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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0794; Project Identifier AD–2020–01232–Q; Amendment 39–21249; AD 2020–18–51]

RIN 2120–AA64

Airworthiness Directives; Sandia Attitude Indicators

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Sandia attitude indicators (attitude indicators). This AD was sent previously to all known U.S. owners and operators of aircraft with these attitude indicators installed. This AD requires revising the existing Airplane Flight Manual (AFM) for your airplane to prohibit operation under instrument flight rules (IFR) or night visual flight rules (VFR) and prohibit coupling the autopilot with an affected attitude indicator. This AD was prompted by reports of 54 failed attitude indicators. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 28, 2020 to all persons except those persons to whom it was made immediately effective by Emergency AD 2020–18–51, issued on August 28, 2020, which contains the requirements of this AD.

The FAA must receive comments on this AD by October 26, 2020.

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

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0794; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: John Felton, Aerospace Engineer, Fort Worth ACO Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5171; email *john.felton@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On August, 28, 2020, the FAA issued Emergency AD 2020–18–51 (Emergency AD 2020–18–51) for attitude indicator part number (P/N) 306171–10 or 306171–20. Emergency AD 2020–18–51 requires revising the existing AFM for your airplane to prohibit operation under IFR or night VFR and prohibit coupling the autopilot with an affected attitude indicator. These part-numbered attitude indicators may be marked as BendixKing Model KI–300 or Sandia Model SAI–340A.

Emergency AD 2020–18–51 was prompted by a report of three failed attitude indicator P/N 306171–10 units. Following the initial report, an investigation revealed a total of 54 failed attitude indicator P/N 306171–10 units. Attitude indicator P/N 306171–20 is affected by the same unsafe condition because it is identical to P/N 306171–10. The effect of the failure was erroneous attitude data provided to the pilot and autopilot, if equipped. In some instances, the pilot is unaware that the data is erroneous or unreliable. In other instances, where the aircraft is equipped with multiple displays, the pilot may be provided with conflicting information, but will have no way to determine which display contains the correct data.

This condition, if not addressed, could result in aeronautical decision-making based on erroneous attitude information, which may result in loss of control of the aircraft.

FAA's Determination

The FAA is issuing this AD after evaluating all the relevant information and determining the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires, before further flight, revising the existing AFM for your airplane to prohibit operation under IFR or night VFR and prohibit coupling the autopilot with an affected attitude indicator.

Revising the existing AFM for your airplane may be performed by the owner/operator (pilot) holding at least a private pilot certificate. This authorization is an exception to our standard maintenance regulations. The pilot must record compliance with this AD in the aircraft maintenance records in accordance with 14 CFR 43.9(a)(1) through (4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417. This authority is not applicable to aircraft being operated under 14 CFR part 119.

Interim Action

The FAA considers this AD interim action. If final action is later identified, the FAA might consider further rulemaking then.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that required the immediate adoption of Emergency AD 2020–18–51, issued on August 28, 2020, to all known U.S. owners and operators of aircraft with attitude indicator P/N 306171–10 or 306171–20 installed. The FAA found that the risk to the flying public justified waiving notice and comment prior to adoption of this rule because the required corrective actions must be completed before further flight. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to section

39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons. Therefore, the FAA finds good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reason stated above, the FAA finds that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, the FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the Docket Number FAA–2020–0794 and Project Identifier AD–2020–01232–Q at the beginning of your comments. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this final rule contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this final rule, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this final rule. Submissions containing CBI should be sent to John Felton, Aerospace Engineer, Fort Worth ACO Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5171; email *john.felton@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 1,211 units installed on aircraft of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates that operators may incur the following costs in order to comply with this AD.

Revising the existing AFM for your airplane takes about 0.5 work-hour for an estimated cost of $43 per aircraft and $52,073 for the U.S. fleet.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–18–51 Sandia Attitude Indicator: Amendment 39–21249; Docket No. FAA–2020–0794; Project Identifier AD–2020–01232–Q.

(a) Effective Date

This AD is effective September 28, 2020 to all persons except those persons to whom it was made immediately effective by Emergency AD 2020–18–51, issued on August, 28, 2020, which contains the requirements of this AD.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Sandia attitude indicator (attitude indicator) part number 306171–10 and 306171–20. These attitude indicators may be marked as BendixKing Model KI–300 or Sandia Model SAI–340A. They may be installed on airplanes certificated in any category.

(d) Subject

Joint Airplane Service Component (JASC) Code: 3420, Attitude and Direction Data System.

(e) Unsafe Condition

This AD was prompted by reports of 54 failed attitude indicators, which produced erroneous attitude data to the pilot and autopilot, if equipped. The FAA is issuing this AD to prevent aeronautical decision-making based on erroneous attitude information, which may result in loss of control of the airplane.

(f) Compliance

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

(g) Required Actions

(1) Before further flight, revise the limitations section of the existing Airplane

Flight Manual for your airplane by inserting a copy of this AD or by making pen and ink changes to add:

(i) ''Operation under Instrument Flight Rules or night Visual Flight Rules is prohibited.''

(ii) ''Coupling the autopilot with Sandia attitude indicator part number 306171–10 or 306171–20 is prohibited. These attitude indicators may be marked as BendixKing Model KI 300 or Sandia Model SAI 340A.''

(2) The action required by paragraph (g)(1) of this AD may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a)(1) through (4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417. This authority is not applicable to aircraft being operated under 14 CFR part 119.

(h) Special Flight Permits

Special flight permits are prohibited.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

For further information about this AD, contact: John Felton, Aerospace Engineer, Fort Worth ACO Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5171; email *john.felton@faa.gov.*

Issued on September 4, 2020.

Gaetano A. Sciortino,

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

[FR Doc. 2020–20049 Filed 9–10–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0463; Product Identifier 2013–SW–041–AD; Amendment 39–21246; AD 2015–17–01R1]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; removal of airworthiness directive (AD).

SUMMARY: The FAA is removing AD 2015–17–01, which applied to certain Airbus Helicopters Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters. AD 2015–17–01 required inspections of each tail rotor pitch horn assembly (pitch horn) for a crack, replacement of a cracked pitch horn, and a repetitive visual inspection of certain pitch horns. AD 2015–17–01 is no longer necessary because the cause of the unsafe condition has been removed from all affected helicopter models. Accordingly, the FAA is removing AD 2015–17–01.

DATES: This AD becomes effective September 11, 2020.

ADDRESSES:

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0463; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Matt Fuller, AD Program Manager, Continued Operational Safety Branch, Airworthiness Products Section, General Aviation and Rotorcraft Unit, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *matthew.fuller@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by removing AD 2015–17–01, Amendment 39–18234 (80 FR 50554, August 20, 2015) (''AD 2015–17–01''), that applied to certain Airbus Helicopters Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters. The NPRM published in the **Federal Register** on June 12, 2020 (85 FR 35814). The NPRM was prompted by a determination that AD 2015–17–01 is no longer necessary because the unsafe condition no longer exists on Model AS350 and AS355 helicopters. The NPRM proposed to remove AD 2015–17–01. The FAA is issuing this AD to remove AD 2015–17–01.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA has considered the comment received. Mr. Warren LaBare indicated support for the NPRM.

Conclusion

The FAA reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

This AD adds no cost. This AD removes AD 2015–17–01 from 14 CFR part 39; therefore, operators are no longer required to show compliance with that AD.

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce.

This regulation is within the scope of that authority.

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2015–17–01, Amendment 39–18234 (80 FR 50554, August 20, 2015), and adding the following new AD:

2015–17–01R1 Airbus Helicopters: Amendment 39–21246; Docket No. FAA–2020–0463; Product Identifier 2013–SW–041–AD.

(a) Effective Date

This AD is effective September 11, 2020.

(b) Affected ADs

This AD replaces AD 2015–17–01, Amendment 39–18234 (80 FR 50554, August 20, 2015).

(c) Applicability

This AD applies to Airbus Helicopters Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters, certificated in any category, with tail rotor hub pitch horn (pitch horn) assembly, part number (P/N) 350A121368.01, 350A121368.02, 350A121368.03, or 350A121368.04, with a pitch horn, P/N 350A121368.XX, where XX stands for a two-digit dash number, installed. The pitch horn may be marked with either the pitch horn assembly P/N or pitch horn P/N.

(d) Related Information

For more information about this AD, contact Matt Fuller, AD Program Manager, Continued Operational Safety Branch, Airworthiness Products Section, General Aviation and Rotorcraft Unit, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *matthew.fuller@faa.gov.*

Issued on September 3, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–20001 Filed 9–10–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 360

[Docket No. 200806–0208]

RIN 0625–AB17

Steel Import Monitoring and Analysis System

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: In this final rule, U.S. Department of Commerce (Commerce) is modifying its regulations pertaining to the Steel Import Monitoring and Analysis (SIMA) system to require steel import license applicants to identify the country where the steel used in the manufacture of the imported steel product was melted and poured (the country of melt and pour); clarify how certain import data collected from the licenses will be aggregated and reported on the public SIMA monitor; harmonize the scope of steel products subject to the SIMA licensing requirement with the scope of steel products subject to Section 232 tariffs; extend the SIMA system indefinitely by eliminating the regulatory provision concerning the duration of the SIMA system; and codify eligibility for use of the low-value license for certain steel entries up to $5,000. In addition, Commerce is making corresponding changes to the public SIMA monitor that do not require regulatory modifications and amending the steel import license application to include a new field for the country of melt and pour. Finally, Commerce is modernizing the SIMA system, including both the online license application platform and the public SIMA monitor.

DATES:

Effective date: October 13, 2020.

Applicability date: All licenses requested on or after October 13, 2020, must meet the requirements of this rule and utilize the online license application platform on the new SIMA system website. Licenses requested on or before October 9, 2020, must meet the requirements of the existing SIMA system and utilize the online license application platform on the existing SIMA system website. The existing SIMA system website will no longer be operational beginning on October 10, 2020, and the new SIMA system website will not be operational until October 13, 2020. Therefore, no licenses can be obtained via the online license application platform from October 10 through October 12, 2020. For information on registering for the new SIMA system and obtaining licenses manually from October 10 through 12, 2020, see the **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The existing SIMA system website that will be operational until October 9, 2020 is *https://enforcement.trade.gov/steel/license/.* From October 10–12, 2020, Commerce will accept manual applications in emergency situations identified above to the following email address: *steel.license@trade.gov.*

The new SIMA system website that will be operational on October 13, 2020 is *https://www.trade.gov/steel.* Through this website, potential license applicants can register for the new online license application platform and apply for licenses. Additionally, the public SIMA monitor is also featured on this website.

More information can be found at *https://www.trade.gov/updates-steel-import-licensing.* To assist with the transition to the modernized SIMA system, Commerce is offering a virtual demonstration of the online license application platform for potential license applicants. Commerce also is offering a demonstration of the new modernized public SIMA monitor, which is available to the general public. Commerce will have a limited number of spots available to participate in the demonstrations, that will occur prior to the effective date of this rule. For specific dates and times of the demonstrations, and to participate in the demonstrations, please visit *https://www.trade.gov/updates-steel-import-licensing.*

FOR FURTHER INFORMATION CONTACT: Julie Al-Saadawi at (202) 482–1930, Brandon Custard (202) 482–1823, or Jessica Link at (202) 482–1411.

SUPPLEMENTARY INFORMATION:

Background

On May 17, 2019, the United States announced joint understandings with Canada and Mexico, respectively, concerning trade in steel covered by the action taken pursuant to Section 232 of the Trade Expansion Act of 1962, as amended. Among other things, the understandings call for the monitoring of steel trade between the United States and Canada and Mexico, respectively. Consistent with the joint understandings, and to enhance U.S. Government monitoring and analysis of steel imports more generally, Commerce published a proposed rule on March 30, 2020 (85 FR 17515), to enhance its existing SIMA system to allow for the effective and timely monitoring of import surges of specific steel products which will aid in the prevention of transshipment of steel products.

The SIMA System

The purpose of the SIMA system is to provide steel producers, steel consumers, importers, and the general public with accurate and timely information on anticipated imports of certain steel products into the United States. Steel import licenses, issued through the online SIMA licensing system, are required by U.S. Customs and Border Protection (CBP or Customs) for filing entry summary documentation for imports of certain steel mill products into the United States.[1] Through the monitoring tool, certain import data collected from the steel licenses are aggregated and reported on the public SIMA monitor website on a monthly basis, and are refreshed each week. The public SIMA monitor provides valuable data regarding certain steel mill imports into the United States as early as possible and makes such data available to the public approximately five weeks in advance of official U.S. import statistics compiled by the United States Census Bureau (Census).

The SIMA system has operated under its current authority since March 11, 2005. Prior to that date, authority for steel import licensing and monitoring was derived from Presidential Proclamation 7529 of March 5, 2002 and accompanying memorandum.[2] Pursuant to sections 201 and 203 of the 1974 Trade Act, as amended (19 U.S.C. 2251 and 2253), Proclamation 7529 implemented safeguard measures with respect to certain imported steel products, placing temporary tariffs on these steel imports and requiring the Secretary of Commerce to establish a system of import licensing to facilitate the monitoring of these steel imports. Accordingly, on July 18, 2002, Commerce issued and requested public comment on a proposed rule to establish a steel licensing system requiring all importers of the covered steel products to obtain a license from Commerce prior to completing CBP entry summary documentation.[3] This monitoring tool ensured that the effectiveness of the border measure was not undermined by large quantities of imports originating from countries that were excluded from the tariffs. On December 31, 2002, Commerce issued a final rule implementing the Steel Import Licensing and Surge Monitoring program, which was codified at 19 CFR part 360.[4]

Subsequently, Presidential Proclamation 7741 of December 4, 2003 terminated the steel safeguard measures, but directed the Secretary of Commerce to continue the monitoring system until the earlier of March 21, 2005, or such time as the Secretary of Commerce established a replacement program.[5] On December 9, 2003, Commerce published a notice stating that the system would continue in effect as described in Proclamation 7741 until March 21, 2005.[6] On August 25, 2004, Commerce published an advanced notice of proposed rulemaking soliciting comments on whether to continue the SIMA system (formerly known as the Steel Import Licensing and Surge Monitoring System) beyond March 21, 2005, and whether the system should be modified.[7]

Commerce determined that there continued to be a need to collect import data, and published an interim final rule revising 19 CFR part 360 to extend the SIMA system for four years under the authority of the Census Act of 1930, as amended (the Census Act) (13 U.S.C. 301(a) and 302), and expand the coverage of the system to include all basic steel mill products, while also removing certain downstream steel products.[8] Commerce also provided an exception to the requirement for obtaining a unique license for each CBP entry where the total value of the covered steel portion of an entry was less than $250 (*i.e.,* the low-value license).[9] Commerce explained that the purpose of the SIMA system is to provide statistical data on steel imports entering the United States seven weeks earlier than is otherwise publicly available, and that the data collected on the licenses are made available to the public in an aggregated form weekly after Commerce review.[10]

On December 5, 2005, Commerce published a final rule that did not make any changes to the interim final rule.[11] However, in light of certain comments, Commerce agreed to a discrete change to the SIMA system via its public SIMA monitor that did not require regulatory changes.[12]

The SIMA system was subsequently extended several times through the rulemaking process, with the most recent extension of the SIMA system continuing until March 21, 2022.[13] Therefore, unless further extended, the SIMA system is set to expire on March 21, 2022.[14]

Section 232 Tariffs on Steel Imports

Presidential Proclamation 9705 of March 8, 2018, which was issued pursuant to Section 232 of the Trade Expansion Act of 1962, as amended, adjusted imports of steel articles by imposing a 25 percent ad valorem tariff on certain steel articles imported from most countries, to address the threatened impairment to the national security of the United States by such imports from those countries.[15] Presidential Proclamation 9711 of March 22, 2018 amended certain aspects of Presidential Proclamation 9705,

[1] *See* 19 CFR 12.145.

[2] *To Facilitate Positive Adjustment to Competition from Imports of Certain Steel Products,* Proclamation 7529, 67 FR 10553 (Mar. 7, 2002); *Action Under Section 203 of the Trade Act of 1974 Concerning Certain Steel Products,* Memorandum of March 5, 2002, 67 FR 10593 (Mar. 7, 2002).

[3] *Steel Import Licensing and Surge Monitoring, Proposed Rule,* 67 FR 47338 (July 18, 2002).

[4] *Steel Import Licensing and Surge Monitoring,* Final Rule, 67 FR 79845 (Dec. 31, 2002).

[5] *To Provide for the Termination of Action Taken with Regard to Imports of Certain Steel Products,* Proclamation 7741, 68 FR 68483 (Dec. 8, 2003).

[6] *Steel Import Licensing and Surge Monitoring,* 68 FR 68594 (Dec. 9, 2003).

[7] *Steel Import Monitoring and Analysis System,* Advanced Notice of Proposed Rulemaking, 69 FR 52211 (Aug. 25, 2004).

[8] *Steel Import Monitoring and Analysis System,* Interim Final Rule, 70 FR 12133 (Mar. 11, 2005).

[9] *Id.*

[10] *Id.*

[11] *Steel Import Monitoring and Analysis System,* Final Rule, 70 FR 72373 (Dec. 5, 2005).

[12] *Id.*

[13] *See Steel Import Monitoring and Analysis System,* Final Rule, 74 FR 11474 (Mar. 18, 2009) (extending the SIMA system to March 21, 2013); *Steel Import Monitoring and Analysis System,* Final Rule, 78 FR 11090 (Feb. 15, 2013) (extending the SIMA system to March 21, 2017); and *Steel Import Monitoring and Analysis System,* Final Rule, 82 FR 1183 (Jan. 5, 2017) (extending the SIMA system to March 21, 2022).

[14] *See* 19 CFR 360.105.

[15] *Adjusting Imports of Steel into the United States,* Proclamation 9705, 83 FR 11625 (Mar. 15, 2018) (*Proclamation 9705*).

providing for duty exemptions for certain countries, including Canada and Mexico, which were to expire on May 1, 2018, unless agreement was reached with respect to a satisfactory alternative means to address the threatened impairment to the national security of the United States by steel imports from those countries.[16] Presidential Proclamation 9740 of April 30, 2018, further amended certain aspects of the prior proclamations, continuing the duty exemptions for certain countries, including Canada and Mexico, until June 1, 2018.[17] Presidential Proclamation 9759 of May 31, 2018, further amended certain aspects of the prior proclamations, continuing the duty exemptions for certain countries, which did not include Canada and Mexico, on a long-term basis.[18] Presidential Proclamation 9772 of August 10, 2018, Presidential Proclamation 9777 of August 29, 2018, and Presidential Proclamation 9886 of May 16, 2019, further amended certain aspects of prior proclamations.[19]

As a result of the aforementioned proclamations, effective June 1, 2018, all steel imports from Canada and Mexico were subject to Section 232 tariffs. However, Presidential Proclamation 9705 provided that any country with which the United States has a security relationship is welcome to discuss with the United States alternative ways to address the threatened impairment of the national security caused by imports of steel articles from that country.[20] Subsequently, on May 17, 2019, the United States announced that such discussions had yielded joint understandings with Canada and Mexico, respectively, to remove the Section 232 tariffs for steel imports from those countries.[21] As part of the joint understandings, the United States and Canada, and the United States and Mexico, agreed to implement effective measures to prevent the transshipment of steel products made outside of the United States, Canada, and Mexico, among other commitments. Additionally, the joint understandings allow for the countries to establish an agreed-upon process for monitoring steel trade between them, and, further, in monitoring for surges, to treat products made with steel that is melted and poured in North America separately from products that are not. In light of the joint understandings, Presidential Proclamation 9894 of May 19, 2019, provided that a satisfactory alternative means had been agreed upon and, effective May 21, 2019, steel imports from Canada and Mexico would no longer be subject to Section 232 tariffs.[22]

Proposed Rule

On March 30, 2020, Commerce published a proposed modification of 19 CFR part 360, which governs the SIMA system.[23] Commerce received 15 comments on the *Proposed Rule,* and we address those comments below. The *Proposed Rule,* comments received, and this final rule can be accessed using the Federal eRulemaking portal at *http://www.regulations.gov/* under Docket Number ITA–2019–0008. After analyzing and carefully considering the comments received, we have adopted the modifications described below and amended Commerce's regulations accordingly.

Explanation of Regulatory Provisions and Final Modifications

Commerce amends the SIMA system as discussed below.

First, the joint understandings described above provide that, in monitoring for surges of steel imports, the United States, Canada, and Mexico may treat products made with steel that is melted and poured in North America separately from products that are not. As discussed further above, the SIMA system is a critical trade monitoring program which collects timely detailed statistics on anticipated steel imports and provides stakeholders with information about import trends in this sector in advance of official U.S. import statistics. Under the system, importers of certain steel mill products must apply for a steel import license through the online SIMA licensing system, which requires the name and address of the importer, type of steel product, and country of origin of the steel imports, along with additional information. This information is detailed at 19 CFR 360.103(c). These licenses are required by CBP for filing entry summary documentation for imports of certain steel mill products into the United States. The SIMA system currently does not collect information with regard to the country where the steel used in the manufacture of the imported steel product was melted and poured. Therefore, consistent with the joint understandings, and to enhance U.S. Government monitoring and analysis of steel imports more generally, Commerce is amending the SIMA system to require identification of the country where the steel used in the manufacture of the imported steel product is melted and poured on the license form as an additional requirement to obtain an import license. This is also referred to as the ''country of melt and pour.'' Commerce is effectuating these changes by amending § 360.103(c) as well as the SIMA import license application. Specifically, consistent with the *Proposed Rule,* paragraph (c)(1)(viii) is amended to include reference to the country of melt and pour.[24]

Additionally, as explained further below, in light of comments in response to the *Proposed Rule,* Commerce is adopting a definition of ''melt and pour'' to clarify for license applicants how to complete this new field. As described above, the joint understandings indicate that, in monitoring for surges of steel imports, the United States, Canada, and Mexico may treat products made with steel that is melted and poured in North America separately from products that are not. The joint understandings do not further define country of melt and pour. Although a definition was not featured in the *Proposed Rule,* further defining a term that was first identified in the *Proposed Rule* for purposes of the final rule is a logical outgrowth of the rulemaking process. In addition, several commenters requested that a definition be provided to increase clarity and

[16] *Adjusting Imports of Steel Into the United States,* Proclamation 9711, 83 FR 13361 (Mar. 28, 2018).

[17] *Adjusting Imports of Steel Into the United States,* Proclamation 9740, 83 FR 20683 (May 7, 2018).

[18] *Adjusting Imports of Steel Into the United States,* Proclamation 9759, 83 FR 25857 (June 5, 2018).

[19] *Adjusting Imports of Steel Into the United States,* Proclamation 9772, 83 FR 40429 (Aug. 15, 2018); *Adjusting Imports of Steel Into the United States,* Proclamation 9777, 83 FR 45025 (Sept. 4, 2018); *Adjusting Imports of Steel Into the United States,* Proclamation 9886, 84 FR 23421 (May 21, 2019).

[20] *See Proclamation 9705,* 83 FR at 11626.

[21] *See* Joint Statement by the United States and Canada on Section 232 Duties on Steel and Aluminum, dated May 17, 2019, *available at https://ustr.gov/sites/default/files/Joint_Statement_by_the_United_States_and_Canada.pdf;* Joint Statement by the United States and Mexico on Section 232 Duties on Steel and Aluminum, dated May 17, 2019, *available at https://ustr.gov/sites/default/files/Joint_Statement_by_the_United_States_and_Mexico.pdf.*

[22] *Adjusting Imports of Steel Into the United States,* Proclamation 9894, 84 FR 23987 (May 23, 2019).

[23] *Modification of Regulations Regarding the Steel Import Monitoring and Analysis System,* 85 FR 17515 (March 30, 2020) (*Proposed Rule*). On June 22, 2020, Commerce published a correction to the Proposed Rule to clarify CBP requirements for steel imports for entry purposes. *See Modification of Regulations Regarding the Steel Import Monitoring and Analysis System; Correction,* 85 FR 37397 (June 22, 2020).

[24] Commerce also has made several non-substantive edits to paragraph (c)(1) as follows: Remove the requirement for the filer to provide a fax number in paragraph (c)(1)(ii); amend paragraphs (c)(1)(iii) and (xiv) to include missing semicolons; amend paragraph (c)(1)(xii) to include Harmonized Tariff Schedule; and redesignate remaining paragraphs as necessary.

consistency for all potentially regulated entities, and the adopted definition relies on the suggested language from commenters. In light of this, we believe it is necessary and appropriate to adopt the definition in the final rule. Existing paragraph (c)(3) is redesignated as paragraph (c)(4), and a newly added paragraph (c)(3) includes the adopted definition. The definition also will be added to the SIMA import license application instructions.

Second, various amendments have been made to § 360.104. As discussed above, pursuant to existing § 360.104, certain information obtained from the steel licenses is aggregated and reported on the public SIMA monitor on a monthly basis and are refreshed each week. Consistent with the *Proposed Rule,* and after further consideration, Commerce is making minor amendments to § 360.104(a) and (b) to align more closely with Commerce's practice of replacing outdated license data with official U.S. import statistics compiled by the Census, where available. Additionally, to avoid confusion, Commerce is amending § 360.104(a) to clarify that aggregate data will be reported, as appropriate, by relevant steel mill product ''groupings.'' This is a generic term meant to cover both steel mill product ''categories'' (*i.e.,* at a broader level) and steel mill product ''groups'' (*i.e.,* at a more specific level), as that terminology is currently used in the public SIMA monitor. This differs from the *Proposed Rule,* which misstated the definitions for steel mill product group and steel mill product categories.[25] Further, Commerce is clarifying that aggregate data will be reported, as appropriate, by country of melt and pour, consistent with the joint understandings. To avoid confusion, Commerce has streamlined the language from the *Proposed Rule* on this point. Therefore, § 360.104(a) is amended to state that aggregate data will be reported, as appropriate, on a monthly basis by country of origin, country of melt and pour, and relevant steel mill product groupings, etc. This revised language will allow Commerce the flexibility to report aggregate data at a sufficient level of detail to enable the public to monitor trends in import data, including potential surges and transshipment, while allowing for adequate protection of proprietary data. Similarly, § 360.104(b) is also amended to clarify that monthly import license data will be updated weekly, as appropriate, to allow for the adequate protection of proprietary data.

Third, Commerce is expanding the scope of steel products covered by the SIMA system so that it covers all steel products subject to Section 232 tariffs.[26] A list of the products covered by the SIMA system by Harmonized Tariff Schedule (HTS) codes can be obtained on the SIMA system website. This will allow for more consistent and complete monitoring for surges and transshipment. Commerce is amending § 360.101(a) to indicate that the products covered by the SIMA system will be listed on the website and identified by HTS codes. The HTS codes, which are maintained by the U.S. International Trade Commission, may be updated periodically to reflect revisions to the codes.

Fourth, Commerce is extending the SIMA system indefinitely by eliminating the regulatory provision, § 360.105, which makes the SIMA system temporary. In the past, Commerce has considered whether to extend the SIMA system every four years, which is done under the authority of the Census Act (13 U.S.C. 301(a) and 302).[27] Although the SIMA system is not set to expire until March 21, 2022, Commerce is extending the system indefinitely given that the program is a well-established and important trade monitoring tool that has strong support from the trade community over its near-twenty year history.[28] Therefore, Commerce is removing and reserving § 360.105 as indicated below, and making conforming amendments to § 360.104(a).

Fifth, Commerce is amending § 360.103(f) to codify eligibility for use of the low-value license for certain steel entries from a $250 value to a $5,000 value to align with current practice. The low-value license is an optional multiple-use license that allows a company to apply once for a steel import license and use it on multiple occasions for entries of covered steel products with a limited customs value. A re-usable low-value license number can be obtained with respect to an entry for which the portion covered by the steel licensing requirement is less than the limited amount and may be used by those companies listed on the license. The low-value license is processed on the SIMA system website in the same manner as a typical steel license. Commerce's low-value license application form provides that such a license may apply to covered steel products with a value of $5,000 or less per entry. Accordingly, Commerce is making conforming edits to § 360.103(f) to reflect this requirement.

Beyond the regulatory changes identified above, as a result of the comments discussed below, Commerce also will implement the following sub-regulatory changes to the public SIMA monitor that do not require regulatory modifications: (1) Maintain country of melt and pour license data on the public SIMA monitor for a longer period; (2) separate the ''blooms, billets and slabs'' product group (for both carbon and alloy and stainless) into two product groups: ''slab'' and ''other semi-finished'' product groups; (3) create three new product groups for line pipe corresponding to three different diameters of line pipe; and (4) create a new product group ''Other Rails and Railroad Accessories'' to reflect the inclusion of certain additional HTS codes subject to Section 232 tariffs. In light of these changes (that are further discussed below), the public SIMA monitor website will reflect the increased number of steel product groups from 53 to 58. We are implementing these changes on the public SIMA monitor at the same time as this final rule.

Finally, Commerce is modernizing the SIMA system, including both the online license application platform and the public SIMA monitor, with updated software when the final rule goes into effect. Registered users on the existing

[25] In the *Proposed Rule,* we inadvertently stated that there are five steel mill ''product groups'' which are further broken down into 52 specific steel mill ''product categories'' on the public SIMA monitor. *See* 85 FR at 17517 and 17519. This is incorrect. There are five steel mill ''product categories'' (*i.e.,* flat, long, pipe and tube, semi-finished, and stainless steel products). Under these categories, there are currently 53 ''product groups.'' In this final rule, as discussed herein, Commerce is increasing the number of product groups to 58 on the public SIMA monitor; the five product groups on the public SIMA monitor are unchanged.

[26] *See Proposed Rule,* 85 FR at 17520 (providing the eight additional HTS codes at Appendix I). To clarify, this covers the steel products subject to Section 232 tariffs as announced on March 15, 2018. *See Adjusting Imports of Steel into the United States, Proclamation 9705,* 83 FR 11625 (Mar. 15, 2018). Although Section 232 tariffs were recently imposed on steel derivative products, such products are not covered by the SIMA system. *See Adjusting Imports of Derivative Aluminum Articles and Derivative Steel Articles Into the United States,* Proclamation 9980, 85 FR 5281 (Jan. 29, 2020).

[27] *See, e.g., Steel Import Monitoring and Analysis System,* Interim Final Rule, 70 FR 12133, 12134 (''The Department believes that the SIMA system is a critical trade monitoring program and is extending it for another four years under the authority of the Census Act of 1930.'') (Mar. 11, 2005); *Steel Import Monitoring and Analysis System,* Final Rule, 74 FR 11474 (Mar. 18, 2009) (extending the SIMA system to March 21, 2013); *Steel Import Monitoring and Analysis System,* Final Rule, 78 FR 11090 (Feb. 15, 2013) (extending the SIMA system to March 21, 2017); and *Steel Import Monitoring and Analysis System,* Final Rule, 82 FR 1183 (Jan. 5, 2017) (extending the SIMA system to March 21, 2022).

[28] *See Steel Import Monitoring and Analysis System,* Final Rule, 78 FR at 11091; *Steel Import Monitoring and Analysis System,* Final Rule, 82 FR at 1184.

SIMA system must re-register on the new SIMA system to use the new online license application platform. In accordance with 19 CFR 360.107, when the electronic licensing system is unavailable for an extended period of time, parties will be able to obtain licenses manually from Commerce via fax during regular business hours. Because October 10 and 11, 2020, fall over a weekend, and not during regular business hours, and because of the additional resources required to process manual license applications, Commerce will accept manual license applications October 10, 11, and 12 only in emergency situations, *i.e.,* where the CBP entry summary must be filed on those dates and the license applicant has not previously obtained a license number under the existing SIMA system on or before October 9, 2020. Additionally, manual license applications must be sent via email, not fax, to the address identified in the **ADDRESSES** section. These restrictions are intended to address operational considerations due to COVID–19. See the **DATES** and **ADDRESSES** sections above for more information.

Response to Comments Received on the Proposed Rule

Commerce received 15 comments on the proposed rule. Below is a summary of the comments, grouped by issue category, followed by Commerce's response.

1. Whether To Require SIMA License Applicants To Identify the Country Where the Steel Is Melted and Poured

All commenters who provided a view supported Commerce's proposal for adding a field to the license application requiring U.S. importers to identify the country where the steel was melted and poured. Some commenters opposed allowing an ''unknown'' country option in the melt and pour field in the license application, arguing that an ''unknown'' option would undermine the utility of the melt and pour data collection, and that steel mill test certificates are easy for importers and traders to obtain because these documents are generated at all stages of the steel supply chain in the normal course of business. In contrast, other commenters asserted that many steel importers purchase products that have been processed multiple times into the supply chain and may not know where the steel they are importing was originally melted and poured.

One commenter requested that Commerce provide a clear definition for the country where the steel is melted and poured to assist importers in filling out the license application. The commenter also recommended that Commerce use language from the joint understandings in crafting a definition. Another commenter concurs with the need for a precise definition and defines the country where the steel is melted and poured as the country ''where raw steel is first produced in a steelmaking furnace and then poured into its first solid shape.'' This commenter noted that subsequent processing in another country after the melting and pouring stage may be significant enough to change the country of origin for customs purposes to a different country than the one where the steel was first melted and poured. Also, this commenter contends that a field for the country of melt and pour should be included in the licensing program because much of the value-added and investment in the steel manufacturing process takes place in the facilities that melt and pour the steel.

Some commenters requested that the country of melt and pour license data be collected at the 10-digit HTS level and then displayed in the public SIMA monitor at the 6-digit HTS level, to the extent possible, so as to avoid revealing proprietary data but to ensure full traceability and prevent transshipment. These commenters argued that Commerce's concern that reporting further disaggregated data would release proprietary data is ''speculative and would likely never come to fruition.'' These commenters also claimed that publicly available subscription sources already provide bill of lading data on an aggregate basis, making public certain trading patterns, such that release of additional data in the public SIMA monitor reflecting these similar trading patterns serves only as a further aggregation.

One commenter states that, consistent with the joint understandings with Canada and Mexico, and to enhance the SIMA system generally, Commerce should continue to report all license data through the public SIMA monitor by country and product group (currently 53), by country and product category (defined as flat, long, pipe and tube, and semi-finished), and at the 6-digit HTS-level. Further, this commenter argues that, to the extent any license applicant has concerns regarding proprietary information, Commerce should create a means by which that applicant can request that data be aggregated at the next product level.

Response: Given commenters' unanimous support, Commerce will amend the SIMA system to require import license applicants to identify and report the country where the steel is melted and poured as an additional requirement to obtaining an import license. Commerce is effectuating these changes by amending § 360.103(c) as well as the SIMA import license application. As stated above, Commerce believes collecting information on the country of melt and pour is consistent with the United States' joint understandings with the governments of Canada and Mexico and will enhance monitoring of U.S. steel imports. Collection of this data will allow for the effective and timely monitoring of import surges of specific steel products, which will aid in the prevention of transshipment of steel products. We also agree with commenters that an option for ''unknown'' in the country of melt and pour field on the license application would defeat the purpose of this new field. Furthermore, Commerce expects that importers will have access to thorough information regarding the product being imported, including the mill test certification (which would indicate country of melt and pour). Specifically, the mill test certification is currently required by CBP for entry purposes, in accordance with 19 CFR 141.89 and 142.6, and Commerce expects that the mill test certification would be included with the standard sales documentation for steel mill imports and therefore would be readily available to the importer. Commerce therefore agrees with commenters that steel mill test certificates are easy for importers and traders to obtain and are generated at all stages of the steel supply chain in the normal course of business. For these reasons, we disagree with the assertion of certain commenters that importers of steel products that have been processed multiple times may not have access to information regarding the country where the steel they are importing was originally melted and poured.

Additionally, Commerce agrees with certain commenters' recommendation that we should provide a clear definition for country of melt and pour and have included this definition in revised § 360.103(c)(3) and the steel license application. We agree that a definition for ''country of melt and pour'' would provide clarity and certainty to the steel trade community. As discussed above, Commerce expects that the mill test certification (that is currently required by CBP for entry purposes and readily available to the importer) will indicate the country of melt and pour; however, we recognize that mill test certifications come in different forms and may utilize different terminology. Therefore, we would not expect the precise phrase ''country of

melt and pour'' to be explicitly labeled on the mill test certification. In light of this, a definition is necessary to provide clear guidance to parties as to which information from the mill test certification should be relied upon in identifying the country of melt and pour for purposes of the steel import license application.

In crafting a definition for country of melt and pour, we found useful language in the Protocol of Amendment to the United States-Mexico-Canada Agreement (USMCA):

> Notwithstanding any other provision of this Agreement, beginning seven years after entry into force of this Agreement, for steel to be considered as originating under this Article, all steel manufacturing processes must occur in one or more of the Parties, except for metallurgical processes involving the refinement of steel additives. Such processes include the initial melting and mixing and continues through the coating stage. This requirement does not apply to raw materials used in the steel manufacturing process, including steel scrap; iron ore; pig iron; reduced, processed, or pelletized iron ore; or raw alloys.[29]

We also considered the definition provided by one of the commenters for country of melt and pour, which is the country ''where raw steel is first produced in a steelmaking furnace and then poured into its first solid shape.'' This definition is consistent with the definition included in the USMCA Protocol of Amendment, as well as our general understanding of the steel industry.[30] Specifically, it is our understanding that the steelmaking process generally follows the same pattern, beginning with the initial melting and mixing of the raw steel in a liquid state in a steelmaking furnace, that is then poured into a solid shape. This first solid shape may take the form of a semi-finished product (slab, billet, or ingot) or a finished steel mill product. Subsequent to this initial melting and pouring process, the steel may undergo further processing, including rolling, drawing, otherwise finishing, coating, etc. However, all steel imported into the United States must be accompanied by the mill test certification from the steel mill involved in the initial melt and pour phase. Thus, our adopted definition for country of melt and pour described below takes into account these various processes and establishes a singular definition focusing on the initial melt and pour phase that will be well-understood by the steel trade community.

In light of the above, we developed a definition for the country where the steel used in the manufacture of the product was melted and poured, as provided in revised § 360.103(c)(3). Specifically, the license applicant is required to identify the original location where the raw steel is (1) first produced in a steel-making furnace in a liquid state, and then (2) poured into its first solid shape. Revised § 360.103(c)(3) also provides that the first solid state can take the form of either a semi-finished product (slab, billets or ingots) or a finished steel mill product, and further explains that the location of melt and pour is customarily identified on mill test certificates that are commonplace in steel production, generated at each stage of the production process, and maintained in the ordinary course of business. Further, revised § 360.103(c)(3) explains that this reporting requirement will not apply to raw materials used in the steel manufacturing process (*i.e.,* steel scrap; iron ore; pig iron; reduced, processed, or pelletized iron ore; or raw alloys). This definition specifically incorporates the language from the Protocol of Amendment to the USMCA and the definition suggested by one of the commenters, as well as our own experience under the SIMA system. No other definitions were proposed by commenters. Additionally, this definition provides clear guidance to parties as to which information from the mill test certification should be relied upon in identifying the country of melt and pour for purposes of the steel import license application.

With respect to the public SIMA monitor, which aggregates and reports certain license data, Commerce will only release or update weekly data on the country of melt and pour for each product group (at the 6-digit HTS level) if there are sufficient observations for the product groups. Commerce releases data on its public SIMA monitor under the authority of the Census Act (13 U.S.C. 301(a) and 302) and must adhere to Census guidance for the release of data, which requires the protection of proprietary data. After collecting the melt and pour data, Commerce will determine whether there are sufficient data observations to report at a 6-digit product group level without disclosing proprietary data. Notably, the public SIMA monitor currently divides license data into 53 different product groups (which, as described in this final rule, will be increased to 58 product groups). In instances where there are few (*i.e.,* less than three) observations of certain country of origin/product group combinations, Commerce cannot provide this disaggregated data (*i.e.,* product group level) when adding the melt and pour data. Further, as stated in revised § 360.104(a), provision of aggregate data on the public SIMA monitor may be revisited at the sub-regulatory level should concerns arise over the possible release of proprietary data.

As stated above, some commenters assert that certain trading patterns, which might be revealed by reporting data at the 6-digit HTS level on the public SIMA monitor, are already available through publicly available subscription sources, which aggregate bill of lading information. However, these subscription sources, based on CBP import records, do not provide the same level of detail as the public SIMA monitor, based on license data (including country of melt and pour).[31] Additionally, CBP import records become available much later than the early release of data on the public SIMA monitor. Therefore, as stated above, until we collect and conduct an analysis of the melt and pour data, Commerce cannot determine whether there will be sufficient observations to ensure anonymity to release data at the 6-digit HTS level in all instances. Further, our adoption of these procedures is consistent with the joint understandings and will provide the requisite information needed to monitor for import surges and potential transshipment, while allowing for the protection of proprietary data.

2. Whether To Require SIMA License Applicants To Identify Countries Where the Steel Was Subsequently Processed Prior to Importation

Certain commenters requested that the steel license application require information on each country where the steel was subsequently processed prior to importation. According to the commenters, this information is necessary to prevent evasion and circumvention of trade remedy measures. One commenter argued that ''extending the country of origin reporting requirement to all levels of processing would not be unreasonably burdensome.'' One commenter, however, asserted that U.S. importers may not know where steel was subsequently processed because these importers are far removed from the part of the supply chain that has knowledge

[29] *https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Protocol-of-Amendments-to-the-United-States-Mexico-Canada-Agreement.pdf.*

[30] This general understanding is informed by years of administering the SIMA program, involving regular contact with the steel industry and other government agencies.

