 552b; 5 U.S.C. App. 2; 41 CFR parts 102–3.140 through 102–3.165.)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–23368 Filed 10–20–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0197]

Request for Comments on the Renewal of a Previously Approved Information Collection War Risk Insurance, Applications, and Related Information

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Maritime Administration (MARAD) invites public comments on our intention to request the Office of Management and Budget (OMB) approval to renew an information collection in accordance with the Paperwork Reduction Act of 1995. The proposed collection OMB 2133–0011 (War Risk Insurance, Applications, and Related Information) is used to determine the eligibility of the applicant and the vessel(s) for participation in the War Risk Insurance Program. There are no changes to this collection since the last renewal. We are required to publish this notice in the **Federal Register** to obtain comments from the public and affected agencies. A 60-day notice **Federal Register** soliciting comments on this information collection was published on August 14, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collections should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Cameryn L. Miller, (202) 366–0907, Office of Marine Insurance, Maritime Administration, 1200 New Jersey Ave. SE, Washington, DC 20590, Email: *Cameryn.miller@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: War Risk Insurance, Applications, and Related Information.

OMB Control Number: 2133–0011.

Type of Request: Renewal of a previously approved information collection.

Abstract: As authorized by section 1202, Title XII, Merchant Marine Act, 1936, as amended, (46 U.S.C. 53901–53912) (Act), the Secretary of the U.S. Department of Transportation may provide war risk insurance for national defense or waterborne commerce if such insurance cannot be obtained on reasonable terms and conditions from companies authorized to operate an insurance business within any state of the United States.

Respondents: Vessel owners or charterers interested in participating in MARAD's War Risk Insurance Program.

Affected Public: Business or other for profit.

Estimated Number of Respondents: 20.

Estimated Number of Responses: 20.

Estimated Hours per Response: 12.8.

Annual Estimated Total Annual Burden Hours: 256.

Frequency of Response: Annually.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.49.)

* * * * *

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–23369 Filed 10–20–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2021–0089, Notice 1]

Mercedes-Benz USA, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Mercedes-Benz USA, LLC (Mercedes-Benz) has determined that certain model year (MY) 2019–2021 Mercedes-Benz motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 101, Controls and Displays, and FMVSS No. 102, Transmission Shift Position. Mercedes-Benz filed a noncompliance report dated September 24, 2021, and subsequently petitioned NHTSA (the ''Agency'') on October 25, 2021, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of Mercedes-Benz's petition.

DATES: Send comments on or before November 22, 2023.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

Mail: Send comments by mail addressed to the 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 comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal holidays.

Electronically: Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.

Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register**

pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Frederick Smith, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366–7487 or Ahmad Barnes, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366–7236.

SUPPLEMENTARY INFORMATION:

I. Overview: Mercedes-Benz determined that certain MY 2020 Mercedes-Benz CLS450, MY 2019 Mercedes-Benz E300, MY 2019–2020 Mercedes-Benz E450, MY 2019 Mercedes-Benz AMG E53, MY 2019–2020 Mercedes-Benz AMG G63, MY 2020–2021 Mercedes-Benz E350, MY 2019–2020 Mercedes-Benz G550 do not fully comply with paragraph S5.3.1(a), S5.3.1(b), S5.3.2.1, S5.3.2.2(a), S5.3.3(a). of FMVSS No. 101, Controls and Displays (49 CFR 571.101) and paragraph S3.1.4.1 of FMVSS No. 102, Transmission Shift Position, (49 CFR 571.102.) Mercedes-Benz filed a noncompliance report dated September 24, 2021, pursuant to 49 CFR part 573, Defect and Noncompliance Responsibility and Reports. Mercedes-Benz petitioned NHTSA on October 25, 2021, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, Exemption for Inconsequential Defect or Noncompliance.

This notice of receipt of Mercedes-Benz's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or another exercise of judgment concerning the merits of the petition.

II. Vehicles Involved: Approximately 27,742 MY 2020 Mercedes-Benz CLS450, MY 2019 Mercedes-Benz E300, MY 2019–2020 Mercedes-Benz E450, MY 2019 Mercedes-Benz AMG E53, MY 2019–2020 Mercedes-Benz AMG G63, MY 2020–2021 Mercedes-Benz E350, MY 2019–2020 Mercedes-Benz G550, manufactured between January 29, 2018, and August 25, 2020, were reported by the manufacturer.

III. Noncompliance: Mercedes-Benz explains that the illumination of the instrument cluster in the subject vehicles may be interrupted under certain circumstances, and therefore does not comply with paragraph S5.3.1(a), S5.3.1(b), S5.3.2.1, S5.3.2.2(a), S5.3.3(a). of FMVSS No. 101 and paragraph S3.1.4.1 of FMVSS No. 102. Specifically, the digital indicators including the shift position indicator, digital/analog speedometer, tachometer, time, and temperature may briefly fade to dark for a maximum of 2.5 seconds and then intensify back to full illumination.

IV. Rule Requirements: Paragraph S5.3.1(a), S5.3.1(b), S5.3.2.1, S5.3.2.2(a), S5.3.3(a). of FMVSS No. 101 and paragraph S3.1.4.1. of FMVSS No. 102 include the requirements relevant to this petition. Except as provided in FMVSS 101 S5.3.1(c), the identifications of controls for which the word ''Yes'' is specified in column 5 of Table 1 must be capable of being illuminated whenever the headlamps are activated. This requirement does not apply to a control located on the floor, floor console, steering wheel, steering column, or in the area of windshield header, or to a control for a heating and air-conditioning system that does not direct air upon the windshield. Except as provided in S5.3.1(c), the indicators and their identifications for which the word ''Yes'' is specified in column 5 of Table 1 must be illuminated whenever the vehicle's propulsion system and headlamps are activated. Means must be provided for illuminating the indicators, identifications of indicators and identifications of controls listed in Table 1 to make them visible to the driver under daylight and nighttime driving conditions. The means of providing the visibility required by S5.3.2.1: must be adjustable to provide at least two levels of brightness. Means must be provided for illuminating telltales and their identification sufficiently to make them visible to the driver under daylight and nighttime driving conditions. Except as specified in FMVSS 102 S3.1.4.3, if the transmission shift position sequence includes a park position, identification of shift positions, including the positions in relation to each other and the position selected, shall be displayed in view of the driver whenever the ignition is in a position where the transmission can be shifted, or the transmission is not in park.

V. Summary of Mercedes-Benz's Petition: The following views and arguments presented in this section, ''V. Summary of Mercedes-Benz's Petition,'' are the views and arguments provided by Mercedes-Benz. They have not been evaluated by the Agency and do not reflect the views of the Agency. Mercedes-Benz describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

Mercedes-Benz claims that the conditions needed to cause the FMVSS No. 101 noncompliance is rare. In order for the subject FMVSS No. 101 noncompliance to occur, three events must occur simultaneously. First, the CPU load must approach the limits of the instrument cluster's input capacity. Second, while there is a high CPU load, a specific diagnostic function must be activated and the combined effect of the already high CPU load and the diagnostics is sufficient to threaten an instrument cluster freeze, which would trigger a preventative reset. Finally, during the reset, which would last no more than 2.5 seconds, a separate equipment malfunction or condition must occur that would activate an indicator or telltale.

Mercedes-Benz believes that ''the likelihood of a telltale being activated in any particular 2.5 second period is very low.'' Compounded with the probability of the being activated following the first two events, the Mercedes-Benz contends that the likelihood of the subject noncompliance occurring is ''negligible.''

Mercedes-Benz says that its engineers determined that the maximum duration of illumination loss is 2.5 seconds, and the maximum time of analog display illumination loss is 0.8 seconds. Additionally, Mercedes-Benz claims that the subject noncompliance ''would not cause the instrument cluster to report inaccurate information.''

Mercedes-Benz also claims that a driver is unlikely to be confused if the display experiences diminished illumination for 2.5 seconds and the driver would be unlikely to notice a 2.5 second interruption of illumination. Mercedes-Benz refers to a prior NHTSA decision in which the agency granted a similar petition based on its belief that a reset of the instrument panel would happen quickly within seconds before the driver would be distracted to realize what was happening.[1]

According to Mercedes-Benz, it is difficult to formulate an outcome in a

[1] *See* Grant of Petition for Inconsequential Noncompliance to General Motors, Docket No. NHTSA–2013–0134, 81 FR 6928. (February 9, 2016)

situation had the instrument cluster displays made the driver aware of the situation 2.5 seconds sooner. Mercedes-Benz explains that the purpose of the IC displays is to inform the driver of the vehicle and equipment functions, metrics, and status. They have no control over the vehicle's operation or the equipment and functions that they monitor and report on. The subject noncompliance would therefore have no effect on the vehicle's operation.

Finally, Mercedes-Benz contends that the IC reset is a functional safety measure designed to prevent a permanent IC display failure. Mercedes-Benz asserts that if this reset feature is determined to be consequential to vehicle safety and manufacturers were required to remove or disable it, vehicle occupants would be exposed ''to a much higher and enduring safety risk.

Mercedes-Benz believes that NHTSA precedent supports the granting of its petition for the subject noncompliance. According to Mercedes-Benz, ''NHTSA has consistently held that brief interruption of vehicle display visibility, lasting only seconds, is inconsequential to motor vehicle safety.'' Mercedes-Benz says that the subject noncompliance is similar to the noncompliances at issue in past petitions that were granted. Mercedes-Benz says that NHTSA granted a petition by General Motors, LLC, in which MY 2014 Chevrolet Silverado motor vehicles were noncompliant with FMVSS No. 101 and FMVSS No. 102 due to an instrument cluster reset. According to Mercedes-Benz, in this case, the affected vehicles were equipped with an instrument cluster that would reset if the driver used the steering wheel controls to operate an external device connected to the vehicle's USB port. All warning lights would go out, the shift position indicator (PRNDM) would extinguish, and the analog gauges (such as the speedometer) would drop to zero for 1.5 seconds. All telltales would then turn on for 5 seconds following the reset. Mercedes-Benz notes that the noncompliance in the Chevrolet Silverado vehicles would cause telltale activation to be obscured for 6.5 seconds in total which is more than 2.5 times the maximum time the digital displays in the subject vehicles would be affected in the present case and more than eight times the maximum time the analog meters would be affected. Mercedes-Benz says that NHTSA found that the noncompliance in the Chevrolet Silverado vehicles was inconsequential to vehicle safety because the reset would be corrected within seconds, ''before the driver would be distracted, or realize what was happening.''

Mercedes-Benz contends that the granting of another petition by General Motors, LLC, further supports the granting of the current petition. In 2016, NHTSA granted General Motors' petition in which GMC Denali motor vehicles were equipped with an instrument cluster that ''would reset if the design input rate of the CPU was exceeded due to simultaneous use of multiple functions (such as navigation, Bluetooth calling, pairing a media device, or others).'' In this case, the reset would cause a loss of illumination to all digital warning lights and the shift position indicator, and the indicator gauges would drop to zero for 1.3 seconds. After the reset, all telltales would illuminate for 5 seconds. Mercedes-Benz says that NHTSA determined this noncompliance to be inconsequential to vehicle safety because the reset would be a momentary condition and ''the instrument panel telltales and indicators would extinguish and return to normal very quickly, with little, if any, impact to the driver.''

Mercedes-Benz contends that the subject noncompliance is similar to the aforementioned noncompliances because the instrument cluster reset in question is likely to be infrequent because the reset is ''triggered by the simultaneous occurrence of two unusual and independent events.'' Mercedes-Benz claims that the subject noncompliance has been difficult for its engineers ''to induce or observe, in large part because of the infrequent coincidence of the two events.''

Mercedes-Benz believes that the loss of display visibility is not likely to cause driver distraction or other increased risk to motor vehicle safety. The subject noncompliance causes the illumination of the speedometer and tachometer to be interrupted for up to 0.8 seconds and would interrupt the illumination of the digital indicators and telltale lamps for less than 2.5 seconds. Mercedes-Benz contends that it is unlikely that an IC indicator or telltale would activate during this reset period and even in the event that it did, activation of the indicator or telltale after the 2.5 second reset would not cause an increased risk to motor vehicle safety.

According to Mercedes-Benz, NHTSA has not previously required a recall ''to address a seconds-long interruption of instrument cluster illumination.'' The interruption of illumination affecting the Chevrolet Silverado and GMC Denali motor vehicles in the aforementioned General Motors petitions is more than twice the duration of the reset in the subject Mercedes-Benz motor vehicles. Mercedes-Benz contends that NHTSA found that the displays ''would return to normal quickly with little to no impact to the driver,'' and should therefore have the same finding for the subject noncompliance. Like the Chevrolet Silverado and GMC Denali motor vehicles, none of the subject vehicles' operating functions would be affected by the instrument cluster reset. Mercedes-Benz adds that many signals on the digital main instrument cluster involve comfort or convenience features unrelated to vehicle safety and conditions communicated by other indicators or telltales would not be significantly affected by a driver response that is 2.5 seconds earlier. Furthermore, the analog gauges, like the speedometer, would continue to display the correct information when illumination is interrupted and during daylight, the analog gauges remain visible.

Finally, Mercedes-Benz contends that any risk to motor vehicle safety related to the subject noncompliance is ''lower than the risk posed by instrument cluster malfunctions NHTSA has previously exempted.'' Mercedes-Benz says that the analog gauge readings in the Chevrolet Silverado and GMC Denali noncompliances dropped to zero during a reset and the instrument clusters would stop functioning whereas the analog gauges in the subject vehicles continue to display accurate information and the instrument clusters would lack illumination but would otherwise remain functional during the reset. Further, the operation of the instrument panels in the Chevrolet Silverado and GMC Denali vehicles was interrupted and only the illumination of the instrument panels in the subject vehicles is interrupted. In the Chevrolet Silverado and GMC Denali vehicles, any meaningful message would be further obscured for 5 seconds while all the telltales are illuminated which Mercedes-Benz claims could cause confusion, but no such confusion would occur in the subject vehicles because once the reset is completed, only those controls or telltales that have been activated would be displayed to the driver. Therefore, Mercedes-Benz believes that the instrument cluster reset in the subject vehicles poses an even lower risk to safety than the Chevrolet Silverado and GMC Denali noncompliance which NHTSA determined to be inconsequential to motor vehicle safety.

Mercedes-Benz claims that the subject noncompliance has no effect on the operation of headlights, taillights, or

other vehicle lights. Mercedes-Benz states that they are not aware of any reports or claims regarding crashes or injuries concerning the subject noncompliance.

Mercedes-Benz concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that Mercedes-Benz no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicles distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Mercedes-Benz notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke, III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2023–23341 Filed 10–20–23; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2022–0093; Notice 1]

Gillig, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Gillig, LLC, (Gillig) has determined that certain model year (MY) 1998–2022 Gillig Low Floor buses do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 205, *Glazing Materials.* Gillig filed a noncompliance report dated July 6, 2022, and later amended the report on July 22, 2022. Gillig subsequently petitioned NHTSA (the ''Agency'') on July 21, 2022, for a decision that the subject noncompliances are inconsequential as they relate to motor vehicle safety. This document announces receipt of Gillig's petition.

DATES: Send comments on or before November 22, 2023.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the 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 comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Jack Chern, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366–0661.

SUPPLEMENTARY INFORMATION:

I. Overview: Gillig determined that certain MY 1998–2022 Gillig Low Floor buses do not fully comply with paragraph S6 [1] of FMVSS No. 205, *Glazing Materials,* and ANSI/SAE Z26.1–l996, as referenced by FMVSS No. 205 (49 CFR 571.205).

Gillig filed a noncompliance report dated July 6, 2022, and later amended the report on July 22, 2022, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Gillig petitioned NHTSA on July, 21, 2022, for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that these noncompliances are inconsequential as they relate to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt of Gillig's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or another exercise of judgment concerning the merits of the petition.

II. Buses Involved: Gillig stated that an unknown number of MY 1998–2022 Gillig Low Floor buses, manufactured between May 28, 1998, and May 23, 2022, are potentially involved.

[1] Gillig filed a Part 573 noncompliance report dated July 6, 2022, and later amended the report on July 22, 2022, indicating that it has violated the marking requirements as specified in S6 of FMVSS No. 205. However, in its July 21, 2022, petition to NHTSA for a decision that the subject noncompliances are inconsequential as they relate to motor vehicle safety, Gillig stated that the noncompliance was with the Section 5.1.3 of FMVSS No. 205. The Agency would like to correct Gillig's mistake because it was, in fact, a violation of Section 6 of FMVSS No. 205, as stated in its original Part 573 report.

III. Noncompliance: Gillig explains that the noncompliance is that subject buses may be equipped with a polycarbonate barrier adjacent to the driver's designated seating position that does not meet the performance requirements to be certified as Item 4 glazing. Specifically, the interior partition installed in the subject buses do not meet the requirements of the abrasion, chemical resistance, and weathering tests. Within the population affected by this noncompliance, there are certain partitions that are also missing the required glazing certification marking required by Section 6 of FMVSS No. 205. In a separate vehicle population, Gillig explains that ''modesty panels'' were installed that are also missing the required glazing certification marking. The modesty panels are polycarbonate barriers installed in certain transit buses that are located in the passenger compartment of the bus.

IV. Rule Requirements: S6 of FMVSS No. 205 and ANSI/SAE Z26.1–l996, as referenced by FMVSS No. 205, include the requirements relevant to this petition.

V. Summary of Gillig's Petition: The following views and arguments presented in this section, ''V. Summary of Gillig's Petition,'' are the views and arguments provided by Gillig. They have not been evaluated by the Agency and do not reflect the views of the Agency. Gillig describes the subject noncompliances and contends that the noncompliances are inconsequential as they relate to motor vehicle safety.

1. Glazing Material Noncompliance

Gillig believes that the noncompliance relating to the partitions is inconsequential because the subject partitions are not exposed to ''elements or conditions that would affect the stability and robustness of the partition due to weathering, abrasion or chemical degradation.'' Therefore, Gillig contends that the performance requirements to certify Item 4 glazing ''are not appropriate or necessary to maintain the safe performance of the partitions as installed in Gillig's transit bus applications.''

Gillig states its belief that two of the functional purposes of the interior partitions installed in the subject buses are to create a ''hygiene barrier'' between the driver of the vehicles and the passengers that minimizes the driver's risk of exposure to airborne viruses and to protect the driver from passengers that may pose a security risk.

Gillig also believes that the overall purpose of the abrasion, chemical resistance, and weathering tests ''is to ensure that driver visibility is adequately maintained through the glazing and that the Item 4 glazing material can withstand long term exposure to simulated weathering conditions, abrasion due to contact friction and resistance to certain chemicals that are likely to be used for cleaning purposes and that could lead to degradation of the glazing surface.''

Gillig refers to an August 2020 interpretation by NHTSA, in which it says the Agency ''took the position that rigid plexiglass installed to the right of the bus driver is installed in an area that is requisite for driving visibility and that NHTSA would consider such a barrier to be an 'interior partition.' '' [2] Gillig lists the types of glazing that are allowed to be used for ''an interior partition installed in an area requisite for driving visibility,'' which includes Item 4 glazing. Gillig says that while Item 4 glazing is allowed in this application, it is ''typically used for glazing on or facing the exterior of the vehicle,'' and would therefore be exposed to weather and other elements.

However, Gillig states that because the subject partitions are installed inside of the vehicle compartment, they would not be exposed to such elements that the abrasion, chemical resistance, and weathering test requirements are intended to replicate. Thus, Gillig believes that those performance requirements are ''not appropriate for generic partitions installed inside the vehicle compartment.''

According to Gillig, the abrasion, chemical resistance, and weathering performance requirements ''were intended for glazing used as windows, doors and other glazing that typically are or may be installed facing and exposed to the exterior of the vehicles.'' Therefore, Gillig believes that the application of these performance requirements ''may be appropriate for exterior-mounted devices but is overinclusive and unnecessary for interior partitions like the Gillig partitions.''

A. Abrasion Test

According to Gillig, ''the risk of exposure to actual abrasion conditions in real-world operation similar to those specified by the standard is extremely low.''

Gillig says that in a Notice of Proposed Rulemaking [3] the Agency ''acknowledged that internal glazing requires significantly less cleaning compared to glazing mounted facing the exterior of the vehicle, which needs frequent cleaning to remove dirt and grime due to exposure to external elements.'' Gillig states that the Agency also recognized that different performance requirements for glass and glass faced plastic are based on the differing locations on the vehicle in which each type of glazing is installed. While Gillig acknowledges that an internal partition may be exposed to abrasion when passengers are ''leaning and rubbing against the glazing surface,'' Gillig explains that the partition installed in the subject buses ''is situated in an area of the passenger compartment where no standees are allowed and, therefore, this risk is considerably reduced.''

B. Chemical Resistance Test

Gillig provides the ANSI Standard that states the purpose of the chemical resistance test:

''The purpose of the test is to determine whether non-stressed transparent plastic or glass-plastic glazing material have certain minimum resistance to the following chemicals which are likely to be used for cleaning purposes in motor vehicle service:

(1) One percent solution of nonabrasive soap in deionized water;

(2) Kerosene No. K–1 or K–2;

(3) Undiluted denatured alcohol (Formula SD No. 30);

(4) Gasoline;

(5) An aqueous solution of isopropanol and glycol ether solvents in concentration no greater than 10% or less than 5% by weight each and ammonium hydroxide no greater than 5% or less than 1% by weight each, simulating typical commercial windshield cleaner.''

Gillig explains that the partitions installed in the subject buses were found to be noncompliant with the performance requirements pertaining to the gasoline immersion. Gillig says that the gasoline exposure test is ''focused on extended exposure to gasoline where the glazing specimen is immersed in the substance'' which Gillig believes is unlikely to occur in real-world use. Gillig contends that in the event gasoline were to make contact with the partition, ''it would not occur at a rate or level that is so frequent that it would have any impact on the performance of the partition.'' Furthermore, Gillig says it is not aware of any claims, information, or other data that suggests the partitions installed in the subject buses would be exposed to gasoline.

Gillig adds that the subject buses equipped with the noncompliant interior partitions are not gasoline powered, therefore the potential for the

[2] *See* Letter to Collingwood, August 20, 2020, *571.205 Plexiglass Barriers (002) | NHTSA.*

[3] 77 FR 37477, June 21, 2012.

partitions to be exposed to gasoline is lowered. Furthermore, due to the location of the partition inside the subject buses adjacent to the driver's seat, Gillig contends that the probability that the partitions would be exposed to gasoline is ''extremely low and most likely to be nonexistent.''

C. Weathering Test

Gillig states that the purpose of the weathering test is ''to determine whether the plastic or glass plastic material glazing will sufficiently withstand exposure to simulated weathering conditions over an extended period of time.'' To conduct this test, Gillig explains that a specimen is first exposed to a simulated source of radiation, after which the specimen's luminous transmittance is required to not be reduced by more than 5 percent, however, any increase in regular luminous transmittance is acceptable. The specimen may develop some discoloration but other defects should not develop. Additionally, the irradiated specimen shall develop no bubbles or other noticeable decomposition.

When testing the partitions installed in the subject buses, Gillig found that ''segments of the coating peeled up and flaked off during the exposure and did not pass the abrasion test that followed the weathering procedure.'' However, Gillig believes that this weathering test does not reflect real-world use of the subject partition. Gillig explains that the light sources used to conduct the weathering test ''simulate solar maximum conditions, meaning global, noon sunlight at normal incidence on the summer solstice.'' Gillig says this is ''the most severe condition met in outdoor service.''

Gillig says that any type of glass that surrounds a partition located in the passenger compartment of a vehicle would act as a sunlight filter and would significantly reduce the energy of the damaging wavelengths. Thus, Gillig believes, the material deterioration due to UV weathering of subject partitions would be greatly reduced. Gillig further contends that ''since automotive glass is thicker than common window glass, it provides an even superior filtering efficiency compared to common glass with the potential to filter out almost all of the damaging UV wavelengths.''

2. Glazing Marking Noncompliance

In the same population of buses affected by the glazing material noncompliance, Gillig determined that certain buses are not marked with the ''DOT AS4'' glazing marking required by FMVSS No. 205 to indicate that it is certified as Item 4 glazing. Gillig also determined that a separate population of buses are equipped with modesty panels in the passenger compartment that are not marked with the required ''AS4'' glazing marking. Gillig says the modesty panel is not used for driver visibility but is used to ''enhance privacy for passengers.''

Gillig says, ''The purpose of the glazing marking is so that appropriate equivalent glazing can be used in the event that the original glazing needs to be replaced.'' Gillig states its belief that the absence of the required glazing marking does not create an increased risk to motor vehicle safety because the subject buses are operated by personnel that are trained and knowledgeable of the appropriate Item of glazing that is allowed to be used in the interior of the bus. Despite the lack of the marking, Gillig says that the trained maintenance personnel would ensure that the subject glazing is replaced by the appropriate glazing. Furthermore, Gillig says that replacement parts need to be specifically ordered for the vehicle using a unique part number.

Gillig states production has been corrected and any of the subject glazing still in its possession have been removed from future service. Gillig says that the modesty panels meet all other FMVSS No. 205 labeling and performance requirements and the interior partitions ''meet all of the performance requirements that are necessary for the real-world use'' of the subject partitions.

Gillig claims that the Agency has granted prior petitions in which the glazing was missing the required marking, such as the 2016 granting of a petition submitted by Supreme Corporation.[4]

Gillig concludes its petition by stating its belief that the subject noncompliances are inconsequential as they relate to motor vehicle safety and its petition to be exempted from providing notification of the noncompliances, as required by 49 U.S.C. 30118, and a remedy for the noncompliances, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that Gillig no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicles distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Gillig notified them that the subject noncompliances existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8.)

Otto G. Matheke, III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2023–23330 Filed 10–20–23; 8:45 am]

BILLING CODE 4910–59–P

[4] *See, e.g.,* Grant of Petition of Supreme Corporation, 81 FR 72850, October 21, 2016.

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 List (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 effective date(s).

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 the 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 (*ofac.treasury.gov*).

Notice of OFAC Action(s)

On October 18, 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.

BILLING CODE 4810–AL–P

Individuals

1. ‘ABD-AL-DAYIM NASRALLAH, Muhammad Ahmad (محمد أحمد عبد الدايم نصرالله) (a.k.a. ‘ABD-AL-DA’IM, Muhammad Ahmad; a.k.a. ABD EL DAIM, Mohamed Ahmed; a.k.a. ABDUL DA’IM NASRALLAH, Mohammed Ahmed; a.k.a. ABID AL DAIM NASR ALLAH, Mohammad Ahmad; a.k.a. ABID ALDAIM NASR ALLAH, Mohammad Ahmad; a.k.a. NASRALLAH, Mohammed; a.k.a. NASRALLAH, Muhammad; a.k.a. “NASR, Muhammad”), Qatar; DOB 03 Oct 1964; POB Aqbat Jabr, Jordan; nationality Jordan; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; National ID No. 9641032658 (Jordan); Identification Number 103185046 (Jordan) (individual) [SDGT] (Linked To: HAMAS).

   Designated pursuant to section 1(a)(iii)(A) 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 (E.O. 13224, as amended), for having acted or purported to act for or on behalf of, directly or indirectly, HAMAS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

2. NOFAL, Ayman, Gaza; DOB 1965; POB Gaza Strip; nationality Palestinian; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886 (individual) [SDGT] (Linked To: HAMAS).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for having acted or purported to act for or on behalf of, directly or indirectly, HAMAS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

3. ALAQAD, Ahmed M. M. (a.k.a. ALAQAD, Ahmed; a.k.a AL-AQAD, Ahmed; a.k.a. “ALAQAD, Abu Yamin” (“أبو يامن العقاد”)), Khan Yunis, Gaza; DOB 21 Nov 1978; POB Khan Yunis, Gaza Strip; nationality Palestinian; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport 4067405 (Palestinian) (individual) [SDGT] (Linked To: BUY CASH MONEY AND MONEY TRANSFER COMPANY).

   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, BUY CASH MONEY AND MONEY TRANSFER COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

4. DUDIN, Musa Muhammad Salim (موسى محمد سالم دودين) (a.k.a. DODIN, Mussa; a.k.a. DOUDIN, Mousa; a.k.a. DUDIN, Musa), Hebron, West Bank; DOB 12 Jun 1972;

nationality Palestinian; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; National ID No. 985416981 (Palestinian); alt. National ID No. 909517724 (Palestinian) (individual) [SDGT] (Linked To: HAMAS).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for having acted or purported to act for or on behalf of, directly or indirectly, HAMAS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

5. AL-DUWAIK, Aiman Ahmad (أيمن أحمد رشاد الدويك) (a.k.a. AL DUWAIK, Aiman Ahmad R; a.k.a. AL-DUWAIK, Aiman Ahmad Rashed), Turkey; Algeria; DOB 24 Sep 1962; nationality Jordan; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886 (individual) [SDGT] (Linked To: HAMAS).

   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, HAMAS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

6. JAHLEB, Ahmed Sadu (a.k.a. ALJIHLIB, Yousef; a.k.a. JAHLEB, Ahmed; a.k.a. JAHLEB, Ahmed Sadu Yousef; a.k.a. JAKHLAB, Ahmad Saado Yusuf), Turkey; DOB 23 Dec 1976; nationality Egypt; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport P00018023 (Egypt) (individual) [SDGT] (Linked To: HAMAS).

   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, HAMAS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

7. KHAIR, Abdelbasit Hamza Elhassan Mohamed (a.k.a. HAMZA, Abd al-Basit; a.k.a. "HAMZA, Abdelbasit"), Africa Street, Khartoum 12290, Sudan; DOB 28 Aug 1955; POB Marawi, Sudan; nationality Sudan; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; National ID No. 101 0015 9792 (Sudan) (individual) [SDGT] (Linked To: HAMAS).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for having acted or purported to act for or on behalf of, directly or indirectly, HAMAS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

8. JADALLAH, Walid Mohammed Mustafa (a.k.a. JAD ALLAH, Waleed Mohammad Mustafa; a.k.a. "JADALLAH, Walid"), Turkey; DOB 01 Jan 1958; nationality Jordan; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport T199962 (Jordan) (individual) [SDGT] (Linked To: HAMAS).

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, HAMAS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

9. ALSHAWA, Amer Kamal Sharif (a.k.a. AL-SHAVA, Amar; a.k.a. ALSHAVA, Amer; a.k.a. AL-SHAVA, Amer; a.k.a. AL-SHAWA, Amer; a.k.a. ALSHAWA, Amer Kamel), Turkey; DOB 29 Apr 1964; POB Kuwait; nationality Turkey; alt. nationality Jordan; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport U12937160 (Turkey) (individual) [SDGT] (Linked To: HAMAS).

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, HAMAS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

Entity

1. BUY CASH MONEY AND MONEY TRANSFER COMPANY (باي كاش للصرافة والحولات المالية) (a.k.a. "BUY CASH"), Khan Yunis, Gaza; Digital Currency Address - XBT 19D1iGzDr7FyAdiy3ZZdxMd6ttHj1kj6WW; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Type: Other monetary intermediation [SDGT] (Linked To: HAMAS).

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, HAMAS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

Dated: October 18, 2023.

Bradley T. Smith,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–23345 Filed 10–20–23; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the name of a person who has been removed from the List of Specially Designated Nationals and Blocked Persons (SDN List) and whose property and interests in property have been unblocked.

DATES: See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: OFAC: 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 Compliance & Evaluation, 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 Actions

On October 18, 2023, OFAC determined that the following person would be removed from the SDN List and that their property and interests in property subject to U.S. jurisdiction are unblocked pursuant to Executive Order 13722 of March 15, 2016 (''Blocking the Property of the Government of North Korea and the Workers' Party of Korea, and Prohibiting Certain Transactions With Respect to North Korea''), and U.S. persons are no longer generally prohibited from engaging in transactions with them.

Individual

1. HUISH, Irina Igorevna (a.k.a. BURLOVA, Irina), Russia; South Africa; DOB 18 Jan 1973; Gender Female; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214 (individual) [DPRK3] (Linked To: VELMUR MANAGEMENT PTE LTD).

Dated: October 18, 2023.

Bradley T. Smith,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–23370 Filed 10–20–23; 8:45 am]

BILLING CODE 4810–AL–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 List (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(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Bradley T. 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 the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

On October 26, 2020, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Individuals

1. KARBASIAN, Masoud (a.k.a. KARBASIAN, Mas'ud); DOB 14 Jun 1956; POB Isfahan, Iran; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; Passport D10002096 (Iran) expires 26 Aug 2022; National ID No. 1286504104 (Iran) (individual) [SDGT] [IFSR] (Linked To: NATIONAL IRANIAN OIL COMPANY).

Designated pursuant to section 1(a)(iii)(E) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism,'' (E.O. 13224), 3 CFR, 2001 Comp., p. 786, as amended by Executive Order 13886 of September 9, 2019, ''Modernizing Sanctions to Combat Terrorism,'' 84 FR 48041 (E.O. 13224, as amended) for being a leader or official of NATIONAL IRANIAN OIL COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. PUREBRAHIM, Ali Akbar (a.k.a. POUREBRAHIM, Ali Akbar; a.k.a. POUR–EBRAHIM, Ali-Akbar; a.k.a. POUREBRAHIMABADI, Aliakbar; a.k.a. PUREBRAHIMABADI, Ali Akbar), Iran; Lausanne, Switzerland; DOB 22 Dec 1987; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; Passport X42276294 (Iran) expires 21 Sep 2022 (individual) [SDGT] [IFSR] (Linked To: QASEMI, Rostam).

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, Rostam QASEMI, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

3. SARDASHTI, Nasrollah, Iran; DOB 22 Nov 1958; POB Iran; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; Passport E194742 (Iran) (individual) [SDGT] [IFSR] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Designated pursuant to section 1(a)(iii)(E) of E.O. 13224, as amended, for being a leader or official of NATIONAL IRANIAN TANKER COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

4. ZANGANEH, Viyan (a.k.a. ZANGANEH, Vian); DOB 23 Sep 1974; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Female; Passport E34651195 (Iran) expires 26 Aug 2020 (individual) [SDGT] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

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, Iran's ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

5. ZANGANEH, Bijan, Iran; DOB Mar 1952; alt. DOB Mar 1953; POB Kermanshah, Iran; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male (individual) [SDGT] [IFSR] (Linked To: MINISTRY OF PETROLEUM).

Designated pursuant to section 1(a)(iii)(E) of E.O. 13224, as amended, for being a leader or official of Iran's MINISTRY OF PETROLEUM, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

6. MOHAMMADI, Behzad, Iran; DOB 1966; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male (individual) [SDGT] [IFSR] (Linked To: NATIONAL PETROCHEMICAL COMPANY).

Designated pursuant to section 1(a)(iii)(E) of E.O. 13224, as amended, for being a leader or official of Iran's NATIONAL PETROCHEMICAL COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

7. SADIQABADI, Alireza, Iran; DOB 1982; POB Tehran, Iran; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male (individual) [SDGT] [IFSR] (Linked To: NATIONAL IRANIAN OIL REFINING AND DISTRIBUTION COMPANY).

Designated pursuant to section 1(a)(iii)(E) of E.O. 13224, as amended, for being a leader or official of NATIONAL IRANIAN OIL REFINING AND DISTRIBUTION COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

8. MADANIPOUR, Mahmoud, 93 Chiltern Road, Sutton, SM2 5QZ, Surry, United Kingdom; Iran; DOB 19 Jul 1978; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; Passport Y42996343 (Iran) issued 10 Oct 2022 (individual) [SDGT] [IFSR] (Linked To: MOBIN INTERNATIONAL LIMITED).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for having acted or purposed to have acted for or on behalf of, directly or indirectly, MOBIN INTERNATIONAL LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Entities

1. ATLANTIC SHIP MANAGEMENT COMPANY (a.k.a. ATLANTIC SHIP MANAGEMENT LLC), Office Number 3803, Churchill Tower, 38 Floor, Business Bay, Bur Dubai, Burj Khalifa, Dubai, United Arab Emirates; P.O. Box 128650, No 1902, Churchill Tower, Business Bay, Dubai, United Arab Emirates; Additional Sanctions Information—Subject to Secondary Sanctions; Registration Number 663558 (United Arab Emirates) [SDGT] [IFSR] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, NATIONAL IRANIAN TANKER COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. ATLAS SHIP MANAGEMENT (a.k.a. ATLAS SHIPS MANAGEMENT), Fujairah, United Arab Emirates; Additional Sanctions Information—Subject to Secondary Sanctions [SDGT] [IFSR] (Linked To: NATIONAL IRANIAN TANKER COMPANY).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, NATIONAL IRANIAN TANKER COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

3. MINISTRY OF PETROLEUM (a.k.a. IRANIAN MINISTRY OF PETROLEUM), Iranian Ministry of Petroleum Building, Taleghani Ave., Tehran, Iran; Additional Sanctions Information—Subject to Secondary Sanctions [SDGT] [IFSR] (Linked To:

ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13224, as amended, for owning or controlling, directly or indirectly, NATIONAL IRANIAN OIL COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, as well as 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, Iran's ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

4. NATIONAL IRANIAN OIL COMPANY (a.k.a. NIOC), Hafez Crossing, Taleghani Avenue, P.O. Box 1863 and 2501, Tehran, Iran; National Iranian Oil Company Building, Taleghani Avenue, Hafez Street, Tehran, Iran; website *www.nioc.ir;* IFCA Determination—Involved in Energy Sector; Additional Sanctions Information—Subject to Secondary Sanctions; all offices worldwide [IRAN] [SDGT] [IFSR] [IFCA] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE; Linked To: MINISTRY OF PETROLEUM).

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, Iran's ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

5. NATIONAL IRANIAN TANKER COMPANY (a.k.a. NITC), NITC Building, 67–88, Shahid Atefi Street, Africa Avenue, Tehran, Iran; No. 65 and 67 Shahid Atefi Street, Africa Blvd., Tehran, Iran; website *www.nitc.co.ir;* Email Address *info@nitc.co.ir;* alt. Email Address *administrator@nitc.co.ir;* IFCA Determination—Involved in the Shipping Sector; Additional Sanctions Information—Subject to Secondary Sanctions; National ID No. 4891 (Iran); Telephone (98)(21)(66153220); Telephone (98)(21)(23803202); Telephone (98)(21)(23803303); Telephone (98)(21)(66153224); Telephone (98)(21)(23802230); Telephone (98)(9121115315); Telephone (98)(9128091642); Telephone (98)(9127389031); Fax (98)(21)(22224537); Fax (98)(21)(23803318); Fax (98)(21)(22013392); Fax (98)(21)(22058763) [IRAN] [SDGT] [IFSR] [IFCA] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

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, Iran's ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

BILLING CODE 4810–AL–P

1. ABADAN OIL REFINING COMPANY (Arabic: شركت پالايش نفت آبادان) (a.k.a. ABADAN OIL REFINING COMPANY PRIVATE JOINT STOCK (Arabic: شركت پالايش نفت آبادان سهامى عام); a.k.a. PALAYESH NAFT ABADAN (Arabic: پالايش نفت آبادان); a.k.a. "AORC"), Breym, Abadan, Khuzestan 6316915651, Iran; P.O. Box 555, Abadan, Khuzestan, Iran; Central Abadan Oil Refinery, Abadan, Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Executive Order 13846 information: LOANS FROM UNITED STATES FINANCIAL INSTITUTIONS. Sec. 5(a)(i); alt. Executive Order 13846 information: FOREIGN EXCHANGE. Sec. 5(a)(ii); alt. Executive Order 13846 information: BANKING TRANSACTIONS. Sec. 5(a)(iii); alt. Executive Order 13846 information: BLOCKING PROPERTY AND INTERESTS IN PROPERTY. Sec. 5(a)(iv); alt. Executive Order 13846 information: BAN ON INVESTMENT IN EQUITY OR DEBT OF SANCTIONED PERSON. Sec. 5(a)(v); alt. Executive Order 13846 information: IMPORT SANCTIONS. Sec. 5(a)(vi); alt. Executive Order 13846 information: SANCTIONS ON PRINCIPAL EXECUTIVE OFFICERS. Sec. 5(a)(vii); National ID No. 14003570909 (Iran); Registration Number 1690 (Iran) [SDGT] [IFSR] [IRAN-EO13846] (Linked To: MINISTRY OF PETROLEUM).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Iran's MINISTRY OF PETROLEUM, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

BILLING CODE 4810–AL–C

6. IMAM KHOMEINI SHAZAND OIL REFINING COMPANY (a.k.a. IKORC; a.k.a. IMAM KHOMEINI ZHAZAND OIL REFINING), 20th Km of Borujerd Road, Arak 38671–41111, Iran; Additional Sanctions Information—Subject to Secondary Sanctions; National ID No. 144518 (Iran) [SDGT] [IFSR] (Linked To: MINISTRY OF PETROLEUM).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Iran's MINISTRY OF PETROLEUM, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

7. IRANIAN OIL PIPELINES AND TELECOMMUNICATION CO. (a.k.a. IOPTC), Qarani Street, No. 135, Tehran, Tehran Province, Iran; Additional Sanctions Information—Subject to Secondary Sanctions [SDGT] [IFSR] (Linked To: MINISTRY OF PETROLEUM).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Iran's MINISTRY OF PETROLEUM, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

8. NATIONAL IRANIAN OIL ENGINEERING AND CONSTRUCTION COMPANY (a.k.a. NIOEC), No. 247 Ostad Nejatollahi Avenue, Corner of Shahid Kalantary Street, Tehran, Iran; Additional Sanctions Information—Subject to Secondary Sanctions; National ID No. 89299 (Iran) [SDGT] [IFSR] (Linked To: MINISTRY OF PETROLEUM).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Iran's MINISTRY OF PETROLEUM, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

9. NATIONAL IRANIAN OIL PRODUCTS DISTRIBUTION COMPANY (a.k.a. NIOPDC), No 1, Iransahr Building, Opposite of Honarmandan Park Corner of Iransahr Street, Taleghani Avenue, Tehran, Iran; Additional Sanctions Information—Subject to Secondary Sanctions; National ID No. 67337 (Iran) [SDGT] [IFSR] (Linked To: MINISTRY OF PETROLEUM).

Designated pursuant to section 1(a)(iii)(A) of of September 9, 2019, ''Modernizing Sanctions to Combat Terrorism,'' 84 FR 48041 (E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Iran's MINISTRY OF PETROLEUM, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

10. NATIONAL IRANIAN OIL REFINING AND DISTRIBUTION COMPANY (a.k.a. NIORDC), 4 Varsho Street, Tehran, Iran; P.O. Box 15815/3499, No. 4 Varsho Street, 1598666611, Iran; Additional Sanctions Information—Subject to Secondary Sanctions; National ID No. 89152 (Iran) [SDGT] [IFSR] (Linked To: MINISTRY OF PETROLEUM).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Iran's MINISTRY OF PETROLEUM, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

11. NATIONAL PETROCHEMICAL COMPANY (a.k.a. THE NATIONAL PETROCHEMICAL COMPANY; a.k.a. ''NIPC''; a.k.a. ''NPC''), No. 104, North Sheikh Bahaei Blvd., Molla Sadra Ave., Tehran, Iran; No 144, North Sheikh Bahayi Avenue, Mulla Sadra Street, Vanak Square, Tehran, Iran; P.O. Box 19395–6896, Tehran, Iran; Additional Sanctions Information—Subject to Secondary Sanctions; National ID No. 9614 (Iran); all offices worldwide [IRAN] [SDGT] [IFSR] (Linked To: MINISTRY OF PETROLEUM).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Iran's MINISTRY OF PETROLEUM, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

12. MOBIN HOLDING LIMITED (f.k.a. GOLDEN CROWN OVERSEAS LIMITED), 22 Long Acre, Long Acre, London WC2E 9LY, United Kingdom; Additional Sanctions Information—Subject to Secondary Sanctions; Registration Number 09745038 (United Kingdom) [SDGT] [IFSR] (Linked To: MADANIPOUR, Mahmoud).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Mahmoud MADANIPOUR, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

13. MOBIN INTERNATIONAL LIMITED (a.k.a. ''MOBIN INTERNATIONAL LTD.''), Office 2403, Ahmad-Abberrhaim al-Attar, Dubai, United Arab Emirates; website *www.mobinogp.com;* Additional Sanctions Information—Subject to Secondary Sanctions [SDGT] [IFSR] (Linked To: NATIONAL IRANIAN OIL PRODUCTS DISTRIBUTION COMPANY).

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, NATIONAL IRANIAN OIL PRODUCTS DISTRIBUTION COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

14. OMAN FUEL TRADING LTD, 22 Long Acre, Long Acre, London WC2E 9LY, United Kingdom; 51 Creighton Road, London W5 4SH, United Kingdom; Additional Sanctions Information—Subject to Secondary Sanctions; Registration Number 11751545 (United Kingdom) [SDGT] [IFSR] (Linked To: MADANIPOUR, Mahmoud).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Mahmoud MADANIPOUR, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Vessels

1. LONGBOW LAKE (f.k.a. GULF FALCON; f.k.a. GULF GLORY; f.k.a. NICHINORI) Crude Oil Tanker Honduras flag; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9237539 (vessel) [SDGT] [IFSR] (Linked To: NATIONAL IRANIAN OIL COMPANY).

Identified pursuant to E.O. 13224, as amended, as property in which NATIONAL IRANIAN OIL COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

2. WU XIAN Crude Oil Tanker Panama flag; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9102239 (vessel) [SDGT] [IFSR] (Linked To: NATIONAL IRANIAN OIL COMPANY).

Identified pursuant to E.O. 13224, as amended, as property in which NATIONAL IRANIAN OIL COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

Dated: October 18, 2023.

Bradley T. Smith,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–23346 Filed 10–20–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Veterans Experience Office, Department of Veterans Affairs (VA).

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, notice is hereby given that the Department of Veterans Affairs (VA) is modifying the system of records titled ''Veterans Affairs Profile-VA'' (192VA30). VA Profile contains information about Veterans; their families, caregivers, and survivors; and other VA customers to facilitate the title 38 benefits and services provided by the different administrations and program offices.

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 the 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 Affairs Profile-VA'' (192VA30). Comments received will be available at *regulations.gov* for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Trisha Dang, Veterans Experience Office (VEO), Department of Veterans Affairs, 810 Vermont Ave. NW, Building 810,

Washington, DC 20420; Telephone (202) 461–9898; email *trisha.dang@va.gov*.

SUPPLEMENTARY INFORMATION: VA is modifying the Veterans Affairs Profile system of records by making minor revisions to the Routine Uses of Records Maintained in the System; and updating the System Location; Purpose 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; Administrative, Technical, and Physical Safeguards; Record Access Procedures; and Contesting Record Procedures.

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 September 13, 2023 for publication.

Dated: October 18, 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 Affairs Profile (VA Profile) (192VA30).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The VA Profile system is maintained in a system known as the VA Profile Data Repository (VA PROFILEDB) hosted at an OI&T approved VA sponsored data warehouse location via secured cloud storage on a Federal Risk and Authorization Management Program (FedRAMP) certified VA Enterprise Cloud (VAEC).

SYSTEM MANAGER(S):

Trisha Dang, Veterans Experience Office (VEO), Department of Veterans Affairs, 810 Vermont Ave. NW, Building 810, Washington, DC 20420; Telephone (202) 461–9898; email *trisha.dang@va.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

38 U.S.C. 501, 7304.

PURPOSE(S) OF THE SYSTEM:

The purpose of VA Profile is to serve as the authoritative data source for common customer profiles of Veterans; their families, caregivers, and survivors; and other VA customers. The profile data in this system of records is mastered and synchronized with information in other data sources, meet VA data quality standards, and is updated using a single touchpoint service. Through synchronization of information from various data sources, VA Profile provides VA administrations and program offices with a customer profile that is accurate, relevant, complete, and timely.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records in the system contain information about Veterans; their families, caregivers, and survivors; and eligible beneficiaries who are receiving or have received title 38 benefits and services; and other individuals who may be entitled to title 38 benefits and services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include identifying data and contact information, such as names; mailing and residential addresses; daytime, evening, mobile, and fax phone numbers; and email addresses.

RECORD SOURCE CATEGORIES:

Records contain information provided by Veterans as well as their families, advocates, and dependents. Information is also obtained from other VA components and systems of records, including National Patient Database-VA (121VA10A7), VA/DoD Identity Repository (138VA005Q); Enrollment and Eligibility Records-VA (147VA10), Veterans Health Information Systems and Technology Architecture (VistA) Records-VA (79VA10),Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records (58VA21/22/28), Administrative Data Repository-VA (150VA19), and supplemented with information purchased from data brokers.

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 (a) VA suspects or has confirmed that there has been a breach of the system of records; (b) 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 (c) 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 (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

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. 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. *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.

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 prior written request of that agency.

14. *Researchers, for Research:* To epidemiological and other research facilities approved by the Under Secretary for Health for research purposes determined to be necessary and proper, provided that the names and addresses of veterans and their dependents will not be disclosed unless those names and addresses are first provided to VA by the facilities making the request.

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. *Consumer Reporting Agencies:* To a consumer reporting agency for the purpose of locating the individual, obtaining a consumer report to determine the ability of the individual to repay an indebtedness to the United States, or assisting in the collection of such indebtedness, provided that the provisions of 38 U.S.C. 5701(g)(2) and (4) have been met, and the disclosure is limited to information as is reasonably necessary to identify such individual or concerning that individual's indebtedness to the United States by virtue of the person's participation in a benefits program administered by the Department.

17. *Law Enforcement, for Locating Fugitive:* To any Federal, state, local, territorial, tribal, or foreign law enforcement agency to identify, locate, or report a known fugitive felon, in compliance with 38 U.S.C. 5313B(d).

18. *OMB:* To the Office of Management and Budget (OMB) for the performance of its statutory responsibilities for evaluating Federal programs.

19. *Nonprofits, for Release of Names and Addresses (RONA):* To a nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under Title 38, provided that the disclosure is limited to the names and addresses of present or former members of the armed services or their beneficiaries, that the records will not be used for any purpose other than that stated in the request, and the that organization is aware of the penalty provision of 38 U.S.C. 5701(f).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records will be maintained at an OI&T approved VA sponsored data warehouse location via secured cloud storage on a Federal Risk and Authorization Management Program (FedRAMP) certified VA Government Cloud (GovCloud) site.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by name or other identifiers, such as an internal entry number of a partner system that maintains information on the individuals.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this system are maintained and disposed of in accordance with the schedule approved by the Archivist of the United States, General Records Schedule 5.2, item 020, which provides for disposition of intermediary records, *e.g.,* copies of electronic records from one system that are used as source records to another system.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to VA Profile is limited to those persons whose official duties require such access. VA has established security procedures to ensure that access is appropriately limited, including review by information security officers and system data stewards of data access requests; and privacy and information security training required annually of all users of VA information or information systems.

Access is regulated with security software that requires each user to be authenticated, and the system is hosted on a FedRAMP-certified, FISMA-high VA Government Cloud (GovCloud); and transmissions are protected by firewalls, intrusion detection devices, encryption, and other security measures.

Physical access to computer rooms housing national administrative databases, warehouses, and data marts is restricted to authorized staff and protected by a variety of security devices. Unauthorized employees, contractors, and other staff are not allowed in computer rooms. The Federal Protective Service or other security personnel provide physical security for the buildings housing computer rooms and data centers, and copies of back-up computer files are generally maintained at off-site locations.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records in this system pertaining to them must contact the system manager in writing as indicated above. The request for access must contain the requester's full name, address, telephone number, and signature, and describe the records sought in sufficient detail to enable VA 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 must contact the system manager in writing as indicated above. A request to contest or amend must state clearly and concisely what record is being contested, the basis 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:

87 FR 36207 (June 15, 2022).

[FR Doc. 2023–23327 Filed 10–20–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0648]

Agency Information Collection Activity: Foreign Medical Program (FMP) Registration Form and Claim Cover Sheet

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Health Administration (VHA), 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 December 22, 2023.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Grant Bennett, Office of Regulations, Appeals, and Policy (10BRAP), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *Grant.Bennett@va.gov.* Please refer to ''OMB Control No. 2900–0648'' 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 Avenue NW, Washington, DC 20420, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0648'' 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, VHA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA'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 104–13; 44 U.S.C. 3501–3521.

Title: Foreign Medical Program (FMP) Registration Form and Claim Cover Sheet, VA Forms 10–7959f–1 and 10–7959f–2.

OMB Control Number: 2900–0648.

Type of Review: Extension of a currently approved collection.

Abstract: The Foreign Medical Program (FMP) is a federal health benefits program for Veterans, which is administered by the Department of Veterans Affairs (VA) Veterans Health Administration (VHA). The FMP is a Fee for Service (indemnity plan) program and provides reimbursement for VA adjudicated service-connected conditions. Title 38 CFR 17.35 states that VA will provide coverage for the Veteran's service-connected disability when the Veteran is residing or traveling overseas. Title 38 CFR 17.125(c) states that requests for consideration of claim reimbursement from approved health care providers and Veterans are to be mailed to VHA Health Administration Center. VA currently collects information for FMP reimbursement through an OMB approved collection under 2900–0648, using VA Form 10–7959f–1, Foreign Medical Program (FMP) Registration Form, and VA Form 10–7959f–2, Foreign Medical Program (FMP) Claim Cover Sheet. This collection of information is necessary to continue to reimburse Veterans or providers under the FMP.

a. VA Form 10–7959f–1 will collect information used to register into the FMP those Veterans with service-connected disabilities who are living or traveling overseas.

b. VA Form 10–7959f–2 will collect information to streamline the FMP claims submission process for claimants or providers, while also reducing the time spent by VA on processing FMP claims. The cover sheet will explain to foreign providers and Veterans the basic information required for the processing and payment of claims.

VA Form 10–7959f–1

Affected Public: Individuals and households.

Estimated Annual Burden: 111 hours.

Estimated Average Burden per Respondent: 4 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 1,660.

VA Form 10–7959f–2

Affected Public: Individuals or households; private sector.

Estimated Annual Burden: 3,652 hours.

Estimated Average Burden per Respondent: 11 minutes.

Frequency of Response: 12 times annually.

Estimated Number of Respondents: 1,660.

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. 2023–23297 Filed 10–20–23; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 88 Monday,
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Part II

Environmental Protection Agency

40 CFR Part 51
Guideline on Air Quality Models; Enhancements to the AERMOD Dispersion Modeling System; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA–HQ–OAR–2022–0872; FRL–10391–01–OAR]

RIN 2060–AV92

Guideline on Air Quality Models; Enhancements to the AERMOD Dispersion Modeling System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notification of public hearing and conference.

SUMMARY: In this action, the Environmental Protection Agency (EPA) proposes to revise the *Guideline on Air Quality Models* (''*Guideline*''). The *Guideline* has been incorporated into EPA's regulations, satisfying a requirement under the Clean Air Act (CAA) section 165(e)(3)(D) for the EPA to specify, with reasonable particularity, models to be used in the Prevention of Significant Deterioration (PSD) program. It provides EPA-preferred models and other recommended techniques, as well as guidance for their use in predicting ambient concentrations of air pollutants. In this action, the EPA is proposing revisions to the *Guideline,* including enhancements to the formulation and application of the EPA's near-field dispersion modeling system, AERMOD, and updates to the recommendations for the development of appropriate background concentration for cumulative impact analyses. Within this action, the EPA is also announcing the Thirteenth Conference on Air Quality Modeling and invites the public to participate in the conference. The conference will focus on the proposed revisions to the *Guideline,* and part of the conference will also serve as the public hearing for these revisions.

DATES: Comments must be received on or before December 22, 2023.

Public hearing and conference: The public hearing for this action and the Thirteenth Conference on Air Quality Modeling will be held November 14–15, 2023, from 8:30 a.m. to 5:00 p.m. Eastern Standard Time (EST).

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2022–0872, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2022–0872 in the subject line of the message.
- *Fax:* (202) 566–9744.
- *Mail:* Environmental Protection Agency, EPA Docket Center, Office of Air and Radiation Docket, Mail code 28221T, Attention Docket No. EPA–HQ–OAR–2022–0872, 1200 Pennsylvania Ave. NW, Washington, DC 20460.
- *Hand/Courier Delivery:* EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Ave. NW, Washington, DC. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

The public hearing will be held at 109 T.W. Alexander Drive, Research Triangle Park, North Carolina 27711. The hearing will convene at 8:30 a.m. (local time) and will conclude at 5:00 p.m. (local time). Refer to the **SUPPLEMENTARY INFORMATION** section below for additional information.

FOR FURTHER INFORMATION CONTACT: Mr. George M. Bridgers, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Air Quality Modeling Group, U.S. Environmental Protection Agency, Mail code C439–01, Research Triangle Park, NC 27711; telephone: (919) 541–5563; email: *Bridgers.George@epa.gov.* (and include ''2023 Revisions to the Guideline on Air Quality Models'' in the subject line of the message).

SUPPLEMENTARY INFORMATION:

The information in this preamble is organized as follows:

Table of Contents

I. General Information

A. Does this action apply to me?

This action applies to Federal, State, territorial, and local air quality management programs that conduct air quality modeling as part of State Implementation Plan (SIP) submittals and revisions, New Source Review (NSR), including new or modifying industrial sources under Prevention of Significant Deterioration (PSD), Conformity, and other air quality assessments required under EPA regulation. Categories and entities potentially regulated by this action include:

Category	NAICS [a] code
Federal/State/territorial/local/Tribal government	924110

[a] North American Industry Classification System.

B. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this proposed rule and relative supporting documentation will also be available on EPA's Support Center for Regulatory Atmospheric Modeling (SCRAM) website. Following signature, these materials will be posted on SCRAM at the following address: *https://www.epa.gov/scram/13th-conference-air-quality-modeling.*

II. Background

A. The Guideline on Air Quality Models and EPA Modeling Conferences

The *Guideline* is used by the EPA, other Federal, State, territorial, and local

air quality agencies, and industry to prepare and review preconstruction permit applications for new sources and modifications, SIP submittals and revisions, determinations that actions by Federal agencies are in conformity with SIPs, and other air quality assessments required under EPA regulation. The *Guideline* serves as a means by which national consistency is maintained in air quality analyses for regulatory activities under CAA regulations, including 40 CFR 51.112, 51.117, 51.150, 51.160, 51.165, 51.166, 52.21, 93.116, 93.123, and 93.150.

The EPA originally published the *Guideline* in April 1978 (EPA–450/2–78–027), and it was incorporated by reference in the regulations for the PSD program in June 1978. The EPA revised the *Guideline* in 1986 (51 FR 32176) and updated it with supplement A in 1987 (53 FR 32081), supplement B in July 1993 (58 FR 38816), and supplement C in August 1995 (60 FR 40465). The EPA published the *Guideline* as Appendix W to 40 CFR part 51 when the EPA issued supplement B. The EPA republished the *Guideline* in August 1996 (61 FR 41838) to adopt the CFR system for labeling paragraphs. The publication and incorporation of the *Guideline* by reference into the EPA's PSD regulations satisfies the requirement under the CAA section 165(e)(3)(D) for the EPA to promulgate regulations that specify with reasonable particularity models to be used under specified sets of conditions for purposes of the PSD program.

To support the process of developing and revising the *Guideline* during the period of 1977 to 1988, we held the First, Second, and Third Conferences on Air Quality Modeling as required by CAA section 320 to help standardize modeling procedures. These modeling conferences provided a forum for comments on the *Guideline* and associated revisions, thereby helping us introduce improved modeling techniques into the regulatory process. Between 1988 and 1995, we conducted the Fourth, Fifth, and Sixth Conferences on Air Quality Modeling to solicit comments from the stakeholder community to guide our consideration of further revisions to the *Guideline,* update the available modeling tools based on the current state-of-the-science, and advise the public on new modeling techniques.

The Seventh Conference was held in June 2000 and also served as a public hearing for the proposed revisions to the recommended air quality models in the *Guideline* (65 FR 21506). These changes included the CALPUFF modeling system, AERMOD Modeling System, and ISC–PRIME model. Subsequently, the EPA revised the *Guideline* on April 15, 2003 (68 FR 18440), to adopt CALPUFF as the preferred model for long-range transport of emissions from 50 to several hundred kilometers and to make various editorial changes to update and reorganize information and remove obsolete models.

We held the Eighth Conference on Air Quality Modeling in September 2005. This conference provided details on changes to the preferred air quality models, including available methods for model performance evaluation and the notice of data availability that the EPA published in September 2003, related to the incorporation of the PRIME downwash algorithm in the AERMOD dispersion model (in response to comments received from the Seventh Conference). Additionally, at the Eighth Conference, a panel of experts discussed the use of state-of-the-science prognostic meteorological data for informing the dispersion models. The EPA further revised the *Guideline* on November 9, 2005 (70 FR 68218), to adopt AERMOD as the preferred model for near-field dispersion of emissions for distances up to 50 kilometers.

The Ninth Conference on Air Quality Modeling was held in October 2008 and emphasized the following topics: reinstituting the Model Clearinghouse, review of non-guideline applications of dispersion models, regulatory status updates of AERMOD and CALPUFF, continued discussions on the use of prognostic meteorological data for informing dispersion models, and presentations reviewing the available model evaluation methods. To further inform the development of additional revisions to the *Guideline,* we held the Tenth Conference on Air Quality Modeling in March 2012. The conference addressed updates on: the regulatory status and future development of AERMOD and CALPUFF, review of the Mesoscale Model Interface (MMIF) prognostic meteorological data processing tool for dispersion models, draft modeling guidance for compliance demonstrations of the fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS), modeling for compliance demonstration of the 1-hour nitrogen dioxide (NO_2) and sulfur dioxide (SO_2) NAAQS, and new and emerging models/techniques for future consideration under the *Guideline* to address single-source modeling for ozone and secondary $PM_{2.5,}$ as well as long-range transport and chemistry.

The Eleventh Conference on Air Quality Modeling was held August 12–13, 2015, and included the public hearing for the most recently proposed version of the *Guideline.* The conference included presentations summarizing the proposed updates to the AERMOD Modeling System, replacement of CALINE3 with AERMOD for modeling of mobile sources, incorporation of prognostic meteorological data for use in dispersion modeling, the proposed screening approach for long-range transport for NAAQS and PSD increments assessments with use of CALPUFF as a screening technique rather than an EPA-preferred model, the proposed 2-tiered screening approach to address ozone and $PM_{2.5}$ in PSD compliance demonstrations, the status and role of the Model Clearinghouse, and updates to procedures for single-source and cumulative modeling analyses (*e.g.,* modeling domain, source input data, background data, and compliance demonstration procedures).

Additionally, the 2015 proposed action included a reorganization of the *Guideline* to make it easier to use and to streamline the compliance assessment process (80 FR 45340), and also included additional clarity in distinguishing requirements from recommendations while noting the continued flexibilities provided within the *Guideline,* including but not limited to use and approval of alternative models (82 FR at 45344). These proposed revisions were adopted and reflected in the latest version of the *Guideline,* promulgated on January 17, 2017 (82 FR 5182).

B. The Twelfth Conference on Air Quality Modeling

The most recent EPA modeling conference was the Twelfth Conference on Air Quality Modeling, which was held in August 2019 in continuing compliance with CAA section 320. While not associated with a regulatory action, the Twelfth Conference was held with the intent to inform the ongoing development of EPA's preferred air quality models and potential revisions to the *Guideline.* The conference included expert panel discussions and invited presentations covering the following model/technique enhancements: treatment of low wind conditions, overwater modeling, mobile source modeling, building downwash, prognostic meteorological data, near-field and long-range model evaluation criteria, NO_2 modeling techniques, plume rise, deposition, and single source ozone and $PM_{2.5}$ modeling techniques. At the conclusion of the expert panels and invited presentations, there were several presentations given by the public, including industrial trade groups, on recommended areas for additional model development and

future revision in the *Guideline.* The proposed regulatory updates to the AERMOD Modeling System in this action address topics on which there was focused discussion and engagement with the stakeholder community through these expert panels and invited and public presentations during the Twelfth Conference.

All the presentations, along with the transcript of the conference proceedings, are available in the docket for the Twelfth Conference on Air Quality Models (Docket ID No. EPA–HQ–OAR–2019–0454). Additionally, all the materials associated with the Twelfth Conference and the public hearing are available on the EPA's SCRAM website at *https://www.epa.gov/scram/12th-conference-air-quality-modeling.*

C. Alpha and Beta Categorization of Non-Regulatory Options

With the release of AERMOD version 18181 in 2018, the EPA adopted a new paradigm for engagement with the scientific community to facilitate the continued development of the AERMOD Modeling System. Previously, updates to the scientific formulation of the model were not made available to the public for review, testing, evaluation, and comment prior to the proposal stage of the formal rulemaking process when an update was made to the *Guideline.* This limited the public's engagement and feedback to a short, predefined comment period, typically only one to two months. The new approach enables the EPA to release potential formulation updates as non-regulatory ''alpha'' and ''beta'' options as they are being developed. As non-regulatory options, they can be made available during any release cycle, thereby enabling feedback as they are being developed. This approach allows for more robust testing and evaluation during development, benefitting from the experience of a broad expert community. In addition, the EPA developed a protocol to enable the external community to submit model updates to the EPA for review and consideration for inclusion as new alpha or beta options. A pathway such as this that facilitates more frequent and active engagement with the external community allows for a more informed and timely regulatory update process when the EPA has determined an update has met the criteria required for consideration as a science formulation update to the regulatory version of the model.

In this alpha/beta construct, alpha options are updates to the scientific formulation that are thought to have merit but are considered experimental, still in the research and development stage. Alpha options have not yet been fully tested, evaluated, or vetted through peer review and should not be considered for use as an alternative model for regulatory applications of the model.

Beta options, on the other hand, have been demonstrated to be applicable on a theoretical basis, have undergone scientific peer review, and are supported with performance evaluations using available and adequate databases that demonstrate unbiased, improved model performance. In general, beta options have met the necessary criteria to be formally proposed and adopted as updates to the regulatory version of the model but have not yet been proposed through the required rulemaking process, which includes a public hearing and formal comment period. Beta options are mature enough in the development process to be considered for use as an alternative model, provided an appropriate site-specific modeling demonstration is completed to show the alternative model is appropriate for the site and conditions where it will be applied and the requirements of the *Guideline,* section 3.2, are fully satisfied, including formal concurrence by the EPA's Model Clearinghouse.

III. Public Participation

Interested persons may provide the EPA with their views on the proposed revisions to the *Guideline* in several ways. This includes submitting written comments to the EPA, participating in the Thirteenth Conference on Air Quality Modeling, and speaking at the public hearing that will be conducted as part of the conference. Additional information on where to submit written comments on the proposed revisions to the *Guideline* is provided in the **ADDRESSES** section above.

A. Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2022–0872, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). Please visit *https://www.epa.gov/dockets/commenting-epa-dockets* for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

B. Notice of Public Hearing and the Thirteenth Conference on Air Quality Models

The public hearing for this action and the Thirteenth Conference on Air Quality Modeling will be held on November 14–15, 2023, in the EPA Nantahala Auditorium, Room C111, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711. The hearing and conference will convene each day at 8:30 a.m. EST and will conclude at 5:00 p.m. EST.

The Thirteenth Conference on Air Quality Modeling will be open to the public. No registration fee is charged. The conference will be formally conducted and chaired by an EPA official. As required under CAA section 320, a verbatim transcript of the conference proceedings will be produced and placed in the docket for this proposed action. The conference will begin with introductory remarks by the presiding EPA official. The EPA staff and EPA invited speakers will then provide a structured overview of the revisions to the *Guideline* as proposed in this document and present on the research that supports those revisions and supports formulation updates to the preferred models. The following topics will be presented:

I. Overview of the Thirteenth Conference on Air Quality Modeling;

II. Review of the proposed revisions to the preferred air quality models; and

III. Review of the proposed revisions to the *Guideline.*

At the conclusion of these presentations, the EPA will convene the public hearing on the proposed revisions to the *Guideline.* The public hearing will span a portion of the afternoon of the first day and throughout the second day of the conference. The EPA will make every effort to follow the schedule as closely as possible on the days of the conference; however, please plan for the public hearing to run either ahead of schedule or behind schedule. The EPA may close the hearing 15 minutes after

the last pre-registered speaker has testified on November 15, if there are no additional speakers.

Those wishing to reserve time to speak at the public hearing, whether to offer specific comments on the proposed rule, volunteer a presentation on a special topic, or to offer recommendations on any regulatory modeling techniques, should contact us at the address given in the **FOR FURTHER INFORMATION CONTACT** section by no later than November 10, 2023. Such persons should identify the organization (if any) on whose behalf they are speaking and the length of the presentation. If a scheduled presentation is projected to be longer than 10 minutes, the presenter should also state why a longer period is needed. Scheduled speakers should bring extra copies of their presentation for inclusion in the docket and for the convenience of the recorder. Scheduled speakers will also be permitted to enter additional written comments into the record.

Any person in attendance wishing to speak at the public hearing who has not reserved time in advance may provide oral comments on the proposed revisions to the *Guideline* during time allotted on the last day. These parties will need to sign up to speak on the second day of the hearing, and the EPA may need to limit the duration of presentations to allow all participants to be heard.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Information submitted to the EPA during the public hearing will be placed in the docket for this proposed action. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral testimony and supporting information presented at the public hearing.

Conference background information. Preregistration details, additional background information, and a more detailed agenda for the Thirteenth Conference on Air Quality Modeling are electronically available at *https://www.epa.gov/scram/13th-conference-air-quality-modeling.* Preregistration for the conference, while not required, is strongly recommended due to heightened security protocols at the EPA–RTP facility.

Access to U.S. government facility. Because this hearing is being held at a U.S. government facility, individuals planning to attend the conference and/or public hearing should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. Please note that the REAL ID Act, passed by Congress in 2005, established new requirements for entering Federal facilities. For purposes of the REAL ID Act, EPA will accept government-issued IDs, including drivers' licenses, from the District of Columbia and all States and territories except from American Samoa. If your identification is issued by American Samoa, you must present an additional form of identification to enter the Federal building where the public hearing will be held. Acceptable alternative forms of identification include Federal employee badges, passports, enhanced driver's licenses, and military identification cards. For additional information for the status of your State regarding REAL ID, go to: *https://www.dhs.gov/real-id-enforcement-brieffrequently-asked-questions.* Any objects brought into the building need to fit through the security screening system, such as a purse, laptop bag, or small backpack. Demonstrations will not be allowed on Federal property for security reasons. Attendees are encouraged to arrive at least 15 minutes prior to the start of the meeting to allow enough time for security screening.

IV. Proposed Revisions to the Guideline

In this action, the EPA is proposing updates to the *Guideline* corresponding to updates to the scientific formulation of the AERMOD Modeling System and updates to the recommendations for the development of appropriate background concentration for cumulative impact analyses. When and where appropriate, the EPA has engaged with our Federal partners, including the Bureau of Ocean Energy Management (BOEM) and the Federal Highway Administration (FHWA), to collaborate on these proposed updates to the *Guideline.* There are additional editorial changes proposed to the *Guideline* to correct minor typographical errors found in the 2017 *Guideline* and update website links.

A. Proposed Revisions

This section provides a detailed overview of the substantive proposed changes to the *Guideline* that are intended to improve the science of the models and approaches used in regulatory assessments.

1. Proposed Updates to EPA's AERMOD Modeling System

Based on studies presented and discussed at the Twelfth Conference on Air Quality Models held on October 2–3, 2019,[1] and additional relevant research since 2017, the EPA and other researchers have conducted additional model evaluations and developed changes to the model formulation of the AERMOD Modeling System to improve model performance in its regulatory applications. One update is to the AERMET meteorological preprocessor for AERMOD. This update provides the capability to process measured and prognostic marine-based meteorology for offshore applications. Separate updates are related to the AERMOD dispersion model and include (1) a new Tier 3 screening method for the conversion of nitrogen oxides (NO_X) emissions to NO_2 and (2) a new source type for modeling vehicle roadway emissions.

Each of the proposed formulation updates to the AERMOD Modeling System is provided as a non-regulatory beta option in the release of the relevant modeling system components that is occurring concurrent with this proposed rule. If EPA adopts these formulation updates in a subsequent final rule, the beta categorization would be removed and the respective model option(s) could be considered regulatory model options.

The EPA proposes the following updates to the AERMOD Modeling System to address several technical concerns expressed by stakeholders:

a. Incorporation of COARE Algorithms Into AERMET for Use in Overwater Marine Boundary Layer Environments

As the number of overwater applications has increased in recent years, the EPA is proposing to add the Coupled Ocean-Atmosphere Response Experiment (COARE)[2] [3] algorithms to AERMET for meteorological data processing in applications using either observed or prognostic meteorological data in overwater marine boundary layer environments. One of the first notable uses of AERMOD for an overwater application was an alternative model application—AERMOD–COARE was used in 2011 in an ice-free arctic environment of Alaska.[4] [5] In this

[1] *https://www.epa.gov/scram/12th-conference-air-quality-modeling.*

[2] Fairall, C.W., E.F. Bradley, J.E. Hare, A.A. Grachev, and J.B. Edson, 2003: ''Bulk Parameterization of Air-Sea Fluxes: Updates and Verification for the COARE Algorithm.'' *Journal of Climate,* 16, 571–591.

[3] Evaluation of the Implementation of the Coupled Ocean-Atmosphere Response Experiment (COARE) algorithms into AERMET for Boundary Layer Environments. EPA–2023/R–23–008, Office of Air Quality Planning and Standards, RTP, NC.

[4] U.S. EPA, 2011: COARE Bulk Flux Algorithm to Generate Hourly Meteorological Data for Use with

Continued

application, the incorporation of the COARE bulk flux algorithm was used as an alternative to the AERMET meteorological processor to AERMOD. This led to the development of the AERCOARE [6] processor that can be used with either measured or prognostic data for overwater applications in lieu of AERMET. AERCOARE has been approved as an alternative model for several overwater applications since 2011.[7]

For overwater applications, the algorithms in COARE are better suited for overwater boundary layer calculations than the existing algorithms in AERMET that are better suited for land-based data. These calculations include calculation of surface roughness, stability classification, effects of moisture on Monin-Obukhov length, and the use of Bowen ratio by AERMET for heat flux calculations.[5] The EPA proposes to add COARE to AERMET in order to ensure that the COARE algorithms are updated regularly as part of routine AERMET updates, to provide consistent data handling among land based and overwater based meteorological data (*e.g.,* treatment of missing data and treatment of calms), and to have all meteorological processing for AERMOD applications in one program.

The addition of the COARE algorithms to AERMET would replace the standalone AERCOARE program and the AERCOARE output option in MMIF for prognostic data overwater. This proposed option is selected by the user with the METHOD COARE RUN–COARE record in the AERMET Stage 2 input file. For prognostic applications processed through the MMIF, the user can run MMIF for AERMET input for overwater applications.

The addition of COARE to AERMET would eliminate the previous alternative model demonstration requirements for use of AERMOD in marine environments, and this elimination is contingent upon consultation with the EPA Regional Office and appropriate reviewing authority. This consultation will ensure that platform downwash and shoreline fumigation are adequately considered in the modeling demonstration.

b. Proposed Addition of a New Tier 3 Detailed Screening Technique for NO_2

Section 4.2.3.4 of the 2017 *Guideline* details a 3-tiered approach for evaluating the modeled impacts of NO_X sources, which was recommended to assess hourly and annual average NO_2 impacts from point, volume, and area sources for the purposes of the PSD program, SIP planning, and transportation general conformity. This 3-tiered approach addresses the co-emissions of NO and NO_2 and the subsequent conversion of NO to NO_2 in the atmosphere. The tiered levels include:

Tier 1—assuming that all emitted NO is converted to NO_2 (full conversion).

Tier 2—using the Ambient Ratio Method 2 (ARM2), which applies an assumed equilibrium ratio of NO_2 to NO_X, based on analysis of and correlation with nationwide hourly observed ambient conditions.

Tier 3—applying the Ozone Limiting Method (OLM) and Plume Volume Molar Ratio (PVMRM) screening options based on site-specific hourly ozone data and source-specific NO_2 to NO_X in-stack ratios.[8] [9] [10] [11]

As further discussed in section 4.2.3.4(e) of the *Guideline,* regulatory application of Tier 3 screening options shall occur in consultation with the EPA Regional Office and appropriate reviewing authority.

The EPA proposes to include the Generic Reaction Set Method (GRSM) as a regulatory non-default Tier 3 NO_2 screening option. Following a peer-reviewed publication in 2017, GRSM was added to AERMOD as an alpha option in version 21112 and updated as a beta option in version 22112.[12] The primary motivation behind the formulation and development of the GRSM NO_2 screening option was to address photolytic conversion of NO_2 to NO and to address the time-of-travel necessary for NO_X plumes to convert the NO portion of the plume to NO_2 via titration and entrainment of ambient ozone. The existing regulatory non-default Tier 3 NO_2 screening options, PVMRM and OLM, do not address or provide for treatment of these mechanisms, and have been shown to over-predict for some source characterizations and model configurations at project source ambient air boundaries and within the first 1–3 km.[13]

The functionality of the GRSM implementation in AERMOD is similar to that of the PVMRM and OLM schemes, with exception to some additional input requirements necessary for treatment of the reverse NO_2 photolysis reaction during daytime hours. Modeled source inputs for GRSM require NO_2/NO_X in-stack ratios, with similar assumptions as applied to PVMRM and OLM according to section 4.2.3.4 of the *Guideline.* Ambient inputs for GRSM require hourly ozone concentrations taken from an appropriately representative monitoring station or selection of monitoring stations for varying upwind sector concentrations. GRSM also requires hourly NO_X concentration inputs to resolve the daytime photolysis of NO_2 reaction in equilibrium with ozone titration conversion of the NO portion of the NO_X plume. GRSM hourly NO_X concentration inputs can also vary by upwind sector concentration, as appropriate. Background NO_2 concentrations are accounted for in the GRSM daytime equilibrium NO_2 concentration estimates based on the chemical reaction balance between ozone entrainment and NO titration, photolysis of NO_2 to NO, and ambient background NO_2 participation in titration and photolysis reactions. Nighttime GRSM NO_2 estimates are based on ozone entrainment and titration of available NO in the NO_X plume. Note that all hourly ozone and NO_X ambient inputs to GRSM must coincide with the hourly meteorological

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the AERMOD dispersion program; Section 3.2.2.e Alternative Refined Model Demonstration Herman Wong Memorandum dated April 1, 2011, Office of Environmental Assessment, Region 10, Seattle, Washington 98101.

[5] U.S. EPA, 2011: Model Clearinghouse Review AERMOD–COARE as an Alternative Model in an Arctic Ice Free Environment. George Bridgers Memorandum dated May 6, 2011, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711.

[6] U.S. EPA, 2012: User's Manual AERCOARE Version 1.0. EPA–910–R–12–008. U.S. EPA, Region 10, Seattle, WA.

[7] Please reference the EPA Model Clearinghouse Information Storage and Retrieval System (MCHISRS) database for more information regarding AERCOARE alternative model approvals (*https://cfpub.epa.gov/oarweb/MCHISRS,* text Search term ''AERCOARE'').

[8] Podrez, M. 2015. An Update to the Ambient Ratio Method for 1-h NO_2 Air Quality Standards Dispersion Modeling. Atmospheric Environment, 103: 163–170.

[9] Cole, H.S. and J.E. Summerhays, 1979. A Review of Techniques Available for Estimation of Short-Term NO_2 Concentrations. *Journal of the Air Pollution Control Association,* 29(8): 812–817.

[10] Hanrahan, P.L., 1999. The Polar Volume Polar Ratio Method for Determining NO_2/NO_X Ratios in Modeling—Part I: Methodology. *Journal of the Air & Waste Management Association,* 49: 1324–1331.

[11] Chu, S.H. and E.L. Meyer, 1991. Use of Ambient Ratios to Estimate Impact of NO_X Sources on Annual NO_2 Concentrations. Proceedings, 84th Annual Meeting & Exhibition of the Air & Waste Management Association, Vancouver, B.C.; 16–21 June 1991. (16pp.) (Docket No. A–92–65, II–A–9).

[12] David J. Carruthers, Jenny R. Stocker, Andrew Ellis, Martin D. Seaton & Stephen E. Smith (2017) Evaluation of an explicit NO_X chemistry method in AERMOD, *Journal of the Air & Waste Management Association,* 67:6, 702–712, DOI: 10.1080/10962247.2017.1280096.

[13] Jenny Stocker, Martin Seaton, Stephen Smith, James O'Neill, Kate Johnson, Rose Jackson, David Carruthers (CERC). Evaluation of the Generic Reaction Set Method for NO_2 conversion in AERMOD. The modification of AERMOD to include ADMS chemistry. August 8, 2023. Cambridge Environmental Research Consultants (CERC) Technical Report.

data records for the period of the modeling analysis (*i.e.,* minimum of 1 year for on-site data, 3 years of prognostic data, and 5 years of airport data).

Updates to the GRSM formulation in AERMOD version 22112 were developed in late 2022 to address more realistic building effects on instantaneous plume spread, accounting of multiple plume effects on entrainment of ozone, and the tendency of GRSM to over-predict in the far-field (*e.g.,* beyond approximately 3 km for typical point source releases). Sensitivity testing and model performance evaluations of these updates to GRSM in AERMOD version 23132 have shown consistent or improved model behavior and performance.[14]

c. Proposed Addition of RLINE as Mobile Source Type

As a culmination of an Interagency Agreement between EPA and FHWA, the EPA proposes to add the RLINE source type as a new source type applicable for regulatory modeling of mobile sources. This is in addition to the AREA, LINE, and VOLUME source types already available for mobile source modeling. The proposed addition of RLINE as a mobile source type is an extension of the 2017 update to the *Guideline* in which AERMOD replaced CALINE3 as the addendum A [15] model for mobile source modeling. At that time, AERMOD's AREA, LINE, and VOLUME sources were available for mobile source modeling. The basis of the RLINE source type is the EPA's Office of Research and Development (ORD) Research LINE (RLINE) model [16] released in 2013. The RLINE model was designed for near-surface releases to simulate mobile source dispersion with an emphasis on the near-road environment. The RLINE model was first incorporated into AERMOD as a beta source type in AERMOD version 19191 in 2019.

The RLINE source type for this proposed action has undergone significant evaluation by the EPA and the FHWA as part of the Interagency Agreement and has shown improved performance.[17] [18] This proposed option is selected by the model user with the SOURCE type ''RLINE''. In addition to proposing RLINE as a new source type, the EPA is also proposing the use of the AERMOD urban option (accounting for urban heat island effect in stable conditions) and terrain with the RLINE source type. However, the inclusion of terrain with RLINE does not supersede the EPA's PM Hot-spot guidance where FLAT terrain is recommended for modeling applications.[19] The EPA also emphasizes that the inclusion of RLINE as a source type for mobile source modeling does not preclude the use of the existing AREA, LINE, and VOLUME source types thereby extending the flexibility of users in best characterizing mobile source for regulatory modeling.

d. Support Information, Documentation, and Model Code

Model performance evaluation and peer-reviewed scientific references for each of these three proposed updates to the AERMOD Modeling System are cited and placed in the docket, as appropriate. An updated user's guide and model formulation documents for version 23132 have also been placed in the docket. We have updated the summary description of the AERMOD Modeling System to addendum A of the *Guideline* to reflect these proposed updates. The essential codes, preprocessors, and test cases have been updated and posted to the EPA's SCRAM website, *https://www.epa.gov/scram.*

2. Proposed Updates to Recommendations on the Development of Background Concentration

Based on permit modeling experiences since the 2017 revisions to the *Guideline,* the EPA proposes revisions to section 8 of the *Guideline* to refine the recommendations regarding the determination of appropriate model input data, specifically background concentration, for use in NAAQS implementation modeling demonstrations (*e.g.,* PSD compliance demonstrations, SIP demonstrations for inert pollutants, and SO_2 designations). The *Guideline* recommends that a representative background concentration should include contributions from all sources, including both nearby and other sources. When identifying nearby sources that may not be adequately represented by ambient monitoring data, the *Guideline* recommends selecting sources ''that cause a significant concentration gradient in the vicinity of the source(s) under consideration.'' The EPA recognizes that the recommended method for identifying nearby sources lacks specificity, is used and referenced inconsistently, and may lead to overly conservative modeling exercises. The proposed revisions to section 8 are intended to provide a more robust framework for characterizing background concentrations for cumulative modeling with particular attention to identifying and modeling nearby sources in multi-source areas.

The EPA proposes to revise recommendations for the determination of background concentrations in constructing the design concentration, or total air quality concentration in multi-source areas (*see* section 8.3), as part of a cumulative impact analysis for NAAQS implementation modeling demonstrations. The EPA's proposed framework includes a stepwise set of considerations to replace the narrow recommendation of modeling nearby sources that cause a significant concentration gradient. This framework focuses the inherent discretion in defining representative background concentrations through qualitative and semi-quantitative considerations within a transparent process using the variety of emissions and air quality data available to the permit applicant. To construct a background concentration for model input under the framework, permit applicants should consider the representativeness of relevant emissions, air quality monitoring, and pre-exiting air quality modeling to appropriately represent background concentrations for the cumulative impact analysis.

In conjunction with the proposed revisions to section 8 of the *Guideline,* the EPA developed the *Draft Guidance on Developing Background Concentrations for Use in Modeling Demonstrations.*[20] This draft guidance

[14] Environmental Protection Agency, 2023. Technical Support Document (TSD) for Adoption of the Generic Reaction Set Method (GRSM) as a Regulatory Non-Default Tier-3 NO2 Screening Option, Publication No. EPA–454/R–23–009. Office of Air Quality Planning & Standards, Research Triangle Park, NC.

[15] Under the codification requirements of the Administrative Committee of the Federal Register (ACFR), only subparts, parts, subchapters, and chapters may have appendices. Therefore, we have changed the naming convention from ''appendix A'' to ''addendum A''.

[16] Snyder, M.G., Venkatram, A., Heist, D.K., Perry, S.G., Petersen, W.B. and Isakov, V., 2013. RLINE: A line source dispersion model for near-surface releases. *Atmospheric environment, 77,* pp.748–756.

[17] Incorporation and Evaluation of the RLINE source type in AERMOD for Mobile Source Applications. EPA–2023/R–23–011, Office of Air Quality Planning and Standards, RTP, NC.

[18] Heist, D., *et al.,* 2023. Integration of RLINE dispersion model into EPA's AERMOD: updated formulation and evaluations. *Journal of the Air & Waste Management Association,* Manuscript submitted for publication.

[19] U.S. EPA, 2021: PM Hot-spot Guidance; Transportation Conformity Guidance for Quantitative Hot-spot Analyses in $PM_{2.5}$ and PM_{10} Nonattainment and Maintenance Areas. EPA–42–B–21–037. U.S. EPA, Office of Transportation and Air Quality, Ann Arbor, MI.

[20] U.S. Environmental Protection Agency, 2023. Draft Guidance on Developing Background

Continued

document details the EPA-recommended framework with illustrative examples to assist permit applicants in characterizing a credible and appropriately representative background concentration for cumulative impact analyses including the contributions from nearby sources in multi-source areas.

3. Transition Period for Applicability of Revisions to the Guideline

In previous rulemakings to revise the *Guideline,* we have traditionally communicated that it would be appropriate to provide 1-year to transition to the use of new models, techniques and procedures in the context of PSD permit applications and other regulatory modeling applications. We invite comments whether it would be appropriate to apply a 1-year transition after promulgation of the revised *Guideline* (*i.e.,* from its effective date) such that applications conducted under the existing *Guideline* with approved protocols would be acceptable during that period, but new requirements and recommendations should be used for applications submitted after that period or protocols approved after that period.

Such a transition period is consistent with previous revisions to the *Guideline* and appropriate to avoid the time and expense of revisiting modeling that is substantially complete, which would cause undue delays to permit applications that are pending when the proposed revisions to the *Guideline* are finalized. The proposed revisions to the *Guideline* are intended as incremental improvements to the *Guideline,* and such improvements do not necessarily invalidate past practices under the previous editions of the *Guideline.* The requirements and recommendations in the existing (2017) version of the *Guideline* were previously identified as acceptable by the EPA, and they will continue to be acceptable for air quality assessments during the period of transition to the revised version of the *Guideline,* if finalized.

Where a proposed revision to the *Guideline* does raise questions about the acceptability of a requirement or recommendation that it replaces, model users and applicants are encouraged to consult with the appropriate reviewing authority as soon as possible to assure the acceptability of modeling used to support permit applications during this period.

4. Proposed Revisions by Section

a. Section 1.0—Introduction

The EPA proposes to correct paragraph (i) by combining the inadvertently created paragraph (A), which is actually part of the phrase ''addendum A'' in the first sentence.

b. Section 3.0—Preferred and Alternative Air Quality Models

The EPA proposes to revise an outdated website link in section 3.0(b).

In sections 3.1.1(c) and 3.1.2(a), the EPA proposes to correct the sections by combining the inadvertently created paragraph (A), which is actually part of the phrase ''addendum A'' in the first sentence.

c. Section 4.0—Models for Carbon Monoxide, Lead, Sulfur Dioxide, Nitrogen Dioxide and Primary Particulate Matter

The EPA proposes to update reference numbers where necessary due to added references.

In sections 4.1(b) and 4.2.2(a), the EPA proposes to correct the sections by combining the inadvertently created paragraph (A), which is actually part of the phrase ''addendum A'' in the first sentence.

In section 4.2.2.1, the EPA proposes to add a new paragraph (f) regarding the use of AERMOD in certain overwater situations. A typographical correction is proposed in section 4.2.2.1(b).

The EPA proposes amendments to section 4.2.2.3 to account for circumstances where OCD is available to evaluate situations where shoreline fumigation and/or platform downwash are important.

In section 4.2.3.4, the EPA proposes to revise paragraph (e) to adopt the Generic Reaction Set Method (GRSM) as a regulatory Tier 3 detailed screening technique for NO_2 modeling demonstrations. Sentences in this section would be updated to incorporate GRSM with the existing regulatory Tier 3 screening techniques OLM and PVMRM. An additional statement is proposed indicating GRSM model performance may be better than OLM and PVMRM under certain source characterization situations. The EPA also proposes to add two references to the section including one for the peer-reviewed paper on development and evaluation of GRSM, and a second reference to the EPA Technical Support Document (TSD) on GRSM.

The EPA proposes to revise Table 4–1 in section 4.2.3.4(f) to include GRSM as a Tier 3 detailed screening option.

d. Section 5.0—Models for Ozone and Secondarily Formed Particulate Matter

The EPA proposes to update reference numbers where necessary due to added references. In section 5.2, the EPA proposes to revise paragraph (c) to include a reference for guidance on the use of models to assess the impacts of emissions from single sources on secondarily formed ozone and $PM_{2.5}$.

e. Section 6.0—Modeling for Air Quality Related Values and Other Governmental Programs

The EPA proposes to update reference numbers where necessary due to added references and revise an outdated website link in section 6.3(a).

f. Section 7.0—General Modeling Considerations

The EPA proposes to update reference numbers where necessary due to added references.

In section 7.2.3, the EPA proposes to revise paragraph (b) to include the addition of RLINE as a source type for use in regulatory applications of AERMOD and remove references to specific distances that receptors can be placed from the roadway.

Also in section 7.2.3, the EPA proposes to revise paragraph (c) to include RLINE as a source type that can be used to model mobile sources and clarify that an area source can be categorized in AERMOD using the AREA, LINE, or RLINE source type.

g. Section 8.0—Model Input Data

The EPA proposes to update reference numbers where necessary due to added references.

The EPA proposes to revise Table 8–1 and Table 8–2 to correct typographical errors and update the footnotes in each of the tables.

The EPA proposes to revise section 8.3.1 to address current EPA practices and recommendations for determining the appropriate background concentration as model input data for a new or modifying source(s) or sources under consideration for a revised permit limit. This revision would provide a stepwise framework for modeling isolated single sources and multi-source areas as part of a cumulative impact analysis. The EPA also proposes to remove the term ''significant concentration gradient'' and its related content in section 8.3.1(a)(i) due to the ambiguity and lack of definition of this term in the context of modeling multi-source areas.

The EPA proposes to remove paragraph (d) in section 8.3.2 and renumber paragraphs (e) and (f) to (d) and (e), respectively. The content of

Concentrations for Use in Modeling Demonstrations. Publication No. EPA–454/P–23–001. Office of Air Quality Planning and Standards, Research Triangle Park, NC.

paragraph (d) is proposed to be included in the proposed revision of paragraph (a) in section 8.3.2.

In section 8.3.3, the EPA proposes revisions to the content in section 8.3.3(b) on the recommendations for determining nearby sources to explicitly model as part of a cumulative impact analysis. The EPA proposes to remove the content related to the term ''significant concentration gradient'' in section 8.3.3(b)(i), section 8.3.3(b)(ii), and section 8.3.3(b)(iii) due to the lack of definition of this term in the context of modeling multi-source areas. The EPA also proposes to revise the example given in section 8.3.3(d) to be consistent with the discussion of other sources in section 8.3.1(a)(ii) and the proposed revisions to Tables 8–1 and 8–2.

In section 8.4.1, the EPA proposes to include buoy data as an example of site-specific data as a result of the inclusion of the Coupled-Ocean Atmosphere Response Experiment (COARE) algorithms to AERMET for marine boundary layer processing. The EPA proposes to revise paragraph (a) of section 8.4.2 to note that MMIF should be used to process prognostic meteorological data for both land-based and overwater applications, and to revise paragraph (b) to clarify that AERSURFACE should be used to calculate surface characteristics for land-based data and AERMET calculates surface characteristics for overwater applications. Also, the EPA proposes to revise paragraph (e) of this section to clarify that at least 1-year of site-specific data applies to both land-based and overwater-based data.

The EPA proposes to revise paragraph (a) of section 8.4.3.2 to remove references to specific weblinks and to state that users should refer to the latest guidance documents for weblinks.

The EPA proposes to add a new section 8.4.6 to discuss the implementation of COARE for marine boundary layer processing and to renumber the existing section 8.4.6 (in the 2017 *Guideline)* to a new section 8.4.7. References to specific wind speed thresholds are proposed to be replaced with guidance to consult the appropriate guidance documents for the latest thresholds.

h. Section 9.0—Regulatory Application of Models

The EPA proposes to update reference numbers where necessary due to added references.

In section 9.2.3, the EPA proposes to revise the example given in section 9.2.3(a)(ii) to be consistent with the discussion of other sources in section 8.3.1(a)(ii) and the proposed revisions to Tables 8–1 and 8–2.

i. Section 10.0—References

The EPA proposes updates to references in section 10.0 to remove outdated website links and reflect current versions of guidance documents, user's guides, and other supporting documentation where applicable. The EPA also proposes to add references to support proposed updates to the AERMOD Modeling System described in this proposed update to the *Guideline.*

5. Proposed Revisions to Addendum A [21] to Appendix W to Part 51

a. Section A.0

The EPA proposes to revise section A.0 to remove references that indicate there are ''many'' preferred models while the number is currently only three.

b. Section A.1

The EPA proposes to revise the References section to include additional references that support our proposed updates to the AERMOD Modeling System.

In the Abstract section, the EPA proposes to add line type sources as one of the source types AERMOD can simulate.

The EPA proposes to revise section A.1(a) to include overwater applications for regulatory modeling where shoreline fumigation and/or platform downwash are not important to facilitate the use of AERMOD with COARE processing. This revision would remove the need to request an alternative model demonstration for such applications. The EPA also proposes to clarify elevation data that can be used in AERMOD, specifically the change in the name of the U.S. Geological Survey (USGS) National Dataset (NED) to 3D Elevation Program (3DEP). For consistency, references to NED would be updated to 3DEP throughout section A.1.

The EPA proposes to revise section A.1(b) to include prognostic data as meteorological input to the AERMOD Modeling System, as applicable.

The EPA proposes to revise section A.1(l) to include the proposed Generic Reaction Set Method in the discussion on chemical transformation in AERMOD. We also propose to clarify the status of the different deposition options in A.1(l).

The EPA proposes to revise section A.1(n) to include references to additional evaluation studies to support our proposed updates to the AERMOD Modeling System.

c. Section A.3

In section A.3, the EPA proposes to remove the reference to the Bureau of Ocean Energy Management's (BOEM) outdated guidance.

V. Ongoing Model Development

In addition to the proposed beta options above, AERMOD version 23132 also includes alpha options that are thought to have scientific merit and that are still being developed or evaluated and peer reviewed. These alpha options are not being proposed as updates to the regulatory formulation of the AERMOD Modeling System, and the EPA is not taking comment on the alpha options during this rulemaking. A list of alpha options on which the EPA has placed a high priority for continued research and development for model improvement is included below. Refer to the AERMOD User's Guide for details and usage of each option.

The AERMOD Modeling System, version 23131, includes but is not limited to the following alpha options:

- Low Wind Default Overrides (LOW_WIND).

LOW_WIND was first implemented as a collection of non-regulatory beta test options in AERMOD version 12345 (LOWWIND1 and LOWWIND2) and expanded in version 15481(LOWWIND3). Each of these options altered the default model values for minimum sigma-v, minimum wind speed, and the minimum meander factor with different combinations of hardcoded values. Though the original LOW_WIND beta test options are no longer implemented in AERMOD, the LOW_WIND option was recategorized as an alpha option in AERMOD version 18181. The LOW_WIND option in version 23132 enables the user to override AERMOD default values with user-defined values for one or more of the following parameters:

- Minimum standard deviation of the lateral velocity to the average wind direction;
- Minimum mean wind speed;
- Minimum and maximum meander factor;
- Minimum standard deviation of the vertical wind speed; and
- Time scale for random dispersion.

- Modifications to PRIME Building Downwash (AWMADWNW and ORD_DWNW).

Beginning with AERMOD version 19191, two distinct sets of alpha options were added that modify the building downwash algorithm, PRIME. The two sets of options were developed

[21] Formerly designated as appendix A.

independently by EPA's ORD (ORD_DWNW) and the Air & Waste Management Association (A&WMA) (AWMADWNW). With a couple of exceptions, the options within each set can be employed individually or combined with other options from each set.

- Downwash from Offshore Drilling Platforms (PLATFORM).

To enhance AERMOD's offshore modeling capabilities, the platform downwash algorithm, adapted from the Offshore Coastal Dispersion (OCD) dispersion model, was incorporated in AERMOD version 22112 and requires further development, testing, and evaluation. The PLATFORM option simulates the building downwash effect from platforms commonly used for offshore drilling, made up of both porous and solid structures and which are elevated with airflow beneath them.

- Extended RLINE Source Type Including Barriers and Depressed Roadways (RLINEXT).

The RLINEXT source type was implemented in AERMOD version 18181 and is an extended version of the RLINE source type that allows for a more refined characterization of a road segment. It accepts separate inputs for the elevations of each end of the road segment and extended options for modeling with roadway barriers (RBARRIER) and depressed roadways (RDEPRESS).

- TTRM and TTRM2 for Conversion of NO_X to NO_2.

The Travel Time Reaction Method (TTRM) was implemented in AERMOD version 21112 as a stand-alone NO_X-to-NO_2 conversion option that accounts for plume travel time, applicable only in the near field. TTRM was further integrated in AERMOD version 22112 as TTRM2 which can be paired with any one of the Ambient Ration Method (ARM2), OLM, or PVMRM. When paired with one of these, TTRM is applied in the near field and the other specified option is applied in the far field where travel time is not as relevant.

- Highly Buoyant Plume (HBP).

A Highly Buoyant Plume (HBP) option was implemented as an alpha option that can be applied to POINT source types beginning with AERMOD version 23132 to further explore AERMOD's treatment of the penetrated plume. A penetrated plume occurs when a plume released into the mixed layer, and a portion of the plume eventually penetrates the top of the mixed layer during convective hours as it continues to rise due to either buoyancy or momentum.

- Aircraft Plume Rise (AREA/VOLUME Source Types).

Beginning with AERMOD version 23132, the characterization of AREA and VOLUME sources was extended to account for the buoyancy and horizontal momentum of aircraft emissions. The aircraft plume rise formulation and code for AREA and VOLUME sources was independently developed and provided by the Federal Aviation Administration (FAA). EPA continues to collaborate with FAA on model evaluation and peer review of the aircraft plume rise formulations.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is not a significant regulatory action as defined in Executive Order 12866, as amended by Executive Order 14094, and was therefore not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This action does not contain any information collection activities, nor does it add any information collection requirements beyond those imposed by existing New Source Review requirements.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action proposes revisions to the *Guideline,* including enhancements to the formulation and application of the EPA's near-field dispersion modeling system, AERMOD, and updates to the recommendations for the development of appropriate background concentration for cumulative impact analyses. Use of the models and/or techniques described in this action is not expected to pose any additional burden on small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any State, local or Tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications, as specified in Executive Order 13175. This action provides proposed revisions to the *Guideline* which is used by the EPA, other Federal, State, territorial, local, and Tribal air quality agencies, and industry to prepare and review preconstruction permit applications, SIP submittals and revisions, determinations of conformity, and other air quality assessments required under EPA regulation. Separate from this action, the Tribal Air Rule implements the provisions of section 301(d) of the CAA authorizing eligible Tribes to implement their own Tribal air program. Thus, Executive Order 13175 does not apply to this action.

The EPA provided information regarding this action to the Tribes during a monthly National Tribal Air Association (NTAA) call and will continue to provide any new or subsequent updates to EPA modeling guidance and other regulatory compliance demonstration related topics upon request of the NTAA. Additionally, the EPA specifically solicits any comments on this proposed action from Tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order.

Therefore, this action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. Since this action does not concern human health, EPA's Policy on Children's Health also does not apply.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All

The EPA believes that this action does not have disproportionate and adverse human health or environmental effects on communities with environmental justice concerns because it does not establish an environmental health or safety standard. This action proposes revisions to the *Guideline,* including enhancements to the formulations and application of EPA's near-field dispersion modeling system, AERMOD, that would assist and expand assessment options in Environmental Justice determinations. While the EPA does not expect this action to directly impact air quality, the proposed revisions are important because the *Guideline* is used by air permitting authorities and industry to prepare and review NSR permits and serves as a benchmark of consistency across the nation. This consistency has value to all communities including communities with environmental justice concerns.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Criteria pollutants, Intergovernmental relations, Lead, Mobile sources, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Stationary sources, Sulfur oxides.

Michael S. Regan,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency is amending title 40, chapter I of the Code of Federal Regulations as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

■ 2. Appendix W to part 51 is revised to read as follows:

Appendix W to Part 51—Guideline on Air Quality Models Preface

a. Industry and control agencies have long expressed a need for consistency in the application of air quality models for regulatory purposes. In the 1977 Clean Air Act (CAA), Congress mandated such consistency and encouraged the standardization of model applications. The *Guideline on Air Quality Models* (hereafter, *Guideline*) was first published in April 1978 to satisfy these requirements by specifying models and providing guidance for their use. The *Guideline* provides a common basis for estimating the air quality concentrations of criteria pollutants used in assessing control strategies and developing emissions limits.

b. The continuing development of new air quality models in response to regulatory requirements and the expanded requirements for models to cover even more complex problems have emphasized the need for periodic review and update of guidance on these techniques. Historically, three primary activities have provided direct input to revisions of the *Guideline.* The first is a series of periodic EPA workshops and modeling conferences conducted for the purpose of ensuring consistency and providing clarification in the application of models. The second activity was the solicitation and review of new models from the technical and user community. In the March 27, 1980, **Federal Register**, a procedure was outlined for the submittal to the EPA of privately developed models. After extensive evaluation and scientific review, these models, as well as those made available by the EPA, have been considered for recognition in the *Guideline.* The third activity is the extensive on-going research efforts by the EPA and others in air quality and meteorological modeling.

c. Based primarily on these three activities, new sections and topics have been included as needed. The EPA does not make changes to the guidance on a predetermined schedule, but rather on an as-needed basis. The EPA believes that revisions of the *Guideline* should be timely and responsive to user needs and should involve public participation to the greatest possible extent. All future changes to the guidance will be proposed and finalized in the **Federal Register**. Information on the current status of modeling guidance can always be obtained from the EPA's Regional Offices.

Table of Contents

List of Tables

Addendum A to Appendix W of Part 51—Summaries of Preferred Air Quality Models

List of Tables

Table No.	Title
8–1	Point Source Model Emission Inputs for SIP Revisions of Inert Pollutants.
8–2	Point Source Model Emission Inputs for NAAQS Compliance in PSD Demonstrations.

1.0 Introduction

a. The *Guideline* provides air quality modeling techniques that should be applied to State Implementation Plan (SIP) submittals and revisions, to New Source Review (NSR), including new or modifying sources under Prevention of Significant Deterioration (PSD),[1 2 3] conformity analyses,[4] and other air quality assessments required under EPA regulation. Applicable only to criteria air pollutants, the *Guideline* is intended for use by the EPA Regional Offices in judging the adequacy of modeling analyses performed by the EPA, by State, local, and Tribal permitting authorities, and by industry. It is appropriate for use by other Federal government agencies and by State, local, and Tribal agencies with air quality and land management responsibilities. The *Guideline* serves to identify, for all interested parties, those modeling techniques and databases that the EPA considers acceptable. The *Guideline* is not intended to be a compendium of modeling techniques. Rather, it should serve as a common measure of acceptable technical analysis when supported by sound scientific judgment.

b. Air quality measurements [5] are routinely used to characterize ambient concentrations of criteria pollutants throughout the nation but are rarely sufficient for characterizing the ambient impacts of individual sources or demonstrating adequacy of emissions limits for an existing source due to limitations in spatial and temporal coverage of ambient monitoring networks. The impacts of new sources that do not yet exist, and modifications to existing sources that have yet to be implemented, can only be determined through modeling. Thus, models have become a primary analytical tool in most air quality assessments. Air quality measurements can be used in a complementary manner to air quality models, with due regard for the strengths and weaknesses of both analysis techniques, and are particularly useful in assessing the accuracy of model estimates.

c. It would be advantageous to categorize the various regulatory programs and to apply a designated model to each proposed source needing analysis under a given program. However, the diversity of the nation's topography and climate, and variations in source configurations and operating characteristics dictate against a strict modeling ''cookbook.'' There is no one model capable of properly addressing all conceivable situations even within a broad category such as point sources. Meteorological phenomena associated with threats to air quality standards are rarely amenable to a single mathematical treatment; thus, case-by-case analysis and judgment are frequently required. As modeling efforts become more complex, it is increasingly important that they be directed by highly competent individuals with a broad range of experience and knowledge in air quality meteorology. Further, they should be coordinated closely with specialists in emissions characteristics, air monitoring and data processing. The judgment of experienced meteorologists, atmospheric scientists, and analysts is essential.

d. The model that most accurately estimates concentrations in the area of interest is always sought. However, it is clear from the needs expressed by the EPA Regional Offices, by State, local, and Tribal agencies, by many industries and trade associations, and also by the deliberations of Congress, that consistency in the selection and application of models and databases should also be sought, even in case-by-case analyses. Consistency ensures that air quality control agencies and the general public have a common basis for estimating pollutant concentrations, assessing control strategies, and specifying emissions limits. Such consistency is not, however, promoted at the expense of model and database accuracy. The *Guideline* provides a consistent basis for selection of the most accurate models and databases for use in air quality assessments.

e. Recommendations are made in the *Guideline* concerning air quality models and techniques, model evaluation procedures, and model input databases and related requirements. The guidance provided here should be followed in air quality analyses relative to SIPs, NSR, and in supporting analyses required by the EPA and by State, local, and Tribal permitting authorities. Specific models are identified for particular applications. The EPA may approve the use of an alternative model or technique that can be demonstrated to be more appropriate than those recommended in the *Guideline*. In all cases, the model or technique applied to a given situation should be the one that provides the most accurate representation of atmospheric transport, dispersion, and chemical transformations in the area of interest. However, to ensure consistency, deviations from the *Guideline* should be carefully documented as part of the public record and fully supported by the appropriate reviewing authority, as discussed later.

f. From time to time, situations arise requiring clarification of the intent of the guidance on a specific topic. Periodic workshops are held with EPA headquarters, EPA Regional Offices, and State, local, and Tribal agency modeling representatives to ensure consistency in modeling guidance and to promote the use of more accurate air quality models, techniques, and databases. The workshops serve to provide further explanations of *Guideline* requirements to the EPA Regional Offices and workshop materials are issued with this clarifying information. In addition, findings from ongoing research programs, new model development, or results from model evaluations and applications are continuously evaluated. Based on this information, changes in the applicable guidance may be indicated and appropriate revisions to the *Guideline* may be considered.

g. All changes to the *Guideline* must follow rulemaking requirements since the *Guideline* is codified in Appendix W to 40 Code of Federal Regulations (CFR) part 51. The EPA will promulgate proposed and final rules in the **Federal Register** to amend this appendix. The EPA utilizes the existing procedures under CAA section 320 that requires the EPA to conduct a Conference on Air Quality Modeling at least every 3 years (CAA 320, 42 U.S.C. 7620). These modeling conferences are intended to develop standardized air quality modeling procedures and form the basis for associated revisions to this *Guideline* in support of the EPA's continuing effort to prescribe with ''reasonable particularity'' air quality models and meteorological and emission databases suitable for modeling National Ambient Air Quality Standards (NAAQS) [6] and PSD increments. Ample opportunity for public comment will be provided for each proposed change and public hearings scheduled.

h. A wide range of topics on modeling and databases are discussed in the *Guideline.* Section 2 gives an overview of models and their suitability for use in regulatory applications. Section 3 provides specific guidance on the determination of preferred air quality models and on the selection of alternative models or techniques. Sections 4 through 6 provide recommendations on modeling techniques for assessing criteria pollutant impacts from single and multiple sources with specific modeling requirements for selected regulatory applications. Section 7 discusses general considerations common to many modeling analyses for stationary and mobile sources. Section 8 makes recommendations for data inputs to models including source, background air quality, and meteorological data. Section 9 summarizes how estimates and measurements of air quality are used in assessing source impact and in evaluating control strategies.

i. Appendix W to 40 CFR part 51 contains an addendum: addendum A. Thus, when reference is made to ''addendum A'' in this document, it refers to addendum A to appendix W to 40 CFR part 51. Addendum A contains summaries of refined air quality models that are ''preferred'' for particular applications; both EPA models and models developed by others are included.

2.0 Overview of Model Use

a. Increasing reliance has been placed on concentration estimates from air quality models as the primary basis for regulatory decisions concerning source permits and emission control requirements. In many situations, such as review of a proposed new source, no practical alternative exists. Before attempting to implement the guidance contained in this document, the reader should be aware of certain general information concerning air quality models and their evaluation and use. Such information is provided in this section.

2.1 Suitability of Models

a. The extent to which a specific air quality model is suitable for the assessment of source impacts depends upon several factors. These include: (1) the topographic and meteorological complexities of the area; (2) the detail and accuracy of the input databases, *i.e.,* emissions inventory, meteorological data, and air quality data; (3) the manner in which complexities of atmospheric processes are handled in the model; (4) the technical competence of those undertaking such simulation modeling; and (5) the resources available to apply the model. Any of these factors can have a significant influence on the overall model performance, which must be thoroughly evaluated to determine the suitability of an air quality model to a particular application or range of applications.

b. Air quality models are most accurate and reliable in areas that have gradual transitions of land use and topography. Meteorological conditions in these areas are spatially uniform such that observations are broadly representative and air quality model projections are not further complicated by a heterogeneous environment. Areas subject to major topographic influences experience meteorological complexities that are often difficult to measure and simulate. Models with adequate performance are available for increasingly complex environments. However, they are resource intensive and frequently require site-specific observations and formulations. Such complexities and the related challenges for the air quality simulation should be considered when selecting the most appropriate air quality model for an application.

c. Appropriate model input data should be available before an attempt is made to evaluate or apply an air quality model. Assuming the data are adequate, the greater the detail with which a model considers the spatial and temporal variations in meteorological conditions and permit-enforceable emissions, the greater the ability to evaluate the source impact and to distinguish the effects of various control strategies.

d. There are three types of models that have historically been used in the regulatory demonstrations applicable in the *Guideline,* each having strengths and weaknesses that lend themselves to particular regulatory applications.

i. Gaussian plume models use a ''steady-state'' approximation, which assumes that over the model time step, the emissions, meteorology and other model inputs, are constant throughout the model domain, resulting in a resolved plume with the emissions distributed throughout the plume according to a Gaussian distribution. This formulation allows Gaussian models to estimate near-field impacts of a limited number of sources at a relatively high resolution, with temporal scales of an hour and spatial scales of meters. However, this formulation allows for only relatively inert pollutants, with very limited considerations of transformation and removal (*e.g.,* deposition), and further limits the domain for which the model may be used. Thus, Gaussian models may not be appropriate if model inputs are changing sharply over the model time step or within the desired model domain, or if more advanced considerations of chemistry are needed.

ii. Lagrangian puff models, on the other hand, are non-steady-state, and assume that model input conditions are changing over the model domain and model time step. Lagrangian models can also be used to determine near- and far-field impacts from a limited number of sources. Traditionally, Lagrangian models have been used for relatively inert pollutants, with slightly more complex considerations of removal than Gaussian models. Some Lagrangian models treat in-plume gas and particulate chemistry. However, these models require time and space varying concentration fields of oxidants and, in the case of fine particulate matter ($PM_{2.5}$), neutralizing agents, such as ammonia. Reliable background fields are critical for applications involving secondary pollutant formation because secondary impacts generally occur when in-plume precursors mix and react with species in the background atmosphere.[7] [8] These oxidant and neutralizing agents are not routinely measured, but can be generated with a three-dimensional photochemical grid model.

iii. Photochemical grid models are three-dimensional Eulerian grid-based models that treat chemical and physical processes in each grid cell and use diffusion and transport processes to move chemical species between grid cells.[9] Eulerian models assume that emissions are spread evenly throughout each model grid cell. At coarse grid resolutions, Eulerian models have difficulty with fine scale resolution of individual plumes. However, these types of models can be appropriately applied for assessment of near-field and regional scale reactive pollutant impacts from specific sources [7] [10] [11] [12] or all sources.[13] [14] [15] Photochemical grid models simulate a more realistic environment for chemical transformation,[7] [12] but simulations can be more resource intensive than Lagrangian or Gaussian plume models.

e. Competent and experienced meteorologists, atmospheric scientists, and analysts are an essential prerequisite to the successful application of air quality models. The need for such specialists is critical when sophisticated models are used or the area has complicated meteorological or topographic features. It is important to note that a model applied improperly or with inappropriate data can lead to serious misjudgments regarding the source impact or the effectiveness of a control strategy.

f. The resource demands generated by use of air quality models vary widely depending on the specific application. The resources required may be important factors in the selection and use of a model or technique for a specific analysis. These resources depend on the nature of the model and its complexity, the detail of the databases, the difficulty of the application, the amount and level of expertise required, and the costs of manpower and computational facilities.

2.1.1 Model Accuracy and Uncertainty

a. The formulation and application of air quality models are accompanied by several sources of uncertainty. ''Irreducible'' uncertainty stems from the ''unknown'' conditions, which may not be explicitly accounted for in the model (*e.g.,* the turbulent velocity field). Thus, there are likely to be deviations from the observed concentrations in individual events due to variations in the unknown conditions. ''Reducible'' uncertainties [16] are caused by: (1) uncertainties in the ''known'' input conditions (*e.g.,* emission characteristics and meteorological data); (2) errors in the measured concentrations; and (3) inadequate model physics and formulation.

b. Evaluations of model accuracy should focus on the reducible uncertainty associated with physics and the formulation of the model. The accuracy of the model is normally determined by an evaluation procedure which involves the comparison of model concentration estimates with measured air quality data.[17] The statement of model accuracy is based on statistical tests or performance measures such as bias, error, correlation, etc.[18] [19]

c. Since the 1980's, the EPA has worked with the modeling community to encourage development of standardized model evaluation methods and the development of continually improved methods for the characterization of model

performance.[16] [18] [20] [21] [22] There is general consensus on what should be considered in the evaluation of air quality models; namely, quality assurance planning, documentation and scrutiny should be consistent with the intended use and should include:

- Scientific peer review;
- Supportive analyses (diagnostic evaluations, code verification, sensitivity analyses);
- Diagnostic and performance evaluations with data obtained in trial locations; and
- Statistical performance evaluations in the circumstances of the intended applications.

Performance evaluations and diagnostic evaluations assess different qualities of how well a model is performing, and both are needed to establish credibility within the client and scientific community.

d. Performance evaluations allow the EPA and model users to determine the relative performance of a model in comparison with alternative modeling systems. Diagnostic evaluations allow determination of a model capability to simulate individual processes that affect the results, and usually employ smaller spatial/temporal scale data sets (*e.g.,* field studies). Diagnostic evaluations enable the EPA and model users to build confidence that model predictions are accurate for the right reasons. However, the objective comparison of modeled concentrations with observed field data provides only a partial means for assessing model performance. Due to the limited supply of evaluation datasets, there are practical limits in assessing model performance. For this reason, the conclusions reached in the science peer reviews and the supportive analyses have particular relevance in deciding whether a model will be useful for its intended purposes.

2.2 Levels of Sophistication of Air Quality Analyses and Models

a. It is desirable to begin an air quality analysis by using simplified and conservative methods followed, as appropriate, by more complex and refined methods. The purpose of this approach is to streamline the process and sufficiently address regulatory requirements by eliminating the need of more detailed modeling when it is not necessary in a specific regulatory application. For example, in the context of a PSD permit application, a simplified and conservative analysis may be sufficient where it shows the proposed construction clearly will not cause or contribute to ambient concentrations in excess of either the NAAQS or the PSD increments.[2] [3]

b. There are two general levels of sophistication of air quality models. The first level consists of screening models that provide conservative modeled estimates of the air quality impact of a specific source or source category based on simplified assumptions of the model inputs (*e.g.,* preset, worst-case meteorological conditions). In the case of a PSD assessment, if a screening model indicates that the increase in concentration attributable to the source could cause or contribute to a violation of any NAAQS or PSD increment, then the second level of more sophisticated models should be applied unless appropriate controls or operational restrictions are implemented based on the screening modeling.

c. The second level consists of refined models that provide more detailed treatment of physical and chemical atmospheric processes, require more detailed and precise input data, and provide spatially and temporally resolved concentration estimates. As a result, they provide a more sophisticated and, at least theoretically, a more accurate estimate of source impact and the effectiveness of control strategies.

d. There are situations where a screening model or a refined model is not available such that screening and refined modeling are not viable options to determine source-specific air quality impacts. In such situations, a screening technique or reduced-form model may be viable options for estimating source impacts.

i. Screening techniques are differentiated from a screening model in that screening techniques are approaches that make simplified and conservative assumptions about the physical and chemical atmospheric processes important to determining source impacts, while screening models make assumptions about conservative inputs to a specific model. The complexity of screening techniques ranges from simplified assumptions of chemistry applied to refined or screening model output to sophisticated approximations of the chemistry applied within a refined model.

ii. Reduced-form models are computationally efficient simulation tools for characterizing the pollutant response to specific types of emission reductions for a particular geographic area or background environmental conditions that reflect underlying atmospheric science of a refined model but reduce the computational resources of running a complex, numerical air quality model such as a photochemical grid model.

In such situations, an attempt should be made to acquire or improve the necessary databases and to develop appropriate analytical techniques, but the screening technique or reduced-form model may be sufficient in conducting regulatory modeling applications when applied in consultation with the EPA Regional Office.

e. Consistent with the general principle described in paragraph 2.2(a), the EPA may establish a demonstration tool or method as a sufficient means for a user or applicant to make a demonstration required by regulation, either by itself or as part of a modeling demonstration. To be used for such regulatory purposes, such a tool or method must be reflected in a codified regulation or have a well-documented technical basis and reasoning that is contained or incorporated in the record of the regulatory decision in which it is applied.

2.3 Availability of Models

a. For most of the screening and refined models discussed in the *Guideline,* codes, associated documentation and other useful information are publicly available for download from the EPA's Support Center for Regulatory Atmospheric Modeling (SCRAM) website at *https://www.epa.gov/scram.* This is a website with which air quality modelers should become familiar and regularly visit for important model updates and additional clarifications and revisions to modeling guidance documents that are applicable to EPA programs and regulations. Codes and documentation may also be available from the National Technical Information Service (NTIS), *https://www.ntis.gov,* and, when available, is referenced with the appropriate NTIS accession number.

3.0 Preferred and Alternative Air Quality Models

a. This section specifies the approach to be taken in determining preferred models for use in regulatory air quality programs. The status of models developed by the EPA, as well as those submitted to the EPA for review and possible inclusion in this *Guideline,* is discussed in this section. The section also provides the criteria and process for obtaining EPA approval for use of alternative models for individual cases in situations where the preferred models are not applicable or available. Additional sources of relevant modeling information are: the EPA's Model Clearinghouse [23] (section 3.3); EPA modeling conferences; periodic Regional, State, and Local Modelers' Workshops; and the EPA's SCRAM website (section 2.3).

b. When approval is required for a specific modeling technique or analytical procedure in this *Guideline,* we refer to the ''*appropriate reviewing authority.*'' Many States and some local agencies administer NSR permitting under programs approved into SIPs. In some EPA regions, Federal authority to administer NSR permitting and related activities has been delegated to State or local agencies. In these cases, such agencies ''*stand in the shoes*'' of the respective EPA Region. Therefore, depending on the circumstances, the appropriate reviewing authority may be an EPA Regional Office, a State, local, or Tribal agency, or perhaps the Federal Land Manager (FLM). In some cases, the *Guideline* requires review and approval of the use of an alternative model by the EPA Regional Office (sometimes stated as ''*Regional Administrator*''). For all approvals of alternative models or techniques, the EPA Regional Office will coordinate and shall seek concurrence with the EPA's Model Clearinghouse. If there is any question as to the appropriate reviewing authority, you should contact the EPA Regional Office modeling contact (*https://www.epa.gov/scram/air-modeling-regional-contacts*), whose jurisdiction generally includes the physical location of the source in question and its expected impacts.

c. In all regulatory analyses, early discussions among the EPA Regional Office staff, State, local, and Tribal agency staff, industry representatives, and where appropriate, the FLM, are invaluable and are strongly encouraged. Prior to the actual analyses, agreement on the databases to be used, modeling techniques to be applied, and the overall technical approach helps avoid misunderstandings concerning the final results and may reduce the later need for additional analyses. The preparation of a written modeling protocol that is vetted with the appropriate reviewing authority helps to

keep misunderstandings and resource expenditures at a minimum.

d. The identification of preferred models in this *Guideline* should not be construed as a determination that the preferred models identified here are to be permanently used to the exclusion of all others or that they are the only models available for relating emissions to air quality. The model that most accurately estimates concentrations in the area of interest is always sought. However, designation of specific preferred models is needed to promote consistency in model selection and application.

3.1 Preferred Models

3.1.1 Discussion

a. The EPA has developed some models suitable for regulatory application, while other models have been submitted by private developers for possible inclusion in the *Guideline*. Refined models that are preferred and required by the EPA for particular applications have undergone the necessary peer scientific reviews [24] [25] and model performance evaluation exercises [26] [27] that include statistical measures of model performance in comparison with measured air quality data as described in section 2.1.1.

b. An American Society for Testing and Materials (ASTM) reference [28] provides a general philosophy for developing and implementing advanced statistical evaluations of atmospheric dispersion models, and provides an example statistical technique to illustrate the application of this philosophy. Consistent with this approach, the EPA has determined and applied a specific evaluation protocol that provides a statistical technique for evaluating model performance for predicting peak concentration values, as might be observed at individual monitoring locations.[29]

c. When a single model is found to perform better than others, it is recommended for application as a preferred model and listed in addendum A. If no one model is found to clearly perform better through the evaluation exercise, then the preferred model listed in addendum A may be selected on the basis of other factors such as past use, public familiarity, resource requirements, and availability. Accordingly, the models listed in addendum A meet these conditions:

i. The model must be written in a common programming language, and the executable(s) must run on a common computer platform.

ii. The model must be documented in a user's guide or model formulation report which identifies the mathematics of the model, data requirements and program operating characteristics at a level of detail comparable to that available for other recommended models in addendum A.

iii. The model must be accompanied by a complete test dataset including input parameters and output results. The test data must be packaged with the model in computer-readable form.

iv. The model must be useful to typical users, *e.g.,* State air agencies, for specific air quality control problems. Such users should be able to operate the computer program(s) from available documentation.

v. The model documentation must include a robust comparison with air quality data (and/or tracer measurements) or with other well-established analytical techniques.

vi. The developer must be willing to make the model and source code available to users at reasonable cost or make them available for public access through the internet or National Technical Information Service. The model and its code cannot be proprietary.

d. The EPA's process of establishing a preferred model includes a determination of technical merit, in accordance with the above six items, including the practicality of the model for use in ongoing regulatory programs. Each model will also be subjected to a performance evaluation for an appropriate database and to a peer scientific review. Models for wide use (not just an isolated case) that are found to perform better will be proposed for inclusion as preferred models in future *Guideline* revisions.

e. No further evaluation of a preferred model is required for a particular application if the EPA requirements for regulatory use specified for the model in the *Guideline* are followed. Alternative models to those listed in addendum A should generally be compared with measured air quality data when they are used for regulatory applications consistent with recommendations in section 3.2.

3.1.2 Requirements

a. Addendum A identifies refined models that are preferred for use in regulatory applications. If a model is required for a particular application, the user must select a model from addendum A or follow procedures in section 3.2.2 for use of an alternative model or technique. Preferred models may be used without a formal demonstration of applicability as long as they are used as indicated in each model summary in addendum A. Further recommendations for the application of preferred models to specific source applications are found in subsequent sections of the *Guideline*.

b. If changes are made to a preferred model without affecting the modeled concentrations, the preferred status of the model is unchanged. Examples of modifications that do not affect concentrations are those made to enable use of a different computer platform or those that only affect the format or averaging time of the model results. The integration of a graphical user interface (GUI) to facilitate setting up the model inputs and/or analyzing the model results without otherwise altering the preferred model code is another example of a modification that does not affect concentrations. However, when any changes are made, the Regional Administrator must require a test case example to demonstrate that the modeled concentrations are not affected.

c. A preferred model must be operated with the options listed in addendum A for its intended regulatory application. If the regulatory options are not applied, the model is no longer ''preferred.'' Any other modification to a preferred model that would result in a change in the concentration estimates likewise alters its status so that it is no longer a preferred model. Use of the modified model must then be justified as an alternative model on a case-by-case basis to the appropriate reviewing authority and approved by the Regional Administrator.

d. Where the EPA has not identified a preferred model for a particular pollutant or situation, the EPA may establish a multi-tiered approach for making a demonstration required under PSD or another CAA program. The initial tier or tiers may involve use of demonstration tools, screening models, screening techniques, or reduced-form models; while the last tier may involve the use of demonstration tools, refined models or techniques, or alternative models approved under section 3.2.

3.2 Alternative Models

3.2.1 Discussion

a. Selection of the best model or techniques for each individual air quality analysis is always encouraged, but the selection should be done in a consistent manner. A simple listing of models in this *Guideline* cannot alone achieve that consistency nor can it necessarily provide the best model for all possible situations. As discussed in section 3.1.1, the EPA has determined and applied a specific evaluation protocol that provides a statistical technique for evaluating model performance for predicting peak concentration values, as might be observed at individual monitoring locations.[29] This protocol is available to assist in developing a consistent approach when justifying the use of other-than-preferred models recommended in the *Guideline* (*i.e.,* alternative models). The procedures in this protocol provide a general framework for objective decision-making on the acceptability of an alternative model for a given regulatory application. These objective procedures may be used for conducting both the technical evaluation of the model and the field test or performance evaluation.

b. This subsection discusses the use of alternate models and defines three situations when alternative models may be used. This subsection also provides a procedure for implementing 40 CFR 51.166(l)(2) in PSD permitting. This provision requires written approval of the Administrator for any modification or substitution of an applicable model. An applicable model for purposes of 40 CFR 51.166(l) is a preferred model in addendum A to the *Guideline*. Approval to use an alternative model under section 3.2 of the *Guideline* qualifies as approval for the modification or substitution of a model under 40 CFR 51.166(l)(2). The Regional Administrators have delegated authority to issue such approvals under section 3.2 of the *Guideline,* provided that such approval is issued after consultation with the EPA's Model Clearinghouse and formally documented in a concurrence memorandum from the EPA's Model Clearinghouse which demonstrates that the requirements within section 3.2 for use of an alternative model have been met.

3.2.2 Requirements

a. Determination of acceptability of an alternative model is an EPA Regional Office responsibility in consultation with the EPA's Model Clearinghouse as discussed in paragraphs 3.0(b) and 3.2.1(b). Where the Regional Administrator finds that an

alternative model is more appropriate than a preferred model, that model may be used subject to the approval of the EPA Regional Office based on the requirements of this subsection. This finding will normally result from a determination that: (1) a preferred air quality model is not appropriate for the particular application; or (2) a more appropriate model or technique is available and applicable.

b. An alternative model shall be evaluated from both a theoretical and a performance perspective before it is selected for use. There are three separate conditions under which such a model may be approved for use:

1. If a demonstration can be made that the model produces concentration estimates equivalent to the estimates obtained using a preferred model;

2. If a statistical performance evaluation has been conducted using measured air quality data and the results of that evaluation indicate the alternative model performs better for the given application than a comparable model in addendum A; or

3. If there is no preferred model.

Any one of these three separate conditions may justify use of an alternative model. Some known alternative models that are applicable for selected situations are listed on the EPA's SCRAM website (section 2.3). However, inclusion there does not confer any unique status relative to other alternative models that are being or will be developed in the future.

c. Equivalency, condition (1) in paragraph (b) of this subsection, is established by demonstrating that the appropriate regulatory metric(s) are within +/−2 percent of the estimates obtained from the preferred model. The option to show equivalency is intended as a simple demonstration of acceptability for an alternative model that is nearly identical (or contains options that can make it identical) to a preferred model that it can be treated for practical purposes as the preferred model. However, notwithstanding this demonstration, models that are not equivalent may be used when one of the two other conditions described in paragraphs (d) and (e) of this subsection are satisfied.

d. For condition (2) in paragraph (b) of this subsection, established statistical performance evaluation procedures and techniques [28] [29] for determining the acceptability of a model for an individual case based on superior performance should be followed, as appropriate. Preparation and implementation of an evaluation protocol that is acceptable to both control agencies and regulated industry is an important element in such an evaluation.

e. Finally, for condition (3) in paragraph (b) of this subsection, an alternative model or technique may be approved for use provided that:

i. The model or technique has received a scientific peer review;

ii. The model or technique can be demonstrated to be applicable to the problem on a theoretical basis;

iii. The databases which are necessary to perform the analysis are available and adequate;

iv. Appropriate performance evaluations of the model or technique have shown that the model or technique is not inappropriately biased for regulatory application; [a] and

v. A protocol on methods and procedures to be followed has been established.

f. To formally document that the requirements of section 3.2 for use of an alternative model are satisfied for a particular application or range of applications, a memorandum will be prepared by the EPA's Model Clearinghouse through a consultative process with the EPA Regional Office.

3.3 EPA's Model Clearinghouse

a. The Regional Administrator has the authority to select models that are appropriate for use in a given situation. However, there is a need for assistance and guidance in the selection process so that fairness, consistency, and transparency in modeling decisions are fostered among the EPA Regional Offices and the State, local, and Tribal agencies. To satisfy that need, the EPA established the Model Clearinghouse [23] to serve a central role of coordination and collaboration between EPA headquarters and the EPA Regional Offices. Additionally, the EPA holds periodic workshops with EPA Headquarters, EPA Regional Offices, and State, local, and Tribal agency modeling representatives.

b. The appropriate EPA Regional Office should always be consulted for information and guidance concerning modeling methods and interpretations of modeling guidance, and to ensure that the air quality model user has available the latest most up-to-date policy and procedures. As appropriate, the EPA Regional Office may also request assistance from the EPA's Model Clearinghouse on other applications of models, analytical techniques, or databases or to clarify interpretation of the *Guideline* or related modeling guidance.

c. The EPA Regional Office will coordinate with the EPA's Model Clearinghouse after an initial evaluation and decision has been developed concerning the application of an alternative model. The acceptability and formal approval process for an alternative model is described in section 3.2.

4.0 Models for Carbon Monoxide, Lead, Sulfur Dioxide, Nitrogen Dioxide and Primary Particulate Matter

4.1 Discussion

a. This section identifies modeling approaches generally used in the air quality impact analysis of sources that emit the criteria pollutants carbon monoxide (CO), lead, sulfur dioxide (SO_2), nitrogen dioxide (NO_2), and primary particulates ($PM_{2.5}$ and PM_{10}).

b. The guidance in this section is specific to the application of the Gaussian plume models identified in addendum A. Gaussian plume models assume that emissions and meteorology are in a steady-state, which is typically based on an hourly time step. This approach results in a plume that has an hourly-averaged distribution of emission mass according to a Gaussian curve through the plume. Though Gaussian steady-state models conserve the mass of the primary pollutant throughout the plume, they can still take into account a limited consideration of first-order removal processes (*e.g.,* wet and dry deposition) and limited chemical conversion (*e.g.,* OH oxidation).

c. Due to the steady-state assumption, Gaussian plume models are generally considered applicable to distances less than 50 km, beyond which, modeled predictions of plume impact are likely conservative. The locations of these impacts are expected to be unreliable due to changes in meteorology that are likely to occur during the travel time.

d. The applicability of Gaussian plume models may vary depending on the topography of the modeling domain, *i.e.,* simple or complex. Simple terrain is considered to be an area where terrain features are all lower in elevation than the top of the stack(s) of the source(s) in question. Complex terrain is defined as terrain exceeding the height of the stack(s) being modeled.

e. Gaussian models determine source impacts at discrete locations (receptors) for each meteorological and emission scenario, and generally attempt to estimate concentrations at specific sites that represent an ensemble average of numerous repetitions of the same ''event.'' Uncertainties in model estimates are driven by this formulation, and as noted in section 2.1.1, evaluations of model accuracy should focus on the reducible uncertainty associated with physics and the formulation of the model. The ''irreducible'' uncertainty associated with Gaussian plume models may be responsible for variation in concentrations of as much as +/−50 percent.[30] ''Reducible'' uncertainties [16] can be on a similar scale. For example, Pasquill [31] estimates that, apart from data input errors, maximum ground-level concentrations at a given hour for a point source in flat terrain could be in error by 50 percent due to these uncertainties. Errors of 5 to 10 degrees in the measured wind direction can result in concentration errors of 20 to 70 percent for a particular time and location, depending on stability and station location. Such uncertainties do not indicate that an estimated concentration does not occur, only that the precise time and locations are in doubt. Composite errors in highest estimated concentrations of 10 to 40 percent are found to be typical.[32] [33] However, estimates of concentrations paired in time and space with observed concentrations are less certain.

f. Model evaluations and inter-comparisons should take these aspects of uncertainty into account. For a regulatory application of a model, the emphasis of model evaluations is generally placed on the highest modeled impacts. Thus, the Cox-Tikvart model evaluation approach, which compares the highest modeled impacts on several timescales, is recommended for comparisons of models and measurements and model inter-comparisons. The approach includes bootstrap techniques to determine the significance of various modeled predictions

[a] For PSD and other applications that use the model results in an absolute sense, the model should not be biased toward underestimates. Alternatively, for ozone and $PM_{2.5}$ SIP attainment demonstrations and other applications that use the model results in a relative sense, the model should not be biased toward overestimates.

and increases the robustness of such comparisons when the number of available measurements are limited.[34] [35] Because of the uncertainty in paired modeled and observed concentrations, any attempts at calibration of models based on these comparisons is of questionable benefit and shall not be done.

4.2 Requirements

a. For NAAQS compliance demonstrations under PSD, use of the screening and preferred models for the pollutants listed in this subsection shall be limited to the near-field at a nominal distance of 50 km or less. Near-field application is consistent with capabilities of Gaussian plume models and, based on the EPA's assessment, is sufficient to address whether a source will cause or contribute to ambient concentrations in excess of a NAAQS. In most cases, maximum source impacts of inert pollutants will occur within the first 10 to 20 km from the source. Therefore, the EPA does not consider a long-range transport assessment beyond 50 km necessary for these pollutants if a near-field NAAQS compliance demonstration is required.[36]

b. For assessment of PSD increments within the near-field distance of 50 km or less, use of the screening and preferred models for the pollutants listed in this subsection shall be limited to the same screening and preferred models approved for NAAQS compliance demonstrations.

c. To determine if a compliance demonstration for NAAQS and/or PSD increments may be necessary beyond 50 km (*i.e.,* long-range transport assessment), the following screening approach shall be used to determine if a significant ambient impact will occur with particular focus on Class I areas and/or the applicable receptors that may be threatened at such distances.

i. Based on application in the near-field of the appropriate screening and/or preferred model, determine the significance of the ambient impacts at or about 50 km from the new or modifying source. If a near-field assessment is not available or this initial analysis indicates there may be significant ambient impacts at that distance, then further assessment is necessary.

ii. For assessment of the significance of ambient impacts for NAAQS and/or PSD increments, there is not a preferred model or screening approach for distances beyond 50 km. Thus, the appropriate reviewing authority (paragraph 3.0(b)) and the EPA Regional Office shall be consulted in determining the appropriate and agreed upon screening technique to conduct the second level assessment. Typically, a Lagrangian model is most appropriate to use for these second level assessments, but applicants shall reach agreement on the specific model and modeling parameters on a case-by-case basis in consultation with the appropriate reviewing authority (paragraph 3.0(b)) and EPA Regional Office. When Lagrangian models are used in this manner, they shall not include plume-depleting processes, such that model estimates are considered conservative, as is generally appropriate for screening assessments.

d. In those situations where a cumulative impact analysis for NAAQS and/or PSD increments analysis beyond 50 km is necessary, the selection and use of an alternative model shall occur in agreement with the appropriate reviewing authority (paragraph 3.0(b)) and approval by the EPA Regional Office based on the requirements of paragraph 3.2.2(e).

4.2.1 Screening Models and Techniques

a. Where a preliminary or conservative estimate is desired, point source screening techniques are an acceptable approach to air quality analyses.

b. As discussed in paragraph 2.2(a), screening models or techniques are designed to provide a conservative estimate of concentrations. The screening models used in most applications are the screening versions of the preferred models for refined applications. The two screening models, AERSCREEN[37] [38] and CTSCREEN, are screening versions of AERMOD (American Meteorological Society (AMS)/EPA Regulatory Model) and CTDMPLUS (Complex Terrain Dispersion Model Plus Algorithms for Unstable Situations), respectively. AERSCREEN is the recommended screening model for most applications in all types of terrain and for applications involving building downwash. For those applications in complex terrain where the application involves a well-defined hill or ridge, CTSCREEN[39] can be used.

c. Although AERSCREEN and CTSCREEN are designed to address a single-source scenario, there are approaches that can be used on a case-by-case basis to address multi-source situations using screening meteorology or other conservative model assumptions. However, the appropriate reviewing authority (paragraph 3.0(b)) shall be consulted, and concurrence obtained, on the protocol for modeling multiple sources with AERSCREEN or CTSCREEN to ensure that the worst case is identified and assessed.

d. As discussed in section 4.2.3.4, there are also screening techniques built into AERMOD that use simplified or limited chemistry assumptions for determining the partitioning of NO and NO_2 for NO_2 modeling. These screening techniques are part of the EPA's preferred modeling approach for NO_2 and do not need to be approved as an alternative model. However, as with other screening models and techniques, their usage shall occur in agreement with the appropriate reviewing authority (paragraph 3.0(b)).

e. As discussed in section 4.2(c)(ii), there are screening techniques needed for long-range transport assessments that will typically involve the use of a Lagrangian model. Based on the long-standing practice and documented capabilities of these models for long-range transport assessments, the use of a Lagrangian model as a screening technique for this purpose does not need to be approved as an alternative model. However, their usage shall occur in consultation with the appropriate reviewing authority (paragraph 3.0(b)) and EPA Regional Office.

f. All screening models and techniques shall be configured to appropriately address the site and problem at hand. Close attention must be paid to whether the area should be classified urban or rural in accordance with section 7.2.1.1. The climatology of the area must be studied to help define the worst-case meteorological conditions. Agreement shall be reached between the model user and the appropriate reviewing authority (paragraph 3.0(b)) on the choice of the screening model or technique for each analysis, on the input data and model settings, and the appropriate metric for satisfying regulatory requirements.

4.2.1.1 AERSCREEN

a. Released in 2011, AERSCREEN is the EPA's recommended screening model for simple and complex terrain for single sources including point sources, area sources, horizontal stacks, capped stacks, and flares. AERSCREEN runs AERMOD in a screening mode and consists of two main components: (1) the MAKEMET program which generates a site-specific matrix of meteorological conditions for input to the AERMOD model; and (2) the AERSCREEN command-prompt interface.

b. The MAKEMET program generates a matrix of meteorological conditions, in the form of AERMOD-ready surface and profile files, based on user-specified surface characteristics, ambient temperatures, minimum wind speed, and anemometer height. The meteorological matrix is generated based on looping through a range of wind speeds, cloud covers, ambient temperatures, solar elevation angles, and convective velocity scales (w*, for convective conditions only) based on user-specified surface characteristics for surface roughness (Z_o), Bowen ratio (B_o), and albedo (r). For unstable cases, the convective mixing height (Z_{ic}) is calculated based on w*, and the mechanical mixing height (Z_{im}) is calculated for unstable and stable conditions based on the friction velocity, u*.

c. For applications involving simple or complex terrain, AERSCREEN interfaces with AERMAP. AERSCREEN also interfaces with BPIPPRM to provide the necessary building parameters for applications involving building downwash using the Plume Rise Model Enhancements (PRIME) downwash algorithm. AERSCREEN generates inputs to AERMOD via MAKEMET, AERMAP, and BPIPPRM and invokes AERMOD in a screening mode. The screening mode of AERMOD forces the AERMOD model calculations to represent values for the plume centerline, regardless of the source-receptor-wind direction orientation. The maximum concentration output from AERSCREEN represents a worst-case 1-hour concentration. Averaging-time scaling factors of 1.0 for 3-hour, 0.9 for 8-hour, 0.60 for 24-hour, and 0.10 for annual concentration averages are applied internally by AERSCREEN to the highest 1-hour concentration calculated by the model for non-area type sources. For area type source concentrations for averaging times greater than one hour, the concentrations are equal to the 1-hour estimates.[37] [40]

4.2.1.2 CTSCREEN

a. CTSCREEN[39] [41] can be used to obtain conservative, yet realistic, worst-case estimates for receptors located on terrain above stack height. CTSCREEN accounts for the three-dimensional nature of plume and

terrain interaction and requires detailed terrain data representative of the modeling domain. The terrain data must be digitized in the same manner as for CTDMPLUS and a terrain processor is available.[42] CTSCREEN is designed to execute a fixed matrix of meteorological values for wind speed (u), standard deviation of horizontal and vertical wind speeds (σv, σw), vertical potential temperature gradient ($d\theta/dz$), friction velocity (u*), Monin-Obukhov length (L), mixing height (z_i) as a function of terrain height, and wind directions for both neutral/stable conditions and unstable convective conditions. The maximum concentration output from CTSCREEN represents a worst-case 1-hour concentration. Time-scaling factors of 0.7 for 3-hour, 0.15 for 24-hour and 0.03 for annual concentration averages are applied internally by CTSCREEN to the highest 1-hour concentration calculated by the model.

4.2.1.3 Screening in Complex Terrain

a. For applications utilizing AERSCREEN, AERSCREEN automatically generates a polar-grid receptor network with spacing determined by the maximum distance to model. If the application warrants a different receptor network than that generated by AERSCREEN, it may be necessary to run AERMOD in screening mode with a user-defined network. For CTSCREEN applications or AERMOD in screening mode outside of AERSCREEN, placement of receptors requires very careful attention when modeling in complex terrain. Often the highest concentrations are predicted to occur under very stable conditions, when the plume is near or impinges on the terrain. Under such conditions, the plume may be quite narrow in the vertical, so that even relatively small changes in a receptor's location may substantially affect the predicted concentration. Receptors within about a kilometer of the source may be even more sensitive to location. Thus, a dense array of receptors may be required in some cases.

b. For applications involving AERSCREEN, AERSCREEN interfaces with AERMAP to generate the receptor elevations. For applications involving CTSCREEN, digitized contour data must be preprocessed [42] to provide hill shape parameters in suitable input format. The user then supplies receptor locations either through an interactive program that is part of the model or directly, by using a text editor; using both methods to select receptor locations will generally be necessary to assure that the maximum concentrations are estimated by either model. In cases where a terrain feature may ''appear to the plume'' as smaller, multiple hills, it may be necessary to model the terrain both as a single feature and as multiple hills to determine design concentrations.

c. Other screening techniques may be acceptable for complex terrain cases where established procedures [43] are used. The user is encouraged to confer with the appropriate reviewing authority (paragraph 3.0(b)) if any unforeseen problems are encountered, *e.g.,* applicability, meteorological data, receptor siting, or terrain contour processing issues.

4.2.2 Refined Models

a. A brief description of each preferred model for refined applications is found in addendum A. Also listed in that addendum Are availability, the model input requirements, the standard options that shall be selected when running the program, and output options.

4.2.2.1 AERMOD

a. For a wide range of regulatory applications in all types of terrain, and for aerodynamic building downwash, the required model is AERMOD.[44] [45] The AERMOD regulatory modeling system consists of the AERMOD dispersion model, the AERMET meteorological processor, and the AERMAP terrain processor. AERMOD is a steady-state Gaussian plume model applicable to directly emitted air pollutants that employs best state-of-practice parameterizations for characterizing the meteorological influences and dispersion. Differentiation of simple versus complex terrain is unnecessary with AERMOD. In complex terrain, AERMOD employs the well-known dividing-streamline concept in a simplified simulation of the effects of plume-terrain interactions.

b. The AERMOD Modeling System has been extensively evaluated across a wide range of scenarios based on numerous field studies, including tall stacks in flat and complex terrain settings, sources subject to building downwash influences, and low-level non-buoyant sources.[27] These evaluations included several long-term field studies associated with operating plants as well as several intensive tracer studies. Based on these evaluations, AERMOD has shown consistently good performance, with ''errors'' in predicted versus observed peak concentrations, based on the Robust Highest Concentration (RHC) metric, consistently within the range of 10 to 40 percent (cited in paragraph 4.1(e)).

c. AERMOD incorporates the PRIME algorithm to account for enhanced plume growth and restricted plume rise for plumes affected by building wake effects.[46] The PRIME algorithm accounts for entrainment of plume mass into the cavity recirculation region, including re-entrainment of plume mass into the wake region beyond the cavity.

d. AERMOD incorporates the Buoyant Line and Point Source (BLP) Dispersion model to account for buoyant plume rise from line sources. The BLP option utilizes the standard meteorological inputs provided by the AERMET meteorological processor.

e. The state-of-the-science for modeling atmospheric deposition is evolving, new modeling techniques are continually being assessed, and their results are being compared with observations. Consequently, while deposition treatment is available in AERMOD, the approach taken for any purpose shall be coordinated with the appropriate reviewing authority (paragraph 3.0(b)).

f. The AERMET meteorological processor incorporates the COARE algorithms to derive marine boundary layer parameters for overwater applications of AERMOD.[47] [48] AERMOD is applicable for some overwater applications when platform downwash and shoreline fumigation are adequately considered in consultation with the Regional Office and appropriate reviewing authority. Where the effects of shoreline fumigation and platform downwash need to be assessed, the Offshore and Coastal Dispersion (OCD) model is the applicable model (paragraph 4.2.2.3).

4.2.2.2 CTDMPLUS

a. If the modeling application involves an elevated point source with a well-defined hill or ridge and a detailed dispersion analysis of the spatial pattern of plume impacts is of interest, CTDMPLUS is available. CTDMPLUS provides greater resolution of concentrations about the contour of the hill feature than does AERMOD through a different plume-terrain interaction algorithm.

4.2.2.3 OCD

a. The OCD (Offshore and Coastal Dispersion) model is a straight-line Gaussian model that incorporates overwater plume transport and dispersion as well as changes that occur as the plume crosses the shoreline. OCD can determine the impact of offshore emissions from point, area, or line sources on the air quality of coastal regions. OCD is also applicable for situations that involve platform building downwash.

4.2.3 Pollutant Specific Modeling Requirements

4.2.3.1 Models for Carbon Monoxide

a. Models for assessing the impact of CO emissions are needed to meet NSR requirements to address compliance with the CO NAAQS and to determine localized impacts from transportations projects. Examples include evaluating effects of point sources, congested roadway intersections and highways, as well as the cumulative effect of numerous sources of CO in an urban area.

b. The general modeling recommendations and requirements for screening models in section 4.2.1 and refined models in section 4.2.2 shall be applied for CO modeling. Given the relatively low CO background concentrations, screening techniques are likely to be adequate in most cases. In applying these recommendations and requirements, the existing 1992 EPA guidance for screening CO impacts from highways may be consulted.[49]

4.2.3.2 Models for Lead

a. In January 1999 (40 CFR part 58, appendix D), the EPA gave notice that concern about ambient lead impacts was being shifted away from roadways and toward a focus on stationary point sources. Thus, models for assessing the impact of lead emissions are needed to meet NSR requirements to address compliance with the lead NAAQS and for SIP attainment demonstrations. The EPA has also issued guidance on siting ambient monitors in the vicinity of stationary point sources.[50] For lead, the SIP should contain an air quality analysis to determine the maximum rolling 3-month average lead concentration resulting from major lead point sources, such as smelters, gasoline additive plants, etc. The EPA has developed a post-processor to calculate rolling 3-month average concentrations from model output.[51] General

guidance for lead SIP development is also available.[52]

b. For major lead point sources, such as smelters, which contribute fugitive emissions and for which deposition is important, professional judgment should be used, and there shall be coordination with the appropriate reviewing authority (paragraph 3.0(b)). For most applications, the general requirements for screening and refined models of section 4.2.1 and 4.2.2 are applicable to lead modeling.

4.2.3.3 Models for Sulfur Dioxide

a. Models for SO_2 are needed to meet NSR requirements to address compliance with the SO_2 NAAQS and PSD increments, for SIP attainment demonstrations,[53] and for characterizing current air quality via modeling.[54] SO_2 is one of a group of highly reactive gases known as ''oxides of sulfur'' with largest emissions sources being fossil fuel combustion at power plants and other industrial facilities.

b. Given the relatively inert nature of SO_2 on the short-term time scales of interest (*i.e.,* 1-hour) and the sources of SO_2 (*i.e.,* stationary point sources), the general modeling requirements for screening models in section 4.2.1 and refined models in section 4.2.2 are applicable for SO_2 modeling applications. For urban areas, AERMOD automatically invokes a half-life of 4 hours [55] to SO_2. Therefore, care must be taken when determining whether a source is urban or rural (*see* section 7.2.1.1 for urban/rural determination methodology).

4.2.3.4 Models for Nitrogen Dioxide

a. Models for assessing the impact of sources on ambient NO_2 concentrations are needed to meet NSR requirements to address compliance with the NO_2 NAAQS and PSD increments. Impact of an individual source on ambient NO_2 depends, in part, on the chemical environment into which the source's plume is to be emitted. This is due to the fact that NO_2 sources co-emit NO along with NO_2 and any emitted NO may react with ambient ozone to convert to additional NO_2 downwind. Thus, comprehensive modeling of NO_2 would need to consider the ratio of emitted NO and NO_2, the ambient levels of ozone and subsequent reactions between ozone and NO, and the photolysis of NO_2 to NO.

b. Due to the complexity of NO_2 modeling, a multi-tiered screening approach is required to obtain hourly and annual average estimates of NO_2.[56] Since these methods are considered screening techniques, their usage shall occur in agreement with the appropriate reviewing authority (paragraph 3.0(b)). Additionally, since screening techniques are conservative by their nature, there are limitations to how these options can be used. Specifically, modeling of negative emissions rates should only be done after consultation with the EPA Regional Office to ensure that decreases in concentrations would not be overestimated. Each tiered approach (*see* Figure 4–1) accounts for increasingly complex considerations of NO_2 chemistry and is described in paragraphs c through e of this subsection. The tiers of NO_2 modeling include:

i. A first-tier (most conservative) ''full'' conversion approach;

ii. A second-tier approach that assumes ambient equilibrium between NO and NO_2; and

iii. A third-tier consisting of several detailed screening techniques that account for ambient ozone and the relative amount of NO and NO_2 emitted from a source.

c. For Tier 1, use an appropriate refined model (section 4.2.2) to estimate nitrogen oxides (NO_X) concentrations and assume a total conversion of NO to NO_2.

d. For Tier 2, multiply the Tier 1 result(s) by the Ambient Ratio Method 2 (ARM2), which provides estimates of representative equilibrium ratios of NO_2/NO_X value based ambient levels of NO_2 and NO_X derived from national data from the EPA's Air Quality System (AQS).[57] The national default for ARM2 includes a minimum ambient NO_2/NO_X ratio of 0.5 and a maximum ambient ratio of 0.9. The reviewing agency may establish alternative minimum ambient NO_2/NO_X values based on the source's in-stack emissions ratios, with alternative minimum ambient ratios reflecting the source's in-stack NO_2/NO_X ratios. Preferably, alternative minimum ambient NO_2/NO_X ratios should be based on source-specific data which satisfies all quality assurance procedures that ensure data accuracy for both NO_2 and NO_X within the typical range of measured values. However, alternate information may be used to justify a source's anticipated NO_2/NO_X in-stack ratios, such as manufacturer test data, State or local agency guidance, peer-reviewed literature, and/or the EPA's NO_2/NO_X ratio database.

e. For Tier 3, a detailed screening technique shall be applied on a case-by-case basis. Because of the additional input data requirements and complexities associated with the Tier 3 options, their usage shall occur in consultation with the EPA Regional Office in addition to the appropriate reviewing authority. The Ozone Limiting Method (OLM),[58] the Plume Volume Molar Ratio Method (PVMRM),[59] and the Generic Set Reaction Method (GRSM) [60] [61] are three detailed screening techniques that may be used for most sources. These three techniques use an appropriate section 4.2.2 model to estimate NO_X concentrations and then estimate the conversion of primary NO emissions to NO_2 based on the ambient levels of ozone and the plume characteristics. OLM only accounts for NO_2 formation based on the ambient levels of ozone while PVMRM and GRSM also accommodate distance-dependent conversion ratios based on ambient ozone. GRSM, PVMRM and OLM require explicit specification of the NO_2/NO_X in-stack ratios and that ambient ozone concentrations be provided on an hourly basis. GRSM requires hourly ambient NO_X concentrations in addition to hourly ozone.

f. Alternative models or techniques may be considered on a case-by-case basis and their usage shall be approved by the EPA Regional Office (section 3.2). Such models or techniques should consider individual quantities of NO and NO_2 emissions, atmospheric transport and dispersion, and atmospheric transformation of NO to NO_2. Dispersion models that account for more explicit photochemistry may also be considered as an alternative model to estimate ambient impacts of NO_X sources.

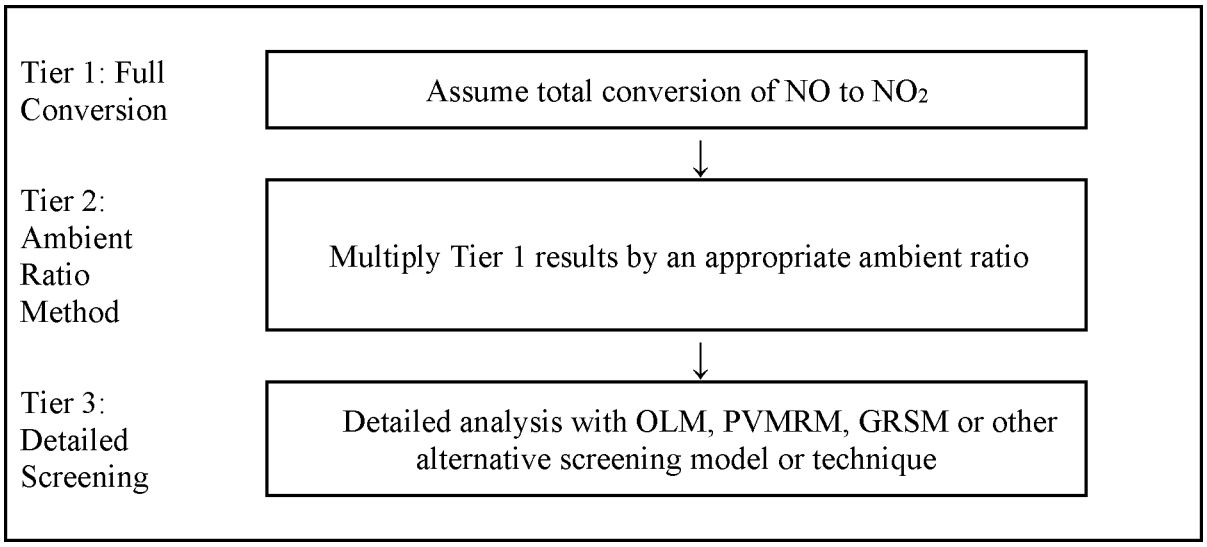

Figure 4–1: Multi-Tiered Approach for Estimating NO_2 Concentrations

4.2.3.5 Models for $PM_{2.5}$

a. $PM_{2.5}$ is a mixture consisting of several diverse components.[62] Ambient $PM_{2.5}$ generally consists of two components: (1) the primary component, emitted directly from a source; and (2) the secondary component, formed in the atmosphere from other pollutants emitted from the source. Models for $PM_{2.5}$ are needed to meet NSR requirements to address compliance with the $PM_{2.5}$ NAAQS and PSD increments and for SIP attainment demonstrations.

b. For NSR modeling assessments, the general modeling requirements for screening models in section 4.2.1 and refined models in section 4.2.2 are applicable for the primary component of $PM_{2.5}$, while the methods in section 5.4 are applicable for addressing the secondary component of $PM_{2.5}$. Guidance for PSD assessments is available for determining the best approach to handling sources of primary and secondary $PM_{2.5}$.[63]

c. For SIP attainment demonstrations and regional haze reasonable progress goal analyses, effects of a control strategy on $PM_{2.5}$ are estimated from the sum of the effects on the primary and secondary components composing $PM_{2.5}$. Model users should refer to section 5.4.1 and associated SIP modeling guidance [64] for further details concerning appropriate modeling approaches.

d. The general modeling requirements for the refined models discussed in section 4.2.2 shall be applied for $PM_{2.5}$ hot-spot modeling for mobile sources. Specific guidance is available for analyzing direct $PM_{2.5}$ impacts from highways, terminals, and other transportation projects.[65]

4.2.3.6 Models for PM_{10}

a. Models for PM_{10} are needed to meet NSR requirements to address compliance with the PM_{10} NAAQS and PSD increments and for SIP attainment demonstrations.

b. For most sources, the general modeling requirements for screening models in section 4.2.1 and refined models in section 4.2.2 shall be applied for PM_{10} modeling. In cases where the particle size and its effect on ambient concentrations need to be considered, particle deposition may be used on a case-by-case basis and their usage shall be coordinated with the appropriate reviewing authority. A SIP development guide [66] is also available to assist in PM_{10} analyses and control strategy development.

c. Fugitive dust usually refers to dust put into the atmosphere by the wind blowing over plowed fields, dirt roads, or desert or sandy areas with little or no vegetation. Fugitive emissions include the emissions resulting from the industrial process that are not captured and vented through a stack, but may be released from various locations within the complex. In some unique cases, a model developed specifically for the situation may be needed. Due to the difficult nature of characterizing and modeling fugitive dust and fugitive emissions, the proposed procedure shall be determined in consultation with the appropriate reviewing authority (paragraph 3.0(b)) for each specific situation before the modeling exercise is begun. Re-entrained dust is created by vehicles driving over dirt roads (*e.g.,* haul roads) and dust-covered roads typically found in arid areas. Such sources can be characterized as line, area or volume sources.[65] [67] Emission rates may be based on site-specific data or values from the general literature.

d. Under certain conditions, recommended dispersion models may not be suitable to appropriately address the nature of ambient PM_{10}. In these circumstances, the alternative modeling approach shall be approved by the EPA Regional Office (section 3.2).

e. The general modeling requirements for the refined models discussed in section 4.2.2 shall be applied for PM_{10} hot-spot modeling for mobile sources. Specific guidance is available for analyzing direct PM_{10} impacts from highways, terminals, and other transportation projects.[65]

5.0 Models for Ozone and Secondarily Formed Particulate Matter

5.1 Discussion

a. Air pollutants formed through chemical reactions in the atmosphere are referred to as secondary pollutants. For example, ground-level ozone and a portion of $PM_{2.5}$ are secondary pollutants formed through photochemical reactions. Ozone and secondarily formed particulate matter are closely related to each other in that they share common sources of emissions and are formed in the atmosphere from chemical reactions with similar precursors.

b. Ozone formation is driven by emissions of NO_X and volatile organic compounds (VOCs). Ozone formation is a complicated nonlinear process that requires favorable meteorological conditions in addition to VOC and NO_X emissions. Sometimes complex terrain features also contribute to the build-up of precursors and subsequent ozone formation or destruction.

c. $PM_{2.5}$ can be either primary (*i.e.,* emitted directly from sources) or secondary in nature. The fraction of $PM_{2.5}$ which is primary versus secondary varies by location and season. In the United States, $PM_{2.5}$ is dominated by a variety of chemical species or components of atmospheric particles, such as ammonium sulfate, ammonium nitrate, organic carbon mass, elemental carbon, and other soil compounds and oxidized metals. $PM_{2.5}$ sulfate, nitrate, and ammonium ions are predominantly the result of chemical reactions of the oxidized products of SO_2 and NO_X emissions with direct ammonia emissions.[68]

d. Control measures reducing ozone and $PM_{2.5}$ precursor emissions may not lead to proportional reductions in ozone and $PM_{2.5}$. Modeled strategies designed to reduce ozone or $PM_{2.5}$ levels typically need to consider the chemical coupling between these pollutants. This coupling is important in understanding processes that control the levels of both pollutants. Thus, when feasible, it is important to use models that take into account the chemical coupling between ozone and $PM_{2.5}$. In addition, using such a multi-pollutant modeling system can reduce the resource burden associated with applying and evaluating separate models for each pollutant and promotes consistency among the strategies themselves.

e. $PM_{2.5}$ is a mixture consisting of several diverse chemical species or components of

atmospheric particles. Because chemical and physical properties and origins of each component differ, it may be appropriate to use either a single model capable of addressing several of the important components or to model primary and secondary components using different models. Effects of a control strategy on $PM_{2.5}$ is estimated from the sum of the effects on the specific components comprising $PM_{2.5}$.

5.2 Recommendations

a. Chemical transformations can play an important role in defining the concentrations and properties of certain air pollutants. Models that take into account chemical reactions and physical processes of various pollutants (including precursors) are needed for determining the current state of air quality, as well as predicting and projecting the future evolution of these pollutants. It is important that a modeling system provide a realistic representation of chemical and physical processes leading to secondary pollutant formation and removal from the atmosphere.

b. Chemical transport models treat atmospheric chemical and physical processes such as deposition and motion. There are two types of chemical transport models, Eulerian (grid based) and Lagrangian. These types of models are differentiated from each other by their frame of reference. Eulerian models are based on a fixed frame of reference and Lagrangian models use a frame of reference that moves with parcels of air between the source and receptor point.[9] Photochemical grid models are three-dimensional Eulerian grid-based models that treat chemical and physical processes in each grid cell and use diffusion and transport processes to move chemical species between grid cells.[9] These types of models are appropriate for assessment of near-field and regional scale reactive pollutant impacts from specific sources [7 10 11 12] or all sources.[13 14 15] In some limited cases, the secondary processes can be treated with a box model, ideally in combination with a number of other modeling techniques and/or analyses to treat individual source sectors.

c. Regardless of the modeling system used to estimate secondary impacts of ozone and/or $PM_{2.5}$, model results should be compared to observation data to generate confidence that the modeling system is representative of the local and regional air quality. For ozone related projects, model estimates of ozone should be compared with observations in both time and space. For $PM_{2.5}$, model estimates of speciated $PM_{2.5}$ components (such as sulfate ion, nitrate ion, etc.) should be compared with observations in both time and space.[69]

d. Model performance metrics comparing observations and predictions are often used to summarize model performance. These metrics include mean bias, mean error, fractional bias, fractional error, and correlation coefficient.[69] There are no specific levels of any model performance metric that indicate ''acceptable'' model performance. The EPA's preferred approach for providing context about model performance is to compare model performance metrics with similar contemporary applications.[64 69] Because model application purpose and scope vary, model users should consult with the appropriate reviewing authority (paragraph 3.0(b)) to determine what model performance elements should be emphasized and presented to provide confidence in the regulatory model application.

e. There is no preferred modeling system or technique for estimating ozone or secondary $PM_{2.5}$ for specific source impacts or to assess impacts from multiple sources. For assessing secondary pollutant impacts from single sources, the degree of complexity required to assess potential impacts varies depending on the nature of the source, its emissions, and the background environment. The EPA recommends a two-tiered approach where the first tier consists of using existing technically credible and appropriate relationships between emissions and impacts developed from previous modeling that is deemed sufficient for evaluating a source's impacts. The second tier consists of more sophisticated case-specific modeling analyses. The appropriate tier for a given application should be selected in consultation with the appropriate reviewing authority (paragraph 3.0(b)) and be consistent with EPA guidance.[70]

5.3 Recommended Models and Approaches for Ozone

a. Models that estimate ozone concentrations are needed to guide the choice of strategies for the purposes of a nonattainment area demonstrating future year attainment of the ozone NAAQS. Additionally, models that estimate ozone concentrations are needed to assess impacts from specific sources or source complexes to satisfy requirements for NSR and other regulatory programs. Other purposes for ozone modeling include estimating the impacts of specific events on air quality, ozone deposition impacts, and planning for areas that may be attaining the ozone NAAQS.

5.3.1 Models for NAAQS Attainment Demonstrations and Multi-Source Air Quality Assessments

a. Simulation of ozone formation and transport is a complex exercise. Control agencies with jurisdiction over areas with ozone problems should use photochemical grid models to evaluate the relationship between precursor species and ozone. Use of photochemical grid models is the recommended means for identifying control strategies needed to address high ozone concentrations in such areas. Judgment on the suitability of a model for a given application should consider factors that include use of the model in an attainment test, development of emissions and meteorological inputs to the model, and choice of episodes to model. Guidance on the use of models and other analyses for demonstrating attainment of the air quality goals for ozone is available.[63 64] Users should consult with the appropriate reviewing authority (paragraph 3.0(b)) to ensure the most current modeling guidance is applied.

5.3.2 Models for Single-Source Air Quality Assessments

a. Depending on the magnitude of emissions, estimating the impact of an individual source's emissions of NO_X and VOC on ambient ozone is necessary for obtaining a permit. The simulation of ozone formation and transport requires realistic treatment of atmospheric chemistry and deposition. Models (*e.g.,* Lagrangian and photochemical grid models) that integrate chemical and physical processes important in the formation, decay, and transport of ozone and important precursor species should be applied. Photochemical grid models are primarily designed to characterize precursor emissions and impacts from a wide variety of sources over a large geographic area but can also be used to assess the impacts from specific sources.[7 11 12]

b. The first tier of assessment for ozone impacts involves those situations where existing technical information is available (*e.g.,* results from existing photochemical grid modeling, published empirical estimates of source specific impacts, or reduced-form models) in combination with other supportive information and analysis for the purposes of estimating secondary impacts from a particular source. The existing technical information should provide a credible and representative estimate of the secondary impacts from the project source. The appropriate reviewing authority (paragraph 3.0(b)) and appropriate EPA guidance [70 71] should be consulted to determine what types of assessments may be appropriate on a case-by-case basis.

c. The second tier of assessment for ozone impacts involves those situations where existing technical information is not available or a first tier demonstration indicates a more refined assessment is needed. For these situations, chemical transport models should be used to address single-source impacts. Special considerations are needed when using these models to evaluate the ozone impact from an individual source. Guidance on the use of models and other analyses for demonstrating the impacts of single sources for ozone is available.[70] This guidance document provides a more detailed discussion of the appropriate approaches to obtaining estimates of ozone impacts from a single source. Model users should use the latest version of the guidance in consultation with the appropriate reviewing authority (paragraph 3.0(b)) to determine the most suitable refined approach for single-source ozone modeling on a case-by-case basis.

5.4 Recommended Models and Approaches for Secondarily Formed $PM_{2.5}$

a. Models that estimate $PM_{2.5}$ concentrations are needed to guide the choice of strategies for the purposes of a nonattainment area demonstrating future year attainment of the $PM_{2.5}$ NAAQS. Additionally, models that estimate $PM_{2.5}$ concentrations are needed to assess impacts from specific sources or source complexes to satisfy requirements for NSR and other regulatory programs. Other purposes for $PM_{2.5}$ modeling include estimating the impacts of specific events on air quality,

visibility, deposition impacts, and planning for areas that may be attaining the $PM_{2.5}$ NAAQS.

5.4.1 Models for NAAQS Attainment Demonstrations and Multi-Source Air Quality Assessments

a. Models for $PM_{2.5}$ are needed to assess the adequacy of a proposed strategy for meeting the annual and 24-hour $PM_{2.5}$ NAAQS. Modeling primary and secondary $PM_{2.5}$ can be a multi-faceted and complex problem, especially for secondary components of $PM_{2.5}$ such as sulfates and nitrates. Control agencies with jurisdiction over areas with secondary $PM_{2.5}$ problems should use models that integrate chemical and physical processes important in the formation, decay, and transport of these species (*e.g.,* photochemical grid models). Suitability of a modeling approach or mix of modeling approaches for a given application requires technical judgment as well as professional experience in choice of models, use of the model(s) in an attainment test, development of emissions and meteorological inputs to the model, and selection of days to model. Guidance on the use of models and other analyses for demonstrating attainment of the air quality goals for $PM_{2.5}$ is available.[63] [64] Users should consult with the appropriate reviewing authority (paragraph 3.0(b)) to ensure the most current modeling guidance is applied.

5.4.2 Models for Single-Source Air Quality Assessments

a. Depending on the magnitude of emissions, estimating the impact of an individual source's emissions on secondary particulate matter concentrations may be necessary for obtaining a permit. Primary $PM_{2.5}$ components shall be simulated using the general modeling requirements in section 4.2.3.5. The simulation of secondary particulate matter formation and transport is a complex exercise requiring realistic treatment of atmospheric chemistry and deposition. Models should be applied that integrate chemical and physical processes important in the formation, decay, and transport of these species (*e.g.,* Lagrangian and photochemical grid models). Photochemical grid models are primarily designed to characterize precursor emissions and impacts from a wide variety of sources over a large geographic area and can also be used to assess the impacts from specific sources.[7] [10] For situations where a project source emits both primary $PM_{2.5}$ and $PM_{2.5}$ precursors, the contribution from both should be combined for use in determining the source's ambient impact. Approaches for combining primary and secondary impacts are provided in appropriate guidance for single source permit related demonstrations.[70]

b. The first tier of assessment for secondary $PM_{2.5}$ impacts involves those situations where existing technical information is available (*e.g.,* results from existing photochemical grid modeling, published empirical estimates of source specific impacts, or reduced-form models) in combination with other supportive information and analysis for the purposes of estimating secondary impacts from a particular source. The existing technical information should provide a credible and representative estimate of the secondary impacts from the project source. The appropriate reviewing authority (paragraph 3.0(b)) and appropriate EPA guidance [70] [71] should be consulted to determine what types of assessments may be appropriate on a case-by-case basis.

c. The second tier of assessment for secondary $PM_{2.5}$ impacts involves those situations where existing technical information is not available or a first tier demonstration indicates a more refined assessment is needed. For these situations, chemical transport models should be used for assessments of single-source impacts. Special considerations are needed when using these models to evaluate the secondary particulate matter impact from an individual source. Guidance on the use of models and other analyses for demonstrating the impacts of single sources for secondary $PM_{2.5}$ is available.[70] This guidance document provides a more detailed discussion of the appropriate approaches to obtaining estimates of secondary particulate matter concentrations from a single source. Model users should use the latest version of this guidance in consultation with the appropriate reviewing authority (paragraph 3.0(b)) to determine the most suitable single-source modeling approach for secondary $PM_{2.5}$ on a case-by-case basis.

6.0 Modeling for Air Quality Related Values and Other Governmental Programs

6.1 Discussion

a. Other Federal government agencies and State, local, and Tribal agencies with air quality and land management responsibilities have also developed specific modeling approaches for their own regulatory or other requirements. Although such regulatory requirements and guidance have come about because of EPA rules or standards, the implementation of such regulations and the use of the modeling techniques is under the jurisdiction of the agency issuing the guidance or directive. This section covers such situations with reference to those guidance documents, when they are available.

b. When using the model recommended or discussed in the *Guideline* in support of programmatic requirements not specifically covered by EPA regulations, the model user should consult the appropriate Federal, State, local, or Tribal agency to ensure the proper application and use of the models and/or techniques. These agencies have developed specific modeling approaches for their own regulatory or other requirements. Most of the programs have, or will have when fully developed, separate guidance documents that cover the program and a discussion of the tools that are needed. The following paragraphs reference those guidance documents, when they are available.