[31] *See, e.g., https://www.datamyne.com/us-import-data/.*

of the country after the steel is melted and poured.

Response: Commerce, at this time, will not require SIMA license applicants to report information on subsequent processing in the license application. Unlike the country of melt and pour field discussed above, Commerce did not request comments on including a subsequent processing [32] field in the *Proposed Rule* [33] and, as a result, the public has not been afforded an opportunity to provide comments on such a change in the license application. However, Commerce has considered the commenters' assertion that collecting data on subsequent processing of steel imports in third countries, prior to importation into the United States, will assist in monitoring potential evasion and circumvention of trade remedy measures.

Accordingly, Commerce may request public comments on the inclusion of a subsequent processing field to SIMA's import license application, at a later date.

3. Increasing the Maximum Threshold for Low-Value Licenses To Codify Current Practice

Several commenters raised concerns that if the maximum threshold for low-value licenses was raised to $5,000, key data, particularly imports from Canada and Mexico, would not be tracked in the SIMA system and requested that the maximum threshold be reverted to $250 per shipment. According to these commenters, a $5,000 limit for low-value licenses might create a transshipment loophole for U.S. steel imports. Specifically, the use of low-value licenses on multiple shipments will incentivize a U.S. importer (or distributor) to obscure the country of origin of steel and also the country where the steel was melted and poured by being shipped into the United States via Canada or Mexico. One commenter also stated that allowing the exemption level to be significantly higher creates loopholes that allow gaming within the SIMA system via multi-load and warehousing schemes that lead to circumvention. As such, commenters recommended that Commerce conform its practice to the existing regulation rather than conforming the regulation to existing practice.

One commenter recommended that to prevent abuse of the low-value license exemption, Commerce should adopt a ''formal entry/formal license'' operational paradigm. One commenter also requested that Commerce collect low-value license information on country of melt and pour and all subsequent processing in a third country. This commenter also suggested that Commerce limit the use of low-value licenses to a single entry and that the number of low-value licenses obtained by a single party or affiliates be limited to one per quarter within a calendar year.

Response: As discussed above, Commerce is amending § 360.103(f) to reflect that the low-value license threshold is $5,000 per steel shipment into the United States, consistent with our existing practice. The low-value license threshold has been set at $5,000 since 2010, and during this time Commerce has never received any evidence that importers use the low-value license to conceal the actual country of origin or otherwise evade the regular license requirements. The commenters did not provide any such evidence. Increasing the threshold to $5,000 merely codifies Commerce's longstanding practice.

Additionally, Commerce finds that use of the low-value licenses substantially reduces the burden to importers of steel shipments between $250 and $5,000. To determine the potential burden, we examined CBP data for one sample month for steel product entries below $5,000. This data indicated that there were approximately 8,000 such entries in the sample month (June 2019). Therefore, we estimate that the additional burden of requiring importers of entries between $250 to $5,000 to switch to regular (*i.e.,* one-time use) licenses would create roughly 96,000 more regular licenses per year (8,000/month * 12 months = 96,000 more licenses per year) at 10 minutes per license (or 16,000 hours).[34] Additionally, based on review of CBP data, we find that there would be little improvement in the quality of the data collection, as the value of entries covered by the low-value licenses ($5,000 or less) is very small compared to the average monthly value of regular licenses (in May 2020, the average value was $50,000 per regular license). That said, Commerce will continue to monitor the use of low-value licenses and, if there is evidence that low-value licenses are being misused, or any other improper activity related to low-value license, we will revisit the threshold maximum of $5,000, and also consider other action, as appropriate.

Moreover, Commerce does not intend to limit the use of low-value licenses to one per quarter for each importer or to collect information about country of melt and pour on low-value licenses because low-value licenses are, by definition, re-usable licenses. Additionally, we note that adding these restrictions to the low-value licenses would obviate the intended benefit of these licenses. Specifically, the intent of low-value licenses is to reduce the public burden of the steel license requirements by allowing an importer to bring in multiple shipments of steel at a low-value on a single reusable license. If importers were required to create separate, single-use low-value licenses for each low-value shipment, this would increase the public burden of the license system, without a meaningful benefit in terms of data collection.

Finally, Commerce does not intend to adopt a ''formal entry/formal license'' operational paradigm to prevent abuse of the low-value license exemption, as suggested by one commenter. Specifically, this commenter did not elaborate on how implementing such a paradigm would prevent abuse of the low-value license exemption, and, therefore, we have not further considered this proposal.

4. Maintain License Data on the Steel Monitor for a Longer Period of Time

Certain commenters requested that Commerce maintain information regarding the country of melt and pour on the public SIMA monitor for a longer period of time. One commenter asserted that this would allow stakeholders to analyze longer trends in steel trade including where steel is melted, poured, and processed prior to importation into the United States. Commenters suggested compiling this data in a separate report on the public SIMA monitor, which only includes license data, and requested that Commerce maintain the data indefinitely. One commenter also requested that Commerce provide a ''table search'' function on the public SIMA monitor to allow the public to construct custom tables specifying country of melt and pour, country of subsequent processing, and country of origin in addition to other data fields.

Response: Currently, Commerce does not maintain license data on the public SIMA monitor once new Census data are released, and license data connected with the monthly Census data are only

[32] According to a commenter, subsequent processing could occur in two countries before importation into the United States. For example, subsequent processing of corrosion resistant steel from Country A could take the following two steps: (1) Cold rolling in Country B; and (2) coating/finishing in Country C before importation into the United States.

[33] 85 FR at 17515.

[34] *See Proposed Rule,* 85 FR at 17518 (describing that, for purposes of the Paperwork Reduction Act information collection requirements, Commerce estimates that each regular license application take less than 10 minutes per response).

available on the public SIMA monitor for two months.[35] Given that melt and pour information will not be replicated in the official Census statistics, Commerce will maintain license data regarding the country of melt and pour on the public SIMA monitor for a longer period, as a separate report. Commerce will maintain the monthly license data for the country of melt and pour field up to 12 months and maintain annual data afterwards, to the extent possible. Initially, Commerce may not be able to include country of melt and pour with the other fields for license data on the public SIMA monitor because of concerns regarding proprietary data. As mentioned above, in accordance with the Census guidelines, Commerce needs to have a minimum number of observations to display a piece of data publicly (including the country of melt and pour). Therefore, information indicating the country of melt and pour will only be reported on the public SIMA monitor once we have the minimum observations to display the data publicly without disclosing proprietary data.

5. Additional Modifications Proposed by a Commenter

One commenter proposed modifications to the SIMA licensing system and public SIMA monitor, which Commerce did not include in its *Proposed Rule.*[36] Specifically, this commenter requested that the following changes be made to the SIMA system: (1) Reduce the import license validity period from 75 days to 15 days to improve reporting accuracy and prevent skewing of actual U.S. steel import volumes; (2) license holders be required to submit corrections to the data reported on the SIMA import license form within 30 days of the date of importation of steel products; (3) importers be required to maintain their SIMA licenses, both original and corrected, for a period of five years after importation; and (4) all license applications require applicants to identify whether imported steel products are subject to antidumping (AD) and countervailing duty (CVD) orders pursuant to Title VII of the Tariff Act of 1930, as amended.

Response: With respect to the first item, Commerce will not adopt the commenter's proposed 15-day validity period because reducing the validity period from 75 to 15 days would require importers to obtain licenses shortly before the date of importation. Although a shorter validity period might improve the accuracy of the license information, Commerce finds that reducing the license validity period significantly would defeat SIMA's main purpose, which is to serve as an early-warning system for U.S. imports of steel products. Consistent with this purpose, SIMA currently collects two months of license information to be displayed on our public SIMA monitor for the public to track import trends. If the license validity period was reduced, Commerce would not have the necessary license information to accurately report import trends on its public SIMA monitor as early as has been the case historically. Commerce finds the value of the early data provided in the public SIMA monitor outweighs the slight degree of additional precision possible by a shortened validity period.

With respect to the second item, Commerce will not change existing practice and require users to submit corrections to licenses within 30 days of the date of importation. Under existing practice, corrections to the SIMA license can be made months after importation, typically when CBP performs an audit on individual importers' entries. Thus, Commerce has decided not to modify the regulations for the SIMA licensing system to implement a time limit requirement for making corrections to the license application, to maintain consistency with CBP's audit procedures.

With respect to the third item, Commerce will not implement a requirement for U.S. steel importers to maintain steel licenses for five years. Although Commerce declines to implement this record-keeping requirement for the SIMA system, CBP regulations (*i.e.,* 19 CFR part 163) require that records for entry declarations be maintained for five years. Additionally, Commerce did not request comments on implementing this or any other record-keeping requirement in the *Proposed Rule,*[37] and, as a result, interested parties were not given an opportunity to provide public comments on this requirement. However, Commerce may, at a later date, request public comment about implementing this requirement.

With respect to the fourth item, at this time, Commerce is not adding a new field to the license form requiring U.S. importers to identify the steel mill products subject to AD/CVD orders. Commerce does not disagree with the commenter that making such a change may enhance reliability and completeness of the data in the public SIMA monitor, with respect to steel products covered by AD/CVD orders. Commerce, however, did not request comments on implementing this change to the license application in the *Proposed Rule,*[38] and, thus, interested parties did not have an opportunity to provide public comments on this requirement. This is in contrast to the field for country of melt and pour that was first identified in the *Proposed Rule,* discussed above. Accordingly, Commerce will not make this change to the license application for this final rule. Nonetheless, Commerce may, at a later date, request public comment about this requirement.

6. Amendments to Existing Product Groups on the Public SIMA Monitor

Several commenters request that Commerce divide the existing product group for ''blooms, billets, and slabs'' (also called ''semi-finished steel'') into at least two separate product groups. The two proposed product groups are for slab and ''other semi-finished steel,'' which certain commenters suggest will allow a better understanding of import trends for these two distinct products. Certain commenters specifically proposed that Commerce include HTS 7207.12.0050, 7207.20.0045, 7224.90.0025, and 7224.90.0055 in the proposed new slab product group.

Response: For the final rule, as suggested by commenters, Commerce will divide the ''carbon and alloy blooms, billets, and slabs'' product group on the public SIMA monitor into two product groups: ''slab (rectangular cross-section with width greater than 4 times the thickness)'' and ''other semi-finished'' product groups. Commerce will make the same change for the ''stainless blooms, billets, and slabs'' product group. While making this change, Commerce also plans to separate line pipe into three more specific product groups (*i.e.,* line pipe greater than 16 inches in diameter, line pipe less than or equal to 16 inches in diameter, and line pipe not specified), which will harmonize SIMA data with Census data releases. These changes will also help the U.S. industry observe potential evasion or circumvention of AD/CVD orders, which the U.S. domestic producers raised as an underlying concern in their comments.

7. Harmonizing the Products Subject to SIMA With Those Subject to Section 232 Tariffs

In the *Proposed Rule,* Commerce proposed adding to the SIMA system eight additional HTS codes subject to

[35] *https://enforcement.trade.gov/steel/license/.*

[36] *See Proposed Rule,* 85 FR at 17515.

[37] *See Proposed Rule,* 85 FR at 17515.

[38] *See id.*

Section 232 tariffs,[39] which one commenter supports. However, this commenter suggests the following two options for reporting these new HTS codes in the public SIMA monitor to better account for the rails product group: (1) Create a new product group for the eight HTS codes in an ''other'' steel product group to ensure continuity of data over time; or (2) incorporate the eight HTS codes in the same product groups where each HTS subheading (at the 6-digit level) is already categorized.

Response: For this final rule, as stated above, Commerce is expanding the scope of steel products covered by the SIMA system so that it covers all steel products subject to Section 232 tariffs, *i.e.,* the eight additional HTS codes. Additionally, Commerce will adopt some of the suggestions raised above for the public SIMA monitor. Specifically, for three of these HTS codes,[40] because they already fall within existing 6-digit level HTS subheadings under various existing product groups, Commerce intends to include these HTS codes in those existing product groups.

Additionally, four of the HTS codes currently fall within 6-digit level HTS subheadings under the ''standard rails'' product group. The combined total imports for adding these four HTS codes to the ''standard rails'' product group would increase 2019 imports of this group by over 25 percent.[41] The final HTS code (7302909000) falls within the 6-digit level HTS subheading under the ''railroad accessories'' product group. However, the import volume last year for HTS 7302909000 exceeded the total import volume for the ''railroad accessories'' product group. Therefore, Commerce plans to create a new product group called ''Other Rails and Railroad Accessories'' in which to place these 5 remaining HTS codes on the public SIMA monitor.

8. Indefinitely Extending the SIMA Program

Most commenters support extending the SIMA licensing program indefinitely. Specifically, commenters requested that the SIMA program become permanent because unfairly traded imports continue to be an ongoing threat to the U.S. industry.

Response: Given the unanimous support by commenters, Commerce will extend the SIMA program indefinitely, as stated above, by removing and reserving § 360.105.

[39] *See Proposed Rule,* 85 FR at 17520 (Appendix I).

[40] HTS 7217901000, 7222406000, and 7228706000.

[41] *https://www.trade.gov/steel.*

Classifications

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this final rule is significant, but not economically significant, for purposes of Executive Order 12866.

Executive Order 13771

This final rule is not subject to Executive Order 13771 because it imposes *de minimis* costs.

Executive Order 13132

This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

Paperwork Reduction Act

This final rule contains collection-of-information requirements that have been submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act (PRA) (OMB Control No. 0625–0245; Expiration Date: 07/31/2023). Public reporting for this collection of information is estimated to be less than ten minutes per response, including the time for reviewing instructions and completing and reviewing the collection of information.

The *Proposed Rule* identified two revisions to the public reporting for this collection of information. First, steel import license applicants will need to identify the country of melt and pour as an additional field on the steel import license application. In this final rule, the information collection has been refined to provide the regulatory definition of country of melt and pour (as found in 19 CFR 360.103(c)(3)) in the form instructions. Additionally, commenters agreed with the *Proposed Rule* that this revision will not add any additional burden on the public, because the information needed to identify the country of melt and pour can be found on the mill test certification that is currently required by CBP for entry purposes and readily available to the importer. Second, the licensing requirement will be expanded to apply to all steel products, including eight additional HTS categories in addition to the approximately 780 HTS categories currently covered by the SIMA system. No party raised concerns regarding the burden hour estimates in the *Proposed Rule* for this revision.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number. All currently approved collections of information may be viewed at *https://www.reginfo.gov/public/jsp/PRA/praDashboard.myjsp.*

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration at the proposed rule stage, that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities as that term is defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The factual basis for the certification is found in the proposed rule and is repeated below. No comments were received on the certification or the economic impacts of this action. As a result, no final regulatory flexibility analysis is required and none was prepared.

This rule will not have a significant economic impact on a substantial number of small entities. This rule, if implemented, would: (1) Require import license applicants to additionally identify the country where steel used in the manufacture of the imported steel product was melted and poured, as defined in this final rule; (2) harmonize the scope of SIMA's licensing requirement with the scope of steel products subject to Section 232 tariffs; (3) indefinitely extend the SIMA system; and (4) to modify the regulations regarding low value licenses to align with our current practice. The entities that would be impacted by this rule are importers and brokerage companies that import steel mill products. These entities are already required to provide information, including the name and address of the importer, type of steel product, and country of origin of the steel imports, along with additional information, to obtain steel import licenses through the online SIMA licensing system for filing entry summary documentation required by CBP for U.S. imports of steel mill products. Based on statistics derived from current license applications, of the approximately 562,857 licenses issued each year, Commerce estimates that less than two percent of the license applications (approximately 11,257) would be filed by importers and brokerage companies considered to be small entities.

Based on the current usage of the SIMA system, Commerce does not anticipate that these four changes to the SIMA system required under this proposed rule will have a significant economic impact on a substantial

number of small entities. Companies are already familiar with the licensing of certain steel products under the current system. In most cases, brokerage companies will apply for the license on behalf of the steel importers. Most brokerage companies that are currently involved in filing documentation for importing goods into the United States are accustomed to CBP's automated entry filing systems. Today, CBP filings are handled electronically. Although steel import license applicants will need to identify the country of melt and pour as an additional field on the steel import license application pursuant to this final rule, this revision will not add any additional burden, because the information needed to identify the country of melt and pour can be found on the mill test certification that is currently required by CBP for entry purposes and readily available to the importer. Therefore, the proposed modifications to the license application will not be a significant obstacle to any firm. Should an importer or brokerage company need to register for an account or apply for a license non-electronically, a fax/phone option is available at Commerce during regular business hours. There is no cost to register for a company-specific steel license account and no cost to file for the license. Each license form is expected to take less than 10 minutes to complete and collects much of the same information required on the CBP entry summary documentation. The steel import license is the only additional U.S. entry requirement that the importers or their representatives must fulfill in order to import each covered steel product shipment under 19 CFR part 360.

Commerce does not charge fees for licenses. Commerce estimates that the likely aggregate license costs incurred by small entities in terms of the time to apply for licenses as a result of this proposed rule would be less than two percent, or an estimated $37,523.00, of the estimated total $1,876,190 cost to all steel importers to process the on-line automatic licenses. These calculations are based on an hourly pay rate of $20.00 multiplied by the estimated 93,195 total annual burden hours. The average cost of a single license is less than $3.33 based on the estimate that one license requires less than 10 minutes of the filer's time.

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

List of Subjects in 19 CFR Part 360

Administrative practice and procedure, Business and industry, Imports, Reporting and recordkeeping requirements, Steel.

Dated: September 1, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

For the reasons stated in the preamble, the Department of Commerce amends 19 CFR part 360 as follows:

PART 360—STEEL IMPORT MONITORING AND ANALYSIS SYSTEM

■ 1. The authority citation for 19 CFR part 360 continues to read as follows:

Authority: 13 U.S.C. 301(a) and 302.

■ 2. In § 360.101, revise paragraph (a)(1) to read as follows:

§ 360.101 Steel import licensing.

(a) * * *

(1) All imports of basic steel mill products are subject to the import licensing requirements. These products are listed on the Steel Import Monitoring and Analysis (SIMA) system website (*https://www.trade.gov/steel*). Registered users will be able to obtain steel import licenses on the SIMA system website. This website contains two sections related to import licensing—the online registration system and the automatic steel import license issuance system. Information gathered from these licenses will be aggregated and posted on the import monitoring section of the SIMA system website.

* * * * *

■ 3. In § 360.103:

■ a. Revise paragraphs (c)(1)(ii), (iii), and (xii);

■ b. Redesignate paragraphs (c)(1)(xiii) and (xiv) as paragraphs (c)(1)(xiv) and (xv);

■ c. Add a new paragraph (c)(1)(xiii);

■ d. Revise newly redesignated paragraph (c)(1)(xiv);

■ e. Redesignate paragraph (c)(3) as paragraph (c)(4);

■ f. Add a new paragraph (c)(3); and

■ g. Revise paragraph (f).

The revisions and additions read as follows:

§ 360.103 Automatic issuance of import licenses.

* * * * *

(c) * * *

(1) * * *

(ii) Filer contact name, phone number, and email address;

(iii) Entry type (*i.e.,* Consumption, FTZ);

* * * * *

(xii) Current Harmonized Tariff Schedule (HTS) number (from Chapters 72 or 73);

(xiii) Country where the steel used in the manufacture of the product was melted and poured (see paragraph (c)(3) of this section for further instruction);

(xiv) Quantity (in kilograms); and

* * * * *

(3)(i) The field in the license application requiring identification of the country where the steel used in the manufacture of the product was melted and poured (*see* paragraph (c)(1)(xiii) of this section) applies to the original location where the raw steel is:

(A) First produced in a steel-making furnace in a liquid state; and then

(B) Poured into its first solid shape.

(ii) The first solid state can take the form of either a semi-finished product (slab, billets or ingots) or a finished steel mill product. The location of melt and pour is customarily identified on mill test certificates that are commonplace in steel production, generated at each stage of the production process, and maintained in the ordinary course of business. The reporting requirement in paragraph (c)(1)(xiii) of this section will not apply to raw materials used in the steel manufacturing process (*i.e.,* steel scrap; iron ore; pig iron; reduced, processed, or pelletized iron ore; or raw alloys).

* * * * *

(f) *Low-value licenses.* There is one exception to the requirement for obtaining a unique license for each Customs entry. If the total value of the covered steel portion of an entry is less than $5,000, applicants may apply to Commerce for a low-value license that can be used in lieu of a single-entry license for low-value entries.

■ 4. Revise § 360.104 to read as follows:

§ 360.104 Steel import monitoring.

(a) Commerce will maintain an import monitoring system on the SIMA system website that will report certain aggregate information on imports of steel mill products obtained from the steel licenses and, where available, from the U.S. Census Bureau. Aggregate data will be reported, as appropriate, on a monthly basis by country of origin, country of melt and pour, and relevant steel mill product groupings, etc. and will include import quantity (metric tons), import Customs value (U.S. $), and average unit value ($/metric ton). The website will also contain certain aggregate data at the 6-digit Harmonized Tariff Schedule level and will also present a range of historical data for comparison purposes. Provision of aggregate data on the website may be revisited should concerns arise over the possible release of proprietary data.

(b) Reported monthly import data will be refreshed each week, as appropriate,

with new data on licenses issued during the previous week. This data will also be adjusted periodically for cancelled or unused steel import licenses, as appropriate. Additionally, outdated license data will be replaced, where available, with information from the U.S. Census Bureau.

§ 360.105 [Removed and Reserved]

■ 5. Remove and reserve § 360.105.

[FR Doc. 2020–19753 Filed 9–10–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 143

[Docket ID: DOD–2020–OS–0049]

RIN 0790–AK23

DoD Policy on Organizations That Seek To Represent or Organize Members of the Armed Forces in Negotiations or Collective Bargaining

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: This final rule removes the DoD's regulation that prohibits members of the armed forces from being members of a ''military labor organization,'' which is an organization that engages or attempts to engage in negotiations or bargaining on behalf of service members concerning the terms or conditions of military service. The rule restates statute or otherwise contains internal DoD processes wholly contained within DoD internal guidance. Therefore, this part can be removed from the Code of Federal Regulations (CFR).

DATES: This rule is effective on September 11, 2020.

FOR FURTHER INFORMATION CONTACT: Christa A. Specht, Office of Legal Policy, Office of the Under Secretary of Defense (Personnel and Readiness), (703) 697–3387.

SUPPLEMENTARY INFORMATION: It has been determined that publication of this rule removal for public comment is impracticable, unnecessary, and contrary to public interest because the underlying rule simply restates the law in 10 U.S.C. 976, or otherwise contains internal DoD processes. The only additional language in 32 CFR 143.7 and 143.8 contains internal DoD procedures and guidelines. These provisions are publicly available in DoD Instruction 1354.01, ''DoD Policy on Organizations That Seek to Represent Or Organize Members of the Armed Forces in Negotiation Or Collective Bargaining,'' published January 19, 2007 (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/135401p.pdf*).

This rule is not significant under Executive Order (E.O.) 12866, ''Regulatory Planning and Review.'' Therefore, the requirements of E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' do not apply. This removal supports a recommendation of the DoD Regulatory Reform Task Force.

List of Subjects in 32 CFR Part 143

Government employees, Labor management relations, Military personnel.

PART 143—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 143 is removed.

Dated: September 8, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–20087 Filed 9–10–20; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[EPA–R03–UST–2020–0205; FRL 10012–34–Region 3]

West Virginia: Final Approval of State Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to the Solid Waste Disposal Act of 1965, as amended (commonly known as the Resource Conservation and Recovery Act (RCRA)), the Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the State of West Virginia's Underground Storage Tank (UST) program submitted by West Virginia (West Virginia or State). This action also revises the address of EPA's Region 3 office. This action also codifies EPA's approval of West Virginia's state program and incorporates by reference (IBR) those provisions of West Virginia's regulations and statutes that we have determined meet the requirements for approval. The provisions will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA Subtitle I and other applicable statutory and regulatory provisions.

DATES: This rule is effective November 10, 2020, unless EPA receives any significant negative comment opposing this action by October 13, 2020. If EPA receives any significant negative comment opposing this action, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of November 10, 2020, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Submit your comments by one of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *Email: uybarreta.thomas@epa.gov.*

3. *Mail:* Thomas UyBarreta, RCRA Programs Branch, Land, Chemicals and Redevelopment Division, EPA Region 3, 1650 Arch Street, (Mail Code 3LD30), Philadelphia, PA 19103–2029.

Instructions: Direct your comments to Docket ID No. EPA–R03–UST–2020–0205. EPA's policy is that all comments received will be included in the public docket without change and may be available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov* or email. The federal website, *https://www.regulations.gov,* is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment. If EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. EPA encourages electronic submittals, but if you are unable to submit electronically, please reach out to the EPA contact person listed in the notice for assistance. If you need assistance in a language other than English, or you are a person with disabilities who needs a reasonable accommodation at no cost to you, please reach out to the EPA contact person by email or phone.

Docket: All documents in the docket are listed in the *https://www.regulations.gov* index. Although listed in the index, some information might not be publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas UyBarreta, (215) 814–2953, *uybarreta.thomas@epa.gov,* RCRA Programs Branch; Land, Chemicals, and Redevelopment Division; EPA Region 3, 1650 Arch Street (3LD30), Philadelphia, PA 19103–2029.

SUPPLEMENTARY INFORMATION:

I. Approval of Revisions to West Virginia's Underground Storage Tank Program

A. Why are revisions to state programs necessary?

Section 9004 of RCRA authorizes EPA to approve state underground storage tank (UST) programs to operate in lieu of the federal UST program. EPA may approve a state program if the state demonstrates, pursuant to section 9004(a), 42 U.S.C. 6991c(a), that the state program includes the elements set forth at section 9004(a)(1) through (9), 42 U.S.C. 6991c(a)(1) through (9), and provides for adequate enforcement of compliance with UST standards (section 9004(a), 42 U.S.C. 6991c(a)). Additionally, EPA must find, pursuant to section 9004(b), 42 U.S.C. 6991c(b), that the state program is ''no less stringent'' than the federal program in the elements set forth at section 9004(a)(1) through (7), 42 U.S.C. 6991c(a)(1) through (7). States such as West Virginia that have received final UST program approval from EPA under section 9004 of RCRA must, in order to retain such approval, revise their approved programs when the controlling federal or state statutory or regulatory authority is changed and EPA determines revision is required. In 2015, EPA revised the federal UST regulations and determined that states must revise their UST programs accordingly.

B. What decisions has EPA made in this rule?

On June 24, 2018, in accordance with 40 CFR 281.51(a), West Virginia submitted a complete program revision application seeking EPA approval for its UST program revisions (State Application). West Virginia's revisions correspond to the EPA final rule published on July 15, 2015 (80 FR 41566), which revised the 1988 UST regulations and the 1988 state program approval (SPA) regulations (2015 Federal Revisions). As required by 40 CFR 281.20, the State Application contains the following: A transmittal letter requesting program approval; a description of the program and operating procedures; a demonstration of the State's procedures to ensure adequate enforcement; a Memorandum of Agreement outlining the roles and responsibilities of EPA and the implementing agency; an Attorney General's statement in accordance with 40 CFR 281.24 certifying to applicable state authorities; and copies of all relevant state statutes and regulations. EPA has reviewed the State Application and determined that the revisions to West Virginia's UST program are no less stringent than the corresponding federal requirements in subpart C of 40 CFR part 281 because West Virginia has adopted almost all of the federal requirements by reference. In addition, EPA has determined that the West Virginia program provides for adequate enforcement of compliance (40 CFR 281.11(b)). Therefore, EPA grants West Virginia final approval to operate its UST program with the changes described in the State Application, and as outlined below in section I.G. of this document.

C. What is the effect of this approval decision?

This action does not impose additional requirements on the regulated community because the regulations being approved by this rule are already effective in West Virginia, and they are not changed by this action. This action merely approves the existing State regulations as meeting the federal requirements and renders them federally enforceable.

D. Why is EPA using a direct final rule?

EPA is publishing this direct final rule concurrently with a proposed rulemaking because we view this as a noncontroversial action and anticipate no significant negative comment. EPA is providing an opportunity for public comment now.

E. What happens if EPA receives comments that oppose this action?

Along with this direct final rule, EPA is publishing a separate document in the ''Proposed Rules'' Section of this **Federal Register** that serves as the proposal to approve the State's UST program revisions, providing opportunity for public comment. If EPA receives any significant negative comment opposing this approval, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will not make any further decision on the approval of the State program changes until it considers any significant negative comment received during the comment period. EPA will address any significant negative comment in a later final rule. You may not have another opportunity to comment. If you want to comment on this approval, you must do so at this time.

F. For what has West Virginia previously been approved?

On September 23, 1997, EPA finalized a rule approving West Virginia's UST program, effective February 10, 1998, to operate in lieu of the federal program. On June 15, 2004 (69 FR 33312, June 15, 2004), EPA codified the approved West Virginia program, incorporating by reference the State statutes and regulatory provisions that are subject to EPA's inspection and enforcement authorities under RCRA sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions.

G. What changes is EPA approving with this action?

On June 24, 2018, in accordance with 40 CFR 281.51(a), West Virginia submitted a complete application for final approval of its UST program revisions adopted on June 1, 2018. The State of West Virginia has amended its Code of State Rules (CSR) to incorporate by reference (into the West Virginia regulations at 33CSR30) the requirements of 40 CFR part 280, including the requirements added by the 2015 Federal Revisions, except for 40 CFR 280.20(c), 280.22, 280.34(a)(1), 280.251(b), the definition of ''implementing agency,'' the citation to section 9005 of RCRA in 280.34, and appendices I, II and III of 40 CFR part 280. EPA has reviewed West Virginia's requirements and determined that West Virginia's requirements are no less stringent than the federal regulations

and that the criteria set forth in 40 CFR part 281 subpart C are met. EPA now makes an immediate final decision, subject to receipt of any significant negative written comment opposing this action, that West Virginia's UST program revisions satisfy all of the requirements necessary to qualify for final approval. Therefore, EPA grants West Virginia final approval for the following program changes:

Required Federal Element	Implementing State Authority
40 CFR 281.30, New UST Systems and Notification	33CSR30–2.1, 33CSR30–3, 33CSR30–4.
40 CFR 281.31, Upgrading Existing UST Systems	33CSR30–2.1.
40 CFR 281.32, General Operating Requirements	33CSR30–2.1.
40 CFR 281.33, Release Detection	33CSR30–2.1.
40 CFR 281.34, Release Reporting, Investigation, and Confirmation	33CSR30–2.1.
40 CFR 281.35, Release Response and Corrective Action	33CSR30–2.1.
40 CFR 281.36, Out-of-service Systems and Closure	33CSR30–2.1.
40 CFR 281.37, Financial Responsibility for UST systems Containing Petroleum	33CSR30–2.1.
40 CFR 281.38, Lender Liability	33CSR30–2.1.
40 CFR 281.39, Operator Training	33CSR30–2.1.

The State also demonstrates that its program provides adequate enforcement of compliance as described in 40 CFR 281.11(b) and part 281, subpart D. The State's lead implementing agency, the West Virginia Department of Environmental Protection, has broad statutory and regulatory authority with respect to USTs to regulate installation, operation, maintenance, closure, and UST releases, and to the issuance of orders. These statutory and regulatory authorities are found in the West Virginia Code at sections 22–17–13, 22–17–15, 22–17–16, 22–17–17, 22–17–18, and in the West Virginia regulations at 33CSR30–5.

H. Where are the revised rules different from the Federal rules?

Broader in Scope Provisions

Where an approved state program has a greater scope of coverage than required by federal law, the additional coverage is not part of the federally-approved program and is not federally enforceable (40 CFR 281.12(a)(3)(ii)). The following West Virginia requirements are considered ''broader in scope'' than the federal program. In accordance with 40 CFR 281.12(a)(3)(ii), this additional coverage is not part of the federally-approved program and is not federally enforceable:

West Virginia requires, at 33CSR30–3, that individuals who install, repair, retrofit, upgrade, perform change-in-service, close, or tightness test UST systems or install, repair, upgrade or test corrosion protection on UST systems be certified. The requirement that installers be certified is no less stringent than the federal requirements, and is therefore part of the federally-approved program. With respect to others who are required to be certified, the West Virginia requirements are broader in scope. Additionally, fees are required to be paid for the certifications, and such fee requirements go beyond the scope of the federal program. The fees required under 33CSR31 (Underground Storage Tank Fee Assessments) are also broader in scope. The additional operator training requirements at 33CSR30–6.1 (Approval of Required Training) are broader in scope and therefore not a part of the federally-approved program.

II. Codification

A. What is codification?

Codification is the process of placing a state's statutes and regulations that comprise the state's approved UST program into the CFR. Section 9004(b) of RCRA, as amended, allows EPA to approve state UST programs to operate in lieu of the federal program. EPA codifies its authorization of state programs in 40 CFR part 282 and incorporates by reference state statutes and regulations that EPA will enforce under sections 9005 and 9006 of RCRA and any other applicable statutory provisions. The incorporation by reference of state authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the approved state program and state requirements that can be federally enforced. This effort provides clear notice to the public of the scope of the approved program in each state.

B . What is the history of codification of West Virginia's UST program?

EPA incorporated by reference West Virginia's approved UST program effective June 15, 2004 (69 FR 33312, June 15, 2004). In this document, EPA is revising 40 CFR 282.98 to include the approved revisions.

C. What codification decisions has EPA made in this rule?

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 the West Virginia statutes and regulations described in the amendments to 40 CFR part 282 set forth below. EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 3 office (see the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

One purpose of this **Federal Register** document is to codify West Virginia's approved UST program. The codification reflects the State program that will be in effect at the time EPA's approved revisions to the West Virginia UST program addressed in this direct final rule become final. If, however, EPA receives any significant negative comment opposing the proposed rule then this codification will not take effect, and the State rules that are approved after EPA considers public comment will be codified instead. The document incorporates by reference West Virginia's UST statutes and regulations and clarifies which of these provisions are included in the approved and federally-enforceable program. By codifying the approved West Virginia program and by amending the CFR, the public will more easily be able to discern the status of the federally-approved requirements of the West Virginia program.

EPA is incorporating by reference the West Virginia approved UST program in 40 CFR 282.98. Section 282.98(d)(1)(i)(A) and (B) incorporates by reference for enforcement purposes the State's statutes and regulations.

Section 282.98 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the UST program under Subtitle I of

RCRA. These documents are not incorporated by reference.

D. What is the effect of West Virginia's codification on enforcement?

The EPA retains the authority under sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in approved States. If EPA determines it will take such actions in West Virginia, EPA will rely on federal sanctions, federal inspection authorities, and federal procedures rather than the State's authorized analogs to these provisions. Therefore, EPA is not incorporating by reference such approved West Virginia procedural and enforcement authorities. Section 282.98(d)(1)(ii) of 40 CFR lists those approved West Virginia authorities that would fall into this category.

E. What State provisions are not part of the codification?

The public also needs to be aware that some provisions of the State's UST program are not part of the federally-approved State program. Such provisions are not part of the RCRA Subtitle I program because they are ''broader in scope'' than Subtitle I of RCRA. 40 CFR 281.12(a)(3)(ii) states that where an approved state program has a greater scope of coverage than required by federal law, the additional coverage is not part of the federally-approved program. As a result, State provisions that are ''broader in scope'' than the federal program are not incorporated by reference for purposes of enforcement in part 282. Section 282.98(d)(1)(iii) lists for reference and clarity the West Virginia statutory and regulatory provisions that are ''broader in scope'' than the federal program and which are not, therefore, part of the approved program being codified in this action. Provisions that are ''broader in scope'' cannot be enforced by EPA; the State, however, will continue to implement and enforce such provisions under State law.

III. Statutory and Executive Order Reviews

This action only applies to West Virginia's UST Program requirements pursuant to RCRA section 9004 and imposes no requirements other than those imposed by State law. It complies with applicable Executive Orders (EOs) and statutory provisions as follows:

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

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action approves and codifies State requirements for the purpose of RCRA section 9004 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as this final approval of West Virginia's revised underground storage tank program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

C. Unfunded Mandates Reform Act and Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Because this action approves and codifies pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). Currently there are no federally recognized tribes in West Virginia. Therefore, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

D. Executive Order 13132: Federalism

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves and codifies State requirements as part of the State RCRA underground storage tank program without altering the relationship or the distribution of power and responsibilities established by RCRA.

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

This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant, and it does not make decisions based on environmental health or safety risks.

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

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a ''significant regulatory action'' as defined under Executive Order 12866.

G. National Technology Transfer and Advancement Act

Under RCRA section 9004(b), EPA grants a State's application for approval as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State approval application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

H. Executive Order 12988: Civil Justice Reform

As required by Section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

I. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

J. Paperwork Reduction Act

This rule does not impose an information collection burden under the

provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). ''Burden'' is defined at 5 CFR 1320.3(b).

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision 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 and low-income populations in the United States. Because this rule approves pre-existing State rules that are no less stringent than existing federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

L. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801–808, 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 document 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 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). However, this action will be effective November 10, 2020 because it is a direct final rule.

Authority: This rule is issued under the authority of section 9004 of the Solid Waste Disposal Act of 1965, as amended, 42 U.S.C. 6991c.

List of Subjects in 40 CFR Part 282

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Incorporation by reference, Insurance, Intergovernmental relations, Oil pollution, Penalties, Petroleum, Reporting and recordkeeping requirements, State program approval, Surety bonds, Water pollution control, Water supply, Underground storage tanks.

Cosmo Servidio,

Regional Administrator, EPA Region 3.

For the reasons set forth in the preamble, EPA is amending 40 CFR part 282 as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

■ 1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

■ 2. Revise § 282.2(b)(3) to read as follows:

§ 282.2 Incorporation by reference.

* * * * *

(b) * * *

(3) Region 3 (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia): 1650 Arch Street, Philadelphia, PA 19103–2029.

■ 3. Revise § 282.98 to read as follows:

§ 282.98 West Virginia State-Administered Program.

(a) The State of West Virginia is approved to administer and enforce an underground storage tank program in lieu of the federal program under Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State's program, as administered by the West Virginia Department of Environmental Protection, was approved by EPA pursuant to 42 U.S.C. 6991c and 40 CFR part 281 of this chapter. EPA approved the West Virginia underground storage tank program on September 23, 1997, and approval was effective on February 10, 1998. A subsequent program revision application was approved by EPA and became effective on November 10, 2020.

(b) West Virginia has primary responsibility for administering and enforcing its federally-approved underground storage tank program. However, EPA retains the authority to exercise its inspection and enforcement authorities under sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, regardless of whether the State has taken its own actions, as well as under any other applicable statutory and regulatory provisions.

(c) To retain program approval, West Virginia must revise its approved program to adopt new changes to the federal Subtitle I program which makes it more stringent, in accordance with Section 9004 of RCRA, 42 U.S.C. 6991c and 40 CFR part 281, subpart E. If West Virginia obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the **Federal Register**.

(d) West Virginia has final approval for the following elements of its program application originally submitted to EPA and approved on September 23, 1997 and effective February 10, 1998, and the program revision application approved by EPA, effective on November 10, 2020.

(1) *State statutes and regulations.*—(i) *Incorporation by reference.* The provisions cited in this paragraph, and listed in Appendix A to Part 282, with the exception of the provisions cited in paragraphs (d)(1)(ii) and (iii) of this section, are incorporated by reference as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.* (See § 282.2 for incorporation by reference approval and inspection information.) The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the West Virginia regulations and statutes that are incorporated by reference in this paragraph from Terry Fletcher, Acting Communications Director, West Virginia Department of Environmental Protection, 601 57th St. SE, Charleston, WV 25304; Phone number: 304–926–0499 ext 49720; email address, *DEPPIOEmployees@wv.gov;* Hours: Monday–Friday, 7:00 a.m. to 3:30 p.m. You may inspect all approved material at the EPA Region 3 Office, 1650 Arch Street, Philadelphia, PA 19103–2029 (Phone number: 215–814–2953); or the National Archives and Records Administration (NARA). For information on the availability of the material at NARA, email *fedreg.legal@nara.gov* or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

(A) West Virginia Statutory Requirements Applicable to the Underground Storage Tank Program, June 2011.

(B) West Virginia Regulatory Requirements Applicable to the Underground Storage Tank Program, June 2018.

(ii) *Legal basis.* EPA evaluated the following statutes and regulations, which are part of the approved program, but they are not being incorporated by reference for enforcement purposes and do not replace federal authorities:

(A) The statutory provisions include:

(*1*) Code of West Virginia, Chapter 22, Article 17: Underground Storage Tank Act

Section 22–17–5 Powers and duties of director; integration with other acts
Section 22–17–6 Promulgation of rules and standards by director, § 22–17–6.(b)(13)
Section 22–17–12 Confidentiality, § 22–17–12.(b)
Section 22–17–13 Inspections, monitoring, and testing
Section 22–17–15 Administrative orders; injunctive relief; requests for reconsideration
Section 22–17–16 Civil penalties
Section 22–17–17 Public participation
Section 22–17–18 Appeal to environmental quality board
Section 22–17–23 Duplicative enforcement prohibited

(*2*) Code of West Virginia, Chapter 22, Article 1: Department of Environmental Protection

Section 22–1–2 Definitions

(B) The regulatory provisions include:

(*1*) West Virginia Code of State Regulations, Title 33: Waste Management Rule, Series 30: Underground Storage Tanks

Section 33–30–5 Delivery Prohibition

(iii) *Provisions not incorporated by reference.* The following statutory and regulatory provisions are ''broader in scope'' than the federal program, are not part of the approved program, and are not incorporated by reference. These provisions are not federally enforceable.