6.2 Air Quality Related Values

a. The 1990 CAA Amendments give FLMs an ''affirmative responsibility'' to protect the natural and cultural resources of Class I areas from the adverse impacts of air pollution and to provide the appropriate procedures and analysis techniques. The CAA identifies the FLM as the Secretary of the department, or their designee, with authority over these lands. Mandatory Federal Class I areas are defined in the CAA as international parks, national parks over 6,000 acres, and wilderness areas and memorial parks over 5,000 acres, established as of 1977. The FLMs are also concerned with the protection of resources in federally managed Class II areas because of other statutory mandates to protect these areas. Where State or Tribal agencies have successfully petitioned the EPA and lands have been redesignated to Class I status, these agencies may have equivalent responsibilities to that of the FLMs for these non-Federal Class I areas as described throughout the remainder of section 6.2.

b. The FLM agency responsibilities include the review of air quality permit applications from proposed new or modified major pollution sources that may affect these Class I areas to determine if emissions from a proposed or modified source will cause or contribute to adverse impacts on air quality related values (AQRVs) of a Class I area and making recommendations to the FLM. AQRVs are resources, identified by the FLM agencies, that have the potential to be affected by air pollution. These resources may include visibility, scenic, cultural, physical, or ecological resources for a particular area. The FLM agencies take into account the particular resources and AQRVs that would be affected; the frequency and magnitude of any potential impacts; and the direct, indirect, and cumulative effects of any potential impacts in making their recommendations.

c. While the AQRV notification and impact analysis requirements are outlined in the PSD regulations at 40 CFR 51.166(p) and 40 CFR 52.21(p), determination of appropriate analytical methods and metrics for AQRV's are determined by the FLM agencies and are published in guidance external to the general recommendations of this paragraph.

d. To develop greater consistency in the application of air quality models to assess potential AQRV impacts in both Class I areas and protected Class II areas, the FLM agencies have developed the Federal Land Managers' Air Quality Related Values Work Group Phase I Report (FLAG).[72] FLAG focuses upon specific technical and policy issues associated with visibility impairment, effects of pollutant deposition on soils and surface waters, and ozone effects on vegetation. Model users should consult the latest version of the FLAG report for current modeling guidance and with affected FLM agency representatives for any application specific guidance which is beyond the scope of the *Guideline.*

6.2.1 Visibility

a. Visibility in important natural areas (*e.g.,* Federal Class I areas) is protected under a number of provisions of the CAA, including sections 169A and 169B (addressing impacts primarily from existing sources) and section 165 (new source review). Visibility impairment is caused by light scattering and light absorption associated with particles and gases in the atmosphere. In most areas of the country, light scattering by $PM_{2.5}$ is the most

significant component of visibility impairment. The key components of $PM_{2.5}$ contributing to visibility impairment include sulfates, nitrates, organic carbon, elemental carbon, and crustal material.[72]

b. Visibility regulations (40 CFR 51.300 through 51.309) require State, local, and Tribal agencies to mitigate current and prevent future visibility impairment in any of the 156 mandatory Federal Class I areas where visibility is considered an important attribute. In 1999, the EPA issued revisions to the regulations to address visibility impairment in the form of regional haze, which is caused by numerous, diverse sources (*e.g.,* stationary, mobile, and area sources) located across a broad region (40 CFR 51.308 through 51.309). The state of relevant scientific knowledge has expanded significantly since that time. A number of studies and reports [73] [74] have concluded that long-range transport (*e.g.,* up to hundreds of kilometers) of fine particulate matter plays a significant role in visibility impairment across the country. Section 169A of the CAA requires States to develop SIPs containing long-term strategies for remedying existing and preventing future visibility impairment in the 156 mandatory Class I Federal areas, where visibility is considered an important attribute. In order to develop long-term strategies to address regional haze, many State, local, and Tribal agencies will need to conduct regional-scale modeling of fine particulate concentrations and associated visibility impairment.

c. The FLAG visibility modeling recommendations are divided into two distinct sections to address different requirements for: (1) near field modeling where plumes or layers are compared against a viewing background, and (2) distant/multi-source modeling for plumes and aggregations of plumes that affect the general appearance of a scene.[72] The recommendations separately address visibility assessments for sources proposing to locate relatively near and at farther distances from these areas.[72]

6.2.1.1 Models for Estimating Near-Field Visibility Impairment

a. To calculate the potential impact of a plume of specified emissions for specific transport and dispersion conditions (''plume blight'') for source-receptor distances less than 50 km, a screening model and guidance are available.[72] [75] If a more comprehensive analysis is necessary, a refined model should be selected. The model selection, procedures, and analyses should be determined in consultation with the appropriate reviewing authority (paragraph 3.0(b)) and the affected FLM(s).

6.2.1.2 Models for Estimating Visibility Impairment for Long-Range Transport

a. Chemical transformations can play an important role in defining the concentrations and properties of certain air pollutants. Models that take into account chemical reactions and physical processes of various pollutants (including precursors) are needed for determining the current state of air quality, as well as predicting and projecting the future evolution of these pollutants. It is important that a modeling system provide a realistic representation of chemical and physical processes leading to secondary pollutant formation and removal from the atmosphere.

b. Chemical transport models treat atmospheric chemical and physical processes such as deposition and motion. There are two types of chemical transport models, Eulerian (grid based) and Lagrangian. These types of models are differentiated from each other by their frame of reference. Eulerian models are based on a fixed frame of reference and Lagrangian models use a frame of reference that moves with parcels of air between the source and receptor point.[9] Photochemical grid models are three-dimensional Eulerian grid-based models that treat chemical and physical processes in each grid cell and use diffusion and transport processes to move chemical species between grid cells.[9] These types of models are appropriate for assessment of near-field and regional scale reactive pollutant impacts from specific sources [7] [10] [11] [12] or all sources.[13] [14] [15]

c. Development of the requisite meteorological and emissions databases necessary for use of photochemical grid models to estimate AQRVs should conform to recommendations in section 8 and those outlined in the EPA's *Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5,}$ and Regional Haze.*[64] Demonstration of the adequacy of prognostic meteorological fields can be established through appropriate diagnostic and statistical performance evaluations consistent with recommendations provided in the appropriate guidance.[64] Model users should consult the latest version of this guidance and with the appropriate reviewing authority (paragraph 3.0(b)) for any application-specific guidance that is beyond the scope of this subsection.

6.2.2 Models for Estimating Deposition Impacts

a. For many Class I areas, AQRVs have been identified that are sensitive to atmospheric deposition of air pollutants. Emissions of NO_X, sulfur oxides, NH_3, mercury, and secondary pollutants such as ozone and particulate matter affect components of ecosystems. In sensitive ecosystems, these compounds can acidify soils and surface waters, add nutrients that change biodiversity, and affect the ecosystem services provided by forests and natural areas.[72] To address the relationship between deposition and ecosystem effects, the FLM agencies have developed estimates of critical loads. A critical load is defined as, ''A quantitative estimate of an exposure to one or more pollutants below which significant harmful effects on specified sensitive elements of the environment do not occur according to present knowledge.'' [76]

b. The FLM deposition modeling recommendations are divided into two distinct sections to address different requirements for: (1) near field modeling, and (2) distant/multi-source modeling for cumulative effects. The recommendations separately address deposition assessments for sources proposing to locate relatively near and at farther distances from these areas.[72] Where the source and receptors are not in close proximity, chemical transport (*e.g.,* photochemical grid) models generally should be applied for an assessment of deposition impacts due to one or a small group of sources. Over these distances, chemical and physical transformations can change atmospheric residence time due to different propensity for deposition to the surface of different forms of nitrate and sulfate. Users should consult the latest version of the FLAG report [72] and relevant FLM representatives for guidance on the use of models for deposition. Where source and receptors are in close proximity, users should contact the appropriate FLM for application-specific guidance.

6.3 Modeling Guidance for Other Governmental Programs

a. Dispersion and photochemical grid modeling may need to be conducted to ensure that individual and cumulative offshore oil and gas exploration, development, and production plans and activities do not significantly affect the air quality of any State as required under the Outer Continental Shelf Lands Act (OCSLA). Air quality modeling requires various input datasets, including emissions sources, meteorology, and pre-existing pollutant concentrations. For sources under the reviewing authority of the Department of Interior, Bureau of Ocean Energy Management (BOEM), guidance for the development of all necessary Outer Continental Shelf (OCS) air quality modeling inputs and appropriate model selection and application is available from the BOEM's website: *https://www.boem.gov/about-boem/regulations-guidance/guidance-portal.*

b. The Federal Aviation Administration (FAA) is the appropriate reviewing authority for air quality assessments of primary pollutant impacts at airports and air bases. The Aviation Environmental Design Tool (AEDT) is developed and supported by the FAA, and is appropriate for air quality assessment of primary pollutant impacts at airports or air bases. AEDT has adopted AERMOD for treating dispersion. Application of AEDT is intended for estimating the change in emissions for aircraft operations, point source, and mobile source emissions on airport property and quantify the associated pollutant level- concentrations. AEDT is not intended for PSD, SIP, or other regulatory air quality analyses of point or mobile sources at or peripheral to airport property that are unrelated to airport operations. The latest version of AEDT may be obtained from the FAA at: *https://aedt.faa.gov.*

7.0 General Modeling Considerations

7.1 Discussion

a. This section contains recommendations concerning a number of different issues not explicitly covered in other sections of the *Guideline.* The topics covered here are not specific to any one program or modeling area, but are common to dispersion modeling analyses for criteria pollutants.

7.2 Recommendations

7.2.1 All sources

7.2.1.1 Dispersion Coefficients

a. For any dispersion modeling exercise, the urban or rural determination of a source

is critical in determining the boundary layer characteristics that affect the model's prediction of downwind concentrations. Historically, steady-state Gaussian plume models used in most applications have employed dispersion coefficients based on Pasquill-Gifford [77] in rural areas and McElroy-Pooler [78] in urban areas. These coefficients are still incorporated in the BLP and OCD models. However, the AERMOD model incorporates a more up-to-date characterization of the atmospheric boundary layer using continuous functions of parameterized horizontal and vertical turbulence based on Monin-Obukhov similarity (scaling) relationships.[44] Another key feature of AERMOD's formulation is the option to use directly observed variables of the boundary layer to parameterize dispersion.[44] [45]

b. The selection of rural or urban dispersion coefficients in a specific application should follow one of the procedures suggested by Irwin [79] to determine whether the character of an area is primarily urban or rural (of the two methods, the land use procedure is considered more definitive.):

i. *Land Use Procedure:* (1) Classify the land use within the total area, A_o, circumscribed by a 3 km radius circle about the source using the meteorological land use typing scheme proposed by Auer; [80] (2) if land use types I1, I2, C1, R2, and R3 account for 50 percent or more of A_o, use urban dispersion coefficients; otherwise, use appropriate rural dispersion coefficients.

ii. *Population Density Procedure:* (1) Compute the average population density, $\overline{p}$ per square kilometer with A_o as defined above; (2) If $\overline{p}$ is greater than 750 people per square kilometer, use urban dispersion coefficients; otherwise use appropriate rural dispersion coefficients.

c. Population density should be used with caution and generally not be applied to highly industrialized areas where the population density may be low and, thus, a rural classification would be indicated. However, the area is likely to be sufficiently built-up so that the urban land use criteria would be satisfied. Therefore, in this case, the classification should be ''urban'' and urban dispersion parameters should be used.

d. For applications of AERMOD in urban areas, under either the Land Use Procedure or the Population Density Procedure, the user needs to estimate the population of the urban area affecting the modeling domain because the urban influence in AERMOD is scaled based on a user-specified population. For non-population oriented urban areas, or areas influenced by both population and industrial activity, the user will need to estimate an equivalent population to adequately account for the combined effects of industrialized areas and populated areas within the modeling domain. Selection of the appropriate population for these applications should be determined in consultation with the appropriate reviewing authority (paragraph 3.0(b)) and the latest version of the AERMOD Implementation Guide.[81]

e. It should be noted that AERMOD allows for modeling rural and urban sources in a single model run. For analyses of whole urban complexes, the entire area should be modeled as an urban region if most of the sources are located in areas classified as urban. For tall stacks located within or adjacent to small or moderate sized urban areas, the stack height or effective plume height may extend above the urban boundary layer and, therefore, may be more appropriately modeled using rural coefficients. Model users should consult with the appropriate reviewing authority (paragraph 3.0(b)) and the latest version of the AERMOD Implementation Guide [81] when evaluating this situation.

f. Buoyancy-induced dispersion (BID), as identified by Pasquill,[82] is included in the preferred models and should be used where buoyant sources (*e.g.,* those involving fuel combustion) are involved.

7.2.1.2 Complex Winds

a. *Inhomogeneous local winds.* In many parts of the United States, the ground is neither flat nor is the ground cover (or land use) uniform. These geographical variations can generate local winds and circulations, and modify the prevailing ambient winds and circulations. Typically, geographic effects are more apparent when the ambient winds are light or calm, as stronger synoptic or mesoscale winds can modify, or even eliminate the weak geographic circulations.[83] In general, these geographically induced wind circulation effects are named after the source location of the winds, *e.g.,* lake and sea breezes, and mountain and valley winds. In very rugged hilly or mountainous terrain, along coastlines, or near large land use variations, the characteristics of the winds are a balance of various forces, such that the assumptions of steady-state straight-line transport both in time and space are inappropriate. In such cases, a model should be chosen to fully treat the time and space variations of meteorology effects on transport and dispersion. The setup and application of such a model should be determined in consultation with the appropriate reviewing authority (paragraph 3.0(b)) consistent with limitations of paragraph 3.2.2(e). The meteorological input data requirements for developing the time and space varying three-dimensional winds and dispersion meteorology for these situations are discussed in paragraph 8.4.1.2(c). Examples of inhomogeneous winds include, but are not limited to, situations described in the following paragraphs:

i. *Inversion breakup fumigation.* Inversion breakup fumigation occurs when a plume (or multiple plumes) is emitted into a stable layer of air and that layer is subsequently mixed to the ground through convective transfer of heat from the surface or because of advection to less stable surroundings. Fumigation may cause excessively high concentrations, but is usually rather short-lived at a given receptor. There are no recommended refined techniques to model this phenomenon. There are, however, screening procedures [40] that may be used to approximate the concentrations. Considerable care should be exercised in using the results obtained from the screening techniques.

ii. *Shoreline fumigation.* Fumigation can be an important phenomenon on and near the shoreline of bodies of water. This can affect both individual plumes and area-wide emissions. When fumigation conditions are expected to occur from a source or sources with tall stacks located on or just inland of a shoreline, this should be addressed in the air quality modeling analysis. The EPA has evaluated several coastal fumigation models, and the evaluation results of these models are available for their possible application on a case-by-case basis when air quality estimates under shoreline fumigation conditions are needed.[84] Selection of the appropriate model for applications where shoreline fumigation is of concern should be determined in consultation with the appropriate reviewing authority (paragraph 3.0(b)).

iii. *Stagnation.* Stagnation conditions are characterized by calm or very low wind speeds, and variable wind directions. These stagnant meteorological conditions may persist for several hours to several days. During stagnation conditions, the dispersion of air pollutants, especially those from low-level emissions sources, tends to be minimized, potentially leading to relatively high ground-level concentrations. If point sources are of interest, users should note the guidance provided in paragraph (a) of this subsection. Selection of the appropriate model for applications where stagnation is of concern should be determined in consultation with the appropriate reviewing authority (paragraph 3.0(b)).

7.2.1.3 Gravitational Settling and Deposition

a. Gravitational settling and deposition may be directly included in a model if either is a significant factor. When particulate matter sources can be quantified and settling and dry deposition are problems, use professional judgment along with coordination with the appropriate reviewing authority (paragraph 3.0(b)). AERMOD contains algorithms for dry and wet deposition of gases and particles.[85] For other Gaussian plume models, an ''infinite half-life'' may be used for estimates of particle concentrations when only exponential decay terms are used for treating settling and deposition. Lagrangian models have varying degrees of complexity for dealing with settling and deposition and the selection of a parameterization for such should be included in the approval process for selecting a Lagrangian model. Eulerian grid models tend to have explicit parameterizations for gravitational settling and deposition as well as wet deposition parameters already included as part of the chemistry scheme.

7.2.2 Stationary Sources

7.2.2.1 Good Engineering Practice Stack Height

a. The use of stack height credit in excess of Good Engineering Practice (GEP) stack height or credit resulting from any other dispersion technique is prohibited in the development of emissions limits by 40 CFR 51.118 and 40 CFR 51.164. The definition of GEP stack height and dispersion technique are contained in 40 CFR 51.100. Methods and procedures for making the appropriate stack height calculations, determining stack height credits and an example of applying those

techniques are found in several references,[86] [87] [88] [89] that provide a great deal of additional information for evaluating and describing building cavity and wake effects.

b. If stacks for new or existing major sources are found to be less than the height defined by the EPA's refined formula for determining GEP height, then air quality impacts associated with cavity or wake effects due to the nearby building structures should be determined. The EPA refined formula height is defined as H + 1.5L.[88] Since the definition of GEP stack height defines excessive concentrations as a maximum ground-level concentration due in whole or in part to downwash of at least 40 percent in excess of the maximum concentration without downwash, the potential air quality impacts associated with cavity and wake effects should also be considered for stacks that equal or exceed the EPA formula height for GEP. The AERSCREEN model can be used to obtain screening estimates of potential downwash influences, based on the PRIME downwash algorithm incorporated in the AERMOD model. If more refined concentration estimates are required, AERMOD should be used (section 4.2.2).

7.2.2.2 Plume Rise

a. The plume rise methods of Briggs [90] [91] are incorporated in many of the preferred models and are recommended for use in many modeling applications. In AERMOD,[44] [45] for the stable boundary layer, plume rise is estimated using an iterative approach, similar to that in the CTDMPLUS model. In the convective boundary layer, plume rise is superposed on the displacements by random convective velocities.[92] In AERMOD, plume rise is computed using the methods of Briggs, except in cases involving building downwash, in which a numerical solution of the mass, energy, and momentum conservation laws is performed.[93] No explicit provisions in these models are made for multistack plume rise enhancement or the handling of such special plumes as flares.

b. Gradual plume rise is generally recommended where its use is appropriate: (1) in AERMOD; (2) in complex terrain screening procedures to determine close-in impacts; and (3) when calculating the effects of building wakes. The building wake algorithm in AERMOD incorporates and exercises the thermodynamically based gradual plume rise calculations as described in paragraph (a) of this subsection. If the building wake is calculated to affect the plume for any hour, gradual plume rise is also used in downwind dispersion calculations to the distance of final plume rise, after which final plume rise is used. Plumes captured by the near wake are re-emitted to the far wake as a ground-level volume source.

c. Stack tip downwash generally occurs with poorly constructed stacks and when the ratio of the stack exit velocity to wind speed is small. An algorithm developed by Briggs [91] is the recommended technique for this situation and is used in preferred models for point sources.

d. On a case-by-case basis, refinements to the preferred model may be considered for plume rise and downwash effects and shall occur in agreement with the appropriate reviewing authority (paragraph 3.0(b)) and approval by the EPA Regional Office based on the requirements of section 3.2.2.

7.2.3 Mobile Sources

a. Emissions of primary pollutants from mobile sources can be modeled with an appropriate model identified in section 4.2. Screening of mobile sources can be accomplished by using screening meteorology, *e.g.,* worst-case meteorological conditions. Maximum hourly concentrations computed from screening modeling can be converted to longer averaging periods using the scaling ratios specified in the AERSCREEN User's Guide.[37]

b. Mobile sources can be modeled in AERMOD as either line (*i.e.,* elongated area) sources or as a series of volume sources. Line sources can be represented in AERMOD with the following source types: LINE, AREA, VOLUME or RLINE. However, since mobile source modeling usually includes an analysis of very near-source impacts, the results can be highly sensitive to the characterization of the mobile emissions. Important characteristics for both line/area and volume sources include the plume release height, source width, and initial dispersion characteristics, and should also take into account the impact of traffic-induced turbulence that can cause roadway sources to have larger initial dimensions than might normally be used for representing line sources.

c. The EPA's quantitative PM hot-spot guidance [65] and Haul Road Workgroup Final Report [67] provide guidance on the appropriate characterization of mobile sources as a function of the roadway and vehicle characteristics. The EPA's quantitative PM hot-spot guidance includes important considerations and should be consulted when modeling roadway links. Area and line sources, which can be characterized as AREA, LINE, and RLINE source types in AERMOD, or volume sources, may be used for modeling mobile sources. However, experience in the field has shown that area sources (characterized as AREA, LINE, or RLINE source types) may be easier to characterize correctly compared to volume sources. If volume sources are used, it is particularly important to ensure that roadway emissions are appropriately spaced when using volume source so that the emissions field is uniform across the roadway. Additionally, receptor placement is particularly important for volume sources that have ''exclusion zones'' where concentrations are not calculated for receptors located ''within'' the volume sources, *i.e.,* less than 2.15 times the initial lateral dispersion coefficient from the center of the volume.[65] Therefore, placing receptors in these ''exclusion zones'' will result in underestimates of roadway impacts.

8.0 Model Input Data

a. Databases and related procedures for estimating input parameters are an integral part of the modeling process. The most appropriate input data available should always be selected for use in modeling analyses. Modeled concentrations can vary widely depending on the source data or meteorological data used. This section attempts to minimize the uncertainty associated with database selection and use by identifying requirements for input data used in modeling. More specific data requirements and the format required for the individual models are described in detail in the user's guide and/or associated documentation for each model.

8.1 Modeling Domain

8.1.1 Discussion

a. The modeling domain is the geographic area for which the required air quality analyses for the NAAQS and PSD increments are conducted.

8.1.2 Requirements

a. For a NAAQS or PSD increments assessment, the modeling domain or project's impact area shall include all locations where the emissions of a pollutant from the new or modifying source(s) may cause a significant ambient impact. This impact area is defined as an area with a radius extending from the new or modifying source to: (1) the most distant location where air quality modeling predicts a significant ambient impact will occur, or (2) the nominal 50 km distance considered applicable for Gaussian dispersion models, whichever is less. The required air quality analysis shall be carried out within this geographical area with characterization of source impacts, nearby source impacts, and background concentrations, as recommended later in this section.

b. For SIP attainment demonstrations for ozone and $PM_{2.5}$, or regional haze reasonable progress goal analyses, the modeling domain is determined by the nature of the problem being modeled and the spatial scale of the emissions that impact the nonattainment or Class I area(s). The modeling domain shall be designed so that all major upwind source areas that influence the downwind nonattainment area are included in addition to all monitor locations that are currently or recently violating the NAAQS or close to violating the NAAQS in the nonattainment area. Similarly, all Class I areas to be evaluated in a regional haze modeling application shall be included and sufficiently distant from the edge of the modeling domain. Guidance on the determination of the appropriate modeling domain for photochemical grid models in demonstrating attainment of these air quality goals is available.[64] Users should consult the latest version of this guidance for the most current modeling guidance and the appropriate reviewing authority (paragraph 3.0(b)) for any application specific guidance that is beyond the scope of this section.

8.2 Source Data

8.2.1 Discussion

a. Sources of pollutants can be classified as point, line, area, and volume sources. Point sources are defined in terms of size and may vary between regulatory programs. The line sources most frequently considered are roadways and streets along which there are well-defined movements of motor vehicles. They may also be lines of roof vents or stacks, such as in aluminum refineries. Area

and volume sources are often collections of a multitude of minor sources with individually small emissions that are impractical to consider as separate point or line sources. Large area sources are typically treated as a grid network of square areas, with pollutant emissions distributed uniformly within each grid square. Generally, input data requirements for air quality models necessitate the use of metric units. As necessary, any English units common to engineering applications should be appropriately converted to metric.

b. For point sources, there are many source characteristics and operating conditions that may be needed to appropriately model the facility. For example, the plant layout (*e.g.,* location of stacks and buildings), stack parameters (*e.g.,* height and diameter), boiler size and type, potential operating conditions, and pollution control equipment parameters. Such details are required inputs to air quality models and are needed to determine maximum potential impacts.

c. Modeling mobile emissions from streets and highways requires data on the road layout, including the width of each traveled lane, the number of lanes, and the width of the median strip. Additionally, traffic patterns should be taken into account (*e.g.,* daily cycles of rush hour, differences in weekday and weekend traffic volumes, and changes in the distribution of heavy-duty trucks and light-duty passenger vehicles), as these patterns will affect the types and amounts of pollutant emissions allocated to each lane and the height of emissions.

d. Emission factors can be determined through source-specific testing and measurements (*e.g.,* stack test data) from existing sources or provided from a manufacturing association or vendor. Additionally, emissions factors for a variety of source types are compiled in an EPA publication commonly known as AP–42.[94] AP–42 also provides an indication of the quality and amount of data on which many of the factors are based. Other information concerning emissions is available in EPA publications relating to specific source categories. The appropriate reviewing authority (paragraph 3.0(b)) should be consulted to determine appropriate source definitions and for guidance concerning the determination of emissions from and techniques for modeling the various source types.

8.2.2 Requirements

a. For SIP attainment demonstrations for the purpose of projecting future year NAAQS attainment for ozone, $PM_{2.5}$, and regional haze reasonable progress goal analyses, emissions which reflect actual emissions during the base modeling year time period should be input to models for base year modeling. Emissions projections to future years should account for key variables such as growth due to increased or decreased activity, expected emissions controls due to regulations, settlement agreements or consent decrees, fuel switches, and any other relevant information. Guidance on emissions estimation techniques (including future year projections) for SIP attainment demonstrations is available.[64 95]

b. For the purpose of SIP revisions for stationary point sources, the regulatory modeling of inert pollutants shall use the emissions input data shown in Table 8–1 for short-term and long-term NAAQS. To demonstrate compliance and/or establish the appropriate SIP emissions limits, Table 8–1 generally provides for the use of ''allowable'' emissions in the regulatory dispersion modeling of the stationary point source(s) of interest. In such modeling, these source(s) should be modeled sequentially with these loads for every hour of the year. As part of a cumulative impact analysis, Table 8–1 allows for the model user to account for actual operations in developing the emissions inputs for dispersion modeling of nearby sources, while other sources are best represented by air quality monitoring data. Consultation with the appropriate reviewing authority (paragraph 3.0(b)) is advisable on the establishment of the appropriate emissions inputs for regulatory modeling applications with respect to SIP revisions for stationary point sources.

c. For the purposes of demonstrating NAAQS compliance in a PSD assessment, the regulatory modeling of inert pollutants shall use the emissions input data shown in Table 8–2 for short and long-term NAAQS. The new or modifying stationary point source shall be modeled with ''allowable'' emissions in the regulatory dispersion modeling. As part of a cumulative impact analysis, Table 8–2 allows for the model user to account for actual operations in developing the emissions inputs for dispersion modeling of nearby sources, while other sources are best represented by air quality monitoring data. For purposes of situations involving emissions trading, refer to current EPA policy and guidance to establish input data. Consultation with the appropriate reviewing authority (paragraph 3.0(b)) is advisable on the establishment of the appropriate emissions inputs for regulatory modeling applications with respect to PSD assessments for a proposed new or modifying source.

d. For stationary source applications, changes in operating conditions that affect the physical emission parameters (*e.g.,* release height, initial plume volume, and exit velocity) shall be considered to ensure that maximum potential impacts are appropriately determined in the assessment. For example, the load or operating condition for point sources that causes maximum ground-level concentrations shall be established. As a minimum, the source should be modeled using the design capacity (100 percent load). If a source operates at greater than design capacity for periods that could result in violations of the NAAQS or PSD increments, this load should be modeled. Where the source operates at substantially less than design capacity, and the changes in the stack parameters associated with the operating conditions could lead to higher ground level concentrations, loads such as 50 percent and 75 percent of capacity should also be modeled. Malfunctions which may result in excess emissions are not considered to be a normal operating condition. They generally should not be considered in determining allowable emissions. However, if the excess emissions are the result of poor maintenance, careless operation, or other preventable conditions, it may be necessary to consider them in determining source impact. A range of operating conditions should be considered in screening analyses. The load causing the highest concentration, in addition to the design load, should be included in refined modeling.

e. Emissions from mobile sources also have physical and temporal characteristics that should be appropriately accounted. For example, an appropriate emissions model shall be used to determine emissions profiles. Such emissions should include speciation specific for the vehicle types used on the roadway (*e.g.,* light duty and heavy duty trucks), and subsequent parameterizations of the physical emissions characteristics (*e.g.,* release height) should reflect those emissions sources. For long-term standards, annual average emissions may be appropriate, but for short-term standards, discrete temporal representation of emissions should be used (*e.g.,* variations in weekday and weekend traffic or the diurnal rush-hour profile typical of many cities). Detailed information and data requirements for modeling mobile sources of pollution are provided in the user's manuals for each of the models applicable to mobile sources.[65 67]

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Table 8-1. - Point Source Model Emission Inputs for SIP Revisions of Inert Pollutants[1]

Averaging time	Emissions limit (lb/MMBtu)[2]	X	Operating level (MMBtu/hr)[2]	X	Operating factor (*e.g.*, hr/yr, hr/day)
Stationary Point Source(s) Subject to SIP Emissions Limit(s) Evaluation for Compliance with Ambient Standards *(Including Areawide Demonstrations)*					
Annual & quarterly	Maximum allowable emission limit or federally enforceable permit limit.		Actual or design capacity (whichever is greater), or federally enforceable permit condition.[3]		Actual operating factor averaged over the most recent 2 years.[4]
Short term (≤ 24 hours)	Maximum allowable emission limit or federally enforceable permit limit.		Actual or design capacity (whichever is greater), or federally enforceable permit condition.[3]		Continuous operation, i.e., all hours of each time period under consideration (for all hours of the meteorological database).[5]
Nearby Source(s)[6]					
Annual & quarterly	Maximum allowable emission limit or federally enforceable permit limit.[6]		Annual level when actually operating, averaged over the most recent 2 years.[4]		Actual operating factor averaged over the most recent 2 years.[4, 8]
Short term (≤ 24 hours)	Maximum allowable emission limit or federally enforceable permit limit.[6]		Temporally representative level when actually operating, reflective of the most recent 2 years.[4, 7]		Continuous operation, i.e., all hours of each time period under consideration (for all hours of the meteorological database).[5]
Other Source(s)[6, 9]					

The ambient impacts from Non-nearby or Other Sources (*e.g.*, natural, minor, distant major, and unidentified sources) can be represented by air quality monitoring data unless adequate data do not exist.

1. For purposes of emissions trading, NSR, or PSD, other model input criteria may apply. See Section 8.2 for more information regarding attainment demonstrations of primary PM2.5.
2. Terminology applicable to fuel burning sources; analogous terminology (*e.g.*, lb/throughput) may be used for other types of sources.
3. Operating levels such as 50 percent and 75 percent of capacity should also be modeled to determine the load causing the highest concentration.
4. Unless it is determined that this period is not representative.
5. If operation does not occur for all hours of the time period of consideration (*e.g.*, 3 or 24-hours) and the source operation is constrained by a federally enforceable permit condition, an appropriate adjustment to the modeled emission rate may be made (*e.g.*, if operation is only 8 a.m. to 4 p.m. each day, only these hours will be modeled with emissions from the source. Modeled emissions should not be averaged across non-operating time periods.)
6. See Section 8.3.3.
7. Temporally representative operating level could be based on Continuous Emissions Monitoring (CEM) data or other information and should be determined through consultation with the appropriate reviewing authority (Paragraph 3.0(b)).
8. For those permitted sources not in operation or that have not established an appropriate factor, continuous operation (*i.e.*, 8760) should be used.
9. See Section 8.3.2.

Table 8-2. - Point Source Model Emission Inputs for NAAQS Compliance in PSD Demonstrations

Averaging time	Emissions limit (lb/MMBtu)[1]	X	Operating level (MMBtu/hr)[1]	X	Operating factor (*e.g.*, hr/yr, hr/day)
Proposed Major New or Modified Source					
Annual & quarterly	Maximum allowable emission limit or federally enforceable permit limit.		Design capacity or federally enforceable permit condition.[2]		Continuous operation (i.e., 8760 hours).[3]
Short term (≤ 24 hours)	Maximum allowable emission limit or federally enforceable permit limit.		Design capacity or federally enforceable permit condition.[2]		Continuous operation, i.e., all hours of each time period under consideration (for all hours of the meteorological database).[3]
Nearby Source(s) [4, 5]					
Annual & quarterly	Maximum allowable emission limit or federally enforceable permit limit.[5]		Annual level when actually operating, averaged over the most recent 2 years.[6]		Actual operating factor averaged over the most recent 2 years.[6, 8]
Short term (≤ 24 hours)	Maximum allowable emission limit or federally enforceable permit limit.[5]		Temporally representative level when actually operating, reflective of the most recent 2 years.[6, 7]		Continuous operation, i.e., all hours of each time period under consideration (for all hours of the meteorological database).[3]
Other Source(s) [5, 9]					
The ambient impacts from Non-nearby or Other Sources (*e.g.*, natural, minor, distant major, and unidentified sources) can be represented by air quality monitoring data unless adequate data do not exist.					

1. Terminology applicable to fuel burning sources; analogous terminology (*e.g.*, lb/throughput) may be used for other types of sources.
2. Operating levels such as 50 percent and 75 percent of capacity should also be modeled to determine the load causing the highest concentration.
3. If operation does not occur for all hours of the time period of consideration (*e.g.*, 3 or 24-hours) and the source operation is constrained by a federally enforceable permit condition, an appropriate adjustment to the modeled emission rate may be made (*e.g.*, if operation is only 8 a.m. to 4 p.m. each day, only these hours will be modeled with emissions from the source. Modeled emissions should not be averaged across non-operating time periods.
4. Includes existing facility to which modification is proposed if the emissions from the existing facility will not be affected by the modification. Otherwise use the same parameters as for major modification.
5. See Section 8.3.3.
6. Unless it is determined that this period is not representative.
7. Temporally representative operating level could be based on Continuous Emissions Monitoring (CEM) data or other information and should be determined through consultation with the appropriate reviewing authority (Paragraph 3.0(b)).
8. For those permitted sources not in operation or that have not established an appropriate factor, continuous operation (*i.e.*, 8760) should be used.
9. See Section 8.3.2.

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8.3 Background Concentrations

8.3.1 Discussion

a. Background concentrations are essential in constructing the design concentration, or total air quality concentration, as part of a cumulative impact analysis for NAAQS and PSD increments (section 9.2.3). To assist applicants and reviewing authorities with appropriately characterizing background concentrations, EPA has developed the *Draft Guidance on Developing Background Concentrations for Use in Modeling Demonstrations*.[96] The guidance provides a recommended framework composed of steps that should be used in parallel with the recommendations made in this section. Generally, background air quality should not include the ambient impacts of the project source under consideration. Instead, it should include:

i. *Nearby sources:* These are individual sources located in the vicinity of the source(s) under consideration for emissions limits that are not adequately represented by ambient monitoring data. The ambient contributions from these nearby sources are thereby accounted for by explicitly modeling their emissions (section 8.2).

ii. *Other sources:* That portion of the background attributable to natural sources, other unidentified sources in the vicinity of the project, and regional transport contributions from more distant sources (domestic and international). The ambient contributions from these sources are typically accounted for through use of ambient monitoring data or, in some cases, regional-scale photochemical grid modeling results.

b. The monitoring network used for developing background concentrations is expected to conform to the same quality assurance and other requirements as those networks established for PSD purposes.[97] Accordingly, the air quality monitoring data should be of sufficient completeness and follow appropriate data validation

procedures. These data should be adequately representative of the area to inform calculation of the design concentration for comparison to the applicable NAAQS (section 9.2.2).

c. For photochemical grid modeling conducted in SIP attainment demonstrations for ozone, $PM_{2.5}$ and regional haze, the emissions from nearby and other sources are included as model inputs and fully accounted for in the modeling application and predicted concentrations. The concept of adding individual components to develop a design concentration, therefore, do not apply in these SIP applications. However, such modeling results may then be appropriate for consideration in characterizing background concentrations for other regulatory applications. Also, as noted in section 5, this modeling approach does provide for an appropriate atmospheric environment to assess single-source impacts for ozone and secondary $PM_{2.5}$.

d. For NAAQS assessments and SIP attainment demonstrations for inert pollutants, the development of the appropriate background concentration for a cumulative impact analysis involves proper accounting of each contribution to the design concentration and will depend upon whether the project area's situation consists of either an isolated single source(s) or a multitude of sources. For PSD increment assessments, all impacts after the appropriate baseline dates (*i.e.,* trigger date, major source baseline date, and minor source baseline date) from all increment-consuming and increment-expanding sources should be considered in the design concentration (section 9.2.2).

8.3.2 Recommendations for Isolated Single Sources

a. In areas with an isolated source(s), determining the appropriate background concentration should focus on characterization of contributions from all other sources through adequately representative ambient monitoring data. The application of EPA's recommended framework for determining an appropriate background concentration should be consistent with appropriate EPA modeling guidance [63 96] and justified in the modeling protocol that is vetted with the appropriate reviewing authority (paragraph 3.0(b)).

b. The EPA recommends use of the most recent quality assured air quality monitoring data collected in the vicinity of the source to determine the background concentration for the averaging times of concern. In most cases, the EPA recommends using data from the monitor closest to and upwind of the project area. If several monitors are available, preference should be given to the monitor with characteristics that are most similar to the project area. If there are no monitors located in the vicinity of the new or modifying source, a ''regional site'' may be used to determine background concentrations. A regional site is one that is located away from the area of interest but is impacted by similar or adequately representative sources.

c. Many of the challenges related to cumulative impact analyses arise in the context of defining the appropriate metric to characterize background concentrations from ambient monitoring data and determining the appropriate method for combining this monitor-based background contribution to the modeled impact of the project and other nearby sources. For many cases, the best starting point would be use of the current design value for the applicable NAAQS as a uniform monitored background contribution across the project area. However, there are cases in which the current design value may not be appropriate. Such cases include but are not limited to:

i. For situations involving a modifying source where the existing facility is determined to impact the ambient monitor, the background concentration at each monitor can be determined by excluding values when the source in question is impacting the monitor. In such cases, monitoring sites inside a 90° sector downwind of the source may be used to determine the area of impact.

ii. There may be other circumstances which would necessitate modifications to the ambient data record. Such cases could include removal of data from specific days or hours when a monitor is being impacted by activities that are not typical or not expected to occur again in the future (*e.g.,* construction, roadway repairs, forest fires, or unusual agricultural activities). There may also be cases where it may be appropriate to scale (multiplying the monitored concentrations with a scaling factor) or adjust (adding or subtracting a constant value the monitored concentrations) data from specific days or hours. Such adjustments would make the monitored background concentrations more temporally and/or spatially representative of the area around the new or modifying source for the purposes of the regulatory assessment.

iii. For short-term standards, the diurnal or seasonal patterns of the air quality monitoring data may differ significantly from the patterns associated with the modeled concentrations. When this occurs, it may be appropriate to pair the air quality monitoring data in a temporal manner that reflects these patterns (*e.g.,* pairing by season and/or hour of day).[98]

iv. For situations where monitored air quality concentrations vary across the modeling domain, it may be appropriate to consider air quality monitoring data from multiple monitors within the project area.

d. Considering the spatial and temporal variability throughout a typical modeling domain on an hourly basis and the complexities and limitations of hourly observations from the ambient monitoring network, the EPA does not recommend hourly or daily pairing of monitored background and modeled concentrations except in rare cases of relatively isolated sources where the available monitor can be shown to be representative of the ambient concentration levels in the areas of maximum impact from the proposed new source. The implicit assumption underlying hourly pairing is that the background monitored levels for each hour are spatially uniform and that the monitored values are fully representative of background levels at each receptor for each hour. Such an assumption clearly ignores the many factors that contribute to the temporal and spatial variability of ambient concentrations across a typical modeling domain on an hourly basis. In most cases, the seasonal (or quarterly) pairing of monitored and modeled concentrations should sufficiently address situations to which the impacts from modeled emissions are not temporally correlated with background monitored levels.

e. In those cases where adequately representative monitoring data to characterize background concentrations are not available, it may be appropriate to use results from a regional-scale photochemical grid model, or other representative model application, as background concentrations consistent with the considerations discussed above and in consultation with the appropriate reviewing authority (paragraph 3.0(b)).

8.3.3 Recommendations for Multi-Source Areas

a. In multi-source areas, determining the appropriate background concentration involves: (1) characterization of contributions from other sources through adequately representative ambient monitoring data, and (2) identification and characterization of contributions from nearby sources through explicit modeling. A key point here is the interconnectedness of each component in that the question of which nearby sources to include in the cumulative modeling is inextricably linked to the question of what the ambient monitoring data represents within the project area.

b. *Nearby sources:* All sources in the vicinity of the source(s) under consideration for emissions limits that are not adequately represented by ambient monitoring data should be explicitly modeled. EPA's recommended framework for determining an appropriate background concentration [96] should be applied to identify such sources and accurately account for their ambient impacts through explicit modeling.

i. The determination of nearby sources relies on the selection of adequately representative ambient monitoring data (section 8.3.2). The EPA recommends determining the representativeness of the monitoring data through a visual assessment of the modeling domain considering any relevant nearby sources and their respective air quality data. The visual assessment should consider any relevant air quality data such as the proximity of nearby sources to the project source and the ambient monitor, the nearby source's level of emissions with respect to the ambient data, and the dispersion environment (*i.e.,* meteorological patterns, terrain, etc.) of the modeling domain.

ii. Nearby sources not adequately represented by the ambient monitor through visual assessment should undergo further qualitative and quantitative analysis before being explicitly modeled. The EPA recommends evaluating any modeling, monitoring, or emissions data that may be available for the identified nearby sources with respect to possible exceedances of the appropriate SIL or violations to the NAAQS.

iii. The number of nearby sources to be explicitly modeled in the air quality analysis is expected to be few except in unusual

situations. The determination of nearby sources through the application of EPA's recommended framework calls for the exercise of professional judgment by the appropriate reviewing authority (paragraph 3.0(b)) and should be consistent with appropriate EPA modeling guidance.[63] [96] This guidance is not intended to alter the exercise of that judgment or to comprehensively prescribe which sources should be included as nearby sources.

c. For cumulative impact analyses of short-term and annual ambient standards, the nearby sources as well as the project source(s) must be evaluated using an appropriate addendum A model or approved alternative model with the emission input data shown in Table 8–1 or 8–2.

i. When modeling a nearby source that does not have a permit and the emissions limits contained in the SIP for a particular source category is greater than the emissions possible given the source's maximum physical capacity to emit, the ''maximum allowable emissions limit'' for such a nearby source may be calculated as the emissions rate representative of the nearby source's maximum physical capacity to emit, considering its design specifications and allowable fuels and process materials. However, the burden is on the permit applicant to sufficiently document what the maximum physical capacity to emit is for such a nearby source.

ii. It is appropriate to model nearby sources only during those times when they, by their nature, operate at the same time as the primary source(s) or could have impact on the averaging period of concern. Accordingly, it is not necessary to model impacts of a nearby source that does not, by its nature, operate at the same time as the primary source or could have impact on the averaging period of concern, regardless of an identified significant concentration gradient from the nearby source. The burden is on the permit applicant to adequately justify the exclusion of nearby sources to the satisfaction of the appropriate reviewing authority (paragraph 3.0(b)). The following examples illustrate two cases in which a nearby source may be shown not to operate at the same time as the primary source(s) being modeled: (1) Seasonal sources (only used during certain seasons of the year). Such sources would not be modeled as nearby sources during times in which they do not operate; and (2) Emergency backup generators, to the extent that they do not operate simultaneously with the sources that they back up. Such emergency equipment would not be modeled as nearby sources.

d. *Other sources.* That portion of the background attributable to all other sources (*e.g.,* natural, minor, distant major, and unidentified sources) should be accounted for through use of ambient monitoring data and determined by the procedures found in section 8.3.2 in keeping with eliminating or reducing the source-oriented impacts from nearby sources to avoid potential double-counting of modeled and monitored contributions.

8.4 Meteorological Input Data

8.4.1 Discussion

a. This subsection covers meteorological input data for use in dispersion modeling for regulatory applications and is separate from recommendations made for photochemical grid modeling. Recommendations for meteorological data for photochemical grid modeling applications are outlined in the latest version of EPA's *Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5,}$ and Regional Haze*.[64] In cases where Lagrangian models are applied for regulatory purposes, appropriate meteorological inputs should be determined in consultation with the appropriate reviewing authority (paragraph 3.0(b)).

b. The meteorological data used as input to a dispersion model should be selected on the basis of spatial and climatological (temporal) representativeness as well as the ability of the individual parameters selected to characterize the transport and dispersion conditions in the area of concern. The representativeness of the measured data is dependent on numerous factors including, but not limited to: (1) the proximity of the meteorological monitoring site to the area under consideration; (2) the complexity of the terrain; (3) the exposure of the meteorological monitoring site; and (4) the period of time during which data are collected. The spatial representativeness of the data can be adversely affected by large distances between the source and receptors of interest and the complex topographic characteristics of the area. Temporal representativeness is a function of the year-to-year variations in weather conditions. Where appropriate, data representativeness should be viewed in terms of the appropriateness of the data for constructing realistic boundary layer profiles and, where applicable, three-dimensional meteorological fields, as described in paragraphs (c) and (d) of this subsection.

c. The meteorological data should be adequately representative and may be site-specific data (land-based or buoy data for overwater applications), data from a nearby National Weather Service (NWS) or comparable station, or prognostic meteorological data. The implementation of NWS Automated Surface Observing Stations (ASOS) in the early 1990's should not preclude the use of NWS ASOS data if such a station is determined to be representative of the modeled area.[99]

D. Model input data are normally obtained either from the NWS or as part of a site-specific measurement program. State climatology offices, local universities, FAA, military stations, industry, and pollution control agencies may also be sources of such data. In specific cases, prognostic meteorological data may be appropriate for use and obtained from similar sources. Some recommendations and requirements for the use of each type of data are included in this subsection.

8.4.2 Recommendations and Requirements

a. AERMET [100] shall be used to preprocess all meteorological data, be it observed or prognostic, for use with AERMOD in regulatory applications. The AERMINUTE [101] processor, in most cases, should be used to process 1-minute ASOS wind data for input to AERMET when processing NWS ASOS sites in AERMET. When processing prognostic meteorological data for AERMOD, the Mesoscale Model Interface Program (MMIF) [109] should be used to process data for input to AERMET, both for land-based applications and overwater applications. Other methods of processing prognostic meteorological data for input to AERMET should be approved by the appropriate reviewing authority. Additionally, the following meteorological preprocessors are recommended by the EPA: PCRAMMET,[102] MPRM,[103] and METPRO.[104] PCRAMMET is the recommended meteorological data preprocessor for use in applications of OCD employing hourly NWS data. MPRM is the recommended meteorological data preprocessor for applications of OCD employing site-specific meteorological data. METPRO is the recommended meteorological data preprocessor for use with CTDMPLUS.[105]

b. Regulatory application of AERMOD necessitates careful consideration of the meteorological data for input to AERMET. Data representativeness, in the case of AERMOD, means utilizing data of an appropriate type for constructing realistic boundary layer profiles. Of particular importance is the requirement that all meteorological data used as input to AERMOD should be adequately representative of the transport and dispersion within the analysis domain. Where surface conditions vary significantly over the analysis domain, the emphasis in assessing representativeness should be given to adequate characterization of transport and dispersion between the source(s) of concern and areas where maximum design concentrations are anticipated to occur. The EPA recommends that the surface characteristics input to AERMET should be representative of the land cover in the vicinity of the meteorological data, *i.e.,* the location of the meteorological tower for measured data or the representative grid cell for prognostic data. Therefore, the model user should apply the latest version AERSURFACE,[106] [107] where applicable, for determining surface characteristics when processing measured land-based meteorological data through AERMET. In areas where it is not possible to use AERSURFACE output, surface characteristics can be determined using techniques that apply the same analysis as AERSURFACE. In the case of measured meteorological data for overwater applications, AERMET calculates the surface characteristics and AERSURFACE outputs are not needed. In the case of prognostic meteorological data, the surface characteristics associated with the prognostic meteorological model output for the representative grid cell should be used.[108] [109] Furthermore, since the spatial scope of each variable could be different, representativeness should be judged for each variable separately. For example, for a variable such as wind direction, the data should ideally be collected near plume height to be adequately representative, especially for sources located in complex

terrain. Whereas, for a variable such as temperature, data from a station several kilometers away from the source may be considered to be adequately representative. More information about meteorological data, representativeness, and surface characteristics can be found in the AERMOD Implementation Guide.[81]

c. Regulatory application of CTDMPLUS requires the input of multi-level measurements of wind speed, direction, temperature, and turbulence from an appropriately sited meteorological tower. The measurements should be obtained up to the representative plume height(s) of interest. Plume heights of interest can be determined by use of screening procedures such as CTSCREEN.

d. Regulatory application of OCD requires meteorological data over land and over water. The over land or surface data, processed through PCRAMMET [102] or MPRM,[103] that provides hourly stability class, wind direction and speed, ambient temperature, and mixing height, are required. Data over water requires hourly mixing height, relative humidity, air temperature, and water surface temperature. Missing winds are substituted with the surface winds. Vertical wind direction shear, vertical temperature gradient, and turbulence intensities are optional.

e. The model user should acquire enough meteorological data to ensure that worst-case meteorological conditions are adequately represented in the model results. The use of 5 years of adequately representative NWS or comparable meteorological data, at least 1 year of site-specific (either land-based or overwater based), or at least 3 years of prognostic meteorological data, are required. If 1 year or more, up to 5 years, of site-specific data are available, these data are preferred for use in air quality analyses. Depending on completeness of the data record, consecutive years of NWS, site-specific, or prognostic data are preferred. Such data must be subjected to quality assurance procedures as described in section 8.4.4.2.

f. Objective analysis in meteorological modeling is to improve meteorological analyses (the ''*first guess field*'') used as initial conditions for prognostic meteorological models by incorporating information from meteorological observations. Direct and indirect (using remote sensing techniques) observations of temperature, humidity, and wind from surface and radiosonde reports are commonly employed to improve these analysis fields. For long-range transport applications, it is recommended that objective analysis procedures, using direct and indirect meteorological observations, be employed in preparing input fields to produce prognostic meteorological datasets. The length of record of observations should conform to recommendations outlined in paragraph 8.4.2(e) for prognostic meteorological model datasets.

8.4.3 National Weather Service Data

8.4.3.1 Discussion

a. The NWS meteorological data are routinely available and familiar to most model users. Although the NWS does not provide direct measurements of all the needed dispersion model input variables, methods have been developed and successfully used to translate the basic NWS data to the needed model input. Site-specific measurements of model input parameters have been made for many modeling studies, and those methods and techniques are becoming more widely applied, especially in situations such as complex terrain applications, where available NWS data are not adequately representative. However, there are many modeling applications where NWS data are adequately representative and the applications still rely heavily on the NWS data.

b. Many models use the standard hourly weather observations available from the National Centers for Environmental Information (NCEI).[b] These observations are then preprocessed before they can be used in the models. Prior to the advent of ASOS in the early 1990's, the standard ''hourly'' weather observation was a human-based observation reflecting a single 2-minute average generally taken about 10 minutes before the hour. However, beginning in January 2000 for first-order stations and in March 2005 for all stations, the NCEI has archived the 1-minute ASOS wind data (*i.e.,* the rolling 2-minute average winds) for the NWS ASOS sites. The AERMINUTE processor [101] was developed to reduce the number of calm and missing hours in AERMET processing by substituting standard hourly observations with full hourly average winds calculated from 1-minute ASOS wind data.

8.4.3.2 Recommendations

a. The preferred models listed in addendum A all accept, as input, the NWS meteorological data preprocessed into model compatible form. If NWS data are judged to be adequately representative for a specific modeling application, they may be used. The NCEI makes available surface and upper air meteorological data online and in CD–ROM format. Upper air data are also available at the Earth System Research Laboratory Global Systems Divisions website and from NCEI. For the latest websites of available surface and upper air data see reference 100.

b. Although most NWS wind measurements are made at a standard height of 10 m, the actual anemometer height should be used as input to the preferred meteorological processor and model.

c. Standard hourly NWS wind directions are reported to the nearest 10 degrees. Due to the coarse resolution of these data, a specific set of randomly generated numbers has been developed by the EPA and should be used when processing standard hourly NWS data for use in the preferred EPA models to ensure a lack of bias in wind direction assignments within the models.

d. Beginning with year 2000, NCEI began archiving 2-minute winds, reported every minute to the nearest degree for NWS ASOS sites. The AERMINUTE processor was developed to read those winds and calculate hourly average winds for input to AERMET. When such data are available for the NWS ASOS site being processed, the AERMINUTE processor should be used, in most cases, to calculate hourly average wind speed and direction when processing NWS ASOS data for input to AERMOD.[99]

e. Data from universities, FAA, military stations, industry and pollution control agencies may be used if such data are equivalent in accuracy and detail (*e.g.,* siting criteria, frequency of observations, data completeness, etc.) to the NWS data, they are judged to be adequately representative for the particular application, and have undergone quality assurance checks.

f. After valid data retrieval requirements have been met,[110] large number of hours in the record having missing data should be treated according to an established data substitution protocol provided that adequately representative alternative data are available. Data substitution guidance is provided in section 5.3 of reference 110.[110] If no representative alternative data are available for substitution, the absent data should be coded as missing using missing data codes appropriate to the applicable meteorological pre-processor. Appropriate model options for treating missing data, if available in the model, should be employed.

8.4.4 Site-Specific Data

8.4.4.1 Discussion

a. Spatial or geographical representativeness is best achieved by collection of all of the needed model input data in close proximity to the actual site of the source(s). Site-specific measured data are, therefore, preferred as model input, provided that appropriate instrumentation and quality assurance procedures are followed, and that the data collected are adequately representative (free from inappropriate local or microscale influences) and compatible with the input requirements of the model to be used. It should be noted that, while site-specific measurements are frequently made ''on-property'' (*i.e.,* on the source's premises), acquisition of adequately representative site-specific data does not preclude collection of data from a location off property. Conversely, collection of meteorological data on a source's property does not of itself guarantee adequate representativeness. For help in determining representativeness of site-specific measurements, technical guidance [110] is available. Site-specific data should always be reviewed for representativeness and adequacy by an experienced meteorologist, atmospheric scientist, or other qualified scientist in consultation with the appropriate reviewing authority (paragraph 3.0(b)).

8.4.4.2 Recommendations

a. The EPA guidance [110] provides recommendations on the collection and use of site-specific meteorological data. Recommendations on characteristics, siting, and exposure of meteorological instruments and on data recording, processing, completeness requirements, reporting, and archiving are also included. This publication should be used as a supplement to other limited guidance on these subjects.[5 97 111 112] Detailed information on quality assurance is

[b] Formerly the National Climatic Data Center (NCDC).

also available.[113] As a minimum, site-specific measurements of ambient air temperature, transport wind speed and direction, and the variables necessary to estimate atmospheric dispersion should be available in meteorological datasets to be used in modeling. Care should be taken to ensure that meteorological instruments are located to provide an adequately representative characterization of pollutant transport between sources and receptors of interest. The appropriate reviewing authority (paragraph 3.0(b)) is available to help determine the appropriateness of the measurement locations.

i. *Solar radiation measurements.* Total solar radiation or net radiation should be measured with a reliable pyranometer or net radiometer sited and operated in accordance with established site-specific meteorological guidance.[110 113]

ii. *Temperature measurements.* Temperature measurements should be made at standard shelter height (2m) in accordance with established site-specific meteorological guidance.[110]

iii. *Temperature difference measurements.* Temperature difference (DT) measurements should be obtained using matched thermometers or a reliable thermocouple system to achieve adequate accuracy. Siting, probe placement, and operation of DT systems should be based on guidance found in Chapter 3 of reference 110 and such guidance should be followed when obtaining vertical temperature gradient data. AERMET may employ the Bulk Richardson scheme, which requires measurements of temperature difference, in lieu of cloud cover or insolation data. To ensure correct application and acceptance, AERMOD users should consult with the appropriate reviewing authority (paragraph 3.0(b)) before using the Bulk Richardson scheme for their analysis.

iv. *Wind measurements.* For simulation of plume rise and dispersion of a plume emitted from a stack, characterization of the wind profile up through the layer in which the plume disperses is desirable. This is especially important in complex terrain and/or complex wind situations where wind measurements at heights up to hundreds of meters above stack base may be required in some circumstances. For tall stacks when site-specific data are needed, these winds have been obtained traditionally using meteorological sensors mounted on tall towers. A feasible alternative to tall towers is the use of meteorological remote sensing instruments (*e.g.,* acoustic sounders or radar wind profilers) to provide winds aloft, coupled with 10-meter towers to provide the near-surface winds. Note that when site-specific wind measurements are used, AERMOD, at a minimum, requires wind observations at a height above ground between seven times the local surface roughness height and 100 m. (For additional requirements for AERMOD and CTDMPLUS, *see* addendum A.) Specifications for wind measuring instruments and systems are contained in reference 110.

b. All processed site-specific data should be in the form of hourly averages for input to the dispersion model.

i. *Turbulence data.* There are several dispersion models that are capable of using direct measurements of turbulence (wind fluctuations) in the characterization of the vertical and lateral dispersion (*e.g.,* CTDMPLUS or AERMOD). When turbulence data are used to directly characterize the vertical and lateral dispersion, the averaging time for the turbulence measurements should be 1-hour. For technical guidance on processing of turbulence parameters for use in dispersion modeling, refer to the user's guide to the meteorological processor for each model (*see* section 8.4.2(a)).

ii. *Stability categories.* For dispersion models that employ P–G stability categories for the characterization of the vertical and lateral dispersion, the P–G stability categories, as originally defined, couple near-surface measurements of wind speed with subjectively determined insolation assessments based on hourly cloud cover and ceiling height observations. The wind speed measurements are made at or near 10 m. The insolation rate is typically assessed using observations of cloud cover and ceiling height based on criteria outlined by Turner.[77] It is recommended that the P–G stability category be estimated using the Turner method with site-specific wind speed measured at or near 10 m and representative cloud cover and ceiling height. Implementation of the Turner method, as well as considerations in determining representativeness of cloud cover and ceiling height in cases for which site-specific cloud observations are unavailable, may be found in section 6 of reference 110. In the absence of requisite data to implement the Turner method, the solar radiation/delta-T (SRDT) method or wind fluctuation statistics (*i.e.,* the σ_E and σ_A methods) may be used.

iii. The SRDT method, described in section 6.4.4.2 of reference 110, is modified slightly from that published from earlier work [114] and has been evaluated with three site-specific databases.[115] The two methods of stability classification that use wind fluctuation statistics, the σ_E and σ_A methods, are also described in detail in section 6.4.4 of reference 110 (note applicable tables in section 6). For additional information on the wind fluctuation methods, several references are available.[116 117 118 119]

c. *Missing data substitution.* After valid data retrieval requirements have been met,[110] hours in the record having missing data should be treated according to an established data substitution protocol provided that adequately representative alternative data are available. Such protocols are usually part of the approved monitoring program plan. Data substitution guidance is provided in section 5.3 of reference 110. If no representative alternative data are available for substitution, the absent data should be coded as missing, using missing data codes appropriate to the applicable meteorological pre-processor. Appropriate model options for treating missing data, if available in the model, should be employed.

8.4.5 Prognostic Meteorological Data

8.4.5.1 Discussion

a. For some modeling applications, there may not be a representative NWS or comparable meteorological station available (*e.g.,* complex terrain), and it may be cost prohibitive or infeasible to collect adequately representative site-specific data. For these cases, it may be appropriate to use prognostic meteorological data, if deemed adequately representative, in a regulatory modeling application. However, if prognostic meteorological data are not representative of transport and dispersion conditions in the area of concern, the collection of site-specific data is necessary.

b. The EPA has developed a processor, the MMIF,[108] to process MM5 (Mesoscale Model 5) or WRF (Weather Research and Forecasting) model data for input to various models including AERMOD. MMIF can process data for input to AERMET or AERMOD for a single grid cell or multiple grid cells. MMIF output has been found to compare favorably against observed data (site-specific or NWS).[120] Specific guidance on processing MMIF for AERMOD can be found in reference 109109. When using MMIF to process prognostic data for regulatory applications, the data should be processed to generate AERMET inputs and the data subsequently processed through AERMET for input to AERMOD. If an alternative method of processing data for input to AERMET is used, it must be approved by the appropriate reviewing authority (paragraph 3.0(b)).

8.4.5.2 Recommendations

a. *Prognostic model evaluation.* Appropriate effort by the applicant should be devoted to the process of evaluating the prognostic meteorological data. The modeling data should be compared to NWS observational data or other comparable data in an effort to show that the data are adequately replicating the observed meteorological conditions of the time periods modeled. An operational evaluation of the modeling data for all model years (*i.e.,* statistical, graphical) should be completed.[64] The use of output from prognostic mesoscale meteorological models is contingent upon the concurrence with the appropriate reviewing authority (paragraph 3.0(b)) that the data are of acceptable quality, which can be demonstrated through statistical comparisons with meteorological observations aloft and at the surface at several appropriate locations.[64]

b. *Representativeness.* When processing MMIF data for use with AERMOD, the grid cell used for the dispersion modeling should be adequately spatially representative of the analysis domain. In most cases, this may be the grid cell containing the emission source of interest. Since the dispersion modeling may involve multiple sources and the domain may cover several grid cells, depending on grid resolution of the prognostic model, professional judgment may be needed to select the appropriate grid cell to use. In such cases, the selected grid cells should be adequately representative of the entire domain.

c. *Grid resolution.* The grid resolution of the prognostic meteorological data should be considered and evaluated appropriately, particularly for projects involving complex terrain. The operational evaluation of the modeling data should consider whether a finer grid resolution is needed to ensure that the data are representative. The use of output from prognostic mesoscale meteorological

models is contingent upon the concurrence with the appropriate reviewing authority (paragraph 3.0(b)) that the data are of acceptable quality.

8.4.6 Marine Boundary Layer Environments

8.4.6.1 Discussion

a. Calculations of boundary layer parameters for the marine boundary layer present special challenges as the marine boundary layer can be very different from the boundary layer over land. For example, convective conditions can occur in the overnight hours in the marine boundary layer while typically over land, stable conditions occur at night. Also, surface roughness in the marine environment is a function of wave height and wind speed and less static with time than surface roughness over land.

b. While the Offshore and Coastal Dispersion Model (OCD) is the preferred model for overwater applications, there are applications where the use of AERMOD is applicable. These include applications that utilize features of AERMOD not included in OCD (*e.g.,* NO_2 chemistry). Such use of AERMOD would require consultation with the Regional Office and appropriate reviewing authority to ensure that platform downwash and shoreline fumigation are adequately considered in the modeling demonstration.

c. For the reasons stated above, a standalone pre-processor to AERMOD, called AERCOARE [47] was developed to use the Coupled Ocean Atmosphere Response Experiment (COARE) bulk-flux algorithms [48] to bypass AERMET and calculate the boundary layer parameters for input to AERMOD for the marine boundary layer. AERCOARE can process either measurements from water-based sites such as buoys or prognostic data. To better facilitate the use of the COARE algorithms for AERMOD, EPA has included the COARE algorithms into AERMET thus eliminating the need for a standalone pre-processor and ensuring the algorithms are updated as part of routine AERMET updates.

8.4.6.2 Recommendations

a. *Measured data.* For applications in the marine environment that require the use of AERMOD, measured surface data, such as from a buoy or other offshore platform, should be processed in AERMET with the COARE processing option following recommendations in the AERMET User's Guide [100] and AERMOD Implementation Guide.[81] For applications in the marine environment that require the use of OCD, users should use the recommended meteorological pre-processor MPRM.

b. *Prognostic data.* For applications in the marine environment that require the use of AERMOD and prognostic data, the prognostic data should be processed via MMIF for input to AERMET following recommendations in paragraph 8.4.5.1(b) and the guidance found in reference 109.

8.4.7 Treatment of Near-Calms and Calms

8.4.7.1 Discussion

a. Treatment of calm or light and variable wind poses a special problem in modeling applications since steady-state Gaussian plume models assume that concentration is inversely proportional to wind speed, depending on model formulations. Procedures have been developed to prevent the occurrence of overly conservative concentration estimates during periods of calms. These procedures acknowledge that a steady-state Gaussian plume model does not apply during calm conditions, and that our knowledge of wind patterns and plume behavior during these conditions does not, at present, permit the development of a better technique. Therefore, the procedures disregard hours that are identified as calm. The hour is treated as missing and a convention for handling missing hours is recommended. With the advent of the AERMINUTE processor, when processing NWS ASOS data, the inclusion of hourly averaged winds from AERMINUTE will, in some instances, dramatically reduce the number of calm and missing hours, especially when the ASOS wind are derived from a sonic anemometer. To alleviate concerns about these issues, especially those introduced with AERMINUTE, the EPA implemented a wind speed threshold in AERMET for use with ASOS derived winds.[99] [100] Winds below the threshold will be treated as calms.

b. AERMOD, while fundamentally a steady-state Gaussian plume model, contains algorithms for dealing with low wind speed (near calm) conditions. As a result, AERMOD can produce model estimates for conditions when the wind speed may be less than 1 m/s, but still greater than the instrument threshold. Required input to AERMET for site-specific data, the meteorological processor for AERMOD, includes a threshold wind speed and a reference wind speed. The threshold wind speed is the greater of the threshold of the instrument used to collect the wind speed data or wind direction sensor.[110] The reference wind speed is selected by the model as the lowest level of non-missing wind speed and direction data where the speed is greater than the wind speed threshold, and the height of the measurement is between seven times the local surface roughness length and 100 m. If the only valid observation of the reference wind speed between these heights is less than the threshold, the hour is considered calm, and no concentration is calculated. None of the observed wind speeds in a measured wind profile that are less than the threshold speed are used in construction of the modeled wind speed profile in AERMOD.

8.4.7.2 Recommendations

a. Hourly concentrations calculated with steady-state Gaussian plume models using calms should not be considered valid; the wind and concentration estimates for these hours should be disregarded and considered to be missing. Model predicted concentrations for 3-, 8-, and 24-hour averages should be calculated by dividing the sum of the hourly concentrations for the period by the number of valid or non-missing hours. If the total number of valid hours is less than 18 for 24-hour averages, less than 6 for 8-hour averages, or less than 3 for 3-hour averages, the total concentration should be divided by 18 for the 24-hour average, 6 for the 8-hour average, and 3 for the 3-hour average. For annual averages, the sum of all valid hourly concentrations is divided by the number of non-calm hours during the year. AERMOD has been coded to implement these instructions. For hours that are calm or missing, the AERMOD hourly concentrations will be zero. For other models listed in addendum A, a post-processor computer program, CALMPRO [121] has been prepared, is available on the EPA's SCRAM website (section 2.3), and should be used.

b. Stagnant conditions that include extended periods of calms often produce high concentrations over wide areas for relatively long averaging periods. The standard steady-state Gaussian plume models are often not applicable to such situations. When stagnation conditions are of concern, other modeling techniques should be considered on a case-by-case basis (*see* also section 7.2.1.2).

c. When used in steady-state Gaussian plume models other than AERMOD, measured site-specific wind speeds of less than 1 m/s but higher than the response threshold of the instrument should be input as 1 m/s; the corresponding wind direction should also be input. Wind observations below the response threshold of the instrument should be set to zero, with the input file in ASCII format. For input to AERMOD, no such adjustment should be made to the site-specific wind data, as AERMOD has algorithms to account for light or variable winds as discussed in section 8.4.6.1(a). For NWS ASOS data, see the AERMET User's Guide [100] for guidance on wind speed thresholds. For prognostic data, see the latest guidance [109] for thresholds. Observations with wind speeds less than the threshold are considered calm, and no concentration is calculated. In all cases involving steady-state Gaussian plume models, calm hours should be treated as missing, and concentrations should be calculated as in paragraph (a) of this subsection.

9.0 Regulatory Application of Models

9.1 Discussion

a. Standardized procedures are valuable in the review of air quality modeling and data analyses conducted to support SIP submittals and revisions, NSR, or other EPA requirements to ensure consistency in their regulatory application. This section recommends procedures specific to NSR that facilitate some degree of standardization while at the same time allowing the flexibility needed to assure the technically best analysis for each regulatory application. For SIP attainment demonstrations, refer to the appropriate EPA guidance [53] [64] for the recommended procedures.

b. Air quality model estimates, especially with the support of measured air quality data, are the preferred basis for air quality demonstrations. A number of actions have been taken to ensure that the best air quality model is used correctly for each regulatory application and that it is not arbitrarily imposed.

• First, the *Guideline* clearly recommends that the most appropriate model be used in each case. Preferred models are identified, based on a number of factors, for many uses.

• Second, the preferred models have been subjected to a systematic performance evaluation and a scientific peer review. Statistical performance measures, including measures of difference (or residuals) such as bias, variance of difference and gross variability of the difference, and measures of correlation such as time, space, and time and space combined, as described in section 2.1.1, were generally followed.

• Third, more specific information has been provided for considering the incorporation of new models into the *Guideline* (section 3.1), and the *Guideline* contains procedures for justifying the case-by-case use of alternative models and obtaining EPA approval (section 3.2).

c. Air quality modeling is the preferred basis for air quality demonstrations. Nevertheless, there are rare circumstances where the performance of the preferred air quality model may be shown to be less than reasonably acceptable or where no preferred air quality model, screening model or technique, or alternative model are suitable for the situation. In these unique instances, there is the possibility of assuring compliance and establishing emissions limits for an existing source solely on the basis of observed air quality data in lieu of an air quality modeling analysis. Comprehensive air quality monitoring in the vicinity of the existing source with proposed modifications will be necessary in these cases. The same attention should be given to the detailed analyses of the air quality data as would be applied to a model performance evaluation.

d. The current levels and forms of the NAAQS for the six criteria pollutants can be found on the EPA's NAAQS website at *https://www.epa.gov/criteria-air-pollutants.* As required by the CAA, the NAAQS are subjected to extensive review every 5 years and the standards, including the level and the form, may be revised as part of that review. The criteria pollutants have either long-term (annual or quarterly) and/or short-term (24-hour or less) forms that are not to be exceeded more than a certain frequency over a period of time (*e.g.,* no exceedance on a rolling 3-month average, no more than once per year, or no more than once per year averaged over 3 years), are averaged over a period of time (*e.g.,* an annual mean or an annual mean averaged over 3 years), or are some percentile that is averaged over a period of time (*e.g.,* annual 99th or 98th percentile averaged over 3 years). The 3-year period for ambient monitoring design values does not dictate the length of the data periods recommended for modeling (*i.e.,* 5 years of NWS meteorological data, at least 1 year of site-specific, or at least 3 years of prognostic meteorological data).

e. This section discusses general recommendations on the regulatory application of models for the purposes of NSR, including PSD permitting, and particularly for estimating design concentration(s), appropriately comparing these estimates to NAAQS and PSD increments, and developing emissions limits. This section also provides the criteria necessary for considering use of an analysis based on measured ambient data in lieu of modeling as the sole basis for demonstrating compliance with NAAQS and PSD increments.

9.2 Recommendations

9.2.1 Modeling Protocol

a. Every effort should be made by the appropriate reviewing authority (paragraph 3.0(b)) to meet with all parties involved in either a SIP submission or revision or a PSD permit application prior to the start of any work on such a project. During this meeting, a protocol should be established between the preparing and reviewing parties to define the procedures to be followed, the data to be collected, the model to be used, and the analysis of the source and concentration data to be performed. An example of the content for such an effort is contained in the Air Quality Analysis Checklist posted on the EPA's SCRAM website (section 2.3). This checklist suggests the appropriate level of detail to assess the air quality resulting from the proposed action. Special cases may require additional data collection or analysis and this should be determined and agreed upon at the pre-application meeting. The protocol should be written and agreed upon by the parties concerned, although it is not intended that this protocol be a binding, formal legal document. Changes in such a protocol or deviations from the protocol are often necessary as the data collection and analysis progresses. However, the protocol establishes a common understanding of how the demonstration required to meet regulatory requirements will be made.

9.2.2 Design Concentration and Receptor Sites

a. Under the PSD permitting program, an air quality analysis for criteria pollutants is required to demonstrate that emissions from the construction or operation of a proposed new source or modification will not cause or contribute to a violation of the NAAQS or PSD increments.

i. For a NAAQS assessment, the design concentration is the combination of the appropriate background concentration (section 8.3) with the estimated modeled impact of the proposed source. The NAAQS design concentration is then compared to the applicable NAAQS.

ii. For a PSD increment assessment, the design concentration includes impacts occurring after the appropriate baseline date from all increment-consuming and increment-expanding sources. The PSD increment design concentration is then compared to the applicable PSD increment.

b. The specific form of the NAAQS for the pollutant(s) of concern will also influence how the background and modeled data should be combined for appropriate comparison with the respective NAAQS in such a modeling demonstration. Given the potential for revision of the form of the NAAQS and the complexities of combining background and modeled data, specific details on this process can be found in the applicable modeling guidance available on the EPA's SCRAM website (section 2.3). Modeled concentrations should not be rounded before comparing the resulting design concentration to the NAAQS or PSD increments. Ambient monitoring and dispersion modeling address different issues and needs relative to each aspect of the overall air quality assessment.

c. The PSD increments for criteria pollutants are listed in 40 CFR 52.21(c) and 40 CFR 51.166(c). For short-term increments, these maximum allowable increases in pollutant concentrations may be exceeded once per year at each site, while the annual increment may not be exceeded. The highest, second-highest increase in estimated concentrations for the short-term averages, as determined by a model, must be less than or equal to the permitted increment. The modeled annual averages must not exceed the increment.

d. Receptor sites for refined dispersion modeling should be located within the modeling domain (section 8.1). In designing a receptor network, the emphasis should be placed on receptor density and location, not total number of receptors. Typically, the density of receptor sites should be progressively more resolved near the new or modifying source, areas of interest, and areas with the highest concentrations with sufficient detail to determine where possible violations of a NAAQS or PSD increments are most likely to occur. The placement of receptor sites should be determined on a case-by-case basis, taking into consideration the source characteristics, topography, climatology, and monitor sites. Locations of particular importance include: (1) the area of maximum impact of the point source; (2) the area of maximum impact of nearby sources; and (3) the area where all sources combine to cause maximum impact. Depending on the complexities of the source and the environment to which the source is located, a dense array of receptors may be required in some cases. In order to avoid unreasonably large computer runs due to an excessively large array of receptors, it is often desirable to model the area twice. The first model run would use a moderate number of receptors more resolved near the new or modifying source and over areas of interest. The second model run would modify the receptor network from the first model run with a denser array of receptors in areas showing potential for high concentrations and possible violations, as indicated by the results of the first model run. Accordingly, the EPA neither anticipates nor encourages that numerous iterations of modeling runs be made to continually refine the receptor network.

9.2.3 NAAQS and PSD Increments Compliance Demonstrations for New or Modifying Sources

a. As described in this subsection, the recommended procedure for conducting either a NAAQS or PSD increments assessment under PSD permitting is a multi-stage approach that includes the following two stages:

i. The EPA describes the first stage as a single-source impact analysis, since this stage involves considering only the impact of the new or modifying source. There are two possible levels of detail in conducting a single-source impact analysis with the model user beginning with use of a screening model and proceeding to use of a refined model as necessary.

ii. The EPA describes the second stage as a cumulative impact analysis, since it takes into account all sources affecting the air quality in an area. In addition to the project source impact, this stage includes consideration of background, which includes contributions from nearby sources and other sources (*e.g.,* natural, minor, distant major, and unidentified sources).

b. Each stage should involve increasing complexity and details, as required, to fully demonstrate that a new or modifying source will not cause or contribute to a violation of any NAAQS or PSD increment. As such, starting with a single-source impact analysis is recommended because, where the analysis at this stage is sufficient to demonstrate that a source will not cause or contribute to any potential violation, this may alleviate the need for a more time-consuming and comprehensive cumulative modeling analysis.

c. The single-source impact analysis, or first stage of an air quality analysis, should begin by determining the potential of a proposed new or modifying source to cause or contribute to a NAAQS or PSD increment violation. In certain circumstances, a screening model or technique may be used instead of the preferred model because it will provide estimated worst-case ambient impacts from the proposed new or modifying source. If these worst case ambient concentration estimates indicate that the source will not cause or contribute to any potential violation of a NAAQS or PSD increment, then the screening analysis should generally be sufficient for the required demonstration under PSD. If the ambient concentration estimates indicate that the source's emissions have the potential to cause or contribute to a violation, then the use of a refined model to estimate the source's impact should be pursued. The refined modeling analysis should use a model or technique consistent with the *Guideline* (either a preferred model or technique or an alternative model or technique) and follow the requirements and recommendations for model inputs outlined in section 8. If the ambient concentration increase predicted with refined modeling indicates that the source will not cause or contribute to any potential violation of a NAAQS or PSD increment, then the refined analysis should generally be sufficient for the required demonstration under PSD. However, if the ambient concentration estimates from the refined modeling analysis indicate that the source's emissions have the potential to cause or contribute to a violation, then a cumulative impact analysis should be undertaken. The receptors that indicate the location of significant ambient impacts should be used to define the modeling domain for use in the cumulative impact analysis (section 8.2.2).

d. The cumulative impact analysis, or the second stage of an air quality analysis, should be conducted with the same refined model or technique to characterize the project source and then include the appropriate background concentrations (section 8.3). The resulting design concentrations should be used to determine whether the source will cause or contribute to a NAAQS or PSD increment violation. This determination should be based on: (1) The appropriate design concentration for each applicable NAAQS (and averaging period); and (2) whether the source's emissions cause or contribute to a violation at the time and location of any modeled violation (*i.e.,* when and where the predicted design concentration is greater than the NAAQS). For PSD increments, the cumulative impact analysis should also consider the amount of the air quality increment that has already been consumed by other sources, or, conversely, whether increment has expanded relative to the baseline concentration. Therefore, the applicant should model the existing or permitted nearby increment-consuming and increment-expanding sources, rather than using past modeling analyses of those sources as part of background concentration. This would permit the use of newly acquired data or improved modeling techniques if such data and/or techniques have become available since the last source was permitted.

9.2.3.1 Considerations in Developing Emissions Limits

a. Emissions limits and resulting control requirements should be established to provide for compliance with each applicable NAAQS (and averaging period) and PSD increment. It is possible that multiple emissions limits will be required for a source to demonstrate compliance with several criteria pollutants (and averaging periods) and PSD increments. Case-by-case determinations must be made as to the appropriate form of the limits, *i.e.,* whether the emissions limits restrict the emission factor (*e.g.,* limiting lb/MMBTU), the emission rate (*e.g.,* lb/hr), or both. The appropriate reviewing authority (paragraph 3.0(b)) and appropriate EPA guidance should be consulted to determine the appropriate emissions limits on a case-by-case basis.

9.2.4 Use of Measured Data in Lieu of Model Estimates

a. As described throughout the *Guideline,* modeling is the preferred method for demonstrating compliance with the NAAQS and PSD increments and for determining the most appropriate emissions limits for new and existing sources. When a preferred model or adequately justified and approved alternative model is available, model results, including the appropriate background, are sufficient for air quality demonstrations and establishing emissions limits, if necessary. In instances when the modeling technique available is only a screening technique, the addition of air quality monitoring data to the analysis may lend credence to the model results. However, air quality monitoring data alone will normally not be acceptable as the sole basis for demonstrating compliance with the NAAQS and PSD increments or for determining emissions limits.

b. There may be rare circumstances where the performance of the preferred air quality model will be shown to be less than reasonably acceptable when compared with air quality monitoring data measured in the vicinity of an existing source. Additionally, there may not be an applicable preferred air quality model, screening technique, or justifiable alternative model suitable for the situation. In these unique instances, there may be the possibility of establishing emissions limits and demonstrating compliance with the NAAQS and PSD increments solely on the basis of analysis of observed air quality data in lieu of an air quality modeling analysis. However, only in the case of a modification to an existing source should air quality monitoring data alone be a basis for determining adequate emissions limits or for demonstration that the modification will not cause or contribute to a violation of any NAAQS or PSD increment.

c. The following items should be considered prior to the acceptance of an analysis of measured air quality data as the sole basis for an air quality demonstration or determining an emissions limit:

i. Does a monitoring network exist for the pollutants and averaging times of concern in the vicinity of the existing source?

ii. Has the monitoring network been designed to locate points of maximum concentration?

iii. Do the monitoring network and the data reduction and storage procedures meet EPA monitoring and quality assurance requirements?

iv. Do the dataset and the analysis allow impact of the most important individual sources to be identified if more than one source or emission point is involved?

v. Is at least one full year of valid ambient data available?

vi. Can it be demonstrated through the comparison of monitored data with model results that available air quality models and techniques are not applicable?

d. Comprehensive air quality monitoring in the area affected by the existing source with proposed modifications will be necessary in these cases. Additional meteorological monitoring may also be necessary. The appropriate number of air quality and meteorological monitors from a scientific and technical standpoint is a function of the situation being considered. The source configuration, terrain configuration, and meteorological variations all have an impact on number and optimal placement of monitors. Decisions on the monitoring network appropriate for this type of analysis can only be made on a case-by-case basis.

e. Sources should obtain approval from the appropriate reviewing authority (paragraph 3.0(b)) and the EPA Regional Office for the monitoring network prior to the start of monitoring. A monitoring protocol agreed to by all parties involved is necessary to assure that ambient data are collected in a consistent and appropriate manner. The design of the network, the number, type, and location of the monitors, the sampling period, averaging time, as well as the need for meteorological monitoring or the use of mobile sampling or plume tracking techniques, should all be specified in the protocol and agreed upon prior to start-up of the network.

f. Given the uniqueness and complexities of these rare circumstances, the procedures can only be established on a case-by-case basis for analyzing the source's emissions data and the measured air quality monitoring data, and for projecting with a reasoned basis

the air quality impact of a proposed modification to an existing source in order to demonstrate that emissions from the construction or operation of the modification will not cause or contribute to a violation of the applicable NAAQS and PSD increment, and to determine adequate emissions limits. The same attention should be given to the detailed analyses of the air quality data as would be applied to a comprehensive model performance evaluation. In some cases, the monitoring data collected for use in the performance evaluation of preferred air quality models, screening technique, or existing alternative models may help inform the development of a suitable new alternative model. Early coordination with the appropriate reviewing authority (paragraph 3.0(b)) and the EPA Regional Office is fundamental with respect to any potential use of measured data in lieu of model estimates.

10.0 References

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Addendum A to Appendix W of Part 51—Summaries of Preferred Air Quality Models

Table of Contents

A.0 Introduction and Availability

(1) This appendix summarizes key features of refined air quality models preferred for specific regulatory applications. For each model, information is provided on availability, approximate cost (where applicable), regulatory use, data input, output format and options, simulation of atmospheric physics, and accuracy. These models may be used without a formal demonstration of applicability provided they satisfy the recommendations for regulatory use; not all options in the models are necessarily recommended for regulatory use.

(2) These models have been subjected to a performance evaluation using comparisons with observed air quality data. Where possible, the models contained herein have been subjected to evaluation exercises, including: (1) statistical performance tests recommended by the American Meteorological Society, and (2) peer scientific reviews. The models in this appendix have been selected on the basis of the results of the model evaluations, experience with previous use, familiarity of the model to various air quality programs, and the costs and resource requirements for use.

(3) Codes and documentation for all models listed in this addendum are available from the EPA's Support Center for Regulatory Air Models (SCRAM) website at *https://www.epa.gov/scram.* Codes and documentation may also be available from the National Technical Information Service (NTIS), *https://www.ntis.gov,* and, when available, are referenced with the appropriate NTIS accession number.

A.1 AERMOD (AMS/EPA Regulatory Model)

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Availability

The model codes and associated documentation are available on EPA's SCRAM website (paragraph A.0(3)).

Abstract

AERMOD is a steady-state plume dispersion model for assessment of pollutant concentrations from a variety of sources. AERMOD simulates transport and dispersion from multiple point, area, volume, and line sources based on an up-to-date characterization of the atmospheric boundary layer. Sources may be located in rural or urban areas, and receptors may be located in simple or complex terrain. AERMOD accounts for building wake effects (*i.e.,* plume downwash) based on the PRIME building downwash algorithms. The model employs hourly sequential preprocessed meteorological data to estimate concentrations for averaging times from 1-hour to 1-year (also multiple years). AERMOD can be used to estimate the concentrations of nonreactive pollutants from highway traffic. AERMOD also handles unique modeling problems associated with aluminum reduction plants, and other industrial sources where plume rise and downwash effects from stationary buoyant line sources are important. AERMOD is designed to operate in concert with two pre-processor codes: AERMET processes meteorological data for input to AERMOD, and AERMAP processes terrain elevation data and generates receptor and hill height information for input to AERMOD.

a. Regulatory Use

(1) AERMOD is appropriate for the following applications:

- Point, volume, and area sources;
- Buoyant, elevated line sources (*e.g.,* aluminum reduction plants);
- Mobile sources;
- Surface, near-surface, and elevated releases;
- Rural or urban areas;
- Simple and complex terrain;
- Transport distances over which steady-state assumptions are appropriate, up to 50 km;
- 1-hour to annual averaging times,
- Continuous toxic air emissions; and,
- Applications in the marine boundary layer environment where the effects of shoreline fumigation and/or platform downwash are adequately assessed or are not applicable.

(2) For regulatory applications of AERMOD, the regulatory default option should be set, *i.e.,* the parameter DFAULT should be employed in the MODELOPT record in the COntrol Pathway. The DFAULT option requires the use of meteorological data processed with the regulatory options in AERMET, the use of terrain elevation data processed through the AERMAP terrain processor, stack-tip downwash, sequential date checking, and does not permit the use of the model in the SCREEN mode. In the regulatory default mode, pollutant half-life or decay options are not employed, except in the case of an urban source of sulfur dioxide where a 4-hour half-life is applied. Terrain elevation data from the U.S. Geological Survey (USGS) 7.5-Minute Digital Elevation Model (DEM), or equivalent (approx. 30-meter resolution and finer), (processed through AERMAP) should be used in all applications. Starting in 2011, data from the 3D Elevation Program (3DEP, *https://apps.nationalmap.gov/downloader*), formerly the National Elevation Dataset (NED), can also be used in AERMOD, which includes a range of resolutions, from 1-m to 2 arc seconds and such high resolution would always be preferred. In some cases, exceptions from the terrain data requirement may be made in consultation with the appropriate reviewing authority (paragraph 3.0(b)).

b. Input Requirements

(1) *Source data:* Required inputs include source type, location, emission rate, stack height, stack inside diameter, stack gas exit velocity, stack gas exit temperature, area and volume source dimensions, and source base elevation. For point sources subject to the influence of building downwash, direction-specific building dimensions (processed through the BPIPPRM building processor) should be input. Variable emission rates are optional. Buoyant line sources require coordinates of the end points of the line, release height, emission rate, average line source width, average building width, average spacing between buildings, and average line source buoyancy parameter. For mobile sources, traffic volume; emission factor, source height, and mixing zone width are needed to determine appropriate model inputs.

(2) *Meteorological data:* The AERMET meteorological preprocessor requires input of surface characteristics, including surface roughness (zo), Bowen ratio, and albedo, as well as, hourly observations of wind speed between 7zo and 100 m (reference wind speed measurement from which a vertical profile can be developed), wind direction, cloud cover, and temperature between zo and 100 m (reference temperature measurement from which a vertical profile can be developed). Meteorological data can be in the form of observed data or prognostic modeled data as discussed in paragraph 8.4.1(d). Surface characteristics may be varied by wind sector and by season or month. When using observed meteorological data, a morning sounding (in National Weather Service format) from a representative upper air station is required. Latitude, longitude, and time zone of the surface, site-specific or prognostic data (if applicable) and upper air meteorological stations are required. The wind speed starting threshold is also required in AERMET for applications involving site-specific data. When using prognostic data, modeled profiles of temperature and winds are input to AERMET. These can be hourly or a time that represents a morning sounding. Additionally, measured profiles of wind, temperature, vertical and lateral turbulence may be required in certain applications (*e.g.,* in complex terrain) to adequately represent the meteorology affecting plume transport and dispersion. Optionally, measurements of solar and/or net radiation may be input to AERMET. Two files are produced by the AERMET meteorological preprocessor for input to the AERMOD dispersion model. When using observed data, the surface file contains observed and calculated surface variables, one record per hour. For applications with multi-level site-specific meteorological data, the profile contains the observations made at each level of the meteorological tower (or remote sensor). When using prognostic data, the surface file contains surface variables calculated by the prognostic model and AERMET. The profile file contains the observations made at each level of a meteorological tower (or remote sensor), the one-level observations taken from other representative data (*e.g.,* National Weather Service surface observations), one record per level per hour, or in the case of prognostic data, the prognostic modeled values of temperature and winds at user-specified levels.