(A) The statutory provisions include:

(*1*) Code of West Virginia, Chapter 22, Article 17: Underground Storage Tank Act

Section 22–17–6 Promulgation of rules and standards by director, § 22–17–6.(b)(12) (except as to installation)
Section 22–17–7 Underground storage tank advisory committee; purpose
Section 22–17–19 Disclosures required in deeds and leases
Section 22–17–20 Appropriation of funds; underground storage tank administrative fund
Section 22–17–21 Leaking underground storage tank response fund

(*2*) [Reserved]

(B) The regulatory provisions include:

(*1*) West Virginia Code of State Regulations, Title 33: Waste Management Rule, Series 30: Underground Storage Tanks

Section 33–30–3 Certification Requirements for Individuals who Install, Repair, Retrofit, Upgrade, Perform Change-in-Service, Close or Tightness Test Underground Storage Tank Systems (except as to Individuals who Install)
Section 33–30–6 Operator Training Requirements

(*2*) West Virginia Code of State Regulations, Title 33: Office of Waste Management Rule, Series 31: Underground Storage Tank Fee Assessments

(2) *Statement of Legal Authority.* ''Attorney General's Statement'', signed by the Acting General Counsel, Chief of the Office of Legal Services, West Virginia Department of Environmental Protection, on June 8, 2017, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of Procedures for Adequate Enforcement.* The ''Demonstration of Procedures for Adequate Enforcement'' submitted as part of the program revision application on June 24, 2018, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program Description.* The program description and any other material submitted as part of the program revision application on June 24, 2018, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 3 and the West Virginia Department of Environmental Protection, signed by the EPA Regional Administrator on July 8, 2018, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

■ 4. Appendix A to part 282 is amended by revising the entry for West Virginia to read as follows:

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

* * * * *

West Virginia

(a) The statutory provisions include:

(1) Code of West Virginia, Chapter 22, Article 17: Underground Storage Tank Act

Section 22–17–1 Short title
Section 22–17–2 Declaration of policy and purpose
Section 22–17–3 Definitions
Section 22–17–4 Designation of division of environmental protection as the state underground storage tank program lead agency
Section 22–17–6 Promulgation of rules and standards by director, except § 22.17–6.(b)(12) (except as to installation) and (b)(13)
Section 22–17–8 Notification requirements
Section 22–17–9 Registration requirements; undertaking activities without registration
Section 22–17–10 Financial responsibility
Section 22–17–11 Performance standards for new underground storage tanks
Section 22–17–12 Confidentiality, except § 22–17–12.(b)
Section 22–17–14 Corrective action for underground petroleum storage tanks
Section 22–17–22 Underground storage tank insurance fund

(b) The regulatory provisions include:

(1) West Virginia Code of State Regulations, Title 33: Waste Management Rule, Series 30: Underground Storage Tanks

Section 33–30–1 General
Section 33–30–2 Adoption of Federal Regulations
Section 33–30–3 Certification Requirements for Individuals Who Install, Repair, Retrofit, Upgrade, Perform Change-in-Service, Close or Tightness Test Underground Storage Tank Systems or Install, Repair, Upgrade or Test Corrosion Protection on Underground Storage Tank Systems (as to Individuals Who Install)
Section 33–30–4 Notification Requirements

Notification for Underground Storage Tanks, revised 2/2018

[FR Doc. 2020–17345 Filed 9–10–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 200–903–0233]

RIN 0648–BH73

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Regional Fishery Management Council Membership; Financial Disclosure and Recusal

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

ACTION: Final rule.

SUMMARY: NMFS is taking final action to amend the regulations that address disclosure of financial interests by, and voting recusal of, council members appointed by the Secretary of Commerce (Secretary) to the regional fishery management councils established under the Magnuson-Stevens Fishery Conservation and Management Act. The regulatory changes will provide guidance to (1) ensure consistency and transparency in the calculation of a

Council member's financial interests; (2) determine whether a close causal link exists between a Council decision and a benefit to a Council member's financial interest; and (3) establish regional procedures for preparing and issuing recusal determinations. This final rule will improve implementation of the statutory requirements governing disclosure of financial interests and voting recusal at section 302(j) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: The final rule will be effective October 13, 2020.

FOR FURTHER INFORMATION CONTACT: Brian Fredieu, National Marine Fisheries Service, Headquarters: 301–427–8578 or *Brian.fredieu@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

In November 2018, NMFS published a proposed rule to amend the financial disclosure and recusal regulations. See 83 FR 57705 (November 16, 2018). The proposed rule sought to modify the regulations at 50 CFR 600.235 to provide guidance to (1) ensure consistency and transparency in the calculation of an affected individual's financial interests; (2) determine whether a close causal link exists between a Council decision and a benefit to an affected individual's financial interest; and (3) establish regional procedures for preparing and issuing recusal determinations. The proposed rule also sought to make several minor modifications to the regulations governing financial disclosure. The preamble of the proposed rule provided substantial detailed information on the background and application of the recusal regulations, the issues that have arisen given the lack of regulations addressing certain aspects of recusal, and a detailed description and rationale of the regulatory changes being proposed to determine when a voting recusal is required and the process for issuing recusal determinations. See 83 FR 57705–57713 (November 16, 2018).

NMFS invited public comment on whether the changes in the proposed rule were sufficient and effective in distinguishing the calculation of direct ownership, indirect ownership and employment interests; whether the proposed language appropriately defines when a close causal link exists between a Council decision and a benefit; and whether the establishment of regional procedures provides consistency and transparency in the preparation and issuance of recusal determinations. Specifically, NMFS invited public comment on whether partial attribution should extend to cases where the affected individual is an employee, a member of an association or organization, a spouse, partner, or minor child of a council member, or in cases of parent ownership; on whether there are additional circumstances that merit an exception from the standard that a close causal link exists for all Council decisions that require implementing regulations and that affect a fishery or sector of a fishery in which an affected individual has a financial interest; whether partial attribution appropriately reflects the attenuated nature of indirect ownership. NMFS also invited comment on whether a 50 percent ownership threshold captures the nature of direct ownership, including whether an interest of less than 50 percent might in some cases be controlling, and noted that any subjective control test would likely require council members to submit additional financial information and would require NMFS to develop a process and expertise to analyze control.

Changes From the Proposed Rule

NMFS modifies the proposed regulations at 50 CFR 600.235(c)(6)(ii)(A) and at § 600.235(c)(6)(ii)(E)(*1*) to remove the 50 percent ownership threshold for full attribution and apply the partial attribution principle for direct ownership regardless of the percentage ownership held by an affected individual or an affected individual's spouse, partner, or minor child. NMFS' rationale for these changes is provided in the response to Comment 3.

Responses to Public Comments

NMFS received four public comments during the comment period on the proposed rule. Three of those were from the New England, North Pacific, and Western Pacific Regional Fishery Management Councils and one was from a private citizen. Most commenters made multiple comments in one document. Comments were generally in favor of the changes made in the proposed rule but some expressed concerns over certain provisions. The specific comments and our responses are as follows.

Comment 1: The New England Fishery Management Council (NEFMC) requested that NMFS provide guidance on when a financial interest in a lobbying or advocacy organization should lead to a voting recusal. The NEFMC noted that because ''significant financial interest'' is defined solely on the basis of harvesting, processing, marketing, and vessel ownership, an affected individual with a financial interest in a lobbying or advocacy organization is unlikely to ever have a significant financial interest that leads to recusal. The Magnuson-Stevens Act does not exempt lobbying and advocacy organizations from the possibility of recusal and gives NMFS the authority to develop appropriate regulations to define such conduct.

Response: Section 302(j)(7) states that an affected individual required to disclose a financial interest under section 302(j)(2) must not vote on a Council decision that would have a significant and predictable effect on such financial interest. Section 302(j)(7) also states that a Council decision will be considered to have a significant and predictable effect on a financial interest if there is a close causal link between the Council decision and an expected and substantially disproportionate benefit to the financial interest of the affected individual relative to the financial interests of other participants in the same gear type or sector of the fishery affected by the Council decision.

Section 302(j)(7) was originally added to the Magnuson-Stevens Act with the Sustainable Fisheries Act of 1996 (SFA) (Pub. L. 104–297). Section 302(j)(7)(F) directed NMFS to promulgate regulations which prohibit an affected individual from voting on Council decisions that would have a significant and predictable effect on the affected individual's financial interests. NMFS published a proposed rule in August 1997 (62 FR 42474; August 7, 1997) and a final rule in November 1998 (63 FR 64182; November 19, 1998).

At the time NMFS was developing the 1997 proposed rule, section 302(j)(2) did not include the terms ''lobbying'' or ''advocacy'' as types of financial interests that must be disclosed. However, NMFS required, and still requires, disclosure of a financial interest in an association that provides representational services (such as lobbying and advocacy) for those involved with the fishery, such as fishermen and processors. NMFS recognized that many affected individuals had these types of financial interests and that NMFS would have to determine whether the significant and predictable effect standard for voting recusal applied to these affected individuals.

As NMFS explained in the preamble of the 1997 proposed rule, ''Affected individuals who have financial interests in businesses or not-for-profit organizations closely related to harvesting, processing, or marketing activities are covered by section 302(j)

of the Magnuson-Stevens Act and must disclose those interests. Examples are . . . business or economic consultants to the fishing industry . . . . Because the effects of Council decisions on this type of financial interest are unlikely to be 'significant or predictable,' we do not foresee recusals by such individuals under § 600.235(c) . . . .'' (see 42476 at 62 FR 42474; August 7, 1997). The preamble went on to specifically address affected individuals who are employed by or represent associations of fishermen, processors, or dealers stating, ''[These affected individuals] would be required to disclose, in addition to his/her own interests, the financial interests of the association in harvesting, processing, or marketing activities that are or will be undertaken within any fishery under the jurisdiction of his or her Council.'' Most importantly, NMFS then stated the following: ''The financial interests of the association *would be considered as separate from* the financial interests of its individual members. A vote taken on a Council decision that might have a significant and predictable effect on the members of the association would not be considered to have a significant and predictable effect on the financial interests of the representative.'' (Emphasis added.)

In the preamble to the 1998 final rule, NMFS further explained its rationale in its responses to Comments 3 and 4 (see 63 FR 64182, 64183; November 19, 1998). Comment 3 stated that the 1997 proposed rule was overly broad in that it required affected individuals to disclose financial interests in industries related to, but not directly involved in, fishing, processing or marketing. NMFS disagreed with the comment, stating, ''NMFS has long interpreted section 302(j)(2) to require affected individuals to disclose financial interests in activities *related* to harvesting, processing, or marketing. If NMFS had read the financial-disclosure provision as narrowly as [the commenter] suggests, many Council members such as fisheries association officers would have been subject to criminal liability under 18 U.S.C. 208. They would have been unable to even participate in Council deliberations on issues affecting their employment or other fiduciary interests. NMFS believes Congress intended . . . to allow persons with financial interest in activities related to harvesting, processing, or marketing to continue serving on Councils on the same footing as persons with more direct interests. The 'price' of this participation was the disclosure of those interests, so that the public could be informed of possible biases by members affiliated with certain sectors of the fishing industry.'' (Emphasis in original.) Comment 4 perceived an inconsistency in the 1997 proposed rule between the broad scope of disclosure and the narrow scope of financial interests that would disqualify an affected individual from voting. The commenter stated that the disqualifying interests should be broadened to match the disclosed interests so that representatives of fishing industry associations would be subject to the recusal provisions at 302(j)(7). NMFS disagreed with the comment, stating, ''The legislative history . . . indicates that Congress was concerned about members who votes on Council actions might result in direct gain or loss to themselves or their companies. The SFA disqualifies members from voting on decisions that would have a 'significant and predictable effect' on their financial interests. That phrase was defined as 'a close causal link between the Council decision and an expected and substantially disproportionate benefit to the financial interest of the affected individual relative to the financial interests of other participants in the same gear type or sector of the fishery.' In developing the [1997] proposed rule, and again in considering the final rule, NMFS focused on the comparative aspect of the defined term. The disqualifying effect is not that the Council action will have a significant impact on the member's financial interest; the action must have a disproportionate impact as compared with that of other participants in the fishery sector. Therefore, the criteria for recusal are limited to persons whose financial interests are directly linked to harvesting, processing, or marketing activities.''

Although the Magnuson-Stevens Act was amended in 2006 by the Magnuson-Stevens Reauthorization Act (Pub. L. 109–479) to add the terms ''lobbying'' and ''advocacy'' to section 302(j)(2), the recusal standard set forth in section 302(j)(7) remained the same. Therefore, NMFS continues to adhere to its originally stated positions: (1) That the financial interests of the association are separate from the financial interests of its individual members, and a vote taken on a Council decision that might have a significant and predictable effect on the members of the association is not considered to have a significant and predictable effect on the financial interests of the representative; and (2) that because the significant and predictable effect standard requires a disproportionate impact as compared with that of other participants in the fishery sector, the criteria for recusal continue to be limited to persons whose financial interests are directly linked to harvesting, processing, or marketing activities. This final rule amends the regulations at 50 CFR 600.235(c) to add a new paragraph § 600.235(c)(6)(D), which provides guidance on calculating a significant financial interest for an affected individual who is employed by, or who may serve as an officer, director, board member, or trustee of, an association or organization related to harvesting, processing, or marketing.

Comment 2: The North Pacific Fishery Management Council (NPFMC) requested that NMFS provide additional clarification as to how indirect employment (such as consultants) is considered in the determination of significant financial interest. The NPFMC contended that there is an apparent inconsistency in NMFS attributing all fishing activity to the affected individual when he or she is an employee of a company, but not attributing to an affected individual who is a director of an association or organization any of the fishing activity of the association's or organization's members, particularly when that association or organization may have been explicitly formed to influence council decisions and whose director's annual compensation may be directly related to council decisions.

Response: The proposed and final rules do not use the term ''indirect employment.'' An affected individual who has employment with a business that provides representational services for clients who are involved in the harvesting, processing, or marketing of fisheries under the jurisdiction of the Council, such as a consultant, must disclose that financial interest under the Magnuson-Stevens Act and the regulations. This final rule amends § 600.235(c) to add a new paragraph § 600.235(c)(6)(D), which provides guidance on calculating a significant financial interest for an affected individual who is employed by a business or organization that provides consulting services for persons directly involved in harvesting, processing, or marketing. New paragraph § 600.235(c)(6)(D) reflects NMFS' long-held position that an affected individual's financial interest in an association, or a consulting business, are separate from the financial interests of its individual members or clients, and that the significant and predictable standard set forth in section 302(j)(7), which requires a disproportionate impact as compared with that of other participants in the fishery sector for

voting disqualification, dictates that the criteria for recusal must be limited to persons whose financial interests are directly linked to harvesting, processing, or marketing activities in the fishery affected by the Council decision. With respect to the concern about the director or other employee of an association or organization whose compensation may be directly related to Council decisions, a detailed explanation of NMFS's position as it relates to this regulation is provided in the response to Comment 4. However, we note that a director or other employee of such an association or organization who serves as a Council member and compensation may be directly linked to certain Council outcomes may be subject to the restrictions set forth in 50 CFR 600.225(b)(9). This provision provides that ''no Council member may participate personally and substantially as a member . . . in a particular matter in which the member . . . has a financial interest.'' This provision implements the prohibitions contained in the criminal conflict of interest statute found at 18 U.S.C. 208. Council members who may have a financial interest in a particular matter should consult with the appropriate designated official to determine whether their participation in that matter would raise concerns under 50 CFR 600.225.

Comment 3: The NPFMC disagreed with the provision in the proposed rule that would attribute all (*i.e.,* 100 percent) of a company's fishing activity to a Council member when the Council member directly owns 50 percent or more of that company. The NPFMC stated that this provision ignores complex ownership and management arrangements of many Alaska fishing companies (*e.g.,* CDQ and family owned companies), and incorrectly equates a majority ownership with having a different level of financial interest than a minority ownership (*i.e.,* a direct ownership interest in a company that is less than 50 percent). As an alternative, the NPFMC recommended that NMFS proportionately attribute fishing activity to a Council member based on his or her percentage of direct ownership in a company.

Response: NMFS considered the comment and agrees that the regulations should proportionately attribute fishing activity to an affected individual based on his or her percentage of direct ownership in a company. With this final rule, NMFS modifies the proposed regulations at 50 CFR 600.235(c)(6)(ii)(A) and § 600.235(c)(6)(ii)(E)(*1*) to remove the 50 percent ownership threshold for full attribution and apply the partial attribution principle for direct ownership regardless of the percentage ownership held by an affected individual or an affected individual's spouse, partner or minor child. As a result of this change, an affected individual will only be attributed 100 percent of a company's harvesting, processing and marketing activity if the affected individual or his or her spouse, partner or minor child directly owns 100 percent of that company. If an affected individual or his or her spouse, partner or minor child directly owns something less than 100 percent of a company, NMFS will attribute harvesting, processing and marketing activity to the affected individual commensurate with the percentage of direct ownership.

As was explained in the proposed rule preamble, individual NPFMC members and the NPFMC as a whole have objected to NMFS's practice of fully attributing all fishing activity of a company to an affected individual when the affected individual directly owns something less than 100 percent of that fishing company. The arguments against full attribution and for partial attribution in a partial ownership situation have focused on consistency with common business practices, promoting fairness, and avoiding unintended results that can increase the likelihood of voting recusals. The NPFMC and some of its members have explained that common business practices support using a proportional share, or partial attribution, approach because an affected individual who owns five percent of a fishing company only receives five percent of the company's distributions. If an affected individual owns only five percent of the company, attribution of all of the company's fishing activity unreasonably and unfairly credits the affected individual with a greater financial interest in the company than is actually owned. Crediting an affected individual with a greater financial interest than is actually owned increases the chance of determining a voting recusal is required even though the affected individual's actual financial interest in the fishery may not represent a significant interest in the affected fishery if the individual's true ownership and activity level is considered. The NPFMC has argued that use of the full attribution approach is an ''unfair and illogical interpretation of the recusal regulations, and results in unintended recusals of Council members.''

NMFS was aware of the NPFMC's arguments for partial attribution when it proposed continuing full attribution for an affected individual who directly owns 50 percent or more of a company. NMFS proposed the 50 percent threshold for full versus partial attribution as a mid-point on the attribution continuum, with full attribution regardless of percentage ownership at one end and attribution based on actual percentage of direct ownership at the other end. NMFS specifically asked the public for comments on this aspect of the proposed rule and purposely described the NPFMC's position on this aspect of the proposed rule in the preamble to indicate to, and inform, the public that the NPFMC and some of its members had strongly held opinions on this aspect of the proposed rule. However, NMFS did not receive any comments (1) supporting the proposed 50 percent direct ownership threshold for partial versus full attribution; (2) requesting that NMFS continue its past practice of full attribution regardless of percentage ownership; or (3) criticizing the attribution approach advocated by the NPFMC or advocating for a different attribution approach than the one proposed by NMFS.

In the proposed rule preamble, NMFS stated that the proposed 50 percent threshold for full versus partial attribution stemmed from the agency's concern that an affected individual who owns 50 percent or more of a company would have more control over the actions of the company, and therefore should be attributed with all of the company's harvesting, processing, and marketing activity. However, NMFS recognizes that ''control'' of a company is an elusive factor on which to base recusal determinations. Additionally, NMFS recognizes that ''control'' of a company can come in ways other than percentage of direct ownership and is not necessarily tied solely to an ownership percentage. NMFS also recognizes that it does not have the tools or the time to conduct investigations of an affected individual's possible ''control'' over a company in preparing recusal determinations. NMFS also re-examined its proposed attribution position for direct ownership relative to its proposed attribution position for indirect, or subsidiary, ownership. While ''control'' could exist with a high percentage ownership of a subsidiary company, NMFS proposed partial attribution regardless of percentage owned for indirect ownership.

NMFS agrees that partial attribution proportional to a Council member's percentage of direct and indirect company ownership more closely reflects common business practices, promotes fairness, and avoids

unintended results that can increase the likelihood of voting recusals. For the reasons stated above, NMFS agrees with the comment and has modified proposed regulations at 50 CFR 600.235(c)(6)(ii)(A) with this final rule.

Although the NPFMC's comment focused on direct ownership by an affected individual, NMFS' decision to make changes based upon that comment also has applicability to the proposed attribution principle for direct ownership by a spouse, partner or minor child at 50 CFR 600.235(c)(6)(ii)(E)(*1*). In developing the proposed rule, NMFS determined that the attribution principle applicable to direct ownership by an affected individual should be the same as the attribution principle applicable to direct ownership by an affected individual's spouse, partner or minor child. Therefore, the proposed regulatory text at § 600.235(c)(6)(ii)(E)(*1*) mirrored the proposed regulatory text at § 600.235(c)(6)(ii)(A).

NMFS received no comments suggesting that different attribution principles for direct ownership should apply to an affected individual versus the affected individual's spouse, partner or minor child, and determined that its proposed policy of applying the same attribution principle should continue. In keeping with that policy, NMFS modifies 50 CFR 600.235(c)(6)(ii)(E)(*1*) to remove the 50 percent ownership threshold for full attribution and apply the partial attribution principle for direct ownership regardless of the percentage ownership held by an affected individual's spouse, partner, or minor child.

Comment 4: One comment noted that a Council member can own up to 49 percent of a company without meeting the threshold for recusal. The commenter noted, however, an employee of that same company would be attributed 100 percent ownership and be subject to recusal. The commenter wrote that an employee does not have legal control over a company and should not be held to a higher standard than that of a minority owner and if attribution is to be applied to employees, the proposed rule must further define categories of employment (officer, director, *etc.*) and compensation (commission, bonus, shareholder, *etc.*) that would lead to significant and direct financial benefit to employees as a result of management actions.

Response: NMFS recognizes that there is a range of employee-employer relationships and compensation models. For example, employees may be officers or directors with significant financial interest in the employer, or they may be hourly wage employees, with no other financial interest. NMFS also recognizes that employees do not necessarily have control over their employers' interests or actions. However, NMFS does not have the discretion to consider only situations where there would be a significant and direct financial benefit to employees as a result of a fishery management council action. In the case of an employee, the Act requires disclosure of any financial interest held by both the individual and any organization in which the individual is serving as an employee. The recusal requirement specifically relates to both of those financial interests—that is, an affected individual may not vote on a Council decision that would have a significant and predictable effect on the financial interest of either the employer or the employee. The Act does not allow us to consider the nature of employment or the type of compensation when making recusal determinations.

Comment 5: The NEFMC commented that there should be guidance specifying when recusal determinations will be made and how quickly action will be taken on a request for review. Additionally, the NEFMC commented that the recusal process and the regional handbook should be developed and modified in consultation with the Council.

Response: NMFS agrees that there should be specific guidance on when recusal determinations are made and the timeline for review of those determinations. The NMFS Policy Directive 01–116 states that it is the policy of NMFS to carry out the responsibilities of the Secretary pursuant to section 302(j) of the MSA and implementing regulations to provide an effective process for submission and review of financial disclosures and for resolving any conflicts of interest by Council members. That policy includes implementing the process in this final rule. NMFS will require that each NMFS Regional Office, in conjunction with the NOAA Office of General Counsel, publish and make publicly available a Regional Recusal Determination Procedure Handbook. As reflected in the final rule, the handbook would include, among other items: A description of the process for preparing and issuing a recusal determination relative to the timing of a Council decision; a description of the process by which the Council, Council members, and the public will be made aware of recusal determinations; and a description of the process for identifying the designated official(s) who will prepare recusal determinations and attend Council meetings.

As referenced in the NMFS Policy Directive 01–116, the Councils, specifically the Council Executive Directors, are responsible for reviewing the submission of financial disclosures, advising the NMFS Regional Administrator and NOAA General Counsel Regional Section if there are discrepancies, and reviewing disclosures prior to meetings as well as recording any incidences of recusals for reporting purposes. The Councils are integral in assisting NMFS in the implementation of section 302(j) of the MSA. NMFS intends to include the Councils in reviewing the Regional Recusal Determination Procedure Handbooks prior to final publication and in any subsequent review of those Handbooks.

Comment 6: The NEFMC commented that the proposed rule language updating the ''close causal link'' definition is very subjective and provides little guidance to Council members or the designated official preparing the determination. They commented that this will lead to endless debates over whether a relationship is real or speculative. They recommended the inclusion of examples as is done in some regulations (*e.g.,* 5 CFR 2635.402(b)(1)) may help clarify this issue. Another commenter noted that the proposed rule states that there is no close causal link where the affected individuals' financial interest is attenuated or is contingent on the occurrence of events that are speculative. This commenter noted that these terms are ambiguous, and if construed broadly, problematic, thus leaving room for non-recusal based on no more than a plausible claim that there is some speculative, contingent event standing between a council regulation and its effect on an affected individuals' financial interest.

Response: Section 302(j)(7)(A) of the MSA states that a Council decision is considered to have a ''significant and predictable effect'' on a financial interest if there is a close causal link between the Council decision and an expected and substantially disproportionate benefit to the financial interests. As noted in the proposed rule, since implementation of the recusal regulations in 1999, designated officials have understood that the Magnuson-Stevens Act and the regulations require a voting recusal when there is a close causal link between the Council decision and an expected and substantially disproportionate benefit to an affected individual's financial interest in the fishery or sector of the fishery affected by the Council decision. Without any regulatory guidance

concerning the close causal link requirement NMFS proposed to create a definition of close causal link to better guide the application of the requirement for causation between a Council decision and an expected and substantially disproportionate benefit to the financial interests of an affected individual. Contrary to the idea that there would be endless debates on whether a relationship is real or speculative, NMFS concluded that generally a close causal link between a benefit and a Council decision exists for all Council decisions, especially those with implementing regulations. However, NMFS also recognizes that there may be rare instances where no impact would occur or where the chain of causation is attenuated. The final rule acknowledges this, stating that a causal link does not exist if there is ''no real, as opposed to speculative, possibility that the Council decision will affect the affected individual's financial interest.'' The concept of a financial benefit being ''real, as opposed to speculative'' is necessarily subjective as it is based upon the facts of the matter before a designated official, including the type and subject of a Council decision at hand and the category of interest disclosed by a voting Council member. Furthermore, interpretation of the phrase, ''real, as opposed to speculative'' can be found in both current federal conflict of interest law and in the concept of causation in other areas of law. For example, the primary federal conflict of interest statute, 18 U.S.C. 208, requires a disqualification of a government employee in a matter in which the employee, the employee's family or connected organization has a financial interest and the matter in which the employee would be involved has a real possibility of affecting those interests. The regulations of the Office of Governmental Ethics explains that a matter will have a direct effect on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect, further noting that the chain of causation must not be ''attenuated'' or ''contingent upon the occurrence of events that are speculative or that are independent of . . . the matter''. See 5 CFR 2635.402. Here, the term ''speculative'' does not describe a type of event, as one commenter noted, but rather the probability that a link between the Council decision and whether a substantially disproportionate benefit exists. The determining official must establish that it is more likely than not that the decision causes the benefit. Therefore, the proof of a causal link cannot be based on mere speculation or inferences drawn from other inferences; but must be a conclusion supported by direct and real information provided to the determining official. NMFS agrees that including some examples of how a determining official may reach or not reach the conclusion that a close causal link exists could be helpful both to the public, the agency, and the Councils and will advise that examples be included in the Regional Recusal Determination Procedure Handbook.

Classification

The NMFS Assistant Administrator has determined that this rule is consistent with the provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law.

This rule has been determined to be significant for purposes of Executive Order 12866.

This rule modifies regulations at 50 CFR 600.235 to provide guidance to: (1) Ensure consistency and transparency in the calculation of an affected individual's financial interests; (2) determine whether a close causal link exists between a Council decision and a benefit to an affected individual's financial interest; and (3) establish regional procedures for preparing and issuing recusal determinations. Commerce certified the rule at the proposed rule stage. At the final rule stage the ownership interest has been adjusted. This rule regulates only those Council members who have voting privileges and are appointed to their position by the Secretary of Commerce. As such, this rule would have no effect on any small entities, as defined under the Regulatory Flexibility Act, 5 U.S.C. 601. As a result, a final regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

Dated: September 4, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set out in the preamble, NMFS amends 50 CFR part 600 as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

■ 2. In § 600.235;
■ a. Revise the section heading;
■ b. In paragraph (a), add in alphabetical order the definitions for ''Close causal link,'' ''Expected and substantially disproportionate benefit,'' and ''Significant financial interest;''
■ c. Redesignate paragraphs (b)(5) through (b)(7) as paragraphs (b)(6) through (b)(8), respectively, add new paragraph (b)(5), and revise newly redesignated paragraph (b)(8);
■ d. Revise paragraph (c)(3), redesignate paragraph (c)(4) as (c)(7), and add new paragraphs (c)(4), (c)(5), and (c)(6);
■ e. Revise (f) introductory text, (f)(1), and add paragraph (f)(6);
■ f. Revise paragraphs (g)(2) and (h) to read as follows:

§ 600.235 Financial disclosure and recusal.

(a) * * *

Close causal link means that a Council decision would reasonably be expected to directly impact or affect the financial interests of an affected individual.

* * * * *

Expected and substantially disproportionate benefit means a positive or negative impact with regard to a Council decision that is likely to affect a fishery or sector of a fishery in which the affected individual has a significant financial interest.

* * * * *

Significant financial interest means:

(1) A greater than 10-percent interest in the total harvest of the fishery or sector of the fishery affected by the Council decision;

(2) A greater than 10-percent interest in the marketing or processing of the total harvest of the fishery or sector of the fishery affected by the Council decision; or

(3) Full or partial ownership of more than 10 percent of the vessels using the same gear type within the fishery or sector of the fishery affected by the Council decision.

* * * * *

(b) * * *

(5) The Regional Administrator must retain the Financial Interest Form for a Council member for 20 years from the date the form is signed by the Council member or in accordance with the current NOAA records schedule.

* * * * *

(8) The Regional Administrator must retain the Financial Interest Forms of all SSC members for at least five years after the expiration of that individual's term on the SSC. Such forms are not subject to sections 302(j)(5)(B) and (C) of the Magnuson-Stevens Act.

(c) * * *

(3) In making a determination under paragraph (f) of this section as to whether a Council decision will have a significant and predictable effect on an affected individual's financial interests, the designated official will:

(i) Initially determine whether the action before the Council is a Council decision, and whether the affected individual has any financial interest in the fishery or sector of the fishery affected by the action.

(ii) If the designated official determines that the action is not a Council decision or that the affected individual does not have any financial interest in the fishery or sector of the fishery affected by the action, the designated official's inquiry ends and the designated official will determine that a voting recusal is not required under 50 CFR 600.235.

(iii) However, if the designated official determines that the action is a Council decision and that the affected individual has a financial interest in the fishery or sector of the fishery affected by the Council decision, a voting recusal is required under 50 CFR 600.235 if there is:

(A) An expected and substantially disproportionate benefit to the affected individual's financial interest (see paragraph (c)(5) of this section), and

(B) A close causal link (see paragraph (c)(4) of this section) between the Council decision and the expected and substantially disproportionate benefit to the affected individual's financial interest.

(4) A close causal link for Council decisions that either require or do not require implementing regulations is determined as follows:

(i) For all Council decisions that require implementing regulations and that affect a fishery or sector of a fishery in which an affected individual has a financial interest, a close causal link exists unless:

(A) The chain of causation between the Council decision and the affected individual's financial interest is attenuated or is contingent on the occurrence of events that are speculative or that are independent of and unrelated to the Council decision; or

(B) There is no real, as opposed to speculative, possibility that the Council decision will affect the affected individual's financial interest.

(ii) For Council decisions that do not require implementing regulations, a close causal link exists if there is a real, as opposed to speculative, possibility that the Council decision will affect the affected individual's financial interest.

(5) A designated official will determine that an expected and substantially disproportionate benefit exists if an affected individual has a significant financial interest (see paragraph (c)(6) of this section) in the fishery or sector of the fishery that is likely to be positively or negatively affected by the Council decision. The magnitude of the positive or negative impact is not determinative of whether there is an expected and substantially disproportionate benefit. The determining factor is the affected individual's significant financial interest in the fishery or sector of the fishery affected by the Council decision.

(6) When calculating significant financial interest, the designated official will rely on certain information.

(i) The information to be used is as follows:

(A) The designated official will use the information included in the Financial Interest Form and any other reliable and probative information provided in writing.

(B) The designated official may contact an affected individual to better understand the reported financial interest or any information provided in writing.

(C) The designated official will presume that the information reported on the Financial Interest Form is true and correct and the designated official is not responsible for determining the veracity of the reported information when preparing a determination under paragraph (f) of this section.

(D) If an affected individual does not provide information concerning the specific percentage of ownership of a financial interest reported on his or her Financial Interest Form, the designated official will attribute all harvesting, processing, or marketing activity of, and vessels owned by, the financial interest to the affected individual.

(ii) The designated official will apply the following principles when calculating an affected individual's financial interests relative to the significant financial interest thresholds for the fishery or sector of the fishery affected by the action. For purposes of this paragraph, use of the term ''company'' includes any business, vessel, or other entity.

(A) For attributions concerning direct ownership (companies owned by or that employ an affected individual) the designated official will attribute to an affected individual all harvesting, processing, and marketing activity of, and all vessels owned by, a company when the affected individual owns 100 percent of that company. If an affected individual owns less than 100 percent of a company, the designated official will attribute to the affected individual the harvesting, processing, and marketing activity of, and vessels owned by, the company commensurate with the affected individual's percentage of ownership. The designated official will attribute to an affected individual all harvesting, processing, and marketing activity of, and all vessels owned by, a company that employs the affected individual.

(B) For attributions concerning indirect ownership (companies owned by an affected individual's company or employer) the designated official will attribute to the affected individual the harvesting, processing, and marketing activity of, and vessels owned by, a company that is owned by that affected individual's company or employer commensurate with the affected individual's percentage ownership in the directly owned company, and the directly owned company's ownership in the indirectly owned company.

(C) For attributions concerning parent ownership (companies that own some percentage of an affected individual's company or employer) the designated official will attribute to an affected individual all harvesting, processing, and marketing activity of, and all vessels owned by, a company that owns fifty percent or more of a company that is owned by the affected individual or that employs the affected individual. The designated official will not attribute to an affected individual the harvesting, processing, or marketing activity of, or any vessels owned by, a company that owns less than fifty percent of a company that is owned by the affected individual or that employs the affected individual.

(D) For attributions concerning employment or service with associations or organizations, an affected individual may be employed by or serve, either compensated or unpaid, as an officer, director, board member or trustee of an association or organization. The designated official will not attribute to the affected individual the vessels owned by, or the harvesting, processing, or marketing activity conducted by, the members of that association or organization if such organization or association, as an entity separate from its members, does not own any vessels and is not directly engaged in harvesting, processing or marketing. However, if such organization or

association receives from NMFS an allocation of harvesting or processing privileges, owns vessels, or is directly engaged in harvesting, processing or marketing, the designated official will attribute to the affected individual the vessels owned by, and all harvesting, processing, and marketing activity of, that association or organization.

(E) For the financial interests of a spouse, partner or minor child, the designated official will consider the following factors for ownership and employment.

(1) For the financial interests of a spouse, partner or minor child related to ownership, the designated official will attribute to an affected individual all harvesting, processing, and marketing activity of, and all vessels owned by, a company when the affected individual's spouse, partner or minor child owns 100 percent of that company. If an affected individual's spouse, partner or minor child owns less than 100 percent of a company, the designated official will attribute to the affected individual the harvesting, processing, and marketing activity of, and vessels owned by, the company commensurate with the spouse's, partner's or minor child's percentage of ownership.

(2) For the financial interests of a spouse, partner or minor child related to employment, the designated official will not attribute to an affected individual the harvesting, processing, or marketing activity of, or any vessels owned by, a company that employs the affected individual's spouse, partner or minor child when the spouse's, partner's or minor child's compensation are not influenced by, or fluctuate with, the financial performance of the company. The designated official will attribute to an affected individual all harvesting, processing, and marketing activity of, and all vessels owned by, a company that employs the Council member's spouse, partner or minor child when the spouse's, partner's or minor child's compensation are influenced by, or fluctuate with, the financial performance of the company.

* * * * *

(f) *Process and procedure for determination.* (1) At the request of an affected individual, and as provided under paragraphs (c)(3)–(6) of this section, the designated official shall determine for the record whether a Council decision would have a significant and predictable effect on that individual's financial interest. Unless subject to confidentiality requirements, all information considered will be made part of the public record for the decision. The affected individual may request a determination by notifying the designated official—

(i) Within a reasonable time before the Council meeting at which the Council decision will be made; or

(ii) During a Council meeting before a Council vote on the decision.

* * * * *

(6) Regional Recusal Determination Procedure Handbooks shall be developed for reach NMFS Region.

(i) Each NMFS Regional Office, in conjunction with NOAA Office of General Counsel, will publish and make available to the public its Regional Recusal Determination Procedure Handbook, which explains the process and procedure typically followed in preparing and issuing recusal determinations.

(ii) A Regional Recusal Determination Procedure Handbook must include:

(A) A statement that the Regional Recusal Determination Procedure Handbook is intended as guidance to describe the recusal determination process and procedure typically followed within the region.

(B) Identification of the Council(s) to which the Regional Recusal Determination Procedure Handbook applies. If the Regional Recusal Determination Procedure Handbook applies to multiple Councils, any procedure that applies to a subset of those Councils should clearly identify the Council(s) to which the procedure applies.

(C) A description of the process for identifying the fishery or sector of the fishery affected by the action before the Council.

(D) A description of the process for preparing and issuing a recusal determination relative to the timing of a Council decision.

(E) A description of the process by which the Council, Council members, and the public will be made aware of recusal determinations.

(F) A description of the process for identifying the designated official(s) who will prepare recusal determinations and attend Council meetings.

(iii) A Regional Recusal Determination Procedure Handbook may include additional material related to the region's process and procedure for recusal determinations not specifically identified in paragraph (f)(6)(ii) of this section. A Regional Recusal Determination Procedure Handbook may be revised at any time upon agreement by the NMFS Regional Office and NOAA Office of General Counsel.

(g) * * *

(2) A Council member may request a review of any aspect of the recusal determination, including but not limited to, whether the action is a Council decision, the description of the fishery or sector of the fishery affected by the Council action, the calculation of an affected individual's financial interests or the finding of a significant financial interest, and the existence of a close causal link. A request for review must include a full statement in support of the review, including a concise statement as to why the Council member believes that the recusal determination is in error and why the designated official's determination should be reversed.

* * * * *

(h) The provisions of 18 U.S.C. 208 regarding conflicts of interest do not apply to an affected individual who is a voting member of a Council appointed by the Secretary, as described under section 302(j)(1)(A)(ii) of the Magnuson-Stevens Act, and who is in compliance with the requirements of this section for filing a Financial Interest Form. The provisions of 18 U.S.C. 208 do not apply to a member of an SSC, unless that individual is an officer or employee of the United States or is otherwise covered by the requirements of 18 U.S.C. 208.

* * * * *

[FR Doc. 2020–20019 Filed 9–10–20; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 177
Friday, September 11, 2020

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 ENERGY

10 CFR Part 430

[EERE–2020–BT–STD–0001]

RIN 1904–AE86

Energy Conservation Program: Energy Conservation Standards for Clothes Washers and Clothes Dryers

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

ACTION: Extension of public comment period; notification of public hearing.

SUMMARY: The U.S. Department of Energy (''DOE'') is extending the public comment period for the notice of proposed rulemaking (''NOPR'') which DOE proposes to establish separate product classes for top-loading residential clothes washers and consumer clothes dryers that offer cycle times for a normal cycle of less than 30 minutes, and for front-loading residential clothes washers that offer cycle times for a normal cycle of less than 45 minutes. DOE published the NOPR in the **Federal Register** on August 13, 2020, establishing a public comment period that ends on September 14, 2020. In this document, DOE is extending the comment period to October 13, 2020 and announcing a public hearing on September 30, 2020.

DATES: *Comments:* The comment period for the NOPR published on August 13, 2020 (85 FR 49297), is extended. DOE will accept comments, data, and information regarding the NOPR received no later than October 13, 2020.

Meeting: DOE will hold a webinar on Wednesday, September 30, 2020 from 12:00 p.m. to 4:00 p.m. See ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants. If no participants register for the webinar, then it will be cancelled.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2020–BT–STD–0001, by any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

2. Email: ConsumerWashersDryers2020STD0001@ee.doe.gov. Include the docket number EERE–2020–BT–STD–0001 in the subject line of the message.

3. *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza, SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

5. No telefacsimilies (faxes) will be accepted.

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *http://www.regulations.gov.* All documents in the docket are listed in the *http://www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *https://www.regulations.gov/docket?D=EERE-2020-BT-STD-0001.* The docket web page contains instructions on how to access all documents, including public comments in the docket.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–7796. Email: *Elizabeth.Kohl@hq.doe.gov.*

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

SUPPLEMENTARY INFORMATION:

On August 13, 2020, the U.S. Department of Energy (DOE) published a document in the **Federal Register** soliciting public comment on a NOPR regarding energy conservation standards for clothes washers and clothes dryers which DOE proposes to establish separate product classes for top-loading residential clothes washers and consumer clothes dryers that offer cycle times for a normal cycle of less than 30 minutes, and for front-loading residential clothes washers that offer cycle times for a normal cycle of less than 45 minutes. 85 FR 49297. Comments were originally due by September 14, 2020, though an incorrect reference to October 13, 2020 was also included in Section V. of the NOPR. On August 27, 2020, DOE received a joint comment from Sierra Club, Appliance Standards Awareness Project, Consumer Federation of America, and Earthjustice asking for clarification of the comment period deadline; requesting an extension of the comment period to November 12, 2020; and requesting a public hearing (see *https://www.regulations.gov/document?D=EERE-2020-BT-STD-0001-0003*). On September 1, 2020, DOE also received a request from the Association of Home Appliance Manufacturers to extend the comment period by 30 days (see *https://www.regulations.gov/document?D=EERE-2020-BT-STD-0001-0005).* DOE has reviewed these requests and considered the benefit to stakeholders in providing additional time to review the NOPR, and gather information/data that DOE is seeking. Accordingly, DOE extends the comment period until October 13, 2020. In addition, DOE will be holding a webinar on September 30, 2020.

Public Participation

DOE invites public participation in this process through participation in the webinar and submission of written comments and information. After the webinar and the closing of the comment period, DOE will consider all timely-submitted comments and additional information obtained from interested parties, as well as information obtained through further analyses.

Participation in the Webinar

The time and date of the webinar are listed in the **DATES** section at the beginning of this document. If no participants register for the webinar, then it will be cancelled.

Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *https://cms.doe.gov/eere/buildings/public-meetings-and-comment-deadlines.* Participants are responsible for ensuring their systems are compatible with the webinar software.

DOE encourages those who wish to participate in the webinar to obtain the NOPR from DOE's website and to be prepared to discuss its contents. Once again, a copy of the NOPR is available at: *https://www.regulations.gov/docket?D=EERE-2020-BT-STD-0001.*

Signing Authority

This document of the Department of Energy was signed on September 3, 2020, by Alexander N. Fitzsimmons, Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on September 3, 2020.

Treena V. Garrett,

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

[FR Doc. 2020–19927 Filed 9–10–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0511]

RIN 1625–AA00

Safety Zones; Spa Creek, Annapolis, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish two temporary safety zones for certain waters of the Spa Creek from October 19, 2020, through October 23, 2020. This action is necessary to provide for the safety of life on these navigable waters at Annapolis, MD, during a film project. This proposed rulemaking would prohibit persons and vessels from being in the safety zones unless authorized by the Captain of the Port Maryland-National Capital Region or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before September 28, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0511 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Mr. Ron Houck, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
PATCOM Coast Guard Patrol Commander
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

Hoonigan Industries, of Long beach, CA, notified the Coast Guard that it will be conducting a film project from 5 a.m. on October 19, 2020, to noon on October 22, 2020. In the event of inclement weather, the filming may continue on to October 23, 2020. The film project includes the use of barges and other marine equipment positioned at two locations in Spa Creek, at Annapolis, MD, within a portion of Market Slip (Ego Alley) and across the width of Annapolis Harbor. On site marine equipment and vessels will be operated by Smith Marine Towing, Inc. of Baltimore, MD, or its subcontractors. Such equipment and vessels will display the lights and shapes described in U.S. Coast Guard regulations. Vessels engaged in work for this project will utilize marine band radio VHF–FM channels 16 and 13. Hazards associated with the film project include barges and other marine equipment positioned within designated navigation channels and interfering with vessels intending to operate within those channels, and operating within approaches to local public boat moorings and mooring facilities, yacht clubs and private marinas, and other waterside businesses. The Captain of the Port (COTP) Maryland-National Capital Region has determined that potential hazards associated with the film project would be a safety concern for anyone within promiximity of the barges and other marine equipment positioned at two locations in Spa Creek.

The Coast Guard is requesting that interested parties provide comments within a shortened comment period of 15 days instead of the typical 30 days for this notice of proposed rulemaking. The Coast Guard believes a shortened comment period is necessary and reasonable to ensure the Coast Guard has time to review and respond to any significant comments submitted by the public in response to this NPRM and has a final rule in effect in time for the scheduled event.

The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP Maryland-National Capital Region is proposing to establish two temporary safety zones for certain waters of Spa Creek at Annapolis, MD. This rule would be effective from 5 a.m. on October 19, 2020, through noon on October 23, 2020, and would be enforced during the times described below for each zone.

The first safety zone would be enforced from 5 a.m. to noon on October 19, 2020, or if necessary due to inclement weather on October 19, 2020, from 5 a.m. to noon on October 20, 2020. This safety zone would cover all navigable waters of Spa Creek, within

Market Slip (Ego Alley), from shoreline to shoreline, bounded on the southeast by a line commencing at latitude 38°58′34.2″ N, longitude 076°29′05.6″ W, thence southwest to latitude 38°58′32.9″ N, longitude 076°29′06.4″ W, located at Annapolis, MD. This area is approximately 285 yards in length and approximately 50 yards in width. The proposed duration of the zone is intended to ensure the safety of vessels on these navigable waters before, during, and after the scheduled 5 a.m. to noon film project.

The second safety zone would be enforced from 7 a.m. on October 20, 2020 through noon on October 22, 2020. If there is inclement weather, enforcement would be continued through noon on October 23, 2020. This safety zone would cover all navigable waters of Spa Creek, encompassed by a line connecting the following points, beginning at the shoreline at latitude 38°58′39.8″ N, longitude 076°28′48.9″ W, thence south to the shoreline at latitude 38°58′32.1″ N, longitude 076°28′47.2″ W, thence southwest along the shoreline to latitude 38°58′24.6″ N, longitude 076°28′57.1″ W, thence northwest to the shoreline at latitude 38°58′34.2″ N, longitude 076°29′05.6″ W, thence northeast along the shoreline to the point of origin, located at Annapolis, MD. This area is approximately 475 yards in length and approximately 430 yards in width. This area includes the Spa Creek Anchorage, described in paragrapgh (a)(5) of 33 CFR 110.159. The mooring of vessels in this designated anchorage is managed through local ordinances enforced by the City of Annapolis Harbor Master. Vessels at moorings within this anchorage located in the vicinity of the barges and other marine equipment would be required to depart that portion of the safety zone during enforcement. Persons and vessels may seek permission to enter or depart the safety zones, by contacting the COTP or the COTP's representative. Vessels intending to use, using, or seeking to use moorings within this anchorage located near the entrance to Spa Creek would be allowed to do so during enforcement if authorized by the COTP or the COTP's designated representative. Vessels may also use the designated anchorage located outside the entrance to Spa Creek. This area includes the Spa Creek South Anchorage, described in paragrapgh (a)(3) of 33 CFR 110.159. The mooring of vessels in this anchorage is managed through local ordinances enforced by the City of Annapolis Harbor Master. The proposed duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 7 a.m. on October 20, 2020 through noon on October 22, 2020 film project.

Except for marine equipment and vessels operated by Smith Marine Towing, Inc. or its subcontractors, no vessel or person would be permitted to enter these safety zones without obtaining permission from the COTP or a designated representative. The COTP would notify the public that the safety zone will be enforced by all appropriate means to the affected segments of the public, including publication in the **Federal Register**, as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners. Vessels or persons violating this rule are subject to the penalties set forth in 46 U.S.C. 70036 (previously codified in 33 U.S.C. 1232) and 46 U.S.C. 70052 (previously codified in 50 U.S.C. 192). The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, time-of-day, time-of-year, and the days of the week of the safety zones, which would impact two designated areas of Spa Creek for 67 total enforcement hours. The first safety zone, within Market Slip (Ego Alley), would be enforced for 14 total enforcement hours. The second safety zone, across the width of Annapolis Harbor, would be enforced for 53 total enforcement hours. The film project is being planned to coincide with the non-peak season for tourism in the area and is not being held during the weekend so that there is less impact on vessel transits in this section of the waterway. Although vessel traffic will not be able to safely transit around these safety zones, there may be locations along the placement of the barges and other marine equipment in Spa Creek across the width of Annapolis Harbor that would allow for vessel transits. Vessels desiring to transit to or from local waterside businesses located within the safety zones during enforcement would be able to seek permission by contacting the COTP or the COTP's representative. Vessels intending to use, using, or seeking to use moorings within the Spa Crek Anchorage located near the entrance to Spa Creek would be allowed to do so during enforcement by contacting the COTP or the COTP's representative. Vessels at moorings within this anchorage this time of year are typically transient vessels, which may also use the South Anchorage located outside the entrance to Spa Creek. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the status of the safety zones.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in

understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves two safety zones lasting a combined 67 total enforcement hours that would prohibit entry within portions of Spa Creek. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

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

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

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 is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0511 to read as follows:

§ 165.T05–0511 Safety Zones; Spa Creek, Annapolis, MD.

(a) *Locations.* The following areas are a safety zone. All coordinates are based on datum NAD 83.

(1) *Safety zone 1.* All navigable waters of Spa Creek, within Market Slip (Ego Alley), from shoreline to shoreline, bounded on the southeast by a line commencing at latitude 38°58′34.2″ N, longitude 076°29′05.6″ W, thence southwest to latitude 38°58′32.9″ N, longitude 076°29′06.4″ W, located at Annapolis, MD.

(2) *Safety zone 2.* All navigable waters of Spa Creek, encompassed by a line connecting the following points, beginning at the shoreline at latitude 38°58′39.8″ N, longitude 076°28′48.9″ W, thence south to the shoreline at latitude 38°58′32.1″ N, longitude 076°28′47.2″ W, thence southwest along the shoreline to latitude 38°58′24.6″ N, longitude 076°28′57.1″ W, thence northwest to the shoreline at latitude 38°58′34.2″ N, longitude 076°29′05.6″ W, thence northeast along the shoreline

to the point of origin, located at Annapolis, MD.

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

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Maryland-National Capital Region to assist in enforcing any safety zone described in paragraph (a) of this section.

Marine equipment means any vessel, barge or other equipment operated by Smith Marine Towing, Inc. or its subcontractors.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative. Except for marine equipment, all vessels underway within this safety zone at the time it is activated are to depart the zone.

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone at 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF–FM channel 16 (156.8 MHz).

(3) Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement periods.* (1) Paragraph (a)(1) of this section will be enforced from 5 a.m. to noon on October 19, 2020, or if necessary due to inclement weather on October 19, 2020, from 5 a.m. to noon on October 20, 2020.

(2) Paragraph (a)(2) of this section will be enforced from 7 a.m. on October 20, 2020, through noon on October 22, 2020, or if necessary due to inclement weather, from 7 a.m. on October 20, 2020, through noon on October 23, 2020.

Dated: September 8, 2020.

Joseph B. Loring,

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

[FR Doc. 2020–20153 Filed 9–10–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3

RIN 2900–AQ80

Aggravation Definition

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes its adjudication regulations relating to aggravation of service-connected disabilities to more clearly define ''aggravation'' in service-connection claims. The revisions would explicitly confirm a singular definition of ''aggravation'' that includes the requirement of ''permanent worsening.'' The revisions would also include minor organizational and technical changes.

DATES: Comments must be received on or before November 10, 2020.

ADDRESSES: Comments may be submitted through *www.Regulations.gov;* or mailed to: Director, Compensation Service, VASRD Program Office, Department of Veterans Affairs, 1800 G St. NW, Room 644, Washington, DC 20006. Comments should indicate that they are submitted in response to ''RIN 2900–AQ80, Aggravation Definition.'' Comments received will be available *Regulations.gov* for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Keronica Richardson, Policy Analyst, VASRD Program Office (210), Compensation Service (21C), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–9700. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

I. Service Connection Based on Aggravation

For veterans who have injuries or diseases that existed prior to service and worsened during service, VA awards service connection and compensates them for the increase in disability. 38 CFR 3.306. For the purposes of this regulatory preamble, this basis of service connection will be referred to as ''in-service aggravation.'' Likewise, for veterans who have nonservice-connected injuries or diseases that are worsened by service-connected disabilities, VA awards service connection and compensates them for the increase in disability. 38 CFR 3.310. For the purposes of this regulatory preamble, this basis of service connection will be referred to as ''post-service aggravation.''

Both part 3.306 and part 3.310 provide that service connection based on aggravation is limited to situations where there is an increase in disability not caused by the natural progression of the injury or disease. Both regulations also provide that the increase must be measurable from an established baseline, although the burden is on VA to establish the baseline for purposes of in-service aggravation, whereas the burden is on the veteran to submit medical evidence establishing a baseline for purposes of post-service aggravation. *Compare* 38 CFR 3.306(b) *with* 38 CFR 3.310(b); *see also* 71 FR 52,744, 52,745 (Sept. 7, 2006) (final rule amending 38 CFR 3.310).

Section 3.306(a) derives from 38 U.S.C. 1153, which provides that a preexisting injury or disease will be considered to have been ''aggravated'' by active service ''where there is an increase in disability during such service,'' unless the increase is due to the natural progress of the disease.

Section 3.310(b) applies aggravation to the context of what is often called ''secondary'' service connection—when a service-connected disability itself causes a separate disability. Secondary service connection derives from the basic entitlement statutes applicable to disability compensation: 38 U.S.C. 1110 and 1131. As counterparts for wartime and peacetime service, each provides for compensation for ''disability resulting from personal injury suffered or disease contracted in line of duty'' or for ''aggravation of a preexisting injury suffered or disease contracted in line of duty.'' Given that these basic entitlement statutes also reference in-service aggravation, VA proposes to add those references to section 3.306 as well.

II. The Need for Regulatory Amendment

The primary purpose of this proposed regulatory amendment is to provide a singular definition of ''aggravation'' by clarifying two phrases contained within 38 CFR 3.306 and 3.310; specifically, ''increase in disability'' in section 3.306 and ''any increase in severity'' in section 3.310. These phrases are not currently defined by statute or regulation, but rather by case law.

The premise that ''disability'' refers to impairment of earning capacity is firmly established in 38 U.S.C. 1155 and 38 CFR 4.1. Courts have long and consistently recognized this definition in regard to both in-service and post-service aggravation. *See Davis* v. *Principi,* 276 F.3d 1341, 1344 (2002) (addressing in-service aggravation of a preexisting condition); *Allen* v. *Brown,* 7 Vet. App. 439, 448 (1995) (*en banc*)

(addressing post-service aggravation). Both 38 CFR 3.306 and 3.310 serve the same ultimate goal of compensating veterans for increase in disability, whether based on aggravation of a preexisting disability (in-service context) or aggravation of a nonservice-connected disability (post-service context).

Although these regulations are built on the same fundamental concepts, the differences in their wording have caused confusion over how to apply ''aggravation'' in both contexts. Because the phrases ''increase in disability'' and ''any increase in severity'' are not clearly defined, there has been uncertainty over what standard to use in determining whether ''aggravation'' is demonstrated. The incongruent wording in these two regulations has been a consistent point of confusion and contention in the claims process, including on appeal. Many appellants have argued that the standard for ''aggravation'' of preexisting disabilities that worsened during service (under section 3.306) is different than for ''aggravation'' of post-service disabilities worsened by service-connected disabilities (under section 3.310). Recently, in the case of *Ward* v. *Wilkie,* the United States Court of Appeals for Veterans Claims (Veterans Court) held that the term ''aggravation'' under section 3.310 (as currently drafted) contemplates even temporary flare-ups. 31 Vet. App. 233, 240 (2019).

Although the Veterans Court discussed the current authorizing statutes for 38 CFR 3.306 and 3.310 in order to reach its regulatory holding, its statutory analysis was limited. *See* 31 Vet. App. at 238–39. The Veterans Court noted that the term ''aggravation,'' although present in 38 U.S.C. 1153, ''is not contained in the portions of 38 U.S.C. 1110 and 1131, from which secondary service connection derives.'' 31 Vet. App.at 238. Rather, the Court noted, sections 1110 and 1131 only use that term as pertaining to a pre-existing condition ''aggravated'' during service, which would not be applicable in the context of post-service aggravation. *Id.* However, the Veterans Court did not hold that sections 1110 and 1131 clearly foreclose a permanent worsening requirement in the term ''aggravation.'' Instead, the Veterans Court focused its analysis on interpreting section 3.310 as currently written, which includes the term ''[a]ny increase in severity'' that is not contained in the authorizing statutes. *Id.* at 238–39. VA is proposing to clarify its intent by amending the regulation in response to this interpretation of its regulation.

Specifically, VA intends to clarify, through regulatory amendment, what the term ''aggravation'' means in sections 3.306 and 3.310, and to harmonize those definitions where possible.[1] Thus, VA proposes amending both sections to clarify that the increase in disability must be permanent, not merely temporary or intermittent. The changes to harmonize sections 3.306 and 3.310 reflect the principle that VA's statutory and regulatory scheme should be read as a whole. Further, 38 U.S.C. 1110 and 1131 authorize VA to provide compensation for ''disability''; inherent in that conferred authority is VA's authority to define what constitutes disability (and, it logically follows, ''increase in disability'' for purposes of aggravation). *See, e.g., Wanner* v. *Principi,* 370 F.3d 1124, 1131 (Fed. Cir. 2004) (courts precluded from reviewing ''what should be considered a disability''); *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 330 F.3d 1345, 1351 (Fed. Cir. 2003) (''38 U.S.C. 501(a) authorizes the Secretary to promulgate regulations with respect to the nature and extent of proof and evidence necessary to establish entitlement to veterans benefits.''). The reason that VA proposes to require an enduring, permanent increase in disability to establish service connection based on aggravation is that temporary or intermittent symptoms are difficult to rate (and thus prone to confusion and error) as well as time-consuming to identify and rate (resulting in delayed processing times).

VA's proposed changes to section 3.306 are in line with longstanding court precedent. *See, e.g., Davis,* 276 F.3d at 1346–47 (holding that ''evidence of temporary flare-ups symptomatic to an underlying preexisting condition, alone, is not sufficient for a non-combat veteran to show increased disability under 38 U.S.C. [ ] 1153 unless the underlying condition is worsened''). VA's proposed changes to section 3.310 respond to a growing divergence between the two ''aggravation'' standards in recent Veterans Court case law based on imprecise regulatory language. VA did not intend this divergence, and its proposed revisions to realign the two standards of ''aggravation'' will supersede the effect of the Veterans Court's recent holding in *Ward* v. *Wilkie* based on a change in the underlying regulatory text.

When VA last amended section 3.310, it did so to implement the Veterans Court's fundamental holding in *Allen* v. *Brown* that service connection may be awarded based on aggravation when a veteran's nonservice-connected disability is worsened beyond its natural progression due to a service-connected disability. The regulation was amended to allow a veteran entitlement to compensation for the degree of disability (but only that degree) over and above the degree of disability existing prior to aggravation. Prior to the *Allen* holding, section 3.310 only addressed secondary service connection. To conform section 3.310 to the *Allen* decision, VA amended it by moving paragraph (b) to (c) and creating a new paragraph (b). The new paragraph (b), represented by the current text, addressed compensation for the incremental increase in severity of a nonservice-connected disability worsened by a service-connected condition (*i.e.,* post-service aggravation). *See* 62 FR 30,547 (Jun. 4, 1997) (notice of proposed rulemaking); 71 FR 52,744 (Sept. 7, 2006) (final rule). At that time, VA did not consider or address the distinction between temporary flare-ups versus enduring worsening. To the extent that litigation has arisen over the boundaries of ''aggravation'' as defined in section 3.310, VA intends to clarify those boundaries now.

Currently, VA adjudicators must consult case law to understand how ''aggravation'' is defined. By amending 38 CFR 3.306 and 3.310, VA would enable its adjudicators—as well as all affected parties—to clearly identify and apply a singular definition of ''aggravation'' in both regulations.

Finally, VA also proposes amendments to sections 3.306 and 3.310 to use consistent terminology, as well as to make minor, technical changes to section 3.310.

III. A Singular Definition

In light of the uncertainty that exists as to the meaning of ''aggravation'' in 38 CFR 3.306 and 3.310 and the unintended divergence in meaning of the regulatory terms as interpreted in case law resulting from imprecise wording in these regulations, VA is proposing to amend these regulations to explicitly confirm a singular definition of ''aggravation.'' This singular definition would apply to all claims for service connection, regardless of whether the aggravated condition was a preexisting condition that worsened during service or a nonservice-connected condition that worsened due to a service-connected condition.

[1] VA does not intend to alter the structure of 38 CFR 3.306(b) through (c) or revise the standard for demonstrating aggravation of a preexisting injury or disease for combat and prisoner-of-war veterans under section 3.306(b).

A. Changes to 38 CFR 3.306(a)

VA proposes to incorporate the longstanding, case law definition of ''aggravation'' from *Davis* v. *Principi* into 38 CFR 3.306(a). This revision would remove any ambiguity in the existing text and would define what constitutes an ''increase in disability''; the definition would include the requirement of ''permanent worsening.'' Accordingly, VA proposes to amend paragraph 3.306(a) by adding the following two sentences: ''Except as otherwise noted in paragraph (b)(2) in this section, service connection will only be warranted if the increase in disability is permanent and not attributable to the natural progress of the injury or disease. Temporary or intermittent flare-ups do not constitute an increase in disability unless the underlying injury or disease shows permanent worsening.''

B. Changes to 38 CFR 3.310(a)

VA proposes to change the introductory heading of 38 CFR 3.310(a) from ''*General*'' to ''*Secondary disabilities*''. The intent behind this change is to clarify the distinction between secondary service connection of a disability that only arose post-service and was caused by a service-connected disability, addressed in subsection (a), and aggravation of a pre-existing disability by a service-connected disability, addressed in subsection (b). Both scenarios are ''secondary'' service connection in the sense that VA is compensating for the downstream consequence of a service-connected disability rather than a disability that itself arose in service. Both scenarios accordingly rely on VA's authority found in 38 U.S.C. 1110 and 1131 to compensate disability that is causally related to service, as well as VA's underlying rulemaking authority in 38 U.S.C. 501.

While both scenarios share this similar legal grounding, VA wishes to highlight the distinction in order to clarify for rating personnel that the concepts are distinct. When an entirely new disability is caused by a service-connected disability, VA rates and compensates for the entire disability. In the scenario where a pre-existing disability is aggravated by a service-connected disability, VA rates and compensates only for the extent of the aggravation.

VA also proposes minor technical corrections to 38 CFR 3.310(a) that include grammatical corrections and use of consistent wording. For example, the current regulation interchangeably uses the terms ''disability'' and ''condition''; VA is proposing to use only the term ''disability'' for consistency. No substantive change to the law of secondary service connection in the non-aggravation context is intended.

C. Changes to 38 CFR 3.310(b)

VA proposes to clarify the definition of ''aggravation'' in 38 CFR 3.310(b) to align it with the definition in 38 CFR 3.306(a), which would change the underlying text relied on in the recent *Ward* v. *Wilkie* decision. This revision would remove any ambiguity as to what constitutes aggravation of a nonservice-connected condition by a service-connected condition. For further clarity and organization, VA proposes to revise paragraph 3.310(b) by dividing it into three paragraphs. Paragraph 3.310(b)(1) would provide general guidance and would define what constitutes an ''increase in disability''; this definition would include the requirement of ''permanent worsening.'' paragraph 3.310(b)(2) would describe the requirement of a baseline level of severity. This language is already present in the existing regulation, and VA only proposes to add a title and nomenclature to paragraph 3.310(b)(2). Lastly, paragraph 3.310(b)(3) would describe how to determine the extent of aggravation by deducting the baseline level of severity from the current level of severity. This language is already present in the existing regulation, and VA only proposes to add a title and nomenclature to paragraph 3.310(b)(3).

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is a significant regulatory action under Executive Order 12866.

VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at *http://www.va.gov/orpm/,* by following the link for ''VA Regulations Published From FY 2004 Through Fiscal Year to Date.''

This proposed rule is not expected to be an Executive Order 13771 regulatory or deregulatory action because it is not expected to result in more than *de minimis* costs. Details on the estimated costs of this proposed rule can be found in the rule's economic analysis.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This certification is based on the fact that no small entities or businesses receive or determine entitlement to VA disability compensation. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.102, Compensation for Service Connected Deaths for Veterans' Dependents; and 64.103, Veterans Compensation for Service Connected Disability; 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Veterans.

Signing Authority

The Secretary of Veterans Affairs 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. Pamela Powers, Chief of Staff, Performing the Delegable Duties of the Deputy Secretary, Department of Veterans Affairs, approved this document on April 14, 2020, for publication.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 3 as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

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

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Revise § 3.306 paragraph (a) to read as follows:

§ 3.306 Aggravation of preservice disability.

(a) *General.* A preexisting injury or disease will be considered to have been aggravated by active military, naval, or air service when there is an increase in disability during such service. Except as otherwise noted in paragraph (b)(2) in this section, service connection will only be warranted if the increase in disability is permanent and not attributable to the natural progress of the injury or disease. Temporary or intermittent flare-ups do not constitute an increase in disability unless the underlying injury or disease shows permanent worsening.

(Authority: 38 U.S.C. 1110, 1131, and 1153)

* * * * *

■ 3. Revise § 3.310 paragraphs (a) and (b) to read as follows:

§ 3.310 Disabilities that are proximately due to, or aggravated by, service-connected disease or injury.

(a) *Secondary disabilities.* Except as provided in § 3.300(c), a disability that is proximately due to or the result of a service-connected disability shall be service connected. When service connection is established for a secondary disability, it shall be considered a part of the original disability.

(b)(1) *Aggravation of Nonservice-Connected Disabilities.* An increase in disability of a nonservice-connected injury or disease that is proximately due to or the result of a service-connected disability will be service connected on the basis of aggravation. Service connection will only be warranted if the increase in disability is permanent and not attributable to the natural progress of the injury or disease. Temporary or intermittent flare-ups do not constitute an increase in disability unless the underlying injury or disease shows permanent worsening.

(2) *Baseline Level of Severity.* VA will not concede that a nonservice-connected injury or disease was aggravated by a service-connected injury or disease unless the baseline level of severity of the nonservice-connected injury or disease is established by medical evidence created before the onset of aggravation or by the earliest medical evidence created at any time between the onset of aggravation and the receipt of medical evidence establishing the current level of severity of the nonservice connected injury or disease.

(3) *Extent of Aggravation.* The rating activity will determine the baseline and current levels of severity under the Schedule for Rating Disabilities (38 CFR part 4) and determine the extent of aggravation by deducting the baseline level of severity, as well as any increase in severity due to the natural progress of the injury or disease, from the current level.

(Authority: 38 U.S.C. 501, 1110 and 1131)

* * * * *

[FR Doc. 2020–17672 Filed 9–10–20; 8:45 am]

BILLING CODE 8320–01–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3050

[Docket No. RM2020–12; Order No. 5622]

Periodic Reporting

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission initiates an informal rulemaking proceeding to change how the Postal Service determines incremental costs and how it accounts for peak-season costs in its periodic reports. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 8, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

On August 5, 2020, the Postal Service filed a petition pursuant to 39 CFR 3050.11 requesting that the Commission initiate a rulemaking proceeding to consider changes to analytical principles relating to periodic reports.[1] The Petition identifies the proposed analytical changes filed in this docket as Proposal Five.

II. Proposal Five

Background. Proposal Five relates to the Revenue Piece and Weight (RPW) reporting methodology for measuring the national totals of non-Negotiated Service Agreement (NSA) mailpieces in international outbound product categories bearing PC Postage indicia from postage evidencing systems. Petition, Proposal Five at 1. The international outbound products at issue include Priority Mail International (PMI) and First-Class Package International Service (FCPIS). *Id.* Currently, the Postal Service uses several census sources in combination with statistical sampling estimates from the System for International Revenue and Volume, Outbound, and International Origin Destination Information System (SIRVO) to report the national totals of non-NSA mailpieces in outbound international product categories. *Id.* at 2. The Postal Service also filed a detailed assessment of the impact of the proposal on particular products in a non-public attachment accompanying this proposal.[2]

Proposal. The Postal Service's proposal seeks to replace the SIRVO sampling data used in the existing RPW reporting methodology for international

[1] Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Five), August 5, 2020 (Petition). The Postal Service also filed a notice of filing of non-public material relating to Proposal Five. Notice of Filing of USPS–RM2020–12–NP1 and Application for Nonpublic Treatment, August 5, 2020.

[2] *See* Library Reference USPS–RM2020–12–NP1.

outbound non-NSA parcel mail categories bearing PC Postage indicia with census data provided by reports from the Accounting Data Mart (ADM). Petition, Proposal Five at 4. The Postal Service notes that ''[d]ata collection is always challenging in the fast-moving timeframe around mail arrival to U.S. International Service Centers and distribution to outbound international flights, which is when SIRVO tests are conducted.'' *Id.* at 3. For this reason, ''[u]nintended errors could occur in the sampling of mail, and in the recording of the data elements observed[,]'' resulting in SIRVO point estimates with sampling errors that are not present in census data. *Id.*

Rationale and impact. The Postal Service states that the proposed methodology ''provides a complete census source of transactional-level data for PC Postage international outbound mailpieces.'' *Id.* at 4. The Postal Service contends that the proposed methodology will provide ''equal or improved data quality.'' *Id.* at 3. The Postal Service avers that the proposed methodology will result in ''the improved reporting of PC Postage non-contract revenue and volume both in terms of the level and measures of precision.'' *Id.* at 6. Furthermore, the Postal Service argues that the proposed methodology ''will also allow for more granularity in the underlying report data.'' *Id.*

The Postal Service reports that its examination of potential changes suggests that the proposed methodology would directly affect two major international outbound mail categories: PMI and FCPIS. *Id.* at 5. Outbound PMI revenue would increase 2.3 percent and volume would decrease 5.8 percent. *Id.* FCPIS would experience revenue and volume changes of the ''same general percentage magnitude as Outbound Priority Mail International, but in each instance in the opposite direction.'' *Id.*

The Postal Service also notes indirect effects of the proposal which would occur when estimates of mail categories other than PMI and FCPIS are scaled to the remaining known dispatch weights. *Id.* Among those, Outbound First-Class Mail International revenue would decrease 4.8 percent and volume would decrease by 5.7 percent. *Id.* Additionally, U.S. Postal Service Mail, Free Mail, and International Ancillary Services would experience indirect effects on revenue and volume. *Id.* at 5–6. The Postal Service notes that ultimately, indirect effects of the proposal will be spread over other types of mail, not listed above. *Id.* at n.4. The Postal Service reports that ''[o]verall, outbound international revenue and volume for Quarters 1 and 2 of FY 2020 would have been reduced by 0.3 percent and 2.7 percent, respectively.'' *Id.* at 6 (footnote omitted).

III. Notice and Comment

The Commission establishes Docket No. RM2020–12 for consideration of matters raised by the Petition. More information on the Petition may be accessed via the Commission's website at *http://www.prc.gov.* Interested persons may submit comments on the Petition and Proposal Five no later than September 8, 2020. Pursuant to 39 U.S.C. 505, Jennaca D. Upperman is designated as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. RM2020–12 for consideration of the matters raised by the Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Five), filed August 5, 2020.

2. Comments by interested persons in this proceeding are due no later than September 8, 2020.[3]

3. Pursuant to 39 U.S.C. 505, the Commission appoints Jennaca Upperman to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2020–17663 Filed 9–10–20; 8:45 am]

BILLING CODE 7710–FW–P

[3] The Commission reminds interested persons that its revised and reorganized Rules of Practice and Procedure became effective April 20, 2020, and should be used in filings with the Commission after April 20, 2020. The new rules are available on the Commission's website and can be found in Order No. 5407. *See* Docket No. RM2019–13, Order Reorganizing Commission Regulations and Amending Rules of Practice, January 16, 2020 (Order No. 5407).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2020–0439; FRL–10014–17–Region 7]

Air Plan Approval; Missouri; Removal of Control of Emission From Solvent Cleanup Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of a State Implementation Plan (SIP) revision submitted by the State of Missouri on January 15, 2019 and supplemented by letter on July 11, 2019. Missouri requests that the EPA remove a rule related to the control of emissions from solvent cleanup operations in the St. Louis, Missouri area from its SIP. This removal does not have an adverse effect on air quality. The EPA's proposed approval of this rule revision is in accordance with the requirements of the Clean Air Act (CAA).

DATES: Comments must be received on or before October 13, 2020.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R07–OAR–2020–0439 to *https://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will 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 ''Written Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Peter, Environmental Protection Agency, Region 7 Office, Air Permitting and Standards Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7397; email address: *peter.david@epa.gov.*

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

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I. Written Comments

Submit your comments, identified by Docket ID No. EPA–R07–OAR–2020–0439 at *https://www.regulations.gov.* Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. What is being addressed in this document?

The EPA is proposing to approve the removal of 10 Code of State Regulations (CSR) 10–5.455, *Control of Emission from Solvent Cleanup Operations,* from the Missouri SIP.

According to the July 11, 2019 letter from the Missouri Department of Natural Resources, available in the docket for this proposed action, Missouri stated that it rescinded the rule because of the three facilities that were once subject to the rule, two facilities shutdown and the other facility no longer meets the applicability of the rule. Therefore, the rule is no longer necessary for attainment and maintenance of the 1979, 1997, 2008, or 2015 National Ambient Air Quality Standards (NAAQS) for Ozone.

III. Background

The EPA established a 1-hour ozone NAAQS in 1971. 36 FR 8186 (April 30, 1971). On March 3, 1978, the entire St. Louis Air Quality Control Region (AQCR) (070) was identified as being in nonattainment of the 1971 1-hour ozone NAAQS, as required by the CAA Amendments of 1977. 43 FR 8962 (March 3, 1978). On the Missouri side, the St. Louis nonattainment area included the city of St. Louis and Jefferson, St. Charles, Franklin and St. Louis Counties (hereinafter referred to in this document as the ''St. Louis Area''). On February 8, 1979, the EPA revised the 1-hour ozone NAAQS, referred to as the 1979 ozone NAAQS. 44 FR 8202 (February 8, 1979). On May 26, 1988, the EPA notified Missouri that the SIP was substantially inadequate (hereinafter referred to as the ''SIP Call'') to attain the 1-hour ozone NAAQS in the St. Louis Area. *See* 54 FR 43183 (October 23, 1989).To address the inadequacies identified in the SIP Call, Missouri submitted volatile organic compound (VOC) control regulations on June 14, 1985; November 19, 1986; and March 30, 1989. The EPA subsequently approved the revised control regulations for the St. Louis Area on March 5, 1990 and February 17, 2000. The VOC control regulations approved by EPA into the SIP included reasonably available control technology (RACT) rules as required by CAA section 172(b)(2), including 10 CSR 10–5.455 *Control of Emission from Solvent Cleanup Operations.*

The EPA redesignated the St. Louis Area to attainment of the 1979 1-hour ozone standard on May 12, 2003. 68 FR 25418. Pursuant to section 175A of the CAA, the first 10-year maintenance period for the 1-hour ozone standard began on May 12, 2003, the effective date of the redesignation approval. On April 30, 2004, the EPA published a final rule in the **Federal Register** stating the 1-hour ozone NAAQS would no longer apply (*i.e.,* would be revoked) for an area one year after the effective date of the area's designation for the 8-hour ozone NAAQS. 69 FR 23951 (April 30, 2004). The effective date of the revocation of the 1979 1-hour ozone standard for the St. Louis Area was June 15, 2005. *See* 70 FR 44470 (August 3, 2005).

As noted above, 10 CSR 10–5.455, *Control of Emission from Solvent Cleanup Operations,* was approved into the Missouri SIP as a RACT rule on February 17, 2000. 65 FR 8060 (February 17, 2000). At the time the rule was approved into the SIP, 10 CSR 10–5.455 applied to all installations throughout St. Louis City and Jefferson, St. Charles, Franklin and St. Louis Counties that allowed the performance of any cleaning operation involving the use of organic solvents or solvent solutions.

By letter dated January 15, 2019, Missouri requested that the EPA remove 10 CSR 10–5.455 from the SIP. Section 110(l) of the CAA prohibits EPA from approving a SIP revision that interferes with any applicable requirement concerning attainment and reasonable further progress (RFP), or any other applicable requirement of the CAA. The State supplemented its SIP revision with a July 11, 2019, letter in order to address the requirements of section 110(l) of the CAA.

IV. What is the EPA's analysis of Missouri's SIP revision request?

In its July 11, 2019 letter, Missouri states that it intended its RACT rules, such as 10 CSR 10–5.455, to solely apply to existing sources in accordance with section 172(c)(1) of the CAA.[1] Missouri states that although the applicability section of 10 CSR 10–5.455 specifies that the rule applies to all installations located throughout St. Louis City and Jefferson, St. Charles, Franklin and St. Louis Counties, the only facilities that met the applicability criteria of the rule were Ford Motor Company, St. Louis Assembly Plant; Chrysler Group LLC South Assembly Plant; and General Motors LLC Wentzville Center (hereinafter referred to as ''Ford'', ''Chrysler'', and ''General Motors'', respectively).

Missouri, in its July 11, 2019 letter, indicated that MDNR ''marked'' the Ford plant as shutdown in 2008 and the Chrysler plant as shutdown in 2011. The EPA confirmed that Ford and Chrysler are no longer in operation [2] and are therefore no longer subject to 10 CSR 10–5.455. Missouri further indicated in the July 11, 2019 letter that General Motors is no longer subject to 10 CSR 10–5.455 in accordance with paragraph (1)(C)8.B. which exempts cleaning operations for emission units within the auto and light duty truck assembly coatings category listed for regulation under section 183(e) of the Clean Air Act.[3]

As stated above, Missouri contends that 10 CSR 10–5.455 may be removed from the SIP because section 172(c)(1) of the CAA requires RACT for existing sources, and because 10 CSR 10–5.455 was applicable to only three sources [4]

[1] The EPA agrees with Missouri's interpretation of CAA section 172(c)(1) in regard to whether RACT is required for existing sources, but also notes that the State regulation establishing RACT may apply to new sources as well, dependent upon the State regulation's language.

[2] The EPA reviewed MDNR's website that lists active, issued permits to facilities in Missouri and did not observe a permit for Ford or Chrysler. Further, the EPA reviewed EPA's ICIS-Air database which indicated that both facilities are ''permanently closed''.

[3] The Title V Operating Permit issued to General Motors by Missouri on December 4, 2017, which is included in docket, supports the interpretation that paragraph (1)(C)8.B. exempts the facility from 10 CSR 10–5.455.

[4] The EPA indicated in the March 18, 1996 **Federal Register** document (61 FR 10968), which proposed to approve 10 CSR 10–5.455 into Missouri's SIP, that three ''automobile

that are no longer subject to the rule and, therefore, the rule no longer reduces VOC emissions. Because these three facilities are no longer subject to the rule, the EPA believes the rule no longer provides an emission reduction benefit to the St. Louis Area and is proposing to remove it from the SIP.

Missouri's July 11, 2019 letter states that any new sources or major modifications of existing sources are subject to new source review (NSR) permitting. Under NSR, a new major source or major modification of an existing source with a PTE of 250 tons per year (tpy) [5] or more of any NAAQS pollutant is required to obtain a Prevention of Significant Deterioration (PSD) permit when the area is in attainment or unclassifiable, which requires an analysis of Best Available Control Technology (BACT) in addition to an air quality analysis and an additional impacts analysis. Sources with a PTE greater than 100 tpy, but less than 250 tpy,[6] are required to obtain a minor permit in accordance with Missouri's New Source Review permitting program, which is approved into the SIP.[7] Further, a new major source or major modification of an existing source with a PTE of 100 tpy or more of any NAAQS pollutant is required to obtain a nonattainment (NA) NSR permit when the area is in nonattainment, which requires an analysis of Lowest Achievable Emission Rate (LAER) in addition to an air quality analysis, an additional impacts analysis and emission offsets. The EPA agrees with this analysis.

Missouri has demonstrated that removal of 10 CSR 10–5.455 will not interfere with attainment of the NAAQS, RFP [8] or any other applicable requirement of the CAA because the only three sources that were subject to the rule are no longer subject and the removal of the rule will not cause VOC emissions to increase. Therefore, the EPA proposes to approve the removal of 10 CSR 10–5.455 from the SIP.

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

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from May 15, 2018 to August 2, 2018 and received twelve comments from the EPA that related to Missouri's lack of an adequate demonstration that the rule could be removed from the SIP in accordance with section 110(l) of the CAA, whether the rule applied to new sources and other implications related to rescinding the rule. Missouri's July 11, 2019 letter and December 3, 2018 response to comments on the state rescission rulemaking addressed the EPA's comments. In addition, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

VI. What action is the EPA taking?

The EPA is proposing to approve Missouri's request to rescind 10 CSR 10–5.455 from the SIP because the rule applied to three facilities that are no longer subject and because the rule is not applicable to any other source. Therefore, the rule no longer serves to reduce emissions in the St. Louis Area. Furthermore, any new sources or major modifications of existing sources in the St. Louis Area are subject to NSR permitting.[9] We are processing this as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

VII. Incorporation by Reference

In this document, the EPA is proposing to amend regulatory text that includes incorporation by reference. As described in the proposed amendments to 40 CFR part 52 set forth below, the EPA is proposing to remove provisions of the EPA-Approved Missouri Regulation from the Missouri State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

VIII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 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 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as

manufacturers'' were subject to this rule but did not specifically name the three facilities.

[5] The PSD major source threshold for certain sources is 100 tpy rather than 250 tpy (see 40 CFR 52.21(b)(1)(i)(*a*) and 10 C.S.R. 10–6.060(8)(A)).

[6] Except for those sources with a PSD major source threshold of 100 tpy.

[7] EPA's latest approval of Missouri's NSR permitting program rule was published in the **Federal Register** on October 11, 2016. 81 FR 70025.

[8] RFP is not applicable to the St. Louis Area because for marginal ozone nonattainment areas, such as the St. Louis Area, the specific requirements of section 182(a) apply in lieu of the attainment planning requirements that would otherwise apply under section 172(c), including the attainment demonstration and reasonably available control measures (RACM) under section 172(c)(1), reasonable further progress (RFP) under section 172(c)(2), and contingency measures under section 172(c)(9).