(i) Data used as input to AERMET should possess an adequate degree of representativeness to ensure that the wind, temperature and turbulence profiles derived by AERMOD are both laterally and vertically representative of the source impact area. The adequacy of input data should be judged independently for each variable. The values for surface roughness, Bowen ratio, and albedo should reflect the surface characteristics in the vicinity of the meteorological tower or representative grid cell when using prognostic data, and should be adequately representative of the modeling domain. Finally, the primary atmospheric input variables, including wind speed and direction, ambient temperature, cloud cover, and a morning upper air sounding, should also be adequately representative of the source area when using observed data.

(ii) For applications involving the use of site-specific meteorological data that includes turbulences parameters (*i.e.,* sigma-theta and/or sigma-w), the application of the ADJ_U* option in AERMET would require approval as an alternative model application under section 3.2.

(iii) For recommendations regarding the length of meteorological record needed to perform a regulatory analysis with AERMOD, *see* section 8.4.2.

(3) Receptor data: Receptor coordinates, elevations, height above ground, and hill height scales are produced by the AERMAP terrain preprocessor for input to AERMOD. Discrete receptors and/or multiple receptor grids, Cartesian and/or polar, may be employed in AERMOD. AERMAP requires input of DEM or 3DEP terrain data produced by the USGS, or other equivalent data. AERMAP can be used optionally to estimate source elevations.

c. Output

Printed output options include input information, high concentration summary tables by receptor for user-specified averaging periods, maximum concentration summary tables, and concurrent values summarized by receptor for each day processed. Optional output files can be generated for: a listing of occurrences of exceedances of user-specified threshold value; a listing of concurrent (raw) results at each receptor for each hour modeled, suitable for post-processing; a listing of design values that can be imported into graphics software for plotting contours; a listing of results suitable for NAAQS analyses including NAAQS exceedances and culpability analyses; an unformatted listing of raw results above a threshold value with a special structure for use with the TOXX model component of TOXST; a listing of concentrations by rank (*e.g.,* for use in quantile-quantile plots); and a listing of concentrations, including arc-maximum normalized concentrations, suitable for model evaluation studies.

d. Type of Model

AERMOD is a steady-state plume model, using Gaussian distributions in the vertical and horizontal for stable conditions, and in the horizontal for convective conditions. The vertical concentration distribution for convective conditions results from an assumed bi-Gaussian probability density function of the vertical velocity.

e. Pollutant Types

AERMOD is applicable to primary pollutants and continuous releases of toxic and hazardous waste pollutants. Chemical transformation is treated by simple exponential decay.

f. Source-Receptor Relationships

AERMOD applies user-specified locations for sources and receptors. Actual separation between each source-receptor pair is used. Source and receptor elevations are user input or are determined by AERMAP using USGS DEM or 3DEP terrain data. Receptors may be

located at user-specified heights above ground level.

g. Plume Behavior

(1) In the convective boundary layer (CBL), the transport and dispersion of a plume is characterized as the superposition of three modeled plumes: (1) the direct plume (from the stack); (2) the indirect plume; and (3) the penetrated plume, where the indirect plume accounts for the lofting of a buoyant plume near the top of the boundary layer, and the penetrated plume accounts for the portion of a plume that, due to its buoyancy, penetrates above the mixed layer, but can disperse downward and re-enter the mixed layer. In the CBL, plume rise is superposed on the displacements by random convective velocities (Weil, *et al.,* 1997).

(2) In the stable boundary layer, plume rise is estimated using an iterative approach to account for height-dependent lapse rates, similar to that in the CTDMPLUS model (*see* A.2 in this appendix).

(3) Stack-tip downwash and buoyancy induced dispersion effects are modeled. Building wake effects are simulated for stacks subject to building downwash using the methods contained in the PRIME downwash algorithms (Schulman, *et al.,* 2000). For plume rise affected by the presence of a building, the PRIME downwash algorithm uses a numerical solution of the mass, energy and momentum conservation laws (Zhang and Ghoniem, 1993). Streamline deflection and the position of the stack relative to the building affect plume trajectory and dispersion. Enhanced dispersion is based on the approach of Weil (1996). Plume mass captured by the cavity is well-mixed within the cavity. The captured plume mass is re-emitted to the far wake as a volume source.

(4) For elevated terrain, AERMOD incorporates the concept of the critical dividing streamline height, in which flow below this height remains horizontal, and flow above this height tends to rise up and over terrain (Snyder, *et al.,* 1985). Plume concentration estimates are the weighted sum of these two limiting plume states. However, consistent with the steady-state assumption of uniform horizontal wind direction over the modeling domain, straight-line plume trajectories are assumed, with adjustment in the plume/receptor geometry used to account for the terrain effects.

h. Horizontal Winds

Vertical profiles of wind are calculated for each hour based on measurements and surface-layer similarity (scaling) relationships. At a given height above ground, for a given hour, winds are assumed constant over the modeling domain. The effect of the vertical variation in horizontal wind speed on dispersion is accounted for through simple averaging over the plume depth.

i. Vertical Wind Speed

In convective conditions, the effects of random vertical updraft and downdraft velocities are simulated with a bi-Gaussian probability density function. In both convective and stable conditions, the mean vertical wind speed is assumed equal to zero.

j. Horizontal Dispersion

Gaussian horizontal dispersion coefficients are estimated as continuous functions of the parameterized (or measured) ambient lateral turbulence and also account for buoyancy-induced and building wake-induced turbulence. Vertical profiles of lateral turbulence are developed from measurements and similarity (scaling) relationships. Effective turbulence values are determined from the portion of the vertical profile of lateral turbulence between the plume height and the receptor height. The effective lateral turbulence is then used to estimate horizontal dispersion.

k. Vertical Dispersion

In the stable boundary layer, Gaussian vertical dispersion coefficients are estimated as continuous functions of parameterized vertical turbulence. In the convective boundary layer, vertical dispersion is characterized by a bi-Gaussian probability density function and is also estimated as a continuous function of parameterized vertical turbulence. Vertical turbulence profiles are developed from measurements and similarity (scaling) relationships. These turbulence profiles account for both convective and mechanical turbulence. Effective turbulence values are determined from the portion of the vertical profile of vertical turbulence between the plume height and the receptor height. The effective vertical turbulence is then used to estimate vertical dispersion.

l. Chemical Transformation

Chemical transformations are generally not treated by AERMOD. However, AERMOD does contain an option to treat chemical transformation using simple exponential decay, although this option is typically not used in regulatory applications except for sources of sulfur dioxide in urban areas. Either a decay coefficient or a half-life is input by the user. Note also that the Generic Reaction Set Method, Plume Volume Molar Ratio Method and the Ozone Limiting Method (section 4.2.3.4) for NO_2 analyses are available.

m. Physical Removal

AERMOD can be used to treat dry and wet deposition for both gases and particles. Currently, Method 1 particle deposition is available for regulatory applications. Method 2 particle deposition and gas deposition are currently alpha options and not available for regulatory applications

n. Evaluation Studies

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Brode, R.W., 2002. Implementation and Evaluation of PRIME in AERMOD. Preprints of the 12th Joint Conference on Applications of Air Pollution Meteorology, May 20–24, 2002; American Meteorological Society, Boston, MA.

Brode, R.W., 2004. Implementation and Evaluation of Bulk Richardson Number Scheme in AERMOD. 13th Joint Conference on Applications of Air Pollution Meteorology, August 23–26, 2004; American Meteorological Society, Boston, MA.

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Heist, D., *et al.,* 2023. Integration of RLINE dispersion model into EPA's AERMOD: updated formulation and evaluations. *Journal of the Air & Waste Management Association,* Manuscript submitted for publication.

Carruthers, D.J.; Stocker, J.R.; Ellis, A.; Seaton, M.D.; Smith, SE Evaluation of an explicit NOx chemistry method in AERMOD; *Journal of the Air & Waste Management Association*. 2017, 67 (6), 702–712; DOI:10.1080/10962247.2017.1280096.

Environmental Protection Agency, 2023. Technical Support Document (TSD) for Adoption of the Generic Reaction Set Method (GRSM) as a Regulatory Non-Default Tier-3 NO2 Screening Option. Publication No. EPA–454/R–23–009. Office of Air Quality Planning & Standards, Research Triangle Park, NC.

A.2 CTDMPLUS (Complex Terrain Dispersion Model Plus Algorithms for Unstable Situations)

References

Perry, S.G., D.J. Burns, L.H. Adams, R.J. Paine, M.G. Dennis, M.T. Mills, D.G. Strimaitis, R.J. Yamartino and E.M. Insley, 1989. User's Guide to the Complex Terrain Dispersion Model Plus Algorithms for Unstable Situations (CTDMPLUS). Volume 1: Model Descriptions and User Instructions. EPA Publication No. EPA–600/8–89–041. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 89–181424).

Perry, S.G., 1992. CTDMPLUS: A Dispersion Model for Sources near Complex Topography. Part I: Technical Formulations. *Journal of Applied Meteorology,* 31(7): 633–645.

Availability

The model codes and associated documentation are available on the EPA's SCRAM website (paragraph A.0(3)).

Abstract

CTDMPLUS is a refined point source Gaussian air quality model for use in all stability conditions for complex terrain applications. The model contains, in its entirety, the technology of CTDM for stable and neutral conditions. However, CTDMPLUS can also simulate daytime, unstable conditions, and has a number of additional capabilities for improved user friendliness. Its use of meteorological data

and terrain information is different from other EPA models; considerable detail for both types of input data is required and is supplied by preprocessors specifically designed for CTDMPLUS. CTDMPLUS requires the parameterization of individual hill shapes using the terrain preprocessor and the association of each model receptor with a particular hill.

a. Regulatory Use

CTDMPLUS is appropriate for the following applications:

- Elevated point sources;
- Terrain elevations above stack top;
- Rural or urban areas;
- Transport distances less than 50 kilometers; and
- 1-hour to annual averaging times when used with a post-processor program such as CHAVG.

b. Input Requirements

(1) Source data: For each source, user supplies source location, height, stack diameter, stack exit velocity, stack exit temperature, and emission rate; if variable emissions are appropriate, the user supplies hourly values for emission rate, stack exit velocity, and stack exit temperature.

(2) Meteorological data: For applications of CTDMPLUS, multiple level (typically three or more) measurements of wind speed and direction, temperature and turbulence (wind fluctuation statistics) are required to create the basic meteorological data file (''PROFILE''). Such measurements should be obtained up to the representative plume height(s) of interest (*i.e.,* the plume height(s) under those conditions important to the determination of the design concentration). The representative plume height(s) of interest should be determined using an appropriate complex terrain screening procedure (*e.g.,* CTSCREEN) and should be documented in the monitoring/modeling protocol. The necessary meteorological measurements should be obtained from an appropriately sited meteorological tower augmented by SODAR and/or RASS if the representative plume height(s) of interest is above the levels represented by the tower measurements. Meteorological preprocessors then create a SURFACE data file (hourly values of mixed layer heights, surface friction velocity, Monin-Obukhov length and surface roughness length) and a RAWINsonde data file (upper air measurements of pressure, temperature, wind direction, and wind speed).

(3) Receptor data: receptor names (up to 400) and coordinates, and hill number (each receptor must have a hill number assigned).

(4) Terrain data: user inputs digitized contour information to the terrain preprocessor which creates the TERRAIN data file (for up to 25 hills).

c. Output

(1) When CTDMPLUS is run, it produces a concentration file, in either binary or text format (user's choice), and a list file containing a verification of model inputs, *i.e.,*

- Input meteorological data from ''SURFACE'' and ''PROFILE,''
- Stack data for each source,
- Terrain information,
- Receptor information, and
- Source-receptor location (line printer map).

(2) In addition, if the case-study option is selected, the listing includes:

- Meteorological variables at plume height,
- Geometrical relationships between the source and the hill, and
- Plume characteristics at each receptor, *i.e.,*

—Distance in along-flow and cross flow direction
—Effective plume-receptor height difference
—Effective σy & σz values, both flat terrain and hill induced (the difference shows the effect of the hill)
—Concentration components due to WRAP, LIFT and FLAT.

(3) If the user selects the TOPN option, a summary table of the top four concentrations at each receptor is given. If the ISOR option is selected, a source contribution table for every hour will be printed.

(4) A separate output file of predicted (1-hour only) concentrations (''CONC'') is written if the user chooses this option. Three forms of output are possible:

(i) A binary file of concentrations, one value for each receptor in the hourly sequence as run;

(ii) A text file of concentrations, one value for each receptor in the hourly sequence as run; or

(iii) A text file as described above, but with a listing of receptor information (names, positions, hill number) at the beginning of the file.

(5) Hourly information provided to these files besides the concentrations themselves includes the year, month, day, and hour information as well as the receptor number with the highest concentration.

d. Type of Model

CTDMPLUS is a refined steady-state, point source plume model for use in all stability conditions for complex terrain applications.

e. Pollutant Types

CTDMPLUS may be used to model non-reactive, primary pollutants.

f. Source-Receptor Relationship

Up to 40 point sources, 400 receptors and 25 hills may be used. Receptors and sources are allowed at any location. Hill slopes are assumed not to exceed 15°, so that the linearized equation of motion for Boussinesq flow are applicable. Receptors upwind of the impingement point, or those associated with any of the hills in the modeling domain, require separate treatment.

g. Plume Behavior

(1) As in CTDM, the basic plume rise algorithms are based on Briggs' (1975) recommendations.

(2) A central feature of CTDMPLUS for neutral/stable conditions is its use of a critical dividing-streamline height (H_c) to separate the flow in the vicinity of a hill into two separate layers. The plume component in the upper layer has sufficient kinetic energy to pass over the top of the hill while streamlines in the lower portion are constrained to flow in a horizontal plane around the hill. Two separate components of CTDMPLUS compute ground-level concentrations resulting from plume material in each of these flows.

(3) The model calculates on an hourly (or appropriate steady averaging period) basis how the plume trajectory (and, in stable/neutral conditions, the shape) is deformed by each hill. Hourly profiles of wind and temperature measurements are used by CTDMPLUS to compute plume rise, plume penetration (a formulation is included to handle penetration into elevated stable layers, based on Briggs (1984)), convective scaling parameters, the value of H_c, and the Froude number above H_c.

h. Horizontal Winds

CTDMPLUS does not simulate calm meteorological conditions. Both scalar and vector wind speed observations can be read by the model. If vector wind speed is unavailable, it is calculated from the scalar wind speed. The assignment of wind speed (either vector or scalar) at plume height is done by either:

- Interpolating between observations above and below the plume height, or
- Extrapolating (within the surface layer) from the nearest measurement height to the plume height.

i. Vertical Wind Speed

Vertical flow is treated for the plume component above the critical dividing streamline height (H_c); *see* ''Plume Behavior.''

j. Horizontal Dispersion

Horizontal dispersion for stable/neutral conditions is related to the turbulence velocity scale for lateral fluctuations, σv, for which a minimum value of 0.2 m/s is used. Convective scaling formulations are used to estimate horizontal dispersion for unstable conditions.

k. Vertical Dispersion

Direct estimates of vertical dispersion for stable/neutral conditions are based on observed vertical turbulence intensity, *e.g.,* σw (standard deviation of the vertical velocity fluctuation). In simulating unstable (convective) conditions, CTDMPLUS relies on a skewed, bi-Gaussian probability density function (pdf) description of the vertical velocities to estimate the vertical distribution of pollutant concentration.

l. Chemical Transformation

Chemical transformation is not treated by CTDMPLUS.

m. Physical Removal

Physical removal is not treated by CTDMPLUS (complete reflection at the ground/hill surface is assumed).

n. Evaluation Studies

Burns, D.J., L.H. Adams and S.G. Perry, 1990. Testing and Evaluation of the CTDMPLUS Dispersion Model: Daytime Convective Conditions. U.S. Environmental Protection Agency, Research Triangle Park, NC.

Paumier, J.O., S.G. Perry and D.J. Burns, 1990. An Analysis of CTDMPLUS Model Predictions with the Lovett Power Plant Data Base. U.S. Environmental Protection Agency, Research Triangle Park, NC.

Paumier, J.O., S.G. Perry and D.J. Burns, 1992. CTDMPLUS: A Dispersion Model for Sources near Complex Topography. Part II: Performance Characteristics. *Journal of Applied Meteorology,* 31(7): 646–660.

A.3 OCD (Offshore and Coastal Dispersion) Model

Reference

DiCristofaro, DC and S.R. Hanna, 1989. OCD: The Offshore and Coastal Dispersion Model, Version 4. Volume I: User's Guide, and Volume II: Appendices. Sigma Research Corporation, Westford, MA. (NTIS Nos. PB 93–144384 and PB 93–144392).

Availability

The model codes and associated documentation are available on EPA's SCRAM website (paragraph A.0(3)).

Abstract

(1) OCD is a straight-line Gaussian model developed to determine the impact of offshore emissions from point, area or line sources on the air quality of coastal regions. OCD incorporates overwater plume transport and dispersion as well as changes that occur as the plume crosses the shoreline. Hourly meteorological data are needed from both offshore and onshore locations. These include water surface temperature, overwater air temperature, mixing height, and relative humidity.

(2) Some of the key features include platform building downwash, partial plume penetration into elevated inversions, direct use of turbulence intensities for plume dispersion, interaction with the overland internal boundary layer, and continuous shoreline fumigation.

a. Regulatory Use

OCD is applicable for overwater sources where onshore receptors are below the lowest source height. Where onshore receptors are above the lowest source height, offshore plume transport and dispersion may be modeled on a case-by-case basis in consultation with the appropriate reviewing authority (paragraph 3.0(b)).

b. Input Requirements

(1) *Source data:* Point, area or line source location, pollutant emission rate, building height, stack height, stack gas temperature, stack inside diameter, stack gas exit velocity, stack angle from vertical, elevation of stack base above water surface and gridded specification of the land/water surfaces. As an option, emission rate, stack gas exit velocity and temperature can be varied hourly.

(2) *Meteorological data:* PCRAMMET is the recommended meteorological data preprocessor for use in applications of OCD employing hourly NWS data. MPRM is the recommended meteorological data preprocessor for applications of OCD employing site-specific meteorological data

(i) *Over land*: Surface weather data including hourly stability class, wind direction, wind speed, ambient temperature, and mixing height are required.

(ii) *Over water:* Hourly values for mixing height, relative humidity, air temperature, and water surface temperature are required; if wind speed/direction are missing, values over land will be used (if available); vertical wind direction shear, vertical temperature gradient, and turbulence intensities are optional.

(3) *Receptor data:* Location, height above local ground-level, ground-level elevation above the water surface.

c. Output

(1) All input options, specification of sources, receptors and land/water map including locations of sources and receptors.

(2) Summary tables of five highest concentrations at each receptor for each averaging period, and average concentration for entire run period at each receptor.

(3) Optional case study printout with hourly plume and receptor characteristics. Optional table of annual impact assessment from non-permanent activities.

(4) Concentration output files can be used by ANALYSIS postprocessor to produce the highest concentrations for each receptor, the cumulative frequency distributions for each receptor, the tabulation of all concentrations exceeding a given threshold, and the manipulation of hourly concentration files.

d. Type of Model

OCD is a Gaussian plume model constructed on the framework of the MPTER model.

e. Pollutant Types

OCD may be used to model primary pollutants. Settling and deposition are not treated.

f. Source-Receptor Relationship

(1) Up to 250 point sources, 5 area sources, or 1 line source and 180 receptors may be used.

(2) Receptors and sources are allowed at any location.

(3) The coastal configuration is determined by a grid of up to 3600 rectangles. Each element of the grid is designated as either land or water to identify the coastline.

g. Plume Behavior

(1) The basic plume rise algorithms are based on Briggs' recommendations.

(2) Momentum rise includes consideration of the stack angle from the vertical.

(3) The effect of drilling platforms, ships, or any overwater obstructions near the source are used to decrease plume rise using a revised platform downwash algorithm based on laboratory experiments.

(4) Partial plume penetration of elevated inversions is included using the suggestions of Briggs (1975) and Weil and Brower (1984).

(5) Continuous shoreline fumigation is parameterized using the Turner method where complete vertical mixing through the thermal internal boundary layer (TIBL) occurs as soon as the plume intercepts the TIBL.

h. Horizontal Winds

(1) Constant, uniform wind is assumed for each hour.

(2) Overwater wind speed can be estimated from overland wind speed using relationship of Hsu (1981).

(3) Wind speed profiles are estimated using similarity theory (Businger, 1973). Surface layer fluxes for these formulas are calculated from bulk aerodynamic methods.

i. Vertical Wind Speed

Vertical wind speed is assumed equal to zero.

j. Horizontal Dispersion

(1) Lateral turbulence intensity is recommended as a direct estimate of horizontal dispersion. If lateral turbulence intensity is not available, it is estimated from boundary layer theory. For wind speeds less than 8 m/s, lateral turbulence intensity is assumed inversely proportional to wind speed.

(2) Horizontal dispersion may be enhanced because of obstructions near the source. A virtual source technique is used to simulate the initial plume dilution due to downwash.

(3) Formulas recommended by Pasquill (1976) are used to calculate buoyant plume enhancement and wind direction shear enhancement.

(4) At the water/land interface, the change to overland dispersion rates is modeled using a virtual source. The overland dispersion rates can be calculated from either lateral turbulence intensity or Pasquill-Gifford curves. The change is implemented where the plume intercepts the rising internal boundary layer.

k. Vertical Dispersion

(1) Observed vertical turbulence intensity is not recommended as a direct estimate of vertical dispersion. Turbulence intensity should be estimated from boundary layer theory as default in the model. For very stable conditions, vertical dispersion is also a function of lapse rate.

(2) Vertical dispersion may be enhanced because of obstructions near the source. A virtual source technique is used to simulate the initial plume dilution due to downwash.

(3) Formulas recommended by Pasquill (1976) are used to calculate buoyant plume enhancement.

(4) At the water/land interface, the change to overland dispersion rates is modeled using a virtual source. The overland dispersion rates can be calculated from either vertical turbulence intensity or the Pasquill-Gifford coefficients. The change is implemented where the plume intercepts the rising internal boundary layer.

l. Chemical Transformation

Chemical transformations are treated using exponential decay. Different rates can be specified by month and by day or night.

m. Physical Removal

Physical removal is also treated using exponential decay.

n. Evaluation Studies

DiCristofaro, D.C. and S.R. Hanna, 1989. OCD: The Offshore and Coastal Dispersion Model. Volume I: User's Guide. Sigma Research Corporation, Westford, MA.

Hanna, S.R., L.L. Schulman, R.J. Paine and J.E. Pleim, 1984. The Offshore and Coastal Dispersion (OCD) Model User's Guide, Revised. OCS Study, MMS 84–

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Hanna, S.R., L.L. Schulman, R.J. Paine, J.E. Pleim and M. Baer, 1985. Development and Evaluation of the Offshore and Coastal Dispersion (OCD) Model. *Journal of the Air Pollution Control Association,* 35: 1039–1047.

Hanna, S.R. and D.C. DiCristofaro, 1988. Development and Evaluation of the OCD/API Model. Final Report, API Pub. 4461, American Petroleum Institute, Washington, DC.

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Part III

Department of Homeland Security

8 CFR Part 214
Modernizing H–1B Requirements, Providing Flexibility in the F–1 Program, and Program Improvements Affecting Other Nonimmigrant Workers; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

[CIS No. 2745–23; DHS Docket No. USCIS–2023–0005]

RIN 1615–AC70

Modernizing H–1B Requirements, Providing Flexibility in the F–1 Program, and Program Improvements Affecting Other Nonimmigrant Workers

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Homeland Security (DHS) proposes to amend its regulations governing H–1B specialty occupation workers to modernize and improve the efficiency of the H–1B program, add benefits and flexibilities, and improve integrity measures. Some of the proposed provisions would narrowly impact other nonimmigrant classifications, including: H–2, H–3, F–1, L–1, O, P, Q–1, R–1, E–3, and TN. DHS intends to finalize the proposals contained in this rulemaking through one or more final rules, depending on agency resources.

DATES: Written comments must be submitted on or before December 22, 2023.

ADDRESSES: You may submit comments on the entirety of this proposed rulemaking package, identified by DHS Docket No. USCIS–2023–0005 through the Federal eRulemaking Portal: *https://www.regulations.gov*. Follow the website instructions for submitting comments. The electronic Federal Docket Management System will accept comments before midnight Eastern time on December 22, 2023.

Comments submitted in a manner other than the one listed above, including emails or letters sent to DHS or USCIS officials, will not be considered comments on the proposed rule and may not receive a response from DHS. Please note that DHS and USCIS cannot accept any comments that are hand-delivered or couriered. In addition, DHS and USCIS cannot accept comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives. USCIS is also not accepting mailed comments at this time. If you cannot submit your comment by using *https://www.regulations.gov*, please contact Samantha Deshommes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, by telephone at (240) 721–3000 for alternate instructions.

FOR FURTHER INFORMATION CONTACT: Charles L. Nimick, Chief, Business and Foreign Workers Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20746; telephone (240) 721–3000.

SUPPLEMENTARY INFORMATION:

Table of Contents

Table of Abbreviations

AAO—Administrative Appeals Office
AC21—American Competitiveness in the Twenty-first Century Act
ACWIA—American Competitiveness and Workforce Improvement Act of 1998
BLS—Bureau of Labor Statistics
CEQ—Council on Environmental Quality
CFR—Code of Federal Regulations
CMSA—Consolidated Metropolitan Statistical Area
COS—Change of Status
CPI–U—Consumer Price Index for All Urban Consumers
D/S—Duration of status
DHS—U.S. Department of Homeland Security
DOL—U.S. Department of Labor
DOS—U.S. Department of State
FDNS—Fraud Detection and National Security
FR—Federal Register
FY—Fiscal Year
HR—Human Resources
HSA—Homeland Security Act of 2002
ICE—Immigration and Customs Enforcement
IMMACT 90—Immigration Act of 1990
INA—Immigration and Nationality Act
INS—legacy Immigration and Naturalization Service
IRFA—Initial Regulatory Flexibility Analysis
IRS—Internal Revenue Service
LCA—Labor Condition Application
MSA—Metropolitan Statistical Area
NAICS—North American Industry Classification System
NEPA—National Environmental Policy Act
NOID—Notice of Intent to Deny
NPRM—Notice of proposed rulemaking
OIRA—Office of Information and Regulatory Affairs
OMB—Office of Management and Budget
OP&S—Office of Policy and Strategy
OPT—Optional Practical Training
PM—Policy Memorandum
PMSA—Primary Metropolitan Statistical Area
PRA—Paperwork Reduction Act PRD—Policy Research Division
Pub. L.—Public Law
RFA—Regulatory Flexibility Act of 1980
RFE—Request for Evidence RIA—Regulatory Impact Analysis
RIN—Regulation Identifier Number
SBA—Small Business Administration
SEVP—Student and Exchange Visitor Program
SOC—Standard Occupational Classification
Stat.—U.S. Statutes at Large
TLC—Temporary Labor Certification
UMRA—Unfunded Mandates Reform Act
U.S.C.—United States Code
USCIS—U.S. Citizenship and Immigration Services

I. Public Participation

DHS invites all interested parties to participate in this rulemaking by submitting written data, views, comments, and arguments on all aspects of this proposed rule. DHS also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments must be submitted in English, or an English translation must be provided. Comments that will provide the most assistance to USCIS in implementing these changes will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. Comments submitted in a manner other than the one listed above, including emails or letters sent to DHS or USCIS officials, will not be considered comments on the proposed rule and may not receive a response from DHS.

Instructions: If you submit a comment, you must include the agency name (U.S. Citizenship and Immigration Services) and the DHS Docket No. USCIS–2023–0005 for this rulemaking. Please note all submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov*, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy and Security Notice available at *https://www.regulations.gov*.

Docket: For access to the docket and to read background documents or comments received, go to *https://www.regulations.gov*, referencing DHS Docket No. USCIS–2023–0005. You may also sign up for email alerts on the online docket to be notified when comments are posted or a final rule is published.

II. Executive Summary

A. Purpose of the Regulatory Action

The purpose of this rulemaking is to modernize and improve the regulations relating to the H–1B program by: (1) streamlining the requirements of the H–1B program and improving program efficiency; (2) providing greater benefits and flexibilities for petitioners and beneficiaries; and (3) improving integrity measures. Some of the proposed provisions would narrowly impact other nonimmigrant classifications.

B. Summary of the Major Provisions of the Regulatory Action

1. Modernization and Efficiencies

DHS proposes to streamline requirements for the H–1B program by: (1) revising the regulatory definition and criteria for a ''specialty occupation''; (2) clarifying that ''normally'' does not mean ''always'' within the criteria for a specialty occupation; and (3) clarifying that a position may allow a range of degrees, although there must be a direct relationship between the required degree field(s) and the duties of the position. As 21st century employers strive to generate better hiring outcomes, improving the match between required skills and job duties, employers have increasingly become more aware of a skills-first culture, led by the Federal Government's commitment to attract and hire individuals well-suited to available jobs.[1] The flexibility inherent in H–1B adjudications to identify job duties and particular positions where a bachelor's or higher degree in a specific specialty, or its equivalent, is normally required, allows employers to explore where skills-based hiring is sensible.

DHS also proposes to clarify when an amended or new petition must be filed due to a change in an H–1B worker's place of employment to be consistent with current policy guidance.

Additionally, DHS proposes to codify and clarify its deference policy to state that, if there has been no material change in the underlying facts, adjudicators generally should defer to a prior determination involving the same parties and underlying facts. DHS also proposes to update the regulations to expressly require that evidence of maintenance of status must be included with the petition if a beneficiary is seeking an extension or amendment of stay. This policy would impact all employment-based nonimmigrant classifications that use Form I–129,

[1] *See, e.g.,* U.S. Office of Personnel Management, Memorandum for Heads of Executive Departments and Agencies: ''Guidance Release—E.O. 13932; Modernizing and Reforming the Assessment and Hiring of Federal Job Candidates'' (May 19, 2022), *https://chcoc.gov/content/guidance-release-eo-13932-modernizing-and-reforming-assessment-and-hiring-federal-job*.

Petition for Nonimmigrant Worker. DHS further proposes to eliminate the itinerary requirement, which would apply to all H classifications, and allow petitioners to amend requested validity periods where the validity expires before adjudication.

2. Benefits and Flexibilities

DHS proposes to modernize the definition of employers who are exempt from the annual statutory limit on H–1B visas to create more flexibility for nonprofit and governmental research organizations and beneficiaries who are not directly employed by a qualifying organization. Specifically, DHS proposes to change the definition of ''nonprofit research organization'' and ''governmental research organization'' by replacing ''primarily engaged'' and ''primary mission'' with ''fundamental activity'' to permit a nonprofit entity or governmental research organization that conducts research as a fundamental activity, but is not primarily engaged in research or where research is not a primary mission, to meet the definition of a nonprofit research entity. Additionally, DHS proposes to revise the requirements for beneficiaries to qualify for H–1B cap exemption when they are not directly employed by a qualifying organization, but still provide essential work, even if their duties do not necessarily directly further the organization's essential purpose.

DHS also proposes to provide flexibilities, such as automatically extending the duration of F–1 status, and any employment authorization granted under 8 CFR 274a.12(c)(3)(i)(B) or (C), until April 1 of the relevant fiscal year, rather than October 1 of the same fiscal year, to avoid disruptions in lawful status and employment authorization for F–1 students changing their status to H–1B. Additionally, DHS is proposing to clarify the requirements regarding the requested employment start date on H–1B cap-subject petitions to permit filing with requested start dates that are after October 1 of the relevant fiscal year, consistent with current USCIS policy.

3. Program Integrity

DHS proposes to address H–1B cap registration abuse by changing the way USCIS selects registrations. Instead of selecting by registration, USCIS would select registrations by unique beneficiary, thereby reducing the potential for gaming the process to increase chances for selection and helping ensure that each beneficiary would have the same chance of being selected, regardless of how many registrations are submitted on their behalf. DHS also proposes to clarify that related entities are prohibited from submitting multiple registrations for the same beneficiary, similar to the prohibition on related entities filing multiple cap-subject petitions for the same beneficiary for the same fiscal year's numerical allocations. Additionally, DHS proposes to codify USCIS's ability to deny H–1B petitions or revoke an approved H–1B petition where the underlying registration contained a false attestation or was otherwise invalid.

DHS further proposes to improve the integrity of the H–1B program by: (1) codifying its authority to request contracts; (2) requiring that the petitioner establish that it has an actual, non-speculative position in a specialty occupation available for the beneficiary as of the requested start date; (3) ensuring that the labor condition application (LCA) properly supports and corresponds with the petition; (4) revising the definition of ''United States employer'' by codifying the existing requirement that the petitioner has a bona fide job offer for the beneficiary to work within the United States as of the requested start date, consistent with current DHS policy; and (5) adding a requirement that the petitioner have a legal presence and be amenable to service of process in the United States.

DHS additionally proposes to clarify that beneficiary-owners may be eligible for H–1B status, while setting reasonable conditions for when the beneficiary owns a controlling interest in the petitioning entity.

DHS also proposes to codify USCIS's authority to conduct site visits and clarify that refusal to comply with site visits may result in denial or revocation of the petition. Additionally, DHS proposes to clarify that if an H–1B worker will be staffed to a third party, meaning they will be contracted to fill a position in the third party's organization, it is the requirements of that third party, and not the petitioner, that are most relevant when determining whether the position is a specialty occupation. Through these provisions, DHS aims to prevent fraud and abuse and maintain H–1B program integrity.

C. Summary of Costs and Benefits

As discussed in the preamble, the purpose of this rulemaking is to modernize and improve the regulations relating to the H–1B program by: (1) streamlining H–1B program requirements and improving program efficiency; (2) providing greater benefits and flexibilities for petitioners and beneficiaries; and (3) improving integrity measures.

For the 10-year period of analysis of the proposed rule, DHS estimates the annualized net costs of this rulemaking would be $6,339,779 annualized at 3 percent and 7 percent. Table 12 provides a more detailed summary of the proposed rule provisions and their impacts.

D. Request for Preliminary Public Input

Finally, DHS is requesting preliminary public input on ideas that would curb or eliminate the possibility that petitioners may have speculative job opportunities as of the requested start date and delay admission of H–1B beneficiaries until the petitioner has secured work for the H–1B beneficiary, including two potential approaches DHS is considering for future action. DHS is also seeking preliminary public input on ways to provide H–1B and other Form I–129 beneficiaries with notice of USCIS actions taken on petitions filed on their behalf.

E. Future Rulemaking Actions

After carefully considering any public comments received on the proposals in this NPRM, DHS may move to finalize the proposed provisions through one or more final rules, and may possibly do so in time for the fiscal year (FY) 2025 cap season, depending on agency resources.

III. Background and Purpose

A. Legal Authority

The Secretary of Homeland Security's authority for these proposed regulatory amendments is found in various sections of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. 1101 *et seq.,* and the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.* General authority for issuing this proposed rule is found in section 103(a) of the INA, 8 U.S.C. 1103(a), which authorizes the Secretary to administer and enforce the immigration and nationality laws and establish such regulations as the Secretary deems necessary for carrying out such authority, as well as section 112 of the HSA, 6 U.S.C. 112, which vests all of the functions of DHS in the Secretary and authorizes the Secretary to issue regulations.[2] Further authority for these regulatory amendments is found in:

- Section 101(a)(15) of the INA, 8 U.S.C. 1101(a)(15), which establishes

[2] Although several provisions of the INA discussed in this NPRM refer exclusively to the ''Attorney General,'' such provisions are now to be read as referring to the Secretary of Homeland Security by operation of the HSA. *See* 6 U.S.C. 202(3), 251, 271(b), 542 note, 557; 8 U.S.C. 1103(a)(1), (g), 1551 note; *Nielsen* v. *Preap,* 139 S. Ct. 954, 959 n.2 (2019).

classifications for noncitizens who are coming temporarily to the United States as nonimmigrants, including the H–1B classification, *see* INA section 101(a)(15)(H)(i)(b), 8 U.S.C. 1101(a)(15)(H)(i)(b);

- Section 214(a)(1) of the INA, 8 U.S.C. 1184(a)(1), which authorizes the Secretary to prescribe, by regulation, the time and conditions of the admission of nonimmigrants;
- Section 214(c) of the INA, 8 U.S.C. 1184(c), which, *inter alia*, authorizes the Secretary to prescribe how an importing employer may petition for nonimmigrant workers, including certain nonimmigrants described at sections 101(a)(a)(15)(H), (L), (O), and (P), 8 U.S.C. 1101(a)(15)(H), (L), (O), and (P); the information that an importing employer must provide in the petition; and certain fees that are required for certain nonimmigrant petitions;
- Section 214(e) of the INA, 8 U.S.C. 1184(e), which provides for the admission of citizens of Canada or Mexico as TN nonimmigrants;
- Section 214(g) of the INA, 8 U.S.C. 1184(g), which, *inter alia*, prescribes the H–1B numerical limitations, various exceptions to those limitations, and the period of authorized admission for H–1B nonimmigrants;
- Section 214(i) of the INA, 8 U.S.C. 1184(i), which sets forth the definition and requirements of a ''specialty occupation'';
- Section 235(d)(3) of the INA, 8 U.S.C. 1225(d)(3) (''any immigration officer shall have the power to administer oaths and to take and consider evidence of or from any person touching the privilege of any alien or person he believes or suspects to be an alien to enter, reenter, transit through, or reside in the United States or concerning any matter which is material and relevant to the enforcement of this chapter and the administration of the Service.'');
- Section 248 of the INA, 8 U.S.C. 1258, which authorizes a noncitizen to change from any nonimmigrant classification to any other nonimmigrant classification (subject to certain exceptions) if the noncitizen was lawfully admitted to the United States as a nonimmigrant and is continuing to maintain that status, and is not otherwise subject to the 3- or 10-year bar applicable to certain noncitizens who were unlawfully present in the United States;
- Section 274A of the INA, 8 U.S.C. 1324a, which recognizes the Secretary's authority to extend employment authorization to noncitizens in the United States;
- Section 287(b) of the INA, 8 U.S.C. 1357(b), which authorizes the taking and consideration of evidence concerning any matter that is material or relevant to the enforcement of the INA;
- Section 402 of the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135, 6 U.S.C. 202, which charges the Secretary with ''[e]stablishing and administering rules . . . governing the granting of visas or other forms of permission . . . to enter the United States'' and ''[e]stablishing national immigration enforcement policies and priorities,'' *id.; see also* HSA sec. 428, 6 U.S.C. 236; and
- Section 451(a)(3) and (b) of the HSA, 6 U.S.C. 271(a)(3) and (b), transferring to USCIS the authority to adjudicate petitions for nonimmigrant status, establish policies for performing that function, and set national immigration services policies and priorities.

B. Background

1. The H–1B Program

The H–1B nonimmigrant visa program allows U.S. employers to temporarily employ foreign workers in specialty occupations, defined by statute as occupations that require the theoretical and practical application of a body of highly specialized knowledge and a bachelor's or higher degree in the specific specialty, or its equivalent. *See* INA sections 101(a)(15)(H)(i)(b) and 214(i), 8 U.S.C 1101(a)(15)(H)(i)(b) and 1184(i).

The Immigration Act of 1990 (Pub. L. 101–649) (IMMACT 90) significantly reformed the H–1B program. To protect U.S. workers, IMMACT 90 required a certified LCA by the Secretary of Labor as a prerequisite for classification as an H–1B nonimmigrant. The LCA requirement, and the associated obligations the employer must attest to and comply with, including the prevailing or actual wage requirement, were intended to safeguard the wages and working conditions of U.S. workers.[3] Through IMMACT 90, Congress set the current annual cap for the H–1B visa category at 65,000,[4] which limited the number of beneficiaries who may be issued an initial H–1B visa or otherwise provided initial H–1B status each fiscal year.[5] Prior to IMMACT 90, no limit existed on the number of initial H–1B visas that could be granted each fiscal year. Congressional deliberations ahead of the enactment of the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA) describe the H–1B program's purpose both as filling shortages and creating opportunities for innovation and expansion.[6]

Congress also set up several exemptions to the annual H–1B cap. For example, workers who will be employed at an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965, as amended) or a related or affiliated nonprofit entity, and workers who will be employed at a nonprofit or governmental research organization, are exempt from the cap. These exemptions are not numerically capped. *See* INA section 214(g)(5)(A)–(B), 8 U.S.C. 1184(g)(5)(A)–(B). Congress further provided an exemption from the numerical limits in INA section 214(g)(1)(A), 8 U.S.C. 1184(g)(1)(A), for 20,000 new H–1B visas, or grants of initial H–1B status, each fiscal year for foreign nationals who have earned a U.S. master's or higher degree (''advanced degree exemption'').[7] Cap exemptions are discussed in more detail below.

To manage the annual cap, USCIS used a random selection process in years of high demand to determine which petitions were selected toward the projected number of petitions needed to reach the annual H–1B numerical allocations.[8] In order to better manage the selection process, DHS created a registration requirement for H–1B cap-subject petitions, which was first implemented in 2020 for the FY 2021

[3] *See* U.S. Gov't Accountability Off., GAO/PEMD–92–17, ''Immigration and the Labor Market: Nonimmigrant Alien Workers in the United States,'' at 18 (1992).

[4] Up to 6,800 visas are set aside from the 65,000 each fiscal year for the H–1B1 visa program under terms of the legislation implementing the U.S.-Chile and U.S.-Singapore free trade agreements. *See* INA sections 101(a)(15)(H)(i)(b1), 214(g)(8), 8 U.S.C. 1101(a)(15)(H)(i)(b1), 1184(g)(8).

[5] The 65,000 annual H–1B numerical limitation was increased for FYs 1999–2003. *See* INA section 214(g)(1)(A), 8 U.S.C. 1184(g)(1)(A), as amended by section 411 of the ACWIA, Public Law 105–277, div. C, tit. IV, 112 Stat. 2681, and the American Competitiveness in the Twenty-first Century Act of 2000 (AC21), Public Law 106–313, 114 Stat. 1251, as amended by the 21st Century Department of Justice Appropriations Authorization Act, Public Law 107–273, 116 Stat. 1758 (2002). Subsequent to IMMACT 90, Congress also created several exemptions from the 65,000 numerical limitation. *See* INA section 214(g)(5), 8 U.S.C. 1184(g)(5).

[6] *See* 144 Cong. Rec. at S12749 (statement of Sen. Abraham) (''[T]his issue [of increasing H–1B visas] is not only about shortages, it is about opportunities for innovation and expansion.'').

[7] *See* INA section 214(g)(5)(C), 8 U.S.C. 1184(g)(5)(C). This rule also may refer to the 20,000 exemptions under section 214(g)(5)(C) from the H–1B regular cap as the ''advanced degree exemption allocation'' or ''advanced degree exemption numerical limitation.''

[8] *See* ''Registration Requirement for Petitioners Seeking To File H–1B Petitions on Behalf of Cap-Subject Aliens,'' 84 FR 888 (Jan. 31, 2019).

cap season.[9] Under the registration requirement, prospective petitioners seeking to file H–1B cap-subject petitions (including petitions filed on behalf of beneficiaries eligible for the advanced degree exemption) must first electronically register and pay the associated H–1B registration fee for each prospective beneficiary. The random selection process is then conducted, selecting from the properly submitted registrations the number of registrations projected as needed to reach the numerical allocations.[10] Only those prospective petitioners with selected registrations are eligible to file H–1B cap-subject petitions for the beneficiary(ies) named in their selected registration(s). The electronic registration process has streamlined the H–1B cap selection process by reducing paperwork and simplifying data exchange, and has provided overall cost savings to employers seeking to file H–1B cap-subject petitions and to USCIS. Prior to the registration requirement, petitioners were required to prepare and file complete H–1B petitions in order to be considered for the random selection process.

2. The F–1 Program

Section 101(a)(15)(F)(i) of the INA, 8 U.S.C. 1101(a)(15)(F)(i), permits bona fide students to be temporarily admitted to the United States for the purpose of pursuing a full course of study at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or accredited language training program. Principal applicants are categorized as F–1 nonimmigrants and their spouses and minor children may accompany or follow to join them as F–2 dependents.[11]

In 1992, legacy Immigration and Naturalization Services (INS) amended its longstanding regulations relating to an employment program for students called Optional Practical Training (OPT) such that students in F–1 nonimmigrant status who have been enrolled on a full-time basis for at least one full academic year in a college, university, conservatory, or seminary (which now must be certified by U.S. Immigration and Customs Enforcement's (ICE's) Student and Exchange Visitor Program (SEVP)) are allowed up to 12 months of OPT to work for a U.S. employer in a job directly related to the student's major area of study.[12] Employers of F–1 students already working for the employer under OPT, would often file petitions to change the students' status to H–1B so that these nonimmigrant students may continue working in their current or a similar job.[13] Many times, however, an F–1 student's OPT authorization would expire prior to the student being able to assume the employment specified in the approved H–1B petition, creating a gap in employment.[14] In order to remedy this, in 2008, DHS created the cap-gap extension to temporarily extend the period of authorized stay, as well as work authorization, of certain F–1 students caught in a gap between the end of their program and the start date on their later-in-time approved, cap-subject H–1B petition.[15] The cap-gap extension provides a temporary bridge between F–1 and H–1B status, allowing students to remain in the United States between the end of their academic program and the beginning of the fiscal year, when the student's H–1B status commences.[16] DHS subsequently amended cap-gap procedures by extending the authorized period of stay and work authorization of any F–1 student who is the beneficiary of a timely filed cap-subject H–1B petition that has been granted by, or remains pending with, USCIS, until October 1 of the fiscal year for which H–1B visa classification has been requested.[17]

IV. Discussion of the Proposed Rule

A. Modernization and Efficiencies

1. Amending the Definition of a ''Specialty Occupation''

DHS proposes to revise the regulatory definition and standards for a ''specialty occupation'' to better align with the statutory definition of that term. Section 101(a)(15)(H)(i)(b) of the INA, 8 U.S.C. 1101(a)(15)(H)(i)(b), describes nonimmigrants coming to the United States temporarily to perform services in a specialty occupation. Section 214(i)(1) of the INA, 8 U.S.C. 1184(i)(1) states that the term ''specialty occupation'' means: ''an occupation that requires—(A) theoretical and practical application of a body of highly specialized knowledge, and (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.''

Currently, 8 CFR 214.2(h)(4)(ii) defines ''specialty occupation'' as an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

This proposed rule would add language to this definition to codify existing USCIS practice that there must be a direct relationship between the required degree field(s) and the duties of the position; there may be more than one acceptable degree field for a specialty occupation; and a general degree is insufficient.[18] Specifically,

[9] *Id.*

[10] *See* 8 CFR 214.2(h)(8)(iii).

[11] *See* INA section 101(a)(15)(F)(i)–(ii), 8 U.S.C. 1101(a)(15)(F)(i)–(ii); 8 CFR 214.2(f)(3).

[12] *See* 8 CFR 214.2(f)(10); ''Pre-Completion Interval Training; F–1 Student Work Authorization,'' 57 FR 31954 (July 20, 1992).

[13] *See* ''Extending Period of Optional Practical Training by 17 Months for F–1 Nonimmigrant Students With STEM Degrees and Expanding Cap-Gap Relief for All F–1 Students With Pending H–1B Petitions,'' 73 FR 18944, 18947 (Apr. 8, 2008), *vacated, Wash. All. of Tech. Workers* v. *U.S. Dep't of Homeland Sec.,* 156 F. Supp. 3d 123 (D.D.C. 2015), which amended the cap-gap extension. Through this interim final rule, DHS also made other amendments, such as eliminating the requirement that USCIS issue a **Federal Register** Notice in order to extend status for students with pending H–1B petitions. Although the 2008 rule was vacated, the cap-gap extension was reinstated through ''Improving and Expanding Training Opportunities for F–1 Nonimmigrant Students With STEM Degrees and Cap-Gap Relief for All Eligible F–1 Students,'' 81 FR 13039 (Mar. 11, 2016).

[14] *Id.*

[15] *Id.*

[16] *See* ''Improving and Expanding Training Opportunities for F–1 Nonimmigrant Students With STEM Degrees and Cap-Gap Relief for All Eligible F–1 Students,'' 81 FR 13039 (Mar. 11, 2016).

[17] *See* ''Extending Period of Optional Practical Training by 17 Months for F–1 Nonimmigrant Students With STEM Degrees and Expanding Cap-Gap Relief for All F–1 Students With Pending H–1B Petitions,'' 74 FR 26514 (June 3, 2009) (correction); ''Improving and Expanding Training Opportunities for F–1 Nonimmigrant Students With STEM Degrees and Cap-Gap Relief for All Eligible F–1 Students,'' 81 FR 13039 (Mar. 11, 2016). Through this proposed rule, DHS amended the cap-gap procedures by no longer requiring USCIS to issue a **Federal Register** notice indicating that the H–1B cap must first be met (or would likely be met) for the current fiscal year.

[18] *See, e.g., Madkudu Inc., et al.,* v. *U.S. Citizenship and Immigration Services,* et al. 5:20–cv–2653–SVK (N.D. Ca. Aug. 20, 2021) Settlement Agreement at 4 (''if the record shows that the petitioner would consider someone as qualified for the position based on less than a bachelor's degree in a specialized field directly related to the position (*e.g.,* an associate's degree, a bachelor's degree in a generalized field of study without a minor, major, concentration, or specialization in market research, marketing, or research methods (see Sections II.C.1.b and c), or a bachelor's degree in a field of study unrelated to the position), then the position would not meet the statutory and regulatory definitions of specialty occupation at 8 U.S.C. 1184(i)(1) and 8 CFR 214.2(h)(4)(ii).''), *https://www.uscis.gov/sites/default/files/document/legal-docs/Madkudu-settlement-agreement.pdf* (last visited Sep. 5, 2023).

DHS proposes to add language to the definition of ''specialty occupation'' clarifying that the required specialized studies must be directly related to the position. DHS also proposes to add language stating that a position is not a specialty occupation if attainment of a general degree, such as business administration or liberal arts, without further specialization, is sufficient to qualify for the position, and that a position may allow a range of degrees or apply multiple bodies of highly specialized knowledge, provided that each of those qualifying degree fields or each body of highly specialized knowledge is directly related to the position.

A position for which a bachelor's degree in any field is sufficient to qualify for the position, or for which a bachelor's degree in a wide variety of fields unrelated to the position is sufficient to qualify, would not be considered a specialty occupation as it would not require the application of a body of highly specialized knowledge.[19] Similarly, the amended definition clarifies that a position would not qualify as a specialty occupation if attainment of a general degree, without further specialization, is sufficient to qualify for the position.[20] The burden of proof is on the petitioner to demonstrate that each qualifying degree field is directly related to the position. This is consistent with the statutory requirement that a degree be ''in the specific specialty'' and is USCIS' long-standing practice.

Under this proposed addition to 8 CFR 214.2(h)(4)(ii), the petitioner would continue to have the burden of demonstrating that there is a direct relationship between the required degree in a specific specialty (in other words, the degree field(s) that would qualify someone for the position) and the duties of the position. In many cases, the relationship will be clear and relatively easy to establish. For example, it should not be difficult to establish that a required medical degree is directly related to the duties of a physician. Similarly, a direct relationship may readily be established between the duties of a lawyer and a required law degree and the duties of an architect and a required architecture degree. In other cases, the direct relationship may be less apparent, and the petitioner may have to explain and provide documentation to meet its burden of demonstrating the relationship. As in the past, to establish a direct relationship, the petitioner would need to provide information regarding the course(s) of study associated with the required degree, or its equivalent, and the duties of the proffered position, and demonstrate the connection between the course of study and the duties and responsibilities of the position.

The requirement of a direct relationship between a degree in a specific specialty, or its equivalent, and the position, however, should not be construed as requiring a singular field of study.[21] For example, for the position of electrical engineer, a degree in electrical engineering or electronics engineering may qualify a person for the position, and therefore a minimum of a bachelor's or higher degree, or its equivalent, in more than one field of study may be recognized as satisfying the ''degree in the specific specialty (or its equivalent)'' requirement of section 214(i)(1)(B) of the INA, 8 U.S.C. 1184(i)(1)(B). In such a case, the ''body of highly specialized knowledge'' required by section 214(i)(1)(A) of the INA, 8 U.S.C. 1184(i)(1)(A), would be afforded by either degree, and each field of study accordingly would be in a ''specific specialty'' directly related to the position consistent with section 214(i)(1)(B) of the INA, 8 U.S.C. 1184(i)(1)(B).

In cases where the petitioner lists degrees in multiple disparate fields of study as the minimum entry requirement for a position, the petitioner has the burden of establishing how each field of study is in a specific specialty providing ''a body of highly specialized knowledge'' directly related to the duties and responsibilities of the particular position. The petitioner must show that its position meets the requirements of sections 214(i)(1)(A) and (B) of the INA, 8 U.S.C. 1184(i)(1)(A) and (B), and the regulatory definition.[22]

As such, under this proposed rule, a minimum entry requirement of a bachelor's or higher degree, or its equivalent, in multiple disparate fields of study would not automatically disqualify a position from being a specialty occupation. For example, a petitioner may be able to establish that a bachelor's degree in the specific specialties of either education or chemistry, each of which provide a body of highly specialized knowledge, is directly related to the duties and responsibilities of a chemistry teacher. In such a scenario, the ''body of highly specialized knowledge'' requirement of section 214(i)(1)(A) of the INA, 8 U.S.C. 1184(i)(1)(A), and the ''degree in the specific specialty'' requirement of section 214(i)(1)(B) of the INA, 8 U.S.C. 1184(i)(1)(B), would both be met by either degree and the chemistry teacher position listing multiple disparate fields of study would qualify as a specialty occupation.

In determining whether a position involves a specialty occupation, USCIS currently interprets the ''specific specialty'' requirement in section 214(i)(1)(B) of the INA, 8 U.S.C. 1184(i)(1)(B), to relate back to the body of highly specialized knowledge requirement referenced in section 214(i)(1)(A) of the INA, 8 U.S.C. 1184(i)(1)(A), required by the specialty occupation in question. The ''specific specialty'' requirement is only met if the degree in a specific specialty or specialties, or its equivalent, provides a body of highly specialized knowledge directly related to the duties and responsibilities of the particular position as required by section 214(i)(1)(A) of the INA, 8 U.S.C. 1184(i)(1)(A).

If the minimum entry requirement for a position is a general degree without further specialization or an explanation of what type of degree is required, the ''degree in the specific specialty (or its equivalent)'' requirement of INA section 214(i)(1)(B), 8 U.S.C. 1184(i)(1)(B),

[19] *See Caremax Inc* v. *Holder,* 40 F. Supp. 3d 1182, 1187–88 (N.D. Cal. 2014).

[20] Although a general-purpose bachelor's degree, such as a degree in business or business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a conclusion that a particular position qualifies for classification as a specialty occupation. *See, e.g., Royal Siam Corp.,* 484 F.3d 139, 147 (1st Cir. 2007) (''The courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H–1B specialty occupation visa.''); *Shanti, Inc.* v. *Reno,* 36 F. Supp. 2d 1151, 1162–1164 (D. Minn. 1999) (the former INS did not depart from established policy or precedent when concluding that a general degree, such as a business administration degree, without more, does not constitute a degree in a specialized field); *Raj & Co.* v. *USCIS,* 85 F. Supp. 3d 1241, 1246 (W.D. Wash. 2015) (it is ''well-settled in the case law and USCIS's reasonable interpretations of the regulatory framework'' that ''a generalized bachelor['s] degree requirement is [in]sufficient to render a position sufficiently specialized to qualify for H–1B status.''); *Vision Builders, LLC* v. *USCIS,* No. 19–CV–3159, 2020 WL 5891546, at *6 (D.D.C. Oct. 5, 2020) (citing *Raj*).

[21] *See, e.g., Relx, Inc.* v. *Baran,* 397 F. Supp. 3d 41, 54 (D.D.C. 2019) (''There is no requirement in the statute that only one type of degree be accepted for a position to be specialized.''); *Residential Fin. Corp.* v. *U.S. Citizenship & Immigration Servs.,* 839 F. Supp. 2d 985, 997 (S.D. Ohio 2012) (stating that when determining whether a position is a specialty occupation, ''knowledge and not the title of the degree is what is important'').

[22] The petitioner must also establish that its position meets one of the four criteria at proposed 8 CFR 214.2(h)(4)(iii)(A), which is explained in detail below.

would not be satisfied. For example, a requirement of a general business degree for a marketing position would not satisfy the specific specialty requirement. In this instance, the petitioner would not satisfactorily demonstrate how a required general business degree provides a body of highly specialized knowledge that is directly related to the duties and responsibilities of a marketing position.[23]

Similarly, a petition with a requirement of any engineering degree in any field of engineering for a position of software developer would generally not satisfy the statutory requirement, as it is unlikely the petitioner could establish how the fields of study within any engineering degree provide a body of highly specialized knowledge directly relating to the duties and responsibilities of the software developer position.[24] If an individual could qualify for a petitioner's software developer position based on having a seemingly unrelated engineering degree, then it cannot be concluded that the position requires the application of a body of highly specialized knowledge and a degree in a specific specialty, because someone with an entirely or largely unrelated degree may qualify to perform the job.[25] In such a scenario, the requirements of INA sections 214(i)(1)(A) and (B), 8 U.S.C. 1184(i)(1)(A) and (B), would not be satisfied.

Further, if a position requires a bachelor's degree in an unspecified ''quantitative field'' (which could include mathematics, statistics, economics, accounting, or physics) the petitioner must identify specific specialties, such as the majors or degree fields, within the wide variety of ''quantitative fields'' and establish how each identified degree in a specific specialty provides a body of highly specialized knowledge, consistent with INA section 214(i)(1)(A), 8 U.S.C. 1184(i)(1)(A), that is directly related to the duties and responsibilities of the software developer position. While a position may allow a range of degrees, and apply multiple bodies of highly specialized knowledge, each of those qualifying degree fields or each body of highly specialized knowledge must be directly related to the proffered position.

2. Amending the Criteria for Specialty Occupation Positions

Under INA section 214(i)(1), 8 U.S.C. 1184(i)(1), a ''specialty occupation'' requires attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States. The current regulatory criteria at 8 CFR 214.2(h)(4)(iii)(A)(*1*) states that a bachelor's degree is ''normally'' required. To provide additional guidance to adjudicators, attorneys, and the public, DHS is proposing to define the term ''normally'' at proposed 8 CFR 214.2(h)(4)(iii)(A)(*5*) to state that, for purposes of the criteria in this provision, ''normally'' means ''conforming to a type, standard, or regular pattern'' and is ''characterized by that which is considered usual, typical, common, or routine.'' [26] The proposed regulation also clarifies that ''[n]ormally does not mean always.'' For these purposes, there is no significant difference between the synonyms ''normal,'' ''usual,'' ''typical,'' ''common,'' or ''routine.'' [27] These synonyms illustrate that a description of an occupation that uses a synonym for the word ''normally'' in describing whether a bachelor's or higher degree is required for the occupation can support a finding that a degree is ''normally'' required. By the same token, other synonyms for the word ''normally'' that are not listed in proposed 8 CFR 214.2(h)(4)(iii)(A)(*5*), such as ''mostly'' or ''frequently,'' also can support a finding that a degree is ''normally'' required. This proposed change clarifies that the petitioner does not have to establish that the bachelor's degree in a specific specialty or its equivalent is always a minimum requirement for entry into the occupation in the United States. This is consistent with both USCIS's current practice, as reflected by the statement on the USCIS website that ''normally,'' ''common,'' and ''usually'' are not interpreted to mean ''always,'' [28] and USCIS's rescission of a 2017 policy memorandum guiding officers on the interpretation of the *Occupational Outlook Handbook's* with respect to the computer programmer occupation.[29] USCIS rescinded the 2017 policy memorandum following the decision of the U.S. Court of Appeals for the Ninth Circuit in *Innova Solutions* v. *Baran,* 983 F.3d 428 (9th Cir. 2020).[30] As the court stated in *Innova,* ''the fact that *some* computer programmers are hired without a bachelor's degree is entirely consistent with a bachelor's degree '*normally* [being] the minimum requirement for entry.' '' [31] USCIS currently applies this same rationale to other occupations. By proposing to codify USCIS's current practice at proposed 8 CFR 214.2(h)(4)(iii)(A)(*5*), DHS seeks to provide H–1B petitioners with more certainty as to what adjudication standards apply to their petitions.

In addition, DHS proposes to codify its current practices by revising the criteria for a specialty occupation at current 8 CFR 214.2(h)(4)(iii)(A). First, DHS proposes to replace the phrase ''To qualify as a specialty occupation, the position must meet one of the following criteria'' with ''A position does not meet the definition of specialty occupation in paragraph (h)(4)(ii) of this section unless it also satisfies at least one of the following criteria at paragraphs (h)(4)(iii)(A)(*1*) through (*4*) of this section.'' This proposed change would clarify that meeting one of the regulatory criteria is a necessary part of—but not always sufficient for—demonstrating that a position qualifies as a specialty occupation. This is not new; the criteria at current 8 CFR 214.2(h)(4)(iii)(A) must be construed in harmony with and in addition to other controlling regulatory provisions and

[23] *See Royal Siam Corp.,* 484 F.3d at 147.

[24] The requirement of any engineering degree could include, for example, a chemical engineering degree, marine engineering degree, mining engineering degree, or any other engineering degree in a multitude of seemingly unrelated fields.

[25] These examples refer to the educational credentials by the title of the degree for expediency. However, USCIS separately evaluates whether the beneficiary's actual course of study is directly related to the duties of the position, rather than merely the title of the degree. When applicable, USCIS also will consider whether the beneficiary has the education, specialized training, and/or progressively responsible experience that is equivalent to completion of a U.S. baccalaureate or higher degree in the specialty occupation. *See* 8 CFR 214.2(h)(4)(iii)(C)(*4*).

[26] *See* Merriam-Webster Dictionary at *https://www.merriam-webster.com/dictionary/normal* (last visited Aug. 24, 2023).

[27] *See Innova,* 983 F.3d at 432 (''There is no daylight between typically needed, per the OOH, and normally required, per the regulatory criteria. 'Typically' and 'normally' are synonyms.'').

[28] *See* USCIS, ''H–1B Specialty Occupations, DOD Cooperative Research and Development Project Workers, and Fashion Models,'' *https://www.uscis.gov/working-in-the-united-states/h-1b-specialty-occupations* (last updated Feb. 8, 2023).

[29] *See* USCIS, ''Rescission of 2017 Policy Memorandum PM–602–0142,'' PM–602–0142.1, *https://www.uscis.gov/sites/default/files/document/memos/PM-602-0142.1_RescissionOfPM-602-0142.pdf* (Feb. 3, 2021).

[30] The 2017 memorandum instructed officers not to ''generally consider the position of [computer] programmer to qualify as a specialty occupation,'' specifically where the proffered position did not have a minimum entry requirement of a U.S. bachelor's or higher and indicated that the petitioner must provide other evidence to establish that the particular position is one in a specialty occupation. *See* USCIS, Recission of the December 22, 2000 ''Guidance memo on H1B computer related positions'', PM–602–0142, *https://www.uscis.gov/sites/default/files/document/memos/PM-6002-0142-H-1BComputerRelatedPositionsRecission.pdf* (Mar. 31, 2017).

[31] *See Innova,* 983 F.3d at 432 (emphasis in original).

with the statute as a whole.[32] In 2000, the U.S. Court of Appeals for the Fifth Circuit highlighted the ambiguity of the regulatory provision's current wording, and petitioners have misinterpreted the criteria in 8 CFR 214.2(h)(4)(iii)(A) as setting forth both the necessary and sufficient conditions to qualify as a specialty occupation, a reading that resulted in some positions meeting one condition of 8 CFR 214.2(h)(4)(iii)(A), but not the definition as a whole.[33] These proposed changes would eliminate this source of confusion.

DHS is also proposing to amend 8 CFR 214.2(h)(4)(iii)(A)(*1*) by adding ''U.S.'' to ''baccalaureate,'' and replacing the word ''position'' with ''occupation,'' so that it sets forth ''the minimum requirement for entry into the particular occupation in which the beneficiary will be employed.'' *See* proposed 8 CFR 214.2(h)(4)(iii)(A)(*1*). Adding ''U.S.'' clarifies that a baccalaureate degree must be a U.S. degree (or its foreign equivalent), and that a foreign baccalaureate is not necessarily an equivalent. DHS is proposing this change to codify longstanding practice and to reflect a consistent standard that will align the regulation discussing the position requirement at 8 CFR 214.2(h)(4)(iii)(A)(*1*) with the statutory requirement of ''a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States'' at INA section 214(i)(1)(B), 8 U.S.C. 1184(i)(1)(B), as well as the regulatory requirement that an H–1B beneficiary must have the equivalent of a U.S. baccalaureate degree at 8 CFR 214.2(h)(4)(iii)(C)(*1*). Replacing ''position'' with ''occupation'' would clarify that the first criterion can be satisfied if the petitioner can show that its position falls within an occupational category for which all positions within that category have a qualifying minimum degree requirement.[34] This revision would provide added clarity to the regulatory criteria as the criteria would flow from general to specific (*i.e.,* occupation level to industry to employer to position). If the occupation requires at least a bachelor's degree in a specific specialty (*e.g.,* architect or aeronautical engineer) then it necessarily follows that a position in one of those occupations would require a degree and qualify as a specialty occupation. If the occupation does not require at least a bachelor's degree in a specific specialty, then the petitioner could submit evidence to show that at least a bachelor's degree in a specific specialty (or its equivalent) is required based on U.S. industry norms, the employer's particular requirement, or because of the particulars of the specific position. *See* proposed 8 CFR 214.2(h)(4)(iii)(A)(*2*) through (*4*). USCIS will continue its practice of consulting the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* and other reliable and informative sources submitted by the petitioner, to assist in its determination regarding the minimum entry requirements for positions located within a given occupation.

DHS further proposes to amend 8 CFR 214.2(h)(4)(iii)(A)(*2*) by consolidating this criterion's second prong into the fourth criterion. *See* proposed 8 CFR 214.2(h)(4)(iii)(A)(*2*). The second prong of current 8 CFR 214.2(h)(4)(iii)(A)(*2*), which focuses on a position's complexity or uniqueness, is similar to current 8 CFR 214.2(h)(4)(iii)(A)(*4*), which focuses on a position's complexity and specialization. In practice, they are frequently consolidated into the same analysis. This amendment would streamline both criteria, as well as the explanation and analysis in written decisions issued by USCIS pertaining to specialty occupation determinations, as such decisions discuss all four criteria and are necessarily repetitive because of the existing overlap between 8 CFR 214.2(h)(4)(iii)(A)(*2*) and (*4*). This amendment would also simplify the analysis because petitioners may demonstrate eligibility under this criterion if the position is ''so specialized, complex, or unique'', as opposed to ''so complex or unique'' under current 8 CFR 214.2(h)(4)(iii)(A)(*2*) and ''so specialized and complex'' under current 8 CFR 214.2(h)(4)(iii)(A)(*4*) (emphasis added). Notwithstanding these amendments, the analytical framework of the first prong of proposed 8 CFR 214.2(h)(4)(iii)(A)(*2*) generally would remain the same. Thus, a petitioner would satisfy proposed 8 CFR 214.2(h)(4)(iii)(A)(*2*) if it demonstrates that the specialty degree requirement is normally the minimum entry requirement for: (1) parallel positions; (2) at similar organizations; (3) within the employer's industry in the United States. This criterion is intended for the subset of positions with minimum entry requirements that are determined not necessarily by occupation, but by specific industry standards. For this criterion, DHS would continue its practice of consulting DOL's *Occupational Outlook Handbook* and other reliable and informative sources, such as information from the industry's professional association or licensing body, submitted by the petitioner.

USCIS proposes to change the third criterion at proposed 8 CFR 214.2(h)(4)(iii)(A)(*3*), in part, from stating that the employer normally requires a ''degree or its equivalent for the position'' to stating that the employer normally requires a ''U.S. baccalaureate or higher degree in a directly related specific specialty, or its equivalent, for the position.'' The additional phrase about a ''degree in a directly related specific specialty'' would reinforce the existing requirements for a specialty occupation, in other words, that the position itself must require a directly related specialty degree, or its equivalent, to perform its duties. *See also* proposed 8 CFR 214.2(h)(4)(iii)(A)(*3*). Employers requiring degrees as a proxy for a generic set of skills would not meet this standard. Employers listing a specialized degree as a hiring preference would not meet this standard either. If USCIS were constrained to recognize a position as a specialty occupation merely because an employer has an established practice of demanding certain educational requirements for the offered position—without consideration of whether the position actually requires the application of a body of highly specialized knowledge consistent with the degree requirement—then any beneficiary with a bachelor's degree in a specific specialty could be brought

[32] Numerous AAO non-precedent decisions spanning several decades have explained that the criteria at 8 CFR 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 CFR 214.2(h)(4)(ii), and that the regulatory criteria must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See, e.g., In Re.* ---, 2009 WL 4982420 (AAO Aug. 21, 2009); *In Re.* ---, 2009 WL 4982607 (AAO Sept. 3, 2009); *In Re. 15542,* 2016 WL 929725 (AAO Feb. 22, 2016); *In Re. 17442092,* 2021 WL 4708199 (AAO Aug. 11, 2021); *In Re. 21900502,* 2022 WL 3211254 (AAO July 7, 2022).

[33] *See Defensor* v. *Meissner,* 201 F.3d 384, 387 (5th Cir. 2000) (stating that current 8 CFR 214.2(h)(4)(iii)(A) ''appears to implement the statutory and regulatory definition of specialty occupation through a set of four different standards. However, this section might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition. The ambiguity stems from the regulation's use of the phrase 'to qualify as.' In common usage, this phrase suggests that whatever conditions follow are both necessary and sufficient conditions. Strictly speaking, however, the language logically entails only that whatever conditions follow are necessary conditions. . . . If § 214.2(h)(4)(iii)(A) is read to create a necessary and sufficient condition for being a specialty occupation, the regulation appears somewhat at odds with the statutory and regulatory definitions of 'specialty occupation.' '').

[34] DHS generally determines a position's occupation or occupational category by looking at the standard occupational classification (SOC) code designated on the LCA.

into the United States to perform work in a non-specialty occupation if the employer arbitrarily imposed such a degree requirement for the non-specialty occupation position.[35] With respect to an employer's normal employment practices, a petitioner could submit evidence of an established recruiting and hiring practice to establish its requirements for the position. Keeping the word ''normally'' in this criterion is intended to preserve flexibility for petitioners, although petitioners seeking to fill a position for the first time generally would not be able to demonstrate an established practice.[36]

Furthermore, DHS proposes to add ''or third party if the beneficiary will be staffed to that third party'' to proposed 8 CFR 214.2(h)(4)(iii)(A)(*3*) [37] to clarify that it is the third party's requirements, not the petitioning employer's, that are most relevant if the beneficiary would be staffed to a third party. This change would be consistent with proposed 8 CFR 214.2(h)(4)(i)(B)(*3*), which clarifies that when a beneficiary is staffed to a third party, it is the requirements of that third party, and not the petitioner, that are most relevant when determining whether the position is a specialty occupation. This proposed revision would define ''staffed'' in the same way to mean that the beneficiary would be contracted to fill a position in the third party's organization. The criterion at proposed 8 CFR 214.2(h)(4)(iii)(A)(*4*) incorporates the second prong of current 8 CFR 214.2(h)(4)(iii)(A)(*2*). *See* proposed 8 CFR 214.2(h)(4)(iii)(A)(*4*). DHS proposes no other substantive changes to this criterion. Thus, the fourth criterion could be satisfied if the petitioner demonstrates that the proffered position's job duties are so specialized, complex, or unique that they necessitate the attainment of a U.S. bachelor's degree in a directly related specific specialty, or its equivalent.

3. Amended Petitions

DHS proposes to clarify when an amended or new H–1B petition must be filed due to a change in an H–1B worker's place of employment. Specifically, this rule proposes to clarify that any change of work location that requires a new LCA is itself considered a material change and therefore requires the petitioning employer to file an amended or new petition with USCIS before the H–1B worker may perform work under the changed conditions. Further, DHS proposes to consolidate and clarify guidance on when an amended or new petition is required for short-term placement of H–1B workers at a worksite not listed on the approved petition or corresponding LCA.[38] These proposed changes are not intended to depart from existing regulations and guidance, but rather, seek to consolidate existing requirements and make clear when a petitioner must submit an amended or new petition. DHS regulations already require that petitioning employers file an amended or new H–1B petition for all situations involving a material change to the conditions of H–1B employment. Specifically, 8 CFR 214.2(h)(2)(i)(E) states that a ''petitioner shall file an amended or new petition, with fee, with the Service Center where the original petition was filed to reflect any material changes in the terms and conditions of employment or training or the alien's eligibility as specified in the original approved petition.'' That regulation goes on to add that if the amended or new petition is an H–1B petition, a new LCA must accompany the petition. Additionally, 8 CFR 214.2(h)(11)(i)(A) requires a petitioner to ''immediately notify'' USCIS of a change in the terms and conditions of employment of a beneficiary which may affect eligibility for H–1B status. However, USCIS seeks to clarify when an amended or new petition must be filed or when a petitioner need not file an amended petition. To find relevant requirements, H–1B petitioners and USCIS officers currently must look to various sources, including USCIS policy guidance, DOL regulations, and DOL guidance. DHS seeks to make its regulations relating to amended or new H–1B petitions more comprehensive and useful by incorporating relevant requirements into proposed 8 CFR 214.2(h)(2)(i)(E)(*2*).

Under 8 CFR 214.2(h)(4)(i)(B), an H–1B petition for a specialty occupation worker must include a certified LCA from DOL. DOL regulation at 20 CFR 655.731 provides details on the LCA requirements, including that an employer seeking to employ an H–1B worker in a specialty occupation must attest on the LCA that it will pay the H–1B worker the required wage rate. The required wage rate is the higher of either the prevailing wage [39] for the occupational classification, or the actual wage paid by the employer to similarly situated employees, in the geographic area of intended employment.[40] The LCA seeks to protect U.S. workers and their wages by disincentivizing hiring foreign workers at lower wages. A key component to filing an LCA is determining the appropriate wage to list on the application. Generally, a petitioning employer is not required to use any specific methodology to determine the prevailing wage and may utilize a wage obtained from the Office of Foreign Labor Certification, an independent authoritative source, or other legitimate sources of wage data.[41] While there are many factors that may be considered when determining the prevailing wage, one of the most significant is the geographic area where the H–1B worker will perform their duties. Because prevailing wages differ, often significantly, from location to location, a change in geographic area of intended employment that goes beyond the current metropolitan statistical area

[35] *See Defensor,* 201 F.3d at 388 (noting ''If only [the employer]'s requirements could be considered, then any alien with a bachelor's degree could be brought into the United States to perform a non-specialty occupation, so long as that person's employment was arranged through an employment agency which required all clients to have bachelor's degrees. Thus, aliens could obtain six year visas for any occupation, no matter how unskilled, through the subterfuge of an employment agency. This result is completely opposite the plain purpose of the statute and regulations, which is to limit H1–B [sic] visas to positions which require specialized experience and education to perform.'').

[36] First-time hirings are not precluded from qualifying under one of the other criteria.

[37] The full proposed regulation would read: ''The employer, or third party if the beneficiary will be staffed to that third party, normally requires a U.S. baccalaureate or higher degree in a directly related specific specialty, or its equivalent, for the position.''

[38] *See* USCIS, ''USCIS Final Guidance on When to File an Amended or New H–1B Petition After *Matter of Simeio Solutions, LLC,*'' PM–602–0120 (July 21, 2015), *https://www.uscis.gov/sites/default/files/document/memos/2015-0721_Simeio_Solutions_Transition_Guidance_Memo_Format_7_21_15.pdf.*

[39] 20 CFR 655.731(a)(2)(ii) states that, if the job opportunity is not covered by a collective bargaining agreement, the prevailing wage shall be the arithmetic mean of the wages of workers similarly employed, except that the prevailing wage shall be the median when provided by paragraphs (a)(2)(ii)(A), (b)(3)(iii)(B)(*2*), and (b)(3)(iii)(C)(*2*) of 20 CFR 655.731. An employer is not permitted to pay a wage that is lower than a wage required under any other applicable Federal, State or local law.

[40] Pursuant to 20 CFR 655.715, ''Area of intended employment'' means the area within normal commuting distance of the place (address) of employment where the H–1B nonimmigrant is or will be employed. There is no rigid measure of distance which constitutes a normal commuting distance or normal commuting area, because there may be widely varying factual circumstances among different areas (*e.g.,* normal commuting distances might be 20, 30, or 50 miles). If the place of employment is within a Metropolitan Statistical Area (MSA) or a Primary Metropolitan Statistical Area (PMSA), any place within the MSA or PMSA is deemed to be within normal commuting distance of the place of employment; however, all locations within a Consolidated Metropolitan Statistical Area (CMSA) will not automatically be deemed to be within normal commuting distance. The borders of MSAs and PMSAs are not controlling with regard to the identification of the normal commuting area; a location outside of an MSA or PMSA (or a CMSA) may be within normal commuting distance of a location that is inside (*e.g.,* near the border of) the MSA or PMSA (or CMSA).

[41] *See* 20 CFR 655.731(a)(2).

(MSA) often will have an impact on the prevailing wage, requiring a new LCA.

In its precedent decision *Matter of Simeio Solutions, LLC,* 26 I&N Dec. 542 (AAO 2015), USCIS's Administrative Appeals Office (AAO) held that a change in geographic area of employment that would require a new LCA is considered a material change for purposes of 8 CFR 214.2(h)(2)(i)(E) and (h)(11)(i)(A) because the new LCA may impact eligibility under 8 CFR 214.2(h)(4)(i)(B)(*1*). For example, a change in location may impact eligibility if the new location is in an MSA with a higher wage. USCIS provided additional guidance implementing *Matter of Simeio Solutions* in July 2015 in its policy memorandum ''USCIS Final Guidance on When to File an Amended or New H–1B Petition After *Matter of Simeio Solutions, LLC.*'' [42]

In proposed 8 CFR 214.2(h)(2)(i)(E)(*2*), DHS proposes to specify that ''Any change in the place of employment to a geographical area that requires a corresponding labor condition application to be certified to USCIS is considered a material change and requires an amended or new petition to be filed with USCIS before the H–1B worker may begin work at the new place of employment.'' Further, DHS proposes to specify in proposed 8 CFR 214.2(h)(2)(i)(E)(*2*) that ''[t]he amended or new petition must be properly filed before the material change(s) takes place''. This would codify current USCIS practice as articulated in its policy memorandum ''USCIS Final Guidance on When to File an Amended or New H–1B Petition After *Matter of Simeio Solutions, LLC,*'' which discusses the ''USCIS position that H–1B petitioners are required to file an amended or new petition before placing an H–1B employee at a new place of employment not covered by an existing, approved H–1B petition.'' As with current USCIS practice, proposed 8 CFR 214.2(h)(2)(i)(E)(*2*) would allow the worker to begin working under the materially changed terms and conditions of employment upon the filing of the amended or new petition, assuming all other requirements and terms of eligibility are met. They would not need to wait for a final decision on the amended or new petition in order to begin working if eligible in accordance with existing portability provisions at 8 CFR 214.2(h)(2)(i)(H). If while the amended or new petition is pending adjudication another material change occurs, an employer must file another amended or new petition to account for the new changes.[43] If that amended or new petition is denied, the H–1B worker generally may return to the position and worksite listed on the most recently approved petition as long as that petition and corresponding LCA are still valid.[44]

Proposed 8 CFR 214.2(h)(2)(i)(E)(*2*) would also set forth limited circumstances in which a change to the beneficiary's place of employment would not require the petitioner to file an amended petition. Proposed 8 CFR 214.2(h)(2)(i)(E)(*2*)(*i*) states that moving a beneficiary to a new job location within the same area of intended employment as listed on the LCA would not require an amended petition, assuming there are no other material changes. This would be consistent with INA section 212(n)(4), which provides that a change in the worksite location within the same MSA of the existing LCA would generally be deemed to be within the area of employment.[45] Note that proposed 8 CFR 214.2(h)(2)(i)(E)(*2*)(*i*) does not purport to set forth all relevant DOL requirements, such as the requirement that the petitioning employer post notice of the LCA, either electronically or in hard-copy, in the new work location on or before the date that the H–1B worker performs any work at the new location.[46]

Additionally, proposed 8 CFR 214.2(h)(2)(i)(E)(*2*)(*ii*) would set forth the specific durations for short-term placements that would not require an amended or new petition, assuming there are no other material changes. This would be consistent with DOL regulations at 20 CFR 655.735 in which short-term placements of less than 30 days, or in some cases 60 days, do not require a new LCA or an amended or new petition, provided there are no material changes.

Proposed 8 CFR 214.2(h)(2)(i)(E)(*2*)(*iii*) would clarify that an amended or new petition would not be required when a beneficiary is going to a non-worksite location to participate in employee development, will be spending little time at any one location, or will perform a peripatetic job. Proposed 8 CFR 214.2(h)(2)(i)(E)(*2*)(*iii*) provides examples of ''peripatetic jobs'' including situations where the job is primarily at one location, but the beneficiary occasionally travels for short periods to other locations on a casual, short-term basis, which can be recurring but not excessive (*i.e.,* not exceeding 5 consecutive workdays for any one visit by a peripatetic worker, or 10 consecutive workdays for any one visit by a worker who spends most work time at one location and travels occasionally to other locations). Proposed 8 CFR 214.2(h)(2)(i)(E)(*2*)(*iii*) would be consistent with DOL regulations at 20 CFR 655.715, which sets forth several criteria for what would not constitute a ''place of employment'' or ''worksite,'' as well as what would constitute an ''employee developmental activity,'' for purposes of requiring a new LCA.

Note that proposed 8 CFR 214.2(h)(2)(i)(E)(*2*) would not codify all relevant considerations related to when to file an amended petition. Stakeholders should still consult DOL regulations and policy guidance when considering if an amended petition is necessary. Nevertheless, DHS believes its proposed changes to 8 CFR 214.2(h)(2)(i)(E)(*2*) would still be beneficial by providing additional clarity about when a change in an H–1B worker's place of employment constitutes a material change requiring an amended or new petition.

DHS proposes to revise and redesignate current 8 CFR 214.2(h)(2)(i)(E) as proposed 8 CFR 214.2(h)(2)(i)(E)(*1*) so that this provision would be applicable to all H classifications, while proposed 8 CFR 214.2(h)(2)(i)(E)(*2*) would be specific to H–1B nonimmigrants. In proposed 8 CFR 214.2(h)(2)(i)(E)(*1*), DHS proposes minor changes to clarify that an amended or new H–1B petition requires a current or new certified labor condition application.

[42] *See* USCIS, ''USCIS Final Guidance on When to File an Amended or New H–1B Petition After *Matter of Simeio Solutions, LLC,*'' PM–602–0120 (July 21, 2015), *https://www.uscis.gov/sites/default/files/document/memos/2015-0721_Simeio_Solutions_Transition_Guidance_Memo_Format_7_21_15.pdf.*

[43] *See id.* at 7.

[44] *See id.*

[45] *See also* 20 CFR 655.734; DOL, Wage and Hour Division, ''Fact Sheet #62J: What does 'place of employment' mean?'' (July 2008), *https://www.dol.gov/agencies/whd/fact-sheets/62j-h1b-worksite* (''The employer need not obtain a new LCA for another worksite within the geographic area of intended employment where the employer already has an existing LCA for that area.'').

[46] *See* 20 CFR 655.734(a)(2).

4. Deference

DHS seeks to codify and clarify its existing deference policy at proposed 8 CFR 214.1(c)(5). Deference helps promote consistency and efficiency for both USCIS and its stakeholders. The deference policy instructs officers to consider prior determinations involving the same parties and facts, when there is no material error with the prior determination, no material change in circumstances or in eligibility, and no new material information adversely impacting the petitioner's, applicant's, or beneficiary's eligibility. Through this proposed regulation, DHS seeks to clarify when petitioners may expect adjudicators to exercise deference in reviewing their petitions, so petitioners will be more likely to submit necessary, relevant supporting evidence. This creates predictability for petitioners and beneficiaries and leads to fairer and more reliable outcomes. Codifying and clarifying when USCIS gives deference would also better ensure consistent adjudications.

In 2004, USCIS issued a memorandum discussing the significance of prior USCIS adjudications.[47] The memorandum acknowledged that USCIS is not bound to approve subsequent petitions or applications where eligibility has not been demonstrated merely because of a prior approval, which may have been erroneous. Nevertheless, where there has been no material change in the underlying facts, the memorandum specified that adjudicators should defer to a prior determination involving the same parties and underlying facts unless there was a material error, a substantial change in circumstances, or new material information that adversely impacts eligibility. On October 23, 2017, USCIS rescinded that guidance, expressing concern that the 2004 memorandum shifted the burden from a petitioner to USCIS.[48] Rather than attempt to address any perceived concerns, the 2017 memorandum rescinded the 2004 policy entirely. On April 27, 2021, USCIS incorporated its deference policy into the USCIS Policy Manual, acknowledging that adjudicators are not required to approve subsequent petitions or applications where eligibility has not been demonstrated strictly because of a prior approval (which may have been erroneous), but stressing that they should defer to prior determinations involving the same parties and underlying facts.[49] As stated in the USCIS Policy Manual, deviation from a previous approval carries important consequences and implicates predictability and consistency concerns.[50]

Consistent with current guidance in the USCIS Policy Manual, proposed 8 CFR 214.1(c)(5) would provide that when adjudicating a request filed on Form I–129 involving the same parties and the same underlying facts, USCIS gives deference to its prior determination of the petitioner's, applicant's, or beneficiary's eligibility. However, USCIS need not give deference to a prior approval if: there was a material error involved with a prior approval; there has been a material change in circumstances or eligibility requirements; or there is new, material information that adversely impacts the petitioner's, applicant's, or beneficiary's eligibility.

Proposed 8 CFR 214.1(c)(5) would apply to all nonimmigrants using Form I–129, Petition for a Nonimmigrant Worker, and would include a request on Form I–129 involving the same parties and same material facts. Currently, the USCIS Policy Manual frames its deference policy as applying to requests for an ''extension of petition validity.'' [51] The phrase ''extension of petition validity'' may be misread as limiting USCIS's deference policy to petition extensions and excluding other types of requests that could involve the same parties and same material facts. Thus, DHS proposes to more broadly frame proposed 8 CFR 214.1(c)(5) as applying to ''a request filed on Form I–129'' and would not use the term ''extension of petition validity'' as found in the current USCIS Policy Manual.

5. Evidence of Maintenance of Status

DHS seeks to clarify current requirements and codify current practices concerning evidence of maintenance of status at proposed 8 CFR 214.1(c)(1) through (7). Maintenance of status in this context generally refers to the applicant or beneficiary abiding by the terms and conditions of admission or extension of stay, as applicable (for example, if admitted as an H–1B nonimmigrant, the individual worked according to the terms and conditions of the H–1B petition approval on which their status was granted and did not engage in activities that would constitute a violation of status, such as by working without authorization). Primarily, DHS seeks to clarify that evidence of maintenance of status is required for petitions where there is a request to extend or amend the beneficiary's stay. These changes would impact the population of nonimmigrants named in 8 CFR 214.1(c)(1): E–1, E–2, E–3, H–1B, H–1B1, H–2A, H–2B, H–3, L–1, O–1, O–2, P–1, P–2, P–3, Q–1, R–1, and TN nonimmigrants.

First, DHS would add a new provision at proposed 8 CFR 214.1(c)(6), which would provide, in part, that an applicant or petitioner seeking an extension of stay must submit supporting evidence to establish that the applicant or beneficiary maintained the previously accorded nonimmigrant status before the extension request was filed.[52] Proposed 8 CFR 214.1(c)(6) would further provide that evidence of such maintenance of status may include, but is not limited to: copies of paystubs, W–2 forms, quarterly wage reports, tax returns, contracts, and work orders. This is consistent with the nonimmigrant petition form instructions, which state that for all classifications, if a beneficiary is seeking a change of status (COS) or extension of stay, evidence of maintenance of status must be included with the new petition.[53] The form instructions further state that if the beneficiary is employed in the United States, the petitioner may submit copies of the beneficiary's last two pay stubs, Form W–2, and other relevant evidence, as well as a copy of the beneficiary's Form I–94, passport, travel document, or Form I–797.[54] By proposing to codify these instructions, DHS hopes to clarify that petitioners should demonstrate such eligibility by submitting supporting documentation upfront with the extension of stay request, rather than waiting for USCIS to issue a request for additional

[47] *See* USCIS, ''The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity,'' HQPRD 72/11.3 (Apr. 23, 2004).

[48] *See* USCIS, ''Rescission of Guidance Regarding Deference to Prior Determinations of Eligibility in the Adjudication of Petitions for Extension of Nonimmigrant Status,'' PM–602–0151 (Oct. 23, 2017).

[49] *See* USCIS, ''Deference to Prior Determinations of Eligibility in Requests for Extensions of Petition Validity, Policy Alert,'' PA–2021–05 (April 27, 2021), *https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210427-Deference.pdf* (last visited on Mar. 23, 2023).

[50] *See* USCIS Policy Manual, Volume 2, ''Nonimmigrants,'' Part A, ''Nonimmigrant Policies and Procedures'', Chapter 4, ''Extension of Stay, Change of Status, and Extension of Petition Validity,'' Section B, ''Extension of Petition Validity,'' *https://www.uscis.gov/policy-manual/volume-2-part-a-chapter-4.*

[51] *See id.*

[52] This is subject to the exception in 8 CFR 214.1(c)(4).

[53] *See* USCIS, Form I–129 Instructions, ''Instructions for Petition for Nonimmigrant Worker,'' at 6, *https://www.uscis.gov/sites/default/files/document/forms/i-129instr.pdf* (last visited Aug. 23, 2023).

[54] *See id.*

information such as a request for evidence (RFE) or notice of intent to deny (NOID). Under proposed 8 CFR 214.1(c)(6) DHS further proposes to include additional examples of evidence to demonstrate maintenance of status, which include, but are not limited to: quarterly wage reports, tax returns, contracts, and work orders. By clearly stating what types of supporting documentation will help USCIS in adjudicating extension petitions, DHS hopes to further reduce the need for RFEs and NOIDs, which can be burdensome to both USCIS and petitioners.

Requiring petitioners (or applicants, in the case of E nonimmigrants) to submit supporting evidence to establish that the beneficiary (or applicant) maintained the previously accorded nonimmigrant status before the extension of stay request was filed would not conflict with USCIS's current and proposed deference policy. Although USCIS defers to prior USCIS determinations of eligibility in extension requests, USCIS would not be able to defer to a prior determination of maintenance of status during the preceding stay because it would not have made such a determination until adjudicating the extension of stay request. Even if there was a prior determination, USCIS need not give deference when there was a material error involved with a prior approval; a material change in circumstances or eligibility requirements; or new, material information that adversely impacts the petitioner's, applicant's, or beneficiary's eligibility. Without supporting evidence to demonstrate maintenance of status, it is unclear how USCIS would determine if there was a material error, material change, or other new material information. For example, evidence pertaining to the beneficiary's continued employment (*e.g.,* paystubs) may help USCIS to determine whether the beneficiary was being employed consistent with the prior petition approval or whether there might have been material changes in the beneficiary's employment (*e.g.,* a material change in the place of employment).

Thus, proposed 8 CFR 214.1(c)(6) would make clear that it is the filers' burden to demonstrate that status was maintained before the extension of stay request was filed. This would be consistent with current 8 CFR 214.1(c)(4), which states that, ''An extension of stay may not be approved for an applicant who failed to maintain the previously accorded status . . ., '' as well as proposed 8 CFR 214.1(c)(4)(i), which would state that, ''An extension or amendment of stay may not be approved for an applicant or beneficiary who failed to maintain the previously accorded status . . .''

In line with proposed 8 CFR 214.1(c)(6), DHS is proposing to amend 8 CFR 214.2(h)(14) by removing the sentence ''Supporting evidence is not required unless requested by the director.'' This sentence causes confusion because it implies that supporting evidence is not required, contrary to current 8 CFR 214.1(c)(1) (a request for an extension of stay must be filed ''on the form designated by USCIS, . . . with the initial evidence specified in § 214.2, and in accordance with the form instructions'') and the form instructions (''[f]or all classifications, if a beneficiary is seeking a [COS] or extension of stay, evidence of maintenance of status must be included with the new petition'').[55] Removing this sentence from proposed 8 CFR 214.2(h)(14) should further reduce the need for RFEs or NOIDs.

For the same reasons, DHS is also proposing to remove the same or similar sentence found in the regulations for the L, O, and P nonimmigrant classifications. Specifically, DHS proposes to amend 8 CFR 214.2(l)(14)(i) by removing the sentence ''Except in those petitions involving new offices, supporting documentation is not required, unless requested by the director.'' DHS proposes to amend 8 CFR 214.2(o)(11) and (p)(13) by removing the sentence ''Supporting documents are not required unless requested by the Director.'' DHS is proposing technical changes to add the word ''generally'' to 8 CFR 214.2(l)(14)(i), (o)(11), and (p)(13), to account for untimely filed extensions that are excused consistent with 8 CFR 214.1(c)(4). As stated above, removing this sentence should reduce the need for RFEs or NOIDs. Further, it would not add an additional burden on the petitioner or applicant.

In addition, DHS proposes to codify its longstanding practice of requiring evidence of maintenance of status for petitions requesting to amend a beneficiary's stay in the United States. The proposed rule would add language to clarify that the petitioner must submit initial evidence that the beneficiary maintained the previously accorded status before the amendment of stay petition was filed. Failure to establish maintenance of status would result in a denial of the request to amend the beneficiary's stay in the United States, unless USCIS determines that the failure to timely file the amendment of stay was due to extraordinary circumstances. *See* proposed 8 CFR 214.1(c)(1), (4), (6), and (7). DHS would also update the Form I–129, Petition for a Nonimmigrant Worker, as well as the form filing instructions to coincide with and support these changes, as well as provide clarity about when an amended petition is appropriate, including the requirement of establishing maintenance of status for amendment of stay requests.

Current 8 CFR 214.1(c)(1) generally requires evidence of maintenance of status with an extension of stay request, and 8 CFR 214.1(c)(4) generally states that an extension of stay may not be approved where a beneficiary failed to maintain the previously accorded status. DHS proposes to add specific references to requests to ''amend the terms and conditions of the nonimmigrant's stay without a request for additional time'' or for an ''amendment of stay'' to proposed 8 CFR 214.1(c)(1), (4), (6), and (7), so that these regulations clearly convey that evidence of maintenance of status is also required for petitions requesting to amend a beneficiary's stay in the United States, even when the petition is not requesting additional time beyond the period previously granted. For example, a petitioner may request to amend the stay of the beneficiary when filing an amended petition but not seek additional time for the beneficiary's stay because the beneficiary may have an unexpired I–94 that has been granted until the end of the 6-year period of admission and is not yet eligible for an exemption from the 6-year period of admission limitation. In that example, the petitioner may seek authorization for the beneficiary to remain in the United States, but under different terms and conditions than previously granted, without requesting additional time. A petitioner filing an amended petition with a request to amend the terms and conditions of the beneficiary's stay, but without a request for additional time, would not specifically request an ''extension of stay'' on the Form I–129 petition. Nevertheless, DHS considers a petition requesting to amend the terms and conditions of the beneficiary's stay to be substantively equivalent to an extension of stay request for purposes of establishing maintenance of status and will exercise discretion when granting such requests. In other words, DHS considers an amendment of stay request as a request to continue to allow the beneficiary to remain in the United States based upon the amended

[55] *See* USCIS, Form I–129 Instructions, ''Instructions for Petition for Nonimmigrant Worker,'' at 6, *https://www.uscis.gov/sites/default/files/document/forms/i-129instr.pdf* (last visited Aug. 23, 2023).

conditions for a period of stay that has already been granted. Therefore, DHS believes that it is reasonable to require evidence that maintenance of status has been satisfied, before USCIS may favorably exercise its discretion to grant an amendment of stay request. Further, including amendments of stay under 8 CFR 214.1(c) would close a potential loophole of using an amended petition for a beneficiary who has not maintained status, yet wishes to remain in the United States, without having to depart and be readmitted in that status.

Currently, most petitioners filing to amend a beneficiary's stay already submit evidence of maintenance of status; however, if an amended petition does not contain evidence of maintenance of status, USCIS typically issues a request for such evidence. By proposing to codify current practice in 8 CFR 214.1(c), DHS hopes to clarify that petitioners should demonstrate eligibility by submitting evidence of maintenance of status with the amendment of stay request (just like with an extension of stay request), rather than waiting for USCIS to request this information. By clearly stating what types of supporting documentation will help USCIS in adjudicating requests to amend a beneficiary's stay, DHS hopes to further reduce the need for RFEs and NOIDs, which can be burdensome for petitioners and USCIS, and generally extends the time needed to complete the adjudication of the petition.

Specifically, DHS proposes to revise 8 CFR 214.1(c)(4), to add a reference to an ''amendment'' of stay. Aside from clarifying that evidence of maintenance of status would be required in an amendment of stay request, this change would also clarify that USCIS can excuse the late filing of an amendment of stay request under the circumstances described at proposed 8 CFR 214.1(c)(4)(i)(A) through (D). ''Late filing'' in this context would include certain extension of stay requests filed after the expiration date on the Form I–94. A ''late filing'' would also encompass, for example, a request for an amendment of stay that was filed after the beneficiary temporarily stopped working due to extraordinary circumstances beyond their control. DHS would clarify in proposed 8 CFR 214.1(c)(4)(ii) that, if USCIS excuses the late filing of an amendment of stay request, it would do so without requiring the filing of a separate application or petition and would grant the amendment of stay, if otherwise eligible, from the date the petition was filed.[56]

DHS proposes nonsubstantive edits to improve readability to 8 CFR 214.1(c)(4). DHS also proposes nonsubstantive edits in proposed 8 CFR 214.1(c)(1) and (4) to add references to a ''beneficiary,'' ''petition,'' or ''Form I–129,'' to account for the extension or amendment of stay being requested on the Form I–129 petition, and to replace ''alien'' with ''beneficiary'' and ''Service'' with ''USCIS.'' With respect to proposed 8 CFR 214.1(c)(7), this provision would contain the same language as current 8 CFR 214.1(c)(5), except that DHS would add references to an ''amendment'' of stay and make other nonsubstantive edits similar to the ones described above.

6. Eliminating the Itinerary Requirement for H Programs

DHS is proposing to eliminate the H programs' itinerary requirement. *See* proposed 8 CFR 214.2(h)(2)(i)(B) and (F). Current 8 CFR 214.2(h)(2)(i)(B) states that ''A petition that requires services to be performed or training to be received in more than one location must include an itinerary with the dates and locations of the services or training and must be filed with USCIS as provided in the form instructions.'' In addition, current 8 CFR 214.2(h)(2)(i)(F), for agents as petitioners, contains itinerary requirement language.

The information provided in an itinerary is largely duplicative of information already provided in the LCA for H–1B petitions and the temporary labor certification (TLC) for H–2 petitions. The LCA and TLC require the petitioner to the list the name and address where work will be performed, as well as the name and address of any secondary entity where work will be performed. It is also largely duplicative of information already provided on the Form I–129, which requires the petitioner to provide the address where the beneficiary will work if different from the petitioner's address listed on the form.[57] Therefore, eliminating the itinerary requirement would reduce duplication that increases petitioner burden and promote more efficient adjudications, without compromising program integrity. Furthermore, USCIS no longer applies the itinerary requirement to H–1B petitions governed by 8 CFR 214.2(h)(2)(i)(B), as memorialized in USCIS Policy Memorandum PM–602–0114, ''Rescission of Policy Memoranda'' (June 17, 2020) (rescinding USCIS Policy Memorandum PM–602–0157, ''Contracts and Itineraries Requirements for H–1B Petitions Involving Third-Party Worksites'' (Feb. 22, 2018)).[58]

To eliminate the unnecessary duplication of work, DHS also proposes to eliminate the itinerary requirement for agents acting as petitioners at current 8 CFR 214.2(h)(2)(i)(F). In proposing to eliminate the itinerary requirement for agents at paragraph (h)(2)(i)(F), DHS also proposes to incorporate technical changes to this provision by moving language currently found in paragraph (h)(2)(i)(F)(*2*) to paragraph (h)(2)(i)(F)(*1*); removing paragraph (h)(2)(i)(F)(*2*); and redesignating current paragraph (h)(2)(i)(F)(3) as proposed paragraph (h)(2)(i)(F)(*2*). Proposed 8 CFR 214.2(h)(2)(i)(F)(*1*) would incorporate the following language currently found in paragraph (h)(2)(i)(F)(*2*): ''The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation. In questionable cases, a contract between the employers and the beneficiary or beneficiaries may be required.'' This proposed restructuring at 8 CFR 214.2(h)(2)(i)(F) is intended to simplify and consolidate the guidance for agents as petitioners following the removal of the itinerary requirement language.

7. Validity Expires Before Adjudication

DHS proposes to allow H–1B petitions to be approved or have their requested validity period dates extended if USCIS adjudicates and deems the petition approvable after the initially requested validity period end-date, or the period for which eligibility has been established, has passed. This typically would happen if USCIS deemed the petition approvable upon a favorable motion to reopen, motion to reconsider, or appeal. Specifically, under proposed 8 CFR 214.2(h)(9)(ii)(D)(*1*), if USCIS adjudicates an H–1B petition and deems it otherwise approvable after the initially requested validity period end-

[56] Proposed 8 CFR 214.1(c)(4)(ii) would continue to state, with minor revisions, that if USCIS excuses the late filing of an extension of stay request, it will do so without requiring the filing of a separate application or petition and will grant the extension of stay from the date the previously authorized stay expired or the amendment of stay from the date the petition was filed.

[57] *See* USCIS, Form I–129, ''Petition for a Nonimmigrant Worker,'' *https://www.uscis.gov/sites/default/files/document/forms/i-129.pdf* (last visited Mar. 14, 2023).

[58] USCIS issued policy memorandum PM–602–0114 following the decision of the U.S. District Court for the District of Columbia in *ITServe Alliance, Inc.* v. *Cissna,* 443 F. Supp. 3d 14, 42 (D.D.C. 2020) (''the itinerary requirement in the INS 1991 Regulation [codified at 8 CFR 214.2(h)(2)(i)(B)] . . has been superseded by statute and may not be applied to H–1B visa applicants''). *See also Serenity Info Tech, Inc.* v. *Cuccinelli,* 461 F. Supp. 3d 1271, 1285 (N.D. Ga. 2020) (citing *ITServe*).

date, or the last day for which eligibility has been established, USCIS may issue an RFE asking whether the petitioner wants to update the dates of intended employment.

If in response to the RFE the petitioner confirms that it wants to update the dates of intended employment and submits a different LCA that corresponds to the new requested validity dates, even if that LCA was certified after the date the H–1B petition was filed, and assuming all other eligibility criteria are met, USCIS would approve the H–1B petition for the new requested period or the period for which eligibility has been established, as appropriate, rather than require the petitioner to file a new or amended petition. The petitioner's request for new dates of employment and submission of an LCA with a new validity period that properly corresponds to the revised requested validity period on the petition and an updated prevailing or proffered wage, if applicable, would not be considered a material change, except that the petitioner may not reduce the proffered wage from that originally indicated in their petition. *See* proposed 8 CFR 214.2(h)(9)(ii)(D)(*1*). However, the total petition validity period would still not be able to exceed 3 years.

Currently, if USCIS adjudicates and deems these types of petitions approvable after the initially requested validity period, or the last day for which eligibility has been established, has elapsed, the petition must be denied. The petitioner is also not able to change the requested validity period using the same petition. Instead, the petitioner must file an amended or new petition requesting a new validity period if they seek to employ or continue to employ the beneficiary. *See* 8 CFR 214.2(h)(2)(i)(E) and (h)(11)(i)(A). The requirement to file an amended or new petition in this circumstance results in additional filing costs and burden for the petitioner. It also results in unnecessary expenditures of USCIS resources to intake and adjudicate another petition, even though the only change generally is a new requested validity period due to the passage of time. This is not an efficient use of USCIS or the petitioner's resources. In certain circumstances this requirement may also result in the H–1B beneficiary losing their cap number, which generally would be an unequitable result for a petition that was otherwise approvable.

Aside from changing the requested validity period, the petitioner would also be able to increase the proffered wage to conform with a new prevailing wage if the prevailing wage has increased due to the passage of time. The petitioner would also be able to increase the proffered wage for other reasons, such as to account for other market wage adjustments. An increase to the proffered wage would not be considered a material change, so long as there are no other material changes to the position. However, a petitioner would not be allowed to reduce the proffered wage, even if the prevailing wage decreased due to the passage of time. If the petitioner intends to reduce the proffered wage or make any other material change to the proposed employment, it would have to file an amended or new petition in accordance with existing provisions at 8 CFR 214.2(h)(2)(i)(E) and (h)(11)(i)(A).

Under proposed 8 CFR 214.2(h)(9)(ii)(D), USCIS would not be required to issue an RFE, as it could instead proceed to approve the petition for the originally requested period or until the last day for which eligibility has been established, as appropriate. For example, USCIS would not be required to issue an RFE when the beneficiary has already been granted H–1B status through another employer, changed nonimmigrant status, adjusted status, or has reached their 6-year limitation on stay, such that an RFE asking the petitioner if they want to update the requested dates of H–1B employment would serve little or no purpose. Consistent with these examples, DHS would consider potential factors that could inform whether USCIS issues an RFE as including, but not limited to, additional petitions filed or approved on the beneficiary's behalf, or the beneficiary's eligibility for additional time in H–1B status. *See* proposed 8 CFR 214.2(h)(9)(ii)(D)(*1*) and (*2*).

Proposed 8 CFR 214.2(h)(9)(ii)(D)(*2*) provides that if no RFE is issued concerning the requested dates of employment, or if the petitioner does not respond, or the response to the RFE does not support new dates of employment, the petition would be approved, if otherwise approvable, for the originally requested period or until the last day for which eligibility has been established, as appropriate. The last day for which eligibility has been established could, for example, be the date the beneficiary reached their six-year maximum limitation on stay, or the end date of the supporting LCA, or one year from approval in case of temporary licensure. If the petition is approved for the originally requested period or the last day for which eligibility has been established, the petition would not be forwarded to the U.S. Department of State (DOS) nor would any accompanying request for a COS, extension of stay, or amendment of stay, be granted because the validity period would have already expired and would therefore not support issuance of a visa or a grant of status.

B. Benefits and Flexibilities

1. H–1B Cap Exemptions

DHS proposes to revise the requirements to qualify for H–1B cap exemption under 8 CFR 214.2(h)(8)(iii)(F)(*4*) when a beneficiary is not directly employed by a qualifying institution, organization, or entity. DHS also proposes to revise the definition of ''nonprofit research organization'' and ''governmental research organization'' under 8 CFR 214.2(h)(19)(iii)(C). These proposed changes are intended to clarify, simplify, and modernize eligibility for cap-exempt H–1B employment, so that they are less restrictive and better reflect modern employment relationships. The proposed changes are also intended to provide additional flexibility to petitioners to better implement Congress's intent to exempt from the annual H–1B cap certain H–1B beneficiaries who are employed at a qualifying institution, organization, or entity.

Congress set the current annual regular cap for the H–1B visa category at 65,000. *See* INA section 214(g)(1)(A), 8 U.S.C. 1184(g)(1)(A). Not all H–1B nonimmigrant visas (or grants of H–1B status) are subject to this annual cap. INA section 214(g)(5) allows certain employers to employ H–1B nonimmigrant workers without being subject to the annual numerical cap. *See* INA section 214(g)(5), 8 U.S.C. 1184(g)(5). For example, INA section 214(g)(5)(A) and (B) exempts those workers who are employed at an institution of higher education or a related or affiliated nonprofit entity, a nonprofit research organization or a governmental research organization. *See* INA section 214(g)(5)(A)–(B), 8 U.S.C. 1184(g)(5)(A)–(B).

Currently, DHS regulations state that an H–1B nonimmigrant worker is exempt from the cap if employed by: (1) an institution of higher education; (2) a nonprofit entity related to or affiliated with such an institution; (3) a nonprofit research organization; or (4) a governmental research organization. *See* 8 CFR 214.2(h)(8)(iii)(F)(*1*) through (*3*). DHS regulations also state that an H–1B nonimmigrant worker may be exempt from the cap when they are not ''directly employed'' by a qualifying institution, organization, or entity, if they are employed at a qualifying

institution, organization, or entity so long as: (1) the majority of the worker's work time will be spent performing job duties at a qualifying institution, organization, or entity; and (2) the worker's job duties will directly and predominately further the essential purpose, mission, objectives or functions of the qualifying institution, organization or entity. *See* 8 CFR 214.2(h)(8)(iii)(F)(*4*). When relying on this exemption, the H–1B petitioner must also establish that there is a nexus between the work to be performed and the essential purpose, mission, objectives, or functions of the qualifying institution, organization, or entity. *Id.*

The H–1B cap exemption regulations define ''nonprofit entity,'' ''nonprofit research organization,'' and ''governmental research organization'' at 8 CFR 214.2(h)(8)(iii)(F)(*3*). For the definition of ''nonprofit entity,'' the regulation adopts the definition at 8 CFR 214.2(h)(19)(iv).[59] For the definition of ''nonprofit research organization'' and ''governmental research organization,'' the regulation adopts the definition at 8 CFR 214.2(h)(19)(iii)(C). The regulation at 8 CFR 214.2(h)(19)(iii)(C) states that a nonprofit research organization is ''primarily engaged in basic research and/or applied research,'' while a governmental research organization is a Federal, State, or local entity ''whose primary mission is the performance or promotion of basic research and/or applied research.'' *Id.*

Specifically, DHS proposes to change the phrase ''the majority of'' at 8 CFR 214.2(h)(8)(iii)(F)(*4*) to ''at least half'' to clarify that H–1B beneficiaries who are not directly employed by a qualifying institution, organization, or entity identified in section 214(g)(5)(A) or (B) of the Act, who equally split their work time between a cap-exempt entity and a non-cap-exempt entity, may be eligible for cap exemption. *See* proposed 8 CFR 214.2(h)(8)(iii)(F)(*4*). The purpose and intended effect of the proposed change is to update the standard to qualify for this cap exemption, as USCIS has historically interpreted ''the majority of'' as meaning more than half.[60] For example, under proposed 8 CFR 214.2(h)(8)(iii)(F)(*4*), a beneficiary who works at a for-profit hospital and research center that would not otherwise be a qualifying institution would qualify for this cap exemption if the beneficiary will spend exactly 50 percent of their time performing job duties at a qualifying research organization (and those job duties would further an activity that supports or advances one of the fundamental purposes, missions, objectives, or functions of the qualifying research organization). Under the current regulations, the same beneficiary would not qualify because 50 percent would not meet the ''majority of'' standard. The application of 8 CFR 214.2(h)(8)(iii)(F)(*4*) to a beneficiary who is not directly employed by a qualifying institution, organization, or entity identified in section 214(g)(5)(A) or (B) of the Act would remain unchanged.

DHS also proposes to revise 8 CFR 214.2(h)(8)(iii)(F)(*4*) to remove the requirement that a beneficiary's duties ''directly and predominately further the essential purpose, mission, objectives or functions'' of the qualifying institution, organization, or entity and replace it with the requirement that the beneficiary's duties ''directly further an activity that supports or advances one of the fundamental purposes, missions, objectives, or functions'' of the qualifying institution, organization, or entity. *See* proposed 8 CFR 214.2(h)(8)(iii)(F)(*4*).[61] This proposed change is intended to update the availability of cap exemptions to include beneficiaries whose work directly contributes to, but does not necessarily predominantly further, the qualifying organization's fundamental purpose, mission, objectives, or functions. Further, this proposed change, by revising ''the'' to ''an'', acknowledges that a qualifying organization may have more than one fundamental purpose, mission, objective, or function, and this fact should not preclude an H–1B beneficiary from being exempt from the H–1B cap.

Proposed 8 CFR 214.2(h)(8)(iii)(F)(*4*) would also eliminate the sentence stating that the H–1B petitioner has the burden to establish that there is a nexus between the beneficiary's duties and the essential purpose, mission, objectives or functions of the qualifying institution, organization, or entity. Since the petitioner is already required to establish that the beneficiary's duties further an activity that supports one of the fundamental purposes, missions, objectives, or functions of the qualifying entity, it is inherently required to show a nexus between the duties and the entity's purpose, mission, objections, or functions, and therefore, the ''nexus'' requirement is redundant. These proposed changes to 8 CFR 214.2(h)(8)(iii)(F)(*4*) would provide more clarity and flexibility for H–1B beneficiaries who will not be directly employed by a qualifying institution, organization, or entity.

DHS also proposes to clarify that the requirement that the beneficiary spend at least half of their work time performing job duties ''at'' a qualifying institution should not be taken to mean the duties need to be physically performed onsite at the qualifying institution. DHS is aware that many positions can be performed remotely. When considering whether such a position is cap-exempt, the proper focus is on the job duties, rather than where the duties are performed physically.

DHS also proposes to revise 8 CFR 214.2(h)(19)(iii)(C), which states that a nonprofit research organization is an entity that is ''primarily engaged in basic research and/or applied research,'' and a governmental research organization is a Federal, State, or local entity ''whose primary mission is the performance or promotion of basic research and/or applied research.'' DHS proposes to replace ''primarily engaged'' and ''primary mission'' with ''a fundamental activity of'' to permit a nonprofit entity or governmental research organization that conducts research as a fundamental activity, but is not *primarily* engaged in research, or where research is not the *primary* mission, to meet the definition of a nonprofit research entity or governmental research organization. *See* proposed 8 CFR 214.2(h)(19)(iii)(C). Reorienting the cap exemptions for nonprofit research organizations and governmental research organizations to the ''fundamental activity'' construct would align these standards with the current ''fundamental activity'' standard found for formal written affiliation agreements under 8 CFR

[59] 8 CFR 214.2(h)(19)(iii) and (iv) pertains to organizations that are exempt from the ACWIA fee for H–1B petitions.

[60] *See* USCIS, Adjudicator's Field Manual (AFM), Chapter 31.3(g)(13), ''Cap Exemptions Pursuant to 214(g)(5) of the Act,'' *https://www.uscis.gov/sites/default/files/document/policy-manual-afm/afm31-external.pdf*, at 36 (providing an example of a qualifying H–1B cap-exempt petition where the beneficiary ''will spend more than half of her time'' working at the qualifying entity). While USCIS retired the AFM in May 2020, this example nevertheless illustrates the agency's historical interpretation since at least June 2006, when chapter 31.3(g)(13) was added. *See also* USCIS, Interoffice Memorandum HQPRD 70/23.12, ''Guidance Regarding Eligibility for Exemption from the H–1B Cap Based on § 103 of the American Competitiveness in the Twenty-First Century Act of 2000 (AC21) (Pub. L. 106–313)'' (Jun. 6, 2006), *https://www.uscis.gov/sites/default/files/document/memos/ac21c060606.pdf*.

[61] Although DHS would replace the word ''essential'' with ''fundamental'' in proposed 8 CFR 214.2(h)(8)(iii)(F)(*4*), these two words are synonymous for purposes of cap exemptions. DHS proposes to use ''fundamental'' in proposed 8 CFR 214.2(h)(8)(iii)(F)(*4*) in order to be consistent with current and proposed 8 CFR 214.2(h)(19)(iii).

214.2(h)(8)(iii)(F)(*2*)(iv) and (h)(19)(iii)(B)(*4*), and would bring more clarity and predictability to decision-making, for both adjudicators and the regulated community.

DHS acknowledges that the ''primarily'' and ''primary'' requirements at current 8 CFR 214.2(h)(19)(iii)(C) have been in effect for over a decade for purposes of cap exemptions, and that DHS declined to make the same changes it is currently proposing in response to commenters' suggestions when codifying this regulation in 2016.[62] At that time, DHS stated ''that maintaining these longstanding interpretations, which include the 'primarily' and 'primary' requirements, will serve to protect the integrity of the cap and fee exemptions as well as clarify for stakeholders and adjudicators what must be proven to successfully receive such exemptions.'' [63] However, rather than providing clarity, the ''primarily'' and ''primary'' requirements have resulted in inconsistency and confusion surrounding eligibility for such cap exemptions.[64]

In 2015, DHS proposed using the phrase ''primary purpose'' at 8 CFR 214.2(h)(8)(iii)(F)(*2*)(*iv*) and (h)(19)(iii)(B)(*4*) (addressing cap exemption and ACWIA fee exemption, respectively, for a nonprofit entity that is related to or affiliated with an institution of higher education based on a formal written affiliation agreement).[65] In the 2016 final rule, however, DHS explained that it was not pursuing the proposed phrase ''primary purpose'' and instead chose to replace it with ''fundamental activity'' at 8 CFR 214.2(h)(8)(iii)(F)(*2*)(*iv*) and (h)(19)(iii)(B)(*4*) ''to avoid potential confusion'' and to make it ''clearer that nonprofit entities may qualify for the cap and fee exemptions even if they are engaged in more than one fundamental activity, any one of which may directly contribute to the research or education mission of a qualifying college or university.'' [66] Even though DHS declined to concurrently change the ''primarily'' and ''primary'' language at current 8 CFR 214.2(h)(19)(iii)(C), DHS acknowledges that the ''fundamental activity'' text in current 8 CFR 214.2(h)(8)(iii)(F)(*2*)(*iv*) and (h)(19)(iii)(B)(*4*) did enhance clarity in the intended manner and believes that current 8 CFR 214.2(h)(19)(iii)(C) would similarly benefit from this proposed change.

In addition, DHS believes that the proposed ''fundamental activity'' standard would still protect the integrity of the cap. While changing this terminology may somewhat expand who is eligible for the cap exemption, it would still require that an employer demonstrate that research is a ''fundamental activity,'' which is a meaningful limiting standard. Not every activity an organization engages in would be considered a ''fundamental activity.'' A fundamental activity would still have to be an important and substantial activity, although it need not be the organization's principal or foremost activity as required under the current ''primary'' construct.[67] Further, the organization would still need to meet all the other requirements to qualify as a nonprofit research organization or governmental research organization, including engaging in qualifying research as defined in proposed 8 CFR 214.2(h)(19)(iii)(C), and documenting its tax exempt status pursuant to proposed 8 CFR 214.2(h)(19)(iv).

DHS believes that the ''primarily'' and ''primary'' requirements at current 8 CFR 214.2(h)(19)(iii)(C) are too restrictive.[68] As explained above, the current ''primarily'' and ''primary'' construct requires a petitioner to demonstrate that research is its principal activity, *i.e.,* that research is the main or primary activity.[69] One key difference between the current and proposed standard is that an employer could have more than one ''fundamental activity,'' whereas the ''primary'' or ''primarily'' standard requires that research is the employer's foremost and main activity. This proposed change acknowledges the reality that nonprofit organizations may engage in several important activities. The proposed change modernizes the definition of ''nonprofit research organization'' and ''governmental research organization'' to include entities that may assist with aspects of research throughout the research cycle despite not being primarily engaged in performing the research. For example, a nonprofit organization with a mission to eradicate malaria that engages in lobbying, public awareness, funding medical research, and performing its own research on the efficacy of various preventative measures, may qualify for H–1B cap exemption even if it was not primarily engaged in research. In this example, the organization would still qualify for the cap exemption if research were one of several ''fundamental activities'' of the organization, as opposed to its primary mission. Similarly, a governmental research organization that engages in semiconductor manufacturing research and development could qualify for H–1B cap exemption if research is a fundamental activity of the organization. Under the proposed rule, the organization may be eligible for cap exemptions if research is one of its fundamental activities as opposed to its primary activity.

DHS also proposes to revise 8 CFR 214.2(h)(19)(iii)(C) to state that a ''nonprofit research organization or governmental research organization may perform or promote more than one fundamental activity.'' *See* proposed 8 CFR 214.2(h)(19)(iii)(C). This proposed change would align with DHS's position that a nonprofit entity may engage in more than one fundamental activity under current 8 CFR

[62] As DHS explained in the final rule, the ''primarily'' and ''primary'' requirements ''have been in place since 1998 with regard to fee exemptions and have been in effect for more than a decade for purposes of the cap exemptions.'' *See* ''Retention of EB–1, EB–2, and EB–3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers,'' 81 FR 82398, 82446 (Nov. 18, 2016).

[63] *Id.*

[64] *See, e.g., Open Society Inst.* v. *USCIS,* 2021 WL 4243403, at *1 (D.D.C. 2021) (''Open Society maintains that on over a dozen prior occasions USCIS found that Open Society satisfied this standard but that in 2020 the agency reversed course without sufficient explanation or sound reason.'').

[65] *See* ''Retention of EB–1, EB–2, and EB–3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers,'' 80 FR 81900 (Dec. 31, 2015) (proposed rule).

[66] *See* ''Retention of EB–1, EB–2, and EB–3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers,'' 81 FR 82398, 82444 (Nov. 18, 2016).

[67] *See Open Society Inst.* v. *USCIS,* 2021 WL 4243403, at *5 (D.D.C. 2021) (''the ordinary meaning of 'primarily' as it is used in 8 CFR 214.2(h)(19)(iii)(C) is 'principally and as distinguished from incidentally or secondarily.'").

[68] Multiple comments leading to the 2016 final rule also expressed concern that the ''primary purpose'' requirement was too restrictive, although in the context of 8 CFR 214.2(h)(8)(ii)(F)(*2*)(*iv*) and (h)(19)(iii)(B)(*4*). 81 FR at 82403.

[69] *See Open Society Institute* v. *USCIS,* 2021 WL 4243403, at *4–5 (D.D.C. 2021) (The court examined AAO's analysis of the term ''primarily engaged'' and the AAO's conclusion that ''a nonprofit organization is ''primarily engaged'' in research if, and only if, it is '''directly and principally' engaged in research'': ''. . . [While] [Open Society] is 'focused on research—researching problems in the world, researching possible solutions for those problems, and researching how to implement those solutions,' the regulation at 8 CFR 214.2(h)(19)(iii)(C) defines a nonprofit research organization as one that is 'primarily engaged' in research, which we interpret to mean directly and principally engaged in research. Based on the totality of evidence in the record, and considering its research activities in proportion to its other activities, we conclude that the record does not demonstrate that [Open Society] is directly and principally engaged in research. The research conducted by [Open Society] is incidental, or, at best, secondary to its principal activities: making grants to promote social, legal and economic reforms.' '') (changes in original).

214.2(h)(8)(iii)(F)(*2*)(*iv*),[70] which DHS seeks to codify at proposed 8 CFR 214.2(h)(8)(iii)(F)(*2*)(*iv*) and (h)(19)(iii)(B)(*4*) as well. DHS believes it should apply the same standard that an entity may engage in more than one fundamental activity, regardless of whether that entity is requesting cap exemption as an ''affiliated or related nonprofit entity'' or a ''nonprofit research organization or governmental research organization.''

Finally, DHS proposes to add language that both basic and applied research may also include ''designing, analyzing, and directing the research of others if on an ongoing basis and throughout the research cycle.'' *See* proposed 8 CFR 214.2(h)(19)(iii)(C).

Taken together, these proposed changes clarify, simplify, and modernize eligibility for cap-exempt H–1B employment.[71] DHS's proposed changes to 8 CFR 214.2(h)(8)(iii)(F)(*4*) and (h)(19)(iii)(C) provide additional flexibility to exempt from the H–1B cap certain H–1B beneficiaries who are employed at a qualifying institution, organization, or entity. These changes are consistent with the language of the statute at INA section 214(g)(5)(A) through (B) and would further the INA's goals of improving economic growth and job creation by facilitating U.S. employers' access to high-skilled workers, particularly at these institutions, organizations, and entities.[72]

DHS further proposes to amend the definition of ''nonprofit or tax exempt organizations'' by eliminating 8 CFR 214.2(h)(19)(iv)(B), which currently requires that the petitioner provide evidence that it ''[h]as been approved as a tax exempt organization for research or educational purposes by the Internal Revenue Service.'' In its experience, USCIS has found that Internal Revenue Service (IRS) letters generally do not identify the reasons why an entity received approval as a tax exempt organization, so current 8 CFR 214.2(h)(19)(iv)(B) imposes an evidentiary requirement that is unduly difficult to meet. Proposed 8 CFR 214.2(h)(19)(iv) would more simply state that a nonprofit organization or entity ''must be determined by the Internal Revenue Service as a tax exempt organization under the Internal Revenue Code of 1986, section 501(c)(3) (c)(4), or (c)(6), 26 U.S.C. 501(c)(3), (c)(4), or (c)(6).'' While this change would remove the requirement that the IRS letter itself state that the petitioner's approval as a tax exempt organization was ''for research or educational purposes,'' DHS is not proposing to eliminate or otherwise change the overarching requirement that a qualifying nonprofit or tax exempt petitioner be an institution of higher education or a related or affiliated nonprofit entity, or a nonprofit research organization or a governmental research organization institution, as required by the regulations and INA section 214(g)(5). The petitioner would still need to submit documentation to demonstrate that it meets such a requirement, except that the submitted documentation would not need to be in the form of an IRS letter.

2. Automatic Extension of Authorized Employment Under 8 CFR 214.2(f)(5)(vi) (Cap–Gap)

DHS proposes to revise 8 CFR 214.2(f)(5)(vi) to provide an automatic extension of duration of status and post-completion OPT or 24-month extension of post-completion OPT, as applicable, until April 1 of the relevant fiscal year for which the H–1B petition is requested. *See* proposed 8 CFR 214.2(f)(5)(vi). Currently, the automatic extension is valid only until October 1 of the fiscal year for which H–1B status is being requested. This change would result in more flexibility for both students and USCIS and would help to avoid disruption to U.S. employers that are lawfully employing F–1 students while a qualifying H–1B cap-subject petition is pending. As an added integrity measure, DHS proposes to specify that the H–1B petition must be ''nonfrivolous'' in order for the student to benefit from the cap-gap extension. *See* proposed 8 CFR 214.2(f)(5)(vi)(A)(*3*).

Each year, a number of U.S. employers seek to employ F–1 students via the H–1B program by requesting a COS and filing an H–1B cap petition with USCIS. Because petitioners may not file H–1B petitions more than six months before the date of actual need for the employee,[73] the earliest date an H–1B cap-subject petition may be filed for a given fiscal year is April 1, six months prior to the start of the applicable fiscal year for which initial H–1B classification is sought. Many F–1 students complete a program of study or post-completion OPT in mid-spring or early summer. Per current regulations, after completing their program or post-completion OPT, F–1 students have 60 days to depart the United States or take other appropriate steps to maintain a lawful status. *See* 8 CFR 214.2(f)(5)(iv). However, because the change to H–1B status cannot occur earlier than October 1, an F–1 student whose program or post-completion OPT expires in mid-spring has two or more months following the 60-day period before the authorized period of H–1B status can begin. To address this situation, commonly known as the ''cap-gap,'' DHS established regulations that automatically extended F–1 Duration of Status (D/S) and, if applicable, post-completion OPT employment authorization to October 1 for eligible F–1 students. *See* 8 CFR 214.2(f)(5)(vi). The extension of F–1 D/S and OPT employment authorization is commonly known as the ''cap-gap extension.''

DHS proposes to further extend F–1 status and post-completion OPT, including STEM OPT, in this context.[74] Under current regulations, the automatic cap-gap extension is valid only until October 1 of the fiscal year for which H–1B status is being requested. *See* 8 CFR 214.2(f)(5)(vi). When the October 1 extension was initially promulgated through an interim final rule in 2008, DHS considered it an administrative solution to bridge the gap between the end of the academic year and the beginning of the fiscal year, when the student's H–1B status typically would begin.[75] When this

[70] *Id.* at 82445 (''DHS emphasizes that a nonprofit entity may meet this definition even if it is engaged in more than one fundamental activity, so long as at least one of those fundamental activities is to directly contribute to the research or education mission of a qualifying college or university.'').

[71] These proposed changes would also impact eligibility for exemption from the ACWIA fees applicable to initial cap-subject petitions. The definitions of ''nonprofit research organization'' and ''governmental research organization'' at 8 CFR 214.2(h)(19)(iii)(C), and ''nonprofit entity'' at 8 CFR 214.2(h)(19)(iv), would continue to apply to which entities are exempt from the H–1B- cap as well as which entities are exempt from the additional ACWIA fee.

[72] *See* S. Rep. No. 260, 106th Cong., 2nd Sess. (Apr. 11, 2000), at 10 (AC21 sought to help the American economy by, in part, exempting from the H–1B cap ''visas obtained by universities, research facilities, and those obtained on behalf of graduate degree recipients to help keep top graduates and educators in the country.'' *See also* ''Retention of EB–1, EB–2, and EB–3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers,'' 81 FR 82398, 82447 (Nov. 18, 2016) (''DHS believes that its policy extending the cap exemption to individuals employed 'at' and not simply employed 'by' a qualifying institution, organization or entity is consistent with the language of the statute and furthers the goals of AC21 to improve economic growth and job creation by immediately increasing U.S. access to high-skilled workers, and particularly at these institutions, organizations, and entities.'').

[73] *See* 8 CFR 214.2(h)(2)(i)(I).

[74] DHS previously proposed extending the cap-gap period, but the proposed rule was never finalized and was subsequently withdrawn. *See* ''Establishing a Fixed Time Period of Admission and an Extension of Stay Procedure for Nonimmigrant Academic Students, Exchange Visitors, and Representatives of Foreign Information Media,'' 85 FR 60526 (Sept. 25, 2020) (withdrawn by 86 FR 35410 (July 6, 2021)).

[75] *See* ''Extending Period of Optional Practical Training by 17 Months for F–1 Nonimmigrant Students With STEM Degrees and Expanding Cap-

provision was finalized in 2016, DHS responded to commenters requesting that DHS revise the cap-gap provision so as to automatically extend status and employment authorization ''until adjudication of such H–1B petition is complete.'' [76] Commenters stated that an extension until October 1 might have been appropriate in the past, when H–1B petitions were adjudicated well before that date, but USCIS workload issues at the time the rule was promulgated and the need to respond to RFEs delayed such adjudications beyond October 1.[77] DHS responded that it recognized that some cap-subject H–1B petitions remain pending on or after October 1 of the relevant fiscal year, but that USCIS prioritizes petitions seeking a COS from F–1 to H–1B, which normally results in the timely adjudication of these requests, so the vast majority of F–1 students changing status to H–1B do not experience any gap in status.[78] DHS also explained that it was concerned that extending cap-gap employment authorization beyond October 1 would reward potentially frivolous filings that would enable students who may ultimately be found not to qualify for H–1B status to continue to benefit from the cap-gap extension and that the October 1 cut-off serves to prevent possible abuse of the cap-gap extension.[79]

DHS has reconsidered its position in light of recent adjudication delays and to avoid potential disruptions in employment authorization. With the consistently high volume of cap-subject H–1B petitions filed within a short period of time each year and the long timeframes afforded to respond to RFEs, USCIS has, in some years, been unable to complete the adjudication of all H–1B cap-subject petitions by October 1. This has resulted in situations where some individuals must stop working on October 1 because the employment authorization provided under 8 CFR 214.2(f)(5)(vi) ends on that date, although these individuals generally have been allowed to remain in the United States in an authorized period of stay while the H–1B petition and COS application is pending.

To account for this operational issue, DHS is proposing to revise 8 CFR 214.2(f)(5)(vi) to provide an automatic extension of F–1 status and post-completion OPT, or 24-month extension of post-completion OPT, as applicable, until April 1 of the fiscal year for which the H–1B petition is filed, or until the validity start date of the approved H–1B petition, whichever is earlier. This provision would extend the student's F–1 status and employment authorization, as applicable, automatically if a nonfrivolous H–1B petition requesting a COS is timely filed on behalf of the F–1 student. *See* proposed 8 CFR 214.2(f)(5)(vi)(A). However, if the F–1 student's COS request is still pending at the end of the cap-gap period, then their employment authorization would terminate on March 31, and the F–1 student would no longer be authorized for employment on this basis as of April 1 of the fiscal year for which H–1B classification is sought. If the H–1B petition underlying the cap-gap extension is denied before April 1, then, consistent with existing USCIS practice, the F–1 beneficiary of the petition, as well as any F–2 dependents, would generally receive the standard F–1 grace period of 60 days to depart the United States or take other appropriate steps to maintain a lawful status.[80] If the H–1B petition is still pending on April 1, then the beneficiary of the petition is no longer authorized for OPT and the 60-day grace period begins on April 1. The F–1 beneficiary may not work during the 60-day grace period.

Changing the automatic extension end date from October 1 to April 1 of the relevant fiscal year would prevent the disruptions in employment authorization that some F–1 nonimmigrants seeking cap-gap extensions have experienced over the past several years. DHS recognizes the hardships that a disruption in employment authorization could cause to both the affected individual and their employer and seeks to prevent potential future disruptions by extending cap-gap relief. According to USCIS data for FY 2016–22, USCIS has adjudicated approximately 99 percent of H–1B cap-subject petitions requesting a COS from F–1 to H–1B by April 1 of the relevant fiscal year.[81] As a result of this proposed cap-gap extension, DHS expects USCIS would be able to adjudicate nearly all H–1B cap-subject petitions requesting a COS from F–1 to H–1B by the April 1 deadline.

In addition to avoiding employment disruptions, the lengthier extension of F–1 status and post-completion OPT or 24-month extension of post-completion OPT employment authorization for students with pending H–1B petitions until April 1, which is one year from the typical initial cap filing start date, accounts for USCIS' competing operational considerations and would enable the agency to balance workloads more appropriately for different types of petitions.

Although DHS previously expressed the concern that extending cap-gap employment authorization could potentially enable students who ultimately may be found not to qualify for H–1B status to continue to benefit from the cap-gap extension,[82] and thus encourage frivolous filings, DHS has reconsidered its position. It is now DHS's position that extending the cap-gap period would not significantly increase the risk of frivolous filings. Because there is no way of knowing whether USCIS would complete adjudication of a petition before October 1 or April 1 of the fiscal year, there should be little incentive to submit a frivolous filing solely to obtain the longer cap-gap extension period. The H–1B petition would still have to be filed with all appropriate fees, which can be substantial for an initial cap filing. Moreover, if the petition is denied, the beneficiary's cap-gap eligibility ends immediately. Accordingly, frivolous petitions or petitions filed solely to obtain cap-gap protections would run the risk of simply being denied prior to October 1. This would result in no additional benefit from the expanded timeframe. Any risk of fraud is already inherent in providing cap-gap relief itself, and DHS is unaware of any additional risk presented by extending the cap-gap period. DHS proposes to explicitly state that the H–1B petition must be nonfrivolous at proposed 8 CFR 214.2(f)(5)(vi)(A)(*3*) to further deter frivolous filings. This would bolster integrity because if USCIS determines the filing to be frivolous, then the beneficiary would not have qualified for the cap-gap protection and may be deemed to have failed to maintain status and, if applicable, worked without authorization. Given the importance of ensuring that the United States attracts and retains top talent from around the globe, DHS believes that the benefits of this proposed cap-gap extension far outweigh the risk of abuse.

3. Start Date Flexibility for Certain H–1B Cap-Subject Petitions

DHS proposes to eliminate all the text currently at 8 CFR 214.2(h)(8)(iii)(A)(*4*), which relates to a limitation on the

Gap Relief for All F–1 Students With Pending H–1B Petitions,'' 73 FR 18944 (Apr. 8, 2008).

[76] *See* ''Improving and Expanding Training Opportunities for F–1 Nonimmigrant Students With STEM Degrees and Cap-Gap Relief for All Eligible F–1 Students,'' 81 FR 13039, 13100 (Mar. 11, 2016).

[77] *See* 81 FR 13040, 13101 (Mar. 11, 2016).

[78] *Id.*

[79] *Id.*

[80] *See* 8 CFR 214.2(f)(5)(iv).

[81] USCIS, OP&S Policy Research Division (PRD), Computer-Linked Application Information Management System 3 (C3) database, Oct. 27, 2022. PRD187.

[82] *See* 81 FR 13039, 13101 (Mar. 11, 2016).

requested start date, because the current regulatory language is ambiguous.[83] DHS's proposal to eliminate the current language at 8 CFR 214.2(h)(8)(iii)(A)(*4*) would provide clarity and flexibility to employers with regard to the start date listed on H–1B cap-subject petitions. This proposal also would align the regulations related to H–1B cap-subject petitions with current USCIS practice, which is to permit a requested petition start date of October 1 or later, as long as the requested petition start date does not exceed six months beyond the filing date of the petition, even during the initial registration period.[84] Other restrictions on the petition start date would remain in place, such as the requirement that a petition may not be filed earlier than six months before the date of actual need. *See* 8 CFR 214.2(h)(2)(i)(I). Additionally, a petitioner may file an H–1B cap-subject petition on behalf of a registered beneficiary for a particular fiscal year only after the petitioner's registration for that beneficiary has been selected for that fiscal year. *See* 8 CFR 214.2(h)(8)(iii)(A)(*1*).

The current regulation at 8 CFR 214.2(h)(8)(iii)(A)(*4*) states, ''A petitioner may submit a registration during the initial registration period only if the requested start date for the beneficiary is the first day for the applicable fiscal year.'' This language is ambiguous as to whether the ''requested start date'' is the start date of the registration or the petition. This has led to confusion as the H–1B cap registration system currently does not ask for the requested start date for the beneficiary. The start date would only be relevant upon the filing of the petition, but the regulation refers to submitting ''a registration with a requested start date.'' Further, current 8 CFR 214.2(h)(8)(iii)(A)(*4*) states that, ''If USCIS keeps the registration period open beyond the initial registration period, or determines that it is necessary to re-open the registration period, a petitioner may submit a registration with a requested start date after the first business day for the applicable fiscal year.'' Given the potential for multiple registration periods, however, the current regulation is potentially confusing regarding the intended start date and what start date a petitioner is permitted to request on a cap-subject petition.

As stated above, DHS's proposal to eliminate the current language at 8 CFR 214.2(h)(8)(iii)(A)(*4*) would provide clarity and flexibility to employers. The need to eliminate potential confusion regarding permissible requested start dates on cap-subject petitions emerged during the FY 2021 registration and filing season, the first year of the electronic registration process. The electronic registration period for FY 2021 ran from March 1, 2020, to March 20, 2020. First, USCIS selected registrations submitted on behalf of all beneficiaries, including those eligible for the advanced degree exemption. USCIS then selected from the remaining registrations a sufficient number projected to reach the advanced degree exemption. The selection process was completed on March 27, 2020, and USCIS began to notify employers of selection results. The initial petition filing period began on April 1, 2020, and lasted 90 days. Due to multiple factors occurring during the FY 2021 registration and initial filing period (most notably that it was the first year that the electronic registration system was in place as well as it being the early months of the COVID–19 pandemic with its unforeseen consequences), USCIS received fewer petitions than projected as needed to reach the numerical allocations under the statutory cap and advanced degree exemption. In August 2020, USCIS selected additional registrations and permitted those prospective petitioners with a selected registration or registrations to file petitions before November 16, 2020. Due to the additional selection period, the filing window went beyond October 1, leading some petitioners to indicate a start date after October 1, 2020.

Although USCIS permitted employers to file petitions after October 1, 2020, USCIS rejected or administratively closed many petitions that did not list a start date of October 1, 2020, pursuant to current 8 CFR 214.2(h)(8)(iii)(A)(*4*). As a result, many petitioners had to backdate the requested start date on the petition, even though the start date listed on the petition consequently may have been before the start date identified on the accompanying LCA. On June 23, 2021, USCIS announced its reconsideration of those rejected or administratively closed petitions.[85] The agency announced that it would permit petitioners to resubmit any FY 2021 H–1B cap-subject petitions that were rejected or administratively closed solely because the petition requested a start date after October 1, 2020.

The proposed changes would eliminate the language at current 8 CFR 214.2(h)(8)(iii)(A)(*4*), which would clarify for petitioners that they may file H–1B cap-subject petitions with requested start dates that are after October 1 of the relevant fiscal year. This is consistent with current USCIS policy and would eliminate the potential confusion resulting from the current regulation with regard to permissible start dates for employers submitting H–1B cap-subject petitions.[86] While the requested start date may be later than October 1, it must be six months or less from the date the petition is filed.[87] If the requested start date is more than six months after the petition is filed, the petition will be denied or rejected.[88]

DHS's proposal to eliminate the current language at 8 CFR 214.2(h)(8)(iii)(A)(*4*) would not affect the requirement that an H—1B cap-subject petition must be based on a valid registration for the same beneficiary and the same fiscal year. This requirement is reflected in existing USCIS guidance [89] and the current regulation at 8 CFR 214.2(h)(8)(iii)(A)(*1*), which states that ''A petitioner may file an H–1B cap-subject petition on behalf of a registered beneficiary only after the petitioner's registration for that beneficiary has been selected for that fiscal year.'' While DHS intends to remove this particular sentence at proposed 8 CFR 214.2(h)(8)(iii)(A)(*1*) to reflect changes resulting from the beneficiary-centric selection process, DHS proposes to add the same requirement that the registration and petition be for the same fiscal year by adding ''for the same fiscal

[83] DHS is proposing new language at 8 CFR 214.2(h)(8)(iii)(A)(*4*) about selecting registrations based on unique beneficiaries. DHS discusses this proposal in detail in the preamble section describing the proposed changes to the H–1B registration system.

[84] *See* USCIS, ''H–1B Electronic Registration Process,'' *https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-electronic-registration-process* (petitioners with a selected registration ''must indicate a start date of Oct. 1 . . . . or later'') (last visited Nov. 10, 2022).

[85] *See* USCIS, ''USCIS Will Allow Resubmission of Certain FY 2021 H–1B Petitions Rejected or Closed Due to Start Date,'' *https://www.uscis.gov/news/alerts/uscis-will-allow-resubmission-of-certain-fy-2021-h-1b-petitions-rejected-or-closed-due-to-start-date* (last visited Jan. 26, 2023).

[86] *See* USCIS, ''H–1B Electronic Registration Process'' (last reviewed/updated Apr. 25, 2022), *https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-electronic-registration-process* (Q4: ''If we selected your registration, you must indicate a start date of Oct. 1 . . . or later.'').

[87] *See* 8 CFR 214.2(h)(2)(i)(I).

[88] *See id.*

[89] *See* USCIS, ''H–1B Specialty Occupations, DOD Cooperative Research and Development Project Workers, and Fashion Models,'' *https://www.uscis.gov/working-in-the-united-states/h-1b-specialty-occupations* (''A cap-subject H–1B petition will not be considered to be properly filed unless it is based on a valid, selected registration for the same beneficiary and the appropriate fiscal year''.).

year'' to the immediately preceding sentence discussing the eligibility requirements to file an H—1B cap-subject petition based on the registration. Thus, proposed 8 CFR 214.2(h)(8)(iii)(A)(*1*) would state, ''To be eligible to file a petition for a beneficiary who may be counted against the H–1B regular cap or the H–1B advanced degree exemption for a particular fiscal year, a registration must be properly submitted in accordance with 8 CFR 103.2(a)(1), paragraph (h)(8)(iii) of this section, and the form instructions, for the same fiscal year.''

C. Program Integrity

1. The H–1B Registration System

Through issuance of a final rule in 2019, *Registration Requirement for Petitioners Seeking To File H–1B Petitions on Behalf of Cap-Subject Aliens,* DHS developed a new way to administer the H–1B cap selection process to streamline processing and provide overall cost savings to employers seeking to file H–1B cap-subject petitions.[90] In 2020, USCIS implemented the first electronic registration process for the FY 2021 H–1B cap. In that year, prospective petitioners seeking to file H–1B cap-subject petitions (including for beneficiaries eligible for the advanced degree exemption) were required to first electronically register and pay the associated H–1B registration fee for each prospective beneficiary.

Under this process, prospective petitioners (also known as registrants) that seek to employ H–1B cap-subject workers must complete a registration process that requires only basic information about the prospective petitioner and each requested worker. The H–1B selection process is then run on properly submitted electronic registrations. Only those with valid selected registrations are eligible to file H–1B cap-subject petitions.

Per regulation, USCIS takes into account historical data related to approvals, denials, revocations, and other relevant factors to calculate the number of petitions needed to meet the H–1B cap for a given fiscal year.[91] In making this calculation, USCIS considers the number of registrations that need to be selected to receive the projected number of petitions required to meet the numerical limitations.

As stated in the proposed rule for the registration requirement, DHS proposed this new process, ''to reduce costs for petitioners who currently spend significant time and resources preparing petitions and supporting documentation for each intended beneficiary without knowing whether such petitions will be accepted for processing by USCIS due to the statutory allocations.'' [92] DHS also explained that the registration process, ''would help to alleviate administrative burdens on USCIS service centers that process H–1B petitions since USCIS would no longer need to physically receive and handle hundreds of thousands of H–1B petitions (and the accompanying supporting documentation) before conducting the random selection process.'' [93] Several stakeholders commented favorably on this proposal, noting that the registration requirement would ''reduce waste and increase efficiency,'' as well as ''relieve uncertainty for employers and employees, and mitigate burdens on USCIS.'' [94] The H–1B electronic registration process continues to be well-received by users, who provided a high satisfaction score with the system for FY 2023 (4.84 out of 5) [95] and FY 2022 (4.87 out of 5).[96]

As DHS noted in the final rule implementing the registration system, USCIS has authority to collect sufficient information for each registration to mitigate the risk that the registration system will be flooded with frivolous registrations.[97] For example, USCIS requires each registrant to complete an attestation and noted in the final rule that ''individuals or entities who falsely attest to the bona fides of the registration and submitted frivolous registrations may be referred to appropriate Federal law enforcement agencies for investigation and further action as appropriate.'' [98] DHS revised this attestation prior to the FY 2023 cap season, by adding a certification (to which the registrant must attest before submission) that the registration reflects a legitimate job offer, and that the registrant has ''not worked with, or agreed to work with, another registrant, petitioner, agent, or other individual or entity to submit a registration to unfairly increase chances of selection for the beneficiary or beneficiaries in this submission.'' [99] DHS continues to take steps against potential abuse and is in the process of investigating potential malfeasance and possible referrals to law enforcement agencies. However, the time needed to pursue potential bad actors supports an alternative solution. As a result, DHS has determined that a more effective way to ensure that the registration system continues to serve its purpose of fair and orderly administration of the annual H–1B numerical allocations would be to structurally limit the potential for bad actors to game the system by changing the selection process so that it selects by unique beneficiary rather than by registration.

As detailed in the table below, DHS has seen an increase in the number of beneficiaries with multiple registrations submitted on their behalf, an increase in the number and percentage of registrations submitted for beneficiaries with multiple registrations, an increase in the number of beneficiaries having five or more registrations submitted on their behalf, and a substantial increase in the total number of registrations submitted for a unique individual.

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[90] *See* ''Registration Requirement for Petitioners Seeking To File H–1B Petitions on Behalf of Cap-Subject Aliens,'' 84 FR 888 (Jan. 31, 2019).

[91] *See* 8 CFR 214.2(h)(8)(iii)(E).

[92] *See* ''Registration Requirement for Petitioners Seeking To File H–1B Petitions on Behalf of Cap-Subject Aliens,'' 83 FR 62406, 62407 (Dec. 3, 2018).

[93] *Id.* at 62407–08.

[94] *See* ''Registration Requirement for Petitioners Seeking To File H–1B Petitions on Behalf of Cap-Subject Aliens,'' 84 FR 888, 897 (Jan. 31, 2019).

[95] *See* USCIS, ''H–1B Electronic Registration Process'' (last updated Apr. 25, 2022), *https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-electronic-registration-process.*

[96] *See* American Immigration Lawyers Association, ''USCIS Provides FY2022 H–1B Cap Registration Process Update,'' *https://www.aila.org/infonet/fy2022-h-1b-cap-registration-process-update.*

[97] *See* ''Registration Requirement for Petitioners Seeking To File H–1B Petitions on Behalf of Cap-Subject Aliens,'' 84 FR 888, 900, 904 (Jan. 31, 2019).

[98] *See id.* at 900.

[99] *See* Office of Management and Budget (OMB) Control Number 1615–0144, Information Collection Request Reference Number 202202–1615–005, supplementary document ''H–1B Registration Tool Copy Deck,'' *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202202-1615-005* (received by OMB's Office of Information and Regulatory Affairs (OIRA) Feb. 28, 2022, and approved without change Aug. 8, 2022).

Registration Data for FY21–FY23

Table 1 – Registration Data			
	FY21 Cap Year	**FY22 Cap Year**	**FY23 Cap Year**
Total Registrations	274,237	308,613	483,927
Total number of unique beneficiaries*	253,331	235,720	357,222
Number of unique beneficiaries with 2 or more registrations	13,443	25,654	49,739
Total number of registrations submitted for beneficiaries with multiple registrations	34,349	98,547	176,444
% of total registrations for beneficiaries with multiple registrations	12.5%	31.9%	36.5%
Number of beneficiaries with 5 or more registrations	700	6,369	9,155
Largest number of registrations submitted for 1 beneficiary	18	41	83
Source: USCIS Office of Performance and Quality * Unique beneficiaries were identified using country of citizenship and passport number; if passport number was not available, name, date of birth, and country of birth were used to identify beneficiaries.			

While DHS recognizes that simply being the beneficiary of multiple registrations is not necessarily indicative of fraud or misuse, as beneficiaries may legitimately have multiple job offers by different employers that are not working together to game the system, it is still worth noting the significant increase in individuals with multiple registrations for FY22 and FY23. For instance, while DHS is aware that multiple petitioners may submit registrations for a highly qualified beneficiary, it raises red flags if one beneficiary has 41 or 83 registrations submitted on their behalf, which occurred in FY22 and FY23, respectively.

Under current regulations, there is no limit on the number of registrations that may be submitted on behalf of one unique individual by different registrants. DHS is not proposing to limit the number of registrations that may be submitted on behalf of a unique individual by different registrants, provided that the registrants are not working with (or have not agreed to work with) another registrant, petitioner, agent, or other individual or entity to submit a registration to unfairly increase the chances of selection for a beneficiary. However, the data show that multiple registrations on behalf of the same individual are increasing. DHS is concerned that this increase in multiple registrations may indicate strategic behavior by registrants (and beneficiaries working with registrants) to submit increasing numbers of registrations, which may be frivolous, to greatly increase a beneficiary's chance of selection. This negatively affects the integrity of the registration system and selection process.

DHS is concerned that individuals with large numbers of registrations submitted on their behalf are potentially misusing the registration system to increase their chances of selection and that the registrations submitted may not represent legitimate job offers. The possible effect of this increase in multiple registrations, which potentially do not represent legitimate job offers, is to skew the selection process. Beneficiaries who have multiple registrations submitted on their behalf have a significantly higher chance of selection. At the same time, an individual's chance of selection with a single registration is greatly reduced, as the number of beneficiaries with multiple registrations increases.

Table 2 – Detailed Data on FY21 Registration and Selection				
Number of Registrations per Beneficiary*	**Count of Beneficiaries**	**Percent of Beneficiaries**	**Count of Beneficiaries Selected in First Random Selection Process**	**Percent Selected**
75 or more	-	0.00%	-	N/A
50 or more	-	0.00%	-	N/A
25 or more	-	0.00%	-	N/A
20 or more	-	0.00%	-	N/A
15 or more	7	0.00%	7	100.00%
10 or more	289	0.11%	289	100.00%
5 or more	700	0.28%	681	97.29%
4 or more	1,259	0.50%	1,173	93.17%
3 or more	3,205	1.27%	2,805	87.52%
2 or more	13,443	5.31%	9,651	71.79%
1 only	239,888	94.69%	108,389	45.18%
Total beneficiaries	**253,331**	**100.00%**	**118,040**	**46.60%**

Source: USCIS Office of Performance and Quality

*Unique beneficiaries were identified using country of citizenship and passport number; if passport number was not available, name, date of birth, and country of birth were used to identify beneficiaries.

Table 3 – Detailed Data on FY22 Registration and Selection

Number of Registrations per Beneficiary*	Count of Beneficiaries	Percent of Beneficiaries	Count of Beneficiaries Selected in First Random Selection Process	Percent Selected
75 or more	-	0.00%	-	N/A
50 or more	-	0.00%	-	N/A
25 or more	44	0.02%	44	100.00%
20 or more	122	0.05%	122	100.00%
15 or more	392	0.17%	392	100.00%
10 or more	1,421	0.60%	1,421	100.00%
5 or more	6,369	2.70%	6,187	97.14%
4 or more	8,743	3.71%	8,329	95.26%
3 or more	13,289	5.64%	11,967	90.05%
2 or more	25,654	10.88%	19,695	76.77%
1 only	210,066	89.12%	86,816	41.33%
Total beneficiaries	**235,720**	**100.00%**	**106,511**	**45.19%**

Source: USCIS Office of Performance and Quality

*Unique beneficiaries were identified using country of citizenship and passport number; if passport number was not available, name, date of birth, and country of birth were used to identify beneficiaries.

Table 4 – Detailed Data on FY23 Registration and Selection				
Number of Registrations per Beneficiary*	**Count of Beneficiaries**	**Percent of Beneficiaries**	**Count of Beneficiaries Selected in First Random Selection Process**	**Percent Selected**
75 or more	2	0.00%	2	100.00%
50 or more	5	0.00%	5	100.00%
25 or more	108	0.03%	108	100.00%
20 or more	246	0.07%	245	99.59%
15 or more	670	0.19%	665	99.25%
10 or more	2,322	0.65%	2,261	97.37%
5 or more	9,155	2.56%	7,781	84.99%
4 or more	14,261	3.99%	11,169	78.32%
3 or more	24,321	6.81%	16,752	68.88%
2 or more	49,739	13.92%	27,143	54.57%
1 only	307,483	86.08%	81,323	26.45%
Total beneficiaries	**357,222**	**100.00%**	**108,466**	**30.36%**

Source: USCIS Office of Performance and Quality

*Unique beneficiaries were identified using country of citizenship and passport number; if passport number was not available, name, date of birth, and country of birth were used to identify beneficiaries.

Registration data also show patterns of groups of companies submitting registrations for the same groups of beneficiaries. When selected, these companies then go on to file a minimal number of petitions compared to the number of registrations they submitted for those beneficiaries. The following tables exemplify how one group of companies has submitted large numbers of registrations for a smaller number of common beneficiaries over three fiscal years, with the vast majority of their total registrations made up of beneficiaries for whom other companies in the group also submitted registrations.

Table 5 – Common Beneficiary Data for Group 1 Companies – FY21

Company	Registration Count	Selection Count	Petition Count	Nonfiling Rate*	Number of Common Beneficiaries **	Common Beneficiary Rate of Registration	Average Registrations per Beneficiary***
A	301	165	5	96.97%	301	100.00%	10.30
B	288	161	5	96.89%	288	100.00%	10.21
C	290	180	1	99.44%	290	100.00%	10.21
D	302	153	8	94.77%	302	100.00%	10.21
E	292	155	5	96.77%	291	99.66%	9.51
F	327	179	4	97.77%	327	100.00%	6.15
G	292	155	2	98.71%	292	100.00%	10.25
H	302	161	6	96.27%	301	99.67%	9.52
I	346	180	3	98.33%	334	96.53%	6.02
J	298	172	3	98.26%	298	100.00%	10.31
K	294	158	1	99.37%	294	100.00%	10.28
L	285	145	7	95.17%	285	100.00%	10.21
M	288	164	8	95.12%	287	99.65%	10.15

Source: USCIS Office of Performance and Quality

*"Nonfiling Rate" is defined as the percentage of registration selections that do not result in a petition being filed.
**Unique beneficiaries were identified using country of citizenship and passport number; if passport number was not available, name, date of birth, and country of birth were used to identify beneficiaries. "Number of Common Beneficiaries" is defined as the number of beneficiaries who were registered for by the company and also at least one more company.
***"Average Registrations per Beneficiary" is defined as the average number of companies that the beneficiaries of the particular company were registered for in the registration.

Table 6 -- Common Beneficiary Data for Group 1 Companies – FY22

Company	Registration Count	Selection Count	Petition Count	Nonfiling Rate*	Number of Common Beneficiaries **	Common Beneficiary Rate of Registration	Average Registrations per Beneficiary***
A	321	173	10	94.22%	321	100.00%	10.24
B	322	165	13	92.12%	322	100.00%	10.09
C	320	158	10	93.67%	320	100.00%	10.30
D	326	153	11	92.81%	325	99.69%	9.70
E	325	166	7	95.78%	325	100.00%	9.77
F	323	160	8	95.00%	323	100.00%	9.84
G	316	178	19	89.33%	316	100.00%	10.69
H	315	162	10	93.83%	315	100.00%	10.44
I	327	183	14	92.35%	327	100.00%	9.69
J	322	180	15	91.67%	322	100.00%	10.02
K	325	166	9	94.58%	325	100.00%	9.71
L	327	170	10	94.12%	327	100.00%	9.97
M	331	184	8	95.65%	331	100.00%	9.50

Source: USCIS Office of Performance and Quality

*"Nonfiling Rate" is defined as the percentage of registration selections that do not result in a petition being filed.
**Unique beneficiaries were identified using country of citizenship and passport number; if passport number was not available, name, date of birth, and country of birth were used to identify beneficiaries. "Number of Common Beneficiaries" is defined as the number of beneficiaries who were registered for by the company and also at least one more company.
***"Average Registrations per Beneficiary" is defined as the average number of companies that the beneficiaries of the particular company were registered for in the registration.

Table 7 – Common Beneficiary Data for Group 1 Companies – FY23

Company	Registration Count	Selection Count	Petition Count	Nonfiling Rate*	Number of Common Beneficiaries **	Common Beneficiary Rate of Registration	Average Registrations per Beneficiary***
A	540	180	4	97.78%	540	100.00%	14.68
B	544	182	8	95.60%	544	100.00%	14.56
C	561	189	7	96.30%	560	99.82%	14.27
D	563	181	9	95.03%	563	100.00%	14.39
E	562	175	7	96.00%	562	100.00%	14.50
F	543	198	8	95.96%	542	99.82%	14.69
G	526	204	5	97.55%	526	100.00%	14.85
H	529	191	9	95.29%	528	99.81%	14.88
I	536	196	10	94.90%	536	100.00%	14.77
J	547	212	10	95.28%	545	99.63%	14.74
K	555	205	11	94.63%	555	100.00%	14.27
L	556	199	9	95.48%	556	100.00%	14.87
M	559	198	10	94.95%	558	99.82%	14.46

Source: USCIS Office of Performance and Quality

*"Nonfiling Rate" is defined as the percentage of registration selections that do not result in a petition being filed.
**Unique beneficiaries were identified using country of citizenship and passport number; if passport number was not available, name, date of birth, and country of birth were used to identify beneficiaries. "Number of Common Beneficiaries" is defined as the number of beneficiaries who were registered for by the company and also at least one more company.
***"Average Registrations per Beneficiary" is defined as the average number of companies that the beneficiaries of the particular company were registered for in the registration.

The degree of duplication between the companies raises concern that the companies are working with each other to increase their chances of selection. This coupled with the fact that the companies routinely have over 150 registrations selected each year, but only file between 1 and 19 petitions, suggests that the registrations submitted by the companies for the duplicate beneficiaries may not have represented legitimate, bona fide offers of employment. This practice creates a disadvantage for companies that are adhering to the requirements of the registration and selection process.

Although there may have been legitimate reasons why a company did not file a petition for a beneficiary whose registration was selected, the non-filing rates for beneficiaries with multiple registrations is significantly higher than that of beneficiaries with single registrations. The non-filing rates for beneficiaries with multiple registrations raises the question of whether these companies actually intended to file an H–1B petition on behalf of the beneficiary when they submitted their registrations and did not work with others to unfairly improve their chance of selection, as they attested to on the Registration Tool when each registration was submitted.

Table 8 – Selection and Petition Filing Data			
	FY21	FY22	FY23
Number of registrations selected where the beneficiary only had one registration submitted and one registration selected (single registration)	108,389	86,816	81,323
Number of these single registrations that resulted in petition filing	91,925	74,048	72,306
Filing rate of single registrations	84.81%	85.29%	88.91%
Number of registrations selected where the beneficiary had multiple registrations submitted and multiple registrations selected (multiple registration)	10,504	36,461	29,213
Number of these multiple registrations that resulted in petition filing	3,835	9,757	8,831
Filing rate of multiple registrations	36.51%	26.76%	30.23%
Source: USCIS Office of Performance and Quality			

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The registration data also show that the companies with the highest rates of non-filing submitted a high percentage of registrations for beneficiaries with multiple registrations. In FY23, 97 companies with 10 or more selections had a non-filing rate of 90 percent or greater. Of those 97, the average rate of common beneficiaries among them was 90.72 percent. Eighteen of the 97 companies had a common beneficiary rate of 100 percent. Amongst these 97 companies, the average number of registrations per beneficiary was 8.03. In contrast, the companies with 10 or more selections and a non-filing rate of 10 percent or less, of which there were 667, had an average rate of common beneficiaries of 8.01 percent and submitted registrations for beneficiaries who had an average of 1.40 registrations per beneficiary.

Stakeholders have also identified opportunities for improving the registration system in response to a DHS Request for Public Input.[100] For instance, several commenters suggested running the selection process based on unique beneficiaries instead of registrations to give all beneficiaries an equal playing field, which is what DHS is proposing with the beneficiary-centric option described below. Commenters also made general suggestions to strengthen the consequences of submitting frivolous registrations, which DHS agrees with and has expanded upon in its proposals.

DHS has a strong interest in ensuring that the annual numerical allocations are going to petitioners that truly intend to employ an H–1B worker, rather than prospective petitioners using the registration system as a relatively cheap placeholder for the possibility that they may want to employ an H–1B worker or as a way to game the selection process. The current registration and selection process would benefit from additional guardrails to better ensure the fair allocation of the limited H–1B cap numbers to employers and individuals that are complying with the regulations and have bona fide, legitimate employment in which they intend to employ qualified beneficiaries. Accordingly, this rule proposes to further limit the potential for abuse of the registration process in three ways.[101]

First, if USCIS determines that a random selection process should be conducted, DHS proposes to shift from selecting by registration, to selecting by unique beneficiary. Under the new proposal, each unique individual who has a registration submitted on their behalf would be entered into the selection process once, regardless of the number of registrations filed on their behalf. By selecting by a unique beneficiary, DHS would better ensure that each individual has the same chance of being selected, regardless of how many registrations were submitted on their behalf.

Second, DHS proposes to extend the existing prohibition on related entities filing multiple petitions[102] by also prohibiting related entities from submitting multiple registrations for the same individual. Prohibiting related employers from submitting multiple registrations, absent a legitimate business need, would prevent employers from submitting registrations when they would not in fact be eligible to file a petition based on that registration, if selected.

Third, DHS proposes to codify USCIS's ability to deny an H–1B petition or revoke an H–1B petition's approval when the petition is based on a registration where the statement of facts (including the attestations) was not true and correct, inaccurate, fraudulent, or misrepresented a material fact.

2. Beneficiary Centric Selection

Under the proposed update to the random selection process, registrants

[100] *See* ''Identifying Barriers Across U.S. Citizenship and Immigration Services (USCIS) Benefits and Services; Request for Public Input,'' 86 FR 20398 (Apr. 19, 2021).

[101] In *U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,* 88 FR 402, 527 (Jan. 4, 2023) (proposed rule), DHS proposed to increase the H–1B registration fee from $10 to $215 per registration submitted. While the underlying purpose of the proposed fee increase is to ensure full cost recovery for USCIS adjudication and naturalization services, DHS recognizes the possibility that the increase in the H–1B registration fee may have an impact on the number of H–1B registrations submitted, including those submitted to improperly increase the chance of selection. However, any potential impact of that separate regulatory proposal is purely speculative.

[102] *See* 8 CFR 214.2(h)(2)(i)(G).

would continue to submit registrations on behalf of beneficiaries and beneficiaries would continue to be able to have more than one registration submitted on their behalf, as allowed by applicable regulations. If a random selection were necessary, then the selection would be based on each unique beneficiary identified in the registration pool, rather than each registration. Each unique beneficiary would be entered in the selection process once, regardless of how many registrations were submitted on their behalf. If a beneficiary were selected, each registrant that submitted a registration on that beneficiary's behalf would be notified of selection and would be eligible to file a petition on that beneficiary's behalf. *See* proposed 8 CFR 214.2(h)(8)(iii)(A)(*1*) and (*4*). Changing how USCIS conducts the selection process to select by unique beneficiaries instead of registrations would significantly reduce or eliminate the advantage of submitting multiple registrations for the same beneficiary solely to increase the chances of selection and should give all beneficiaries an equal chance at selection. It could also result in other benefits, such as giving beneficiaries greater autonomy regarding their H–1B employment and improving the chances of selection for legitimate registrations.

To ensure that USCIS can accurately identify each potential beneficiary, registrants will continue to be required to submit identifying information about the beneficiaries as part of the registration process. Currently, each registration includes, in addition to other basic information, fields for the registrant to provide the beneficiary's full name, date of birth, country of birth, country of citizenship, gender, and passport number if the beneficiary has a passport. Although the Registration Final Rule said the passport number would be required and it is requested during registration, registrants have been able to effectively bypass the passport requirement by affirmatively indicating that the beneficiary does not have a passport.[103]

Because the integrity of the new selection process would rely on USCIS's ability to accurately identify each individual beneficiary, DHS proposes to require the submission of valid passport information, including the passport number, country of issuance, and expiration date, in addition to the currently required information. *See* proposed 8 CFR 214.2(h)(8)(iii)(A)(*4*)(*ii*). Registrants would no longer be allowed to select an option indicating that the beneficiary does not have a passport. Combined with the other collected biographical information, the passport number would allow USCIS to identify unique individuals more reliably, increasing the likelihood that each individual would have the same opportunity to be selected, if random selection were required. Beneficiaries would be required to supply the same identifying information and passport information to all registrants submitting registrations on their behalf. Each beneficiary would only be able to be registered under one passport, and the registrant would be required to submit the information from the valid passport that the beneficiary intends to use for travel to the United States if issued an H–1B visa. If the beneficiary were already in the United States and were seeking a COS, the registrant would be required to list a valid passport. *See* proposed 8 CFR 214.2(h)(8)(iii)(A)(*4*)(*ii*). Even if a beneficiary had more than one valid passport, such as a beneficiary with dual citizenship, a beneficiary would only be able to be registered under one of those passports. If USCIS determined that registrations were submitted by either the same or different prospective petitioners for the same beneficiary, but using different identifying information, USCIS could find all of those registrations invalid and could deny or revoke the approval of any petition filed based on those registrations. *See* proposed 8 CFR 214.2(h)(8)(iii)(A)(*2*). Petitioners would be given notice and the opportunity to respond before USCIS denied or revoked the approval of a petition. Petitioners would be asked to explain and document the identifying information used in the registration process. Petitioners would be encouraged to retain documentation provided by the beneficiary prior to registration, including a copy of the passport.

Any H–1B cap-subject petition must contain and be supported by the same identifying information about the beneficiary as provided in the selected registration for the beneficiary named in the petition, and DHS proposes to require that petitioners submit evidence of the passport used at the time of registration to identify the beneficiary. *See* proposed 8 CFR 214.2(h)(8)(iii)(D)(*1*). USCIS could deny or revoke the approval of an H–1B petition that does not meet this proposed requirement. USCIS would typically afford the petitioner the opportunity to respond when identifying information provided on the registration does not match the information provided on the petition, and petitioners would need to be prepared to explain and document the reason for any change in identifying information. In its discretion, USCIS could find that a change in identifying information is permissible. Such circumstances could include, but would not be limited to, a legal name change due to marriage, change in gender identity, or a change in passport number or expiration date due to passport renewal, or replacement of a stolen passport, in between the time of registration and filing the petition. *See* proposed 8 CFR 214.2(h)(8)(iii)(D)(*1*).

DHS recognizes that some individuals may not possess a valid passport, and therefore the proposed passport requirement would require these individuals to obtain a valid passport, at some cost, by the time of registration or even preclude individuals from being registered if they were unable to obtain a valid passport by the time of registration. However, DHS has a strong interest in requiring passport information for each beneficiary, regardless of nationality, to better identify unique beneficiaries and enhance the integrity of the H–1B registration system. Further, DHS believes that requiring passport information is reasonable because each registration should represent a legitimate job offer. Except in limited situations where the Department of State issued a beneficiary a visa on Form DS–232, Unrecognized Passport or Waiver Cases, in the absence of a passport, it is not clear how most beneficiaries could enter the United States in H–1B status pursuant to that job offer. Therefore, the proposed rule, if finalized, would only accelerate the time by which the beneficiary needed to obtain a passport if the beneficiary did not already have a passport.

DHS recognizes that stateless individuals may be unable to obtain a valid passport and that this passport requirement could preclude some stateless individuals from being registered. DHS considered proposing an exception to the passport requirement limited solely to stateless individuals, but providing an exception would leave open the risk of registrants submitting a registration for an individual claiming to be stateless and having no passport number and submitting another registration for the

[103] In response to a comment in the final rule, DHS responded, ''This final rule requires that each registration include, in addition to other basic information, the beneficiary's full name, date of birth, country of birth, country of citizenship, gender, and passport number.'' ''Registration Requirement for Petitioners Seeking To File H–1B Petitions on Behalf of Cap-Subject Aliens,'' 84 FR 888, 900 (Jan. 31, 2019).

same individual while listing a passport number. At the registration stage, USCIS would not be able to determine whether those two individuals are the same person or whether the individual is truly stateless. Such a determination would require an adjudication of the claim of statelessness, but USCIS does not adjudicate the registration. Submission of the registration is merely an antecedent procedural requirement to file the petition properly and is not intended to replace the petition adjudication process or assess the eligibility of the beneficiary for the offered position.[104] DHS also considered the possibility of generating a unique identifier for stateless individuals, so that registrants could use this number in place of the valid passport number on the registration, but believed this option would run into the same problems of USCIS not being able to verify a claim of statelessness at the registration stage.

Furthermore, DHS considered available data for individuals issued H–1B visas or otherwise granted H–1B status from FYs 2010–23. While the data are imperfect, the data nevertheless suggest that the proposed passport requirement would likely impact a small population of stateless individuals. For instance, available data for FYs 2022 and 2023 show that USCIS received H–1B petitions for nine and four individuals, out of a total of 370,110 and 94,649 H–1B petitions, respectively, whose country of citizenship were listed as ''stateless.'' [105] This represents just 0.0024 percent and 0.0042 percent, respectively, of all H–1B petitions received those fiscal years. These data do not show whether the stateless individuals had a valid passport upon their admission into the United States in H–1B status; these data also do not show whether any of the four individuals for FY 2023 were the same as some of the nine individuals reported for FY 2022. Further, the DOS data show that, between FYs 2010–22, a total of 89 H–1B visas out of a total of 1,988,856 H–1B visas were issued to individuals whose nationalities were listed as ''no nationality.'' [106] This total represents just 0.0045 percent of all H–1B visas issued during those years. These data do not show how many of the 89 total H–1B visas were issued to unique individuals, as individuals could have been issued more than one visa during this twelve-year timeframe. Again, while acknowledging that the above data are imperfect, DHS recognizes that not providing an exception or alternative to the passport requirement would potentially impact stateless individuals who might be approved for H–1B visas but would be ineligible because they are unable to obtain a passport. DHS continues to consider options and alternatives to the passport requirement for stateless individuals and welcomes public comment on this issue as well as the costs and benefits for both petitioners and beneficiaries of requiring a passport number at registration.

As discussed above, conducting the registration selection process based on unique beneficiaries would significantly reduce or remove the advantage of submitting multiple registrations solely to increase the chances of selection and better allow for an equal playing field for both employers and beneficiaries, while continuing to allow beneficiaries to have multiple job offers and multiple registrations. This would significantly reduce or remove an incentive for employers and individuals to pursue registration without the existence of a bona fide job offer and an intent to employ the individual for each registration.

The proposed change would potentially benefit beneficiaries by giving them greater autonomy to choose the employer for whom they ultimately work. If multiple unrelated companies submitted registrations for a beneficiary and the beneficiary were selected, then the beneficiary could have greater bargaining power or flexibility to determine which company or companies could submit an H–1B petition for the beneficiary, because all of the companies that submitted a registration for that unique beneficiary would be notified that their registration was selected and they are eligible to file a petition on behalf of that beneficiary. Under the current selection process, however, the beneficiary could only be petitioned for by the specific company that submitted the selected registration. While another company could subsequently file a petition for concurrent employment, the beneficiary would still have to be initially employed in H–1B status by the same company that filed the initial cap-subject petition based on the selected registration.

The proposed change may also potentially benefit companies that submit legitimate registrations for unique beneficiaries by increasing their chances to employ a specific beneficiary in H–1B status. Again, under the current selection process, a company could file a petition for and employ a beneficiary in H–1B status only if their registration for that specific beneficiary was selected. Under the proposed beneficiary-centric selection process, any company that submitted a registration for a selected beneficiary could file a petition for and potentially employ a beneficiary in H–1B status because all of the prospective petitioners that submitted a registration for that selected beneficiary would receive a selection notice. As previously discussed, the data show that the current system may result in an unfair advantage of selection for registrations potentially involving prospective petitioners that worked together to submit multiple registrations for the same beneficiary to unfairly improve their chance of selection. The beneficiary-centric process is intended to correct this and level the playing field for companies submitting legitimate registrations for unique beneficiaries and not attempting to unfairly improve their chance of selection.