[9] ''NSR Permitting'' includes PSD permitting in areas designated attainment and unclassifiable, NA NSR in areas designated nonattainment and minor source permitting.

specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 24, 2020.

James Gulliford,

Regional Administrator, Region 7.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart-AA Missouri

§ 52.1320 [Amended]

■ 2. In § 52.1320, the table in paragraph (c) is amended by removing the entry ''10–5.455'' under the heading ''Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area''.

[FR Doc. 2020–19009 Filed 9–10–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2019–0401, FRL–10012–52–Region 10]

Air Plan Approval; ID, Incorporation by Reference Updates and Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve State Implementation Plan (SIP) revisions submitted by Idaho on June 5, 2019 and May 27, 2020. The submitted revisions update the incorporation by reference of specific Federal requirements and clarify source permitting requirements. The EPA proposes to find that the changes are consistent with Clean Air Act requirements.

DATES: Comments must be received on or before October 13, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2019–0401, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *https://www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Kristin Hall, EPA Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101, at (206) 553–6357 or *hall.kristin@epa.gov.*

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

Table of Contents

I. Background

Section 110 of the Clean Air Act (CAA) specifies the general requirements for states to submit SIPs to attain and maintain the National Ambient Air Quality Standards (NAAQS) and the EPA's actions regarding approval of those SIPs. Idaho incorporates by reference various portions of Federal regulations codified in the Code of Federal Regulations (CFR) into the Rules for the Control of Air Pollution in Idaho (Idaho Administrative Procedures Act (IDAPA) 58.01.01). Idaho then submits parts of IDAPA 58.01.01 to the EPA for approval into the Federally approved Idaho SIP (generally those provisions that relate to the criteria pollutants regulated under section 110 of the CAA for which the EPA has promulgated NAAQS or other specific requirements of section 110).

To ensure that its rulemakings remain consistent with EPA requirements, Idaho updates the incorporation by reference citations in IDAPA 58.01.01 on an annual basis and submits a SIP revision to reflect any changes made to Federal regulations during that year. Idaho also makes periodic changes to permitting regulations for clarity or to improve implementation and submits the changes to the EPA along with the annual update SIP revision.

II. Evaluation of Submissions

On June 5, 2019 and May 27, 2020, Idaho submitted SIP revisions to update the incorporation by reference of Federal regulations. Idaho also submitted rule changes to clarify permitting requirements. This evaluation section discusses how the submitted rule revisions differ from the current Federally approved Idaho SIP and why the EPA believes the rule changes are approvable.[1] As such, our discussion focuses on the most recently submitted change to any particular rule provision.

A. Incorporation by Reference

The Idaho SIP incorporates by reference the following Federal regulations into the Idaho SIP (IDAPA 58.01.01.107.03.a through .e.):

- National Primary and Secondary Ambient Air Quality Standards, 40 CFR part 50;
- Requirements for Preparation, Adoption, and Submittal of Implementation Plans, 40 CFR part 51, with the exception of certain visibility-related provisions;
- Approval and Promulgation of Implementation Plans, 40 CFR part 52, subparts A and N, and appendices D and E;
- Ambient Air Monitoring Reference and Equivalent Methods, 40 CFR part 53; and
- Ambient Air Quality Surveillance, 40 CFR part 58.

The submitted SIP revisions update the incorporation by reference citation date for these provisions from July 1, 2017 to July 1, 2019. During this time period, there were no changes to 40 CFR parts 50, 53, and 58. There were, however, changes to the State-adopted portions of 40 CFR parts 51 and 52, specifically: A change to the Federal definition of volatile organic compounds; [2] updates to compliance

[1] The EPA approved a portion of the June 5, 2019 SIP revision on December 9, 2019 (84 FR 67189). Specifically, we approved IDAPA 58.01.01.620 and Section 4 of Senate Bill 1024, codified at Idaho Code Section 39–114, state effective April 11, 2019.

[2] Air Quality: Revision to the Regulatory Definition of Volatile Organic Compounds—Exclusion of cis1,1,1,4,4,4-hexafluorobut-2-ene (HFO–1336mzz–Z), final rule published November 28, 2018 (83 FR 61127).

test methods for air emissions sources; [3] additional requirements for ozone nonattainment areas and the ozone transport region; [4] corrections and updates to regulations to limit the interstate transport of nitrogen oxides; [5] and updates to the Idaho SIP codified at 40 CFR part 52, subpart N.[6]

We have reviewed the incorporation by reference updates and have determined that the effect of the updates is to keep the Idaho SIP consistent with minimum Federal requirements. Therefore, we propose to approve the submitted incorporation by reference updates.

B. Permit To Construct Program

The Federally approved Idaho Permit to Construct program is designed to regulate emissions from new and modified industrial sources. The submitted revisions align the Idaho SIP pre-construction permit requirements for sources of radionuclides with the pre-construction approval requirements in the National Emissions Standards for Hazardous Air Pollutants at 40 CFR part 61. Specifically, Idaho revised IDAPA 58.01.01.221 and .222 to make clear that a source must obtain an Idaho Permit to Construct if that source is required to get approval to construct under the Federal National Emissions Standards for Hazardous Air Pollutants (NESHAP) for radionuclides, set forth at 40 CFR part 61, subpart H. Exemptions from pre-construction approval are spelled out in the NESHAP and the redundant exemption language in the Idaho regulations was removed. Idaho also removed the reference to radionuclides from the definition of ''Significant'' at IDAPA 58.01.01.006.108 because the NESHAP defines the applicability terms for the modification of sources of radionuclides.

The radionuclide provisions in these rule sections were approved into the Idaho SIP because they serve to identify which sources must obtain a Permit to Construct. We propose to approve the submitted changes because they are applicability provisions designed to remove confusion and improve program implementation. We are approving the revisions to the Permit to Construct program only to the extent that the rules apply to (1) pollutants for which NAAQS have been established (criteria pollutants) and precursors to those criteria pollutants as determined by the EPA for the applicable geographic area; and (2) any additional pollutants that are required to be regulated under part C of title I of the CAA, but only for the purposes of meeting or avoiding the requirements of part C of title I of the CAA.

C. Non-Title V Operating Permit Program

The submitted revisions update a requirement in the Idaho Tier II (non-title V) operating permit program. Specifically, Idaho submitted a change to IDAPA 58.01.01.404.04 to make clear that a permittee must submit a complete application to the Idaho Department of Environmental Quality for a renewal of the terms and conditions establishing the Tier II operating permit at least six months before, but no earlier than eighteen months before, the expiration date of the existing permit. The submitted revisions are intended to make sure the permit does not expire before the terms and conditions are renewed. We propose to approve the changes.

D. Sulfuric Acid Plants

There are two facilities in Idaho with sulfuric acid plants, namely Itafos Conda and the JR Simplot Don Plant. Both are subject to the Federal Standards of Performance for Sulfuric Acid Plants set forth at 40 CFR part 60 subpart H (NSPS subpart H). Idaho requested to remove outdated state emission limits for sulfuric acid plant from the SIP because the NSPS subpart H limits are more stringent. Idaho compared the emission limit in NSPS subpart H (4 pounds of sulfur oxides per ton of acid produced) to the emission limit in IDAPA 58.01.01.845 through .848 (28 pounds of sulfur oxides per ton of acid produced). Idaho requested to remove the Idaho SIP emission limit because it is less stringent than the NSPS subpart H limit. Idaho also noted any new sulfuric acid plant seeking to construct in Idaho would also be subject to NSPS subpart H and therefore the requirements in IDAPA 58.01.01.845 through .848 are unnecessary.

We have reviewed Idaho's request and agree that the emission limit in the NSPS subpart H is more stringent than the emission limit in the Idaho SIP and that the NSPS subpart H applies to existing and new sources in Idaho. Therefore, we propose to approve the State's request to remove IDAPA 58.01.01.845 through .848 from the Idaho SIP.

III. Proposed Action

The EPA is proposing to approve and incorporate by reference revisions to the Idaho SIP submitted on June 5, 2019, and May 27, 2020. Upon final approval, the Idaho SIP will include the following regulations:

- IDAPA 58.01.01.006.108, definition of ''Significant'' (State effective 4/11/2019);
- IDAPA 58.01.01.107, Incorporation by Reference, except section 107.03.f through 107.03.p (State effective 3/30/2020);
- IDAPA 58.01.01.221, Category I Exemption (State effective 4/11/2019);
- IDAPA 58.01.01.222, Category II Exemption (State effective 4/11/2019); and
- IDAPA 58.01.01.404, Procedure for Issuing Permits (State effective 4/11/2019).

The EPA is also proposing to approve Idaho's request to remove the following regulations from the Idaho SIP:

- IDAPA 58.01.01.845, Rules for Control of Sulfur Oxide Emissions from Sulfuric Acid Plants (State effective 5/1/1994);
- IDAPA 58.01.01.846, Emission Limits (State effective 4/5/2000);
- IDAPA 58.01.01.847, Monitoring and Testing (State effective 5/1/1994); and
- IDAPA 58.01.01.848, Compliance Schedule (State effective 4/5/2000).

IV. Incorporation by Reference

In this document, the EPA is proposing to include in a final rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the provisions described in Section III of this preamble. Also, in this document, the EPA is proposing to remove, in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to remove the incorporation by reference of IDAPA 58.01.01.845 through .848 as described in Section III of this preamble. The EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 10 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 approve a

[3] Testing Regulations for Air Emission Sources, final rule published November 14, 2018 (83 FR 56713).

[4] Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements final rule published December 6, 2018 (83 FR 62998).

[5] Emissions Monitoring Provisions in State Implementation Plans Required Under the NO_X SIP Call, final rule published March 8, 2019 (84 FR 8422).

[6] Idaho SIP codified at 40 CFR part 52, subpart N.

SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed 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 proposed 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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of the requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed action does not apply on any Indian reservation land or in any other area in Idaho where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

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

Dated: August 24, 2020.

Christopher Hladick,

Regional Administrator, Region 10.

[FR Doc. 2020–18972 Filed 9–10–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2020–0422; FRL–10013–71–Region 7]

Air Plan Approval; Kansas; Infrastructure State Implementation Plan Requirements for the 2015 Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve certain elements of a State Implementation Plan (SIP) submission from the State of Kansas addressing the applicable requirements of section 110 of the Clean Air Act (CAA) for the 2015 Ozone (O_3) National Ambient Air Quality Standard (NAAQS). Section 110 requires that each state adopt and submit a SIP revision to support the implementation, maintenance, and enforcement of each new or revised NAAQS promulgated by the EPA. These SIPs are commonly referred to as ''infrastructure'' SIPs. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: Comments must be received on or before October 13, 2020.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R07–OAR–2020–0422 to *https://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will 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 ''Written Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: William Stone, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551–7714; email address *stone.william@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to the EPA. A technical support document (TSD) is included in this proposed rulemaking docket.

Table of Contents

I. Written Comments

Submit your comments, identified by Docket ID No. EPA–R07–OAR–2020–0422, at *https://www.regulations.gov.* Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. What is being addressed in this document?

The EPA is proposing to approve the infrastructure SIP submission received from the state on April 11, 2019, and supplemented by letter dated February 6, 2020, in accordance with section 110(a)(1) of the CAA. Specifically, the EPA is proposing to approve the

following infrastructure elements of section 110(a)(2) of the CAA: (A) through (C), (D)(i)(II)—prevent significant deterioration of air quality (prong 3) and protection of visibility (prong 4), (D)(ii), (E) through (H), and (J) through (M). Elements of section 110(a)(2)(D)(i)(I)—significant contribution to nonattainment (prong 1) and interfering with maintenance of the NAAQS (prong 2) will be addressed in a separate action.

Section 110(a)(2)(I) was also not addressed in the submission, however, the EPA does not expect infrastructure SIP submissions to address element (I). Section 110(a)(2)(I) requires states to meet the applicable SIP requirements of part D of the CAA relating to designated nonattainment areas. The specific part D submissions for designated nonattainment areas are subject to different submission schedules than those for section 110 infrastructure elements. The EPA will act on part D attainment plan SIP submissions through a separate rulemaking governed by the requirements for nonattainment areas, as described in part D.

A TSD is included as part of the docket to discuss the details of this proposed action, including an analysis of how the SIP meets the applicable 110 requirements for infrastructure SIPs. Included in the TSD is the EPA's analysis concerning Kansas' authority to conduct modeling in accordance with the EPA's ''*Revisions to the Guideline on Air Quality Models: Enhancements to the AERMOD Dispersion Modeling System and Incorporation of Approaches To Address Ozone and Fine Particulate Matter*'' (also referred to as the 2017 *Guideline*).[1] 82 FR 5182. While Kansas has not yet formally adopted the 2017 *Guideline* into its regulations, Kansas states that it has the authority to integrate the requirements and recommendations of the 2017 *Guideline* in its regulatory processes. As detailed in the TSD, the EPA proposes to find that Kansas' April 11, 2019 submission, supplemented by letter dated February 6, 2020, satisfies the PSD-related requirements of CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3), and 110(a)(2)(J), and modeling requirements related to CAA section 110(a)(2)(K).

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

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The state provided a public comment period for this SIP revision from August 23, 2018 to September 24, 2018, and received no comments. In addition, as explained in more detail in the technical support document which is part of this docket, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

IV. What action is EPA taking?

The EPA is proposing to approve elements of the September 27, 2018, submission addressing the infrastructure elements for the 2015 O_3 NAAQS. Specifically, the EPA is proposing to approve the following infrastructure elements of section 110(a)(2): (A) through (C), (D)(i)(II) prong 3 and prong 4, (D)(ii), (E) through (H), (J) through (M). The EPA is not acting on the elements of section 110(a)(2)(D)(i)(I)—prong 1 and prong 2 because those elements were not addressed in the submission. Section 110(a)(2)(I) was not addressed in the submission and the EPA would not expect it to be. The EPA's analysis of the submission is addressed in a TSD which is part of this docket.

We are processing this as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

V. Statutory and Executive Order Reviews

Under the Clean Air Act (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, 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 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications 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).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Infrastructure, Intergovernmental relations, Ozone.

Dated: August 11, 2020.

James Gulliford,

Regional Administrator, Region 7.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

[1] EPA's *Guideline on Air Quality Models* is codified at 40 CFR part 51, appendix W and is generically referred to as *Guideline* herein.

Subpart—R Kansas

■ 2. In § 52.870, paragraph (e), the table is amended by adding the entry ''(45)'' in numerical order to read as follows:

§ 52.870 Identification of Plan.

* * * * *

(e) * * *

EPA-APPROVED KANSAS NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
*	*	*	*	*
(45)Section 110(a)(2) Infrastructure Requirements for the 2015 O_3 NAAQS.	Statewide	9/27/18	[Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule].	[EPA–R07–OAR–2020–0422; FRL–10013–71–Region 7]. This action proposes to approve the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II)—prongs 3 and 4, (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). 110(a)(2)(D)(i)(I)—prongs 1 and 2 were not included in the submission. 110(a)(2)(I) is not applicable.

[FR Doc. 2020–17989 Filed 9–10–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R04–RCRA–2020–0402; FRL–10013–63–Region 4]

South Carolina: Proposed Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: South Carolina has applied to the Environmental Protection Agency (EPA) for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. The EPA has reviewed South Carolina's application and has determined, subject to public comment, that these changes satisfy all requirements needed to qualify for final authorization. Therefore, we are proposing to authorize the State's changes. The EPA seeks public comment prior to taking final action.

DATES: Comments must be received on or before October 13, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–RCRA–2020–0402, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.* The EPA encourages electronic submittals, but if you are unable to submit electronically or need other assistance, please contact Leah Davis, the contact listed in the **FOR FURTHER INFORMATION CONTACT** provision below. Please also contact Leah Davis if you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you.

FOR FURTHER INFORMATION CONTACT: Leah Davis, RCRA Programs and Cleanup Branch, LCR Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960; telephone number: (404) 562–8562; fax number: (404) 562–9964; email address: *davis.leah@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why are revisions to state programs necessary?

States that have received final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, states must change their programs and ask the EPA to authorize the changes. Changes to state programs may be necessary when Federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

New Federal requirements and prohibitions imposed by Federal regulations that the EPA promulgates pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized states at the same time that they take effect in unauthorized states. Thus, the EPA will implement those requirements and prohibitions in South Carolina, including the issuance of new permits implementing those requirements, until the State is granted authorization to do so.

B. What decisions has the EPA made in this proposed rule?

South Carolina submitted a final complete program revision application, dated April 8, 2020, seeking authorization of changes to its hazardous waste program that correspond to certain Federal rules promulgated between July 1, 2003 and June 30, 2018 (including RCRA

Clusters [1] XIV through XXVI). The EPA concludes that South Carolina's application to revise its authorized program meets all of the statutory and regulatory requirements established under RCRA, as set forth in RCRA section 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271. Therefore, the EPA proposes to grant South Carolina final authorization to operate its hazardous waste program with the changes described in the authorization application, and as outlined below in Section F of this document.

South Carolina has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian country, as defined at 18 U.S.C. 1151) and for carrying out the aspects of the RCRA program described in its program revision application, subject to the limitations of HSWA, as discussed above.

C. What is the effect of this proposed authorization decision?

If South Carolina is authorized for the changes described in South Carolina's authorization application, these changes will become part of the authorized State hazardous waste program, and will therefore be federally enforceable. South Carolina will continue to have primary enforcement authority and responsibility for its State hazardous waste program. The EPA would maintain its authorities under RCRA sections 3007, 3008, 3013, and 7003, including its authority to:

- Conduct inspections, and require monitoring, tests, analyses, and reports;
- Enforce RCRA requirements, including authorized State program requirements, and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action will not impose additional requirements on the regulated community because the regulations for which the EPA is proposing to authorize South Carolina are already effective under State law, and are not changed by today's proposed action.

D. What happens if the EPA receives comments that oppose this action?

The EPA will evaluate any comments received on this proposed action and will make a final decision on approval or disapproval of South Carolina's proposed authorization. Our decision will be published in the **Federal Register**. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

E. What has South Carolina previously been authorized for?

South Carolina initially received final authorization on November 8, 1985, effective November 22, 1985 (50 FR 46437) to implement the RCRA hazardous waste management program. The EPA granted authorization for changes to South Carolina's program on the following dates: September 8, 1988, effective November 7, 1988 (53 FR 34758); February 10, 1993, effective April 12, 1993 (58 FR 7865); November 29, 1994, effective January 30, 1995 (59 FR 60901); April 26, 1996, effective June 25, 1996 (61 FR 18502); October 4, 2000, effective December 4, 2000 (65 FR 59135); August 21, 2001, effective October 22, 2001 (66 FR 43798); September 2, 2003, effective November 3, 2003 (68 FR 52113); February 9, 2005, effective April 11, 2005 (70 FR 6765); and March 28, 2005, effective May 27, 2005 (70 FR 15594).

F. What changes is the EPA proposing with today's action?

South Carolina submitted a final complete program revision application, dated April 8, 2020, seeking authorization of changes to its hazardous waste management program in accordance with 40 CFR 271.21. This application included changes associated with Checklists [2] 205 through 207, 209, 211 through 215, 217 through 218, 220, 222 through 223, 226 through 229, 231 through 234, and 236 through 239. The EPA proposes to determine, subject to receipt of written comments that oppose this action, that South Carolina's hazardous waste program revisions are equivalent to, consistent with, and no less stringent than the Federal program, and therefore satisfy all of the requirements necessary to qualify for final authorization. Therefore, the EPA is proposing to authorize South Carolina for the following program changes: [3]

Description of Federal requirement	**Federal Register** date and page	Analogous state authority [1]
Checklist 205, NESHAP: Surface Coating of Automobiles and Light-Duty Trucks.	69 FR 22601, 4/26/04	R.61–79.264.1050(h) and R.61–79.265.1050(g).
Checklist 206 and 206.1, Nonwastewaters from Dyes and Pigments.	70 FR 9138, 2/24/05; 70 FR 35032, 6/16/05.	R.61–79.261.4(b)(15) and (b)(15)(i)–(v); R.61–79.261.32(a)–(d) and (d)(1)–(5); R.61–79.261 Appendices VII & VIII; R.61–79.268.20(a)–(c); R.61–79.268.40 Treatment Standards Table; R.61–79.268.48 Universal Treatment Standards Table.
Checklist 207 and 207.1, Uniform Hazardous Waste Manifest Rule [2].	70 FR 10776, 3/4/05; 70 FR 35034, 6/16/05.	R.61–79.260.10; R.61–79.261.7(b)(1)(iii)(A)–(B); R.61–79.262.20(a)(1)–(2); R.61–79.262.21(a)–(m) and (m)(1)–(2), except 262.21(f)(4); R.61–79.262.27(a)–(b); R.61–79.262.32(b) and (b)(1)–(5); R.61–79.262.33; R.61–79.263.20(a)(1)–(3) and (g)(1)–(4); R.61–79.263.21(b)(1)–(2) and (b)(2)(i)–(ii); R.61–79.264.70(a)–(b); R.61–79.264.71(a)(1)–(3), (b)(4), and (e); R.61–79.264.72(a)–(g); R.61–79.264.76(a)–(b) [(b) reserved]; R.61–79.265.70(a)–(b); R.61–79.265.71(a)(1)–(3), (b)(4), and (e); R.61–79.265.72(a)–(g); R.61–79.265.76(a)–(b) [(b) now reserved].
Checklist 209, Universal Waste Rule: Specific Provisions for Mercury Containing Equipment.	70 FR 45508, 8/5/05	R.61–79.260.10; R.61–79.261.9(c); R.61–79.264.1(g)(11)(iii); R.61–79.265.1(c)(14)(iii); R.61–79.268.1(f)(3); R.61–79.270.1(c)(2)(viii)(C); R.61–79.273.1(a)(3); R.61–79.273.4(a)–(c) and (c)(1)–(2); R.61–79.273.9; R.61–79.273.13(c)(1)–(4) and (c)(4)(i)–(iii); R.61–79.273.14(d)(1)–(2); R.61–79.273.32(b)(4)–(5); R.61–79.273.33(c)(1)–(4) and (c)(4)(i)–(iii); R.61–79.273.34(d)(1)–(2).
Checklist 211, Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures (''Headworks exemptions'').	70 FR 57769, 10/4/05	R.61–79.261.3(a)(2)(iv)(A)–(B), (D), and (F)–(G).

[1] A ''cluster'' is a grouping of hazardous waste rules that the EPA promulgates from July 1st of one year to June 30th of the following year.

[2] A ''checklist'' is developed by the EPA for each Federal rule amending the RCRA regulations. The checklists document the changes made by each Federal rule and are presented and numbered in chronological order by date of promulgation.

[3] Although submitted for authorization, the EPA is not including Checklists 212 or 217 in the authorization of South Carolina's program at this time.

Description of Federal requirement	**Federal Register** date and page	Analogous state authority [1]
Checklist 213, Burden Reduction Initiative [3]	71 FR 16862, 4/4/06	R.61–79.260.31(b)(2)–(7); R.61–79.261.4(a)(9)(iii)(E) and (f)(9); R.61–79.264.15(b)(4); R.61–79.264.16(a)(4); R.61–79.264.52(b); R.61–79.264.56(i); R.61–79.264.73(b), (b)(1)–(2), (b)(6), (b)(8), (b)(10), and (b)(18)–(19); R.61–79.264.98(d) and (g)(2)–(3); R.61–79.264.99(f)–(g); R.61–79.264.100(g); R.61–79.264.113(e)(5); R.61–79.264.115; R.61–79.264.120; R.61–79.264.143(i); R.61–79.264.145(i); R.61–79.264.147(e); R.61–79.264.191(a) and (b)(5)(ii); R.61–79.264.192(a) and (b); R.61–79.264.193(a)(1)–(2) and (i)(2); R.61–79.264.195(b)–(d) and (f)–(h); R.61–79.264.196(f); R.61–79.264.251(c); R.61–79.264.280(b); R.61–79.264.314(a)–(e) and (e)(1)–(2); R.61–79.264.343(a)(2); R.61–79.264.347(d); R.61–79.264.554(c)(2); R.61–79.264.571(a)–(c); R.61–79.264.573(a)(4)(ii) and (g); R.61–79.264.574(a); R.61–79.264.1061(b)(1)–(2) and (d) [(d) removed]; R.61–79.264.1062(a); R.61–79.264.1100; R.61–79.264.1101(c)(2) and (c)(4); R.61–79.265.15(b)(4); R.61–79.265.16(a)(4); R.61–79.265.52(b); R.61–79.265.56(i); R.61–79.265.73(b), (b)(1)–(2), (b)(6)–(8), and (b)(15); R.61–79.265.90(d)(1) and (d)(3); R.61–79.265.93(d)(2) and (d)(5); R.61–79.265.113(e)(5); R.61–79.265.115; R.61–79.265.120; R.61–79.265.143(h); R.61–79.265.145(h); R.61–79.265.147(e); R.61–79.265.174; R.61–79.265.191(a) and (b)(5)(ii); R.61–79.265.192(a) and (b); R.61–R.79.265.193(a)(1)–(2) and (i)(2); R.61–79.265.195(a)–(c) and (e)–(g); R.61–79.265.196(f); R.61–79.265.221(a); R.61–79.265.224(a); R.61–79.265.259(a); R.61–79.265.280(e); R.61–79.265.301(a); R.61–79.265.303(a); R.61–79.265.314(a)–(f) and (f)(1)–(2); R.61–79.265.441(a)–(c); R.61–79.265.443(a)(4)(ii) and (g); R.61–79.265.444(a); R.61–79.265.1061(b)(1)–(2); R.61–79.265.1061(d); R.61–79.265.1062(a); R.61–79.265.1100; R.61–79.265.1101(c)(2) and (c)(4); R.61–79.266.102(e)(10); R.61–79.266.103(d) and (k); R.61–79.268.7(a)(1)(2) and (b)(6); R.61–79.268.9(a) and (d); R.61–79.270.14(a); R.61–79.270.16(a); R.61–79.270.26(c)(15); R.61–79.270.42, Appendix I, Item O.

Description of Federal requirement	**Federal Register** date and page	Analogous state authority [1]
Checklist 214, Corrections to Errors in the Code of Federal Regulations [4 5].	71 FR 40254, 7/14/06	R.61–79.260.10; R.61–79.260.22(a)(1) and (d)(1)(ii); R.61–79.260.40(a); R.61–79.260.41; R.61–79.261.2(c)(1)(i); R.61–79.261.3(a)(2)(i); R.61–79.261.4(a)(20)(v), (b)(6)(i)(B), (b)(6)(ii), (b)(6)(ii)(D), (b)(6)(ii)(F), (b)(9), (e)(2)(vi), and (e)(3)(i); R.61–79.261.6(a)(2)(i)–(iv) and (c)(2); R.61–79.261.21(a)(3)–(4), (a)(4)(i), (a)(4)(i)(A)–(D), and Notes 1–4; R.61–79.261.24(b); R.61–79.261.31(a) Table; R.61–79.261.32 Table (Entries K107 and K069); R.61–79.261.33(e), (e) Comment, (e) Table, (f), (f) Comment, and (f) Table; R.61–79.261 Appendices VII & VIII; R.61–79.262.70; R.61–79.262.82(a)(1)(ii); R.61–79.262.83(b)(1)(i) and (b)(2)(ii); R.61–79.262.84(e);R.61–79.264.1(g)(2); R.61–79.264.4; R.61–79.264.13(b)(7)(iii)(B); R.61–79.264.17(b); R.61–79.264.18(a)(2)(iii) and (b)(2)(iii); R.61–79.264.97(a)(1), (a)(1)(i), and (i)(5); R.61–79.264.98(a)(2) and (g)(4)(i); R.61–79.264.99(h)(2); R.61–79.264.101(d); R.61–79.264.111(c); R.61–79.264.112(b)(8); R.61–79.264.115; R.61–79.264.116; R.61–79.264.118(c); R.61–79.264.119(b)(1)(ii); R.61–79.264.140(d)(1); R.61–79.264.142(b)(2); R.61–79.264.143(b)(7), (b)(8), and (e)(5); R.61–79.264.145(d)(6) and (f)(11); R.61–79.264.147(h)(1); R.61–79.264.151(b), (f), (g), (h)(2), (i), (j), (k), (l), (m)(1), and (n)(1); R.61–79.264.175(b)(1); R.61–79.264.193(c)(4) Note, (d)(4), (e)(2)(ii)–(iii), (e)(2)(v)(A)–(B), (e)(3)(i)–(ii), (g)(1)(iii)–(iv), and (g)(2)(i)(A); R.61–79.264.221(c)(1)(i)(B), (c)(2)(ii), (e)(1), and (e)(2)(i)(B)–(C); R.61–79.264.223(b)(1); R.61–79.264.226(a)(2); R.61–79.264.251(a)(2)(i)(A); R.61–79.264.252(a)–(b); R.61–79.264.259(b); R.61–79.264.280(c)(7) and (d); R.61–79.264.283(a); R.61–79.264.301(c)(2) and (e)(2)(i)(B); R.61–79.264.302(a)–(b); R.61–79.264.304(b)(1); R.61–79.264.314(e)(2); R.61–79.264.317(a); R.61–79.264.344(b); R.61–79.264.552(e)(4)(iii), (e)(4)(iv)(F), and (e)(6)(iii)(E); R.61–79.264.553(e); R.61–79.264.554(a); R.61–79.264.555(e)(6); R.61–79.264.573(a)(1), (a)(4)(i), (a)(5), (b), and (m)(2)–(3); R.61–79.264.600; R.61–79.264.601(a), (b)(11), and (c)(4); R.61–79.264.1030(c); R.61–79.264.1033(f)(2)(vii)(B); R.61–79.264.1034(b)(2); R.61–79.264.1035(c)(4)(i)–(ii); R.61–79.264.1050(f); R.61–79.264.1058(c)(1); R.61–79.264.1064(c)(3); R.61–79.264.1080(a) and (c); R.61–79.264.1090(c); R.61–79.264.1101(b)(3)(iii), (c)(3), (c)(3)(i), and (d); R.61–79.264.1102(a); R.61–79.264 Appendix I, Tables 1 and 2; R.61–79.265.1(c)(6); R.61–79.265.12(a)(1); R.61–79.265.14(b)(1); R.61–79.265.16(b); R.61–79.265.19(c)(2); R.61–79.265.56(b); R.61–79.265.90(d); R.61–79.265.110(b)(4); R.61–79.265.111(c); R.61–79.265.112(b)(5) and (d)(4); R.61–79.265.113(b) and (e)(4); R.61–79.265.117(b); R.61–79.265.119(b)(1)(ii); R.61–79.265.140(b) and (b)(2); R.61–79.265.142(a); R.61–79.265.145(e)(11); R.61–79.265.147(a)(1)(i) and (b)(1)(i)–(ii); R.61–79.265.174; R.61–79.265.193(e)(2)(v)(A)–(B) and (i)(2); R.61–79.265.194(b)(1)–(2); R.61–79.265.197(b); R.61–79.265.221(a) and (d)(2)(i)(A)–(B); R.61–79.265.224(b)(1); R.61–79.265.228(a)(2)(iii)(D) and (b)(2); R.61–79.265.229(b)(2) and (b)(3); R.61–79.265.255(b); R.61–79.265.259(b)(1); R.61–79.265.280(a)(4); R.61–79.265.281(a)(1); R.61–79.265.301(a), (d)(1), and (d)(2)(i)(B); R.61–79.265.302(b); R.61–79.265.303(b)(1); R.61–79.265.312(a)(1); R.61–79.265.314(e)(1)(ii) and (f)(2); R.61–79.265.316(c)–(d); R.61–79.265.405(a)(1); R.61–79.265.441(c); R.61–79.265.443(a)(4)(i) and (b); R.61–79.265.445(b); R.61–79.265.1033(f)(2)(ii); R.61–79.265.1035(b)(2), (b)(2)(i), and (c)(4)(i); R.61–79.265.1063(b)(4)(ii); R.61–79.265.1080(a); R.61–79.265.1085(h)(3); R.61–79.1087(b); R.61–79.265.1090(f)(1); R.61–R.79.265.1100(d); R.61–79.265.1101(b)(3)(i)(B), (b)(3)(iii), (c)(3), and (d); R.61–79.265 Appendices I (Tables 1 and 2), V (Table), and VI; R.61–79.266.70(a); R.61–79.266.80(a) Table; R.61–79.266.100(b)(2)(iv), (d)(3)(i)(A), and (g); R.61–79.266.102(a)(2)(iv), (e)(3)(i)(E), (e)(5)(i)(C), (e)(6)(ii)(B)(2), and (e)(8)(iii); R.61–79.266.103(a)(4)(vii), (b)(2)(v)(B)(2), (b)(5)(ii)(A), (b)(6)(viii)(A), (c)(1)(i), (c)(1)(ii)(A)(2), (c)(1)(ix), (c)(1)(ix)(A), (c)(4)(iv)(C)(1), and (g)(1)(i); R.61–79.266.106(d)(1); R.61–79.266.109(a)(2)(ii) and (b); R.61–79.266 Subpart N (heading); R.61–79.266 Appendices III–VI, VIII, IX and XIII; R.61–79.268.2(g); R.61–79.268.4(a)(3); R.61–79.268.6(c)(5); R.61–79.268.7(a)(1), (a)(3)(ii), (a)(4) Table, (b)(3)(ii) Table, (b)(4)(ii), (c)(2), (d), (d)(1)–(3); R.61–79.268.14(b) and (c); R.61–79.268.40(g) and Treatment Standards Table; R.61–79.268.42 Table 1; R.61–79.268.44(c); R.61–79.268.45 Table 1; R.61–79.268.48 Universal Treatment Standards Table; R.61–79.268.49(d); R.61–79.268.50(c) and (g); R.61–79.268 Appendix VIII; R.61–79.270.1(a)(2) Table, (b), (c)(1)(iii), and (c)(3)(i); R.61–79.270.2; R.61–79.270.10(j); R.61–79.270.11(d)(1)–(2); R.61–79.270.13(k)(7); R.61–79.270.14(a), (b)(11)(ii)(B), (b)(19)(iii), and (b)(21); R.61–79.270.17(f); R.61–79.270.18(b) and (g); R.61–79.270.20(i)(2); R.61–79.270.26(c)(15); R.61–79.270.33(b); R.61–79.270.41(c); R.61–79.270.42(d)(2)(i); R.61–79.270.70(a); R.61–79.270.72(b)(2); R.61–79.273.9; R.61–79.273.13(b); R.61–79.273.14(a); R.61–79.273.34(a).
Checklist 215, Cathode Ray Tubes Rule	71 FR 42928, 7/28/06	R.61–79.260.10; R.61–79.261.4(a)(22)(i)–(iv); R.61–79.261.39 through 261.41(a)–(b).
Checklist 218, F019 Exemption for Wastewater Treatment Sludges from Auto Manufacturing Zinc Phosphating Processes.	73 FR 31756, 6/4/08	R.61–79.261.31(a) Table (entry for F019); R.61–79.261.31(b)(4) and (b)(4)(i)–(ii).
Checklist 220, Academic Laboratories Generator Standards [3].	73 FR 72912, 12/1/08	R.61–79.262.10(l) and (l)(1)–(2); Addition of 262 Subpart K (R.61–79.262.200 through R.61–79.262.216).

Description of Federal requirement	**Federal Register** date and page	Analogous state authority [1]
Checklist 222, OECD Requirements; Export Shipments of Spent Lead-Acid Batteries.	75 FR 1236, 1/8/10	R.61–79.262.10(d); R.61–79.262.80(a)–(b); R.61–79.262.81; R.61–79.262.82(a)–(e); R.61–79.262.83(a)–(e); R.61–79.262.84(a)–(e); R.61–79.263.10(d); R.61–79.264.12(a)(2); R.61–79.264.71(a)(3) and (d); R.61–79.265.12(a)(2); R.61–79.265.71(a)(3) and (d); R.61–79.266.80(a) Table Sections 6 and 7.
Checklist 223, Hazardous Waste Technical Corrections and Clarifications.	75 FR 12989, 3/18/10; 75 FR 31716, 6/4/10.	R.61–79.260.10; R.61–79.260 (Removal of Appendix); R.61–79.261.1(c)(10); R.61–79.261.2(c) Table 1; R.61–79.261.4(a)(17)(vi); R.61–79.261.6(a)(2), (a)(2)(ii), and (a)(3); R.61–79.261.7(b)(1) and (b)(3); R.61–79.261.23(a)(8); R.61–79.261.30(d); R.61–79.261.31(a) (listings for F037 and K107); R.61–79.261.32(a) Table; R.61–79.261.33(f); R.61–79.261 Appendix VII; R.61–79.262.23(f) and (f)(1)–(4); R.61–79.262.42(a)(1)–(2), (c), and (c)(1)–(2); R.61–79.264.52; R.61–79.264.56(d)(2); R.61–79.264.72(e)(6), (f)(1), and (f)(7)–(8); R.61–79.264.314(d); R.61–79.264.316(b); R.61–79.264.552(a)(3)(ii)–(iv) and (e)(4)(iv)(F); R.61–79.265.52; R.61–79.265.72(e)(6), (f)(1), and (f)(7)–(8); R.61–79.265.314(e), R.61–79.265.316(b); R.61–79.266.20(b); R.61–79.268.40 Treatment Standards Table; R.61–79.268.48 Universal Treatment Standards Table; R.61–79.270.4(a).
Checklist 226, Academic Laboratories Generator Standards Technical Corrections.	75 FR 79304, 12/20/10	R.61–79.262.200; R.61–79.262.206(b)(3)(i); R.61–79.262.212(e)(1); R.61–79.262.214(a)(1) and (b)(1).
Checklist 227, Revision of the Land Disposal Treatment Standards for Carbamate Wastes.	76 FR 34147, 6/13/11	R.61–79.268.40 Treatment Standards Table; R.61–79.268.48 Universal Treatment Standards Table.
Checklist 228, Hazardous Waste Technical Corrections and Clarifications Rule.	77 FR 22229, 4/13/12	R.61–79.261.32(a) (entry for K107); R.61–79.266.20(b).
Checklist 229, Conditional Exclusions for Solvent Contaminated Wipes.	78 FR 46448, 7/31/13	R.61–79.260.10; R.61–79.261.4(a)(26) and (a)(26)(i)–(vi); R.61–79.261.4(b)(18), (b)(18)(i)–(vi), and (b)(18)(vi)(A)–(B).
Checklist 231, Hazardous Waste Electronic Manifest Rule.	79 FR 7518, 2/7/2014	R.61–79.260.2(a)–(c) and(c)(1)–(2); R.61–79.260.10; R.61–79.260.20(a)(3) and (a)(3)(i)–(ii); R.61–79.262.24(a)–(f); R.61–79.262.25(a)–(b); R.61–79.263.20(a)(1)–(7); R.61–79.263.25(a); R.61–79.264.71(a)(2), (a)(2)(i)–(vi), and (f)–(k); R.61–79.265.71(a)(2), (a)(2)(i)–(vi), and (f)–(k).
Checklist 232, Revisions to the Export Provisions of the Cathode Ray Tube (CRT) Rule [6].	79 FR 36220, 6/26/14	R.61–79.260.10; R.61–79.261.39(a)(5)(i)(F), (a)(5)(x)–(xi); R.61–79.261.41(a)–(b).
Checklist 233, Revisions to the Definition of Solid Waste, Response to Vacatur of Certain Provisions of the Definition of Solid Waste.	80 FR 1694, 1/13/15; 83 FR 24664, 5/30/18.	R.61–79.260.31(c) and (c)(1)–(5); R.61–79.260.33(c)–(e); R.61–79.260.42(a)–(b).
Checklist 233A, Checklist A—Changes affecting all non-waste determinations and variances.		
Checklists 233B, Legitimacy-related provisions, including prohibition of sham recycling, definition of legitimacy, definition of contained [2].	.....	R.61–79.260.10; R.61–79.260.43(a)(1)–(3) and (b)–(c) [(c) reserved]; R.61–79.261.2 (b)(3)–(4) and (g).
Checklist 233C, Speculative Accumulation	.....	R.61–79.261.1(c)(8).
Checklist 233D2, 2008 DSW exclusions and non-waste determinations, including revisions from 2015 DSW final rule and 2018 DSW final rule [2].	.....	R.61–79.260.10; R.61–79.260.30(b), (d)–(f) [(f) removed]; R.61–79.260.31(d) [removed]; R.61–79.260.33(a); R.61–79.260.34(a)–(c) and (c)(1)–(5), excluding (a)(1)–(3); R.61–79.261.1(c)(4); R.61–79.261.2(c)(3); R.61–79.261.4(a)(23), including (a)(23)(i)–(ii)(F); R.61–79.261.4(a)(24), including (a)(24)(i)–(vii); R.61–79.261.4(a)(25), including (25)(i)–(xii); Addition of 261 Subpart H (R.61–79.261.140 through R.61–79.261.151 including Appendices [R.61–79.261.144 through R.61–79.261.146 reserved]) Addition and Reservation of Subparts K–L; Addition of Subpart M (R.61–79.261.400; R.61–79.261.410; R.61–79.261.411; R.61–79.261.420).
Checklist 233E, Remanufacturing exclusion [2]	.....	R.61–79.260.10; R.61–79.261.2(c)(3); R.61–79.261.4(a)(27), including (a)(27)(i)–(vi)(F); Addition of 261 Subpart I (R.61–79.261.170; R.61–79.261.171; R.61–79.261.172; R.61–79.261.173; R.61–79.261.175; R.61–79.261.176; R.61–79.261.177; R.61–79.261.179); Addition of 261 Subpart J (R.61–79.261.190 through R61–79.261.200 [261.192, 261.193(e), 261.195 reserved]; Addition of 261 Subpart AA (R.61–79.261.1030 through R.61–79.261.1049 [261.1036 through 261.1049 reserved]); Addition of 261 Subpart BB (R.61–79.261.1050 through R.61–79.261.1079 [261.1065 through 261.1079 reserved]); Addition of 261 Subpart CC (R.61–79.261.1080 through R.61–79.261.1090 including Appendices [261.1080(b), 261.1083(b), 261.1086(b)(2), 261.1089(c), 261.1089(f)(2), 261.1085, and 261.1090 reserved]).
Checklist 234, Response to Vacaturs of the Comparable Fuels Rule and the Gasification Rule.	80 FR 18777, 4/8/15	R.61–79.260.10; R.61–79.261.4(a)(12)(i) and (a)(16) [(a)(16) reserved]; R.61–79.261.38 [reserved].
Checklist 236, Imports and Exports of Hazardous Waste [2].	81 FR 85696, 11/28/16; 82 FR 41015, 8/29/17; 83 FR 38262, 8/6/2018.	R.61–79.260.10; R.61–79.261.4(d)(1), (d)(4), (e)(1), and (e)(4); R.61–79.261.6(a)(3)(i) and (a)(5); R.61–79.261.39(a)(5)(ii), (a)(5)(v)–(vi), (a)(5)(ix), and (a)(5)(xi); R.61–79.262.10(d); R.61–79.262.18(g); R.61–79.262.41(c); Removal of 262 Subpart E (R.61–79.262.50 through R.61–79.262.58); Removal of 262 Subpart F (R.61–79.262.60); R.61–79.262.80(a)–(b); R.61–79.262.81; R.61–79.262.82(a)–(e) and (e)(1)–(2); R.61–79.262.83(a)–(i) and (i)(1)–(3); R.61–79.262.84(a)–(h) and (h)(1)–(4); R.61–79.262.85 [reserved]; R.61–79.262.86 [reserved]; R.61–79.262.87 [reserved]; R.61–79.262.88 [reserved]; R.61–79.262.89 [reserved]; R.61–79.263.10(d); R.61–79.263.20(a)(2), (c), (e)(2), (f)(2), (g)(1)–(4), and (g)(4)(i)–(ii); R.61–79.264.12(a), (a)(1)–(4), and (a)(4)(i)–(ii); R.61–79.264.71(a)(3), (a)(3)(i)–(ii), and (d); R.61–79.265.12(a), (a)(1)–(4), and (a)(4)(i)–(ii); R.61–79.265.71(a)(3), (a)(3)(i)–(ii), and (d); R.61–79.266.70(b) and (b)(1)–(3); R.61–79.266.80(a) Table Sections 6 through 10; R.61–79.273.20; R.61–79.273.39(a)–(b); R.61–79.273.40; R.61–79.273.56; R.61–79.273.62(a); R.61–79.273.70; R.61–79.273.70(a)–(c).