DHS is also proposing minor changes to 8 CFR 214.2(h)(8)(iii)(A)(*5*) through (*7*) and (h)(8)(iii)(E) to conform the regulatory text to the proposed new selection process and clarify that USCIS would select ''beneficiaries'' rather than ''registrations.''

DHS expects USCIS to have sufficient time to develop, thoroughly test, and implement the modifications to the registration system and selection process and give stakeholders sufficient time to adjust to these new procedures by the time the rule finalizing this proposed rule would publish and become effective. USCIS has already begun planning the development work of the new selection process in the electronic H–1B registration tool. As indicated before, DHS may move to finalize certain provisions through one or more final rules after carefully considering all public comments and may possibly do so in time for the FY 2025 cap season, depending on agency resources. In particular, DHS may seek to finalize the provisions relating to the beneficiary centric registration selection process in proposed 8 CFR 214.2(h)(8)(iii)(A)(*4*) before moving to finalize the other proposed provisions in a separate rule.

However, DHS and USCIS cannot predict, with certainty, agency resources for the next few years or even when the

[104] *See* ''Registration Requirement for Petitioners Seeking To File H–1B Petitions on Behalf of Cap-Subject Aliens,'' 84 FR 888, 900 (Jan. 31, 2019).

[105] *See* USCIS, OP&S Policy Research Division (PRD), I–129—H–1B Petitions reported with Stateless Country of Citizenship, ELIS Petitions FYs 2020–23, PRD 252. The reported numbers do not include beneficiaries whose country of citizenship information was missing, blank, or unknown. The reported numbers for FY 2020 and FY 2021 were both zero, as USCIS was not using ELIS at that time.

[106] DOS, ''Visa Statistics,'' *https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics.html* (last visited Mar. 16, 2023).

final rule would publish. Therefore, there is also the possibility that DHS would need to delay the effective date of 8 CFR 214.2(h)(8)(iii)(A)(*4*). This delayed effective date might only apply to the proposed changes describing the beneficiary-centric selection process and, in that case, would not impact any other provisions in this proposed rule, if finalized.

DHS may need to delay the effective date if it determines that USCIS does not have sufficient time to ensure proper functionality of the beneficiary-centric selection process, including completing all requisite user testing. DHS may need to delay the effective date for other reasons as well, such as to avoid the confusion that could result if the final rule took effect too close to the start of the initial registration period for the upcoming cap season, or to avoid disparate treatment of registrations if the final rule took effect in the middle of the initial registration period, or during a subsequent registration and selection period, particularly if USCIS needed to open a subsequent registration period later that year. In the event DHS needed to further delay the effective date of these provisions beyond the effective date of the final rule, DHS would publish a **Federal Register** Notice advising the regulated public of the new delayed effective date. That **Federal Register** Notice would be published at least 30 calendar days in advance of the first date of the initial registration period.

3. Bar on Multiple Registrations Submitted by Related Entities

DHS regulations already preclude the filing of multiple H–1B cap-subject petitions by related entities for the same beneficiary, unless the related petitioners can establish a legitimate business need for filing multiple cap-subject petitions for the same beneficiary. *See* 8 CFR 214.2(h)(2)(i)(G). DHS is not proposing to change that, but, rather, is proposing to extend a similar limitation to the submission of registrations. *See* proposed 8 CFR 214.2(h)(2)(i)(G). When an employer submits a registration, they attest on the H–1B Registration Tool that they intend to file a petition based on that registration. If two related employers submit registrations for a cap-subject petition for the same beneficiary, without a legitimate business need, both employers are attesting to their intent to file a petition for that beneficiary. If they are both selected, and they lack a legitimate business need, they are left with one of two choices: (1) both file petitions in violation of 8 CFR 214.2(h)(2)(i)(G); or (2) do not file and potentially violate the attestation made at the time of registration. Therefore, employers are left with two bad options. To allow related employers to submit registrations, but not allow them to file petitions, creates an inconsistency between the antecedent procedural step of registration and the petition filing. Extending the bar on multiple petition filings by related entities to multiple registration submissions by related entities for the same cap-subject beneficiary would harmonize the expectations for petition filing and registration submission.

While DHS anticipates that changing the way beneficiaries are selected would reduce frivolous registrations and their negative effects, DHS cannot guarantee with certainty that this change would completely eliminate entities from working with each other to submit registrations to unfairly increase chances of selection for a beneficiary by submitting slightly different identifying information or other means that DHS cannot anticipate. Therefore, adding this provision would serve as an additional tool available to DHS to militate against such abuse and bolster the integrity of the registration process. Furthermore, proposed 8 CFR 214.2(h)(2)(i)(G) is necessary because of the possibility that registration could be suspended, or that the implementation of the beneficiary-centric selection process could be delayed. If registration were suspended, the bar on multiple petitions would still be relevant, and if implementation of the beneficiary-centric selection process were delayed, the bar on multiple registrations would still be relevant.

4. Registrations With False Information or That Are Otherwise Invalid

Although registration is an antecedent procedural step undertaken prior to filing an H–1B cap-subject petition, the validity of the registration information is key to the registrant's eligibility to file a petition. The information contained in the registration, including the required attestations, must be valid. Currently, the regulations state that it is grounds for denial or revocation if the statements of facts contained in the petition are not true and correct, inaccurate, fraudulent, or misrepresented a material fact.[107] In this rule, DHS proposes to codify that those requirements extend to the information provided in the registration and to make clear that this includes if attestations on the registration are determined to be false. *See* proposed 8 CFR 214.2(h)(10)(ii) and (iii) and (h)(11)(iii)(A)(*2*).

To allow companies to provide false information on the registration without consequence would allow them to potentially take a cap number for which they are ineligible. As such, DHS proposes codifying that providing untrue, incorrect, inaccurate, or fraudulent statements of fact, or misrepresenting material facts, including providing false attestations on the registration, would be grounds for denial or revocation of the petition that was based on that registration.

DHS is also proposing changes to the regulations governing registration that would provide USCIS with clearer authority to deny or revoke the approval of a petition based on a registration that was not properly submitted or was otherwise invalid. Specifically, DHS is proposing to add that if a petitioner submits more than one registration per beneficiary in the same fiscal year, all registrations submitted by that petitioner relating to that beneficiary for that fiscal year may be considered not only invalid, but that ''USCIS may deny or revoke the approval of any petition filed for the beneficiary based on those registrations.'' *See* proposed 8 CFR 214.2(h)(8)(iii)(A)(*2*).

Additionally, DHS is proposing to add that USCIS may deny or revoke the approval of an H–1B petition if it determines that the fee associated with the registration is declined, not reconciled, disputed, or otherwise invalid after submission. *See* proposed 8 CFR 214.2(h)(8)(iii)(D)(*2*). DHS is also proposing a new provision that adds an invalid registration as a ground for revocation. *See* proposed 8 CFR 214.2(h)(11)(iii)(A)(*6*). Through these provisions, DHS aims to bolster the integrity of the registration system.

5. Alternatives Considered

DHS considered the alternative of eliminating the registration system and reverting to the paper-based filing system stakeholders used prior to implementing registration. However, when DHS considered the immense cost savings that registration provides to both USCIS and stakeholders and the significant resources the agency would incur to revert back to a paper-based filing system for all cap-subject cases, the benefits of having a registration system still outweigh the costs and any potential problems caused by frivolous filings. As a result, DHS is proposing to make changes to the registration system to improve it and militate against the potential for frivolous filings. DHS continues to consider options to

[107] *See* 8 CFR 214.2(h)(10)(ii) and (h)(11)(iii)(A)(*2*).

improve the registration system and welcomes public comment on this issue.

6. Provisions To Ensure Bona Fide Job Offer for a Specialty Occupation Position

a. Contracts

Under proposed 8 CFR 214.2(h)(4)(iv)(C), DHS proposes to codify USCIS' authority to request contracts, work orders, or similar evidence, in accordance with 8 CFR 103.2(b) (USCIS may request additional evidence if the evidence submitted does not establish eligibility) and 8 CFR 214.2(h)(9) (''USCIS will consider all the evidence submitted and any other evidence independently required to assist in adjudication.''). Such evidence may take the form of contracts or legal agreements, if available, or other evidence including technical documentation, milestone tables, or statements of work. Evidence submitted should show the contractual relationship between all parties, the terms and conditions of the beneficiary's work, and the minimum educational requirements to perform the duties. Uncorroborated statements about a claimed in-house project for a company with no history of developing projects in-house, standing alone, would generally be insufficient to establish that the claimed in-house work exists.

The submitted contracts should include both the master services agreement and accompanying statement(s) of work (or similar legally binding agreements under different titles) signed by an authorized official of any party in the contractual chain, including the petitioner, the end-client company for which the beneficiary will perform work, and any intermediary or vendor company. In general, the master services agreement (also commonly called a supplier agreement) sets out the essential contractual terms and provides the basic framework for the overall relationship between the parties.[108] The statement of work (also commonly called a work order) provides more specific information, such as the scope of services to be performed, details about the services, and the allocation of responsibilities among the parties.[109] The petitioner may also submit letters signed by an authorized official of the end-client company for which the beneficiary will work and any intermediary or vendor company.

Other types of documentation petitioners may provide include technical documentation, milestone tables, marketing analyses, cost-benefit analyses, brochures, and funding documents. Overall, these documents should be detailed enough to provide a sufficiently comprehensive view of the position being offered to the beneficiary and the terms and conditions under which the work would be performed. The documentation should also include the minimum educational requirements to perform the duties. Documentation that merely sets forth the general obligations of the parties to the agreement, or that does not provide specific information pertaining to the actual work to be performed, would generally be insufficient.[110]

Through proposed 8 CFR 214.2(h)(4)(iv)(C), DHS seeks to put stakeholders on notice of the kinds of evidence that could be requested to establish the terms and conditions of the beneficiary's work and the minimum educational requirements to perform the duties. This evidence, in turn, could establish that the petitioner has a bona fide job offer for a specialty occupation position for the beneficiary. DHS is proposing conforming changes to the introductory paragraph (h)(4)(iv) to distinguish the types of evidence that are required as initial evidence addressed in paragraphs (h)(4)(iv)(A) and (B), from the evidence USCIS may request under new paragraph (h)(4)(iv)(C).

b. Non-Speculative Employment

DHS proposes to codify its requirement that the petitioner must establish, at the time of filing, that it has a non-speculative position in a specialty occupation available for the beneficiary as of the start date of the validity period as requested on the petition. *See* proposed 8 CFR 214.2(h)(4)(iii)(F). This change is consistent with current DHS policy guidance that an H–1B petitioner must establish that employment exists at the time of filing the petition and that it will employ the beneficiary in a specialty occupation.[111]

The requirement of non-speculative employment derives from the statutory definition of an H–1B nonimmigrant worker as someone who is ''coming temporarily to the United States to perform services . . . in a specialty occupation . . . .'' *See* INA section 101(a)(15)(H)(i)(b), 8 U.S.C. 1101(a)(15)(H)(i)(b). To determine whether the H–1B worker will perform services in a specialty occupation as required, USCIS must examine the nature of the services the beneficiary will perform in the offered position. Where the proposed position is speculative, meaning that it is undetermined, then the petitioner will not be able to establish the nature of the offered position. Speculative employment precludes the agency from ascertaining whether those duties normally require the attainment of a U.S. bachelor's or higher degree in a directly related specific specialty to qualify the position as a specialty occupation, and whether the beneficiary has the appropriate qualifications to perform those duties. Speculative employment undermines the integrity and a key goal of the H–1B program, which is to help U.S. employers obtain the skilled workers they need to conduct their business, subject to annual numerical limitations, while protecting the wages and working conditions of U.S. workers. DHS believes that expressly prohibiting speculative employment, consistent with current practice, would align with Congressional intent and would prevent possible misunderstanding of the specialty occupation eligibility requirement.

The agency has long held and communicated the view that speculative employment is not permitted in the H–1B program. For example, a 1998 proposed rule documented this position, stating that, historically, USCIS (or the Service, as it was called at the time) has not granted H–1B classification on the basis of speculative, or undetermined, prospective employment.[112] That proposed rule explained that the H–1B classification was not intended as a vehicle for a person to engage in a job search within the United States, or for

[108] *See* 3 David M. Adlerstein et at., *Successful Partnering Between Inside and Outside Counsel* sec. 49:35.

[109] *See* 3 David M. Adlerstein et at., *Successful Partnering Between Inside and Outside Counsel* sec. 49:37.

[110] When requested evidence may contain trade secrets, for example, the petitioner may redact or sanitize the relevant sections to provide a document that is still sufficiently detailed and comprehensive, yet does not reveal sensitive commercial information. However, it is critical that the unredacted information contain all information necessary for USCIS to adjudicate the petition. Although a petitioner may always refuse to submit confidential commercial information, if it is deemed too sensitive, the petitioner must also satisfy the burden of proof and runs the risk of denial. *Cf. Matter of Marques,* 16 I&N Dec. 314, 316 (BIA 1977) (in refusing to disclose material and relevant information that is within his knowledge, the respondent runs the risk that he may fail to carry his burden of persuasion with respect to his application for relief).

[111] *See* USCIS, ''Rescission of Policy Memoranda,'' PM–602–0114 (June 17, 2020) (citing *Matter of Chawathe,* 25 I&N Dec. 369 (AAO 2010)).

[112] *See* ''Petitioning Requirements for the H Nonimmigrant Classification,'' 63 FR 30419, 30419–30420 (June 4, 1998) (proposed rule to be codified at 8 CFR part 214).

employers to bring in temporary foreign workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts.[113] If the employment is speculative, USCIS is unable to properly analyze the intended employment and determine whether the position is a specialty occupation.[114]

Note, however, that establishing non-speculative employment does not mean demonstrating non-speculative daily work assignments through the duration of the requested validity period. DHS does not propose to require employers to establish non-speculative and specific assignments for every day of the intended period of employment.[115] Again, under proposed 8 CFR 214.2(h)(4)(iii)(F), a petitioner must demonstrate, at the time of filing, availability of non-speculative employment as of the requested start date. However, DHS does not require a petitioner to identify and document the beneficiary's specific day-to-day assignments.[116] DHS also does not intend to limit validity periods based on the end-date of contracts, work orders, itineraries, or similar documentation. Speculative employment should not be confused with employment that is contingent on petition approval, visa issuance (when applicable), or the grant of H–1B status. DHS recognizes that employment may be actual, but contingent on petition approval, visa issuance, or the beneficiary being granted H–1B status.

c. LCA Corresponds With the Petition

DHS is proposing to update the regulations to expressly include DHS's existing authority to ensure that the LCA properly supports and corresponds with the accompanying H–1B petition. The proposed text at 8 CFR 214.2(h)(4)(i)(B)(*1*)(*ii*) would align DHS regulations with existing DOL regulations, which state that DHS has the authority to determine whether the LCA supports and corresponds with the H–1B petition. *See* 20 CFR 655.705(b). It would also codify DHS's authority to determine whether all other eligibility requirements have been met, such as whether the beneficiary for whom H–1B classification is sought qualifies to perform services in the specialty occupation as prescribed in INA section 214(i)(2), 8 U.S.C. 1184(i)(2). While DHS already has the authority under INA sections 101(a)(15)(H)(i)(b), 103(a), and 214(a)(1) and (c)(1), 8 U.S.C. 1101(a)(15)(H)(i)(b), 1103(a), and 1184(a)(1) and (c)(1), to determine whether the LCA supports and corresponds with the H–1B petition, this authority currently is only stated in DOL's regulations and not in DHS's regulations.[117] By adding it to DHS regulations, DHS would align its regulations with existing DOL regulations, which would add clarity and provide transparency to stakeholders.

The current statute and regulations require that a petitioner file an LCA certified by the Secretary of Labor with its H–1B petition, unless filing for certain Department of Defense workers.[118] Among other information, the employer must provide the prevailing wage rate, occupational classification (''Standard Occupational Classification (SOC) occupational title''),[119] and place of employment for the offered position on the LCA. The employer must attest on the LCA that it will pay the beneficiary the higher of the prevailing wage for the occupational classification in the area of employment or the employer's actual wage.[120] It must also attest to the truthfulness and accuracy of the information provided on the LCA.[121]

DHS proposes to amend existing regulations to state clearly that, although the Secretary of Labor certifies the LCA, DHS has the authority and obligation to determine whether the certified LCA properly supports and corresponds with the H–1B petition.[122] DHS also proposes to amend the regulations to clarify its existing authority and obligation to determine whether all eligibility requirements for H–1B classification have been met.[123]

This proposed regulation would more clearly summarize DHS's existing authority under INA section 101(a)(15)(H)(i)(b), 103(a), and 214(a)(1) and (c)(1), 8 U.S.C. 1101(a)(15)(H)(i)(b), 1103(a), and 1184(a)(1) and (c)(1). This authority is also referenced, in part, in DOL's regulation at 20 CFR 655.705(b), which states in pertinent part that DHS accepts an employer's H–1B petition with the DOL-certified LCA attached, and in doing so, ''DHS determines whether the petition is supported by an LCA which corresponds with the petition'' and otherwise meets the statutory requirements for the classification.[124] Thus, DHS's proposed regulation would mirror DOL regulations and expressly clarify DHS's existing authority with respect to reviewing the certified LCA within the context of adjudicating the H–1B petition.

When determining whether the submitted certified LCA properly

[113] *See id.* at 30420.

[114] *See id. See also* Government Accountability Office, ''H–1B Foreign Workers: Better Controls Needed to Help Employers and Protect Workers,'' GAO/HEHS–00–157 (Sept. 2000), *https://www.gao.gov/assets/hehs-00-157.pdf* (''The petition is required to contain the necessary information to show that a bona fide job exists . . . .''); *Serenity Info Tech, Inc.* v. *Cuccinelli,* 461 F. Supp. 3d 1271, 1286 (N.D. Ga. 2020) (''Demonstrating that the purported employment is actually likely to exist for the beneficiary is a basic application requirement . . . .'').

[115] *See ITServe Alliance, Inc.* v. *Cissna,* 443 F. Supp. 3d 14, 39 (D.D.C. 2020) (the U.S. District Court for the District of Columbia, in considering a requirement that an H–1B petitioner establish non-speculative assignments for the entire time requested in a petition, explained that ''very few, if any, U.S. employer would be able to identify and prove daily assignments for the future three years for professionals in specialty occupations'' and that ''[n]othing in [the statutory definition of 'specialty occupation'] requires specific and non-speculative qualifying day-to-day assignments for the entire time requested in the petition''); *Serenity Info Tech,* 461 F. Supp. 3d at 1286 (agreeing with the determination by the court in *ITServe Alliance* that the statute does not require specific and non-speculative qualifying day-to-day assignments).

[116] USCIS, ''Rescission of Policy Memoranda,'' PM–602–0114 at 3 (June 17, 2020) (stating that ''a petitioner is not required to identify and document the beneficiary's specific day-to-day assignments'').

[117] *See* 20 CFR 655.705(b).

[118] *See* INA section 212(n)(1); 8 CFR 214.2(h)(1)(ii)(B)(*1*); (h)(4)(i)(B)(*1*) and (*2*); (h)(4)(iii)(B).

[119] SOC refers to the Standard Occupational Classification code system, a classification system used by the DOL and other Federal agencies to categorize occupations. *See* BLS, ''Standard Occupational Classification,'' *https://www.bls.gov/soc/* (last visited Oct. 26, 2022); OMB, ''Statistical Programs & Standards,'' *https://www.whitehouse.gov/omb/information-regulatory-affairs/statistical-programs-standards/* (last visited Oct. 26, 2022).

[120] *See* 20 CFR 655.730–655.731.

[121] *See id.*

[122] There are four Federal agencies involved in the process relating to H–1B nonimmigrant classification and employment: DOL, DOS, U.S. Department of Justice, and DHS. In general, DOL administers the LCA process and LCA enforcement provisions. As noted, DHS determines, among other things, whether the petition is properly supported by an LCA that corresponds with the petition, whether the occupation named in the LCA is a specialty occupation, and whether the qualifications of the nonimmigrant meets the statutory and regulatory requirements for H–1B visa classification. Department of Justice administers the enforcement and disposition of complaints regarding an H–1B–dependent or willful violator employer's failure to offer an H–1B position to an equally or better qualified U.S. worker, or such employer's willful misrepresentation of material facts relating to this obligation. DOS, through U.S. Embassies and consulates, is responsible for issuing H–1B visas. *See* 20 CFR 655.705.

[123] *See, e.g.,* 8 U.S.C. 1184(c)(1) (stating ''[t]he question of importing any alien as a nonimmigrant under subparagraph (H) . . . in any specific case or specific cases shall be determined by the [Secretary of Homeland Security]'').

[124] *See Matter of Simeio Solutions, LLC,* 26 I&N Dec. 542, 546 n.6 (AAO 2015) (''USCIS must determine whether the attestations and content of an LCA correspond to and support the H–1B visa petition'').

corresponds with the petition, consistent with current practice, USCIS would consider all the information on the LCA, including, but not limited to, the standard occupational classification (SOC) code, wage level (or an independent authoritative source equivalent), and location(s) of employment. USCIS would evaluate whether that information sufficiently aligns with the offered position, as described in the rest of the record of proceeding. In other words, USCIS would compare the information contained in the LCA against the information contained in the petition and supporting evidence. USCIS would not, however, supplant DOL's responsibility with respect to wage determinations. The wage level is not solely determinative of whether the position is a specialty occupation.

DHS notes that the LCA, H–1B petition, and supporting documentation must be for the same position; however, the same position does not necessarily mean that all information describing the position must be identical. A petitioner may legitimately supplement or clarify the record with additional information about the offered position in response to an RFE, on motion, or on appeal. So long as the supplemental information does not materially change the position described in the original H–1B petition, DHS would consider the position to be the same. DHS would view a change to be material for these purposes if the change would have required the petitioner to file an amended or new petition with the corresponding LCA or if the change was made to make the position description comport with an originally submitted LCA.[125]

Additionally, DHS proposes to improve 8 CFR 214.2(h)(4)(i)(B), by redesignating existing paragraphs (h)(4)(i)(B)(*1*) through (*6*) as proposed paragraphs (h)(4)(i)(B)(*1*)(*i*) through (*vi*) and adding a new heading to clarify that these provisions all relate to LCA requirements. DHS is also proposing technical changes throughout this section, such as replacing ''shall'' with ''must,'' ''application'' with ''certified labor condition application,'' and ''the Service'' with ''USCIS,'' for additional clarity.

In separate provisions that are also related to the LCA, DHS proposes to revise the grounds for denial or revocation related to the statements of facts contained in the petition, TLC, or the LCA. *See* proposed 8 CFR 214.2(h)(10)(ii) and (h)(11)(iii)(A)(*2*). This would codify DHS's current practices, as the LCA is incorporated into and considered part of the H–1B petition, just like the TLC is incorporated into and considered part of the H–2A or H–2B petition.[126]

While current 8 CFR 214.2(h)(11)(iii)(A)(*2*) already refers to the ''temporary labor certification,'' it does not expressly refer to the ''labor condition application.'' DHS proposes to add an express reference to the LCA in proposed 8 CFR 214.2(h)(11)(iii)(A)(*2*) to resolve any doubts that a false statement on the LCA—just like a false statement on the TLC—could provide a basis for USCIS to revoke an H petition approval. The purpose of the proposed change to 8 CFR 214.2(h)(10)(ii) is to clarify and better align with the language in proposed 8 CFR 214.2(h)(11)(iii)(A)(*2*) to expressly reference inaccurate or false statements on the petition, TLC, or LCA, as applicable, as a basis for denial of an H petition.

d. Revising the Definition of U.S. Employer

DHS is proposing to revise the definition of ''United States employer.'' Currently, 8 CFR 214.2(h)(4)(ii) defines the term ''United States employer'' as a person, firm, corporation, contractor, or other association, or organization in the United States that: (1) Engages a person to work within the United States; (2) has an employer-employee relationship with respect to employees under 8 CFR part 214, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee; and (3) has an Internal Revenue Service Tax identification number.

DHS proposes several changes to the ''United States employer'' definition at 8 CFR 214.2(h)(4)(ii) to bring it in line with our current practice. First, in place of the employer-employee relationship requirement, DHS proposes to codify the existing requirement that the petitioner has a bona fide job offer for the beneficiary to work within the United States. DHS also proposes to replace the requirement that the petitioner ''[e]ngages a person to work within the United States'' with the requirement that the petitioner have a legal presence and is amenable to service of process in the United States. DHS is not proposing to change the current requirement at 8 CFR 214.2(h)(4)(ii) that the petitioner must have an IRS Tax identification number.

e. Employer-Employee Relationship

DHS proposes to remove from the definition of U.S. employer the reference to an employer-employee relationship, which, in the past, was interpreted using common law principles and was a significant barrier to the H–1B program for certain petitioners, including beneficiary-owned petitioners. This proposed change is consistent with current USCIS policy guidance, and removing the employer-employee relationship language from the regulations would promote clarity and transparency in the regulations. It would also support DHS's overall commitment to reducing administrative barriers, including those that unnecessarily impede access to USCIS immigration benefits.[127] This proposed change reflects USCIS's current practices since June 2020, when, following a court order and settlement agreement,[128] USCIS formally rescinded its January 2010 policy guidance on the employer-employee relationship analysis under common law.[129] As

[125] *See* 8 CFR 103.2(b)(1) (an applicant or petitioner must establish eligibility at the time of filing); 8 CFR 214.2(h)(2)(i)(E) (petitioner must file a new or amended petition with USCIS to reflect any material change in the terms and conditions of employment or the foreign citizen's eligibility for H–1B status); *Matter of Simeio Solutions, LLC,* 26 I&N Dec. 542, 547 (AAO 2015) (''When there is a material change in the terms and conditions of employment, the petitioner must file an amended or new H–1B petition with the corresponding LCA. 8 CFR 214.2(h)(2)(i)(E).''). *See also Matter of Izummi,* 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998) (a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements).

[126] *See* 8 CFR 103.2(b)(1) (any evidence submitted in connection with a benefit request is incorporated into and considered part of the request); USCIS, ''Rescission of Policy Memoranda,'' PM–602–0114, at 2 (June 17, 2020) (''The petitioner is required to attest under penalty of perjury on the H–1B petition and LCA that all of the information contained in the petition and supporting documents is complete, true, and correct.''), *https://www.uscis.gov/sites/default/files/document/memos/PM-602-0114_ITServeMemo.pdf*; *Matter of Simeio Solutions,* 26 I&N Dec. 542, 546 n.6 (AAO 2015) (''USCIS must determine whether the attestations and content of an LCA correspond to and support the H–1B visa petition, including the specific place of employment. 20 CFR 655.705(b) (2014); see also 8 CFR 214.2(h)(4)(i)(B).'').

[127] *See, e.g.,* ''Identifying Barriers Across U.S. Citizenship and Immigration Services (USCIS) Benefits and Services; Request for Public Input,'' 86 FR 20398 (Apr. 19, 2021).

[128] *See ITServe Alliance, Inc.* v. *Cissna,* 443 F.Supp.3d 14, 19 (D.D.C. 2020) (finding that the USCIS policy interpreting the existing regulation to require a common-law employer-employee relationship violated the Administrative Procedure Act as applied and that the itinerary requirement at 8 CFR 214.2(h)(2)(i)(B) is ultra vires as it pertains to H–1B petitions).

[129] *See* USCIS, ''Rescission of Policy Memoranda,'' PM–602–0114 (June 17, 2020), *https://www.uscis.gov/sites/default/files/document/memos/PM-602-0114_ITServeMemo.pdf.* This memorandum rescinded the USCIS policy memorandum ''Determining Employer-Employee Relationship for Adjudication of H–1B Petitions, Including Third-Party Site Placements,'' HQ 70/6.2.8 (AD 10–24) (Jan. 8, 2010).

explained in USCIS's June 2020 policy memorandum ''Rescission of Policy Memoranda,'' when assessing whether an employer and a beneficiary have an employer-employee relationship under current 8 CFR 214.2(h)(4)(ii), the petitioner need only establish that it meets at least one of the ''hire, pay, fire, supervise, or otherwise control the work of'' factors with respect to the beneficiary.[130] H–1B petitioners are required to submit an LCA attesting that they will pay the beneficiary, *see, e.g.,* 8 CFR 214.2(h)(4)(i)(B), as well as a copy of any written contracts between the petitioner and the beneficiary (or a summary of the terms of the oral agreement under which the beneficiary will be employed, if a written contract does not exist), which typically demonstrates that they will hire and pay the beneficiary, *see* 8 CFR 214.2(h)(4)(iv). Therefore, H–1B petitioners generally will meet the employer-employee relationship under current 8 CFR 214.2(h)(4)(ii) simply by submitting the required LCA and employment agreement as part of the initial evidence for Form I–129. As a result, the current employer-employee relationship requirement has limited practical value and could be a potential source of confusion if maintained in the regulations. As an additional integrity measure, and as explained in more detail below, DHS is proposing to codify the existing requirement that the petitioner have a bona fide job offer for the beneficiary to work within the United States.

As indicated above, the previous analysis created significant barriers to the H–1B program for certain petitioners, including beneficiary-owned petitioners. For example, a beneficiary-owner may have been unlikely to establish a common-law employer-employee relationship with the petitioning entity, even if working for the petitioning entity in a specialty occupation and as a W–2 employee, and thus denied classification as an H–1B specialty occupation worker. Furthermore, USCIS's previous policy was not entirely consistent with DOL's regulatory definition of an H–1B employer. DOL's definition of ''employer'' at 20 CFR 655.715 states, in pertinent part, ''In the case of an H–1B nonimmigrant (not including E–3 and H–1B1 nonimmigrants), the person, firm, contractor, or other association or organization in the United States that files a petition with [USCIS] on behalf of the nonimmigrant is deemed to be the employer of that nonimmigrant.'' The definition further states, ''In the case of an E–3 and H–1B1 nonimmigrant, the person, firm, contractor, or other association or organization in the United States that files an LCA with [DOL] on behalf of the nonimmigrant is deemed to be the employer of that nonimmigrant.'' As a result of USCIS's 2010 policy guidance, it was often the case that USCIS concluded a petitioner was not an employer for purposes of the H–1B petition even though DOL deemed that same petitioner to be an employer for purposes of the LCA. This disparity increased the potential for confusion among H–1B stakeholders. It is in DHS's interests to promote, to the extent possible, a more consistent framework among DHS and DOL regulations for H–1B, E–3, and H–1B1 petitions and to increase clarity for stakeholders. However, the proposed removal of the employer-employee requirement from 8 CFR 214.2(h)(4)(ii) is not intended to narrow in any way the scope of petitioners against whom DOL may enforce the H–1B labor requirements.

f. Bona Fide Job Offer

Under the second prong of the definition of ''U.S. employer'' at 8 CFR 214.2(h)(4)(ii), DHS proposes to codify the existing requirement that the petitioner have a bona fide job offer for the beneficiary to work within the United States.[131] While this requirement is not currently expressly stated in the regulations, it is reflected in current USCIS policy guidance, which states that the petitioner must establish that ''[a] bona fide job offer . . . exist[s] at the time of filing.'' [132]

This proposed change would also be consistent with the current H–1B Registration Tool, where the petitioner must attest at the time of registration that each registration for an H–1B cap-subject beneficiary reflects a legitimate job offer. DHS's proposal to codify the requirement for a bona fide job offer requirement would complement DHS's proposal to codify the requirement to demonstrate a non-speculative position in a specialty occupation for the beneficiary at proposed 8 CFR 214.2(h)(4)(iii)(F).

DHS proposes to codify the bona fide job offer requirement in place of the current requirement that the petitioner ''[e]ngages a person to work within the United States'' under the first prong of current 8 CFR 214.2(h)(4)(ii). As currently written, the requirement for a petitioner to ''engage[ ] a person to work within the United States'' has limited practical value because it does not specify that the petitioner should engage the beneficiary (rather than ''a person'') and it does not specify that the work to be performed must be within the United States.

Furthermore, DHS proposes to add clarification that the bona fide job offer may include ''telework, remote work, or other off-site work within the United States.'' *See* proposed 8 CFR 214.2(h)(4)(ii). While USCIS currently allows these types of work arrangements (provided they are consistent with the certified LCA and other regulatory requirements), the regulations do not state this expressly. DHS believes this clarification is helpful as more businesses allow and more workers choose telework, remote work, or other types of work arrangements.[133] DHS emphasizes that nothing in the proposed rule would change the Department of Labor's administration and enforcement of statutory and regulatory requirements related to labor condition applications. *See* 8 U.S.C. 1182(n); 20 CFR part 655 Subparts H and I. These requirements would be unaffected by this proposed rule and would continue to apply to all H–1B employers.

g. Legal Presence and Amenable to Service of Process

In the second prong of the definition of U.S. employer at 8 CFR 214.2(h)(4)(iv)(D), DHS proposes to add a new requirement that the petitioner has a legal presence in the United States

[130] *Id.* at 2.

[131] Consistent with existing practice, the phrase ''within the United States'' does not and would not prohibit H–1B nonimmigrants from travelling internationally.

[132] *See* USCIS, ''Rescission of Policy Memoranda,'' PM–602–0114 (June 17, 2020); *see also* USCIS, Adjudicator's Field Manual (AFM) Chapter 31.3(g)(4) at 24, ''H1–B Classification and Documentary Requirements has been partially superseded as of June 17, 2020,'' available at *https://www.uscis.gov/sites/default/files/document/policy-manual-afm/afm31-external.pdf* (last visited Sept. 5, 2023) (''The burden of proof falls on the petitioner to demonstrate the need for such an employee. Unless you are satisfied that a legitimate need exists, such a petition may be denied because the petitioner has failed to demonstrate that the beneficiary will be employed in a qualifying specialty occupation.''). While USCIS retired the AFM in May 2020, this example nevertheless illustrates the agency's historical interpretation.

[133] *See, e.g.,* Kim Parker, Juliana Menasce Horowitz, and Rachel Minkin, ''COVID–19 Pandemic Continues to Reshape Work in America'' (Feb. 16, 2022), *https://www.pewresearch.org/social-trends/2022/02/16/covid-19-pandemic-continues-to-reshape-work-in-america/* (among those who have a workplace outside of their home, in January 2022, 61 percent said they choose not to go into their workplace, compared to only 31 percent of this population surveyed in October 2020); Greg Iacurci, ''Why Labor Economists Say the Remote Work 'Revolution' is Here to Stay'' (Dec. 1, 2022), *https://www.cnbc.com/2022/12/01/why-labor-economists-say-the-remote-work-revolution-is-here-to-stay.html* (the share of remote workers had been doubling every 15 years prior to 2020, but the subsequent increase during the pandemic amounted to 30 years of pre-pandemic growth).

and is amenable to service of process in the United States. Legal presence, in this context, means that the petitioner is legally formed and authorized to conduct business in the United States. In order to employ an individual legitimately in a specialty occupation, an employer should be able to conduct business legally in the United States.[134] If USCIS discovers at any time while the petition is pending that the petitioner does not have a legal presence in the United States, it may issue a request for additional evidence and provide the petitioner the opportunity to cure that deficiency.

''Amenable to service of process'' means that the petitioner may be sued in a court in the United States. Since the petitioner undertakes legal obligations to employ the beneficiary according to the terms and conditions on the petition and LCA, the petitioner should not be able to avoid liability for not complying with these obligations by later claiming that it is not the employer or is not amenable to service of process. The requirement that the petitioner is amenable to service of process in the United States is also found in other classifications, such as H–2B, O–1, and P–1. Those regulations state that ''a foreign employer is any employer who is not amenable to service of process in the United States.'' *See* 8 CFR 214.2(h)(6)(iii)(B); (o)(2)(i); and (p)(2)(i), respectively.

7. Beneficiary-Owners

In the fourth prong of the definition of U.S. employer at 8 CFR 214.2(h)(4)(ii), DHS proposes to codify a petitioner's ability to qualify as a U.S. employer even when the beneficiary possesses a controlling interest in that petitioner. As discussed above, historically, USCIS's common law analysis of the employer-employee relationship has been an impediment for certain beneficiary-owned businesses to use the H–1B program. While USCIS has not applied the common law analysis of the employer-employee relationship since June 2020, when it rescinded its 2010 policy memorandum,[135] DHS believes that prospective beneficiary-owned businesses may still be reluctant to participate in the H–1B program due to the legacy of its now-rescinded memorandum. Through this proposed change to 8 CFR 214.2(h)(4)(ii), DHS seeks to clarify its current policy and encourage more beneficiary-owned businesses to participate in the H–1B program.[136]

The United States has long been a destination for top talent from all over the world, including for entrepreneurs and innovators. The United States continues to build and expand initiatives to support its evolving workforce with policies such as the passage of the CHIPS and Science Act of 2022, which will foster innovation in many ways, including by reducing the barriers of entry to startups.[137] While the United States prides itself on its ability to attract global talent, there are limited pathways for entrepreneurs to come to the United States under existing regulations. To promote access to H–1Bs for entrepreneurs, start-up entities, and other beneficiary-owned businesses, DHS is proposing to add provisions to specifically address situations where a potential H–1B beneficiary owns a controlling interest in the petitioning entity. If more entrepreneurs are able to obtain H–1B status to develop their business enterprises, the United States could benefit from the creation of jobs, new industries, and new opportunities.[138] At the same time, DHS seeks to set reasonable conditions for when the beneficiary owns a controlling interest in the petitioning entity to better ensure program integrity. These proposed conditions would apply when a beneficiary owns a controlling interest, meaning that the beneficiary owns more than 50 percent of the petitioner or when the beneficiary has majority voting rights in the petitioner. These proposed conditions would not apply when a beneficiary does not own a controlling interest in the petitioning entity. DHS believes it is reasonable to limit the application of these conditions to H–1B petitioners where the beneficiary has a controlling interest to ensure that the beneficiary will be employed in a specialty occupation in a bona fide job opportunity.

One of the proposed conditions is that the beneficiary may perform duties that are directly related to owning and directing the petitioner's business as long as the beneficiary will perform specialty occupation duties authorized under the petition a majority of the time. *See* proposed 8 CFR 214.2(h)(4)(ii). ''A majority of the time'' in this context means that the beneficiary must perform specialty occupation duties more than 50 percent of the time.

By requiring that the beneficiary perform specialty occupation duties a majority of the time, the beneficiary-owner would have flexibility to perform non-specialty occupation duties that are directly related to owning and directing the petitioner's business. This proposed rule would not preclude the beneficiary from being authorized for concurrent employment with two or more entities (including another entity where the beneficiary is also an owner with a controlling interest) so long as each entity has been approved to employ the beneficiary in a specialty occupation and the individual otherwise satisfies all eligibility requirements. In this concurrent employment scenario, where a beneficiary seeks concurrent employment with more than one entity and the beneficiary owns a controlling interest in each of the petitioners filing to authorize concurrent employment, the ''majority of the time'' standard must be met with respect to each petition, and the beneficiary must comply with the terms and conditions of each petition.

The proposed language at 8 CFR 214.2(h)(4)(ii) would state that a beneficiary may perform non-specialty occupation duties as long as such non-specialty occupation duties are directly related to owning and directing the petitioner's business. Additionally and similar to other H–1B petitions, a beneficiary-owner may perform some incidental duties, such as making copies or answering the telephone. DHS expects a beneficiary-owner would need to perform some non-specialty

[134] *See, e.g., In Re. 9019481,* 2020 WL 9668720 (AAO July 17, 2020) (''[T]he record of proceeding does not contain evidence demonstrating the Petitioner is active and in good standing with any State. If a petitioner is no longer in business, then no bona fide job offer exists to support the petition.''); *In Re. 16130730,* 2021 WL 2806409 (AAO Apr. 27, 2021) (''[T]he petitioner has not demonstrated that it is an entity in active and good standing. . . . If the petitioner is not actually in business, it cannot qualify as an entity with standing to file an H–1B petition.'').

[135] *See* USCIS, ''Determining Employer-Employee Relationship for Adjudication of H–1B Petitions, Including Third-Party Site Placements,'' HQ 70–6.2.8, AD 10–24 (Jan. 8, 2010).

[136] Again, DHS emphasizes that nothing in the proposed rule would change the Department of Labor's administration and enforcement of statutory and regulatory requirements related to labor condition applications. *See* 8 U.S.C. 1182(n); 20 CFR part 655, subparts H and I. These requirements would be unaffected by this proposed rule and would continue to apply to all H–1B employers.

[137] *See* The CHIPS and Science Act of 2022, Public Law 117–167 (Aug. 22, 2022).

[138] *See, e.g.,* National Bureau of Economic Research, ''Winning the H–1B Visa Lottery Boosts the Fortunes of Startups'' (Jan. 2020), *https://www.nber.org/digest/jan20/winning-h-1b-visa-lottery-boosts-fortunes-startups* (''The opportunity to hire specialized foreign workers gives startups a leg up over their competitors who do not obtain visas for desired employees. High-skilled foreign labor boosts a firm's chance of obtaining venture capital funding, of successfully going public or being acquired, and of making innovative breakthroughs.''); Pierre Azoulay, et al., ''Immigration and Entrepreneurship in the United States'' (National Bureau of Economic Research, Working Paper 27778 (Sept. 2020), *https://www.nber.org/system/files/working_papers/w27778/w27778.pdf* (''immigrants act more as 'job creators' than 'job takers' and . . . non-U.S. born founders play outsized roles in U.S. high-growth entrepreneurship'').

occupation duties when growing a new business or managing the business. Notwithstanding incidental duties, non-specialty occupation duties must be directly related to owning and directing the business. These duties may include, but are not limited to: signing leases, finding investors, and negotiating contracts. The goal is to ensure that a beneficiary who is the majority or sole owner and employee of a company would not be disqualified by virtue of having to perform duties directly related to owning and directing their own company, while also ensuring that the beneficiary would still be ''coming temporarily to the United States to perform services . . . in a specialty occupation'' as required by INA section 101(a)(15)(H)(i)(b).

The proposed ''majority of the time'' framework would allow a beneficiary-owner to perform some non-specialty occupation duties that are directly related to owning and directing the business, as long as a majority of their time performing the job would be spent performing the specialty occupation duties authorized in the approved petition. USCIS would analyze all of the job duties—specialty occupation duties and non-specialty occupation duties—which the petitioner must accurately describe in the petition along with the expected percentage of time to be spent performing each job duty, to determine whether the job would be in a specialty occupation and to determine whether the non-specialty occupation duties are directly related to owning and directing the business. If the beneficiary would spend a majority of their time performing specialty occupation duties, and if the non-specialty occupation duties are directly related to owning and directing the business, then the position may qualify as a specialty occupation.[139]

The ''majority of the time'' analysis would be similar to the approach generally taken for other H–1B petitions, although it would be more limiting in order to mitigate against potential abuse.[140] However, DHS acknowledges that past adjudicative practices have not been entirely consistent as to what level of non-specialty occupation duties is permissible and what level of such duties would result in a finding that the proffered position as a whole does not qualify as a specialty occupation.[141] Codifying the ''majority of the time'' framework would provide clarity in the regulations as to what is permissible in the specific context of beneficiary-owners. This, in turn, would better ensure consistency in adjudications of petitions involving beneficiary-owners. DHS again emphasizes that nothing in the proposed rule would change the Department of Labor's administration and enforcement of statutory and regulatory requirements related to labor condition applications, including requirements concerning the appropriate prevailing wage and wage level when the proffered position involves a combination of occupations.[142] For example, in some cases the petition might involve a combination of occupations that can affect the petitioner's wage obligation, as detailed in DOL's wage guidance.[143] Generally, when an H–1B employer requests a prevailing wage determination from DOL, the National Prevailing Wage Center will assign to the position the occupational code that has the higher of the prevailing wages amongst the combination of occupations. Under this proposed rule, a petitioner may be authorized to employ a beneficiary-owner in a combination of occupations, provided that the petitioner pays the required wage, consistent with existing DOL wage guidance, even when the beneficiary-owner is performing non-specialty occupation duties as authorized by USCIS.

DHS is also proposing to limit the validity period for beneficiary-owned entities. DHS proposes to limit the validity period for the initial petition and first extension (including an amended petition with a request for an extension of stay) of such a petition to 18 months each. *See* proposed 8 CFR 214.2(h)(9)(iii)(E). Any subsequent extension would not be limited and may be approved for up to 3 years, assuming the petition satisfies all other H–1B requirements. DHS proposes limiting the first two validity periods to 18 months as a safeguard against possible fraudulent petitions. While DHS sees a significant advantage in promoting the H–1B program to entrepreneurs, DHS believes that guardrails for beneficiary-owner petitions would be helpful to mitigate the potential for abuse of the H–1B program. Limiting the first two validity periods to 18 months each would allow DHS adjudicators to review beneficiary-owned petitions more frequently, and limiting the nature of non-specialty occupation duties that may be performed, would deter potential abuse and help to maintain the integrity of the H–1B program. DHS seeks public comments on these proposed safeguards and additional safeguards and flexibilities for beneficiary-owned businesses.

8. Site Visits

Pursuant to its authority under INA sections 103(a), 214(a), 235(d)(3) and 287(b), 8 U.S.C. 1103(a), 1184(a), 1225(d)(3) and 1357(b), sections 402, 428 and 451(a)(3) of the HSA, 6 U.S.C. 202, 236 and 271(a)(3), and 8 CFR 2.1, USCIS conducts inspections, evaluations, verifications, and compliance reviews, to ensure that a petitioner and beneficiary are eligible for the benefit sought and that all laws have been complied with before and after approval of such benefits. These inspections, verifications, and other compliance reviews may be conducted telephonically or electronically, as well as through physical on-site inspections (site visits). The existing authority to conduct inspections, verifications, and other compliance reviews is vital to the

[139] *See GCCG Inc* v. *Holder,* 999 F. Supp. 2d 1161, 1167 (N.D. Cal. 2013) (agreeing with Defendant that for USCIS to find the petitioner's proffered job to be a specialty occupation, the majority of the beneficiary's time must be spent performing the duties of the specialty occupation).

[140] *See, e.g., GCCG Inc* v. *Holder,* 999 F. Supp. 2d 1161, 1165–68 (N.D. Cal. 2013) (finding the beneficiary to be mainly performing non-specialty occupation duties and explaining that USCIS requires the beneficiary's duties to entail mainly the performance of specialty occupation duties for the position to qualify as a specialty occupation); *Engaged in Life, LLC* v. *Johnson,* No. 14–06112–CV–DW, 2015 WL 11111211, at *4 (W.D. Mo. Oct. 13, 2015) (citing *GCCG Inc.*).

[141] *See, e.g., In Re. 8423340,* 2020 WL 9668851, at *12 (AAO July 27, 2020) (''[W]e will permit the performance of duties that are incidental to the primary duties of the proffered position as acceptable when they occur by chance, are intermittent, and are of a minor consequence. Anything beyond such incidental duties (*e.g.,* predictable, recurring, and substantive job responsibilities), must be specialty occupation duties or the proffered position as a whole cannot be approved as a specialty occupation.''); *In Re. M–C-,* 2016 WL 8316337, at *4 (AAO Dec. 23, 2016) (''[A]nything beyond incidental duties, that is predictable, recurring, and substantive job responsibilities, must be specialty occupation duties or the proffered position as a whole cannot be approved as a specialty occupation.''); *In Re. 1280169,* 2018 WL 2112902 (AAO Apr. 20, 2018) (concluding that the beneficiary's position, on the whole, will include non-qualifying duties inconsistent with those of a specialty-occupation caliber position because the non-qualifying duties have not been shown to be incidental to the performance of the primary duties of the proffered position).

[142] *See* 8 U.S.C. 1182(n); 20 CFR part 655, subparts H and I.

[143] DOL, ''Round 3: Implementation of the Revised Form ETA–9141 FAQs'' at 1 (July 16, 2021), *https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/NPWC%20Round%203%20Frequently%20Asked%20Questions%20-%20Implementation%20of%20Revised%20Form%20ETA-9141.pdf* (When there is a combination of occupations, the SOC code with the highest wage is assigned.); DOL, ''Prevailing Wage Determination Policy Guidance Nonagricultural Immigration Programs Revised November 2009'' at 4, *https://www.flcdatacenter.com/download/npwhc_guidance_revised_11_2009.pdf* (last visited Oct. 3, 2023) (If the employer's job opportunity involves a combination of occupations, the National Prevailing Wage Center should list the relevant occupational code for the highest paying occupation.).

integrity of the immigration system as a whole and to the H–1B program specifically. In this rule, DHS is proposing to add regulations specific to the H–1B program to codify its existing authority and clarify the scope of inspections and the consequences of a petitioner's or third party's refusal or failure to fully cooperate with these inspections. *See* proposed 8 CFR 214.2(h)(4)(i)(B)(*2*). The authority of USCIS to conduct on-site inspections, verifications, or other compliance reviews to verify information does not relieve the petitioner of its burden of proof or responsibility to provide information in the petition (and evidence submitted in support of the petition) that is complete, true, and correct.[144]

In July 2009, USCIS started a compliance review program as an additional way to verify information in certain visa petitions.[145] Under this program, USCIS Fraud Detection and National Security (FDNS) officers make unannounced site visits to collect information as part of a compliance review. A compliance review verifies whether petitioners and beneficiaries are following the immigration laws and regulations that are applicable in a particular case. This process includes researching information in government databases, reviewing public records and evidence accompanying the petition, and interviewing the petitioner and beneficiary.[146] It also includes conducting site visits.

The site visits conducted by USCIS through its compliance review program have uncovered a significant amount of noncompliance in the H–1B program. For instance, during FYs 2019–22, USCIS conducted a total of 27,062 H–1B compliance reviews and found 5,037 of them, equal to 18.6 percent, to be noncompliant or indicative of fraud.[147] These compliance reviews (during FYs 2019–22) consisted of reviews conducted under both the Administrative Site Visit and Verification Program, which began in 2009, and the Targeted Site Visit and Verification Program, which began in 2017. The targeted site visit program allows USCIS to focus resources where fraud and abuse of the H–1B program may be more likely to occur.[148]

The data from FYs 2013–19 include data only from the Administrative Site Visit and Verification Program.[149] During FYs 2013–16, USCIS conducted 30,786 H–1B compliance reviews. Of those, 3,811 (12 percent) were found to be noncompliant.[150] From FY 2016 through March 27, 2019, USCIS conducted 20,492 H–1B compliance reviews and found 2,341 (11.4 percent) to be noncompliant.[151] Of the site visits conducted during FYs 2013–22, lack of cooperation may have contributed to a finding of noncompliance, although not all findings of noncompliance mean there was a lack of cooperation.

Site visits are important to maintaining the integrity of the H–1B program and in detecting and deterring fraud and noncompliance with H–1B program requirements.[152] Cooperation is crucial to USCIS's ability to verify information about employers and workers, and the overall conditions of employment. Therefore, as noted above, DHS is proposing additional regulations specific to the H–1B program to set forth the scope of on-site inspections and the consequences of a petitioner's or third party's refusal or failure to fully cooperate with these inspections. This proposed rule would provide a clear disincentive for petitioners that do not cooperate with compliance reviews and inspections while giving USCIS a greater ability to access and confirm information about employers and workers as well as identify fraud.

The proposed regulations would make clear that inspections may include, but are not limited to, an on-site visit of the petitioning organization's facilities, interviews with its officials, review of its records related to compliance with immigration laws and regulations, and interviews with any other individuals or review of any other records that USCIS may lawfully obtain and that it considers pertinent to verify facts related to the adjudication of the petition, such as facts relating to the petitioner's and beneficiary's eligibility and continued compliance with the requirements of the H–1B program. *See* proposed 8 CFR 214.2(h)(4)(i)(B)(*2*). The proposed regulation would also clarify that an inspection may take place at the petitioning organization's headquarters, satellite locations, or the location where the beneficiary works or will work, including the beneficiary's home, or third-party worksites, as applicable. The proposed provisions would make clear that an H–1B petitioner or any employer must allow access to all sites where the labor will be performed for the purpose of determining compliance with applicable H–1B requirements. The word ''employer'' used in this context would include petitioners and third-party contractors. DHS believes that the ability to inspect various locations is critical because the purpose of a site

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[144] *See* 8 CFR 103.2(b). In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *See Matter of Chawathe,* 25 I&N Dec. 376 (quoting *Matter of E–M-,* 20 I&N Dec. 77, 80 (Comm'r 1989).

[145] *See* USCIS, Administrative Site Visit and Verification Program, *https://www.uscis.gov/about-us/organization/directorates-and-program-offices/fraud-detection-and-national-security-directorate/administrative-site-visit-and-verification-program* (last updated March 6, 2023).

[146] Outside of the administrative compliance review program, USCIS conducts forms of compliance review in every case, including, for example, by researching information in relevant government databases or by reviewing public records and evidence accompanying the petition.

[147] DHS, USCIS, PRD (2022). PRD196. USCIS conducted these site visits through its Administrative and Targeted Site Visit Program. A finding of noncompliance indicates that the petitioner and/or third-party company is not complying with the terms and conditions of the petition but does not indicate that the petitioner willfully misrepresented information provided to USCIS. An example of noncompliance may include a petitioner sending a worker to an end-client, who without the petitioner's knowledge, uses the worker to perform duties substantially different from those specified in the petition.

[148] *See* USCIS, ''Putting American Workers First: USCIS Announces Further Measures to Detect H–1B Visa Fraud and Abuse,'' (Apr. 3, 2017), *https://www.uscis.gov/archive/putting-american-workers-first-uscis-announces-further-measures-to-detect-h-1b-visa-fraud-and-abuse.*

[149] *See* USCIS, ''Administrative Site Visit and Verification Program,'' *https://www.uscis.gov/about-us/directorates-and-program-offices/fraud-detection-and-national-security/administrative-site-visit-and-verification-program* (last updated Mar. 6, 2023).

[150] *See* USCIS, ''Fiscal Year 2017 Report to Congress: H–1B and L–1A Compliance Review Site Visits, Fraud Detection and National Security Compliance Review Data (October 1, 2012, to September 30, 2016),'' at 7 (Jan. 17, 2018), *https://www.dhs.gov/sites/default/files/publications/USCIS%20-%20H-1B%20and%20L-1A%20Compliance%20Review%20Site%20Visits.pdf* (last visited Mar. 23, 2023). Note that USCIS conducted these site visits only through its Administrative Site Visit Program.

[151] DHS, USCIS, PRD (2019). Summary of H–1B Site Visits Data. Note that USCIS conducted these site visits only through its Administrative Site Visit Program.

[152] DHS acknowledges the 2017 Office of Inspector General report that addressed concerns with the H–1B site visit program and made recommendations for improvement. DHS, Office of Inspector General, ''USCIS Needs a Better Approach to Verify H–1B Visa Participants,'' OIG–18–03 (Oct. 20, 2017), *https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-18-03-Oct17.pdf.* Since the issuance of this report, USCIS has greatly improved its site visit program pursuant to the report's recommendations, such that USCIS believes the concerns addressed in the 2017 report no longer pertain. Specifically, the report's assessment that ''USCIS site visits provide minimal assurance that H–1B visa participants are compliant and not engaged in fraudulent activity'' no longer pertains. As of March 31, 2019, the recommendations have been resolved. *See* DHS, Office of Inspector General, ''DHS Open Unresolved Recommendations Over Six Months Old, as of March 31, 2019,'' *https://www.oig.dhs.gov/sites/default/files/DHS-Open-Recommendations-As-Of-033119_053019.pdf* (not listing OIG–18–03 as an ''open unresolved'' report). DHS maintains that site visits, generally, are an important and effective tool for the H–1B program. The site visit provisions at proposed 8 CFR 214.2(h)(4)(i)(B)(*2*)(*i*) would directly support USCIS's continued efforts to strengthen the effectiveness of the site visit program and the integrity of the H–1B program overall.

inspection is to confirm information related to the petition, and any one of these locations may have information relevant to a given petition. If the petitioner and any third-party contractor does not allow USCIS officials to interview H–1B workers, including in the absence of the employer or the employer's representatives, this may also result in denial or revocation of the associated H–1B petition(s). The interviews may take place on the employer's property, or as feasible, at a neutral location agreed to by the interviewee and USCIS away from the employer's property. The presence of employer representatives during such interviews can reasonably be expected to have a chilling effect on the ability of interviewed workers to speak freely and, in turn, impede the Government's ability to ensure compliance with the terms and conditions of the H–1B program.

The proposed regulation also states that if USCIS is unable to verify facts related to an H–1B petition, including due to the failure or refusal of the petitioner or third party to cooperate in an inspection or other compliance review, then the lack of verification of pertinent facts, including from failure or refusal to cooperate, may result in denial or revocation of the approval of any petition for workers who are or will be performing services at the location or locations that are a subject of inspection or compliance review, including any third-party worksites. *See* proposed 8 CFR 214.2(h)(4)(i)(B)(*2*). A determination that a petitioner or third party failed or refused to cooperate would be case specific, but it could include situations where one or more USCIS officers arrived at a petitioner's worksite, made contact with the petitioner and properly identified themselves to a petitioner's representative, and the petitioner refused to speak to the officers or refused entry into the premises or refused permission to review human resources (HR) records pertaining to the beneficiary. Failure or refusal to cooperate could also include situations where a petitioner or employer agreed to speak but did not provide the information requested within the time period specified, or did not respond to a written request for information within the time period specified. Before denying or revoking the petition, USCIS would provide the petitioner an opportunity to rebut adverse information and present information on its own behalf in compliance with 8 CFR 103.2(b)(16).

This new provision would put petitioners on notice of the specific consequences for noncompliance or lack of cooperation, whether by them or by a third party. It has long been established that, in H–1B visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought.[153] If USCIS conducts a site visit to verify facts related to the H–1B petition or to verify that the beneficiary is or will be employed consistent with the terms of the petition approval, and is unable to verify relevant facts and otherwise confirm general compliance, then the petition could properly be denied or the approval revoked. This would be true whether the unverified facts related to a petitioner worksite or a third-party worksite at which a beneficiary had been or would be placed by the petitioner. It would also be true whether the failure or refusal to cooperate were by the petitioner or a third party. Petitioners could consider notifying third parties at whose worksites beneficiaries may be working about the possibility of DHS verification efforts regarding the immigration benefit.

9. Third-Party Placement (Codifying Defensor)

In certain circumstances where an H–1B worker provides services for a third party, USCIS would look to that third party's requirements for the beneficiary's position, rather than the petitioner's stated requirements, in assessing whether the proffered position qualifies as a specialty occupation. As required by both INA section 214(i)(1) and 8 CFR 214.2(h)(4)(i)(A)(*1*), an H–1B petition for a specialty occupation worker must demonstrate that the worker will perform services in a specialty occupation that requires theoretical and practical application of a body of highly specialized knowledge and attainment of a baccalaureate or higher degree in the specific specialty (or its equivalent) as a minimum requirement for entry into the occupation in the United States. This proposal would ensure that petitioners are not circumventing specialty occupation requirements by imposing token requirements or requirements that are not normal to the third party.

Specifically, under proposed 8 CFR 214.2(h)(4)(i)(B)(*3*), if the beneficiary will be staffed to a third party, meaning they will be contracted to fill a position in a third party's organization, the actual work to be performed by the beneficiary must be in a specialty occupation. Therefore, it is the requirements of that third party, and not the petitioner, that are most relevant when determining whether the position is a specialty occupation. If the beneficiary will work for a third party and perform work that is part of the third party's regular operations, the actual work to be performed by the beneficiary must be in a specialty occupation based on the requirements for the position imposed by that third party. While a petitioning employer may be the entity that hires and pays the beneficiary, the actual services the beneficiary provides may be for a third party. When interpreting the meaning of ''perform services . . . in a specialty occupation,'' INA section 101(a)(15)(H)(i)(b), in the context of certain third-party placements, USCIS would look to the position requirements imposed by the third party if the beneficiary will be ''staffed'' to that third party. Under such an interpretation, a position would not qualify as a specialty occupation simply because the petitioning employer decides to require a baccalaureate or higher degree in a specific specialty.[154]

As stated in proposed 8 CFR 214.2(h)(4)(i)(B)(*3*), ''staffed'' means that the beneficiary ''will be contracted to fill a position in a third party's organization and becomes part of that third party's organizational hierarchy by filling a position in that hierarchy (and not merely providing services to the third party.'' There is a difference between a beneficiary who is ''staffed'' to a third party and a beneficiary who provides services to a third party (whether or not at a third-party location). A beneficiary who is ''staffed'' to a third party becomes part of that third party's organizational hierarchy by filling a position in that hierarchy, even when the beneficiary technically remains an employee of the petitioner. In this circumstance where the beneficiary fills a position within the third party's organizational hierarchy, the third party would be better

[153] *See* INA section 291, 8 U.S.C. 1361; *Matter of Simeio Solutions,* 26 I&N Dec. 542, 549 (AAO 2015) (''It is the petitioner's burden to establish eligibility for the immigration benefit sought.''); *Matter of Skirball Cultural Center,* 25 I&N Dec. 799, 806 (AAO 2012) (''In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner.'').

[154] *See Defensor* v. *Meissner,* 201 F.3d 384, 388 (5th Cir. 2000) (''If only [the employer]'s requirements could be considered, then any alien with a bachelor's degree could be brought into the United States to perform a non-specialty occupation, so long as that person's employment was arranged through an employment agency which required all clients to have bachelor's degrees. Thus, aliens could obtain six year visas for any occupation, no matter how unskilled, through the subterfuge of an employment agency. This result is completely opposite the plain purpose of the statute and regulations, which is to limit [H–1B] visas to positions which require specialized experience and education to perform.'').

positioned than the petitioner to be knowledgeable of the actual degree requirements for the beneficiary's work. Thus, it is reasonable for USCIS to consider the requirements of the third party as determinative of whether the position is a specialty occupation. *See* proposed 8 CFR 214.2(h)(4)(i)(B)(*3*).

Compared to all cases where the H–1B beneficiary provides services to a third party, a third party would not always be in a better position than the petitioner to set the requirements of the proffered position. For example, a beneficiary may provide software development services to a third party as part of the petitioner's team of software developers on a discrete project, or a beneficiary employed by a large accounting firm may provide accounting services to various third-party clients. In these examples, proposed 8 CFR 214.2(h)(4)(i)(B)(*3*) would not apply, because it would not be reasonable to assume that the third party would be better positioned than the petitioner to know the actual degree requirements for the beneficiary's work. DHS narrowed down the applicability of proposed 8 CFR 214.2(h)(4)(i)(B)(*3*) to only the subset of beneficiaries who would be ''staffed'' to a third party because these examples illustrate how a third party's degree requirements would not always be as relevant as the petitioner's degree requirements.

Proposed 8 CFR 214.2(h)(4)(i)(B)(*3*) would be generally consistent with long-standing USCIS practice.[155] In *Defensor* v. *Meissner,* 201 F.3d 384 (5th Cir. 2000), the court recognized that, if only the petitioner's requirements are considered, then any beneficiary with a bachelor's degree could be brought to the United States in H–1B status to perform non-specialty occupation work, as long as that person's employment was arranged through an employment agency that required all staffed workers to have bachelor's degrees. This result would be the opposite of the plain purpose of the statute and regulations, which is to limit H–1B visas to positions that require specialized education to perform the duties. If the work that the beneficiary would actually perform does not require the theoretical and practical application of a body of highly specialized knowledge and attainment of a baccalaureate or higher degree in a specific specialty or its equivalent, then the position would not qualify as an H–1B specialty occupation. In such a case, the petitioning employer's stated education and experience requirements for the beneficiary's position would not be determinative to the specialty occupation assessment. USCIS would make the determination as to whether the beneficiary would be ''staffed'' to a third party on a case-by-case basis, taking into consideration the totality of the relevant circumstances.

D. Request for Preliminary Public Input Related to Future Actions/Proposals

1. Use or Lose

DHS wants to ensure that the limited number of H–1B cap-subject visas and new H–1B status grants available each fiscal year are used for non-speculative job opportunities. Demand for H–1B workers who would be subject to the annual numerical limitations, including those eligible under the advanced degree exemption, has routinely exceeded the annual H–1B numerical allocations. DHS believes there is a problem of petitioners filing H–1B cap-subject petitions even though there is no job opportunity available as of the requested start date. As illustrated by the data below, a significant percentage of H–1B beneficiaries do not enter the United States within six months of the requested employment start date or H–1B petition approval date, whichever was later, or within 90 days of the visa validity start date. The data also show a large percentage of new or amended petitions received before the beneficiary's arrival in the United States, suggesting that there may not have been a bona fide job opportunity available at the time of filing and the initial petition filed was simply to secure an H–1B cap number for the worker. Given the history of demand for H–1B visas that greatly exceeds supply, it is of great concern when a petitioner requests an H–1B cap number and receives approval, but does not use that approved H–1B petition to employ an H–1B worker when the petitioner claimed to need that worker to start and significantly delays such employment by six months or more.

DHS has compiled internal data to help demonstrate the potential scale of the problem. The first two tables below focus on delayed entry into the United States by beneficiaries of H–1B cap-subject petitions that selected consular processing. The third table looks at the same population of cases and amended or new petitions received prior to the beneficiary's arrival in the United States. DHS believes that these may be indicators that the petitioners in these cases had speculative job opportunities at the time of filing their H–1B petitions.

Table 9 shows data on H–1B cap-subject petitions that selected consular processing into the United States and that DHS was able to match with the beneficiary's arrival data into the United States.

[155] *See, e.g., In Re.* ---, 2010 WL 3010500 (AAO Jan. 12, 2010) (''In support of this analysis, USCIS routinely cites *Defensor* v. *Meissner,* 201 F.3d 384 (5th Cir. 2000), in which an examination of the ultimate employment of the beneficiary was deemed necessary to determine whether the position constitutes a specialty occupation.''); *In Re. 5037859,* 2019 WL 6827396 (AAO Nov. 7, 2019) (''The scenario in *Defensor* has repeatedly been recognized by Federal Courts as appropriate in determining which entity should provide the requirements of an H–1B position and the actual duties a beneficiary would perform.'') (citing to *Altimetrik Corp.* v. *USCIS,* No. 2:18–cv–11754, at *7 (E.D. Mich. Aug. 21, 2019); *Valorem Consulting Grp.* v. *USCIS,* No. 13–1209–CV–W–ODS, at *6 (W.D. Mo. Jan. 15, 2015); *KPK Techs.* v. *Cuccinelli,* No. 19–10342, at *10 (E.D. Mich. Sep. 16, 2019); *Altimetrik Corp.* v. *Cissna,* No. 18–10116, at *11 (E.D. Mich. Dec. 17, 2018); *Sagarwala* v. *Cissna,* No. CV 18–2860 (RC), 2019 WL 3084309, at *9 (D.D.C. July 15, 2019)).

FY	Table 9: Arrivals After 6 Months from Requested Employment Start Date or H-1B Petition Approval Date, Whichever Is Later (Percent)
2017	48.4%
2018	41.9%
2019	38.4%
2020	38.7%
2022 YTD	41.1%
AVERAGE	42.8%

Source: C3, Sept. 15, 2022. ADIS, Aug. 13, 2022. Data in FY 2022 YTD only through source pull-date.

Note(s): ADIS matching completed using first name, last name, and date of birth.

Associated Receipts are receipts requesting selection A, B, C, or F in Part 2Q2 of I-129.

Average times are calculated only for records with a matching ADIS arrival.
ADIS matching completed on ADIS H-1B records only.

This table shows that, from FYs 2017 through 2022 (excepting FY 2021),[156] on average, approximately 43 percent of H–1B cap-subject beneficiaries of petitions that selected consular processing (and that DHS was able to match with the beneficiaries' arrival data) did not enter the United States in H–1B status within six months of the requested employment start date on the H–1B petition or the H–1B petition approval date, whichever was later.[157] While it is reasonable to conclude that some of these delays were due to legitimate reasons (*e.g.,* long consular wait times), other delays may have been due to illegitimate reasons (*e.g.,* the petitioner filing an H–1B petition despite not having work available on the requested start date). While DHS is aware that these data are imperfect, in part because DHS was not able to match some petitions with beneficiary arrival data, these data illustrate the scale of the issue—that nearly half of beneficiaries who consular processed appear to have not entered the United States in H–1B status within six months of the requested start date.

DHS is aware that there have been significant visa delays at some consulates, especially during the last few years. Table 10 takes this into account by showing data on H–1B beneficiaries who went through consular processing, who arrived more than 90 days after their DOS visa validity start date, and for whom DHS was able to match with arrival data into the United States with corresponding H–1B petitions.

[156] FY 2021 data was not included because of the variances in visa entries and closed borders due to the COVID–19 pandemic.

[157] These data only track whether a beneficiary entered the United States in H–1B status after 6 months of the employment start date or H–1B petition approval date, whichever was later; the data do not track a beneficiary's prior or subsequent travel history into or outside of the United States. By capturing data on entries made after the requested employment start date on the H–1B petition or the H–1B petition approval date, whichever was later, these data should exclude entries that were made after 6 months of the requested employment start date because of a delay in USCIS approving the H–1B petition.

FY	Table 10: Arrivals After 90 Days of DOS Visa Validity Start (Percent)
2017	38.8%
2018	27.0%
2019	16.1%
2020	22.4%
2022 YTD	21.2%
TOTAL AVERAGE	26.6%

Source: C3, Sept. 15, 2022. ADIS, Aug. 13, 2022. Data in FY 2022 YTD only through source pull-date.

Note(s): ADIS matching completed using first name, last name, and date of birth.

Associated Receipts are receipts requesting selection A, B, C, or F in Part 2Q2 of I-129.

Average times are calculated only for records with a matching ADIS arrival. ADIS matching completed on ADIS H-1B records only.

This table shows that, from FYs 2017 through 2022 (excepting FY 2021),[158] on average, more than 26 percent of H–1B cap-subject beneficiaries who selected consular processing arrived in the United States more than 90 days after the DOS visa validity start date. Again, while it is reasonable to conclude that some of these delays were due to legitimate reasons (*e.g.,* a medical emergency pertaining to the beneficiary or the beneficiary's immediate family), other delays may have been due to illegitimate reasons (*e.g.,* the petitioner filing an H–1B petition despite not having work available on the requested start date).

DHS has also compiled internal data on the number of amended or new petitions received prior to the beneficiary's arrival in the United States, which may also be an indicator that a petitioner had a speculative job opportunity at the time of filing. Table 11 shows data on the percentage of amended or new petitions received prior to the beneficiary's arrival in the United States that DHS was able to match with the beneficiary's arrival data into the United States.

[158] FY 2021 data was not included because of the variances in visa entries and closed borders due to the COVID–19 pandemic.

[159] Part 2, question 2, asks for the ''Basis for Classification,'' and option ''a'' is for ''New employment.''

[160] Part 2, question 2, asks for the ''Basis for Classification,'' and option ''b'' is for ''Continuation of previously approved employment without change with the same employer.''

[161] Part 2, question 2, asks for the ''Basis for Classification,'' and option ''c'' is for ''Change in previously approved employment.''

[162] Part 2, question 2, asks for the ''Basis for Classification,'' and option ''f'' is for ''Amended petition.''

Table 11: Associated Petitions Received Prior to Arrival

FY	Percent of Associated Petitions Received Prior to Arrival (Consular Processing Only)	Percent of Associated Receipts are receipts requesting selection A in Part 2Q2 of I-129.[159]	Percent of Associated Receipts are receipts requesting selection B in Part 2Q2 of I-129.[160]	Percent of Associated Receipts are receipts requesting selection C in Part 2Q2 of I-129.[161]	Percent of Associated Receipts are receipts requesting selection F in Part 2Q2 of I-129.[162]
2017	24.2%	2.0%	0.6%	1.2%	20.4%
2018	14.5%	1.8%	0.6%	1.2%	11.0%
2019	9.6%	2.3%	0.9%	1.8%	4.6%
2020	15.3%	6.1%	1.4%	2.3%	5.4%
2022 YTD	2.3%	0.9%	0.0%	0.2%	1.2%
Total Average	**14.9%**	**2.6%**	**0.7%**	**1.4%**	**10.2%**

Source: C3, Sept. 15, 2022. ADIS, Aug. 13, 2022. Data in FY 2022 YTD only through source pull-date.
Note(s): ADIS matching completed using first name, last name, and date of birth.
Associated Receipts are receipts requesting selection A, B, C, or F in Part 2Q2 of I-129.
Average times are calculated only for records with a matching ADIS arrival.
ADIS matching completed on ADIS H-1B records only.

Table 11 shows that from FYs 2017 through 2022 (excepting FY 2021),[163] an average of approximately 15 percent of amended or new petitions where the beneficiary selected consular processing are received prior to the beneficiary's arrival in the United States. Again, while it is reasonable to conclude that some of these amended or new petitions were due to legitimate reasons (*e.g.,* a legitimate shift in work location or end-client project), other petitions may have been filed due to illegitimate reasons (*e.g.,* the petitioner filing an H–1B petition despite not having work available on the requested start date). DHS believes that these data illustrate that there may be a problem with petitioners filing H–1B petitions and taking up cap numbers without having non-speculative job opportunities as of the requested start date on the petition.

DHS is looking for the most effective ways to prevent petitioners from receiving approval for speculative H–1B employment, and to curtail the practice of delaying H–1B cap-subject beneficiary's employment in the United States until a bona fide job opportunity materializes. DHS has considered various approaches—two of which are discussed below but has determined that each of them has potentially significant downsides.

For example, although current 8 CFR 214.2(h)(8)(ii)(B) requires petitioners to notify USCIS if a petition goes unused because the beneficiary does not apply for admission to the United States, so that the agency may revoke approval of the petition, this regulatory provision does not include a deadline for admission or a reporting deadline. Thus, one approach DHS considered would be to amend 8 CFR 214.2(h)(8)(ii)(B) to require petitioners to notify USCIS if a beneficiary does not apply for admission after a certain amount of time, so that USCIS may revoke the approval of the petition. DHS could add a reporting requirement, so that a failure to report, or reporting that the beneficiary had not yet been admitted within the required timeframe, could be a basis for revocation. This proposal would also afford petitioners an opportunity to provide legitimate reasons for the delay in admission and avoid revocation. However, this approach would not prevent a petitioner without a legitimate reason for the delay from circumventing the intent of this provision, such as by filing an amended petition for the cap-subject beneficiary and further delaying their admission, or having the beneficiary enter the United States one day before the deadline and then leaving shortly thereafter. In addition, while the revocation of the H–1B petition may serve as a disincentive to the petitioner and discourage such conduct the next time around, it may not be the most efficient way to deter the filing of the H–1B petition itself given the time that would have elapsed between the time of filing and the final revocation.

Another approach DHS considered would be to create a rebuttable presumption that a petitioner had only a speculative position available for the beneficiary of an approved H–1B cap-subject petition, which would be triggered if certain circumstances occurred. These circumstances might include delayed entry or filing an amended petition before the beneficiary would have been admitted to the United States in H–1B status. If the petitioner were unable to rebut this presumption, USCIS could deny any extension request based on the previously approved cap-subject H–1B cap-subject petition and could revoke the initial petition approval. Regarding delayed entry, DHS considered proposing that the rebuttable presumption would be triggered if the beneficiary had not entered the United States in H–1B status either within a certain number of days of the requested start date or within a

[163] FY 2021 data was not included because of the variances in visa entries and closed borders due to the COVID–19 pandemic.

certain number of days of the validity date of their H–1B nonimmigrant visa based on the cap-subject petition. Ultimately, DHS concluded that this approach of a rebuttable presumption would create significant evidentiary burdens for legitimate petitioners. Further, while it would bolster program integrity, similar to the first approach, it would not be an efficient deterrent given the time that would have elapsed between the time of filing and the denial of the extension request or the final revocation.

As discussed, DHS is aware that either option could have a broad reach and potentially include petitions for beneficiaries whose admission into the United States was delayed for legitimate reasons beyond their control, such as lengthy consular processing times. Either option would place an additional burden on petitioners, which may be particularly difficult to overcome for a subsequent petitioner that is distinct from the original petitioner that filed the initial H–1B cap-subject petition. Further, the above options would focus on the beneficiary's timely admission into the United States but would not account for the beneficiary's or petitioner's subsequent actions.

Therefore, because DHS believes there is a problem of petitioners filing H–1B cap-subject petitions for speculative job opportunities that would not be fully resolved by the changes at proposed 8 CFR 214.2(h)(4)(iii)(F), DHS is seeking preliminary public comments on the approaches described above, as well as soliciting ideas that would further curb or eliminate the possibility that petitioners may have speculative job opportunities at the time of filing or approval of H–1B petitions and delay admission of H–1B beneficiaries until they have secured work for them. DHS is hoping to use the public input it receives to develop proposals that would further strengthen the programmatic framework and complement provisions already proposed in this NPRM, such as the proposed requirement that the petitioner establish a non-speculative position for the beneficiary as of the start date of the validity period under proposed 8 CFR 214.2(h)(4)(iii)(F) and the proposed requirement that a petitioner have a bona fide job offer under proposed 8 CFR 214.2(h)(4)(ii). Specifically, DHS is requesting ideas and, where possible, supporting data for future regulatory, subregulatory, and enforcement actions that USCIS could take, alone or in partnership with other agencies, to mitigate this behavior. With respect to the two approaches discussed above, DHS encourages commenters to provide input on how a time restriction on admission, or a rebuttable presumption as described above, could impact legitimate business practices. DHS also encourages commenters to provide ideas on other ways DHS could better ensure petitions are filed only for non-speculative job opportunities without imposing an unnecessary burden on H–1B cap-subject petitioners.

2. Beneficiary Notification

DHS is seeking preliminary public input on ways to provide H–1B and other Form I–129 beneficiaries with notice of USCIS actions taken on petitions filed on their behalf, including receipt notices for a petition to extend, amend, or change status filed on their behalf. USCIS does not currently provide notices directly to Form I–129 beneficiaries. DHS is aware that the lack of petition information may leave Form I–129 beneficiaries unable to verify their own immigration status and susceptible to employer abuse.[164] DHS is also aware that having case status information would improve worker mobility and protections.

DHS is committed to addressing the issue of beneficiary notification but is not at this time proposing a specific beneficiary notification process or regulation. The agency continues to research and consider the feasibility, benefits, and costs of various options separate and apart from this proposed rule. At this time, DHS would like to solicit preliminary public comments on various options, and in particular, one option currently being considered for potential future action separate from this rulemaking. This option would require Form I–129 petitioners to provide a copy of the notice of USCIS action to beneficiaries in the United States seeking extension or change of status. DHS believes such notification may be especially beneficial in the context of extensions or changes of status. While beneficiaries who are outside of the United States will receive basic petition information on Form I–94, Arrival-Departure Record, and on their nonimmigrant visa, beneficiaries who are already in the United States must rely entirely on petitioners and employers to provide such information.[165]

DHS recognizes this option would leave open the possibility that petitioners would not comply with this requirement, something DHS intends to forestall, but believes it would still provide benefits and worker protections while USCIS continues to explore other options, including the feasibility of technological solutions that would allow USCIS to directly notify beneficiaries or allow beneficiaries to directly access case status.[166] DHS is particularly interested in comments that cite evidence of the expected costs and burdens on petitioners as a result of such a requirement, as well as comments and evidence about the extent that such a provision would benefit H–1B workers, which DHS will take into consideration when crafting potential future solutions or regulatory proposals.

E. Potential Publication of One or More Final Rules

As indicated earlier in this preamble, after carefully considering public comments it receives on this NPRM, DHS may publish one or more final rules to codify the provisions proposed in this NPRM.

F. Severability

DHS intends for the provisions of this proposed rule, if finalized through one or more final rules, to be severable from each other such that if a court were to hold that any provision is invalid or unenforceable as to a particular person or circumstance, the rule would remain in effect as to any other person or circumstance. While the various provisions of this proposed rule, taken together, would provide maximum benefit with respect to modernizing the H–1B program and strengthening program integrity, none of the provisions are interdependent and unable to operate separately, nor is any single provision essential to the rule's overall workability. DHS welcomes public input on the severability of provisions contained in this proposed rule.

[164] *See* DHS, Office of the Citizenship and Immigration Services Ombudsman, *Recommendation to Remove a Barrier Pursuant to Executive Order 14012: Improving U.S. Citizenship and Immigration Services' Form I–129 Notification Procedures Recommendation Number 62* (Mar. 31, 2022), *https://www.dhs.gov/sites/default/files/2022-03/CIS%20OMBUDSMAN_I-129_BENEFICIARY_RECOMMENDATION_fnl_03-2022_508.pdf* (''lack of direct notification may leave them without status documentation, rendering them noncompliant with the law, susceptible to abuse by employers, and unable to access benefits requiring proof of status''). This report formally recommended that USCIS directly notify beneficiaries of Form I–129 actions taken in the petition on their behalf.

[165] The Form I–797 approval notice instructs petitioners that the lower portion of the notice, including Form I–94, ''should be given to the beneficiary(ies).''

[166] *See* USCIS Memorandum, *Response to Recommendations on Improving Form I-129 Notification Procedures* (Aug. 11, 2022), *https://www.dhs.gov/sites/default/files/2022-08/SIGNED%20USCIS%20Response%20to%20Formal%20Recommendation%20-%20Form%20I-129.08122022_v2.pdf.*

V. Statutory and Regulatory Requirements

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

Executive Orders (E.O.) 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review), and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if a regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) has designated this proposed rule a ''significant regulatory action'' as defined under section 3(f) of E.O. 12866, as amended by Executive Order 14094, but it is not significant under section 3(f)(1) because its annual effects on the economy do not exceed $200 million in any year of the analysis. Accordingly, OMB has reviewed this proposed rule.

1. Summary

As discussed in the preamble, the purpose of this rulemaking is to modernize and improve the regulations governing the H–1B program by: (1) modernizing and streamlining H–1B program requirements and improving program efficiency; (2) providing greater benefits and flexibilities for petitioners and beneficiaries; and (3) improving integrity measures.

For the 10-year period of analysis of the proposed rule DHS estimates the annualized net costs of this rulemaking will be $6,339,779 annualized at 3 percent and 7 percent. Table 12 provides a more detailed summary of the proposed rule provisions and their impacts.

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Table 12. Summary of Provisions and Impacts of the Proposed Rule			
Proposed Rule Provisions	**Description of Proposed Change to Provisions**	**Estimated Costs/Transfers of Provisions**	**Estimated Benefits of Provisions**
1. Amended Petitions	□ DHS proposes to clarify when an amended or new H-1B petition must be filed due to a change in an H-1B worker's place of employment.	Quantitative: Petitioners - □ None DHS/USCIS - □ None Qualitative: Petitioners – □ None DHS/USCIS – □ None	Quantitative: Petitioners - □ DHS estimates the total annual cost savings to petitioners would be $297,673. DHS/USCIS - □ None Qualitative: Petitioners – DHS/USCIS – □ None
2. Deference	□ DHS proposes to codify and clarify its existing deference policy.	Quantitative: Petitioners - □ None DHS/USCIS - □ None Qualitative: Petitioners – □ None DHS/USCIS – □ None	Quantitative: Petitioners - □ DHS estimates the total annual cost savings to petitioners would be $338,412 based on the pre policy baseline. DHS/USCIS - □ None Qualitative: Petitioners – □ DHS anticipates that codifying its existing deference policy would save petitioners time from having to answer RFEs, and provide more certainty when businesses are planning for their HR needs. DHS/USCIS – □ DHS may issue and review fewer RFEs, which may save adjudicators time.

3. Evidence of Maintenance of Status	□ DHS proposes to clarify that evidence of maintenance of status is required for petitions where there is a request to extend or amend the beneficiary's stay.	Quantitative: Petitioners - □ None DHS/USCIS - □ None Qualitative: Petitioners – □ None DHS/USCIS – □ None	Quantitative: Petitioners - □ None DHS/USCIS - □ None Qualitative: Petitioners – □ DHS anticipates that codifying and providing clarification of the requirements for maintenance of status applications would at least render some RFEs and NOIDs unnecessary; therefore, may save the petitioner's time. DHS/USCIS – □ This would in turn reduce the added burden on adjudicators associated with receiving, responding to, and adjudicating RFEs and NOIDs, and decrease the number of RFEs and NOIDs
4. Eliminating the Itinerary Requirement for H Programs	□ DHS proposes to eliminate the H programs' itinerary requirement.	Quantitative: Petitioners - □ None DHS/USCIS - □ None Qualitative: Petitioners – □ None DHS/USCIS – □ None	Quantitative: Petitioners - □ DHS estimates the total annual cost savings to petitioners would be $708,300. DHS/USCIS - □ None Qualitative: Petitioners – □ This may benefit petitioners who have beneficiaries at

			alternative worksites and agents. DHS/USCIS – □ None
5. Validity Expires Before Adjudication	□ DHS proposes to allow H-1B petitions to be approved or have their requested validity period dates extended if USCIS adjudicates and deems the petition approvable after the initially requested validity period end-date, or the period for which eligibility has been established, has passed. This typically would happen if USCIS deemed the petition approvable upon a favorable motion to reopen, motion to reconsider, or appeal.	Quantitative: Petitioners - □ None DHS/USCIS - □ None Qualitative: Petitioners – □ Increased cost of receiving an RFE and spending time to review it. USCIS may issue an RFE asking whether the petitioner wants to update the dates of intended employment. This change may increase the number of RFE's; however, it may save petitioners from having to file another H-1B petition and USCIS from having to intake and adjudicate another petition. □ Reduced cost of filing new petition. DHS/USCIS – □ None	Quantitative: Petitioners - □ None DHS/USCIS - □ None Qualitative: Petitioners – □ This proposed change may save the petitioners the opportunity cost of time and the fee to file an additional form. DHS/USCIS – □ None
6. H-1B Cap Exemptions	□ DHS proposes to revise the requirements to qualify for H-1B cap exemption when a beneficiary is not directly employed by a qualifying institution, organization, or entity. □ DHS also proposes to revise the definition of "nonprofit research organization" and	Quantitative: Petitioners - □ None DHS/USCIS - □ None Qualitative: Petitioners – □ Some petitioners may see a transfer of $10	Quantitative: Petitioners - □ None DHS/USCIS - □ None Qualitative: Petitioners – □ These petitioners may benefit because they

	"governmental research organization."	from no longer registering. Additional cost savings on ACWIA fees associated with initial cap-subject petitions are possible. DHS/USCIS – □ DHS will likely receive fewer registrations for H-1B cap-subject petitioners; therefore, will likely receive less fees for H-1B registrations.	may no longer have to submit a registration for a cap-subject petition and potentially have greater access to high skilled talent. □ Increase in population of petitioners eligible for cap exemption. DHS/USCIS – □ None
7. Automatic Extension of Authorized Employment "Cap-Gap"	□ Under current regulations, the automatic cap-gap extension is valid only until October 1 of the fiscal year for which H-1B status is being requested.	Quantitative: Petitioners - □ None DHS/USCIS - □ None Qualitative: Students – □ None DHS/USCIS – □ None	Quantitative: Petitioners - □ None DHS/USCIS - □ None Qualitative: Petitioners – □ This change may benefit petitioners and students, as the automatic extension end date from October 1 to April 1 of the relevant fiscal year would avoid disruptions in employment authorization that some F-1 nonimmigrants seeking cap-gap extensions have experienced over the past several years. DHS/USCIS – □ None
8. Start Date Flexibility for Certain Cap-Subject H-1B Petitions	□ DHS proposes to eliminate all the text currently at 8 CFR 214.2(h)(8)(iii)(A)(*4*),	Quantitative: Petitioners - □ None	Quantitative: Petitioners - □ None

	which relates to a limitation on the requested start date.	DHS/USCIS - □ None Qualitative: Petitioners – □ This proposed change is also a potential cost savings to petitioners who, in the event USCIS cap-subject petitions that were rejected solely due to start date, would no longer need to re-submit their petition(s). DHS/USCIS – □ None	DHS/USCIS - □ None Qualitative: Petitioners – □ Reduced confusion regarding which start date they must put on an H-1B petition. DHS/USCIS – □ None
9. Additional Time Burden for the H-1B Registration System	□ Due to changes in the instructions, adding clarifying language regarding the denial or revocation of approved H-1B petitions, adding information collection elements related to the beneficiary-centric registration selection option, namely the collection of passport information and related instructional language, and adding verification before submitting instructions, this proposed rule would increase the burden per response by 5 minutes.	Quantitative: Petitioners - □ DHS estimates that the additional time to complete and submit the H-1B registration would cost $3,001,285 annually. DHS/USCIS - □ None Qualitative: Petitioners – □ None DHS/USCIS – □ None	Quantitative: Petitioners - □ None DHS/USCIS - □ None Qualitative: Petitioners – □ None DHS/USCIS – □ None
10. Beneficiary Centric Selection	□ Under the new proposal, each unique individual who has a registration submitted on their behalf would be entered into the selection process once, regardless of the number of registrations filed on their behalf. By selecting by a unique beneficiary, DHS would better	Quantitative: Petitioners - □ DHS estimates the total annual cost savings to petitioners would be $3,840,822 for the registrants cost of time. □ DHS estimates that there will be 73,501 fewer registrations due to this change, resulting in a $735,010	Quantitative: Petitioners - □ None DHS/USCIS - □ None Qualitative: Petitioners/Beneficiaries – □ DHS believes that changing how USCIS

	ensure that each individual has the same chance of being selected, regardless of how many registrations were submitted on their behalf.	cost savings to petitioners based on those petitioners no longer needing to pay the $10 registration fee. DHS/USCIS - □ None Qualitative: Petitioners – □ None DHS/USCIS – □ None	conducts the selection process to select by unique beneficiaries instead of registrations would give each unique beneficiary an equal chance at selection and would reduce the advantage that beneficiaries with multiple registrations submitted on their behalf have over beneficiaries with a single registration submitted on their behalf. DHS/USCIS – □ None
11. Bar on Multiple Registrations Submitted by Related Entities	□ DHS is proposing to preclude the submission of multiple H-1B cap-subject registrations by related entities for the same beneficiary unless the related registrants can establish a legitimate business need for submitting multiple cap-subject registrations for the same beneficiary.	Quantitative: Petitioners - □ None DHS/USCIS - □ None Qualitative: Petitioners – □ None DHS/USCIS – □ None	Quantitative: Petitioners - □ None DHS/USCIS - □ None Qualitative: Petitioners – □ This would benefit the petitioners during the years that the registration process is suspended, and the beneficiary centric process would not be in place to support the petitioners. DHS/USCIS – □ This would also lead to improved program integrity for USCIS.
12. Registrations with False Information or that are Otherwise Invalid	□ DHS proposes to codify its authority to deny or revoke a petition on the basis that the statement of facts on the underlying registration was not	Quantitative: Petitioners - □ None DHS/USCIS - □ None	Quantitative: Petitioners - □ None DHS/USCIS - □ None

	true and correct, or was inaccurate, fraudulent, or misrepresented a material fact.	Qualitative: Petitioners – □ DHS anticipates that USCIS adjudicators may issue more RFEs and NOIDs related to registrations with false information under this proposed rule, which would increase the burden on petitioners and adjudicators. □ USCIS may deny or revoke the approval of any petition filed for the beneficiary based on those registrations with false information. DHS/USCIS – □ DHS would need to spend time issuing RFEs and NOIDs with false information.	Qualitative: Petitioners – □ None DHS/USCIS – □ This would lead to improved program integrity for USCIS.
13. Provisions to Ensure Bona Fide Job Offer for a Specialty Occupation Position	□ DHS proposes to codify USCIS' authority to request contracts, work orders, or similar evidence.	Quantitative: Petitioners - □ None DHS/USCIS - □ None Qualitative: Petitioners – □ **No Action Baseline:** None □ **Pre-Policy Baseline:** Petitioners may have taken time to find contracts or legal agreements, if available, or other evidence including technical documentation, milestone tables, or statements of work. DHS/USCIS – □ None	Quantitative: Petitioners - □ None DHS/USCIS - □ None Qualitative: Petitioners – □ **No Action Baseline:** There may be transparency benefits due to this proposed change. □ **Pre-Policy Baseline:** None DHS/USCIS – □ None

14. Beneficiary-Owners	□ DHS proposes to codify a petitioner's ability to qualify as a U.S. employer even when the beneficiary possesses a controlling interest in that petitioner.	Quantitative: Petitioners - □ None DHS/USCIS - □ None Qualitative: Petitioners – □ None DHS/USCIS – □ None	Quantitative: Petitioners - □ None DHS/USCIS - □ None Qualitative: Petitioners – □ This proposed change may benefit H-1B petitions for entrepreneurs, start-up entities, and other beneficiary-owned businesses. DHS/USCIS – □ None
15. Site Visits	□ DHS is proposing to add regulations specific to the H-1B program to codify its existing authority to conduct site visits and clarify the scope of inspections and the consequences of a petitioner's or third party's refusal or failure to fully cooperate with these inspections.	Quantitative: Petitioners - □ Failure to cooperate during site visits or other compliance reviews may result in denial or revocation of any petition for workers performing services at the location or locations that are a subject of inspection or compliance review. Such action, in turn, may result in opportunity costs of time to provide information to USCIS during these compliance reviews and inspections. On average, USCIS site visits last 1.08 hours, which is a reasonable estimate for the marginal time that a petitioner may need to spend in order to comply with a site visit. □ Employers that do not cooperate would face denial or revocation of their petition(s), which could result in costs to those businesses.	Quantitative: Petitioners - □ None DHS/USCIS - □ None Qualitative: Petitioners – □ None DHS/USCIS – □ A benefit is that USCIS would have clearer authority to deny or revoke a petition if unable to verify information related to the petition. □ Existing USCIS enforcement activities would be more effective by additional cooperation from employers.

		□ DHS obtains the total annual cost of the H-1B worksite inspections to be $674,881 for the proposed rule. DHS/USCIS - □ None Qualitative: Petitioners – □ None DHS/USCIS – □ None	
16. Third-party placement (Codifying *Defensor*)	□ In this proposed provision, when the beneficiary will be staffed to a third party, USCIS would look at the third party's requirements for the beneficiary's position, rather than the petitioner's stated requirements, in assessing whether the proffered position qualifies as a specialty occupation.	Quantitative: Petitioners - □ None DHS/USCIS - □ None Qualitative: Petitioners – □ **No Action Baseline:** None □ **Pre-Policy Baseline:** Petitioners may have taken time to demonstrate that the worker will perform services in a specialty occupation, which requires theoretical and practical application of a body of highly specialized knowledge and attainment of a baccalaureate or higher degree in the specific specialty. DHS/USCIS – □ None	Quantitative: Petitioners - □ None DHS/USCIS - □ None Qualitative: Petitioners – □ **No Action Baseline:** There may be transparency benefits due to this proposed change. This provision will improve program integrity. □ **Pre-Policy Baseline:** None DHS/USCIS – □ None
17. Additional Time Burden for Form I-129 H-1B	□ This proposed rule would increase the burden per response by 5 minutes Due to	Quantitative: Petitioners - □ DHS estimates that the time to complete and	Quantitative: Petitioners - □ None

	changes in the instructions, adding clarifying language regarding the denial or revocation of approved H-1B petitions, adding information collection elements related to the beneficiary-centric registration selection option, namely the collection of passport information and related instructional language, and adding verification before submitting instructions.	submit Form I-129 H-1B would cost $4,578,144 annually. DHS/USCIS - □ None Qualitative: Petitioners – □ None DHS/USCIS – □ None	DHS/USCIS - □ None Qualitative: Petitioners – □ None DHS/USCIS – □ None
18. Additional Time Burden for H Classification Supplement to Form I-129	□ This proposed rule would increase the burden per response 5 minutes. Due to changes in the instructions, adding clarifying language regarding the denial or revocation of approved H-1B petitions, adding information collection elements related to the beneficiary-centric registration selection option, namely the collection of passport information and related instructional language, and adding verification before submitting instructions.	Quantitative: Petitioners - □ DHS estimates that the time to complete and submit Form I-129 H-1B H Classification would cost $4,005,877 annually. DHS/USCIS - □ None Qualitative: Petitioners – □ None DHS/USCIS – □ None	Quantitative: Petitioners - □ None DHS/USCIS - □ None Qualitative: Petitioners – □ None DHS/USCIS – □ None

Inaddition to the impacts summarized above, and as required by OMB Circular A–4, Table 13 presents the prepared accounting statement showing the costs and benefits that would result if this proposed rule is finalized.[167]

[167] OMB, *Circular A–4* (Sept. 17, 2003), *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf* (last viewed June 1, 2021).

Table 13. OMB A-4 Accounting Statement ($ millions, FY 2021) Time Period: FY 2022 through FY 2031				
Category	**Primary Estimate**	**Minimum Estimate**	**Maximum Estimate**	**Source Citation**
BENEFITS				
Monetized Benefits	N/A			Regulatory Impact Analysis (RIA)
Annualized quantified, but unmonetized, benefits	N/A	N/A	N/A	RIA
Unquantified Benefits	The purpose of the changes in this proposed rule is to ensure that petitioners may have clarity and may reduce the amount of redundant work for each beneficiary. DHS anticipates that codifying and providing clarification of the requirements for maintenance of status applications would at least render some RFEs and NOIDs unnecessary; therefore, may save the petitioner's time. In addition, these changes would improve the integrity of the H-1B program by preventing certain abuses. DHS is also proposing to change the automatic extension end date from October 1 to April 1 of the relevant fiscal year to avoid disruptions in employment authorization that some F-1 nonimmigrants seeking cap-gap extensions have been experiencing over the past several years.			RIA
COSTS				
Annualized monetized costs (7%)	$6.3			RIA
Annualized monetized costs (3%)	$6.3			
Annualized quantified, but unmonetized, costs	N/A			
Qualitative (unquantified) costs	DHS anticipates that USCIS adjudicators may issue more RFEs and NOIDs related to registrations with false information under this proposed rule, which would increase the burden on petitioners and adjudicators. Changes to the site visit provision may affect employers who do not cooperate with site visits who would face denial or revocation of their petition(s), which could result in costs to those businesses. Petitioners may face financial losses because they may lose access to labor for extended periods, which could result in too few workers, loss of revenue, and some could go out of business. DHS expects program participants to comply with program requirements, however, and notes that those that do not could experience significant impacts due to this proposed rule. DHS expects that the proposed rule would hold certain petitioners more accountable for violations, including certain findings of labor law and other violations, and would prevent registrations with false information from taking a cap number for which they are ineligible.			RIA
TRANSFERS				
Annualized monetized transfers (7%)	N/A			

Annualized monetized transfers (3%)	N/A	
From whom to whom?		
From whom to whom?		
Miscellaneous Analyses/Category	***Effects***	***Source Citation***
Effects on State, local, or tribal governments	None	RIA
Effects on small businesses	None	RIA
Effects on wages	None	None
Effects on growth	None	None

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2. Background

The purpose of this rulemaking is to propose changes that DHS believes would modernize and improve the regulations relating to the H–1B program by: (1) streamlining the requirements of the H–1B program and improving program efficiency; (2) providing greater benefits and flexibilities for petitioners and beneficiaries; and (3) improving integrity measures. Some of the proposed provisions would narrowly impact other nonimmigrant classifications.

3. Costs, Transfers, and Benefits of the Proposed Rule

a. Amended Petitions

DHS proposes to clarify when an amended or new H–1B petition must be filed due to a change in an H–1B worker's place of employment. Specifically, this rule proposes to clarify that any change of work location that requires a new LCA is itself considered a material change and therefore requires the petitioning employer to file an amended or new petition with USCIS before the H–1B worker may perform work under the changed conditions.

This proposed change would clarify requirements for H–1B amended petitions by codifying *Matter of Simeio* [168] and incorporating DOL rules on when a new LCA is not necessary. DHS estimates that this proposed change would save petitioners filing amended petitions 5 minutes for each petition (0.08 hours).

USCIS received a low of 17,057 amended petitions in FY 2022, and a high of 80,102 amended petitions in FY 2018. Based on the 5-year annual average, DHS estimates that 59,947 petitioners file for an amended petition each year shown in Table 14. DHS does not know if all of these amended petitions are due to a change in an H–1B worker's place of employment. Because of this, DHS cannot estimate how many of these new and amended petitions would benefit by consolidating existing requirements and providing clearer regulatory text pertaining to when a petitioner must submit an amended or new petition.

Table 14. Form I-129 H-1B Classification Amended Petitions, Petition for a Nonimmigrant Worker, FY 2018 through FY 2022

Fiscal Year	Form I-129 H-1B Receipts Received without Form G-28	Form I-129 H-1B Receipts Received with Form G-28	Total	Percentage of Form I-129 H-1B filed with Form G-28
2018	27,258	52,844	80,102	66%
2019	17,038	47,358	64,396	74%
2020	21,082	51,481	72,563	71%
2021	19,128	46,488	65,616	71%
2022	4,120	12,937	17,057	76%
5-year Total	**88,626**	**211,108**	**299,734**	**70%**
5-year Annual Average	**17,725**	**42,222**	**59,947**	**70%**

Source: USCIS, Office of Policy and Strategy, Policy Research Division (PRD), CLAIMS3 and ELIS databases, Mar. 13, 2023.

[168] *See* USCIS, ''USCIS Final Guidance on When to File an Amended or New H–1B Petition After *Matter of Simeio Solutions, LLC*,'' PM–602–0120 (July 21, 2015), *https://www.uscis.gov/sites/default/files/document/memos/2015-0721_Simeio_Solutions_Transition_Guidance_Memo_Format_7_21_15.pdf.*

DHS conducted a sensitivity analysis to estimate the number of petitions that may benefit from this proposed change. Table 15 presents the lower and upper bound number of petitions filed annually for amended petitions and for new petitions, which corresponds to a range of 10 to 90 percent.

Table 15. Estimated Annual Number of Form I-129 H-1B Petitions that Are New or Amended

	Petitioners	Lower Bound (10%)	Upper Bound (90%)
Estimated Annual Amended Petitions	59,947	5,995	53,952
Source: USCIS analysis			

Using the lower and upper bounds of the estimated annual population for the petitioners who would file amended petitions, DHS estimates the cost savings based on the opportunity cost of time of gathering and submitting information by multiplying the estimated time burden savings for those filing an amended petition (5 minutes or 0.08 hours) by the compensation rate of an HR specialist, in-house lawyer, or outsourced lawyer, respectively. DHS does not know the exact number of petitioners who will choose an in-house or an outsourced lawyer but assumes it may be a 50/50 split and therefore provides an average. Table 16 shows that the total annual cost savings would range from $59,545 to $535,801. DHS estimates the total cost savings to be the average between the lower bound and the upper bound estimates. Based on this DHS estimates the average cost savings from this provision to be $297,673.

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Table 16. Estimated Cost Savings to Form I-129 H-1B Petitioners

	Affected Population	Time Burden (Hours)	Compensation Rate	Total Annual Cost
	A	B	C	D=A×B×C
Lower Bound				
Estimated Number of Petitions (Lower Bound)				
HR specialist	1,799	0.08	$50.94	$7,331
In-house lawyer	4,197	0.08	$114.17	$38,334
Outsourced lawyer	4,197	0.08	$196.85	$66,094
Total - Lower Bound	5,996			**$59,545**
Upper Bound				
Estimated Number of Petitions (Upper Bound)				
HR specialist	16,186	0.08	$50.94	$65,961
In-house lawyer	37,766	0.08	$114.17	$344,940*
Outsourced lawyer	37,766	0.08	$196.85	$594,739*
Total - Upper Bound	53,952			**$535,801**
Total Cost Savings Average				**$297,673**
Source: USCIS analysis *Note: DHS does not know the exact number of petitioners who will choose an in-house or an outsourced lawyer but assumes it may be a 50/50 split and therefore provides an average.				

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b. Deference to Prior USCIS Determinations of Eligibility in Requests for Extensions of Petition Validity

DHS seeks to codify and clarify its existing deference policy at proposed 8 CFR 214.1(c)(5). Deference has helped promote consistency and efficiency for both USCIS and its stakeholders. The deference policy instructs officers to consider prior determinations involving the same parties and facts, when there is no material error with the prior determination, no material change in circumstances or in eligibility, and no new material information adversely impacting the petitioner's, applicant's, or beneficiary's eligibility. This provision proposes to codify the deference policy[169] dated April 27, 2021. Relative to the no action baseline there are no costs to the public. The benefit of codifying this policy is that

[169] *See* USCIS, ''Deference to Prior Determinations of Eligibility in Requests for Extensions of Petition Validity, Policy Alert,'' PA–2021–05 (April 27, 2021), *https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210427-Deference.pdf* (last visited on Mar. 23, 2023).

there may be some transparency benefits to having the policy in the CFR so the public has the requirements in one place. Relative to a pre-policy baseline petitioners may need to take time to familiarize themselves with those changes made in the 2021 deference policy memo. The provision applies to all nonimmigrant classifications for which form I–129 is filed to request an extension of stay (*i.e.,* E–1, E–2, E–3, H–1B, H–1B1, H–2A, H–2B, H–3, L–1, O–1, O–2, P–1, P–1S, P–2, P–2S, P–3, P–3S, Q–1, R–1, and TN nonimmigrant classifications). The deference policy had been in effect since 2004 but was rescinded in 2017. After USCIS rescinded deference in 2017, the number of RFEs and denials increased.

Table 17 shows the number for Form I–129 RFEs filed for an extension of stay or amendment of stay, who are applying for a continuation of previously approved employment or a change in previously approved employment from FY 2018 through FY 2022. USCIS received a low of 13,467 RFEs for Form I–129 classifications in FY 2022, and a high of 43,430 RFEs for Form I–129 classifications in FY 2020. Based on a 5-year annual average, 31,327 petitioners who filed for an extension of stay or amendment of stay, who are applying for a continuation of previously approved employment or a change in previously approved employment receive an RFE for Form I–129 per year.

Table 17. Total Form I-129 Receipts Filed for an Extension of Stay or Amendment of Stay, Who Are Applying for a Continuation of Previously Approved Employment or a Change in Previously Approved Employment, FY 2018 Through FY 2022

Reported Fiscal Year	RFE Count	Non-RFE Count	Total
2018	34,202	114,425	**148,627**
2019	42,097	122,457	**164,554**
2020	43,430	142,622	**186,052**
2021	23,440	138,952	**162,392**
2022	13,467	126,767	**140,234**
5-year Total	**156,636**	**645,223**	**801,859**
5-year Annual Average	**31,327**	**129,045**	**160,372**

Source: USCIS, Office of Policy and Strategy, PRD, CLAIMS3 and ELIS databases, Mar. 13, 2023.

DHS is proposing to codify the deference policy that applies to the adjudication of a petition. This proposed change could affect the number of RFEs that USCIS sends for Form I–129. USCIS estimates that there may be a reduction in RFEs, as officers adjudicating a Form I–129 involving the same parties and the same underlying facts would not need to re-adjudicate eligibility. The reduction in RFEs may save time and make the overall process faster for petitioners and USCIS.

Table 18 shows the number of Form I–129 receipts, submitted concurrently with a Form G–28, filed for a continuation of previously approved employment or a change in previously approved employment, and requesting an extension of stay or amendment of stay, on which USCIS issued an RFE. Based on the 5-year annual average, DHS estimates that 23,475 petitioners who received an RFE filed with a Form G–28 and 7,853 petitioners who received an RFE filed without a Form G–28.

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Table 18. Form I-129, Petition for a Nonimmigrant Worker Receipts Filed for an Extension of Stay or Amendment of Stay, Who Are Applying for a Continuation of Previously Approved Employment or a Change in Previously Approved Employment, with an RFE Submitted Concurrently with Form G-28, FY 2018 Through FY 2022

Fiscal Year	Form I-129 Receipts Received without Form G-28	Form I-129 Receipts Received with Form G-28	Total Form I-129 Receipts Received with RFE	Percentage of Form I-129 filed with Form G-28
2018	10,512	23,690	34,202	69%
2019	13,450	28,647	42,097	68%
2020	9,131	34,299	43,430	79%
2021	3,888	19,552	23,440	83%
2022	2,282	11,185	13,467	83%
5-year Total	**39,263**	**117,373**	**156,636**	**75%**
5-year Annual Average	**7,853**	**23,475**	**31,327**	**75%**

Source: USCIS, Office of Policy and Strategy, PRD, CLAIMS3 and ELIS databases, Mar. 13, 2023.

DHS conducted a sensitivity analysis to estimate the number of petitions that may benefit from codifying and clarifying its existing deference policy. Table 19 presents the lower and upper bound number of petitions filed annually for amended petitions and for new petitions, which corresponds to a range of 10 to 90 percent.

Table 19. Estimated Number of Form I-129 Petitions with RFEs

	Petitioners	Lower Bound (10%)	Upper Bound (90%)
Estimated RFE Petitions	31,327	3,133	28,194
Source: USCIS analysis			

Using the lower and upper bounds of the estimated annual population for the petitioners who may no longer have to provide duplicative data, DHS estimates the cost savings based on the opportunity cost of time of gathering and submitting duplicative information by multiplying the estimated time burden to gather information 10 minutes (0.167 hours) by the compensation rate of an HR specialist, in-house lawyer, or outsourced lawyer, respectively. DHS does not know the exact number of petitioners who will choose an in-house or an outsourced lawyer but assumes it may be a 50/50 split and therefore provides an average. Table 20 shows that the total annual cost savings due to the codifying and clarifying its existing deference policy would range from $67,691 to $609,132. DHS estimates the total cost savings to be the average between the lower bound and the upper bound estimates. Based on this DHS estimates the average cost savings from this provision to be $338,412.

Table 20. Estimated Cost Savings to Form I-129 Petitioners due to Codifying and Clarifying the Deference Policy

	Affected Population	Time Burden (Hours)	Compensation Rate	Total Annual Cost
	A	B	C	D=A×B×C
Lower Bound				
Estimated Number of Petitions (Lower Bound)				
HR specialist	783	0.167	$50.94	$6,661
In-house lawyer	2,350	0.167	$114.17	$44,806
Outsourced lawyer	2,350	0.167	$196.85	$77,254
Total - Lower Bound	3,133			**$67,691**
Upper Bound				
Estimated Number of Petitions (Upper Bound)				
HR specialist	7,049	0.167	$50.94	$59,966
In-house lawyer	21,146	0.167	$114.17	$403,178*
Outsourced lawyer	21,146	0.167	$196.85	$695,153*
Total - Upper Bound	28,195			**$609,132**
Total Cost Savings Average				**$338,412**
Source: USCIS analysis * Note: DHS does not know the exact number of petitioners who will choose an in-house or an outsourced lawyer but assumes it may be a 50/50 split and therefore provides an average.				

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c. Evidence of Maintenance of Status

DHS seeks to clarify current requirements and codify current practices concerning evidence of maintenance of status at proposed 8 CFR 214.1(c)(1) through (7). Primarily, DHS seeks to clarify that evidence of maintenance of status is required for petitions where there is a request to extend or amend the beneficiary's stay.

This proposed change would list examples of additional evidence types that petitioners may provide, but would not limit petitioners to those specific evidence types. The proposed form instructions further state that if the beneficiary is employed in the United States, the petitioner may submit copies of the beneficiary's last two pay stubs, Form W–2, and other relevant evidence, as well as a copy of the beneficiary's Form I–94, passport, travel document, or Form I–797. This proposed change may decrease the number of RFEs and NOIDs by clearly stating what types of supporting documentation are relevant and clarifying that petitioners should submit such supporting documentation upfront, rather than waiting for USCIS to issue a request for additional information. This may benefit petitioners by saving them the time to review and respond to RFEs and NOIDs.

DHS is proposing to codify into regulation the instructions that, when seeking an extension of stay, the applicant or petitioner must submit supporting evidence to establish that the

applicant or beneficiary maintained the previously accorded nonimmigrant status before the extension request was filed. Additionally, DHS is proposing to remove the sentence: ''Supporting evidence is not required unless requested by the director.'' [170] DHS expects that these proposed changes would reduce confusion for applicants and petitioners, clarify what evidence is required for all extension of stay requests, and simplify adjudications by decreasing the need for RFEs and NOIDs.

Based on the 5-year annual average, DHS estimates that 299,025 Form I–129 petitions are filed requesting an extension of stay. Of those total filed petitions, DHS estimates that 61,781 petitioners who requested an extension of stay received an RFE and the remaining 237,244 did not receive and RFE as shown in Table 21.

Table 21. Form I-129 Extension of Stay, Petition for a Nonimmigrant Worker, FY 2018 through FY 2022

Fiscal Year	RFE Count	Non-RFE Count	Total
2018	85,849	187,662	273,511
2019	83,454	199,477	282,931
2020	71,804	247,953	319,757
2021	40,990	270,396	311,386
2022	26,806	280,732	307,538
5-year Total	**308,903**	**1,186,220**	**1,495,123**
5-year Annual Average	**61,781**	**237,244**	**299,025**
Source: USCIS, Office of Policy and Strategy, PRD, CLAIMS3 and ELIS databases, Mar. 13, 2023.			

DHS estimates that 29,195 petitions are filed requesting to amend the stay. Of those, DHS estimates that 9,723 petitions that are filed requesting to amend the stay receive an RFE and 19,473 do not receive an RFE.

Table 22. Form I-129 Amend the Stay, Petition for a Nonimmigrant Worker, FY 2018 through FY 2022

Fiscal Year	RFE Count	Non-RFE Count	Total
2018	21,617	16,328	37,945
2019	14,625	16,939	31,564
2020	7,235	20,056	27,291
2021	2,824	20,351	23,175
2022	2,312	23,690	26,002
5-year Total	**48,613**	**97,364**	**145,977**
5-year Annual Average	**9,723**	**19,473**	**29,195**
Source: USCIS, Office of Policy and Strategy, PRD, CLAIMS3 and ELIS databases, Mar. 13, 2023.			

DHS estimates that 89,241 petitions are filed requesting to change status and extend the stay. Of those, DHS estimates that 30,318 petitions that are filed requesting to change status and extend the stay receive an RFE and 58,922 do not receive an RFE.

[170] *See* proposed 8 CFR 214.2(h)(14). *See also* proposed 8 CFR 214.2(l)(14)(i) (removing ''Except in those petitions involving new offices, supporting documentation is not required, unless requested by the director.''); proposed 8 CFR 214.2(o)(11) and (p)(13) (removing ''Supporting documents are not required unless requested by the Director.'').

Table 23. Form I-129 Petition for a Nonimmigrant Worker Requesting New Employment with a COS, FY 2018 through FY 2022			
Fiscal Year	**RFE Count**	**Non-RFE Count**	**Total**
2018	48,884	45,343	94,227
2019	44,096	50,879	94,975
2020	23,943	65,958	89,901
2021	18,354	61,641	79,995
2022	16,315	70,790	87,105
5-year Total	**151,592**	**294,611**	**446,203**
5-year Annual Average	**30,318**	**58,922**	**89,241**
Source: USCIS, Office of Policy and Strategy, PRD, CLAIMS3 and ELIS databases, Mar. 13, 2023.			

It is important to note that issuing RFEs and NOIDs takes time and effort for adjudicators—to send, receive, and adjudicate documentation—and it requires additional time and effort for applicants or petitioners to respond, resulting in extended timelines for adjudications.[171] Data on RFEs and NOIDs related to maintenance of status are not standardized or tracked in a consistent way, thus they are not very accurate or reliable. Within this context, the data can provide some insight, however minimal, that these requests and notices have been present and that they continue to occur.

DHS anticipates that USCIS adjudicators may issue fewer RFEs and NOIDs related to maintenance of status under this proposed rule due to clarity of what types of supporting documentation are relevant and clarification that petitioners should submit such supporting documentation upfront, rather than waiting for USCIS to issue a request for additional information, which would reduce the burden on applicants, petitioners, and adjudicators, and save time processing applications and petitions. Because the data are not standardized or tracked consistently DHS cannot estimate how many RFEs and NOIDs are related to maintenance of status.

d. Eliminating the Itinerary Requirement for H Programs

DHS is proposing to eliminate the H programs' itinerary requirement. *See* proposed 8 CFR 214.2(h)(2)(i)(B) and (F). Current 8 CFR 214.2(h)(2)(i)(B) states that ''A petition that requires services to be performed or training to be received in more than one location must include an itinerary with the dates and locations of the services or training and must be filed with USCIS as provided in the form instructions.'' In addition, current 8 CFR 214.2(h)(2)(i)(F) contains additional language requiring an itinerary for H petitions filed by agents as the petitioner.

DHS recognizes this change may affect H–1B petitioners filing for beneficiaries performing services in more than one location and submitting itineraries. However, due to the absence of detailed data on petitioners submitting itineraries, DHS estimates the affected population as the estimated number of petitions filed annually for workers placed at off-site locations. DHS assumes the petitions filed for workers placed at off-site locations are likely to indicate that beneficiaries may be performing services at multiple locations and, therefore, petitioners are likely to submit itineraries. Eliminating the itinerary requirement would reduce petitioner burden and promote more efficient adjudications, without compromising program integrity. This proposed change may benefit petitioners who have beneficiaries at alternative worksites.

Table 24 shows the total number of Form I–129 H–1B Receipts with and without Form G–28, FY 2018 through FY 2022. USCIS received a low of 398,285 Form I–129 H–1B Receipts in FY 2021, and a high of 474,311 Form I–129 H–1B Receipts in FY 2022. Based on the 5-year annual average, DHS estimates that there are 427,822 Form I–129 H–1B petitioners each year.

[171] The regulations state that when an RFE is served by mail, the response is timely filed if it is received no more than 3 days after the deadline, providing a total of 87 days for a response to be submitted if USCIS provides the maximum period of 84 days under the regulations. The maximum response time for a NOID is 30 days. *See https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-6.*

Table 24. Total Form I-129 H-1B Receipts with and without Form G-28, FY 2018 through FY 2022				
FY	**Form I-129 H-1B Receipts Received without Form G-28**	**Form I-129 H-1B Receipts Received with Form G-28**	**Total Form I-129 H-1B Receipts**	**Percentage of Form I-129 H-1B filed with Form G-28**
2018	94,055	324,549	418,604	78%
2019	90,845	329,777	420,622	78%
2020	90,192	337,097	427,289	79%
2021	79,195	319,090	398,285	80%
2022	90,574	383,737	474,311	81%
5-year Total	**444,861**	**1,694,250**	**2,139,111**	**79%**
5-year Annual Average	**88,972**	**338,850**	**427,822**	**79%**
Source: USCIS, Office of Policy and Strategy, PRD, CLAIMS3 and ELIS databases, Mar. 13, 2023.				

Table 25 shows the average number of Form I–129 H–1B petitions approved in FYs 2018–22 for workers placed at off-site locations. Nearly 31 percent of petitions were approved for workers placed at off-site locations. DHS uses the estimated 31 percent as the proportion of both the population of received petitions and the population of approved petitions that are for workers placed at off-site locations.

Table 25. Form I-129 H-1B Petitions for Workers Placed at Off-site Locations, FY 2018 through FY 2022			
FY	**Total Approved Petitions for Workers Placed at Off-site locations**	**Total Approved Petitions**	**Percent Placed at Off-site locations**
2018	108,981	289,142	38%
2019	118,948	332,384	36%
2020	138,229	363,428	38%
2021	99,974	356,046	28%
2022	73,176	413,395	18%
5-year Total	**539,308**	**1,754,395**	**31%**
5-year Annual Average	**107,862**	**350,879**	**31%**
Source: USCIS, Office of Policy and Strategy, PRD. April 6, 2023			

DHS conducted a sensitivity analysis to estimate the number of H–1B petitions filed annually for workers placed at off-site locations that may contain itineraries (132,625).[172] Table 26 presents the lower and upper bound number of petitions filed annually for workers placed at off-site locations who may submit itineraries, which corresponds to a range of 10 to 90 percent.

Table 26. Estimated Number of Form I-129 H-1B Petitions Who May Submit Itineraries		
Estimated Number of Petitions Filed Annually for Workers Placed at Off-site Locations	Estimated Number of Petitions Submit Itineraries among Workers Placed at Off-site Locations	
	Lower Bound (10%)	Upper Bound (90%)
A	B=A×10%	C=A×90%
132,625	13,263	119,363
Source: USCIS analysis		

Using the lower and upper bounds of the estimated annual population for H–1B petitioners who may no longer be required to gather and submit itinerary information, DHS estimates the cost savings based on the opportunity cost of time of gathering and submitting itinerary information by multiplying the estimated time burden to gather

[172] DHS uses the proportion of petitions approved for off-site workers (31 percent from Table 25) as an approximate measure to estimate the number of petitions received annually for off-site workers from the total number of petitions filed. 132,625 petitions filed requesting off-site workers = 427,822 petitions filed annually × 31 percent.

itinerary information (0.08 hours) by the compensation rate of an HR specialist, in-house lawyer, or outsourced lawyer, respectively. Table 27 shows that the total annual cost savings due to the itinerary exemption would range from $141,704 to $1,275,277. Since the itinerary information normally is submitted with the Form I–129 H–1B package, there would be no additional postage cost savings. DHS estimates the total cost savings to be the average between the lower bound and the upper bound estimates. Based on this DHS estimates the average cost savings from this provision to be $708,491.

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Table 27. Estimated Cost Savings to Form I-129 H-1B Petitioners due to Not Submitting an Itinerary

	Affected Population	Time Burden (Hours)	Compensation Rate	Total Annual Cost
	A	B	C	D=A×B×C
Lower Bound				
Estimated Number of Petitions Submit Itineraries (Lower Bound)				
HR specialist	2,785	0.08	$50.94	$11,349
In-house lawyer	10,478	0.08	$114.17	$95,702
Outsourced lawyer	10,478	0.08	$196.85	$165,008
Total - Lower Bound	**13,263**			**$141,704**
Upper Bound				
Estimated Number of Petitions Submit Itineraries (Upper Bound)				
HR specialist	25,066	0.08	$50.94	$102,149
In-house lawyer	94,297	0.08	$114.17	$861,269
Outsourced lawyer	94,297	0.08	$196.85	$1,484,986
Total - Upper Bound	**119,363**			**$1,275,277**
Total Cost Savings Average				**$708,491**

Source: USCIS analysis
HR specialist (2,785) = Total-lower bound (13,263) × Percent of petitions filed by HR specialist (21%)
In-house lawyer (10,478) = Total-lower bound (13,263) × Percent of petitions filed by in-house lawyer (79%)
Outsourced lawyer (10,478) = Total-lower bound (13,263) × Percent of petitions filed by outsourced lawyer (79%)
DHS does not know the exact number of petitioners who will choose an in-house or an outsourced lawyer but assumes it may be a 50/50 split and therefore provides an average.

HR specialist (25,066) = Total-upper bound (119,363) × Percent of petitions filed by HR specialist (21%)
In-house lawyer (94,297) = Total- upper bound (119,363) × Percent of petitions filed by in-house lawyer (79%)
Outsourced lawyer (94,297) = Total- upper bound (119,363) × Percent of petitions filed by outsourced lawyer (79%)

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DHS acknowledges the proposal to eliminate the itinerary requirement may also affect H petitions filed by agents as well as H–2 petitions filed for beneficiaries performing work in more than one location or for multiple employers, however, DHS has not estimated these cost savings here.

e. Validity Period Expires Before Adjudication

DHS proposes to allow H–1B petitions to be approved or have their requested validity period dates extended if USCIS adjudicates and deems the petition approvable after the initially requested validity period end-date, or the period for which eligibility has been established, has passed. This typically would happen if USCIS deemed the petition approvable upon a favorable motion to reopen, motion to reconsider, or appeal.

If USCIS adjudicates an H–1B petition and deems it approvable after the initially requested validity period end-date, or the last day for which eligibility has been established, USCIS may issue an RFE asking whether the petitioner wants to update the dates of intended employment. This change may increase the number of RFE's; however, it may save petitioners from having to file another H–1B petition and USCIS from having to intake and adjudicate another petition.

If in response to the RFE the petitioner confirms that it wants to update the dates of intended employment and submits a different LCA that corresponds to the new requested validity dates, even if that LCA was certified after the date the H–1B petition was filed, and assuming all other eligibility criteria are met, USCIS would approve the H–1B petition for the new requested period or the period for

which eligibility has been established, as appropriate, rather than require the petitioner to file a new or amended petition. Under a no-action baseline, the requirement to file an amended or new petition results in additional filing costs and burden for the petitioner. DHS expects that this proposed change would save petitioners the difference between the opportunity cost of time and the fee to file an additional form, and the nominal opportunity cost of time and expense associated with responding to the RFE. This proposed change would benefit beneficiaries selected under the cap, who would retain cap-subject petitions while their petition validity dates are extended or whose petitions now may be approved rather than denied based on this technicality.

f. H–1B Cap Exemptions

DHS proposes to revise the requirements to qualify for H–1B cap exemption when a beneficiary is not directly employed by a qualifying institution, organization, or entity at 8 CFR 214.2(h)(8)(iii)(F)(*4*). These proposed changes intend to clarify, simplify, and modernize eligibility for cap-exempt H–1B employment, so that they are less restrictive and better reflect modern employment relationships. The proposed changes also intend to provide additional flexibility to petitioners to better implement Congress's intent to exempt from the annual H–1B cap certain H–1B beneficiaries who are employed at a qualifying institution, organization, or entity.

DHS is also proposing to revise 8 CFR 214.2(h)(19)(iii)(C), which states that a nonprofit research organization is an entity that is ''primarily engaged in basic research and/or applied research,'' and a governmental research organization is a Federal, State, or local entity ''whose primary mission is the performance or promotion of basic research and/or applied research.'' DHS proposes to replace ''primarily engaged'' with ''a fundamental activity of'' in order to permit a nonprofit entity that conducts research as a fundamental activity but is not primarily engaged in research to meet the definition of a nonprofit research entity. This would likely increase the population of petitioners who are now eligible for the cap exemption and, by extension, would likely increase the number of petitions that may be cap-exempt.

These proposed changes would result in a transfer to petitioners who qualify for a cap exemption for their employees under the proposed rule. This would reduce transfers for petitioners because the petitioners would no longer have to pay the registration fee or ACWIA fees applicable to initial cap-subject petitions. DHS does not have data to precisely estimate how many additional petitioners would now qualify for these cap exemptions, but we welcome public comment on this topic to help inform analysis in the final rule. This proposed change would be a reduction in transfers from the petitioners to USCIS because USCIS would no longer receive these petitioners' registration fees. There would be no change in DHS resources. While DHS cannot estimate the precise reduction in transfers, DHS estimates that a fairly small population, between 0.3 percent–0.8 percent of annual petitioners, may no longer use the H–1B registration tool as a result of these new exemptions. Using these percentages, DHS estimates that approximately 1,067 [173] (0.3 percent) up to 2,845 [174] (0.8 percent) registrants would no longer pay the $10 registration fee. DHS estimates the reduction in transfers from registrants to range from $10,670 [175] to $28,450 [176] annually. DHS invites public comment on these transfers to cap exempt petitioners and the percentage of current registrants (prospective petitioners who are cap subject) who may no longer submit a registration for the H–1B cap. While DHS discusses these transfers qualitatively in this proposal, DHS intends to quantify them in the final rule.

Aside from the reduction in transfers from not having to pay the registration fee, petitioners that qualify under the proposed cap exemptions would also benefit from not having to wait for H–1B cap season to commence employment. This may allow approved petitioners to have their H–1B workers commence employment earlier, prior to the beginning of the fiscal year on October 1.

g. Automatic Extension of Authorized Employment ''Cap-Gap''

DHS proposes to extend the automatic cap-gap extension at 8 CFR 214.2(f)(5)(vi). Currently, the automatic extension is valid only until October 1 of the fiscal year for which H–1B status is being requested, but DHS proposes to extend this until April 1 of the fiscal year. *See* proposed 8 CFR 214.2(f)(5)(vi). This change would result in more flexibility for both students and USCIS and would help to avoid disruption to U.S. employers that are lawfully employing F–1 students while a qualifying H–1B cap-subject petition is pending.

Each year, a number of U.S. employers seek to employ F–1 students via the H–1B program by requesting a COS and filing an H–1B cap petition with USCIS. Many F–1 students complete a program of study or post-completion OPT in mid-spring or early summer. Per current regulations, after completing their program or post-completion OPT, F–1 students have 60 days to take the steps necessary to maintain legal status or depart the United States.[177] However, because the change to H–1B status cannot occur earlier than October 1, an F–1 student whose program or post-completion OPT expires in mid-spring has two or more months following the 60-day period before the authorized period of H–1B status begins.

Under current regulations, the automatic cap-gap extension is valid only until October 1 of the fiscal year for which H–1B status is being requested. DHS is proposing to change the automatic extension end date from October 1 to April 1 to avoid disruptions in employment authorization that some F–1 nonimmigrants awaiting the change to H–1B status have been experiencing over the past several years. Table 28 shows the historical completions volumes. Based on the 5-year annual average, DHS estimates that 31,834 F–1 nonimmigrants annually may be able to avoid employment disruptions while waiting to obtain H–1B status. Preventing such employment disruptions would also benefit employers of F–1 nonimmigrants with cap-gap extensions. The change in the automatic extension end date may benefit petitioners as well.

[173] Calculation: 355,592 registrations * 0.3% = 1,067 registrations.

[174] Calculation: 355,592 registrations * 0.8% = 2,845 registrations.

[175] Calculation: 1,067 registrations * $10 registration fee = $10,670 cost savings.

[176] Calculation: 2,845 registrations * $10 registration fee = $28,450 cost savings.

[177] *See* 8 CFR 214.2(f)(5)(iv).

Table 28. Historical Form I-129 Petitions Seeking Initial H-1B Status for Beneficiaries Who Are in F-1 Status and Seeking a COS to H-1B Pending October 1-April 1 Volume, FY 2018 through FY 2022	
Fiscal Year	**Pending Petitions October 1-April 1**
2018	41,606
2019	43,975
2020	26,967
2021	23,339
2022	23,282
5-year Total	**159,169**
5-year Annual Average	**31,834**
Source: USCIS, OP&S PRD, C3 May 4, 2023.	

This proposed change in the automatic extension end date would also allow USCIS greater flexibility in allocating officer resources to complete adjudications without the pressure of completing as many COS requests as possible before October 1. There are additional benefits of this proposed rule that have not been captured in the summary of costs and benefits of this rulemaking. DHS estimates that this change would benefit up to 5 percent (1,592) of the population (31,834) on an annual basis and on the low end 318 (1 percent); however, F–1 students who are beneficiaries of H–1B cap petitions that provide cap-gap relief would be able to avoid employment disruptions while waiting to obtain H–1B status. DHS estimates that an F–1 student who is the beneficiary of an H–1B cap petition makes $42.48 [178] per hour in compensation. Based on a 40 hour work week,[179] DHS estimates the potential compensation for each F–1 student who is the beneficiary of an H–1B cap petition to be $44,174 [180] for 6 months of employment from October 1st to April 1st. DHS estimates that this potential compensation may be a benefit to F–1 students who are seeking a COS to a H–1B status. This benefit ranges from $14,047,332 [181] to $70,325,008 [182] annually. In addition, other impacts such as payroll taxes and adjustments for the value of time have not been monetized here, which would reduce the monetized benefit of this compensation. DHS intends to include these impacts in the final rule and invites public comment on these additional benefits to F–1 students who would be the beneficiaries of H–1B petitions.

h. Start Date Flexibility for Certain H–1B Cap-Subject Petitions

DHS proposes to eliminate all the text currently at 8 CFR 214.2(h)(8)(iii)(A)(*4*), which relates to a limitation on the requested start date, because the current regulatory language is ambiguous. The removal of this text would provide clarity and flexibility to employers with regard to the start date listed on H–1B cap-subject petitions. This clarity may help petitioners by reducing confusion as to what start date they have to put on the petition.

In 2020, USCIS implemented the first electronic registration process for the FY 2021 H–1B cap. In that year, and for each subsequent fiscal year, prospective petitioners seeking to file H–1B cap-subject petitions (including for beneficiaries eligible for the advanced degree exemption) were required to first electronically register and pay the associated H–1B registration fee for each prospective beneficiary. Because of this DHS only has data for Cap Year 2021 through FY 2023. Table 29 shows the number of cap-subject registrations received and selected by USCIS during Cap Year 2021 through FY 2023. Based on the 3-year annual average DHS estimates that 127,980 registrations are selected each year. DHS cannot estimate the number of petitioners that would benefit from this clarification to the start date on their petition.

[178] $42.48 Total Employee Compensation per hour. *See* BLS, Economic News Release, ''Employer Costs for Employee Compensation—December 2022,'' Table 1. ''Employer Costs for Employee Compensation by ownership [Dec. 2022],'' *https://www.bls.gov/news.release/archives/ecec_03172023.htm* (last visited Mar. 21, 2023).

[179] *See, e.g.,* 8 CFR 214.2(f)(5)(vi)(A) (describing cap-gap employment) and (f)(11)(ii)(B) (describing OPT and noting that it may be full-time).

[180] Calculation: $42.48* 40 hours = $1,699 per week * 26 weeks = $44,174 per 6 months.

[181] Calculation: $44,174 per 6 months* 318 (1 percent of 31,834) F–1 students = $14,047,332.

[182] Calculation: $44,174 per 6 months* 1,592 (5 percent of 31,834) F–1 students = $70,325,008.

Table 29. H-1B Cap-Subject Registrations Received and Selected by USCIS, Cap Year 2021 through FY 2023				
Cap Year	**Total Number of Registrations Received**	**Eligible Registrations for Beneficiaries with No Other Eligible Registrations**	**Eligible Registrations for Beneficiaries with Multiple Eligible Registrations**	**Selections**
2021	274,237	241,299	28,125	124,415
2022	308,613	211,304	90,143	131,924
2023	483,927	309,241	165,180	127,600
3-Year Total	**1,066,777**	**761,844**	**283,448**	**383,939**
3-Year Average	**355,592**	**253,948**	**94,483**	**127,980**
Source: *https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-electronic-registration-process* (Mar. 30, 2023).				

This proposed change is also a potential cost savings to petitioners who, in the event USCIS cap-subject petitions that were rejected solely due to start date, would no longer need to re-submit their petition(s).

i. The H–1B Registration System

Through issuance of a final rule in 2019, *Registration Requirement for Petitioners Seeking To File H–1B Petitions on Behalf of Cap-Subject Aliens,*[183] DHS developed a new way to administer the H–1B cap selection process to streamline processing and provide overall cost savings to employers seeking to file H–1B cap-subject petitions. In 2020, USCIS implemented the first electronic registration process for the FY 2021 H–1B cap. In that year, and for each subsequent fiscal year, prospective petitioners seeking to file H–1B cap-subject petitions (including for beneficiaries eligible for the advanced degree exemption) were required to first electronically register and pay the associated H–1B registration fee for each prospective beneficiary. When registration is required, an H–1B cap-subject petition is not eligible for filing unless it is based on a selected registration that was properly submitted by the prospective petitioner, or their representative, for the beneficiary.

Table 30 shows the number of cap registration receipts by year, as well as the number of registrations that were selected to file I–129 H–1B petitions. The number of registrations has increased over the past 3 years. DHS believes that this increase is partially due to the increase in multiple companies submitting registrations for the same beneficiary. USCIS received a low of 274,237 H–1B Cap-Subject Registrations for cap year FY 2021, and a high of 483,927 H–1B Cap-Subject Registrations for cap year 2023. DHS has not included cap year 2024 data into this analysis because such data are incomplete.[184]

Table 30. H-1B Cap-Subject Registrations Received and Selected by USCIS, Cap Year 2021 through FY 2023				
Cap Year	**Total Number of H-1B Cap-Subject Registrations Submitted**	**Eligible Registrations for Beneficiaries with No Other Eligible Registrations**	**Eligible Registrations for Beneficiaries with Multiple Eligible Registrations**	**Selections**
2021	274,237	241,299	28,125	124,415
2022	308,613	211,304	90,143	131,924
2023	483,927	309,241	165,180	127,600
3-Year Total	**1,066,777**	**761,844**	**283,448**	**383,939**
3-Year Average	**355,592**	**253,948**	**94,483**	**127,980**
Source: *https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-electronic-registration-process* Mar. 30, 2023. Note* The count of eligible registrations excludes duplicate registrations, those deleted by the prospective employer prior to the close of the registration period, and those with failed payments.				

DHS estimates the current public reporting time burden for an H–1B Registration is 31 minutes (0.5167 hours), which includes the time for reviewing instructions, gathering the

[183] *See* ''Registration Requirement for Petitioners Seeking To File H–1B Petitions on Behalf of Cap-Subject Aliens,'' 84 FR 888 (Jan. 31, 2019).

[184] While the initial registration selection process has been completed, DHS is unable to determine at this time how many total petitions will be submitted within the filing period.

required information, and submitting the registration.

The number of Form G–28 submissions allows USCIS to estimate the number of H–1B registrations that an attorney or accredited representative submits and thus estimate the opportunity costs of time for an attorney or accredited representative to file each form. Table 31 shows the number of Cap-Subject registrations received with and without Form G–28. USCIS received a low of 148,964 Cap-Subject Registrations with Form G–28 in cap year 2022, and a high of 207,053 Cap-Subject Registrations with Form G–28 in cap year 2023. Based on a 3-year annual average, DHS estimates the annual average receipts of Cap-Subject Registrations to be 171,330 with 48 percent of registrations submitted by an attorney or accredited representative.

Table 31. Total Form I-129 H-1B Cap-Subject Registrations Since the Beginning of the Registration System with and without Form G-28, Cap Year 2021 through Cap Year 2023

Cap Year	Total Number of H-1B Cap-Subject Registrations Submitted without Form G-28	Total Number of H-1B Cap-Subject Registrations Submitted with Form G-28	Total of H-1B Cap-Subject Registrations Submitted	Percentage of H-1B Cap-Subject Registrations Submitted with Form G-28
2021	116,264	157,973	274,237	58%
2022	159,649	148,964	308,613	48%
2023	276,874	207,053	483,927	43%
3-Year Total	**552,787**	**513,990**	**1,066,777**	**48%**
3-Year Average	**184,262**	**171,330**	**355,592**	**48%**

Source: USCIS, Office of Policy and Strategy, PRD, CLAIMS3 and ELIS databases, Mar. 30, 2023.

In order to estimate the opportunity costs of time for completing and filing an H–1B registration DHS assumes that a registrant will use an HR specialist, an in-house lawyer, or an outsourced lawyer to prepare an H–1B registration.[185] DHS uses the mean hourly wage of $35.13 for HR specialists to estimate the opportunity cost of the time for preparing and submitting the H–1B registration.[186] Additionally, DHS uses the mean hourly wage of $78.74 for in-house lawyers to estimate the opportunity cost of the time for preparing and submitting the H–1B registration.[187]

DHS accounts for worker benefits when estimating the total costs of compensation by calculating a benefits-to-wage multiplier using the BLS report detailing the average employer costs for employee compensation for all civilian workers in major occupational groups and industries. DHS estimates that the benefits-to-wage multiplier is 1.45 and, therefore, is able to estimate the full opportunity cost per petitioner, including employee wages and salaries and the full cost of benefits such as paid leave, insurance, retirement, etc.[188] DHS multiplied the average hourly U.S. wage rate for HR specialists and in-house lawyers by 1.45 to account for the full cost of employee benefits, for a total of $50.94 [189] per hour for an HR specialist and $114.17 [190] per hour for an in-house lawyer. DHS recognizes that a firm may choose, but is not required, to outsource the preparation of these petitions and, therefore, presents two wage rates for lawyers. To determine the full opportunity costs of time if a firm hired an outsourced lawyer, DHS multiplied the average hourly U.S. wage rate for lawyers by 2.5 [191] for a total of $196.85 [192] to approximate an hourly wage rate for an outsourced lawyer [193] to prepare and submit an H–1B registration.[194]

[185] USCIS limited its analysis to HR specialists, in-house lawyers, and outsourced lawyers to present estimated costs. However, USCIS understands that not all entities employ individuals with these occupations and, therefore, recognizes equivalent occupations may also prepare and file these petitions or registrations.

[186] *See* BLS, ''Occupational Employment and Wage Statistics, Occupational Employment and Wages, May 2022, 13–1071 Human Resources Specialists,'' *https://www.bls.gov/oes/2022/may/oes131071.htm* (last visited May 11, 2023).

[187] *See* BLS, ''Occupational Employment and Wage Statistics, Occupational Employment and Wages, May 2022, 23–1011 Lawyers,'' *https://www.bls.gov/oes/2022/may/oes231011.htm* (last visited May 11, 2023).

[188] The benefits-to-wage multiplier is calculated as follows: (Total Employee Compensation per hour)/(Wages and Salaries per hour) ($42.48 Total Employee Compensation per hour)/($29.32 Wages and Salaries per hour) = 1.44884 = 1.45 (rounded). *See* BLS, Economic News Release, ''Employer Costs for Employee Compensation'' (Dec. 2022), Table 1. ''Employer Costs for Employee Compensation by ownership'' (Dec. 2022), *https://www.bls.gov/news.release/archives/ecec_03172023.htm* (last visited Mar. 21, 2023). The Employer Costs for Employee Compensation measures the average cost to employers for wages and salaries and benefits per employee hour worked.

[189] Calculation: $35.13 * 1.45 = $50.94 total wage rate for HR specialist.

[190] Calculation: $78.74 * 1.45 = $114.17 total wage rate for in-house lawyer.

[191] The ICE ''Safe-Harbor Procedures for Employers Who Receive a No-Match Letter'' used a multiplier of 2.5 to convert in-house attorney wages to the cost of outsourced attorney based on information received in public comment to that rule. We believe the explanation and methodology used in the Final Small Entity Impact Analysis for that rule remains sound for using 2.5 as a multiplier for outsourced labor wages in this proposed rule, see *https://www.regulations.gov/document/ICEB-2006-0004-0922,* at page G–4.

[192] Calculation: $78.74 * 2.5 = $196.85 total wage rate for an outsourced lawyer.

[193] The DHS analysis in ''Exercise of Time-Limited Authority To Increase the Fiscal Year 2018 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program,'' 83 FR 24905 (May 31, 2018), *https://www.federalregister.gov/documents/2018/05/31/2018-11732/exercise-of-time-limited-authority-to-increase-the-fiscal-year-2018-numerical-limitation-for-the*, used a multiplier of 2.5 to convert in-house attorney wages to the cost of outsourced attorney wages. The DHS Immigration and Customs Enforcement (ICE) rule ''Final Small Entity Impact Analysis: 'Safe-Harbor Procedures for Employers Who Receive a No-Match Letter'' at G–4 (Aug. 25, 2008), *https://www.regulations.gov/document/ICEB-2006-0004-0922,* also uses a multiplier. The methodology used in the Final Small Entity Impact Analysis remains sound for using 2.5 as a multiplier for outsourced labor wages in this proposed rule.

[194] The DHS analysis in ''Exercise of Time-Limited Authority To Increase the Fiscal Year 2018 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program,'' 83 FR 24905 (May 31, 2018), *https://www.federalregister.gov/documents/2018/05/31/2018-11732/exercise-of-time-limited-authority-to-increase-the-fiscal-year-2018-numerical-limitation-for-the,* used a multiplier of 2.5 to convert in-house attorney wages to the cost of outsourced attorney wages. Also, the analysis for a DHS ICE rule, ''Final Small Entity Impact Analysis: 'Safe-Harbor Procedures for Employers

Continued

Table 32 displays the estimated annual opportunity cost of time for submitting an H–1B registration employing an in-house or outsourced lawyer to complete and submit an H–1B registration. DHS does not know the exact number of registrants who will choose an in-house or an outsourced lawyer but assumes it may be a 50/50 split and therefore provides an average. These current opportunity costs of time for submitting an H–1B registration using an attorney or other representative are estimated to range from $10,107,038 to $17,426,385 with an average of $13,766,712.

Table 32. Current Average Opportunity Costs of Time for Submitting an H-1B Registration with an Attorney or Other Representative

	Population Submitting with a Lawyer	Time Burden to Complete H-1B Registration (Hours)	Cost of Time	Total Current Opportunity Cost
	A	B	C	D=(A×B×C)
In-house lawyer	171,330	0.5167	$114.17	$10,107,038
Outsourced lawyer	171,330	0.5167	$196.85	$17,426,385
Average				**$13,766,712**
Source: USCIS Analysis				

To estimate the current remaining opportunity cost of time for an HR specialist submitting an H–1B registration without a lawyer, DHS applies the estimated public reporting time burden (0.5167 hours) to the compensation rate of an HR specialist. Table 33 estimates the current total annual opportunity cost of time to HR specialists completing and submitting an H–1B registration will be approximately $4,849,904.

Table 33. Current Average Opportunity Costs of Time for Submitting an H-1B Registration, without an Attorney or Accredited Representative

	Population	Time Burden to Complete H-1B Registration (Hours)	HR Specialist's Opportunity Cost of time	Total Opportunity Cost of Time
	A	B	C	D=(A×B×C)
Estimate of H-1B Registrations	184,262	0.5167	$50.94	**$4,849,904**
Source: USCIS Analysis				

Table 34 shows the proposed estimated time burden will increase by 5 minutes to 36 minutes (0.6 hours) to the eligible population and compensation rates of those who may submit registrations with or without a lawyer due to changes in the instructions, adding clarifying language regarding denying or revoking approved H–1B petitions, adding passport instructional language, and adding verification before submitting instructions. DHS does not know the exact number of registrants who will choose an in-house or an outsourced lawyer but assumes it may be a 50/50 split and therefore provides an average. DHS estimates that these current opportunity costs of time for submitting an H–1B registration using an attorney or other representative range from $11,736,448 to $20,235,786 with an average of $15,986,117.

Who Receive a No-Match Letter' '' at G–4 (Aug. 25, 2008), *https://www.regulations.gov/document/*

ICEB-2006-0004-0922, used a multiplier. The methodology used in the Final Small Entity Impact Analysis remains sound for using 2.5 as a multiplier for outsourced labor wages in this proposed rule.

Table 34. New Opportunity Costs of Time for an H-1B Registration, Petitioners Submitting with an Attorney or Other Representative				
	Population of Petitioners Submitting with a Lawyer	**Time Burden to Complete FH-1B Registration (Hours)**	**Cost of Time**	**Total Opportunity Cost**
	A	B	C	D=(A×B×C)
In House Lawyer	171,330	0.6	$114.17	$11,736,448
Outsourced Lawyer	171,330	0.6	$196.85	$20,235,786
Average				**$15,986,117**
Source: USCIS Analysis				

To estimate the current remaining opportunity cost of time for an HR specialist submitting an H–1B registration without a lawyer, DHS applies the proposed estimated public reporting time burden (0.6 hours) to the compensation rate of an HR specialist. Table 35 estimates the current total annual opportunity cost of time to HR specialists completing and submitting the H–1B registration will be approximately $5,631,784.

Table 35. Proposed Average Opportunity Costs of Time for an H-1B Registration, Submitting without an Attorney or Accredited Representative				
	Population	**Time Burden to Complete H-1B Registration (Hours)**	**HR Specialist's Opportunity Cost of time (48.40 /hr.)**	**Total Opportunity Cost of Time**
	A	B	C	D=(A×B×C)
Estimate H-1B Registration	184,262	0.6	$50.94	**$5,631,784**
Source: USCIS Analysis				

DHS estimates the total additional annual cost to petitioners completing and filing Form I–129 H–1B are expected to be $3,001,285 shown in Table 36. This table shows the current total opportunity cost of time to submit an H–1B registration and the proposed total opportunity cost of time.

Table 36. Total Costs to Complete the H-1B Registration	
Average Current Opportunity Cost Time for Lawyers to Complete the H-1B Registration	$13,766,712
Average Current Opportunity Cost Time for HR Specialist to Complete the H-1B Registration	$4,849,904
Total	**$18,616,616**
Average Proposed Opportunity Cost Time for Lawyers to Complete the H-1B Registration	$15,986,117
Average Proposed Opportunity Cost Time for HR Specialist to Complete the H-1B Registration	$5,631,784
Total	**$21,617,901**
Proposed Additional Opportunity Costs of Time to Complete the H-1B Registration	**$3,001,285**
Source: USCIS Analysis	

j. Beneficiary Centric Selection

Under the proposed provision, DHS would modify the random selection process. Registrants would continue to submit registrations on behalf of beneficiaries, and beneficiaries would continue to be able to have more than one registration submitted on their behalf, as generally allowed by applicable regulations. If a random selection were necessary (meaning, more registrations are submitted than the number of registrations USCIS projected as needed to reach the numerical allocations), then the random selection would be based on each unique beneficiary identified in the registration pool, rather than each registration. If a beneficiary is selected, then all registrants who properly submitted a registration for that selected beneficiary would be notified of the selection and that they are eligible to file an H–1B cap petition on behalf of the beneficiary during the applicable petition filing period.

DHS believes that changing how USCIS conducts the selection process to select by unique beneficiaries instead of registrations would give each unique beneficiary an equal chance at selection and would reduce the advantage that beneficiaries with multiple registrations submitted on their behalf have over beneficiaries with a single registration submitted on their behalf. DHS believes that it would also reduce the incentive that registrants may have to work with others to submit registrations for the same beneficiary to unfairly increase the chance of selection for the beneficiary because doing so under the beneficiary-centric selection approach would not result in an increase in the odds of selection. Selecting by unique beneficiary could also result in other benefits, such as giving beneficiaries greater autonomy regarding their H–1B employment and improving the chances of selection for legitimate registrations.

Because the integrity of the new selection process would rely on USCIS's ability to accurately identify each individual beneficiary, and all registrations submitted on their behalf, DHS proposes to require the submission of valid passport information, including the passport number, country of issuance, and expiration date, in addition to the currently required information. *See* proposed 8 CFR 214.2(h)(8)(iii)(A)(*4*)(*ii*). While the proposed passport requirement could impact individuals who do not yet hold passports at the time of registration, DHS has determined the described benefits of program integrity outweigh any additional burden to prospective beneficiaries. DHS invites public comment on the proposed passport requirement.

DHS estimates that the annual average receipts of H–1B registrations is 355,592 with 71 percent of registrations being submitted for a beneficiary with only a single registration. DHS estimates that 29 percent [195] of registrations are submitted by companies for beneficiaries who have also had other registrations submitted on their behalf. Based on this new provision DHS estimates that there may be a reduction in registrations because beneficiaries will be less inclined to find as many different employers to submit registrations on their behalf as doing so would not affect their chance of selection. Also, DHS expects to see less abuse by unscrupulous registrants as they would not be able to increase the chance of selection for a beneficiary by working together with others to submit multiple registrations for the same beneficiary.

Table 37. H-1B Cap-Subject Registrations Received by USCIS for Unique Beneficiaries, Cap Year 2021 through 2023

Cap Year	Total Registrations	Total number of registrations submitted for beneficiaries with multiple registrations	Total number of registrations submitted for beneficiaries with a single registration	Total number of unique beneficiaries with registrations submitted on their behalf	% of Total Registrations with Single Beneficiary
2021	274,237	34,349	239,888	253,331	87%
2022	308,613	98,547	210,066	235,720	68%
2023	483,927	176,444	307,483	357,222	64%
3-year Total	**1,066,777**	**309,340**	**757,437**	**846,273**	**71%**
3-year Annual Average	**355,592**	**103,113**	**252,479**	**282,091**	**71%**
Source: USCIS Office of Performance and Quality					

DHS estimates that 73,501 [196] registrations annually may no longer be submitted due to this proposed change. Of those 73,501 registrations, DHS estimated that an attorney or accredited representative submitted 48 percent of registrations and an HR representative submitted the remaining 52 percent shown in Table 31.

Table 38 displays the estimated annual opportunity cost of time for submitting an H–1B registration employing an in-house or outsourced lawyer to complete and submit an H–1B registration. DHS does not know the exact number of prospective petitioners who will choose an in-house or an outsourced lawyer but assumes it may be a 50/50 split and therefore provides an average. DHS estimates that these current opportunity costs of time for submitting an H–1B registration using an attorney or other representative range from $2,081,225 to $3,588,413, with an average of $2,834,819.

[195] Calculation: 100% − 71% Registrations for a single beneficiary = 29% Registrations submitted for multiple beneficiaries.

[196] Calculation: Total Registrations 355,592— Total number of unique beneficiaries with registrations submitted on their behalf 282,091 = 73,501 Estimate of registrations that may no longer be submitted.

Table 38. Current Annual Average Opportunity Costs of Time for Submitting an H-1B Registration, with an Attorney or Other Representative				
	Population of Registrants Submitting with a Lawyer	**Time Burden to Complete H-1B Registration (Hours)**	**Cost of Time**	**Total Current Opportunity Cost**
	A	B	C	D=(A×B×C)
In House Lawyer	**35,280**	0.5167	$114.17	$2,081,225
Outsourced Lawyer	**35,280**	0.5167	$196.85	$3,588,413
Average				**$2,834,819**
Source: USCIS Analysis				

To estimate the current remaining opportunity cost of time for an HR specialist submitting an H–1B registration without a lawyer, DHS applies the estimated public reporting time burden (0.5167 hours) to the compensation rate of an HR specialist. Table 39 estimates the current total annual opportunity cost of time to HR specialists completing and submitting an H–1B registration will be approximately $1,006,003.

Table 39. Current Annual Average Opportunity Costs of Time for Submitting an H-1B Registration, without an Attorney or Accredited Representative				
	Population	**Time Burden to Complete H-1B Registration (Hours)**	**HR Specialist's Opportunity Cost of time**	**Total Opportunity Cost of Time**
	A	B	C	D=(A×B×C)
Estimate of H-1B Registrations	38,221	0.5167	$50.94	**$1,006,003**
Source: USCIS Analysis				

DHS estimates the total annual opportunity cost savings of time for not having to complete and submit H–1B registrations for beneficiaries with multiple registrations are expected to be $3,840,822, shown in Table 40.

Table 40. Total Annual Opportunity Cost Savings of Time for H-1B Registrations	
Average Current Opportunity Cost Time for Lawyers to Complete H-1B Registration	$2,834,819
Average Current Opportunity Cost Time for HR Specialist to Complete H-1B Registration	$1,006,003
Total	**$3,840,822**
Source: USCIS Analysis	

Prospective petitioners seeking to file H–1B cap-subject petitions, including for beneficiaries eligible for the advanced degree exemption, must first electronically register and pay the associated $10 H–1B registration fee for each prospective beneficiary. Due to this proposed change DHS estimates that prospective petitioners may now see an additional cost savings of $735,010. The annual total cost savings of this proposed beneficiary centric selection is $4,575,832.[197]

Table 41. Total Annual Cost Savings for Registration Fees	
Annual Registrations for the same beneficiaries	73,501
Registration Fee	$10
Total Cost savings	**$735,010**
Source: USCIS Analysis	

[197] Calculation: Total Opportunity Cost Savings of time for H–1B Registrations ($3,840,822) + Total Cost Savings for Registration Fees ($735,010) = $4,575,832 Total Cost Savings.

k. Bar on Multiple Registrations Submitted by Related Entities

DHS regulations already preclude the filing of multiple H–1B cap-subject petitions by related entities for the same beneficiary unless the related petitioners can establish a legitimate business need for filing multiple cap-subject petitions for the same beneficiary. DHS is not proposing to change this in the current regulation. Rather, DHS is proposing to extend a similar limitation to the submission of registrations by related entities. *See* proposed 8 CFR 214.2(h)(2)(i)(G). When an employer submits a registration, they attest that they intend to file a petition based on that registration and that there is a legitimate job offer. To allow related employers to submit registrations without a legitimate business need, but not allow them to file petitions without a legitimate business need, creates an inconsistency between the antecedent procedural step of registration and the petition filing. Extending the bar on multiple petition filings by related entities to multiple registration submissions by related entities for the same cap-subject beneficiary would harmonize the expectations for petition filing and registration submission.

While the proposed changes to the beneficiary centric selection are intended to reduce frivolous registrations, DHS cannot guarantee with certainty that such change would eliminate entities from working with each other to submit registrations to unfairly increase chances of selection for a beneficiary by submitting slightly different identifying information or other means. Therefore, this provision may serve as an additional deterrent to further reduce the incentive for companies filing multiple registrations to have a higher chance of selection. This change may benefit petitioners whose chances of selection have been negatively affected by companies filing multiple registrations to increase the chances of selection. DHS cannot estimate the number of petitioners that this provision may benefit, because DHS cannot accurately measure how many petitioners are not submitting legitimate registrations or filing legitimate petitions in this manner.

l. Registrations With False Information or That Are Otherwise Invalid

Although registration is an antecedent procedural step undertaken prior to filing an H–1B cap-subject petition, the validity of the registration information is key to the registrant's eligibility to file a petition. As stated in the current regulations, ''[t]o be eligible to file a petition for a beneficiary who may be counted against the H–1B regular cap or the H–1B advanced degree exemption for a particular fiscal year, a registration must be properly submitted in accordance with 8 CFR 103.2(a)(1), [8 CFR 214.2(h)(8)(iii),] and the form instructions.'' *See* 8 CFR 214.2(h)(8)(iii)(A)(*1*). USCIS does not consider a registration to be properly submitted if the information contained in the registration, including the required attestations, was not true and correct. Currently, the regulations state that it is grounds for denial or revocation if the statements of facts contained in the petition are not true and correct, inaccurate, fraudulent, or misrepresented a material fact. DHS proposes to clarify in the regulations that the grounds for denial of an H–1B petition or revocation of an H–1B petition approval extend to the information provided in the registration and to expressly state in the regulations that this includes attestations on the registration that are determined by USCIS to be false.

DHS is also proposing changes to the regulations governing registration that would provide USCIS with clearer authority to deny or revoke the approval of a petition based on a registration that was not properly submitted or was otherwise invalid.

Specifically, DHS is proposing to add that if a petitioner submits more than one registration per beneficiary in the same fiscal year, all registrations filed by that petitioner relating to that beneficiary for that fiscal year may be considered not only invalid, but that ''USCIS may deny or revoke the approval of any petition filed for the beneficiary based on those registrations.''

Additionally, DHS is proposing to add that USCIS may deny or revoke the approval of an H–1B petition if it determines that the fee associated with the registration is declined, not reconciled, disputed, or otherwise invalid after submission.

These proposed changes may increase the need for RFEs and NOIDs. It is important to note that issuing RFEs and NOIDs takes time and effort for adjudicators—to send, receive, and adjudicate documentation—and it requires additional time and effort for petitioners to respond, resulting in extended timelines for adjudications.[198] Data on RFEs and NOIDs related to H–1B false information are not standardized or tracked in a consistent way, thus they are not accurate or reliable.

m. Provisions To Ensure Bona Fide Job Offer for a Specialty Occupation Position

(1) Contracts

DHS proposes to codify USCIS' authority to request contracts, work orders, or similar evidence. *See* proposed 8 CFR 214.2(h)(4)(iv)(C). Such evidence may take the form of contracts or legal agreements, if available, or other evidence including technical documentation, milestone tables, or statements of work. Evidence submitted should show the contractual relationship between all parties, the terms and conditions of the beneficiary's work, and the minimum educational requirements to perform the duties.

While USCIS already has the authority to request contracts and other similar evidence, the regulations do not state this authority. By proposing to codify this authority, USCIS is putting stakeholders on notice of the kinds of evidence that could be requested to establish the terms and conditions of the beneficiary's work and the minimum educational requirements to perform the duties. This evidence, in turn, could establish that the petitioner has a bona fide job offer for a specialty occupation position for the beneficiary. Relative to the no action baseline, this change has no costs associated with it, and there may be transparency benefits due to this proposed change. Relative to the pre policy baseline petitioners may have taken time to find contracts or legal agreements, if available, or other evidence including technical documentation, milestone tables, or statements of work. DHS cannot estimate how much time it would have taken for petitioners to provide that information.

(2) Non-Speculative Employment

DHS proposes to codify its requirement that the petitioner must establish, at the time of filing, that it has a non-speculative position in a specialty occupation available for the beneficiary as of the start date of the validity period as requested on the petition. *See* proposed 8 CFR 214.2(h)(4)(iv)(D). This change is consistent with current DHS policy guidance that an H–1B petitioner must establish that employment exists at the time of filing the petition and that

[198] The regulations state that when an RFE is served by mail, the response is timely filed if it is received no more than 3 days after the deadline, providing a total of 87 days for a response to be submitted if USCIS provides the maximum period of 84 days under the regulations. The maximum response time for a NOID is 30 days. *See https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-6.*

it may employ the beneficiary in a specialty occupation.[199] Relative to the no action baseline, this change has no costs associated with it, and there may be transparency benefits due to this proposed change. Relative to the pre policy baseline petitioners may require time to provide documentation to establish that their position was a non-speculative position in a specialty occupation. DHS cannot estimate how much time it takes for petitioners to provide that information.

(3) LCA Corresponds With the Petition

DHS is proposing to update the regulations to expressly include DHS's existing authority to ensure that the LCA properly supports and corresponds with the accompanying H–1B petition. Relative to the no action baseline, this change has no costs and may yield transparency benefits due to consistency between regulation and current policy. Relative to the pre policy baseline petitioners may have taken time to provide their LCA to DHS, however DHS cannot estimate how much time it would have taken for petitioners to provide that information.

(4) Revising the Definition of U.S. Employer

DHS is proposing to revise the definition of ''United States employer.'' First, DHS proposes to eliminate the employer-employee relationship requirement. In place of the employer-employee relationship requirement, DHS proposes to codify the requirement that the petitioner has a bona fide job offer for the beneficiary to work, which may include telework, remote work, or other off-site work within the United States. DHS also proposes to replace the requirement that the petitioner ''[e]ngages a person to work within the United States'' with the requirement that the petitioner have a legal presence and is amenable to service of process in the United States. Relative to the no action baseline, this change has no costs associated with it, and there may be transparency benefits due to this proposed change. Relative to the pre policy baseline, petitioners may require time to provide documentation establishing a bona fide job offer for the beneficiary to work. DHS cannot estimate how much time petitioners take to provide that information.

(5) Employer-Employee Relationship

DHS proposes to eliminate the employer-employee relationship requirement, which, in the past, has been a significant barrier to the H–1B program for certain petitioners, including beneficiary-owned petitioners. This proposed change would benefit petitioners because it may decrease confusion and increase clarity for stakeholders. Relative to the no action baseline, this change has no costs associated with it, and there may be transparency benefits due to this proposed change. Relative to the pre policy baseline petitioners may have taken time to understand the change.

n. Beneficiary-Owners

DHS proposes to codify a petitioner's ability to qualify as a U.S. employer even when the beneficiary possesses a controlling interest in that petitioner. To promote access to H–1Bs for entrepreneurs, start-up entities, and other beneficiary-owned businesses, DHS is proposing to add provisions to specifically address situations where a potential H–1B beneficiary owns a controlling interest in the petitioning entity. If more entrepreneurs are able to obtain H–1B status to develop their business enterprise, the United States could benefit from the creation of jobs, new industries, and new opportunities.[200] This proposed change would benefit H–1B petitions filed by start-up entities and other beneficiary-owned businesses, or filed on behalf of entrepreneurs who have a controlling interest in the petitioning entity. DHS is unable to estimate how many petitioners would benefit from this proposed change.

DHS is also proposing to limit the validity period for beneficiary-owned entities. DHS proposes to limit the validity period for the initial petition and first extension (including an amended petition with a request for an extension of stay) of such a petition to 18 months. *See* proposed 8 CFR 214.2(h)(9)(iii)(E). Any subsequent extension would not be limited and may be approved for up to 3 years, assuming the petition satisfies all other H–1B requirements. DHS proposes limiting the first two validity periods to 18 months as a safeguard against possible fraudulent petitions. While DHS sees a significant advantage in promoting the H–1B program to entrepreneurs and allowing these beneficiaries to perform a significant amount of non-specialty occupation duties, unscrupulous petitioners might abuse such provisions without sufficient guardrails. DHS believes that there may be a cost to petitioners associated with this change however cannot estimate how many petitioners may be affected by limiting the validity period.

o. Site Visits

USCIS conducts inspections, evaluations, verifications, and compliance reviews, to ensure that a petitioner and beneficiary are eligible for the benefit sought and that all laws have been complied with before and after approval of such benefits. These inspections, verifications, and other compliance reviews may be conducted telephonically or electronically, as well as through physical on-site inspections (site visits). DHS is proposing to add regulations specific to the H–1B program to codify its existing authority and clarify the scope of inspections and the consequences of a petitioner's or third party's refusal or failure to fully cooperate with these inspections. Currently, site visit inspections are not mandatory for petitioners filing Form I–129 on behalf of H–1B specialty occupation nonimmigrant workers. Using its general authority, USCIS may conduct audits, on-site inspections, reviews, or investigations to ensure that a beneficiary is entitled to the benefits sought and that all laws have been complied with before and after approval of such benefits.[201] The authority to conduct on-site inspection is critical to the integrity of the H–1B program to detect and deter fraud and noncompliance.

[199] *See* USCIS, ''Rescission of Policy Memoranda,'' PM–602–0114 (June 17, 2020) (citing *Matter of Chawathe,* 25 I&N Dec. 369 (AAO 2010)).

[200] *See, e.g.,* National Bureau of Economic Research, ''Winning the H–1B Visa Lottery Boosts the Fortunes of Startups'' (Jan. 2020), *https://www.nber.org/digest/jan20/winning-h-1b-visa-lottery-boosts-fortunes-startups* (''The opportunity to hire specialized foreign workers gives startups a leg up over their competitors who do not obtain visas for desired employees. High-skilled foreign labor boosts a firm's chance of obtaining venture capital funding, of successfully going public or being acquired, and of making innovative breakthroughs.''). Pierre Azoulay, et. al, ''Immigration and Entrepreneurship in the United States'' (National Bureau of Economic Research, Working Paper 27778 (Sept. 2020) *https://www.nber.org/system/files/working_papers/w27778/w27778.pdf* (''immigrants act more as 'job creators' than 'job takers' and . . . non-U.S. born founders play outsized roles in U.S. high-growth entrepreneurship'').

[201] *See* INA section 103 and 8 CFR 2.1. As stated in subsection V.A.5.ii(d) of this analysis, regulation would also clarify the possible scope of an inspection, which may include the petitioning organization's headquarters, satellite locations, or the location where the beneficiary works or will work, including third-party worksites, as applicable.

In July 2009, USCIS started the Administrative Site Visit and Verification Program [202] as an additional method to verify information in certain visa petitions under scrutiny. Under this program, FDNS officers are authorized to make unannounced site visits to collect information as part of a compliance review, which verifies whether petitioners and beneficiaries are following the immigration laws and regulations that are applicable in a particular case. This process includes researching information in government databases, reviewing public records and evidence accompanying the petition, interviewing the petitioner or beneficiary, and conducting site visits. Once the FDNS officers complete the site visit, they write a Compliance Review Report for any indicators of fraud or noncompliance to assist USCIS in final adjudicative decisions.

The site visits conducted under USCIS's existent, general authority, and thus part of the baseline against which this proposed rule's impact should be measured, have uncovered a significant amount of noncompliance in the H–1B program.[203] Further, when disaggregated by worksite location, the noncompliance rate was found to be higher for workers placed at an off-site or third-party location compared to workers placed at a petitioner's on-site location.[204] As a result, USCIS began conducting more targeted site visits related to the H–1B program, focusing on the cases of H–1B dependent employers (*i.e.,* employers who have a high ratio of H–1B workers compared to U.S. workers, as defined by statute) for whom USCIS cannot validate the employer's basic business information through commercially available data, and on employers petitioning for H–1B workers who work off-site at another company or organization's location.

DHS believes that site visits are important to maintain the integrity of the H–1B program to detect and deter fraud and noncompliance in the H–1B program, which in turn ensures the appropriate use of the H–1B program and the protection of the interests of U.S. workers. These site visits would continue in the absence of this proposed rule and DHS notes that current Form I–129 instructions notify petitioners of USCIS' legal authority to verify information before or after a case decision, including by means of unannounced physical site inspection. Hence, DHS is proposing additional requirements specific to the H–1B program to set forth the scope of on-site inspections, and the consequences of a petitioner's or third party's refusal or failure to fully cooperate with existing inspections. DHS does not foresee the rule leading to more on-site inspections.

This proposed rule would provide a clear disincentive for petitioners that do not cooperate with compliance reviews and inspections while giving USCIS greater authority to access and confirm information about employers and workers as well as identify fraud.

The proposed regulations would make clear that inspections may include, but are not limited to, an on-site visit of the petitioning organization's facilities, interviews with its officials, review of its records related to compliance with immigration laws and regulations, and interviews with any other individuals or review of any other records that USCIS may lawfully obtain and that it considers pertinent to verify facts related to the adjudication of the petition, such as facts relating to the petitioner's and beneficiary's eligibility and continued compliance with the requirements of the H–1B program. *See* proposed 8 CFR 214.2(h)(4)(i)(B)(*2*). The proposed regulation would also clarify that an inspection may take place at the petitioning organization's headquarters, satellite locations, or the location where the beneficiary works or will work, including third-party worksites, as applicable. The proposed provisions would make clear that an H–1B petitioner or any employer must allow access to all sites where the labor will be performed for the purpose of determining compliance with applicable H–1B requirements. The proposed regulation would state the consequences if USCIS is unable to verify facts related to an H–1B petition due to the failure or refusal of the petitioner or a third-party worksite to cooperate with a site visit. These failures or refusals may be grounds for denial or revocation of any H–1B petition related to locations that are a subject of inspection, including any third-party worksites. *See* proposed 8 CFR 214.2(h)(4)(i)(B)(*2*).

In order to estimate the population impacted by site visits, DHS uses site inspection data used to verify facts pertaining to the H–1B petition adjudication process. The site inspections were conducted at H–1B petitioners' on-site locations and third-party worksites during FY 2018 through FY 2022. For instance, from FY 2019 through FY 2022, USCIS conducted a total of 27,062 H–1B compliance reviews and found 5,037 of them, equal to 19 percent, to be noncompliant or indicative of fraud.[205] These compliance reviews (from FY 2019 through FY 2022) consisted of reviews conducted under both the Administrative Site Visit and Verification Program and the Targeted Site Visit and Verification Program, which began in 2017. The targeted site visit program allows USCIS to focus resources where fraud and abuse of the H–1B program may be more likely to occur.[206]

Table 42 shows the number of H–1B worksite inspections conducted each year and the number of visits that resulted in compliance and noncompliance. USCIS received a low of 1,057 fraudulent/noncompliant cases in FY 2022, and a high of 1,469 fraudulent/noncompliant cases in FY 2021. DHS estimates that, on average, USCIS conducted 6,766 H–1B worksite inspections annually from FY 2019 through FY 2022 and of those DHS finds a noncompliance rate of 19 percent. Assuming USCIS continues worksite inspections at the 4-year annual average rate, the population impacted by this proposed provision would be 1,259 or 19 percent of H–1B petitioners visited who are found noncompliant or indicative of fraud. The outcomes of site visits under the proposed rule are indeterminate as currently noncooperative petitioners might be found to be fully compliant, might continue to not cooperate with site visits despite penalties, or might be forced to reveal fraudulent practices to USCIS. The expected increase in cooperation from current levels would be the most important impact of the proposed provision, which DHS discusses below. DHS notes that the increased cooperation might come disproportionately from site visits of third-party worksites that did not sign Form I–129 attesting to permit

[202] *See* USCIS, ''Administrative Site Visit and Verification Program,'' *https://www.uscis.gov/about-us/directorates-and-program-offices/fraud-detection-and-national-security/administrative-site-visit-and-verification-program* (last visited Sept. 18, 2019). *See* USCIS, ''Administrative Site Visit and Verification Program,'' *https://www.uscis.gov/about-us/directorates-and-program-offices/fraud-detection-and-national-security/administrative-site-visit-and-verification-program* (last visited Sept. 18, 2019). *See* USCIS, ''Administrative Site Visit and Verification Program,'' *https://www.uscis.gov/about-us/directorates-and-program-offices/fraud-detection-and-national-security/administrative-site-visit-and-verification-program https://www.uscis.gov/about-us/directorates-and-program-offices/fraud-detection-and-national-security/administrative-site-visit-and-verification-program* (last visited Sept. 18, 2019).

[203] USCIS, Office of Policy and Strategy, PRD, Summary of H–1B Site Visits Data.

[204] *Id.*

[205] DHS, USCIS, PRD (2022). PRD196. USCIS conducted these site visits through its Administrative and Targeted Site Visit Programs.

[206] *See* USCIS, ''Putting American Workers First: USCIS Announces Further Measures to Detect H–1B Visa Fraud and Abuse,'' (April 3, 2017), *https://www.uscis.gov/archive/putting-american-workers-first-uscis-announces-further-measures-to-detect-h-1b-visa-fraud-and-abuse.*

unannounced physical site inspections of residences and places of employment by USCIS.

Table 42. H-1B Compliance and Fraud/Noncompliance Percentages Closed by FDNS Overall, FY 2019 through FY 2022

Fiscal Year	Compliant	Fraud/Noncompliant	Total	Percent of Fraud/Noncompliance
2019	7,891	1,431	9,322	15%
2020	4,063	1,080	5,143	21%
2021	5,413	1,469	6,882	21%
2022	4,658	1,057	5,715	18%
4-year Total	**22,025**	**5,037**	**27,062**	**19%**
4-year Annual Average	**5,506**	**1,259**	**6,766**	**19%**
Source: USCIS, Fraud Detection and National Security (FDNS) Jan. 23, 2023				

Table 43 shows the average duration of time to complete each inspection was 1.08 hours. Therefore, DHS assumes that USCIS would continue to conduct the same number of annual worksite inspections (7,252), on average, and that the average duration of time for a USCIS immigration officer to conduct each worksite inspection would be an average of 1.08 hours. The data in Table 42 and Table 43 differ slightly based on the different search criteria, pull dates and systems accessed. DHS also assumes that the average duration of time of 1.08 hours to conduct an inspection covers the entire inspection process, which includes interviewing the beneficiary, the on-site supervisor or manager and other workers, as applicable, and reviewing all records pertinent to the H–1B petitions available to USCIS when requested during inspection.

Table 43. Total Number of Worksite Inspections Conducted for H-1B Petitioners and Average Inspection Time, FY 2018 to FY 2022.