Description of Federal requirement	Federal Register date and page	Analogous state authority [1]
Checklist 237, Hazardous Waste Generator Improvements Rule [2 3 7].	81 FR 85732, 11/28/16	R.61–79.260.3; R.61–79.260.10; R.61–79.260.11(a)(10); R.61–79.261.1(a)(1) and (c)(6); R.61–79.261.4(a)(7); R.61–79.261.5 [reserved]; R.61–79.261.6(c)(2)(iv); R.61–79.261.33(e) and (f); R.61–79.262.1; R.61–79.262.10(a), (a)(1)–(3), (b), (d), (g)(1)–(2), (j) [reserved], (l), and (l)(1)–(2); R.61–79.262.11(a)–(g); R.61–79.262.13 through R.61–79.262.18(a)–(e); R.61–79.262.32(b)–(d); R.61–79.262.34 [reserved]; R.61–79.262.35; R.61–79.262.40(c); R.61–79.262.41(a)–(c), except 262.41(b); R.61–79.262.43; R.61–79.262.44; R.61–79.262.200; 61–79.262.201(a)–(b); R.61–79.262.202(a)–(b); R.61–79.262.203(a) and (b)(2); R.61–79.262.204(a); R.61–79.262.206(b)(3)(ii); R.61–79.262.207(d)(2); R.61–79.262.208(a)(1)–(2), (d)(2), and (d)(2)(i)–(ii); R.61–79.262.209(b); R.61–79.262.210(a), (b)(3), and (d)(2); R.61–79.262.211(c), (d), and (e)(3); R.61–79.262.212(d); R.61–79.262.213(a)(1)–(3) and (b)(2); R.61–79.262.214(b)(5); R.61–79.262.216(a)–(b); Addition of Subpart L (R.61–79.262.230 through R.61–79.262.233); Addition of Subpart M (R.61–79.262.250 through R.61–79.262.256 and R.61–79.262.260 through R.61–79.262.265); R.61–79.263.12(a)–(b) and (b)(1)–(2); R.61–79.264.1(g)(1) and (g)(3); R.61–79.264.15(b)(4) and removal of comment; R.61–79.264.71(c) and removal of comment; R.61–79.264.75; R.61–79.264.170; R.61–79.264.174 and removal of comment; R.61–79.264.191(a); R.61–79.264.195(e) [reserved]; R.61–79.264.1030(b)(2); R.61–79.264.1050(b)(3); R.61–79.264.1101(c)(4); R.61–79.265.1(c)(5) and (c)(7); R.61–79.265.15(b)(4) and (b)(5) (removed); R.61–79.265.71(c) and removal of comment); R.61–79.265.75; R.61–79.265.174 and removal of comment; R.61–79.265.195(d) [reserved]; R.61–79.265.201 [reserved]; R.61–79.265.1030(b)(2)–(3); R.61–79.265.1050; R.61–79.265.1101(c)(4); R.61–79.266.80(a) Table Sections 6 through 10; R.61–79.266.255(a); R.61–79.268.1(e)(1); R.61–79.268.7(a)(5); R.61–79.268.50(a)(1), (a)(2)(i), and (a)(2)(i)(A)–(D); R.61–79.270.1(a)(3), (c)(2), (c)(2)(i), and (c)(2)(iii); R.61–79.270.42(l) and Entries under O.1. in Appendix [reserved]; R.61–79.273.8(a)(2); R.61–79.273.81(b).
Checklist 238, Confidentiality Determinations for Hazardous Waste Export and Import Documents [8].	82 FR 60894, 12/26/17	R.61–79.260.2(b) and (d)(1)–(2); R.61–79.261.39(a)(5)(iv); R.61–79.262.83(b)(5) and (f)(9); R.61–79.262.84(b)(4) and (f)(8).
Checklist 239, Hazardous Waste Electronic Manifest User Fee Rule.	83 FR 420, 1/3/18	R. 61–79.260.4(a) and (a)(1)–(4); R.61–79.260.5(a)–(b) and (b)(1)–(2); R.61–79.262.20(a)(1)–(2); R.61–79.262.21(f)(5)–(8); R.61–79.262.24(c), (c)(1), (c)(2) [reserved], (e), (g) [reserved], and (h); R.61–79.262 (removal of Appendix); R.61–79.263.20(a)(8) [reserved] and (9); R.61–79.263.21(a)–(c) and (c)(1)–(2); R.61–79.264.71(a)(2), (a)(2)(i)–(vi), (j), (j)(1)–(2), (l), and (l)(1)–(5); R.61–79.264.1086(c)(4)(i); R.61–79.264.1086(d)(4)(i); Addition of 264 Subpart FF (R.61–79.264.1300 and 1310–1316); R.61–79.265.71(a)(2), (a)(2)(i)–(vi), (j), (j)(1)–(2), (l), and (l)(1)–(5); R.61–79.265.1087(c)(4)(i) and (d)(4)(i); Addition of 265 Subpart FF (R.61–79.265.1300 and 1310–1316).

Notes

[1] The South Carolina regulatory citations are from the South Carolina Hazardous Waste Management Regulations, S.C. Code Ann. Regs. 61–79.260–273, effective November 22, 2019, as amended June 26, 2020.

[2] The following provisions have been excluded from this authorization because South Carolina does not have an equivalent corresponding provision or an error in the provision was deemed substantive: R.61–79.262.21(f)(4) (Checklist 207); R.61–79.261.2(a)(2)(ii) (Checklist 233B); R. 261.2(c)(4), Table 1 (Checklists 233D2 and 233E); R.61–79.270.42, Entries 9 and 10 in Section A (Appendix I) (Checklist 233D2); R.61–79.261.420(g) (Checklist 237); R.61–79.262.14(a)(5)(iii) (Checklist 237); R.61–79.262.41(b) (Checklist 237) (although South Carolina has a 262.41(b), it does not address the substantive provisions of the Federal 262.41(b).

[3] South Carolina does not seek authorization for any provisions pertaining to the Performance Track Program (Checklists 213, 220, 237).

[4] Corrections to R.61–107.279 are excluded from this authorization because South Carolina has not been previously authorized for R.61–107.279.

[5] There are several errors contained in South Carolina's table at 266.80(a), specifically in Sections 2, 3, and 4. South Carolina will be correcting these errors in a subsequent rulemaking.

[6] The address for notification to EPA in Section 261.42(a)(2) has since been updated by the August 6, 2018 final rule at 83 FR 38262.

[7] R.61–79.260.11(a)(10) is equivalent to 40 CFR 260.11(d)(1).

[8] SC incorrectly cites R.61–79.260.2(d)(1) as R.61–79.260.2(d)1(1).

G. Where are the revised state rules different from the Federal rules?

When revised state rules differ from the Federal rules in the RCRA state authorization process, the EPA determines whether the state rules are equivalent to, more stringent than, or broader in scope than the Federal program. Pursuant to RCRA section 3009, 42 U.S.C. 6929, state programs may contain requirements that are more stringent than the Federal regulations. Such more stringent requirements can be federally authorized and, once authorized, become federally enforceable.

The following South Carolina provisions are more stringent than the Federal program:

- South Carolina is more stringent than the Federal program at R.61–79.261.6(c)(2)(iv), R.61–79.262.41(a)–(b), R.61–79.264.75, and R.61–79.265.75 by requiring quarterly reporting rather than biennial reporting.
- South Carolina is more stringent than the Federal program at R.61–79.262.13(a)(1)(i)(B), R.61–79.262.13(a)(1)(ii)(B), R.61–79.262.13(a)(1)(iii)(B), and R.61–79.262.12 by requiring generators (large quantity, small quantity, and very small quantity) to notify the State when any new hazardous waste is produced.
- South Carolina is more stringent than the Federal program at R.61–79.262.16(b)(2)(iii)(C) by prohibiting generators from stacking hazardous waste containers more than two high without written approval from the Department.

Although the statute does not prevent states from adopting regulations that are broader in scope than the Federal program, states cannot receive authorization for such regulations, and they are not federally enforceable. South Carolina is broader in scope than the Federal program at R.61–79.262.33 by requiring that a generator comply with placarding requirements in accordance with the applicable South Carolina Public Service Commission regulations, in addition to the placarding requirements required by the U.S. Department of Transportation regulations in 49 CFR part 172. South Carolina is also broader in scope than the Federal program by not adopting the conditional exclusion for carbon

dioxide streams in geologic sequestration activities (Checklist 230) at 40 CFR 261.4(h). South Carolina's continued regulation of these waste streams is broader in scope than the Federal program.

There are certain regulatory provisions for which the states cannot be authorized to administer or implement. These provisions include the requirements associated with the Federal manifest registry system (Section 262.21) contained within the Uniform Hazardous Waste Manifest Rule (Checklist 207), as well as the operation of the national E-Manifest system and the user fee provisions associated with the operation of such system contained in the Hazardous Waste Electronic Manifest Rule (Checklist 231) and the Hazardous Waste Electronic Manifest User Fee Rule (Checklist 239). Although South Carolina has adopted these regulations to maintain its equivalency with the Federal program, it has appropriately maintained the Federal references in order to preserve the EPA's authority to implement these non-delegable provisions.

Because of the Federal government's special role in matters of foreign policy, the EPA does not authorize states to administer the Federal import/export functions associated with the Cathode Ray Tubes Rule (Checklist 215), the OECD Requirements for Export Shipments of Spent Lead-Acid Batteries (Checklist 222), the Revisions to the Export Provisions of the Cathode Ray Tube Rule (Checklist 232), the Imports and Exports of Hazardous Waste Rule (Checklist 236), and the Confidentiality Determinations for Hazardous Waste Export and Import Documents Rule (Checklist 238). Although South Carolina has adopted these regulations to maintain its equivalency with the Federal program, it has appropriately maintained the Federal references in order to preserve the EPA's authority to implement these provisions.

H. Who handles permits after the final authorization takes effect?

When final authorization takes effect, South Carolina will issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits that the EPA issued prior to the effective date of authorization until they expire or are terminated. The EPA will not issue any new permits or new portions of permits for the provisions listed in the table above after the effective date of the final authorization. The EPA will continue implementing and issue permits for HSWA requirements for which South Carolina is not yet authorized. The EPA has the authority to enforce State-issued permits after the State is authorized.

I. How does today's proposed action affect Indian country in South Carolina?

South Carolina is not authorized to carry out its hazardous waste program in Indian country within the State, which includes the Indian lands associated with the Catawba Indian Nation. Therefore, this proposed action has no effect on Indian country. The EPA retains jurisdiction over Indian country and will continue to implement and administer the RCRA program on these lands.

J. What is codification and will the EPA codify South Carolina's hazardous waste program as proposed in this rule?

Codification is the process of placing citations and references to the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. The EPA does this by adding those citations and references to the authorized State rules in 40 CFR part 272. The EPA is not proposing to codify the authorization of South Carolina's changes at this time. However, the EPA reserves the ability to amend 40 CFR part 272, subpart PP, for the authorization of South Carolina's program changes at a later date.

K. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action proposes to authorize State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB. This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as today's proposed authorization of South Carolina's revised hazardous waste program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action proposes to authorize pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to authorize State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), the EPA grants a state's application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in proposing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of this action in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive

order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). ''Burden'' is defined at 5 CFR 1320.3(b). Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision 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 and low-income populations in the United States. Because this action proposes authorization of pre-existing State rules which are at least equivalent to, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, this proposed rule is not subject to Executive Order 12898.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: August 14, 2020.

Mary Walker,

Regional Administrator, Region 4.

[FR Doc. 2020–18311 Filed 9–10–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[EPA–R03–UST–2020–0205; FRL 10012–36–Region 3]

West Virginia: Final Approval of State Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Solid Waste Disposal Act of 1965, as amended (commonly known as the Resource Conservation and Recovery Act (RCRA)), the Environmental Protection Agency (EPA) is proposing to approve revisions to the State of West Virginia's Underground Storage Tank (UST) program submitted by West Virginia. This action is based on EPA's determination that these revisions satisfy all requirements needed for program approval. This action also proposes to codify EPA's approval of West Virginia's state program and to incorporate by reference those provisions of West Virginia's regulations and statutes that we have determined meet the requirements for approval. The provisions will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA Subtitle I and other applicable statutory and regulatory provisions. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving this action by a direct final rule, without a prior proposed rulemaking. If no significant negative comment is received, EPA will not take further action on this proposed rulemaking, and the direct final rule will be effective 60 days from the date of publication in this **Federal Register**. If you want to comment on EPA's proposed approval of West Virginia's revisions to its state UST program, you must do so at this time.

DATES: Send written comments by October 13, 2020.

ADDRESSES: Submit any comments, identified by EPA–R03–UST–2020–0205, by one of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *Email: uybarreta.thomas@epa.gov.*

Instructions: Direct your comments to Docket ID No. EPA–R03–UST–2020–0205. EPA's policy is that all comments received will be included in the public docket without change and may be available online at *https://www.regulations.gov* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov,* or email. The federal website, *https://www.regulations.gov,* is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment. If EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. EPA encourages electronic submittals, but if you are unable to submit electronically, please reach out to the EPA contact person listed in the notice for assistance. If you need assistance in a language other than English, or you are a person with disabilities who needs a reasonable accommodation at no cost to you, please reach out to the EPA contact person by email or phone.

FOR FURTHER INFORMATION CONTACT: Thomas UyBarreta, (215) 814–2953; email address: *uybarreta.thomas@epa.gov;* address: RCRA Programs Branch; Land, Chemicals, and Redevelopment Division; EPA Region 3, 1650 Arch Street (Mailcode 3LD30), Philadelphia, PA 19103–2029.

SUPPLEMENTARY INFORMATION: EPA has explained the reasons for this action in the preamble to the direct final rule. For additional information, see the direct final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Authority: This rule is issued under the authority of Section 9004 of the Solid Waste Disposal Act of 1965, as amended, 42 U.S.C. 6991c.

Cosmo Servidio,

Regional Administrator, EPA Region 3.

[FR Doc. 2020–17343 Filed 9–10–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 200903–0232]

RIN 0648–BJ94

Pacific Island Fisheries; Interim Measures for American Samoa Bottomfish

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

ACTION: Proposed temporary rule; interim measures; request for comments.

SUMMARY: NMFS proposes this temporary rule for an interim catch limit (ICL) of 13,000 lb of American Samoa bottomfish for fishing year 2020. NMFS would monitor 2020 catches, and if the fishery reaches the ICL, we would close the fishery in Federal waters for the remainder of the calendar year. This temporary action is necessary to reduce overfishing of American Samoa bottomfish while minimizing socio-economic impacts to fishing communities. This proposed rule supports the long-term sustainability of American Samoa bottomfish.

DATES: NMFS must receive comments by September 28, 2020.

ADDRESSES: You may submit comments on this proposed temporary rule, identified by NOAA–NMFS–2020–0099, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/docket?D=NOAA-NMFS-2020-0099,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

The Fishery Ecosystem Plan for the American Samoa Archipelago (FEP) is available from the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, or *www.wpcouncil.org.*

NMFS prepared a draft environmental assessment (EA) that describes the potential impacts on the human environment that could result from this temporary rule. The draft EA and other supporting documents are available from *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Brett Schumacher, NMFS PIR Sustainable Fisheries, 808–725–5185.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the bottomfish fishery in the U.S. Exclusive Economic Zone (Federal waters) around American Samoa under the FEP and the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Most of the management measures for the fishery are found at 50 CFR 665.

In 2019, the NMFS Pacific Islands Fisheries Science Center (PIFSC) published a benchmark stock assessment that indicated that the multi-species bottomfish stock complex in American Samoa is overfished and experiencing overfishing. NMFS presented these findings at the October 2019 meeting of the Council's Scientific and Statistical Committee (SSC) in Honolulu, Hawaii, and at the October 2019 Council meeting in Pago Pago, American Samoa. At these meetings, the SSC and Council accepted the stock assessment as the best scientific information available for the management of bottomfish in American Samoa. In January 2020, NMFS determined that the assessment results represent the best scientific information available, consistent with National Standard 2 of the Magnuson-Stevens Act. Accordingly, NMFS determined in February 2020, that the stock is overfished and subject to overfishing, and notified the Council of this determination and the Council's obligations to end overfishing and rebuild the stock under Magnuson-Stevens Act section 304(e)(3).

Upon notification that a stock is subject to overfishing, the Council must immediately set catch at a level that would end overfishing. See 50 CFR 600.310(j)(2)(i). Upon notification that a stock is overfished, the Council must prepare and implement a fishery management plan, plan amendment, or regulation that wound end overfishing and rebuild the stock. See 50 CFR 600.310(j)(2)(ii). This action must be implemented within two years of the notification.

The 2019 stock assessment indicated that the annual catch would need to be limited to no more than 8,000 lb through 2025 to end overfishing, consistent with the Magnuson-Stevens Act and National Standard 1. However, the average annual catch of American Samoa bottomfish management unit species (MUS) in the latest five years of the stock assessment (2013–2017) was 21,129 lb. The Council discussed the results of the stock assessment, including the levels of catch that would be needed to end overfishing immediately, at its 180th meeting in American Samoa in October 2019. Fishermen commented that a catch limit of 8,000 lb bottomfish that would end overfishing, or a closure of the federal fishery altogether, would result in detrimental economic, social, and cultural impacts. They indicated that bottomfish, particularly the species found in the deeper federal waters, are primarily used for cultural purposes and for subsistence, rather than for profit. In response to these concerns, the Council requested that NMFS implement an interim measure to reduce, but not necessarily end immediately, overfishing of the stock while the Council develops action required by MSA 304(e)(3), consistent with section 304(e)(6). In consideration of concerns from fishermen and the Council's request, NMFS considered catch levels greater than 8,000 lb that would mitigate effects of management on fishing communities while the Council and NMFS develop long-term management measures to end overfishing and rebuild the stock.

The regulations on emergency actions and interim measures under National Standard 1 (50 CFR 600.310(j)(4)) provide conditions that must be met to implement an interim measure under MSA 304(e)(6):

1. The interim measures are needed to address an unanticipated and significantly changed understanding of the status of the stock or stock complex;

2. Ending overfishing immediately is expected to result in severe social and/or economic impacts to a fishery; and

3. The interim measures will ensure that the stock or stock complex will increase its current biomass through the duration of the interim measures.

We evaluate whether these conditions are met in the EA and summarize as follows:

1. The overfished and overfishing conditions in the fishery were not known before the 2019 benchmark stock assessment, and the stock was believed

to be healthy according to the previous stock assessment. Thus, condition (1) has been met;

2. Catch would have to be substantially reduced from recent catches to immediately end overfishing (from over 21,000 lb to 8,000 lb), and comments from fishermen indicate that ending overfishing immediately would have negative social, economic, and cultural impacts to community members who use bottomfish resources for commercial, subsistence, religious, and cultural purposes. The Council recognized these perspectives in their request for an interim action and believes that ending overfishing immediately would have severe social and/or economic impacts to the fishery, and NMFS concurs with this conclusion. Thus, condition (2) has been met; and

3. The PIFSC completed expanded catch projections that indicated a catch of up to 13,000 lb would allow the MUS stock biomass to increase during the effective period of this interim measure. Implementing a catch limit of 13,000 lb and closing the fishery after that limit is reached would ensure biomass increases (condition 3). However, even after a closure of the fishery in Federal waters, catch is expected to continue unconstrained in American Samoa waters. Thus, catch is expected to exceed 13,000 lb notwithstanding NMFS's implementation of a catch limit of 13,000 lb. Due to unconstrained fishing of the stock in American Samoa waters, no NMFS action can ensure that biomass increases. However, a catch limit of 13,000 lb provides a conservation benefit relative to the status quo (*i.e.,* an unconstrained fishery), reduces overfishing, and contributes to rebuilding the stock.

NMFS discussed potential alternative management options for the interim measure at subsequent public Council meetings, and during meetings with managers from the American Samoa Department of Marine and Wildlife Resources (DMWR). Fishermen and Council members from American Samoa commented at public Council meetings that a catch limit of 0 lb, 8,000 lb, or even 13,000 lb would have social, cultural and economic effects. In a June 15, 2020, letter to the NMFS Pacific Islands Regional Office, the DMWR expressed concerns that the ICL of 13,000 lb is too low for their fishermen to subsist, and that a closure of offshore banks in Federal waters to bottomfish fishing would deprive fishermen of important fishing grounds for deep-water snappers that are critical for cultural ceremonies.

Based on this information and considering the best scientific information available and Federal requirements for interim management actions, NMFS proposes to implement an ICL of 13,000 lb. This ICL provides a balance between regulatory requirements to reduce overfishing, and the need to mitigate impacts of fishery management on communities in American Samoa. The best scientific information available projects that 13,000 lb is the greatest level catch that would allow stock biomass to increase during the interim measure, as required by 50 CFR 600.310(j)(4), so Federal regulations do not allow NMFS to implement a greater ICL. At the same time, 13,000 lb is 63 percent greater the 8,000 lb level that would end overfishing. The present action therefore addresses impacts to the fishery and related communities (inclusive of cultural fishing practices) to the degree NMFS is able within regulatory constraints. Under the proposed measure, overfishing would be reduced relative to the status quo, and socio-economic impacts to the community would be minimized relative to measures that would end overfishing immediately.

The conservation benefit achieved by this measure may be mitigated by circumstances outside NMFS authority. Specifically, catch would likely exceed the ICL because 85 percent of bottomfish habitat is located in territorial waters that are outside of NMFS authority, and American Samoa does not have regulations that would close territorial waters in the event a Federal ICL is reached. Therefore, if the ICL is reached and NMFS closes the fishery in Federal waters, fishing is expected to continue unconstrained in territorial waters. While NMFS does not have detailed spatial information to determine the amount of bottomfish caught in territorial waters versus Federal waters, we assume that bottomfish abundance and catch are distributed equally across habitat. We therefore assume that 15 percent of total catch will occur in Federal waters because 15 percent of bottomfish habitat occurs in federal waters. If the ICL is reached and NMFS closes the fishery in Federal waters catch is expected to exceed 13,000 lb, because most habitat is in territorial waters and would remain open to bottomfish fishing. However, because this action provides for the closure of offshore fishing grounds under Federal jurisdiction, we expect some conservation benefit to the stock complex. Therefore, we anticipate the proposed interim rule would provide a conservation benefit relative to the no-action alternative.

To maintain consistency with the timeframe of catch projections and the bottomfish fishing year (January–December), under the proposed rule NMFS would monitor catches of bottomfish MUS made in both territorial and Federal waters during calendar year 2020 and count the combined 2020 catch toward the ICL. As an inseason AM, if NMFS projects that the fishery will reach the ICL, we would close the fishery in Federal waters through December 31, 2020.

NMFS will consider public comments on this proposed temporary rule, and specifically invites public comments that address the impact of this proposed action on cultural fishing in American Samoa. NMFS will announce the final rule in the **Federal Register**. We must receive any comments by the date provided in the DATES heading, not postmarked or otherwise transmitted by that date.

Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the FEP, the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

Administrative Procedure Act

Section 304(b) of the Magnuson-Stevens Act provides for a 15-day comment period for these types of fishery rules (See 16 U.S.C. 1854(b)). Additionally, NMFS finds good cause that a longer notice and comment period would be contrary to public interest. Specifically, the proposed action needs to be implemented immediately to establish thresholds that would minimize adverse biological effects to the stock and adverse long-term socioeconomic effects to fishermen and communities that utilize bottomfish in American Samoa.

Certification of Finding of No Significant Impact on Substantial Number of Small Entities

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The proposed action would specify an interim catch limit (ICL) of 13,000 lb for American Samoa bottomfish for 2020, as well as in-season accountability measure (AM). If and when the available data indicates the fishery would reach ICL, NMFS would close the fishery in

Federal waters, from the outer boundary of territorial waters at 3 miles from shore to 200 miles from shore, for the remaining time that the interim catch limit is in effect as an AM. As authorized under section 305(c) of the Magnuson-Stevens Act, the rule would be in effect for no more than 180 days, from the date of publication in the **Federal Register**, through December 31, 2020. To maintain consistency with the timeframe of the fishing year in the fishery and catch projections from NMFS, catches made after January 1, 2020, in both territorial waters and Federal waters around American Samoa would count toward the ICL for the 2020 fishing year. Provided certain conditions have been met, NMFS may extend the interim measures from January 1, 2021, to July 5, 2021, for an additional 186 days.

The fishery is likely to reach the ICL, given recent catch history, as catch of American Samoa bottomfish has exceeded the proposed ICL annually from 2013 to 2017. Catch estimates for these years are available from the stock assessment, which provides the best available estimate of total catch of BMUS. These estimates include catch of BMUS reported at the species level, plus an estimate of BMUS catch reported under general categories (*e.g.,* snapper, emperor, deep bottomfish). Estimated total catch data for 2018 and 2019 that would be directly comparable are not available. Most catch would have been retained for personal consumption or sharing, rather than sold, as the American Samoa bottomfish fishery is predominantly non-commercial with at most 30 participants. In recent years, NMFS estimates catch sold (percent of catch sold) to be as follows: 2,047 lb (6.9 percent) in 2015, 1,131 lb (5.6 percent) in 2016, and 1,137 lb (7.1 percent) in 2017. Revenue from American Samoa bottomfish catch were an estimated $6,075 in 2015, $3,896 in 2016, and $5,688 in 2017. Upon reaching the ICL, fishing for or possessing American Samoa bottomfish would be prohibited in Federal waters around American Samoa, as would sale, purchase, or possession of any American Samoa bottomfish caught in Federal waters. Because 85 percent of the bottomfish habitat is in territorial waters located closer to shore, most catch likely comes from territorial waters rather than Federal waters, although NMFS does not have quantitative information on catch by location.

For Regulatory Flexibility Act (RFA) purposes only, NMFS has established a small business size standard, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide. Based on available information, NMFS has determined that all affected entities are small entities under the SBA definition of a small entity, *i.e.,* they are engaged in the business of fish harvesting, are independently owned or operated, are not dominant in their field of operation, and have gross receipts not in excess of $11 million. Therefore, there would be no disproportionate economic impacts between large and small entities. Furthermore, there would be no disproportionate economic impacts among the universe of vessels based on gear, home port, or vessel length. There might be some disproportionate economic impacts on areas fished. Bottomfish fishermen in American Samoa who tend to fish for bottomfish in Federal waters rather than territorial waters, would need to modify their target catch or fishing activities, including areas fished, in the event of a closure of this fishery while the interim measure is in effect. For those who do catch some bottomfish fish for sale, this could mean an increase in costs and/or decrease in revenue.

Even though this proposed action would apply to a substantial number of vessels, this action should not result in significant adverse economic impacts to individual entities, as this is primarily a non-commercial fishery. The proposed action does not duplicate, overlap, or conflict with other Federal rules and is not expected to have significant impact on small entities (as discussed above), organizations, or government jurisdictions. The proposed action also will not place a substantial number of small entities, or any segment of small entities, at a significant competitive disadvantage to large entities.

For the reasons above, NMFS does not expect the proposed action to have a significant economic impact on a substantial number of small entities. As such, an initial regulatory flexibility analysis is not required and none has been prepared.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13771

This proposed rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

List of Subjects in 50 CFR Part 665

Accountability measure, American Samoa, Bottomfish, Fisheries, Fishing, Interim catch limit, Pacific Islands.

Dated: September 3, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 665 as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 1. The authority citation for 50 CFR part 665 continues to read as follows:

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

■ 2. Add § 665.102 to read as follows:

§ 665.102 Bottomfish Interim Catch Limit.

(a) The interim catch limit for American Samoa bottomfish MUS for fishing year 2020 is 13,000 lb.

(b) When the interim catch limit is projected to be reached, the Regional Administrator shall publish a document to that effect in the **Federal Register** and shall use other means to notify permit holders. The document will include an advisement that the fishery will be closed, beginning at a specified date that is not earlier than seven days after the date of filing the closure notice for public inspection at the Office of the Federal Register, through the end of the fishing year in which the interim catch limit is reached.

(c) On and after the date the fishery is closed as specified in paragraph (b) of this section, fishing for and possession of American Samoa bottomfish MUS is prohibited in Federal waters around American Samoa, except as otherwise authorized by law.

(d) On and after the date the fishery is closed as specified in paragraph (b) of this section, possession, sale, offering for sale, and purchase of any American Samoa bottomfish MUS caught in Federal waters around American Samoa is prohibited.

■ 3. In § 665.103, suspend the introductory paragraph, add paragraph (a) and reserve paragraph (b) to read as follows:

§ 665.103 Prohibitions.

(a) In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15, it is unlawful for any person to do any of the following:

(1) Fish for American Samoa bottomfish MUS or ECS, or seamount

groundfish MUS using gear prohibited under § 665.104.

(2) Fish for, possess, sell, offer for sale, or purchase any American Samoa bottomfish MUS in a closed fishery, in violation of § 665.102.

(b) [Reserved]

[FR Doc. 2020–19953 Filed 9–10–20; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 85, No. 177
Friday, September 11, 2020

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture From the People's Republic of China: Rescission of 2019 Antidumping Duty Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty (AD) order on wooden bedroom furniture (WBF) from the People's Republic of China (China) (the Order) for the period of review (POR) January 1, 2019, through December 31, 2019, based on the timely withdrawal of all requests for review.

DATES: Applicable September 11, 2020.

FOR FURTHER INFORMATION CONTACT: Paola Aleman Ordaz, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4031.

SUPPLEMENTARY INFORMATION:

Background

On January 2, 2020, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the Order for the POR.[1] In accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), between January 22, 2020, and January 31, 2020, Guangzhou Maria Yee Furnishings Ltd., Pyla HK Limited, and Maria Yee, Inc. (collectively, Maria Yee); [2] Kimball International, Inc., Kimball Furniture Group, Inc., and Kimball Hospitality Inc. (collectively, Kimball); [3] and the American Furniture Manufacturers Committee for Legal Trade and Vaughan-Bassett Furniture Company, Inc. (collectively, the petitioners),[4] requested a review of the Order with respect to a number of companies. On March 10, 2020, in accordance with section 751(a) of the Act and 19 CFR 351.221(c)(1)(i), Commerce initiated an administrative review of the Order with respect to the companies named by the requesting parties.[5] Between May 8, 2020 and May 11, 2020, Maria Yee, Kimball, and the petitioners timely withdrew their review requests for all companies.[6]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested the review withdraw their requests within 90 days of the publication date of the notice of initiation of the requested reviews. The requesting parties withdrew all of their requests for review within the 90-day deadline. Because Commerce received no other requests for review, we are rescinding the administrative review of the AD order on wooden bedroom furniture from China covering the POR January 1, 2019, through December 31, 2019, in its entirety, in accordance with 19 CFR 351.213(d)(1).[7]

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of wooden bedroom furniture from China during the period January 1, 2019, through December 31, 2019, at rates equal to the cash deposit rates for estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice in the **Federal Register**.[8]

Notification to Importers

This notice serves as the only reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 85 FR 64 (January 2, 2020).

[2] *See* Maria Yee's' letter ''Wooden Bedroom Furniture from the People's Republic of China; *Request for Administrative Review and Request for Voluntary Respondent Treatment*'' dated January 22, 2020.

[3] *See* Kimball's letter ''Wooden Bedroom Furniture from The People's Republic of China: Request For Initiation of Antidumping Duty Administrative Review'' dated January 31, 2020.

[4] *See* the Petitioners' letter ''Wooden Bedroom Furniture from the People's Republic of China: Request For Initiation Of Administrative Review'' dated January 31, 2020.

[5] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 13860 (March 10, 2020).

[6] *See* the Petitioners' letter ''Wooden Bedroom Furniture from the People's Republic of China: Withdraw of Request for Administrative Review'' dated May 8, 2020; Kimball's letter ''Wooden Bedroom Furniture from The People's Republic of China: Withdraw of Request Review'' dated May 8, 2020; and Maria Yee's letter ''*Wooden Bedroom Furniture from the People's Republic of China;* Maria Yee's Withdrawal of Request for Review'' dated May 11, 2020.

[7] Although all requests for an administrative review of Kunshan Jujia Decoration Design Co., Ltd. (Kushan Jujia) covering the period January 1, 2019, through December 31, 2019, were withdrawn, Kushan Jujia remains under review in an ongoing new shipper review covering the period January 1, 2019, through December 31, 2019 (*see Wooden Bedroom Furniture from the People's Republic of China: Initiation of Antidumping Duty New Shipper Review,* 85 FR 11342 (February 27, 2020)).

[8] Because Kunshan Jujia remains under review in an ongoing new shipper review, we will not instruct CBP to liquidation entries of subject merchandise from Kushan Jujia until the conclusion of the new shipper review.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: September 8, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–20074 Filed 9–10–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–867, A–560–833, A–580–902, A–552–825]

Utility Scale Wind Towers From Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Notice of Correction to the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is correcting the antidumping duty orders on utility scale wind towers (wind towers) from Canada, Indonesia, the Republic of Korea (Korea), and the Socialist Republic of Vietnam (Vietnam) to state the correct date on which the provisional measures expired.

DATES: Applicable September 11, 2020.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney at (202) 482–4475 (Canada); Benjamin Luberda at (202) 482–2185 or Brittany Bauer at (202) 482–3860 (Indonesia); Adam Simons at (202) 482–6172 or David Goldberger at (202) 482–4136 (Korea); Joshua A. DeMoss at (202) 482–3362 (Vietnam); AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On August 26, 2020, Commerce published antidumping duty orders on wind towers from Canada, Indonesia, Korea, and Vietnam.[1] In the *Orders,* Commerce inadvertently stated that the provisional measures expired on August 12, 2020.[2] Commerce is correcting the *Orders* to clarify that August 11, 2020 is the date on which the provisional measures expired.

In accordance with section 733(d) of the Tariff Act of 1930, as amended (the Act), we have instructed CBP to terminate the suspension of liquidation the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of wind towers from Canada, Indonesia, Korea, and Vietnam entered, or withdrawn from warehouse, for consumption on or after August 12, 2020, until and through the day preceding the date of publication of the U.S. International Trade Commission's final injury determination in the **Federal Register** (*i.e.,* August 24, 2020).[3] In addition we have instructed CBP to resume the suspension of liquidation and the collection of cash deposits beginning August 25, 2020, the date the *ITC Final Injury Determination* published in the **Federal Register**.

We are hereby correcting the *Orders* to include the correct date on which provisional measures expired, as stated above. This notice serves as a correction and is published in accordance with section 777(i) of the Act.

Dated: September 1, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–20071 Filed 9–10–20; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Antidumping Duty Orders,* 85 FR 52546 (August 26, 2020) (*Orders*).

[2] *See Orders,* 85 FR at 52547.

[3] *See Utility Scale Wind Towers from Canada, Indonesia, Korea, and Vietnam,* 85 FR 52357 (August 25, 2020) (*ITC Final Injury Determination*).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–857]

Certain Oil Country Tubular Goods From India: Final Results of Antidumping Duty Administrative Review and Determination of No Shipments; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that Jindal SAW Ltd., the sole company for which a review was requested, made no shipments of certain oil country tubular goods (OCTG) from India during the period of review (POR) from September 1, 2018 through August 31, 2019.

DATES: Applicable September 11, 2020.

FOR FURTHER INFORMATION CONTACT: Kathryn Turlo, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3870.

SUPPLEMENTARY INFORMATION:

Background

On July 22, 2020, Commerce published the *Preliminary Results* of this administrative review.[1] Interested parties were invited to comment on the *Preliminary Results* within 30 days of publication.[2] We received no comments.

Scope of the Order [3]

The merchandise covered by the *Order* is OCTG, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the *Order* also covers OCTG coupling stock.

Excluded from the scope of the *Order* are: Casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise subject to the *Order* is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45,

[1] *See Certain Oil Country Tubular Goods from India: Preliminary Determination of No Shipments in the Antidumping Duty Administrative Review; 2018–2019,* 85 FR 44280 (July 22, 2020) (*Preliminary Results*).

[2] *Id.* at 44281.

[3] *See Certain Oil Country Tubular Goods from India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Antidumping Duty Orders; and Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value,* 79 FR 53691 (September 10, 2014) (*Order*).

7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The merchandise subject to the *Order* may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, 7304.59.80.80, 7305.31.40.00, 7305.31.60.90, 7306.30.50.55, 7306.30.50.90, 7306.50.50.50, and 7306.50.50.70.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

Final Determination of No Shipments

In the *Preliminary Results,* we found that Jindal SAW, Ltd. (JSL), the sole company for which a review was requested, made no shipments of OCTG from India during the POR. We also stated in the *Preliminary Results* that consistent with Commerce's practice, it was not appropriate to preliminarily rescind the review, but rather to complete the review and issue appropriate instructions to U.S Customs and Border Protection (CBP) based on the final results.[4]

We received no information that contradicted our findings in the *Preliminary Results,* and no interested party commented on the *Preliminary Results.* Therefore, for these final results, we continue to find that JSL made no shipments of OCTG from India during the POR.

Assessment Rates

Commerce determines, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with these final results of review.[5] Consistent with Commerce's clarification to its assessment practice, because we determined that JSL had no shipments of subject merchandise to the United States during the POR, for entries of subject merchandise during the POR produced by JSL, for which this company did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate any entries at the all-others rate (*i.e.,* zero percent) [6] if there is no rate for the intermediate company(ies) involved in the transaction.[7]

We intend to issue instructions to CBP 15 days after the date of publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for JSL will remain unchanged from the rate assigned to them in the most recently completed segment for the company; [8] (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment; (3) if the exporter is not a firm covered in a prior review, or the original investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recently completed segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be zero percent, the all-others cash deposit rate established in the less-than-fair-value investigation.[9] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(5).

Dated: September 4, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–20072 Filed 9–10–20; 8:45 am]

BILLING CODE 3510–DS–P

[4] *See Preliminary Results,* 85 FR at 44280; *see also Certain Frozen Warm water Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012–2013,* 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013,* 79 FR 51306 (August 28, 2014).

[5] *See* 19 CFR 351.212(b).

[6] *See Order,* 79 FR at 53694 n.17.

[7] For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[8] *See Order,* 79 FR at 53694 n.17.

[9] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–924]

Polyethylene Terephthalate (PET) Film From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty (AD) order on polyethylene terephthalate (PET) film from the People's Republic of China (China) for the period of review (POR)

November 1, 2018 through October 31, 2019, based on the timely withdrawal of the request for review.

DATES: Applicable September 11, 2020.