Fiscal Year	Number of Worksite Inspections	Average Duration for Worksite Inspection (Hours)
2018	7,718	1.16
2019	10,384	1.23
2020	5,826	1.12
2021	6,780	0.86
2022	5,550	1.05
5-year Total	**36,258**	**5.42**
5-year Average	**7,252**	**1.08**
Source: USCIS, Fraud Detection and National Security (FDNS). Apr. 12, 2023		

DHS assumes that a supervisor or manager, in addition to the beneficiary, would be present on behalf of a petitioner while a USCIS immigration officer conducts the worksite inspection. The officer would interview the beneficiary to verify the date employment started, work location, hours, salary, and duties performed to corroborate with the information provided in an approved petition. The supervisor or manager would be the most qualified employee at the location who could answer all questions pertinent to the petitioning organization and its H–1B nonimmigrant workers. They would also be able to provide the proper records available to USCIS immigration officers. Consequently, for the purposes of this economic analysis, DHS assumes that on average two individuals would be interviewed during each worksite inspection: the beneficiary and the supervisor or manager. DHS uses their respective compensation rates in the estimation of the worksite inspection costs.[207] However, if any other worker or on-site manager is interviewed, the same compensation rates would apply.

DHS uses hourly compensation rates to estimate the opportunity cost of time a beneficiary and supervisor or manager would incur during worksite inspections. Based on data obtained from a USCIS report in 2022, DHS estimates that an H–1B worker earned an average of $116,000 per year in FY 2021.[208] DHS therefore estimates the salary of an H–1B worker is

[207] DHS does not estimate any other USCIS costs associated with the worksite inspections (*i.e.,* travel and deskwork relating to other research, review and document write up) here because these costs are covered by fees collected from petitioners filing Form I–129 for H–1B petitions. All such costs are reported under the Federal Government Cost section.

[208] This is the annual average earning of all H–1B nonimmigrant workers in all industries with known occupations (excluding industries with unknown occupations) for FY 2021. It is what employers agreed to pay the nonimmigrant workers at the time the applications were filed and estimated based on full-time employment for 12 months, even if the nonimmigrant worker worked fewer than 12 months. USCIS, ''Characteristics of H–1B Specialty Occupation Workers, Fiscal Year 2021 Annual Report to Congress, October 1, 2020–September 30, 2021,'' at 16, Table 9a (Mar. 2, 2022), *https://www.uscis.gov/sites/default/files/document/data/H1B_Characteristics_Congressional_Report_FY2021-3.2.22.pdf.*

approximately $116,000 annually, or $55.77 hourly wage.[209] The annual salary does not include noncash compensation and benefits, such as health insurance and transportation. DHS adjusts the average hourly wage rate using a benefits-to-wage multiplier to estimate the average hourly compensation of $ 80.87 for an H–1B nonimmigrant worker.[210] In order to estimate the opportunity cost of time they would incur during a worksite inspection, DHS uses an average hourly compensation rate of $91.47 per hour for a supervisor or manager, where the average hourly wage is $63.08 per hour worked and average benefits are $28.39.[211] While the average duration of time to conduct an inspection is estimated at 1.08 hours in this analysis, DHS is not able to estimate the average duration of time for a USCIS immigration officer to conduct an interview with a beneficiary or supervisor or manager. In the absence of this information, DHS assumes that it would on average take 0.54 hours to interview a beneficiary and 0.54 hours to interview a supervisor or manager.[212]

In Table 44, DHS estimates the total annual opportunity cost of time for worksite inspections of H–1B petitions by multiplying the average annual number of worksite inspections (7,252) by the average duration the interview would take for a beneficiary or supervisor or manager and their respective compensation rates. DHS obtains the total annual cost of the H–1B worksite inspections to be $674,881 for this proposed rule.

Table 44. Form I-129 Petitioners' Annual Cost of Worksite Inspection for H-1B Workers

Cost Item	Number of Worksite Inspections (Annual Average)	Average Duration of Interview (Hours)	Compensation Rate	Total Cost
	A	B	C	D=A×B×C
Beneficiaries' opportunity cost of time during worksite inspections	7,252	0.54	$80.87	$316,693
Supervisors or managers' opportunity cost of time during worksite inspections	7,252	0.54	$91.47	$358,188
Total	**-**	**1.08**	**-**	**$674,881**
Source: USCIS analysis				

This proposed change may affect employers who do not cooperate with site visits who would face denial or revocation of their petition(s), which could result in costs to those businesses. Petitioners may face financial losses because they may lose access to labor for extended periods, which could result in too few workers, loss of revenue, and some could go out of business. DHS expects program participants to comply with program requirements, however, and notes that those that do not could experience significant impacts due to this proposed rule. DHS expects that the proposed rule would hold certain petitioners more accountable for violations, including certain findings of labor law and other violations, and would prevent registrations with false information from taking a cap number for which they are ineligible.

p. Third-Party Placement (Codifying Defensor)

In this proposed provision, in certain circumstances USCIS would look at the third party's requirements for the beneficiary's position, rather than the petitioner's stated requirements, in assessing whether the proffered position qualifies as a specialty occupation.

As required by both INA section 214(i)(1) and 8 CFR 214.2(h)(4)(i)(A)(*1*), an H–1B petition for a specialty occupation worker must demonstrate that the worker will perform services in a specialty occupation, which requires theoretical and practical application of a body of highly specialized knowledge and attainment of a baccalaureate or higher degree in the specific specialty (or its equivalent) as a minimum requirement for entry into the occupation in the United States. This proposal would ensure that petitioners are not circumventing specialty occupation requirements by imposing token requirements or requirements that are not normal to the third party. Specifically, under proposed 8 CFR 214.2(h)(4)(i)(B)(*3*), if the beneficiary will be staffed to a third party, meaning they will be contracted to fill a position in a third party's organization, the actual work to be performed by the beneficiary must be in a specialty occupation. Therefore, it is the requirements of that third party, and not the petitioner, that are most relevant when determining whether the position is a specialty occupation. Relative to the no action baseline, this change has no costs associated with it, and there may

[209] The hourly wage is estimated by diving the annual salary by the total number of hours worked in a year (2,080, which is 40 hours of full-time workweek for 52 weeks). $55.77 hourly wage = $116,000 annual pay ÷ 2,080 annual work hours. According to DOL that certifies the LCA of the H–1B worker, a full-time H–1B employee works 40 hours per week for 52 weeks for a total of 2,080 hours in a year assuming full-time work is 40 hours per week. DOL, Wage and hour Division: ''Fact Sheet #68—What Constitutes a Full-Time Employee Under H–1B Visa Program?'' (July 2009), *https://www.dol.gov/whd/regs/compliance/whdfs68.htm* (Last visited July 30, 2019).

[210] Hourly compensation of $ 80.87 = $55.77 average hourly wage rate for H–1B worker × 1.45 benefits-to-wage multiplier. *See* section V.A.5. for estimation of the benefits-to-wage multiplier.

[211] Hourly compensation of $91.47 = $63.08 average hourly wage rate for Management Occupations (national) × 1.45 benefits-to-wage multiplier. *See* BLS, ''Occupational Employment and Wage Statistics, Occupational Employment and Wages, May 2022, 11–0000 Management Occupations (Major Group),'' *https://www.bls.gov/oes/2022/may/oes110000.htm* (last visited May 11, 2023).

[212] DHS assumes that beneficiary takes 50 percent of average inspection duration and supervisor or manager takes 50 percent. Average duration of interview hours for beneficiaries (0.54) = Average inspection duration (1.08) × 50% = 0.54 (rounded). Average duration of interview hours for Supervisors or managers (0.54) = Average inspection duration (1.08) × 50% = 0.54 (rounded).

be transparency benefits due to this proposed change. Relative to the pre policy baseline petitioners may have taken time to demonstrate that the worker will perform services in a specialty occupation, which requires theoretical and practical application of a body of highly specialized knowledge and attainment of a baccalaureate or higher degree in the specific specialty. Because this has been in place for a long time, DHS cannot estimate how much time it would have taken for petitioners to provide that information.

q. Additional Time Burden for Form I–129 H–1B

DHS estimates the current public reporting time burden is 2 hours and 20 minutes (2.34 hours), which includes the time for reviewing instructions, gathering the required documentation and information, completing the petition, preparing statements, attaching necessary documentation, and submitting the petition.[213] This proposed rule would increase the burden per response by 5 minutes. Table 45 shows the total receipts received for Form I–129 H–1B[214] for FY 2018 through FY 2022. The table also details the number of Form I–129 H–1B receipts filed with an attorney or accredited representative using Form G–28. The number of Form G–28 submissions allows USCIS to estimate the number of Form I–129 H–1B that are filed by an attorney or accredited representative and thus estimate the opportunity costs of time for a petitioner, attorney, or accredited representative to file each form. USCIS received a low of 319,090 H–1B receipts filed with Form G–28 in FY 2021, and a high of 383,737, H–1B receipts filed with Form G–28 in FY 2022. Based on a 5-year annual average, DHS estimates the annual average receipts of Form I–129 to be 338,850 with 79 percent of petitions filed by an attorney or accredited representative.

Table 45. Total Form I-129 H-1B Receipts with and without Form G-28, FY 2018 through FY 2022

Fiscal Year	Form I-129 H-1B Receipts Received without Form G-28	Form I-129 H-1B Receipts Received with Form G-28	Total Form I-129 H-1B Receipts	Percentage of Form I-129 H-1B filed with Form G-28
2018	94,055	324,549	418,604	78%
2019	90,845	329,777	420,622	78%
2020	90,192	337,097	427,289	79%
2021	79,195	319,090	398,285	80%
2022	90,574	383,737	474,311	81%
5-year Total	**444,861**	**1,694,250**	**2,139,111**	**79%**
5-year Annual Average	**88,972**	**338,850**	**427,822**	**79%**

Source: USCIS, Office of Policy and Strategy, PRD, CLAIMS3 and ELIS databases, Mar. 13, 2023.

In order to estimate the opportunity costs of time for completing and filing Form I–129 H–1B, DHS assumes that a petitioner will use an HR specialist, an in-house lawyer, or an outsourced lawyer to prepare Form I–129 H–1B petitions.[215] DHS uses the mean hourly wage of $35.13 for HR specialists to estimate the opportunity cost of the time for preparing and submitting Form I–129 H–1B.[216] Additionally, DHS uses the mean hourly wage of $78.74 for in-house lawyers to estimate the opportunity cost of the time for preparing and submitting Form I–129 H–1B.[217]

DHS accounts for worker benefits when estimating the total costs of compensation by calculating a benefits-to-wage multiplier using the BLS report detailing the average employer costs for employee compensation for all civilian workers in major occupational groups and industries. DHS estimates that the benefits-to-wage multiplier is 1.45 and, therefore, is able to estimate the full opportunity cost per petitioner, including employee wages and salaries and the full cost of benefits such as paid leave, insurance, retirement, etc.[218] DHS multiplied the average hourly U.S. wage rate for HR specialists and in-house lawyers by 1.45 to account for the full cost of employee benefits, for a total of $50.94[219] per hour for an HR specialist and $114.17[220] per hour for an in-house lawyer. DHS recognizes that a firm may choose, but is not required, to outsource the preparation of these petitions and, therefore, presents two wage rates for lawyers. To determine the full opportunity costs of time if a firm hired an outsourced lawyer, DHS multiplied the average hourly U.S. wage rate for lawyers by 2.5 for a total of $196.85[221] to approximate an hourly wage rate for

[213] *See* Instructions for Petition for a Nonimmigrant Worker (time burden estimate in the Paperwork Reduction Act section). Form I–129 H–1B, *https://www.uscis.gov/sites/default/files/document/forms/i-129.pdf*. OMB No. 1615–1615–0009. Expires Nov. 30, 2025. The public reporting burden for this collection of information is estimated at 2 hours and 20 minutes (2.34 hours) per response.

[214] The term ''Form I–129 H–1B'' refers to a Form I–129 that is filed for H–1B classification.

[215] USCIS limited its analysis to HR specialists, in-house lawyers, and outsourced lawyers to present estimated costs. However, USCIS understands that not all entities employ individuals with these occupations and, therefore, recognizes equivalent occupations may also prepare and file these petitions.

[216] *See* BLS, ''Occupational Employment and Wage Statistics, Occupational Employment and Wages, May 2022, 13–1071 Human Resources Specialists,'' *https://www.bls.gov/oes/2022/may/oes131071.htm* (last visited May 11, 2023).

[217] *See* BLS, ''Occupational Employment and Wage Statistics, Occupational Employment and Wages, May 2022, 23–1011 Lawyers,'' *https://www.bls.gov/oes/2022/may/oes231011.htm* (last visited May. 11, 2023).

[218] The benefits-to-wage multiplier is calculated as follows: (Total Employee Compensation per hour)/(Wages and Salaries per hour) ($42.48 Total Employee Compensation per hour)/($29.32 Wages and Salaries per hour) = 1.44884 = 1.45 (rounded). *See* BLS, Economic News Release, ''Employer Costs for Employee Compensation—December 2022,'' Table 1. ''Employer Costs for Employee Compensation by ownership [Dec. 2022],'' *https://www.bls.gov/news.release/archives/ecec_03172023.htm* (last visited Mar. 21, 2023). The Employer Costs for Employee Compensation measures the average cost to employers for wages and salaries and benefits per employee hour worked.

[219] Calculation: $35.13 * 1.45 = $50.94 total wage rate for HR specialist.

[220] Calculation: $78.74 * 1.45 = $114.17 total wage rate for in-house lawyer.

[221] Calculation: $78.74 * 2.5 = $196.85 total wage rate for an outsourced lawyer.

an outsourced lawyer [222] to prepare and submit Form I–129 H–1B.[223]

To estimate the opportunity cost of time to complete and file Form I–129 H–1B, DHS applies the estimated time burden (2.34 hours) to the eligible population and compensation rates of those who may file with or without a lawyer.[224] Table 46 shows the estimated annual opportunity cost of time for Form I–129 H–1B petitioners employing an in-house or outsourced lawyer to complete and file Form I–129 H–1B petitions. DHS does not know the exact number of petitioners who will choose an in-house or an outsourced lawyer but assumes it may be a 50/50 split and therefore provides an average. DHS estimates that these current opportunity costs of time for Form I–129 H–1B petitioners using an attorney or other representative range from $90,526,421 to $156,084,137 with an annual average of $123,305,279.

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Table 46. Current Annual Average Opportunity Costs of Time for Form I-129 H-1B Petitioners Filing with an Attorney or Other Representative

	Eligible Population of Petitioners Filing with a Lawyer	Time Burden to Complete Form I-129 H-1B (Hours)	Cost of Time	Total Current Opportunity Cost
	A	B	C	D=(A×B×C)
In House Lawyer	338,850	2.34	$114.17	$90,526,421
Outsourced Lawyer	338,850	2.34	$196.85	$156,084,137
Average				**$123,305,279**
Source: USCIS Analysis				

To estimate the current remaining opportunity cost of time for an HR specialist filing Form I–129 H–1B without a lawyer, DHS applies the estimated public reporting time burden (2.34 hours) to the compensation rate of an HR specialist. Table 47 estimates the current total annual opportunity cost of time to HR specialists completing and filing I–129 H–1B requests will be approximately $10,605,427.

Table 47. Current Annual Average Opportunity Costs of Time for Form I-129 H-1B Petitioners Filing without an Attorney or Accredited Representative

	Population	Time Burden to Complete Form I-129 H-1B (Hours)	HR Specialist's Opportunity Cost of time	Total Opportunity Cost of Time
	A	B	C	D=(A×B×C)
Estimate Form I-129 H-1B	88,972	2.34	$50.94	**$10,605,427**
Source: USCIS Analysis				

Table 48 shows the proposed estimated time burden (2.42 hours) to the eligible population and compensation rates of those who may file with or without a lawyer. DHS does not know the exact number of petitioners who will choose an in-house or an outsourced lawyer but assumes it may be a 50/50 split and therefore provides an average. These current opportunity costs of time for Form I–129 H–1B petitioners using an attorney or other representative are estimated to range from $93,621,341 to $161,420,346 with an annual average of $127,520,844.

[222] The DHS analysis in ''Exercise of Time-Limited Authority To Increase the Fiscal Year 2018 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program,'' 83 FR 24905 (May 31, 2018), *https://www.federalregister.gov/documents/2018/05/31/2018-11732/exercise-of-time-limited-authority-to-increase-the-fiscal-year-2018-numerical-limitation-for-the,* used a multiplier of 2.5 to convert in-house attorney wages to the cost of outsourced attorney wages.

The DHS ICE rule ''Final Small Entity Impact Analysis: 'Safe-Harbor Procedures for Employers Who Receive a No-Match Letter' '' at G–4 (Aug. 25, 2008), *https://www.regulations.gov/document/ICEB-2006-0004-0922,* also uses a multiplier. The methodology used in the Final Small Entity Impact Analysis remains sound for using 2.5 as a multiplier for outsourced labor wages in this proposed rule.

[223] The DHS analysis in ''Exercise of Time-Limited Authority To Increase the Fiscal Year 2018 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program,'' 83 FR 24905 (May 31, 2018), *https://www.federalregister.gov/documents/2018/05/31/2018-11732/exercise-of-time-limited-authority-to-increase-the-fiscal-year-2018-numerical-limitation-for-the,* used a multiplier of 2.5 to convert in-house attorney wages to the cost of outsourced attorney wages.

Also, the analysis for a DHS ICE rule, ''Final Small Entity Impact Analysis: 'Safe-Harbor Procedures for Employers Who Receive a No-Match Letter' '' at G–4 (Aug. 25, 2008), *https://www.regulations.gov/document/ICEB-2006-0004-0922,* used a multiplier. The methodology used in the Final Small Entity Impact Analysis remains sound for using 2.5 as a multiplier for outsourced labor wages in this proposed rule.

[224] *See* ''Instructions for Petition for a Nonimmigrant Worker,'' Form I–129, OMB No. 1615–0009, expires Nov. 30, 2025, *https://www.uscis.gov/sites/default/files/document/forms/i-129instr.pdf* (last visited Nov. 3, 2022).

Table 48. New Annual Opportunity Costs of Time for Form I-129 H-1B Petitioners Filing with an Attorney or Other Representative				
	Population of Petitioners Filing with a Lawyer	**Time Burden to Complete Form I-129 H-1B (Hours)**	**Cost of Time**	**Total Opportunity Cost**
	A	B	C	D=(A×B×C)
In House Lawyer	338,850	2.42	$114.17	$93,621,341
Outsourced Lawyer	338,850	2.42	$196.85	$161,420,346
Average				**$127,520,844**
Source: USCIS Analysis				

To estimate the current remaining opportunity cost of time for an HR specialist filing Form I–129 H–1B without a lawyer, DHS applies the estimated public reporting time burden (2.42 hours) to the compensation rate of an HR specialist. Table 49 estimates the current total annual opportunity cost of time to HR specialists completing and filing I–129 H–1B requests will be approximately $10,968,006.

Table 49. Proposed Annual Average Opportunity Costs of Time for Form I-129 H-1B Petitioners Filing without an Attorney or Accredited Representative				
	Population	**Time Burden to Complete Form I-129 H-1B (Hours)**	**HR Specialist's Opportunity Cost of time**	**Total Opportunity Cost of Time**
	A	B	C	D=(A×B×C)
Estimate Form I-129 H-1B	88,972	2.42	$50.94	**$10,968,006**
Source: USCIS Analysis				

DHS estimates the total additional annual cost to petitioners completing and filing Form I–129 H–1B are expected to be $4,578,144 shown in Table 50. This table shows the current total opportunity cost of time to file Form I–129 H–1B and the proposed total opportunity cost of time.

Table 50. Total Annual Costs to Form I-129 H-1B	
Average Current Opportunity Cost Time for Lawyers to Complete Form I-129 H-1B	**$123,305,279**
Average Current Opportunity Cost Time for HR Specialist to Complete Form I-129 H-1B	**$10,605,427**
Total	**$133,910,706**
Average Proposed Opportunity Cost Time for Lawyers to Complete Form I-129 H-1B	**$127,520,844**
Average Proposed Opportunity Cost Time for HR Specialist to Complete Form I-129 H-1B	**$10,968,006**
Total	**$138,488,850**
Proposed Additional Opportunity Costs of Time for Form I-129 H-1B	**$4,578,144**
Source: USCIS Analysis	

Finally, many DHS rulemakings include monetized or unquantified familiarization costs. This is appropriate when a likely consequence of proposed regulations could be additional individuals seeking out and consuming more specialized resources, such as immigration attorneys' time in order to access the same benefits. This section has emphasized that employers of H–1B beneficiaries already consume significant specialized resources. In contrast to policies that impose additional requirements upon petitioners and registrants, DHS believes the proposed modernization, efficiencies, flexibilities and integrity improvements have no likely consequence to current consumption of specialized resources such as HR Specialists' time, in-house attorneys'

time, and even out-sourced attorneys time inclusive of indirect costs. An assumption that hundreds of thousands will spend 4 or more hours reading the entirety of this proposed rule, in addition to the 2.42 hour burden of Form I–129 H–1B, risks overrepresenting the interests of immigration attorneys relative to the other impacts this Regulatory Impact Analysis describes using supporting data and evidence. DHS invites public comment on familiarization costs and how any such costs should be accurately modeled.

r. Additional Time Burden for H Classification Supplement to Form I–129

DHS estimates the current public reporting time burden at 2 hours, for the H Classification Supplement, which includes the time for reviewing instructions, gathering the required documentation and information, completing the petition, preparing statements, attaching necessary documentation, and submitting the petition.[225] This proposed rule would strengthen program integrity by codifying the authority to request contracts from petitioners. This change will increase the burden per response 5 minutes.

Table 51 shows the total receipts received for H–1B petitions for FY 2018 through FY 2022. The table also shows the number of H–1B petitions submitted by an attorney or accredited representative using Form G–28. The number of Form G–28 submissions allows USCIS to estimate the number of H–1B petitions that an attorney or accredited representative submitted and thus estimate the opportunity costs of time for an attorney or accredited representative to file each form USCIS received a low of 398,285 of H–1B petitions in FY 2021, and a high of 474,311 of H–1B petitions in FY 2022. Based on a 5-year annual average, DHS estimates the annual average receipts of H–1B petitions to be 338,850 with 79 percent of petitions filed by an attorney or accredited representative.

Table 51. Total H-1B Petitions with and without Form G-28, FY 2018 through FY 2022

Fiscal Year	Form I-129 H-1B Receipts Received without Form G-28	Form I-129 H-1B Receipts Received with Form G-28	Total Form I-129 H-1B Receipts	Percentage of Form I-129 H-1B filed with Form G-28
2018	94,055	324,549	418,604	78%
2019	90,845	329,777	420,622	78%
2020	90,192	337,097	427,289	79%
2021	79,195	319,090	398,285	80%
2022	90,574	383,737	474,311	81%
5-year Total	**444,861**	**1,694,250**	**2,139,111**	**79%**
5-year Annual Average	**88,972**	**338,850**	**427,822**	**79%**

Source: USCIS, Office of Policy and Strategy, PRD, CLAIMS3 and ELIS databases, Mar. 13, 2023.

Table 52 shows the estimated annual opportunity cost of time for submitting an H–1B petition employing an in-house or outsourced lawyer to complete and submit an H–1B petition. DHS does not know the exact number of petitioners who will choose an in-house or an outsourced lawyer but assumes it may be a 50/50 split and therefore provides an average. DHS estimates that these current annual opportunity costs of time for filing an H–1B petition using an attorney or other representative range from $77,373,009 to $133,405,245 with an average of $105,389,127.

Table 52. Current Annual Average Opportunity Costs of Time for Filing an H-1B H Supplement Filing with an Attorney or Other Representative

	Population of Petitioners Filing with a Lawyer	Time Burden to Complete Form I-129 H Supplement (Hours)	Cost of Time	Total Current Opportunity Cost
	A	B	C	D=(A×B×C)
In House Lawyer	338,850	2	$114.17	$77,373,009
Outsourced Lawyer	338,850	2	$196.85	$133,405,245
Average				**$105,389,127**

Source: USCIS Analysis

To estimate the current remaining opportunity cost of time for an HR specialist filing Form I–129 H–1B without a lawyer, DHS applies the estimated public reporting time burden (2 hours) to the compensation rate of an HR specialist. Table 53 estimates the current total annual opportunity cost of time to HR specialists completing and

[225] *See* Instructions for Petition for a Nonimmigrant Worker (time burden estimate in the Paperwork Reduction Act section). Form I–129 H Classification Supplement, *https://www.uscis.gov/sites/default/files/document/forms/i-129.pdf.* OMB No. 1615–1615–0009. Expires Nov. 30, 2025. The public reporting burden for this collection of information is estimated at 2 hours (2.0 hours) per response.

filing an H–1B petition will be approximately $9,064,467.

Table 53. Current Average Opportunity Costs of Time for Filing an H-1B H Supplement Filing without an Attorney or Accredited Representative

	Population	Time Burden to Complete Form I-129 H-1B H Supplement (Hours)	HR Specialist's Opportunity Cost of time	Total Opportunity Cost of Time
	A	B	C	D=(A×B×C)
Estimate Form I-129 H-1B H Supplement	88,972	2	$50.94	**$9,064,467**
Source: USCIS Analysis				

Table 54 shows the proposed increased estimated time burden of 2 hours and 4 minutes (2.07 hours) to the eligible population and compensation rates of those who may file with or without a lawyer. DHS does not know the exact number of petitioners who will choose an in-house or an outsourced lawyer but assumes it may be a 50/50 split and therefore provides an average. DHS estimates that these current annual opportunity costs of time for filing an H–1B petition using an attorney or other representative range from $80,081,064 to $138,074,429 with an average of $109,077,747.

Table 54. New Annual Opportunity Costs of Time for Form I-129 H-1B H Supplement Petitioners Filing with an Attorney or Other Representative

	Eligible Population of Petitioners Filing with a Lawyer	Time Burden to Complete Form I-129 H-1B H Supplement (Hours)	Cost of Time	Total Opportunity Cost
	A	B	C	D=(A×B×C)
In House Lawyer	338,850	2.07	$114.17	$80,081,064
Outsourced Lawyer	338,850	2.07	$196.85	$138,074,429
Average				**$109,077,747**
Source: USCIS Analysis				

To estimate the current remaining opportunity cost of time for an HR specialist filing Form I–129 H–1B without a lawyer, DHS applies the estimated public reporting time burden (2.07 hours) to the compensation rate of an HR specialist. Table 55 estimates the current total annual opportunity cost of time to HR specialists completing and filing an H–1B petition will be approximately $9,381,724.

Table 55. Proposed Annual Average Opportunity Costs of Time for Form I-129 H-1B H Supplement Petitioners Filing without an Attorney or Accredited Representative

	Population	Time Burden to Complete Form I-129 H-1B H Supplement (Hours)	HR Specialist's Opportunity Cost of time	Total Opportunity Cost of Time
	A	B	C	D=(A×B×C)
Estimate Form I-129 H-1B H Supplement	88,972	2.07	$50.94	**$9,381,724**
Source: USCIS Analysis				

DHS estimates the total additional annual cost to petitioners completing and filing Form I–129 H–1B are expected to be $4,005,877 shown in Table 56. This table shows the current total opportunity cost of time to file an H–1B H Supplement and the proposed total opportunity cost of time.

Table 56. Total Annual Costs to Form I-129 H-1B H Supplement	
Average Current Opportunity Cost Time for Lawyers to Complete Form I-129 H-1B H Supplement	$105,389,127
Average Current Opportunity Cost Time for HR Specialist to Complete Form I-129 H-1B H Supplement	$9,064,467
Total	**$114,453,594**
Average Proposed Opportunity Cost Time for Lawyers to Complete Form I-129 H-1B H Supplement	$109,077,747
Average Proposed Opportunity Cost Time for HR Specialist to Complete Form I-129 H-1B H Supplement	$9,381,724
Total	**$118,459,471**
Proposed Additional Opportunity Costs of Time for Form I-129 H-1B H Supplement	**$4,005,877**
Source: USCIS Analysis	

4. Alternatives Considered

DHS considered the alternative of eliminating the registration system and reverting to the paper-based filing system stakeholders used prior to implementing registration. However, when DHS considered the immense cost savings that registration provides to both USCIS and stakeholders and the significant resources the agency would incur to revert back to a paper-based H–1B cap selection process, the benefits of having a registration system still outweigh the costs of potential abuse of the system.

DHS is also seeking public comment on how to ensure that the limited number of H–1B cap-subject visas, and new H–1B status grants available each fiscal year are used for non-speculative job opportunities. DHS is seeking public comments on the possible approaches described in the preamble, as well as soliciting ideas that would further curb or eliminate the possibility that petitioners may have speculative job opportunities at the time of filing or approval of H–1B petitions and delay admission of H–1B beneficiaries until they have secured work for them.

5. Total Quantified Net Costs of the Proposed Regulatory Changes

In this section, DHS presents the total annual cost savings of this proposed rule annualized over a 10-year period of analysis. Table 57 details the annual cost savings of this proposed rule. DHS estimates the total cost savings is $5,920,408.

Table 57. Summary of Cost Savings	
Description	**Cost Savings**
Amended Petitions	$297,673
Deference to prior USCIS Determinations of Eligibility	$338,412
Eliminating the Itinerary Requirement for H Programs	$708,491
Beneficiary Centric Selection Cost of Time	$3,840,822
Beneficiary Centric Selection Cost of Registrations	$735,010
Total Cost Savings	**$5,920,408**
Source: USCIS Analysis	

DHS summarizes the annual costs of this proposed rule. Table 58 details the annual costs of this proposed rule. DHS estimates the total cost is $12,260,187.

Table 58. Summary of Costs	
Description	**Costs**
The H-1B Registration System	$3,001,285
Cost of Worksite Inspection for H-1B Workers	$674,881
Additional Time Burden H-1B	$4,578,144
Additional Time Burden for H Classification Supplement	$4,005,877
Total Costs	**$12,260,187**
Source: USCIS Analysis	

Net costs to the public of $6,339,779 are the total costs minus cost savings.[226] Table 59 illustrates that over a 10-year period of analysis from FY 2023 through FY 2032 annualized costs would be $6,339,779 using 7-percent and 3-percent discount rates.

Table 59. Discounted Net Costs Over a 10-Year Period of Analysis

Fiscal Year	Total Estimated Cost	
	$6,339,779 (Undiscounted)	
	Discounted at 3 percent	Discounted at 7 percent
2023	$6,155,125	$5,925,027
2024	$5,975,850	$5,537,409
2025	$5,801,796	$5,175,148
2026	$5,632,812	$4,836,587
2027	$5,468,749	$4,520,175
2028	$5,309,465	$4,224,462
2029	$5,154,820	$3,948,096
2030	$5,004,680	$3,689,809
2031	$4,858,913	$3,448,420
2032	$4,717,391	$3,222,822
10-year Total	**$54,079,601**	**$44,527,955**
Annualized Cost	**$6,339,779**	**$6,339,779**

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B. Regulatory Flexibility Act (RFA)

1. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 and 602, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. 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.[227]

An ''individual'' is not considered a small entity and costs to an individual are not considered a small entity impact for RFA purposes. In addition, the courts have held that the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates small entities.[228] Consequently, indirect impacts from a rule on a small entity are not considered as costs for RFA purposes.

a. USCIS's RFA analysis for this proposed rule focuses on the population of Form I–129 petitions for H–1B workers. Where cost savings occur from multiple registrants no longer registering on behalf of a common beneficiary, either deliberately or inadvertently, USCIS is unable to quantify the portion of potential cost savings accruing to small entities. Some of these cost savings may be partially offset by the advantage multiple registrations conferred over single, unique registrants, but it is ambiguous whether such small entities enjoy this advantage or feel increasingly compelled to do this by their belief that other lottery competitors are doing so. A Description of the Reasons Why the Action by the Agency Is Being Considered

The purpose of this rulemaking is to modernize and improve the regulations relating to the H–1B program by: (1) streamlining the requirements of the H–1B program; (2) improving program efficiency; (3) providing greater flexibility for petitioners and beneficiaries; and (4) improving integrity measures.

b. A Statement of the Objectives of, and Legal Basis for, the Proposed Rule

DHS's objectives and legal authority for this proposed rule are discussed earlier in the preamble.

c. A Description and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Changes Would Apply

For this analysis, DHS conducted a sample analysis of historical Form I–129 H–1B petitions to estimate the number of small entities impacted by this proposed rule. DHS utilized a subscription-based electronic database of U.S. entities, ReferenceUSA, as well as three other open-access, free databases of public and private entities, Manta, Cortera, and Guidestar to determine the North American Industry Classification System (NAICS) code, revenue, and employee count for each entity. To determine whether an entity is small for purposes of RFA, DHS first classified the entity by its NAICS code and then used Small Business Administration (SBA) guidelines to classify the revenue or employee count threshold for each entity. Some entities were classified as small based on their annual revenue, and some by their numbers of employees.

Using FY 2022 internal data on actual filings of Form I–129 H–1B petitions, DHS identified 44,593 unique entities. DHS devised a methodology to conduct the small entity analysis based on a representative, random sample of the potentially impacted population. DHS first determined the minimum sample size necessary to achieve a 95-percent

[226] Calculations: $12,260,187 Total Costs – $5,920,217 Total Cost Savings = $6,339,779 Net Costs.

[227] A small business is defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act, 15 U.S.C. 632.

[228] See Small Business Administration, *A Guide For Government Agencies, How to Comply with the* Regulatory Flexibility Act. *https://advocacy.sba.gov/wp-content/uploads/2019/06/How-to-Comply-with-the-RFA.pdf* (last visited Aug. 23 2023).

confidence level confidence interval estimation for the impacted population of entities using the standard statistical formula at a 5-percent margin of error. DHS then created a sample size greater than the minimum necessary to increase the likelihood that our matches would meet or exceed the minimum required sample.

DHS randomly selected a sample of 3,396 entities from the population of 44,593 entities that filed Form I–129 for H–1B petitions in FY 2022. Of the 3,396 entities, 1,724 entities returned a successful match of a filing entity in the ReferenceUSA, Manta, Cortera, and Guidestar databases; 1,672 entities did not return a match. Using these databases' revenue or employee count and their assigned NAICS code, DHS determined 1,209 of the 1,724 matches to be small entities, 515 to be non-small entities. DHS assumes filing entities without database matches or missing revenue/employee count data are likely to be small entities. As a result, in order to prevent underestimating the number of small entities this proposed rule would affect, DHS considers all the non-matched and missing entities as small entities for the purpose of this analysis. Therefore, DHS classifies 2,881 of 3,396 entities as small entities, including combined non-matches (1,672), and small entity matches (1,209). Thus, DHS estimates that 84.8 percent (2,881 of 3,396) of the entities filing Form I–129 H–1B petitions are small entities.

In this analysis DHS assumes that the distribution of firm size for our sample is the same as the entire population of Form I–129 H–1B petitioners. Thus, DHS estimates the number of small entities to be 84.8 percent of the population of 44,593 entities that filed Form I–129 under the H–1B classification, as summarized in Table 60 below. The annual numeric estimate of the small entities impacted by this proposed rule is 37,815 entities.[229]

Table 60. Number of Small Entities for Form I-129 for H-1B, FY 2022

Population	Number of Small Entities	Proportion of Population (Percent)
44,593	37,815	84.8%

It should be acknowledged here that DHS's sample frame excludes H–2 petitioners identified by the RIA as benefitting from the proposal to no longer require itineraries, because this requirement has no adverse impacts to small entities and DHS has not identified opportunities to further enhance this benefit to small entities. Similarly, the proposal to codify deference has no adverse impacts to small entities. Additionally, while the proposed clarity for evidence of maintenance of status may indirectly impact small entities filing such petitions and applications, the costs and benefits fall predominantly and more directly upon the individuals.

Following the distributional assumptions above, DHS uses the set of 1,209 small entities with matched revenue data to estimate the economic impact of the proposed rule on each small entity. The economic impact, in percentage, for each small entity is the sum of the impacts of the proposed changes divided by the entity's sales revenue.[230] DHS constructed the distribution of economic impact of the proposed rule based on the sample of 1,209 small entities. USCIS multiplied the proposed increase in cost per petition by the number of petitions filed by a small entity in FY22 to estimate the increase in cost to that small entity. USCIS then divided the increase in cost to that small entity by the annual revenue generated by that small entity. The average number of petitions filed per small entity was 10.3. Consequently, the average quantified increase per small entity was $152.43. Based on FY 2022 revenue, of the 1,209 small entities, 0 percent (0 small entities) would experience a cost increase that is greater than 1 percent of revenues.

In addition to the quantitated costs to small entities, employers who do not cooperate with site visits who would face denial or revocation of their petition(s), which could result in costs to those businesses.

d. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement and the Types of Professional Skills

The proposed beneficiary-centric selection process would result in additional burden to employers reporting beneficiaries' passport information in the registration system, on Form I–129 H–1B petition and on H Classification Supplement to Form I–129. DHS estimates increase for each of these respective burdens is 5 minutes.

e. An Identification of All Relevant Federal Rules, to the Extent Practical, That May Duplicate, Overlap, or Conflict With the Proposed Rule

DHS is unaware of any duplicative, overlapping, or conflicting Federal rules, but invites any comment and information regarding any such rules.

f. A Description of Any Significant Alternatives to the Proposed Rule That Accomplish the Stated Objectives of Applicable Statutes and That Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

With respect to beneficiary-centric lottery, there are no burdens to be minimized. While collection of passport information imposes some burden to prospective employers, USCIS found no other alternatives that achieved stated objectives with less burden to small entities.

C. Unfunded Mandates Reform Act of 1995 (UMRA)

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed rule, or final rule for which the agency published a

[229] The annual numeric estimate of the small entities (37,815) = Population (44,593) * Percentage of small entities (84.8%).

[230] The economic impact, in percentage, for each small entity *i* = ((Cost of one petition for entity *i* × Number of petitions for entity *i*)/Entity *i*'s sales revenue) × 100.

The cost of one petition for entity *i* ($14.82) is estimated by dividing the total cost of this proposed rule by the estimated population. $6,339,779/427,822 = $14.82.

The entity's sales revenue is taken from ReferenceUSA, Manta, Cortera, and Guidestar databases.

proposed rule, that includes any Federal mandate that may result in a $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.[231]

In addition, the inflation-adjusted value of $100 million in 1995 is approximately $192 million in 2022 based on the Consumer Price Index for All Urban Consumers (CPI–U).[232] This proposed rule does not contain a Federal mandate as the term is defined under UMRA.[233] The requirements of title II of UMRA, therefore, do not apply, and DHS has not prepared a statement under UMRA.

D. 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 Executive Order 13132, it is determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

E. Executive Order 12988: Civil Justice Reform

This proposed rule was drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform. This proposed rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. DHS has determined that this proposed rule meets the applicable standards provided in section 3 of E.O. 12988.

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

This proposed rule does not have ''tribal implications'' because, if finalized, it would not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Accordingly, E.O. 13175, Consultation and Coordination with Indian Tribal Governments, requires no further agency action or analysis.

G. National Environmental Policy Act (NEPA)

DHS and its components analyze proposed actions to determine whether the National Environmental Policy Act (NEPA) [234] applies to them and, if so, what degree of analysis is required. DHS Directive 023–01, Rev. 01 (Directive) and Instruction Manual 023–01–001–01, Rev. 01 (Instruction Manual) [235] establish the procedures DHS and its components use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA.[236] The CEQ regulations allow Federal agencies to establish in their NEPA implementing procedures categories of actions (''categorical exclusions'') that experience has shown normally do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require preparation of an Environmental Assessment or Environmental Impact Statement.[237] Instruction Manual, Appendix A, Table 1 lists the DHS categorical exclusions.

Under DHS NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) The entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect.[238]

As discussed throughout this preamble, this rulemaking includes a number of proposed regulatory improvements affecting H–1B specialty occupation workers, as well as a couple of provisions affecting other nonimmigrant classifications, including: H–2, H–3, F–1, L–1, O, P, Q–1, R–1, E–3, and TN. If finalized, this proposed rule is intended to modernize and improve the efficiency of the H–1B program by: (1) amending the definition of a ''specialty occupation'' and the specialty occupation criteria; (2) clarifying when to file an amended petition; (3) codifying deference given to prior USCIS determinations regarding the petitioner's, beneficiary's, or applicant's eligibility, when adjudicating certain extension requests (both H–1B and other nonimmigrant classifications) involving the same parties and the same underlying facts; (4) clarifying when a petitioner is required to submit evidence of maintenance of status; (5) eliminating the itinerary requirement for H nonimmigrant classifications; and (6) allowing H–1B petitioners to amend requested validity periods when the validity expires before adjudication. If finalized, this rulemaking will also modernize exemptions from the H–1B cap, extend automatic ''cap-gap'' extensions, and codify start date flexibility for certain cap-subject H–1B petitions. In addition, any final rule resulting from this NPRM will improve program integrity by curbing abuse of the H–1B registration process, including through beneficiary-centric selection; codifying USCIS's authority to request contracts; requiring that the petitioner establish that it will employ the beneficiary in a non-speculative position in a specialty occupation; verifying that the LCA corresponds with the petition; revising the definition of U.S. employer; eliminating the employer-employee relationship requirement; codifying the existing requirement that the petitioner have a bona fide job offer for the beneficiary to work within the United States; requiring that petitioners have a legal presence in the United States and be amenable to service of process in the United States; clarifying that beneficiary-owners may qualify for H–1B status; conducting site visits; and codifying the requirement that the specialty occupation determination be assessed based on the third party, rather than the petitioner, if a beneficiary will be staffed to a third party.

DHS is not aware of any significant impact on the environment, or any change in the environmental effect from

[231] *See* 2 U.S.C. 1532(a).

[232] *See* BLS, ''Historical Consumer Price Index for All Urban Consumers (CPI–U): U.S. city average, all items, by month,'' *www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202212.pdf* (last visited Jan. 19, 2023). Calculation of inflation: (1) Calculate the average monthly CPI–U for the reference year (1995) and the current year (2022); (2) Subtract reference year CPI–U from current year CPI–U; (3) Divide the difference of the reference year CPI–U and current year CPI–U by the reference year CPI–U; (4) Multiply by 100 = [(Average monthly CPI–U for 2022 − Average monthly CPI–U for 1995)/(Average monthly CPI–U for 1995)]*100=[(292.655–152.383)/152.383]*100=(140.272/152.383)*100=0.92052263*100=92.05 percent = 92 percent (rounded). Calculation of inflation-adjusted value: $100 million in 1995 dollars*1.92=$192 million in 2022 dollars.

[233] The term ''Federal mandate'' means a Federal intergovernmental mandate or a Federal private sector mandate. *See* 2 U.S.C. 1502(1), 658(6).

[234] *See* Public Law 91–190, 42 U.S.C. 4321 through 4347.

[235] *See* DHS, ''Implementing the National Environmental Policy Act,'' DHS Directive 023–01, Rev 01 (Oct. 31, 2014), and DHS Instruction Manual Rev. 01 (Nov. 6, 2014), *https://www.dhs.gov/publication/directive-023-01-rev-01-and-instruction-manual-023-01-001-01-rev-01-and-catex.*

[236] *See* 40 CFR parts 1500 through 1508.

[237] *See* 40 CFR 1501.4(a).

[238] *See* Instruction Manual, section V.B.2 (a–c).

current H–1B and other impacted nonimmigrant program rules, that will result from the proposed rule changes. DHS therefore finds this proposed rule clearly fits within categorical exclusion A3 established in the Department's implementing procedures.

The proposed amendments, if finalized, would be stand-alone rule changes and are not a part of any larger action. In accordance with the Instruction Manual, DHS finds no extraordinary circumstances associated with the proposed rules that may give rise to significant environmental effects requiring further environmental analysis and documentation. Therefore, this action is categorically excluded and no further NEPA analysis is required.

H. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501–12, DHS must submit to OMB, for review and approval, any reporting requirements inherent in a rule unless they are exempt.

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the agency name and OMB Control Number 1615–0144 and/or 1615–0009 in the body of the letter. Please refer to the **ADDRESSES** and I. Public Participation section of this proposed rule for instructions on how to submit comments. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, 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.

H–1B Registration Tool (OMB Control No. 1615–0144)

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* H–1B Registration Tool.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* OMB–64; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. USCIS uses the data collected on this form to determine which employers will be informed that they may submit a USCIS Form I–129, Petition for Nonimmigrant Worker, for H–1B classification.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection H–1B Registration Tool (Businesses) is 20,950 and the estimated hour burden per response is 0.6 hours. The estimated total number of respondents for the information collection H–1B Registration Tool (Attorneys) is 19,339 and the estimated hour burden per response is 0.6 hours. The total number of responses (355,590) is estimated by averaging the total number of registrations received during the H–1B cap fiscal years 2021, 2022, and 2023.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 213,354 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0.

Form I–129 (OMB Control No. 1615–0009)

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition for Nonimmigrant Worker.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–129, E–1/E–2 Classification Supplement, Trade Agreement Supplement, H Classification Supplement, H–1B and H–1B1 Data Collection and Filing Exemption Supplement, L Classification Supplement, O and P Classification Supplement, Q–1 Classification Supplement, and R–1 Classification Supplement; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. USCIS uses Form I–129 and accompanying supplements to determine whether the petitioner and beneficiary(ies) is (are) eligible for the nonimmigrant classification. A U.S. employer, or agent in some instances, may file a petition for nonimmigrant worker to employ foreign nationals under the following nonimmigrant classifications: H–1B, H–2A, H–2B, H–3, L–1, O–1, O–2, P–1, P–2, P–3, P–1S, P–2S, P–3S, Q–1, or R–1 nonimmigrant worker. The collection of this information is also required from a U.S. employer on a petition for an extension of stay or change of status for E–1, E–2, E–3, Free Trade H–1B1 Chile/Singapore nonimmigrants and TN (USMCA workers) who are in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–129 is 294,751 and the estimated hour burden per response is 2.42 hours. The estimated total number of respondents for the information collection E–1/E–1 Classification Supplement is 4,760 and the estimated hour burden per response is 0.67 hours. The estimated total number of respondents for the information collection Trade Agreement Supplement is 3,057 and the estimated hour burden per response is 0.67 hours. The estimated total number of respondents for the information collection H Classification is 96,291 and the estimated hour burden per response is 2.07 hours. The estimated total number of respondents for the information collection H–1B and H–1B1 Data Collection and Filing Fee Exemption Supplement is 96,291 and the estimated hour burden per response is 1 hour. The estimated total number of respondents for the information collection L Classification Supplement is 37,831 and the estimated hour burden per response is 1.34 hour. The estimated total number of respondents for the information collection O and P Classification Supplement is 22,710 and the estimated hour burden per response is 1 hour. The estimated total number of respondents for the information collection Q–1 Classification Supplement is 155 and the estimated hour burden per response is 0.34 hours. The estimated total number of respondents for the information collection R–1

Classification Supplement is 6,635 and the estimated hour burden per response is 2.34 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 1,103,130 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $70,681,290.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Cultural exchange program, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

Accordingly, DHS proposes to amend chapter I of title 8 of the Code of Federal Regulations as follows:

PART 214—NONIMMIGRANT CLASSES

■ 1. The authority citation for part 214 continues to read as follows:

Authority: 6 U.S.C. 202, 236; 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305, 1357, and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2; Pub. L. 115–218, 132 Stat. 1547 (48 U.S.C. 1806).

■ 2. Amend § 214.1 by:
■ a. Revising paragraphs (c)(1) and (4);
■ b. Redesignating paragraph (c)(5) as paragraph (c)(7);
■ c. Adding new paragraph (c)(5) and paragraph (c)(6); and
■ d. Revising newly redesignated paragraph (c)(7).

The revisions and additions read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

* * * * *

(c) * * *

(1) *Extension or amendment of stay for certain employment-based nonimmigrant workers.* An applicant or petitioner seeking the services of an E–1, E–2, E–3, H–1B, H–1B1, H–2A, H–2B, H–3, L–1, O–1, O–2, P–1, P–2, P–3, P–1S, P–2S, P–3S, Q–1, R–1, or TN nonimmigrant beyond the period previously granted, or seeking to amend the terms and conditions of the nonimmigrant's stay without a request for additional time, must file for an extension of stay or amendment of stay, on Form I–129, with the fee prescribed in 8 CFR 103.7, with the initial evidence specified in § 214.2, and in accordance with the form instructions. Dependents holding derivative status may be included in the petition if it is for only one worker and the form version specifically provides for their inclusion. In all other cases, dependents of the worker should file extensions of stay using Form I–539.

* * * * *

(4) *Timely filing and maintenance of status.* (i) An extension or amendment of stay may not be approved for an applicant or beneficiary who failed to maintain the previously accorded status or where such status expired before the application or petition was filed, except that USCIS may excuse the late filing in its discretion where it is demonstrated at the time of filing that:

(A) The delay was due to extraordinary circumstances beyond the control of the applicant or petitioner, and USCIS finds the delay commensurate with the circumstances;

(B) The applicant or beneficiary has not otherwise violated their nonimmigrant status;

(C) The applicant or beneficiary remains a bona fide nonimmigrant; and

(D) The applicant or beneficiary is not the subject of deportation proceedings under section 242 of the Act (prior to April 1, 1997) or removal proceedings under section 240 of the Act.

(ii) If USCIS excuses the late filing of an extension of stay or amendment of stay request, it will do so without requiring the filing of a separate application or petition and will grant the extension of stay from the date the previously authorized stay expired or the amendment of stay from the date the petition was filed.

(5) *Deference to prior USCIS determinations of eligibility.* When adjudicating a request filed on Form I–129 involving the same parties and the same underlying facts, USCIS gives deference to its prior determination of the petitioner's, applicant's, or beneficiary's eligibility. However, USCIS need not give deference to a prior approval if: there was a material error involved with a prior approval; there has been a material change in circumstances or eligibility requirements; or there is new, material information that adversely impacts the petitioner's, applicant's, or beneficiary's eligibility.

(6) *Evidence of maintenance of status.* When requesting an extension or amendment of stay on Form I–129, an applicant or petitioner must submit supporting evidence to establish that the applicant or beneficiary maintained the previously accorded nonimmigrant status before the extension or amendment request was filed. Evidence of such maintenance of status may include, but is not limited to: copies of paystubs, W–2 forms, quarterly wage reports, tax returns, contracts, and work orders.

(7) *Decision on extension or amendment of stay request.* Where an applicant or petitioner demonstrates eligibility for a requested extension or amendment of stay, USCIS may grant the extension or amendment in its discretion. The denial of an extension or amendment of stay request may not be appealed.

* * * * *

■ 3. Amend § 214.2 by:
■ a. Revising paragraph (f)(5)(vi)(A);
■ b. Removing and reserving paragraph (h)(2)(i)(B);
■ c. Revising paragraphs (h)(2)(i)(E), (F), and (G) and (h)(4)(i)(B);
■ d. Revising the definitions of ''Specialty occupation'' and ''United States employer'' in paragraph (h)(4)(ii);
■ e. Revising paragraphs (h)(4)(iii) heading and (h)(4)(iii)(A);
■ f. Adding paragraph (h)(4)(iii)(F);
■ g. Revising paragraph (h)(4)(iv) introductory text;
■ h. Adding paragraph (h)(4)(iv)(C);
■ i. Revising paragraphs (h)(8)(iii)(A)(*1*), (*2*), (*4*), and (*5*), (h)(8)(iii)(A)(*6*)(*i*) and (*ii*), (h)(8)(iii)(A)(*7*), (h)(8)(iii)(D) and (E), (h)(8)(iii)(F)(*2*)(*iv*), (h)(8)(iii)(F)(*4*), and (h)(9)(i);
■ j. Adding paragraphs (h)(9)(ii)(D) and (h)(9)(iii)(E);
■ k. Revising paragraph (h)(10)(ii);
■ l. Adding paragraph (h)(10)(iii);
■ m. Revising paragraphs (h)(11)(ii) and (h)(11)(iii)(A)(*2*) and (*5*);
■ n. Adding paragraphs (h)(11)(iii)(A)(*6*) and (*7*); and
■ o. Revising paragraphs (h)(14), (h)(19)(iii)(B)(*4*), (h)(19)(iii)(C), (h)(19)(iv), (l)(14)(i), (o)(11), and (p)(13).

The revisions and additions read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(f) * * *

(5) * * *

(vi) * * *

(A) The duration of status, and any employment authorization granted under 8 CFR 274a.12(c)(3)(i)(B) or (C), of an F–1 student who is the beneficiary of an H–1B petition subject to section 214(g)(1)(A) of the Act (8 U.S.C. 1184(g)(1)(A)) and who requests a change of status will be automatically extended until April 1 of the fiscal year

for which such H–1B status is being requested or until the validity start date of the approved petition, whichever is earlier, where such petition:

(*1*) Has been timely filed;

(*2*) Requests an H–1B employment start date in the fiscal year for which such H–1B status is being requested consistent with paragraph (h)(2)(i)(I) of this section; and

(*3*) Is nonfrivolous.

* * * * *

(h) * * *

(2) * * *

(i) * * *

(E) *Amended or new petition*—(*1*) *General provisions.* The petitioner must file an amended or new petition, with the appropriate fee and in accordance with the form instructions, to reflect any material changes in the terms and conditions of employment or training or the beneficiary's eligibility as specified in the original approved petition. An amended or new H–1B, H–2A, or H–2B petition must be accompanied by a current or new Department of Labor determination. In the case of an H–1B petition, the requirement in this paragraph (h)(2)(i)(E)(*1*) includes a current or new certified labor condition application.

(*2*) *Additional H–1B provisions.* The amended or new petition must be properly filed before the material change(s) takes place. The beneficiary is not authorized to work under the materially changed terms and conditions of employment until the new or amended H–1B petition is approved and takes effect, unless the beneficiary is eligible for H–1B portability pursuant to paragraph (h)(2)(i)(H) of this section. Any change in the place of employment to a geographical area that requires a corresponding labor condition application to be certified to USCIS is considered a material change and requires an amended or new petition to be filed with USCIS before the H–1B worker may begin work at the new place of employment. Provided there are no material changes in the terms and conditions of the H–1B worker's employment, a petitioner does not need to file an amended or new petition when:

(*i*) Moving a beneficiary to a new job location within the same area of intended employment as listed on the labor condition application certified to USCIS in support of the current H–1B petition approval authorizing the H–1B nonimmigrant's employment;

(*ii*) Placing a beneficiary at a short-term placements(s) or assignment(s) at any worksite(s) outside of the area of intended employment for a total of 30 days or less in a 1-year period, or for a total of 60 days or less in a 1-year period where the H–1B beneficiary continues to maintain an office or work station at their permanent worksite, the beneficiary spends a substantial amount of time at the permanent worksite in a 1-year period, and the beneficiary's residence is located in the area of the permanent worksite and not in the area of the short-term worksite(s); or

(*iii*) An H–1B beneficiary is going to a non-worksite location to participate in employee development, will be spending little time at any one location, or when the job is peripatetic in nature, in that the normal duties of the beneficiary's occupation (rather than the nature of the employer's business) requires frequent travel (local or non-local) from location to location. Peripatetic jobs include situations where the job is primarily at one location, but the beneficiary occasionally travels for short periods to other locations on a casual, short-term basis, which can be recurring but not excessive (*i.e.,* not exceeding 5 consecutive workdays for any one visit by a peripatetic worker, or 10 consecutive workdays for any one visit by a worker who spends most work time at one location and travels occasionally to other locations).

(F) *Agents as petitioners.* A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act on its behalf. A United States agent may be: the actual employer of the beneficiary; the representative of both the employer and the beneficiary; or a person or entity authorized by the employer to act for, or in place of, the employer as its agent. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation. In questionable cases, a contract between the employers and the beneficiary or beneficiaries may be required.

(*1*) An agent performing the function of an employer must guarantee the wages and other terms and conditions of employment by contractual agreement with the beneficiary or beneficiaries of the petition.

(*2*) A foreign employer who, through a United States agent, files a petition for an H nonimmigrant alien is responsible for complying with all of the employer sanctions provisions of section 274A of the Act and 8 CFR part 274a.

(G) *Multiple H–1B petitions or registrations.* An employer may not file or submit, in the same fiscal year, more than one H–1B petition or registration on behalf of the same alien if the alien is subject to the numerical limitations of section 214(g)(1)(A) of the Act or is eligible for exemption from those limitations under section 214(g)(5)(C) of the Act. However, if an H–1B petition is denied, on a basis other than fraud or misrepresentation, the employer may file a subsequent H–1B petition on behalf of the same alien in the same fiscal year, provided that USCIS continues to accept registrations, or petitions if registration is suspended, towards the numerical allocations and there is a valid registration that was selected on behalf of that beneficiary, or if the filing qualifies as exempt from the applicable numerical limitations. Otherwise, filing or submitting more than one H–1B petition or registration by an employer on behalf of the same alien in the same fiscal year may result in the denial or revocation of all such petitions and invalidation of all such registrations. If USCIS believes that related entities (including, but not limited to, a parent company, subsidiary, or affiliate) may not have a legitimate business need to file or submit more than one H–1B petition or registration on behalf of the same alien subject to the numerical limitations of section 214(g)(1)(A) of the Act or otherwise eligible for an exemption under section 214(g)(5)(C) of the Act, USCIS may issue a request for evidence, notice of intent to deny, or notice of intent to revoke each petition. If any of the related entities fail to demonstrate a legitimate business need to file or submit an H–1B petition or registration on behalf of the same alien, all petitions filed on that alien's behalf by the related entities may be denied or revoked, and all such registrations invalidated. This limitation on petitions and registrations will not apply if the multiple filings or submissions occurred as a result of USCIS requiring petitioners to refile or resubmit previously submitted petitions or registrations.

* * * * *

(4) * * *

(i) * * *

(B) *General requirements for petitions involving a specialty occupation*—(*1*) *Labor condition application requirements.* (*i*) Before filing a petition for H–1B classification in a specialty occupation, the petitioner must obtain a certified labor condition application from the Department of Labor in the occupational specialty in which the alien(s) will be employed.

(*ii*) Certification by the Department of Labor of a labor condition application in

an occupational classification does not constitute a determination by the agency that the occupation in question is a specialty occupation. USCIS will determine whether the labor condition application involves a specialty occupation as defined in section 214(i)(1) of the Act and properly corresponds with the petition. USCIS will also determine whether all other eligibility requirements have been met, such as whether the alien for whom H–1B classification is sought qualifies to perform services in the specialty occupation as prescribed in section 214(i)(2) of the Act.

(*iii*) If all of the beneficiaries covered by an H–1B labor condition application have not been identified at the time a petition is filed, petitions for newly identified beneficiaries may be filed at any time during the validity of the labor condition application using photocopies of the same certified labor condition application. Each petition must refer by file number to all previously approved petitions for that labor condition application.

(*iv*) When petitions have been approved for the total number of workers specified in the labor condition application, substitution of aliens against previously approved openings cannot be made. A new labor condition application will be required.

(*v*) If the Secretary of Labor notifies USCIS that the petitioning employer has failed to meet a condition of paragraph (B) of section 212(n)(1) of the Act, has substantially failed to meet a condition of paragraphs (C) or (D) of section 212(n)(1) of the Act, has willfully failed to meet a condition of paragraph (A) of section 212(n)(1) of the Act, or has misrepresented any material fact in the application, USCIS will not approve petitions filed with respect to that employer under section 204 or 214(c) of the Act for a period of at least 1 year from the date of receipt of such notice.

(*vi*) If the employer's labor condition application is suspended or invalidated by the Department of Labor, USCIS will not suspend or revoke the employer's approved petitions for aliens already employed in specialty occupations if the employer has certified to the Department of Labor that it will comply with the terms of the labor condition application for the duration of the authorized stay of aliens it employs.

(*2*) *Inspections, evaluations, verifications, and compliance reviews.* (*i*) The information provided on an H–1B petition and the evidence submitted in support of such petition may be verified by USCIS through lawful means as determined by USCIS, including telephonic and electronic verifications and onsite inspections. Such verifications and inspections may include, but are not limited to: electronic validation of a petitioner's or third party's basic business information; visits to the petitioner's or third party's facilities; interviews with the petitioner's or third party's officials; reviews of the petitioner's or third party's records related to compliance with immigration laws and regulations; and interviews with any other individuals possessing pertinent information, as determined by USCIS, which may be conducted in the absence of the employer or the employer's representatives; and reviews of any other records that USCIS may lawfully obtain and that it considers pertinent to verify facts related to the adjudication of the H–1B petition, such as facts relating to the petitioner's and beneficiary's H–1B eligibility and compliance. The interviews may be conducted on the employer's property, or as feasible, at a neutral location agreed to by the interviewee and USCIS away from the employer's property. An inspection may be conducted at locations including the petitioner's headquarters, satellite locations, or the location where the beneficiary works, has worked, or will work, including third party worksites, as applicable. USCIS may commence verification or inspection under this paragraph for any petition and at any time after an H–1B petition is filed, including any time before or after the final adjudication of the petition. The commencement of such verification and inspection before the final adjudication of the petition does not preclude the ability of USCIS to complete final adjudication of the petition before the verification and inspection are completed.

(*ii*) USCIS conducts on-site inspections or other compliance reviews to verify facts related to the adjudication of the petition and compliance with H–1B petition requirements. If USCIS is unable to verify facts, including due to the failure or refusal of the petitioner or a third party to cooperate in an inspection or other compliance review, then such inability to verify facts, including due to failure or refusal to cooperate, may result in denial or revocation of any H–1B petition for H–1B workers performing services at the location or locations that are a subject of inspection or compliance review, including any third party worksites.

(*3*) *Third party requirements.* If the beneficiary will be staffed to a third party, meaning they will be contracted to fill a position in a third party's organization and becomes part of that third party's organizational hierarchy by filling a position in that hierarchy (and not merely providing services to the third party), the actual work to be performed by the beneficiary must be in a specialty occupation. When staffed to a third party, it is the requirements of that third party, and not the petitioner, that are most relevant when determining whether the position is a specialty occupation.

* * * * *

(ii) * * *

Specialty occupation means an occupation that requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and that requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States. The required specialized studies must be directly related to the position. A position is not a specialty occupation if attainment of a general degree, such as business administration or liberal arts, without further specialization, is sufficient to qualify for the position. A position may allow a range of degrees or apply multiple bodies of highly specialized knowledge, provided that each of those qualifying degree fields or each body of highly specialized knowledge is directly related to the position.

United States employer means a person, firm, corporation, contractor, or other association, or organization in the United States that:

(*1*) Has a bona fide job offer for the beneficiary to work within the United States, which may include telework, remote work, or other off-site work within the United States;

(*2*) Has a legal presence in the United States and is amenable to service of process in the United States; and

(*3*) Has an Internal Revenue Service Tax identification number.

(*4*) If the H–1B beneficiary possesses a controlling interest in the petitioner, such a beneficiary may perform duties that are directly related to owning and directing the petitioner's business as long as the beneficiary will perform specialty occupation duties a majority of the time, consistent with the terms of the H–1B petition.

(iii) *General H–1B requirements*—(A) *Criteria for specialty occupation position.* A position does not meet the definition of specialty occupation in paragraph (h)(4)(ii) of this section unless

it also satisfies at least one of the following criteria at paragraphs (h)(4)(iii)(A)(*1*) through (*4*) of this section:

(*1*) A U.S. baccalaureate or higher degree in a directly related specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular occupation;

(*2*) A U.S. baccalaureate or higher degree in a directly related specific specialty, or its equivalent, is normally required for parallel positions among similar organizations in the employer's United States industry;

(*3*) The employer, or third party if the beneficiary will be staffed to that third party, normally requires a U.S. baccalaureate or higher degree in a directly related specific specialty, or its equivalent, for the position; or

(*4*) The specific duties of the proffered position are so specialized, complex, or unique that the knowledge required to perform the duties are normally associated with the attainment of a U.S. baccalaureate or higher degree in a directly related specific specialty, or its equivalent.

(*5*) For purposes of the criteria at paragraphs (h)(4)(iii)(A)(*1*) through (*4*) of this section, normally means conforming to a type, standard, or regular pattern, and is characterized by that which is considered usual, typical, common, or routine. Normally does not mean always.

* * * * *

(F) *Non-speculative position in a specialty occupation.* At the time of filing, the petitioner must establish that it has a non-speculative position in a specialty occupation available for the beneficiary as of the start date of the validity period as requested on the petition.

(iv) *General documentary requirements for H–1B classification in a specialty occupation.* Except as specified in paragraph (h)(4)(iv)(C) of this section, an H–1B petition involving a specialty occupation must be accompanied by:

* * * * *

(C) In accordance with 8 CFR 103.2(b) and paragraph (h)(9) of this section, USCIS may request evidence such as contracts, work orders, or other similar evidence between all parties in a contractual relationship showing the terms and conditions of the beneficiary's work and the minimum educational requirements to perform the duties.

* * * * *

(8) * * *

(iii) * * *

(A) * * *

(*1*) *Registration requirement.* Except as provided in paragraph (h)(8)(iv) of this section, before a petitioner can file an H–1B cap-subject petition for a beneficiary who may be counted under section 214(g)(1)(A) of the Act (''H–1B regular cap'') or eligible for exemption under section 214(g)(5)(C) of the Act (''H–1B advanced degree exemption''), the petitioner must register to file a petition on behalf of a beneficiary electronically through the USCIS website (*www.uscis.gov*). To be eligible to file a petition for a beneficiary who may be counted against the H–1B regular cap or the H–1B advanced degree exemption for a particular fiscal year, a registration must be properly submitted in accordance with 8 CFR 103.2(a)(1), paragraph (h)(8)(iii) of this section, and the form instructions, for the same fiscal year.

(*2*) *Limitation on beneficiaries.* A prospective petitioner must electronically submit a separate registration for each beneficiary it seeks to register, and each beneficiary must be named. A petitioner may only submit one registration per beneficiary in any fiscal year. If a petitioner submits more than one registration per beneficiary in the same fiscal year, all registrations filed by that petitioner relating to that beneficiary for that fiscal year may be considered invalid, and USCIS may deny or revoke the approval of any petition filed for the beneficiary based on those registrations. If USCIS determines that registrations were submitted for the same beneficiary by the same or different registrants, but using different identifying information, USCIS may find those registrations invalid and deny or revoke the approval of any petition filed based on those registrations. Petitioners will be given notice and the opportunity to respond before USCIS denies or revokes the approval of a petition.

* * * * *

(*4*) *Selecting registrations based on unique beneficiaries.* Registrations will be counted based on the number of unique beneficiaries who are registered.

(*i*) Should a random selection be necessary, each unique beneficiary will only be counted once towards the random selection of registrations, regardless of how many registrations were submitted for that beneficiary. A petitioner may file an H–1B cap-subject petition on behalf of a registered beneficiary only after a registration for that beneficiary has been selected for that fiscal year. USCIS will notify all registrants that submitted a registration on behalf of a selected beneficiary that they may file a petition for that beneficiary.

(*ii*) Registrations must include the beneficiary's valid passport information, as specified in the form instructions. Each beneficiary must only be registered under one passport, and if the beneficiary is abroad, the passport information must correspond to the passport the beneficiary intends to use to enter the United States.

(*5*) *Regular cap selection.* In determining whether there are enough registrations for unique beneficiaries to meet the H–1B regular cap, USCIS will consider all properly submitted registrations relating to beneficiaries that may be counted under section 214(g)(1)(A) of the Act, including those that may also be eligible for exemption under section 214(g)(5)(C) of the Act. Registrations will be counted based on the number of unique beneficiaries that are registered.

(*i*) *Fewer registrations than needed to meet the H–1B regular cap.* At the end of the annual initial registration period, if USCIS determines that it has received fewer registrations for unique beneficiaries than needed to meet the H–1B regular cap, USCIS will notify all petitioners that have properly registered that their registrations have been selected. USCIS will keep the registration period open beyond the initial registration period, until it determines that it has received a sufficient number of registrations for unique beneficiaries to meet the H–1B regular cap. Once USCIS has received a sufficient number of registrations for unique beneficiaries to meet the H–1B regular cap, USCIS will no longer accept registrations for petitions subject to the H–1B regular cap under section 214(g)(1)(A). USCIS will monitor the number of registrations received and will notify the public of the date that USCIS has received the necessary number of registrations for unique beneficiaries (the ''final registration date''). The day the public is notified will not control the applicable final registration date. When necessary to ensure the fair and orderly allocation of numbers under section 214(g)(1)(A) of the Act, USCIS may randomly select the remaining number of registrations for unique beneficiaries deemed necessary to meet the H–1B regular cap from among the registrations received on the final registration date. This random selection will be made via computer-generated selection, based on the unique beneficiary.

(*ii*) *Sufficient registrations to meet the H–1B regular cap during initial registration period.* At the end of the initial registration period, if USCIS

determines that it has received more than sufficient registrations for unique beneficiaries to meet the H–1B regular cap, USCIS will no longer accept registrations under section 214(g)(1)(A) of the Act and will notify the public of the final registration date. USCIS will randomly select from among the registrations properly submitted during the initial registration period the number of registrations for unique beneficiaries deemed necessary to meet the H–1B regular cap. This random selection will be made via computer-generated selection, based on the unique beneficiary.

(*6*) * * *

(*i*) *Fewer registrations than needed to meet the H–1B advanced degree exemption numerical limitation.* If USCIS determines that it has received fewer registrations for unique beneficiaries than needed to meet the H–1B advanced degree exemption numerical limitation, USCIS will notify all petitioners that have properly registered that their registrations have been selected. USCIS will continue to accept registrations to file petitions for beneficiaries that may be eligible for the H–1B advanced degree exemption under section 214(g)(5)(C) of the Act until USCIS determines that it has received enough registrations for unique beneficiaries to meet the H–1B advanced degree exemption numerical limitation. USCIS will monitor the number of registrations received and will notify the public of the date that USCIS has received the necessary number of registrations for unique beneficiaries (the ''final registration date''). The day the public is notified will not control the applicable final registration date. When necessary to ensure the fair and orderly allocation of numbers under sections 214(g)(1)(A) and 214(g)(5)(C) of the Act, USCIS may randomly select the remaining number of registrations for unique beneficiaries deemed necessary to meet the H–1B advanced degree exemption numerical limitation from among the registrations properly submitted on the final registration date. This random selection will be made via computer-generated selection, based on the unique beneficiary.

(*ii*) *Sufficient registrations to meet the H–1B advanced degree exemption numerical limitation.* If USCIS determines that it has received more than enough registrations for unique beneficiaries to meet the H–1B advanced degree exemption numerical limitation, USCIS will no longer accept registrations that may be eligible for exemption under section 214(g)(5)(C) of the Act and will notify the public of the final registration date. USCIS will randomly select the number of registrations for unique beneficiaries needed to meet the H–1B advanced degree exemption numerical limitation from among the remaining registrations for unique beneficiaries who may be counted against the advanced degree exemption numerical limitation. This random selection will be made via computer-generated selection, based on the unique beneficiary.

(*7*) *Increase to the number of beneficiaries projected to meet the H–1B regular cap or advanced degree exemption allocations in a fiscal year.* Unselected registrations will remain on reserve for the applicable fiscal year. If USCIS determines that it needs to increase the number of registrations for unique beneficiaries projected to meet the H–1B regular cap or advanced degree exemption allocation, and select additional registrations for unique beneficiaries, USCIS will select from among the registrations that are on reserve a sufficient number to meet the H–1B regular cap or advanced degree exemption numerical limitation, as applicable. If all of the registrations on reserve are selected and there are still fewer registrations than needed to meet the H–1B regular cap or advanced degree exemption numerical limitation, as applicable, USCIS may reopen the applicable registration period until USCIS determines that it has received a sufficient number of registrations for unique beneficiaries projected as needed to meet the H–1B regular cap or advanced degree exemption numerical limitation. USCIS will monitor the number of registrations received and will notify the public of the date that USCIS has received the necessary number of registrations (the new ''final registration date''). The day the public is notified will not control the applicable final registration date. When necessary to ensure the fair and orderly allocation of numbers, USCIS may randomly select the remaining number of registrations for unique beneficiaries deemed necessary to meet the H–1B regular cap or advanced degree exemption numerical limitation from among the registrations properly submitted on the final registration date. If the registration period will be re-opened, USCIS will announce the start of the re-opened registration period on the USCIS website at *www.uscis.gov*.

* * * * *

(D) *H–1B cap-subject petition filing following registration*—(*1*) *Filing procedures.* In addition to any other applicable requirements, a petitioner may file an H–1B petition for a beneficiary who may be counted under section 214(g)(1)(A) or eligible for exemption under section 214(g)(5)(C) of the Act only if the petition is based on a valid registration, which means that the registration was properly submitted in accordance with 8 CFR 103.2(a)(1), paragraph (h)(8)(iii) of this section, and the registration tool instructions, and was submitted by the petitioner, or its designated representative, on behalf of the beneficiary who was selected for that cap season by USCIS. A petitioner may not substitute the beneficiary named in the original registration or transfer the registration to another petitioner. Any H–1B petition filed on behalf of a beneficiary must contain and be supported by the same identifying information provided in the selected registration. Petitioners must submit evidence of the passport used at the time of registration to identify the beneficiary. In its discretion, USCIS may find that a change in identifying information in some circumstances would be permissible. Such circumstances could include, but are not limited to, a legal name change due to marriage, change in gender identity, or a change in passport number or expiration date due to renewal or replacement of a stolen passport, in between the time of registration and filing the petition. USCIS may deny or revoke the approval of an H–1B petition that does not meet these requirements.

(*2*) *Registration fee.* USCIS may deny or revoke the approval of an H–1B petition if it determines that the fee associated with the registration is declined, not reconciled, disputed, or otherwise invalid after submission. The registration fee is non-refundable and due at the time the registration is submitted.

(*3*) *Filing period.* An H–1B cap-subject petition must be properly filed within the filing period indicated on the relevant selection notice. The filing period for filing the H–1B cap-subject petition will be at least 90 days. If petitioners do not meet the requirements of this paragraph (h)(8)(iii)(D), USCIS may deny or reject the H–1B cap-subject petition.

(E) *Calculating the number of registrations needed to meet the H–1B regular cap and H–1B advanced degree exemption allocation.* When calculating the number of registrations for unique beneficiaries needed to meet the H–1B regular cap and the H–1B advanced degree exemption numerical limitation for a given fiscal year, USCIS will take into account historical data related to approvals, denials, revocations, and other relevant factors. If necessary,

USCIS may increase those numbers throughout the fiscal year.

(F) * * *

(*2*) * * *

(*iv*) The nonprofit entity has entered into a formal written affiliation agreement with an institution of higher education that establishes an active working relationship between the nonprofit entity and the institution of higher education for the purposes of research or education, and a fundamental activity of the nonprofit entity is to directly contribute to the research or education mission of the institution of higher education. A nonprofit entity may engage in more than one fundamental activity.

* * * * *

(*4*) An H–1B beneficiary who is not directly employed by a qualifying institution, organization, or entity identified in section 214(g)(5)(A) or (B) of the Act will qualify for an exemption under such section if the H–1B beneficiary will spend at least half of their work time performing job duties at a qualifying institution, organization, or entity and those job duties directly further an activity that supports or advances one of the fundamental purposes, missions, objectives, or functions of the qualifying institution, organization, or entity, namely, either higher education, nonprofit research, or government research. Work performed ''at'' the qualifying institution may include work performed in the United States through telework, remote work, or other off-site work. When considering whether a position is cap-exempt, USCIS will focus on the job duties to be performed, rather than where the duties are physically performed.

* * * * *

(9) * * *

(i) *Approval.* (A) USCIS will consider all the evidence submitted and any other evidence independently required to assist in adjudication. USCIS will notify the petitioner of the approval of the petition on a Notice of Action. The approval notice will include the beneficiary's (or beneficiaries') name(s) and classification and the petition's period of validity. A petition for more than one beneficiary and/or multiple services may be approved in whole or in part. The approval notice will cover only those beneficiaries approved for classification under section 101(a)(15)(H) of the Act.

(B) Where an H–1B petition is approved for less time than requested on the petition, the approval notice will provide or be accompanied by a brief explanation for the validity period granted.

(ii) * * *

(D)(*1*) If an H–1B petition is adjudicated and deemed approvable after the initially requested validity period end-date or end-date for which eligibility is established, the officer may issue a request for evidence (RFE) asking the petitioner whether they want to update the requested dates of employment. Factors that inform whether USCIS issues an RFE could include, but would not be limited to: additional petitions filed or approved on the beneficiary's behalf, or the beneficiary's eligibility for additional time in H–1B status. If the new requested period exceeds the validity period of the labor condition application already submitted with the H–1B petition, the petitioner must submit a certified labor condition application with a new validity period that properly corresponds to the new requested validity period on the petition and an updated prevailing or proffered wage, if applicable, except that the petitioner may not reduce the proffered wage from that originally indicated in their petition. This labor condition application may be certified after the date the H–1B petition was filed with USCIS. The request for new dates of employment and submission of a labor condition application corresponding with the new dates of employment, absent other changes, will not be considered a material change. An increase to the proffered wage will not be considered a material change, as long as there are no other material changes to the position.

(*2*) If USCIS does not issue an RFE concerning the requested dates of employment, if the petitioner does not respond, or the RFE response does not support new dates of employment, the petition will be approved, if otherwise approvable, for the originally requested period or until the end-date eligibility has been established, as appropriate. However, the petition will not be forwarded to the Department of State nor will any accompanying request for a change of status, an extension of stay, or amendment of stay, be granted.

(iii) * * *

(E) *H–1B petition for certain beneficiary-owned entities.* The initial approval of a petition filed by a United States employer in which the H–1B beneficiary possesses a controlling ownership interest in the petitioning organization or entity will be limited to a validity period of up to 18 months. The first extension (including an amended petition with a request for an extension of stay) of such a petition will also be limited to a validity period of up to 18 months.

* * * * *

(10) * * *

(ii) *Denial for statement of facts on the petition, H–1B registration, temporary labor certification, labor condition application, or invalid H–1B registration.* The petition will be denied if it is determined that the statements on the petition, H–1B registration (if applicable), the application for a temporary labor certification, or the labor condition application, were inaccurate, fraudulent, or misrepresented a material fact, including if the attestations on the registration are determined to be false. An H–1B cap-subject petition also will be denied if it is not based on a valid registration submitted by the petitioner (or its designated representative), or a successor in interest, for the beneficiary named or identified in the petition.

(iii) *Notice of denial.* The petitioner will be notified of the reasons for the denial and of the right to appeal the denial of the petition under 8 CFR part 103. There is no appeal from a decision to deny an extension of stay to the alien.

(11) * * *

(ii) *Immediate and automatic revocation.* The approval of any petition is immediately and automatically revoked if the petitioner goes out of business, files a written withdrawal of the petition, or the Department of Labor revokes the labor certification upon which the petition is based. The approval of an H–1B petition is also immediately and automatically revoked upon notification from the H–1B petitioner that the beneficiary is no longer employed.

(iii) * * *

(A) * * *

(*2*) The statement of facts contained in the petition, H–1B registration (if applicable), the application for a temporary labor certification, or the labor condition application, was not true and correct, inaccurate, fraudulent, or misrepresented a material fact, including if the attestations on the registration are determined to be false; or

* * * * *

(*5*) The approval of the petition violated paragraph (h) of this section or involved gross error;

(*6*) The H–1B cap-subject petition was not based on a valid registration submitted by the petitioner (or its designated representative), or a successor in interest, for the beneficiary named or identified in the petition; or

(*7*) The petitioner failed to timely file an amended petition notifying USCIS of

a material change or otherwise failed to comply with the material change reporting requirements in paragraph (h)(2)(i)(E) of this section.

* * * * *

(14) *Extension of visa petition validity.* The petitioner must file a request for a petition extension on the Form I–129 to extend the validity of the original petition under section 101(a)(15)(H) of the Act. A request for a petition extension generally may be filed only if the validity of the original petition has not expired.

* * * * *

(19) * * *

(iii) * * *

(B) * * *

(*4*) The nonprofit entity has entered into a formal written affiliation agreement with an institution of higher education that establishes an active working relationship between the nonprofit entity and the institution of higher education for the purposes of research or education, and a fundamental activity of the nonprofit entity is to directly contribute to the research or education mission of the institution of higher education. A nonprofit entity may engage in more than one fundamental activity.

(C) *A nonprofit research organization or government research organization.*

When a fundamental activity of a nonprofit organization is engaging in basic research and/or applied research, that organization is a nonprofit research organization. When a fundamental activity of a governmental organization is the performance or promotion of basic research and/or applied research, that organization is a government research organization. A governmental research organization may be a Federal, state, or local entity. A nonprofit research organization or governmental research organization may perform or promote more than one fundamental activity. Basic research is general research to gain more comprehensive knowledge or understanding of the subject under study, without specific applications in mind. Basic research is also research that advances scientific knowledge but does not have specific immediate commercial objectives although it may be in fields of present or potential commercial interest. Applied research is research to gain knowledge or understanding to determine the means by which a specific, recognized need may be met. Applied research includes investigations oriented to discovering new scientific knowledge that has specific commercial objectives with respect to products, processes, or services. Both basic research and applied research may include research and investigation in the sciences, social sciences, or humanities and may include designing, analyzing, and directing the research of others if on an ongoing basis and throughout the research cycle.

* * * * *

(iv) *Nonprofit or tax-exempt organizations.* For purposes of paragraphs (h)(19)(iii)(B) and (C) of this section, a nonprofit organization or entity must be determined by the Internal Revenue Service as a tax exempt organization under the Internal Revenue Code of 1986, section 501(c)(3), (c)(4), or (c)(6), 26 U.S.C. 501(c)(3), (c)(4), or (c)(6).

* * * * *

(l) * * *

(14) * * *

(i) *Individual petition.* The petitioner must file a petition extension on Form I–129 to extend an individual petition under section 101(a)(15)(L) of the Act. A petition extension generally may be filed only if the validity of the original petition has not expired.

* * * * *

(o) * * *

(11) *Extension of visa petition validity.* The petitioner must file a request to extend the validity of the original petition under section 101(a)(15)(O) of the Act on the form prescribed by USCIS, in order to continue or complete the same activities or events specified in the original petition. A petition extension generally may be filed only if the validity of the original petition has not expired.

* * * * *

(p) * * *

(13) *Extension of visa petition validity.* The petitioner must file a request to extend the validity of the original petition under section 101(a)(15)(P) of the Act on the form prescribed by USCIS in order to continue or complete the same activity or event specified in the original petition. A petition extension generally may be filed only if the validity of the original petition has not expired.

* * * * *

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

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FEDERAL REGISTER PAGES AND DATE, OCTOBER

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

Proposed Rules
308.....70391
364.....70391

13 CFR

120 .....69003, 69529, 70580
125.....70339, 70343

14 CFR

21.....70344
39 .....67627, 67629, 67636, 67640, 67935, 67937, 67939, 68451, 68454, 69008, 69011, 69013, 69015, 69018, 69020, 69023, 70885, 71283, 71461, 71464, 71466, 71733
43.....71468
71 .....69025, 70351, 71735, 71990, 72356
91.....71468
97.....67942, 67943
Proposed Rules:
1.....68507
3.....70911
21.....68507, 70912
22.....68507
25.....67683
27.....67683
29.....67683
36.....68507
39 .....67685, 67999, 68002, 69099, 69102, 69105, 69107, 69110, 69556, 69891, 70409, 70913, 71506, 71778, 72008
43.....68507
45.....68507
61.....68507, 71509
65.....68507
71 .....68004, 68509, 68512, 68514, 68516, 69893, 71781, 71783, 71784, 71786, 72407
73.....70915
91.....67683, 68507
119.....68507
121.....67683
125.....67683
135.....67683

15 CFR

734.....71932
740.....71932
742.....71932
744.....70352, 71991
748.....71478
772.....71932
774.....71932

17 CFR

230.....70435
232.....67945, 70435
239.....70435
270.....70435
274.....70435
Proposed Rules:
Ch. II.....70908
4.....70852
230.....71088
232.....71088
239.....71088
274.....71088

18 CFR

101.....69294

19 CFR

4.....69026
7.....69026
10.....69026
11.....69026
12.....69026
24.....69026, 72675
54.....69026
101.....69026
102.....69026
103.....69026
113.....69026
132.....69026
133.....69026
134.....69026
141.....69026
142.....69026
143.....69026
144.....69026
145.....69026
146.....69026
147.....69026
151.....69026
152.....69026
158.....69026
159.....69026
161.....69026
162.....69026
163.....69026
173.....69026
174.....69026
176.....69026
181.....69026

21 CFR

1.....70887
630.....71736
640.....71736
1307.....69879
1310.....72680
Proposed Rules:
172.....70918, 70919
809.....68006
1310.....70610

22 CFR

171.....71737
181.....67643
Proposed Rules:
22.....67687

26 CFR

1.....71287, 72357
53.....71287
300.....68456, 72366
Proposed Rules:
1 .....69559, 70310, 70412, 72409
40.....67690
47.....67690
54.....68519
300.....68525
301.....70310, 71323

27 CFR

Proposed Rules:
9.....69113

28 CFR

68.....70586

29 CFR

Proposed Rules:
1903.....71329
2590.....68519

30 CFR

585.....68460
Proposed Rules:
926.....72699

31 CFR

Proposed Rules:
Ch. X.....72701
Part 1010.....72701

32 CFR

Proposed Rules:
45.....72412

33 CFR

3.....69034
100 .....67946, 68462, 71481, 71754, 71755
117.....70591, 71483
162.....69034
165 .....67950, 68463, 69034, 69036, 70360, 70593, 70889, 71485, 72370, 72683
Proposed Rules:
117 .....68031, 68033, 72415
165.....70613

34 CFR

Ch. III.....67953, 67955
600.....70004
685.....72685
668.....70004

36 CFR

Proposed Rules:
7.....72010
214.....67694
251.....67694
261.....68035

37 CFR

390.....69038
Proposed Rules:
43.....69578
201.....72013
202.....71787
210.....70412
384.....68527

39 CFR

Proposed Rules:
111.....71329

40 CFR

50.....70595
52 .....67651, 67957, 67963, 68465, 68469, 68471, 71487, 71757, 72686, 72688
55.....72691
81.....67651, 68471
87.....72372
180.....68475, 69039
241.....71761
705.....70516
1031.....72372
1068.....72372
1090.....70602
Proposed Rules:
2.....70616
51.....70616, 72826
52 .....68529, 68532, 70616, 71518
60.....68535
62.....72723
82.....72027
84.....72217
139.....71788
152.....70625
261.....72217
262.....72217
266.....72217
270.....72217
271.....72217

42 CFR

Ch. I.....70768, 70814
12.....69879
402.....70363
411.....68486, 68482
412 .....68482, 68491, 68494
413.....68486
419.....68482
488.....68482, 68486
489.....68482, 68486
495.....68482
Proposed Rules
52i.....68553
93.....69583

43 CFR

3195.....67964

44 CFR

Proposed Rules:
Ch. I.....67697
9.....67870

45 CFR

102.....69531, 70363
Proposed Rules:
147.....68519
205.....67697
260.....67697
261.....67697
263.....67697
410.....68908
2520.....69604
2521.....69604
2522.....69604

46 CFR

11.....67966
175.....69043
Proposed Rules:
10.....68042

47 CFR

8.....69883
20.....70891
54.....67654
64.....71994
73.....71490
Proposed Rules:
73.....68557, 72417

48 CFR

Ch. 1.....69502
1.....69503
3.....69517
4.....69503
9.....69503
13.....69503
19.....69523
31.....69517
39.....69503
52 .....69503, 69517, 69525
1801.....69883
1812.....70897
1813.....70897
1816.....70897
1819.....69883, 70897
1823.....70897

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List October 10, 2023

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