FOR FURTHER INFORMATION CONTACT: Paola Aleman Ordaz, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4031.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2019, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order* for the POR.[1] In accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), on November 27, 2019, Mitsubishi Polyester Film, Inc. and SKC, Inc. (collectively, petitioners) timely requested a review of the *Order* with respect to four companies.[2] On January 17, 2020, in accordance with section 751(a) of the Act and 19 CFR 351.221(c)(1)(i), Commerce initiated an administrative review of the *Order* with respect to the four companies named by the petitioners.[3] On February 10, 2020, the petitioners timely withdrew their November 27, 2019 review request for all four companies.[4]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the publication date of the notice of initiation of the requested review. The petitioners withdrew their requests for review within the 90-day deadline. Because Commerce received no other requests for review, we are rescinding the administrative review of the *Order* on PET film from China covering the November 1, 2018 through October 31, 2019 POR, in full, in accordance with 19 CFR 351.213(d)(1).

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess AD duties on all appropriate entries of PET film from China during the period November 1, 2018, through October 31, 2019, at rates equal to the cash deposit rate for estimated AD duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as the only reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of AD duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of AD duties occurred and the subsequent assessment of doubled AD duties.

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: August 3, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–20075 Filed 9–10–20; 8:45 am]

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[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 58690 (November 1, 2019); and *Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, the People's Republic of China and the United Arab Emirates: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value for the United Arab Emirates,* 73 FR 66595 (November 10, 2008) (*Order*).

[2] *See* Petitioners' Letter, ''Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Request for Antidumping Duty Administrative Review,'' dated November 27, 2019.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 3014 (January 17, 2020).

[4] *See* Petitioners' Letter ''Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Withdrawal of Request for Antidumping Duty Administrative Review,'' dated February 10, 2020.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–010, A–583–853, C–570–011]

Crystalline Silicon Photovoltaic Products From the People's Republic of China and Taiwan: Continuation of Antidumping and Countervailing Duty Orders on China and the Antidumping Duty Order on Taiwan

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) that revocation of the antidumping duty (AD) and countervailing duty (CVD) orders on crystalline silicon photovoltaic products from the People's Republic of China (China) and revocation of the AD order on crystalline silicon photovoltaic products from Taiwan would likely lead to a continuation or recurrence of dumping and countervailable subsidies, as applicable, and material injury to an industry in the United States within a reasonably foreseeable time, Commerce is publishing a notice of continuation of these AD and CVD orders.

DATES: Applicable September 11, 2020.

FOR FURTHER INFORMATION CONTACT: Abdul Alnoor or Eva Kim, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4554 or (202) 482–8283, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 18, 2015, Commerce published in the **Federal Register** the AD and CVD orders on crystalline silicon photovoltaic products from China and the AD order on crystalline silicon photovoltaic products from Taiwan.[1] On January 2, 2020, the ITC instituted and Commerce initiated the first sunset reviews of the *Orders* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2]

[1] *See Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 80 FR 8592 (February 18, 2015); and *Certain Crystalline Silicon Photovoltaic Products from Taiwan: Antidumping Duty Order,* 80 FR 8596 (February 18, 2015) (collectively, *Orders*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 85 FR 67 (January 2, 2020); *see also Certain Crystalline*

Continued

Commerce conducted these sunset reviews on an expedited basis, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2) because it received timely and adequate notices of intent to participate in the sunset reviews and substantive responses from domestic interested parties,[3] but no substantive responses from respondent interested parties. As a result of its reviews, Commerce determined, pursuant to sections 751(c)(1) and 752(b) and (c) of the Act, that revocation of the *Orders* would likely lead to continuation or recurrence of a countervailable subsidy and dumping, as applicable. Commerce also notified the ITC of the magnitude of the subsidy rates and dumping margins likely to prevail should the *Orders* be revoked.[4] On September 4, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Orders* would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Orders

The merchandise covered by these *Orders* is crystalline silicon photovoltaic products from China and Taiwan. Merchandise covered by the *Orders* is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 8501.61.0000, 8507.20.8030, 8507.20.8040, 8507.20.8060, 8507.20.8090, 8541.40.60.15, 8541.40.6020, 8541.40.6030, 8541.40.60.35 and 8501.31.8000. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of the *Orders* is dispositive.[6]

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to continuation or recurrence of a countervailable subsidy and dumping, as applicable, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the AD and CVD orders on crystalline silicon photovoltaic products from China and the AD order on crystalline silicon photovoltaic products from Taiwan. U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the *Orders* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next sunset review of the *Orders* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Notification to Interested Parties

These five-year sunset reviews and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act and this notice is published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: September 4, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–20076 Filed 9–10–20; 8:45 am]

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Silicon Photovoltaic Products from China and Taiwan; Institution of Five-Year Reviews, 85 FR 120 (January 2, 2020).

[3] *See* Domestic Interested Parties' Letters, ''Crystalline Silicon Photovoltaic Products from China and Taiwan: Intent to Participate in Sunset Reviews,'' dated January 13, 2020; ''Crystalline Silicon Photovoltaic Products from People Republic of China and Taiwan: Hanwha Q CELLS USA, Inc.'s Notice of Intent to Participate in Sunset Reviews,'' dated January 17, 2020; ''Crystalline Silicon Photovoltaic Products from China and Taiwan Sunset Reviews: Substantive Response of SPMOR,'' dated February 3, 2020; and ''Certain Crystalline Silicon Photovoltaic Products from China and Taiwan, Inv. Nos. 701–TA–511 and 731–TA–1246 and 1247 (1st Sunset Review); Hanwha Q CELLS USA, Inc.'s Substantive Response,'' dated February 3, 2020.

[4] *See Crystalline Silicon Photovoltaic Products from the People's Republic of China and Taiwan: Final Results of the Expedited First Sunset Reviews of the Antidumping Duty Orders,* 85 FR 26938 (May 6, 2020); and *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Results of the Expedited Sunset Review of the Countervailing Duty Order,* 85 FR 26929 (May 6, 2020) (collectively, *Final Results*).

[5] *See Crystalline Silicon Photovoltaic Products from China and Taiwan: Sunset Review,* Investigation Nos. 701–TA–511 and 731–TA–1246–1247, 85 FR 55319 (September 4, 2020).

[6] For a complete description of the scope of the *Orders, see Final Results.*

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–128]

Mattresses From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of mattresses from the People's Republic of China. The period of investigation is January 1, 2019 through December 31, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable September 11, 2020.

FOR FURTHER INFORMATION CONTACT: Theodore Pearson or Mary Kolberg, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2631 or (202) 482–1785, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 24, 2020.[1] On June 10, 2020, Commerce postponed the preliminary determination of this investigation to August 28, 2020. For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[2] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are mattresses from the People's Republic of China. For a complete description of the scope of this investigation, *see* Appendix I.

[1] *See Mattresses from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 85 FR 22998 (April 24, 2020) (*Initiation Notice*).

[2] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination of the Countervailing Duty Investigation of Mattresses from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Scope Comments

In accordance with the preamble to Commerce's regulations,[3] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[4] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.*[5] Commerce intends to issue its preliminary decision regarding comments concerning the scope of the antidumping duty (AD) and CVD investigations in the preliminary determinations of the concurrent AD investigations.

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[6]

Commerce notes that, in making these findings, it relied on facts available and, because it finds that necessary information was missing from the record and because respondents did not act to the best of their ability to respond to Commerce's request for information, it drew adverse inferences in selecting from among the facts otherwise available. For further information, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memorandum.

Alignment

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), and based on the petitioner's request, we are aligning the final CVD determination in this investigation with the final determinations in the concurrent AD investigations of mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, and the Socialist Republic of Vietnam.[7] Consequently, the final CVD determination will be issued on the same date as the final AD determinations, which are currently scheduled to be issued no later than January 11, 2021, unless postponed.

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

Pursuant to section 705(c)(5)(A)(ii) of the Act, if the individual estimated countervailable subsidy rates established for all exporters and producers individually examined are zero, *de minimis,* or determined based entirely on facts otherwise available, Commerce may use any reasonable method to establish the estimated subsidy rate for all other producers or exporters. In this investigation, all rates are based entirely on facts available, pursuant to section 776 of the Act. Accordingly, we find under ''any reasonable method'' to rely on a simple average of the total AFA rates computed for the non-responsive companies as the all-others rate in this preliminary determination. For a full description of the methodology underlying Commerce's analysis, *see* the Preliminary Decision Memorandum.

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Estimated countervailable subsidy rate (percent)
Kewei Furniture Co Ltd	97.78
Zinus Xiamen	97.78
Ningbo Megafeat Bedding Co., Ltd./Megafeat Bedding Co Ltd	97.78
Healthcare Co. Ltd	97.78
All Others	97.78

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

Normally, Commerce discloses its calculations performed in connection with the preliminary determination to interested parties within five days of its public announcement, or if there is no public announcement, within five days of the date of publication of this notice

[3] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[4] *See Initiation Notice.*

[5] *See* Cozy Comfort LLC's Letter, ''Mattresses from Cambodia, Indonesia, Malaysia, the People's Republic of China, Serbia, Thailand, the Republic of Turkey, and the Socialist Republic of Vietnam; Comments on the Scope of the Less-Than-Fair-Value and Countervailing Duty Investigations,'' dated May 26, 2020; *see also* Night & Day Furniture LLC's Letter, ''Mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam,'' dated May 26, 2020; Target General Merchandise, Inc.'s Letter, ''Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, the Socialist Republic of Vietnam and the People's Republic of China: Scope Comments,'' dated May 26, 2020; Brooklyn Bedding's, Corsicana Mattress Company's Elite Comfort Solutions', FXI, Inc.'s, Innocor, Inc.'s, Kolcraft Enterprises, Inc.'s, Leggett & Platt, Incorporated's, the International Brotherhood of Teamsters', and United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union's, AFL–CIO's (USW) (collectively, the petitioners) Letter, ''Mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam: Mattress Petitioner's Scope Rebuttal Comments,'' dated June 5, 2020; and Cozy Comfort LLC's Letter, ''Mattresses from Cambodia, Indonesia, Malaysia, the People's Republic of China, Serbia, Thailand, the Republic of Turkey, and the Socialist Republic of Vietnam: Rebuttal Comments on the Scope of the Less-Than-Fair Value and Countervailing Duty Investigation,'' dated June 5, 2020.

[6] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[7] These AD investigations were initiated at the same time as this CVD investigation. In addition, the AD investigations and this CVD investigation cover the same class or kind of merchandises. *See Initiation Notice; see also Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 23002 (April 24, 2020).

in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily applied total AFA rates in the calculation of the benefit for the non-responsive companies, and the applied AFA rates are based on rates calculated in prior proceedings, there are no calculations to disclose.

Verification

Because the examined respondents in this investigation did not provide information requested by Commerce and Commerce preliminarily determines each of the examined respondents to have been uncooperative, it will not conduct verification.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 50 days after the date of publication of the preliminary determination. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[8] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, and time of the hearing two days before the scheduled date.

International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will make its determination before the later of 120 days after the date of this preliminary determination or 45 days after the final determination.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: August 28, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The products covered by this investigation are all types of youth and adult mattresses. The term ''mattress'' denotes an assembly of materials that at a minimum includes a ''core,'' which provides the main support system of the mattress, and may consist of innersprings, foam, other resilient filling, or a combination of these materials. Mattresses may also contain (1) ''upholstery,'' the material between the core and the top panel of the ticking on a single-sided mattress, or between the core and the top and bottom panel of the ticking on a double-sided mattress; and/or (2) ''ticking,'' the outermost layer of fabric or other material (*e.g.,* vinyl) that encloses the core and any upholstery, also known as a cover.

The scope of this investigation is restricted to only ''adult mattresses'' and ''youth mattresses.'' ''Adult mattresses'' are frequently described as ''twin,'' ''extra-long twin,'' ''full,'' ''queen,'' ''king,'' or ''California king'' mattresses. ''Youth mattresses'' are typically described as ''crib,'' ''toddler,'' or ''youth'' mattresses. All adult and youth mattresses are included regardless of size or size description.

The scope encompasses all types of ''innerspring mattresses,'' ''non-innerspring mattresses,'' and ''hybrid mattresses.'' ''Innerspring mattresses'' contain innersprings, a series of metal springs joined together in sizes that correspond to the dimensions of mattresses. Mattresses that contain innersprings are referred to as ''innerspring mattresses'' or ''hybrid mattresses.'' ''Hybrid mattresses'' contain two or more support systems as the core, such as layers of both memory foam and innerspring units.

''Non-innerspring mattresses'' are those that do not contain any innerspring units. They are generally produced from foams (*e.g.,* polyurethane, memory (viscoelastic), latex foam, gel-infused viscoelastic (gel foam), thermobonded polyester, polyethylene) or other resilient filling.

Mattresses covered by the scope of this investigation may be imported independently, as part of furniture or furniture mechanisms (*e.g.,* convertible sofa bed mattresses, sofa bed mattresses imported with sofa bed mechanisms, corner group mattresses, day-bed mattresses, roll-away bed mattresses, high risers, trundle bed mattresses, crib mattresses), or as part of a set in combination with a ''mattress foundation.'' ''Mattress foundations'' are any base or support for a mattress. Mattress foundations are commonly referred to as ''foundations,'' ''boxsprings,'' ''platforms,'' and/or ''bases.'' Bases can be static, foldable, or adjustable. Only the mattress is covered by the scope if imported as part of furniture, with furniture mechanisms, or as part of a set, in combination with a mattress foundation.

Excluded from the scope of this investigation are ''futon'' mattresses. A ''futon'' is a bi-fold frame made of wood, metal, or plastic material, or any combination thereof, that functions as both seating furniture (such as a couch, love seat, or sofa) and a bed. A ''futon mattress'' is a tufted mattress, where the top covering is secured to the bottom with thread that goes completely through the mattress from the top through to the bottom, and it does not contain innersprings or foam. A futon mattress is both the bed and seating surface for the futon.

Also excluded from the scope are airbeds (including inflatable mattresses) and waterbeds, which consist of air—or liquid-filled bladders as the core or main support system of the mattress.

Also excluded is certain multifunctional furniture that is convertible from seating to sleeping, regardless of filler material or components, where that filler material or components are upholstered, integrated into the design and construction of, and inseparable from, the furniture framing, and the outermost layer of the multifunctional furniture converts into the sleeping surface. Such furniture may, and without limitation, be commonly referred to as ''convertible sofas,'' ''sofa beds,'' ''sofa chaise sleepers,'' ''futons,'' ''ottoman sleepers'' or a like description.

Also excluded from the scope of this investigation are any products covered by the existing antidumping duty orders on uncovered innerspring units from China or Vietnam. *See Uncovered Innerspring Units from the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 7661 (Feb. 19, 2009); *Uncovered Innerspring Units From the Socialist Republic of Vietnam,* 73 FR 75391 (Dec. 11, 2008).

Also excluded from the scope of this investigation are bassinet pads with a nominal length of less than 39 inches, a nominal width less than 25 inches, and a nominal depth of less than 2 inches.

Additionally, also excluded from the scope of this investigation are ''mattress toppers.'' A ''mattress topper'' is a removable bedding accessory that supplements a mattress by providing an additional layer that is placed on top of a mattress. Excluded mattress toppers have a nominal height of four inches or less.

The products subject to this investigation are currently properly classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 9404.21.0010, 9404.21.0013, 9404.29.1005, 9404.29.1013, 9404.29.9085, and 9404.29.9087. Products subject to this investigation may also enter under HTSUS subheadings: 9404.21.0095, 9404.29.1095, 9404.29.9095, 9401.40.0000, and 9401.90.5081. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this investigation is dispositive.

[8] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2020–20073 Filed 9–10–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA471]

Marine Mammals; File No. 22629

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that a permit has been issued to Mystic Aquarium (Responsible Party: Stephen M. Coan, Ph.D.) to import five beluga whales (*Delphinapterus leucas*) for scientific research.

ADDRESSES: The permit and related documents are available online at *https://www.fisheries.noaa.gov/action/permit-application-import-5-beluga-whales-scientific-research-file-no-22629-mystic-aquarium.*

FOR FURTHER INFORMATION CONTACT: Amy Sloan (*amy.sloan@noaa.gov*), Courtney Smith (*courtney.smith@noaa.gov*), or Jennifer Skidmore (*jennifer.skidmore@noaa.gov*), (301) 427–8401.

SUPPLEMENTARY INFORMATION: On October 1, 2019, notice was published in the **Federal Register** (84 FR 52072) that a request for a permit to import five beluga whales for scientific research had been submitted by the above-named applicant. A public hearing on this action was held on November 18, 2019 (84 FR 58694). The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The permit authorizes the importation of five captive-born beluga whales from Marineland of Canada (Niagara Falls, Ontario, Canada) to Mystic Aquarium (Mystic, Connecticut, United States).

The beluga whales were born at Marineland of Canada and NMFS considers one of the beluga whales to be a member of the depleted Sakhalin Bay-Nikolaya Bay-Amur River stock, because both parents are likely from the depleted stock. Four of the whales have mixed-stock parentage (*i.e.,* one parent likely from the depleted stock and the other from a stock that has not been designated as depleted). For purposes of this permit application, NMFS has treated all five whales as depleted.

The purpose of the research is to contribute knowledge and inform management and recovery of beluga whale populations in the wild including the endangered Cook Inlet beluga whale distinct population segment and the depleted Sakhalin Bay-Nikolaya Bay-Amur River beluga whale stock. Research authorized includes the following Studies: (1) Neuroimmunological response to environmental and anthropogenic stressors; (2) Development of novel non-invasive techniques to assess health in free-ranging, stranded and endangered beluga whales; (3) Hearing and physiological response to anthropogenic sound; (4) Photogrammetry body condition studies; (5) Diving physiology; (6) Microbiome; and (8) Testing of prototype telemetry and imaging devices before deployment on wild beluga whales. The permit does not authorize Study 7 (Behavioral and reproduction studies) including breeding of any of the imported beluga whales but includes reproductive monitoring as part of husbandry activities. Mystic Aquarium must submit a plan to provide safe and effective contraception or other means to prevent breeding of the five subject beluga whales, for approval by the Office Director prior to importation.

Consistent with other research permits authorizing captive maintenance, the permit is conditioned to require approval by the Office Director for any transfer or transport of the imported whales, including any transport to the Georgia Aquarium, and disposition of the whales at the termination of research. Consistent with NMFS' regulations, public display is authorized incidental to the research. This incidental public display must not interfere with the research and must occur as part of an educational program describing the status of the species and its endangered and depleted stocks. The animals may not be used in public interactive programs or be trained for performance. Public demonstrations in which the whales perform trained husbandry, medical, research-related, and natural behaviors are authorized. The permit is valid through August 31, 2025.

An Environmental Assessment (EA) was prepared analyzing the effects of the permitted activities on the human environment in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Based on the analyses in the EA, NMFS determined that issuance of the permit would not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required. That determination is documented in a Finding of No Significant Impact (FONSI), signed on August 27, 2020.

Dated: September 8, 2020.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–20061 Filed 9–10–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of National Estuarine Research Reserve; Public Meeting; Request for Comments

AGENCY: Office for Coastal Management (OCM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meeting and opportunity to comment.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management will hold a public meeting to solicit comments on the performance evaluation of the Delaware National Estuarine Research Reserve.

DATES: NOAA will consider all written comments received by October 23, 2020. A virtual public meeting will be held on Wednesday, October 14, 2020 at 12 p.m. EDT.

ADDRESSES: You may submit written comments on the national estuarine research reserve NOAA intends to evaluate by emailing Carrie Hall, Evaluator, NOAA Office for Coastal management at *Carrie.Hall@noaa.gov.* Timely comments received by the Office for Coastal Management are considered part of the public record and may be publicly accessible. Any personal information (*e.g.,* name, address) submitted voluntarily by the sender may

also be publicly accessible. NOAA will accept anonymous comments.

You may also provide public comments during the virtual public meeting, which is being held Wednesday, October 14, 2020 at 12 p.m. EDT. To participate in the virtual public meeting, registration is required at least two hours in advance by Wednesday, October 14, 2020, at 10 a.m. EDT. Advance registration is available via the following website: *http://noaacsc.adobeconnect.com/depublicmeeting/event/event_info.html.* You may participate online or by phone. If you would like to provide comment during the public meeting, please select ''yes'' during the online registration. The line-up of speakers will be based on the date and time of registration.

FOR FURTHER INFORMATION CONTACT: Carrie Hall, Evaluator, NOAA Office for Coastal Management by email at *Carrie.Hall@noaa.gov* or by phone at (240) 533–0730. Copies of the previous evaluation findings, reserve management plan, and reserve site profile may be viewed and downloaded on the internet at *http://coast.noaa.gov/czm/evaluations.* A copy of the evaluation notification letter and most recent progress report may be obtained upon request by contacting Carrie Hall.

SUPPLEMENTARY INFORMATION: Section 312 of the Coastal Zone Management Act (CZMA) requires NOAA to conduct periodic evaluations of federally approved state coastal programs. The process includes one or more public meetings, consideration of written public comments, and consultations with interested Federal, state, and local agencies and members of the public. During the evaluation, NOAA will consider the extent to which the state of Delaware has met the national objectives, adhered to the management program approved by the Secretary of Commerce, and adhered to the terms of financial assistance under the CZMA. When the evaluation is completed, NOAA's Office for Coastal Management will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

Keelin Kuipers,

Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2020–20096 Filed 9–10–20; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Program; Public Meeting; Request for Comments

AGENCY: Office for Coastal Management (OCM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meeting; request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management will hold a public meeting and solicit written comments on the performance evaluation of the Illinois Coastal Management Program.

DATES: NOAA will consider all written comments received by November 6, 2020. The virtual public meeting will be held on Wednesday October 28, 2020 at 1 p.m. CDT.

ADDRESSES: You may submit written comments on the coastal management program NOAA intends to evaluate by emailing Ralph Cantral, Senior Advisor, NOAA Office for Coastal Management at *Ralph.Cantral@noaa.gov.* Timely comments received by the Office for Coastal Management are considered part of the public record and may be publicly accessible. Any personal identifying information (*e.g.,* name, address) submitted voluntarily by the sender may also be publicly accessible. NOAA will accept anonymous comments.

You may also provide public comments during the virtual public meeting which is being held Wednesday, October 28, 2020 at 1 p.m. CDT. To participate in the virtual public meeting, registration is required at least two hours in advance by Wednesday, October 28, 2020 at 11 a.m. CDT. Advance registration is available via the following website: *http://noaacsc.adobeconnect.com/illinoiscmppublicmeeting/event/event_info.html.* You may participate online or by phone. If you would like to provide comment during the public meeting, please select ''yes'' during the online registration. The line-up of speakers will be based on your date and time of registration.

FOR FURTHER INFORMATION CONTACT: Ralph Cantral, Senior Advisor, NOAA Office for Coastal Management by phone at (301) 233–2998 or email *Ralph.Cantral@noaa.gov.* Copies of the previous evaluation findings, the coastal management program's 2016–2020 Assessment and Strategy, and the Reserve's management plan and site profile may be viewed and downloaded on the internet at *http://coast.noaa.gov/czm/evaluations.* A copy of the evaluation notification letter and most recent progress reports may be obtained upon request by contacting Ralph Cantral.

SUPPLEMENTARY INFORMATION: Section 312 of the Coastal Zone Management Act (CZMA) requires NOAA to conduct periodic evaluations of federally approved state coastal programs. The process includes one or more public meetings, consideration of written public comments, and consultations with interested Federal, state, and local agencies and members of the public. For the evaluation of the Illinois Coastal Management Program, NOAA will consider the extent to which the state has met the national objectives, adhered to the management program approved by the Secretary of Commerce, and adhered to the terms of financial assistance under the CZMA. When the evaluation is completed, NOAA's Office for Coastal Management will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

Keelin Kuipers,

Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2020–20095 Filed 9–10–20; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA468]

Marine Mammals; File No. 23858

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the NMFS' Marine Mammal Laboratory, 7600 Sand Point Way NE, Seattle, WA 98115–6349 (Responsible Party: John Bengtson, Ph.D.), has applied in due form for a permit to conduct research on pinnipeds in Alaska.

DATES: Written, telefaxed, or email comments must be received on or before October 13, 2020.

ADDRESSES: The application and related documents are available for review by

selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 23858 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 23858 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Sara Young or Carrie Hubard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The applicant requests a five-year permit for takes of bearded (*Erignathus barbatus*), harbor (*Phoca vitulina*), ribbon (*Histriophoca fasciata*), ringed (*Phoca hispida*), and spotted seals (*Phoca largha*) in the North Pacific Ocean, Bering Sea, Arctic Ocean, and coastal regions of Alaska. The purposes of the research are to investigate the foraging ecology, population abundance and trends, population structure, habitat requirements, health, vital rates, and effects of natural and anthropogenic factors on these species. Annually, up to 150 of each ice-associated seal species (bearded, ribbon, ringed, and spotted) and up to 250 harbor seals may be captured, handled, and released for measurement of body condition, collection of tissue samples, deployment of telemetry devices, and other procedures as described in the application. An additional 3,000 of each ice associated seal species and 5,500 harbor seals may be incidentally harassed annually during capture activities or collection of feces and other samples from haul-out substrate. Annual takes by harassment during aerial surveys (manned and unmanned) include 3,200 bearded, 6,000 harbor, 1,750 ribbon, 6,700 ringed, and 4,500 spotted seals. Authorization is requested for up to 15 unintentional mortalities of each species over the life of the permit, not to exceed 5 annually. Up to 500 Steller sea lions (*Eumetopias jubatus*) of the Eastern Distinct Population Segment may be taken annually by incidental harassment during harbor seal aerial surveys.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: September 8, 2020.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–20060 Filed 9–10–20; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

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

ACTION: Proposed additions to the Procurement List.

SUMMARY: The Committee is proposing to add services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Comments must be received on or before:* October 11, 2020.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

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

Additions

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

The following services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Services

Service Type: Janitorial Service
Mandatory for: U.S. Department of Energy, Hanford Site and Richland North Areas, Richland, WA
Mandatory Source of Supply: Nobis Enterprises, Inc., Marietta, GA
Contracting Activity: ENERGY, DEPARTMENT OF, RICHLAND OPERATIONS OFFICE

Service Type: Janitorial Service
Mandatory for: Federal Aviation Administration, Norfolk Air Traffic Control Tower, Virginia Beach, VA and Patrick Henry Field Air Traffic Control Tower, Newport News, VA
Mandatory Source of Supply: Portco, Inc., Portsmouth, VA
Contracting Activity: FEDERAL AVIATION ADMINISTRATION, 697DCK REGIONAL ACQUISITIONS SVCS

Service Type: Janitorial Service
Mandatory for: FAA, Air Traffic Control Tower, Roanoke, VA
Mandatory Source of Supply: Goodwill Industries of the Valleys, Inc., Roanoke, VA
Contracting Activity: FEDERAL AVIATION ADMINISTRATION, 697DCK REGIONAL ACQUISITIONS SVCS

Michael R. Jurkowski,

Deputy Director, Business & PL Operations.

[FR Doc. 2020–20059 Filed 9–10–20; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

[Docket Number: DARS–2020–0021; OMB Control Number 0704–0272]

Defense Acquisition Regulations System

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Occupational Safety, Drug-Free Work Force and Related Clauses

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed revision and extension of a public information collection requirement, and seeks public comment on the provisions thereof. DoD invites comments on: Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through November 30, 2020. DoD proposes that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD will consider all comments received by November 10, 2020.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0272, using any of the following methods:

○ *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

○ *Email: osd.dfars@mail.mil.* Include OMB Control Number 0704–0272 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Kimberly Ziegler, OUSD(A&S)DPC/DARS, Room 3B938, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Ziegler, 571–372–6095.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-free Workplace—DoD FAR Supplement Part 223; OMB Control Number 0704–0272.

Type of Request: Extension.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Respondents: 4,527.

Annual Responses: 70,346.

Estimated Hours: 581,165 hours. (48,525 reporting hours and 532,640 recordkeeping hours).

Reporting Frequency: On occasion.

Needs and Uses: This information collection requires that an offeror or contractor submit information to DoD in response to DFARS solicitation four contract clauses relating to occupational safety and drug-free work force program. DoD contracting officers use this information to—

○ Verify compliance with requirements for labeling of hazardous materials;

○ Ensure contractor compliance and monitor subcontractor compliance with DoD 4145.26–M, DoD Contractors' Safety Manual for Ammunition and Explosives, and minimize risk of mishaps;

○ Identify the place of performance of all ammunition and explosives work; and

○ Ensure contractor compliance and monitor subcontractor compliance with DoD 5100.76–M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.

○ Ensure compliance with the clause program requirements with regard to programs for achieving the objective of a drug-free work force; requires contractor recordkeeping.

This information collection addresses the following requirements:

○ *DFARS 252.223–7001, Hazard Warning Labels.* Paragraph (c) requires all offerors to list which hazardous materials will be labeled in accordance with certain statutory requirements instead of the Hazard Communication Standard. Paragraph (d) requires only the apparently successful offeror to submit, before award, a copy of the hazard warning label for all hazardous materials not listed in paragraph (c) of the clause.

○ *DFARS 252.223–7002, Safety Precautions for Ammunition and Explosives.* Paragraph (c)(2) requires the contractor, within 30 days of notification of noncompliance with DoD 4145.26–M, to notify the contracting officer of actions taken to correct the noncompliance. Paragraph (d)(1) requires the contractor to notify the contracting officer immediately of any mishaps involving ammunition or explosives. Paragraph (d)(3) requires the contractor to submit a written report of the investigation of the mishap to the contracting officer. Paragraph (g)(4) requires the contractor to notify the contracting officer before placing a subcontract for ammunition or explosives.

○ *DFARS 252.223–7003, Changes in Place of Performance—Ammunition and Explosives.* Paragraph (a) requires the offeror to identify, in the Place of Performance provision of the solicitation, the place of performance of all ammunition and explosives work covered by the Safety Precautions for Ammunition and Explosives clause of the solicitation. Paragraphs (b) and (c) require the offeror or contractor to obtain written permission from the contracting officer before changing the place of performance after the date set for receipt of offers or after contract award.

○ *DFARS 252.223–7007, Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives.* Paragraph (e) requires the contractor to notify the cognizant Defense Security Service field office within 10 days after award of any subcontract involving sensitive conventional arms, ammunition, and explosives within the scope of DoD 5100.76–M.

○ *DFARS 252.223–7004, Drug-Free Work Force.* The clause requires that certain contractors maintain records necessary to demonstrate reasonable efforts to eliminate the unlawful use by contractor employees of controlled substances. DoD does not regularly collect any information with regard to this clause.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

[FR Doc. 2020–19984 Filed 9–10–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket DARS–2020–0025; OMB Control Number 0704–0248]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement (DFARS); Inspection and Receiving Report

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. *DoD invites comments on:* Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of the estimate of the

burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use through December 31, 2020. DoD proposes that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD will consider all comments received by November 10, 2020.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0248, using any of the following methods:

○ *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

○ *Email: osd.dfars@mail.mil.* Include OMB Number 0704–0248 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Kimberly Ziegler, OUSD(A&S)DPC/DARS, 3060 Defense Pentagon, Room 3B938, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Ziegler, 571–372–6095.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS), Appendix F, Material Inspection and Receiving Report; OMB Control Number 0704–0248.

Type of Request: Extension.

Affected Public: Businesses or other for-profit and not-for profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Respondents: 148,885.

Responses per Respondent: 19.5, approximately.

Annual Responses: 2,900,000.

Hours per response: 0.05.

Estimated Hours: 145,000.

Reporting Frequency: On occasion.

Needs and Uses: This information collection is necessary to process shipping and receipt documentation for contractor-provided goods and services and permit payment under DoD contracts. This information collection includes the requirements of DFARS Appendix F, Material Inspection and Receiving Report. Appendix F contains procedures and instructions for submission of contractor payment requests and receiving reports using Wide Area WorkFlow (WAWF). 10 U.S.C. 2227(c) requires electronic submission and processing of claims for contract payments under DoD contracts. DoD has designated WAWF as the designated platform for contractors to submit payment requests and supporting documentation, including receiving reports. WAWF supports the preparation and distribution of electronic equivalents for the DD Form 250, Material Inspection and Receiving Report, and DD Form 250 series equivalents for repair of Government property and energy-related overland or waterborne shipments.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

[FR Doc. 2020–19983 Filed 9–10–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2020–0020; OMB Control Number 0704–0252]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement (DFARS); Part 251, Use of Government Sources by Contractors

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed revision and extension of a public information collection requirement and seeks public comment on the provisions thereof. *DoD invites comments on:* Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use through November 30, 2020. DoD proposes that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD will consider all comments received by November 10, 2020.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0252, using any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Email: osd.dfars@mail.mil. Include OMB Control Number 0704–0252 in the subject line of the message.

Mail: Defense Acquisition Regulations System, Attn: Ms. Carrie Moore, OUSD(A&S)DPC(DARS), 3060 Defense Pentagon, Room 3B938, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, 571–372–6104.

SUPPLEMENTARY INFORMATION:

Title, Associated Form, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS), Part 251, Use of Government Sources by Contractors, and an associated clause at DFARS 252.251–7000, Ordering from Government Supply Sources; OMB Control Number 0704–0252.

Affected Public: Businesses or other for-profit and not-for profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Type of Request: Revision and extension.

Number of Respondents: 1,414.

Responses per Respondent: 7.8.

Annual Responses: 11,058.

Hours per Response: 0.5.

Annual Burden Hours: 5,529.

Reporting Frequency: On occasion.

Needs and Uses: This information collection permits contractors to place orders from Government supply sources, including Federal Supply Schedules, requirements contracts, and Government stock. Contractors are required to provide a copy of their written authorization to use Government supply sources with their order. The authorization is used by the Government source of supply to verify that a contractor is authorized to place such orders and under what conditions. The clause at DFARS 252.251–7000, Ordering from Government Supply Sources, requires a contractor to provide a copy of the authorization when placing an order under a Federal Supply Schedule, a Personal Property

Rehabilitation Price Schedule, or an Enterprise Software Agreement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

[FR Doc. 2020–19979 Filed 9–10–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket DARS–2020–0019; OMB Control Number 0704–0245]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Transportation

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed revision and extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement under Control Number 0704–0245 for use through November 30, 2020. DoD proposes that OMB extend its approval for an additional three years.

DATES: DoD will consider all comments received by November 10, 2020.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0245, using any of the following methods:

○ *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

○ *Email: osd.dfars@mail.mil.* Include OMB Control Number 0704–0245 in the subject line of the message.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Kimberly Ziegler, OUSD(A&S)DPC/DARS, 3060 Defense Pentagon, Room 3B938, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Ziegler, 571–372–6095.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Transportation, and related clauses—DoD FAR Supplement Part 247, OMB Control Number 0704–0245.

Type of Request: Revision and extension.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Respondents: 18,298.

Responses per Respondent: 6.47.

Annual Responses: 118,326.

Hours per Response: .57.

Estimated Hours: 67,101.

Reporting Frequency: On occasion.

Needs and Uses: DoD contracting officers use this information to verify that prospective contractors have adequate insurance prior to award of stevedoring contracts; to provide appropriate price adjustments to stevedoring contracts; to assist the Maritime Administration in monitoring compliance with requirements for use of U.S.-flag vessels in accordance with the Cargo Preference Act of 1904 (10 U.S.C. 2631); and to provide appropriate and timely shipping documentation and instructions to contractors.

The clause at DFARS 252.247–7000, Hardship Conditions, is prescribed at DFARS 247.270–4(a) for use in all solicitations and contracts for the acquisition of stevedoring services. Paragraph (a) of the clause requires the contractor to notify the contracting officer of unusual conditions associated with loading or unloading a particular cargo, for potential adjustment of contract labor rates; and to submit any associated request for price adjustment to the contracting officer within 10 working days of the vessel sailing time.

The clause at DFARS 252.247–7002, Revision of Prices, is prescribed at DFARS 247.270–4(b) for use in solicitations and contracts when using negotiation to acquire stevedoring services. Paragraph (c) of the clause provides that, at any time, either the contracting officer or the contractor may deliver to the other a written demand that the parties negotiate to revise the prices under the contract. Paragraph (d) of the clause requires that, if either party makes such a demand, the contractor must submit relevant data upon which to base negotiations.

The clause at DFARS 252.247–7007, Liability and Insurance, is prescribed at DFARS 247.270–4(c) for use in all solicitations and contracts for the acquisition of stevedoring services. Paragraph (f) of the clause requires the contractor to furnish the contracting officer with satisfactory evidence of insurance.

The provision at DFARS 252.247–7022, Representation of Extent of Transportation by Sea, is prescribed at DFARS 247.574(a) for use in all solicitations except those for direct purchase of ocean transportation services or those with an anticipated value at or below the simplified acquisition threshold. Paragraph (b) of the provision requires the offeror to represent whether or not it anticipates that supplies will be transported by sea in the performance of any contract or subcontract resulting from the solicitation.

The clause at DFARS 252.247–7023, Transportation of Supplies by Sea, is prescribed at DFARS 247.574(b) for use in all solicitations and contracts except those for direct purchase of ocean transportation services. Paragraph (d) of the clause requires the contractor to submit any requests for use of other than U.S.-flag vessels in writing to the contracting officer. Paragraph (e) of the clause requires the contractor to submit one copy of the rated on board vessel operating carrier's ocean bill of landing. Paragraph (f) of the clause, if the contract exceeds the simplified acquisition threshold, requires the contractor to represent, with its final invoice, that: (1) No ocean transportation was used in the performance of the contract; (2) only U.S.-flag vessels were used for all ocean shipments under the contract; (3) the contractor had the written consent of the contracting officer for all non-U.S.-flag ocean transportation; or (4) shipments were made on non-U.S.-flag vessels without the written consent of the contracting officer. Contractors must flow down these requirements to noncommercial subcontracts and certain types of commercial subcontracts. Subcontracts at or below the simplified acquisition threshold are excluded from the requirements of paragraph (f) stated above. Paragraph (h) of the clause, requires the contractor, after award, to notify the contracting officer if the contractor learns that supplies will be transported by sea and the contractor indicated, in the solicitation, that the contractor did not anticipate transporting any supplies by sea.

The clause at DFARS 252.247–7026, Evaluation Preference for Use of Domestic Shipyards — Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade, is prescribed at DFARS 247.574(d) in solicitations that require a covered vessel for carriage of cargo for DoD. Paragraph (c) of the clause requires the offeror to provide information with its offer, addressing all covered vessels for which overhaul, repair, and maintenance work has been performed during the period covering the current calendar year, up to the date of proposal submission, and the preceding four calendar years.

The clause at DFARS 252.247.7028, Application for U.S. Government Shipping Documentation/Instructions, is prescribed at DFARS 247.207(2) for inclusion in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when shipping under Bills of Lading and Domestic Route Order under FOB origin contract, Export Traffic Release regardless of FOB terms, or foreign military sales shipments. Paragraph (a) of the clause requires contractors to complete DD Form 1659, Application for U.S. Government Shipping Documentation/Instructions to request shipping instructions, unless an automated system is available (paragraph (b) of the clause).

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

[FR Doc. 2020–19982 Filed 9–10–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0099]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; State Lead Agency Record Keeping and Reporting Requirements Under Part C of the Individuals With Disabilities Education Act

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before October 13, 2020.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Amy Bae, (202) 245–8272.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: State Lead Agency Record Keeping and Reporting Requirements under Part C of the Individuals with Disabilities Education Act.

OMB Control Number: 1820–0682.

Type of Review: An Extension of an Existing Information Collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 56.

Total Estimated Number of Annual Burden Hours: 4,268.

Abstract: This collection has been created to reflect the requirements under Part C of IDEA and the Part C regulations that require State lead agencies (LAs) to collect and maintain information or data and, in some cases, report information or data to other public agencies or to the public. However, such information or data are not required to be reported to the Secretary. These required collections are consolidated into 1820–0682.

Dated: September 8, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–20056 Filed 9–10–20; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meetings

AGENCY: U.S. Election Assistance Commission.

ACTION: Sunshine Act notice; notice of public roundtable agenda.

SUMMARY: Roundtable Discussion: Voter Registration During the COVID–19 Pandemic.

DATES: Friday, September 18, 2020, 1:00 p.m.–2:30 p.m. Eastern.

ADDRESSES: Virtual via Zoom. The roundtable discussion is open to the public and will be livestreamed on the U.S. Election Assistance Commission YouTube Channel: *https://www.youtube.com/channel/UCpN6i0g2rlF4ITWhwvBwwZw.*

FOR FURTHER INFORMATION CONTACT: Kristen Muthig, Telephone: (202) 897–9285, Email: *kmuthig@eac.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: In accordance with the Government in the Sunshine Act (Sunshine Act), Public Law 94–409, as amended (5 U.S.C. 552b), the U.S. Election Assistance Commission (EAC) will conduct a virtual roundtable discussion on the challenges election administrators and individuals face regarding voter registration during the COVID–19 pandemic and discuss how state and local election offices are responding to those challenges.

Agenda: The U.S. Election Assistance Commission (EAC) will hold a roundtable discussion on the impact that COVID–19 has had on voter registration efforts. The roundtable will be moderated by the EAC Commissioners who will ask speakers to address the importance of registering and updating voter registration early, the impact of other external factors such as limited hours and closures at state

and local departments of motor vehicle offices, as well as what participants have done to combat other voter registration challenges that have developed because of COVID–19.

The full agenda will be posted in advance on the EAC website: *https://www.eac.gov.*

STATUS: This roundtable discussion will be open to the public.

Amanda Joiner,

Associate Counsel, U.S. Election Assistance Commission.

[FR Doc. 2020–20110 Filed 9–9–20; 11:15 am]

BILLING CODE 6820–KF–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9052–7]

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 August 31, 2020, 10 a.m. EST Through September 4, 2020, 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20200180, Final, FRA, DC, Long Bridge Project, Contact: David Valenstein 202–493–6368.

Under 23 U.S.C. 139(n)(2), FRA has issued a single document that consists of a final environmental impact statement and record of decision. Therefore, the 30-day wait/review period under NEPA does not apply to this action.

Dated: September 4, 2020.

Candi Schaedle,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2020–20063 Filed 9–10–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m. on Tuesday, September 15, 2020.

PLACE: The meeting is open to the public. Out of an abundance of caution related to current and potential coronavirus developments, the public's means to observe this Board meeting will be via a Webcast live on the internet and subsequently made available on-demand approximately one week after the event. Visit *http://fdic.windrosemedia.com* to view the live event. Visit *http://fdic.windrosemedia.com/index.php?category=FDIC+Board+Meetings* after the meeting. If you need any technical assistance, please visit our Video Help page at: *https://www.fdic.gov/video.html.*

Observers requiring auxiliary aids (*e.g.,* sign language interpretation) for this meeting should call 703–562–2404 (Voice) or 703–649–4354 (Video Phone) to make necessary arrangements.

STATUS: Open.

MATTERS TO BE CONSIDERED: Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of Minutes of a Board of Directors' Meeting Previously Distributed.

Memorandum and resolution re: Finalization of Interim Final Rule regarding Treatment of Certain Emergency Facilities in the Regulatory Capital Rule and the Liquidity Coverage Ratio Rule.

Memorandum and resolution re: Finalization of Interim Final Rule regarding Real Estate Appraisals.

Memorandum and resolution re: Notice of Proposed Rulemaking to Rescind Regulations Transferred from the Former Office of Thrift Supervision, Part 390, Subpart F—Application Processing Procedures.

Memorandum and resolution re: Remittance of Assessment Credits.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Discussion Agenda

Memorandum and resolution re: Deposit Insurance Fund (DIF) Restoration Plan.

CONTACT PERSON FOR MORE INFORMATION: Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at 202–898–7043.

Dated at Washington, DC, on September 8, 2020.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2020–20137 Filed 9–9–20; 4:15 pm]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

TIME AND DATE: September 16, 2020; 10:00 a.m.

PLACE: 800 N Capitol Street NW, First Floor Hearing Room, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Closed Session

1. Staff Briefing on Ocean Carrier Rate Trends
2. Staff Briefing on Ocean Carrier Alliances

CONTACT PERSON FOR MORE INFORMATION: Rachel Dickon, Secretary, (202) 523–5725.

Rachel Dickon,

Secretary.

[FR Doc. 2020–20224 Filed 9–9–20; 4:15 pm]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201228–002.

Agreement Name: Port of Seattle/Port of Tacoma Alliance Agreement.

Parties: Port of Seattle and Port of Tacoma.

Filing Party: Thomas Tanaka, Port of Seattle.

Synopsis: The amendment updates the Charter to clarify certain issues

related to finances, environmental responsibilities, and decision-making for legal matters.

Proposed Effective Date: 10/16/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/2077.

Dated: September 8, 2020.

Rachel Dickon,

Secretary.

[FR Doc. 2020–20066 Filed 9–10–20; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank(s) indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than October 13, 2020.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *The Reisher Family Foundation, Lakewood, Colorado;* to become a bank holding company by acquiring 16.95 percent of the voting shares of FirstBank Holding Company, and thereby indirectly acquire FirstBank, both of Lakewood, Colorado.

Board of Governors of the Federal Reserve System, September 4, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–20015 Filed 9–10–20; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than September 28, 2020.

A. Federal Reserve Bank of San Francisco (Sebastian Astrada, Director, Applications) 101 Market Street, San Francisco, California 94105–1579:

1. Richard B. Fowler II, Carmichael, California, and Karl K. Klessig, Sante Fe, New Mexico; as a group acting in concert, to acquire additional voting shares of Golden Pacific Bancorp, Inc., and thereby indirectly acquire voting shares of Golden Pacific Bank, National Association, both of Sacramento, California.

Board of Governors of the Federal Reserve System, September 8, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–20086 Filed 9–10–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–359/CMS–360, CMS–10706, CMS–10725 and CMS 10728]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by October 13, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved information collection; *Title of Information Collection:* Comprehensive Outpatient Rehabilitation Facility (CORF) Certification and Survey Forms; *Use:* The form CMS–359 is an application for health care providers that seek to participate in the Medicare program as a Comprehensive Outpatient Rehabilitation Facility (CORF). The form initiates the process for facilities to become certified as a CORF and it provides the CMS Location and State Survey Agency (SA) staff identifying information regarding the applicant that is stored in the Automated Survey Processing Environment (ASPEN) system.

The form CMS–360 is a survey tool used by the SAs to record information in order to determine a provider's compliance with the CORF Conditions of Participation (COPs) and to report this information to the Federal government. The form includes basic information on the COP requirements, check boxes to indicate the level of compliance, and a section for recording notes. CMS has the responsibility and authority for certification decisions which are based on provider compliance with the COPs and this form supports this process. *Form Number:* CMS–359/360 (OMB control number: 0938–0267); *Frequency:* Occasionally; *Affected Public:* Private Sector (Business or other for-profits); *Number of Respondents:* 49 *Number of Responses:* 8; *Total Annual Hours:* 74. (For questions regarding this collection contact Caroline Gallaher (410)786–8705.)

2. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Generic Clearance for the Center for Clinical Standards and Quality IT Product and Support Teams; *Use:* The Health Information Technology for Economic and Clinical Health (HITECH) Act is part of the American Reinvestment and Recovery Act (ARRA) of 2009. As noted in the HITECH Act, CMS is responsible for defining ''meaningful use'' of certified electronic health record (EHR) technology and developing incentive payment programs for Medicare and Medicaid providers. CMS is continually implementing and updating information systems as legislation and requirements change. To support this initiative, CCSQ IT Product and Support Teams (CIPST) must have the capacity for engagement with users in an ongoing variety of research, discovery, and validation activities to create and refine systems that do not place an undue burden on users and instead are efficient, usable, and desirable.

The Center for Clinical Standards and Quality (CCSQ) is responsible for administering appropriate information systems so that the public can submit healthcare-related information. While beneficiaries ultimately benefit, the primary users of (CIPST) are healthcare facility employees and contractors. They are responsible for the collection and submission of appropriate beneficiary data to CMS to receive merit-based compensation.

The generic clearance will allow a rapid response to inform CMS initiatives using a mixture of qualitative and quantitative consumer research strategies (including formative research studies and methodological tests) to improve information systems that serve CMS audiences. CMS implements human-centered methods and activities for the improvement of policies, services, and products. As information systems and technologies are developed or improved upon, they can be tested and evaluated for end-user feedback regarding utility, usability, and desirability. The overall goal is to apply a human-centered engagement model to maximize the extent to which CMS CIPST product teams can gather ongoing feedback from consumers. Feedback helps engineers and designers arrive at better solutions, therefore minimizing the burden on consumers and meeting their needs and goals.

The activities under this clearance involve voluntary engagement with target CIPST users to receive design and research feedback. Voluntary end-users from samples of self-selected customers, as well as convenience samples, with respondents selected either to cover a broad range of customers or to include specific characteristics related to certain products or services. All collection of information under this clearance is for use in both quantitative and qualitative groups collecting data related to human-computer interactions with information system development. We will use the findings to create the highest possible public benefit. *Form Number:* CMS–10706 (OMB control number: 0938–NEW); *Frequency:* Occasionally; *Affected Public:* Individuals and Private Sector (Business or other for-profit and Not-for-profit institutions); *Number of Respondents:* 11,476; *Total Annual Responses:* 11,476; *Total Annual Hours:* 4,957. (For policy questions regarding this collection contact Stephanie Ray at 410–786–0971).

3. *Type of Information Collection Request:* New information collection; *Title of Information Collection:* Pharmacy Benefit Manager Transparency; *Use:* The Patient Protection and Affordable Care Act (Pub. L. 111–148) and the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (collectively, the Patient Protection and Affordable Care Act (PPACA)) were signed into law in 2010. The PPACA established competitive private health insurance markets, called Marketplaces or Exchanges, which give millions of Americans and small businesses access to qualified health plans (QHPs), including stand-alone dental plans

(SADPs)—private health and dental insurance plans that are certified as meeting certain standards. The PPACA added section 1150A of the Social Security Act, which requires pharmacy benefit managers (PBMs) to report prescription benefit information to the Department of Health and Human Services (HHS). PBMs are third-party administrators of prescription programs for a variety of types of health plans, including QHPs. The Centers for Medicare and Medicaid Services (CMS) files this information collection request (ICR) in connection with the prescription benefit information that PBMs must provide to HHS under section 1150A. The burden estimate for this ICR reflects the time and effort for PBMs to submit the information regarding PBMs and prescription drugs. *Form Number:* CMS–10725 (OMB control number: 0938–NEW); *Frequency:* Annually; *Affected Public:* Private Sector (business or other for-profits), *Number of Respondents:* 40; *Number of Responses:* 275. *Total Annual Hours:* 1,400. For questions regarding this collection contact Ken Buerger at 410–786–1190.

4. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Value in Opioid Use Disorder Treatment Demonstration; *Use:* Value in Opioid Use Disorder Treatment (Value in Treatment) is a 4-year demonstration program authorized under section 1866F of the Social Security Act (Act), which was added by section 6042 of the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (SUPPORT Act). The purpose of Value in Treatment, as stated in the statute, is to ''increase access of applicable beneficiaries to opioid use disorder treatment services, improve physical and mental health outcomes for such beneficiaries, and to the extent possible, reduce Medicare program expenditures.'' As required by statute, Value in Treatment will be implemented no later than January 1, 2021.

Section 1866F(c)(1)(A)(ii) specifies that individuals and entities must apply for and be selected to participate in the Value in Treatment demonstration pursuant to an application and selection process established by the Secretary. Section 1866F(c)(2)(B)(iii) specifies that in order to receive CMF and performance-based incentive payments under the Value in Treatment program, each participant shall report data necessary to: Monitor and evaluate the Value in Treatment program; determine if criteria are met; and determine the performance-based incentive payment. *Form Number:* CMS–10728 (OMB control number: 0938-New); *Frequency:* Yearly; *Affected Public:* Individuals and Households; *Number of Respondents:* 12,096; *Total Annual Responses:* 12,096; *Total Annual Hours:* 1,285. (For policy questions regarding this collection contact Rebecca VanAmburg at 410–786–0524.)

Dated: September 8, 2020.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2020–20089 Filed 9–10–20; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–E–3015]

Determination of Regulatory Review Period for Purposes of Patent Extension; EVERSENSE CONTINUOUS GLUCOSE MONITORING SYSTEM

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for EVERSENSE CONTINUOUS GLUCOSE MONITORING SYSTEM (EVERSENSE CGM SYSTEM) and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that medical device.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by November 10, 2020. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 10, 2021. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before November 10, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 10, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–E–3015 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; EVERSENSE CGM SYSTEM.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov*

or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device EVERSENSE CGM SYSTEM. EVERSENSE CGM SYSTEM is indicated for continually measuring glucose levels in adults (18 years or older) with diabetes for up to 90 days. The system is intended to: (1) Provide real-time glucose readings; (2) provide glucose trend information; and (3) provide alerts for the detection and prediction of episodes of low blood glucose (hypoglycemia) and high blood glucose (hyperglycemia). The system is a prescription device. Historical data from the system can be interpreted to aid in providing therapy adjustments. These adjustments should be based on patterns seen over time. The system is indicated for use as an adjunctive device to complement, not replace, information obtained from standard home blood glucose monitoring devices. Subsequent to this approval, the USPTO received a patent term restoration application for EVERSENSE CGM SYSTEM (U.S. Patent No. 6,400,974) from Senseonics, Inc., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 29, 2019, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of EVERSENSE CGM SYSTEM represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for EVERSENSE CGM SYSTEM is 3,727 days. Of this time, 3,123 days occurred during the testing phase of the regulatory review period, while 604 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360j(g)) involving this device became effective:* April 9, 2008. The applicant claims that the investigational device exemption (IDE) required under section 520(g) of the FD&C Act for human tests to begin became effective on September 25, 2008. However, FDA records indicate that the IDE was determined substantially complete for clinical studies to have begun on April 9, 2008, which represents the IDE effective date.

2. *The date an application was initially submitted with respect to the device under section 515 of the FD&C Act (21 U.S.C. 360e):* October 26, 2016. FDA has verified the applicant's claim that the premarket approval application (PMA) for EVERSENSE CGM SYSTEM (PMA P160048) was initially submitted October 26, 2016.

3. *The date the application was approved:* June 21, 2018. FDA has verified the applicant's claim that PMA P160048 was approved on June 21, 2018.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 5 years of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a

true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: September 4, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–20040 Filed 9–10–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1729]

Authorizations and Revocation of Emergency Use of Drugs During the COVID–19 Pandemic; Availability

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of four Emergency Use Authorizations (EUAs) (the Authorizations) for drugs for use during the COVID–19 pandemic. FDA issued four Authorizations under the Federal Food, Drug, and Cosmetic Act (FD&C Act), as requested by the Department of Health and Human Services (HHS) Biomedical Advanced Research and Development Authority (BARDA), Fresenius Medical Care, Gilead Sciences, Inc., and Fresenius Kabi USA, LLC. The Authorizations contain, among other things, conditions on the emergency use of the authorized drugs. The Authorizations follow the February 4, 2020, determination by the Secretary of HHS that there is a public health emergency that has a significant potential to affect national security or the health and security of U.S. citizens living abroad and that involves a novel (new) coronavirus. The virus is now named SARS-CoV–2, which causes the illness COVID–19. On the basis of such determination, the Secretary of HHS declared on March 27, 2020, that circumstances exist justifying the authorization of emergency use of drugs and biological products during the COVID–19 pandemic, pursuant to the FD&C Act, subject to the terms of any authorization issued under that section. FDA is also announcing the subsequent revocation of the Authorization issued to BARDA for oral formulations of chloroquine phosphate and hydroxychloroquine sulfate. FDA revoked this authorization on June 15, 2020. The Authorizations, and the revocation, which include an explanation of the reasons for issuance or revocation, are reprinted in this document.

DATES: The Authorization for BARDA was effective as of March 28, 2020, and the revocation of this Authorization is effective as of June 15, 2020; the Authorization for Fresenius Medical Care is effective as of April 30, 2020; the Authorization for Gilead Sciences, Inc. is effective as of May 1, 2020; the Authorization for Fresenius Kabi USA, LLC is effective as of May 8, 2020.

ADDRESSES: Submit written requests for single copies of the EUAs to the Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4338, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a Fax number to which the Authorizations may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the Authorizations.

FOR FURTHER INFORMATION CONTACT: Michael Mair, Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4332, Silver Spring, MD 20993–0002, 301–796–8510 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb–3) allows FDA to strengthen the public health protections against biological, chemical, nuclear, and radiological agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. With this EUA authority, FDA can help ensure that medical countermeasures may be used in emergencies to diagnose, treat, or prevent serious or life-threatening diseases or conditions caused by biological, chemical, nuclear, or radiological agents when there are no adequate, approved, and available alternatives.

II. Criteria for EUA Authorization

Section 564(b)(1) of the FD&C Act provides that, before an EUA may be issued, the Secretary of HHS must declare that circumstances exist justifying the authorization based on one of the following grounds: (1) A determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a biological, chemical, radiological, or nuclear agent or agents; (2) a determination by the Secretary of Defense that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to U.S. military forces, including personnel operating under the authority of title 10 or title 50, United States Code, of attack with (i) a biological, chemical, radiological, or nuclear agent or agents; or (ii) an agent or agents that may cause, or are otherwise associated with, an imminently life-threatening and specific risk to U.S. military forces;[1] (3) a determination by the Secretary of HHS that there is a public health emergency, or a significant potential for a public health emergency, that affects, or has a significant potential to affect, national security or the health and security of U.S. citizens living abroad, and that involves a biological, chemical, radiological, or nuclear agent or agents, or a disease or condition that may be attributable to such agent or agents; or (4) the identification of a material threat by the Secretary of Homeland Security pursuant to section 319F–2 of the Public Health Service (PHS) Act (42 U.S.C. 247d–6b) sufficient to affect national security or the health and security of U.S. citizens living abroad.

Once the Secretary of HHS has declared that circumstances exist justifying an authorization under section 564 of the FD&C Act, FDA may authorize the emergency use of a drug, device, or biological product if the Agency concludes that the statutory criteria are satisfied. Under section 564(h)(1) of the FD&C Act, FDA is required to publish in the **Federal Register** a notice of each authorization, and each termination or revocation of an authorization, and an explanation of the reasons for the action. Section 564 of the FD&C Act permits FDA to authorize the introduction into interstate commerce of

[1] In the case of a determination by the Secretary of Defense, the Secretary of HHS shall determine within 45 calendar days of such determination, whether to make a declaration under section 564(b)(1) of the FD&C Act, and, if appropriate, shall promptly make such a declaration.

a drug, device, or biological product intended for use when the Secretary of HHS has declared that circumstances exist justifying the authorization of emergency use. Products appropriate for emergency use may include products and uses that are not approved, cleared, or licensed under sections 505, 510(k), 512, or 515 of the FD&C Act (21 U.S.C. 355, 360(k), 360b, and 360e) or section 351 of the PHS Act (42 U.S.C. 262), or conditionally approved under section 571 of the FD&C Act (21 U.S.C. 360ccc). FDA may issue an EUA only if, after consultation with the HHS Assistant Secretary for Preparedness and Response, the Director of the National Institutes of Health, and the Director of the Centers for Disease Control and Prevention (to the extent feasible and appropriate given the applicable circumstances), FDA [2] concludes: (1) That an agent referred to in a declaration of emergency or threat can cause a serious or life-threatening disease or condition; (2) that, based on the totality of scientific evidence available to FDA, including data from adequate and well-controlled clinical trials, if available, it is reasonable to believe that: (A) The product may be effective in diagnosing, treating, or preventing (i) such disease or condition; or (ii) a serious or life-threatening disease or condition caused by a product authorized under section 564, approved or cleared under the FD&C Act, or licensed under section 351 of the PHS Act, for diagnosing, treating, or preventing such a disease or condition caused by such an agent; and (B) the known and potential benefits of the product, when used to diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product, taking into consideration the material threat posed by the agent or agents identified in a declaration under section 564(b)(1)(D) of the FD&C Act, if applicable; (3) that there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating such disease or condition; (4) in the case of a determination described in section 564(b)(1)(B)(ii), that the request for emergency use is made by the Secretary of Defense; and (5) that such other criteria as may be prescribed by regulation are satisfied.

No other criteria for issuance have been prescribed by regulation under section 564(c)(4) of the FD&C Act.

III. The Authorizations

The Authorizations follow the February 4, 2020, determination by the Secretary of HHS that there is a public health emergency that has a significant potential to affect national security or the health and security of U.S. citizens living abroad and that involves a novel (new) coronavirus. The virus is now named SARS-CoV–2, which causes the illness COVID–19. Notice of the Secretary's determination was provided in the **Federal Register** on February 7, 2020 (85 FR 7316). On the basis of such determination, the Secretary of HHS declared on March 27, 2020, that circumstances exist justifying the authorization of emergency use of drugs and biological products during the COVID–19 pandemic, pursuant to section 564 of the FD&C Act, subject to the terms of any authorization issued under that section. Notice of the Secretary's declaration was provided in the **Federal Register** on April 1, 2020 (85 FR 18250). Having concluded that the criteria for issuance of the Authorizations under section 564(c) of the FD&C Act are met, FDA has issued four authorizations for the emergency use of drugs during the COVID–19 pandemic. On March 28, 2020, FDA issued an EUA to BARDA for oral formulations of chloroquine phosphate and hydroxychloroquine sulfate, subject to the terms of the Authorization. On April 30, 2020, FDA issued an EUA to Fresenius Medical Care for multiFiltrate PRO System and multiBic/multiPlus Solutions, subject to the terms of the Authorization. On May 1, 2020, FDA issued an EUA to Gilead Sciences, Inc. for remdesivir, subject to the terms of the Authorization. On May 8, 2020, FDA issued an EUA to Fresenius Kabi USA, LLC for Fresenius Propoven 2% Emulsion, subject to the terms of the Authorization. The Authorizations in their entirety (not including the authorized versions of the fact sheets and other written materials) follow, below section VI Electronic Access, and provide an explanation of the reasons for issuance, as required by section 564(h)(1) of the FD&C Act.

IV. EUA Criteria for Issuance No Longer Met

Under section 564(g)(2) of the FD&C Act, the Secretary of HHS may revoke an EUA if, among other things, the criteria for issuance are no longer met. On June 15, 2020, FDA revoked the EUA for BARDA for oral formulations of chloroquine phosphate and hydroxychloroquine sulfate because the criteria for issuance were no longer met. Under section 564(c)(2) of the FD&C Act, an EUA may be issued only if FDA concludes that, based on the totality of scientific evidence available to the Secretary, including data from adequate and well-controlled clinical trials, if available, it is reasonable to believe that: (1) The product may be effective in diagnosing, treating, or preventing such disease or condition and (2) the known and potential benefits of the product, when used to diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product. Based on a review of new information and a reevaluation of information available at the time the EUA was issued, FDA now concludes it is no longer reasonable to believe that (1) oral formulations of chloroquine phosphate and hydroxychloroquine sulfate may be effective in treating COVID–19 for the uses authorized in the EUA, or (2) the known and potential benefits of these products outweigh their known and potential risks for those uses. Accordingly, FDA revokes the EUA for emergency use of chloroquine phosphate and hydroxychloroquine sulfate to treat COVID–19, pursuant to section 564(g)(2) of the FD&C Act.

V. The Revocation

Having concluded that the criteria for revocation of the Authorization under section 564(g) of the FD&C Act are met, FDA has revoked the EUA for BARDA's oral formulations of chloroquine phosphate and hydroxychloroquine sulfate. The revocation in its entirety follows, below section VI. Electronic Access, and provides an explanation of the reasons for revocation, as required by section 564(h)(1) of the FD&C Act.

VI. Electronic Access

An electronic version of this document and the full text of the Authorizations and revocation are available on the internet at *https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization.*

BILLING CODE 4164–01–P

[2] The Secretary of HHS has delegated the authority to issue an EUA under section 564 of the FD&C Act to the Commissioner of Food and Drugs.

March 28, 2020

Dr. Rick Bright, Ph.D.
Director
Biomedical Advanced Research and Development Authority (BARDA)
Office of Assistant Secretary for Preparedness and Response (ASPR)
U.S. Department of Health and Human Services (HHS)
330 Independence Ave, S.W.
Room 640G
Washington, D.C. 20201

Re: Request for Emergency Use Authorization For Use of Chloroquine Phosphate or Hydroxychloroquine Sulfate Supplied From the Strategic National Stockpile for Treatment of 2019 Coronavirus Disease

Dear Dr. Bright:

This letter is in response to your request that the Food and Drug Administration (FDA) issue an Emergency Use Authorization (EUA) for emergency use of oral formulations of chloroquine phosphate and hydroxychloroquine sulfate for the treatment of 2019 coronavirus disease (COVID-19) when administered by a healthcare provider (HCP)[1] pursuant to a valid prescription of a licensed practitioner as described in the Scope of Authorization (section II) of this letter. The authorized chloroquine phosphate and hydroxychloroquine sulfate are limited to product supplied from the Strategic National Stockpile (SNS) to public health authorities[2], pursuant to Section 564 of the Federal Food, Drug and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3).

On February 4, 2020, pursuant to Section 564(b)(1)(C) of the Act, the Secretary of the Department of Health and Human Services (HHS) determined that there is a public health emergency that has a significant potential to affect national security or the health and security of United States citizens living abroad, and that involves the virus that causes COVID-19.[3,4] Pursuant to Section 564 of the Act, and on the basis of such determination, the Secretary of HHS

[1] For purposes of this EUA, the term "healthcare provider" means licensed healthcare professionals who are acting within their professional scope of practice under the public health authority of official emergency response plans when administering the authorized product.

[2] "Public health authority" means the public agency or its delegate that has legal responsibility and authority for responding to a public health emergency, based on political or geographical (e.g., city, county, tribal, State, or Federal) or functional (e.g., law enforcement or public health range) or sphere of authority to prescribe, administer, deliver, distribute, or dispense oral chloroquine phosphate and hydroxychloroquine sulfate products during public health emergencies.

[3] On February 11, 2020, the virus tentatively named 2019-nCoV was formally designated as Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). Also on February 11, 2020, the disease caused by SARS-CoV-2 was

then declared that circumstances exist justifying the authorization of emergency use of drugs and biologics during the COVID-19 outbreak, pursuant to section 564 of the Act, subject to terms of any authorization issued under that section.[5]

Chloroquine phosphate and hydroxychloroquine sulfate are not FDA-approved for treatment of COVID-19. Some versions of chloroquine phosphate are approved by FDA for other indications—for prophylaxis and acute attacks of certain strains of malaria and for the treatment of extraintestinal amebiasis, but the chloroquine phosphate drug product covered by this letter has not been approved. Several versions of hydroxychloroquine sulfate are approved by FDA for prophylaxis of and treatment of malaria, treatment of lupus erythematosus, and treatment of rheumatoid arthritis. The safety profile of these drugs has only been studied for FDA approved indications, not COVID-19.

Based upon limited in-vitro and anecdotal clinical data in case series, chloroquine phosphate and hydroxychloroquine sulfate are currently recommended for treatment of hospitalized COVID-19 patients in several countries, and a number of national guidelines report incorporating recommendations regarding use of chloroquine phosphate or hydroxychloroquine sulfate in the setting of COVID-19. FDA encourages the conduct and participation in randomized controlled clinical trials that may produce evidence concerning the effectiveness of these products in treating COVID-19. FDA is issuing this EUA to facilitate the availability of chloroquine phosphate and hydroxychloroquine sulfate during the COVID-19 pandemic to treat patients for whom a clinical trial is not available, or participation is not feasible.

Having concluded that the criteria for issuance of this authorization under 564(c) of the Act are met, I am authorizing the emergency use of chloroquine phosphate and hydroxychloroquine sulfate, as described in the Scope of Authorization section of this letter (Section II) for treatment of COVID-19 when clinical trials are not available, or participation is not feasible, subject to the terms of this authorization.

Clinical trial data results, and any information derived from clinical trials, as well as clinical trial results from studies of other investigational medical products to treat COVID-19, will continue to inform this risk benefit assessment.

I. Criteria for Issuance of Authorization

I have concluded that the emergency use of chloroquine phosphate and hydroxychloroquine sulfate for the treatment of COVID-19 when administered as described in the Scope of Authorization (section II) meet the criteria for issuance of an authorization under Section 564(c) of the Act, because:

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formally designated as Coronavirus Disease 2019 (COVID-19). This document uses the updated names.

[4] U.S. Department of Health and Human Services, *Determination of a Public Health Emergency and Declaration that Circumstances Exist Justifying Authorizations Pursuant to Section 564(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 360bbb-3. February 4, 2020.*

[5] U.S. Department of Health and Human Services, *Declaration that Circumstances Exist Justifying Authorizations Pursuant to Section 564(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 360bbb-3. March 27, 2020.*

1. The SARS-CoV-2 can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus;
2. Based on the totality of scientific evidence available to FDA, it is reasonable to believe that chloroquine phosphate and hydroxychloroquine sulfate may be effective in treating COVID-19, and that, when used under the conditions described in this authorization, the known and potential benefits of chloroquine phosphate and hydroxychloroquine sulfate when used to treat COVID-19 outweigh the known and potential risks of such products; and
3. There is no adequate, approved, and available alternative to the emergency use of chloroquine phosphate and hydroxychloroquine sulfate for the treatment of COVID-19.[6]

II. Scope of Authorization

I have concluded, pursuant to Section 564(d)(1) of the Act, that the scope of this authorization is limited to chloroquine phosphate and hydroxychloroquine sulfate for the treatment of COVID-19, as described in this section.

Authorized Chloroquine Phosphate

I am authorizing use of the following chloroquine phosphate product that is distributed from the SNS to public health authorities for response to the COVID-19 pandemic:

- Chloroquine phosphate that is not approved by FDA for any indication.[7]
- The chloroquine phosphate must be administered by a healthcare provider pursuant to a valid prescription of a licensed practitioner.
- The chloroquine phosphate may only be used to treat adult and adolescent patients who weigh 50 kg or more and are hospitalized with COVID-19, for whom a clinical trial is not available, or participation is not feasible.[8]

The product is authorized to be accompanied by the following product-specific information pertaining to emergency use, which is required to be made available to healthcare providers and patients respectively:

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[6] No other criteria of issuance have been prescribed by regulation under Section 564(c)(4) of the Act.

[7] The authorized chloroquine phosphate may be accompanied by a package insert that is not approved labeling in the United States. Instead, refer to the authorized Fact Sheet for Healthcare Providers: Use of Chloroquine Phosphate Supplied from the Strategic National Stockpile for treatment of COVID-19 in Certain Hospitalized Patients. Note that Chloroquine phosphate's U.S. labeling that is FDA-approved for other indications, not COVID-19, does not include information regarding safety or effectiveness for COVID-19, see: https://dailymed.nlm.nih.gov/dailymed/drugInfo.cfm?setid=f398f8a9-92f3-47cb-81c2-6078806a464d

[8] For a listing of clinical trials, see: https://clinicaltrials.gov/

- Fact Sheet for Healthcare Providers: Emergency Use Authorization (EUA) of Chloroquine Phosphate Supplied from the Strategic National Stockpile for Treatment of COVID-19 in Certain Hospitalized Patients
- Fact Sheet for Patients and Parent/Caregivers: Emergency Use Authorization (EUA) of Chloroquine Phosphate For Treatment of COVID-19 in Certain Hospitalized Patients

The above described products are authorized to be administered under this EUA despite the fact that they do not meet certain requirements otherwise required by applicable federal law.

Authorized Hydroxychloroquine Sulfate

I am authorizing use of the following hydroxychloroquine sulfate product that is distributed from the SNS to public health authorities for response to the COVID-19 pandemic:

- FDA-approved hydroxychloroquine sulfate that is approved by FDA for other uses and accompanied by its FDA-approved labeling and authorized Fact Sheets.

- The hydroxychloroquine sulfate must be administered by a healthcare provider pursuant to a valid valid prescription of a licensed practitioner.

- The hydroxychloroquine sulfate may only be used to treat adult and adolescent patients who weigh 50 kg or more hospitalized with COVID-19 for whom a clinical trial is not available, or participation is not feasible.[9]

The product is authorized to be accompanied by the product information contained in hydroxychloroquine sulfate's approved package insert (for other indications)[10] and together with the following product-specific information pertaining to emergency use, which is required to be made available to healthcare providers and patients respectively:

- Fact Sheet for Healthcare Providers: Emergency Use Authorization (EUA) of Hydroxychloroquine Sulfate Supplied from the Strategic National Stockpile for Treatment of COVID-19 in Certain Hospitalized Patients
- Fact Sheet for Patients and Parent/Caregivers: Emergency Use Authorization (EUA) of Hydroxychloroquine Sulfate For Treatment of COVID-19 in Certain Hospitalized Patients

The above described product, when labeled consistently with the labeling of this product for its approved uses is authorized to be distributed to and administered under this EUA despite the fact that it does not meet certain requirements otherwise required by applicable federal law.

I have concluded, pursuant to Section 564(d)(2) of the Act, that it is reasonable to believe that the known and potential benefits of chloroquine phosphate and hydroxychloroquine sulfate, when used for the treatment of SARS-CoV-2 and used consistently with the Scope of

[9] For a listing of clinical trials, see: https://clinicaltrials.gov/

[10] For hydroxychloroquine's package insert, see: https://dailymed.nlm.nih.gov/dailymed/

Authorization of this letter (Section II), outweigh the known and potential risks of these products.

I have concluded, pursuant to Section 564(d)(3) of the Act, based on the totality of scientific evidence available to FDA, that it is reasonable to believe that chloroquine phosphate and hydroxychloroquine sulfate may be effective for the treatment of COVID-19, when used consistently with the Scope of Authorization of this letter (Section II), pursuant to Section 564(c)(2)(A) of the Act.

Having reviewed the scientific information available to FDA, including the information supporting the conclusions described in Section I of this letter, I have concluded that chloroquine phosphate and hydroxychloroquine sulfate (as described in the Scope of Authorization of this letter (Section II)) meets the criteria set forth in Section 564(c) of the Act concerning safety and potential effectiveness.

The emergency use of these products under an EUA must be consistent with, and may not exceed, the terms of the Authorization, including the Scope of Authorization (Section II) and the Conditions of Authorization (Section IV). Subject to the terms of this EUA and under the circumstances set forth in the Secretary of HHS's determination under Section 564(b)(1)(C) described above and the Secretary of HHS's corresponding declaration under Section 564(b)(1), these products are authorized for the treatment of 2019 coronavirus disease (COVID-19) when administered by a HCP pursuant to a valid prescription of a licensed practitioner as described in the Scope of Authorization (section II) of this letter.

The EUA will cease to be effective when the HHS declaration that circumstances exist to justify the EUA is terminated under Section 564(b)(2) of the Act or when the EUA is revoked under Section 564(g) of the Act.

III. Waiver of Certain Requirements

Pursuant to Section 564(e)(3) of the Act, with respect to the emergency use of a product for which an authorization under this section is issued, FDA may waive or limit, to the extent appropriate given the circumstances of the emergency, requirements regarding current good manufacturing practice otherwise applicable to the manufacture, processing, packing, or holding of products subject to regulation under this Act, including such requirements established under Section 501. FDA grants that waiver with respect to the products covered by this authorization.

IV. Conditions of Authorization

Pursuant to Section 564 of the Act, I am establishing the following conditions on this authorization:

A. SNS will distribute the authorized chloroquine phosphate and hydroxychloroquine sulfate under its direction to the extent such distributions are consistent with and do not exceed the terms of this letter, including distribution with the authorized labeling.

B. Through a process of inventory control, SNS will maintain records regarding distribution under its direction of the authorized chloroquine phosphate and hydroxychloroquine sulfate (i.e., lot numbers, quantity, receiving site, receipt date).

C. HHS will ensure that the terms of this EUA are made available to public health authorities through appropriate means.[11] HHS will provide public health authorities a copy of this letter of authorization and communicate to public health authorities any subsequent amendments that might be made to this letter of authorization and its authorized accompanying materials (e.g., Fact Sheets).

D. BARDA, ASPR, or other organization within HHS may request the authorization of additional chloroquine phosphate and hydroxychloroquine sulfate products under this EUA. Additional such products may be included in this authorization, without amendment of this EUA, upon concurrence of, Office of Infectious Diseases/OND/CDER, CTECS/OCD/CDER, and OCET/OCS/OC.

E. BARDA may request changes to this authorization, including to the authorized fact sheets for chloroquine phosphate and hydroxychloroquine sulfate products and to require patient outcomes reporting if and when a system is established, without amendment of this EUA, upon concurrence of, Office of Infectious Diseases /OND/CDER, CTECS/OCD/CDER, and OCET/OCS/OC.

F. HHS will inform public health authorities about the need to have a process in place for performing adverse event monitoring and compliance activities designed to ensure that adverse events and all medication errors associated with the use of the authorized chloroquine phosphate or hydroxychloroquine sulfate are reported to FDA, to the extent practicable given emergency circumstances, as follows: complete the MedWatch FDA Form online at www.fda.gov/medwatch/report.htm, or by using a postage-paid MedWatch Form 3500 (available at https://www.accessdata.fda.gov/scripts/medwatch/index.cfm?action=reporting.home), or by calling 1-800-FDA-1088. Submitted reports should state: "use of chloroquine phosphate was under an EUA" or "use of hydroxychloroquine sulfate was under an EUA," as relevant. If and when HHS establishes a process for collecting outcomes data, HHS will inform public health authorities about such process.

G. SNS will ensure that the authorized chloroquine phosphate and hydroxychloroquine sulfate is distributed for use under its direction within the expiry dating on the manufacturer's labeling. If FDA authorizes any expiry dating extensions of the authorized chloroquine phosphate or hydroxychloroquine sulfate under this EUA, SNS will inform emergency response stakeholders receiving the authorized chloroquine phosphate or hydroxychloroquine sulfate of such extensions and any conditions related to such extensions under this EUA. SNS will maintain adequate records regarding the expiry dates by which authorized chloroquine phosphate and hydroxychloroquine sulfate may be used.

[11] For example, through hard copy, web posting, and/or mass media.

H. SNS will make available to FDA upon request any records maintained in connection with this EUA.

Healthcare Systems to Whom the Authorized Chloroquine Phosphate and Hydroxychloroquine Sulfate Is Distributed

I. Healthcare systems and healthcare providers receiving the chloroquine phosphate and/or hydroxychloroquine sulfate from the SNS will track adverse events and report to FDA in accordance with the Fact Sheet for Healthcare Providers. Complete and submit a MedWatch form (www.fda.gov/medwatch/report.htm), or Complete and submit FDA Form 3500 (health professional) or FDA Form 3500B (consumer/patient) by fax (1-800-FDA-0178). These forms can be found via link above. Call 1-800-FDA-1088 for questions. Submitted reports should state "chloroquine phosphate treatment under EUA" or "hydroxychloroquine sulfate treatment under EUA."

J. Through a process of inventory control, healthcare systems will maintain records regarding the dispensed authorized chloroquine phosphate and hydroxychloroquine sulfate (i.e., lot numbers, quantity, receiving site, receipt date) and maintain patient information and other relevant data as feasible (e.g., patient name, age, disease manifestation, other drugs administered, outcomes).

K. Healthcare systems will ensure that any records associated with this EUA are maintained until notified by SNS and/or FDA. Such records will be made available to FDA, SNS and BARDA for inspection upon request.

V. Duration of Authorization

This EUA will be effective until the declaration that circumstances exist justifying the authorization of the emergency use of drugs and biologics for prevention and treatment of COVID-19 is terminated under Section 564(b)(2) of the Act or the EUA is revoked under Section 564(g) of the Act.

Sincerely,

/s/

RADM Denise M. Hinton
Chief Scientist
Food and Drug Administration

Enclosures

U.S. FOOD & DRUG ADMINISTRATION

April 30, 2020

Denise Oppermann
Fresenius Medical Care
920 Winter Street
Waltham, MA 02451

Dear Denise Oppermann:

This letter is in response to Fresenius Medical Care's request that the Food and Drug Administration (FDA) issue an Emergency Use Authorization (EUA) for emergency use of the multiFiltrate PRO System[1] and multiBic/multiPlus Solutions[2] to provide continuous renal replacement therapy (CRRT) to treat patients in an acute care environment during the Coronavirus Disease 2019 (COVID-19) pandemic, pursuant to Section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. §360bbb-3).

On February 4, 2020, pursuant to section 564(b)(1)(C) of the Federal Food, Drug, and Cosmetic Act (the Act), the Secretary of the Department of Health and Human Services (HHS) determined that there is a public health emergency that has a significant potential to affect national security or the health and security of United States citizens living abroad, and that involves the virus that causes COVID-19.[3] Pursuant to section 564 of the Act, and on the basis of such determination, the Secretary of HHS then declared on March 24, 2020, that circumstances exist justifying the authorization of emergency use of medical devices, including alternative products used as medical devices, due to shortages during the COVID-19 outbreak, subject to the terms of any authorization issued under that section.[4] Again pursuant to section 564 and on the same basis, the Secretary of HHS declared on March 27, 2020, that circumstances exist justifying the

[1] The multiFiltrate PRO System includes the multiFiltrate PRO delivery unit, the Ultraflux AV 400S/600S/1000S hemodialyzers/hemofilters, and the multiFiltrate PRO hemodiafiltration cassette (bloodline/tubing systems for blood purification). All components of the system have a current CE (European Conformity) mark. The multiFiltrate PRO system, including any device accessories, are devices regulated by the Center for Devices and Radiological Health (CDRH).

[2] The multiBic/multiPlus Solutions include multiBic dialysate and replacement fluid and multiPlus dialysate. All of these solutions are authorized for marketing in the European Union. The multiBic dialysate and the multiPlus dialysate solutions are regulated as devices by CDRH. The multiBic replacement fluid is regulated as a drug by the Center for Drug Evaluation and Research (CDER). The composition of the solutions can be referenced in tables 1 and 2 of this authorization letter.

[3] U.S. Department of Health and Human Services, Determination of a Public Health Emergency and Declaration that Circumstances Exist Justifying Authorizations Pursuant to Section 564(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 360bbb-3. 85 FR 7316 (February 7, 2020).

[4] U.S. Department of Health and Human Services, *Declaration that Circumstances Exist Justifying Authorizations Pursuant to Section 564(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 360bbb-3*, 85 FR 17335 (March 27, 2020).

authorization of emergency use of drugs and biological products during the COVID-19 pandemic, subject to the terms of the authorization issued under that section.[5]
Based on published data from China and preliminary reports in the U.S., it has been noted that SARS-CoV-2, the virus that causes COVID-19, has led to an increased population with critical illness and multiple organ failure, including acute kidney injury, increasing the need for CRRT. As a result, there is a shortage of devices, accessories and solutions to provide CRRT in critically ill patients. Based on the totality of scientific evidence available, FDA has concluded that the multiFiltrate PRO System and multiBic/multiPlus Solutions may be effective in providing CRRT in an acute care environment and in turn, may provide clinical benefit during the shortage situation.

Having concluded that the criteria for issuance of this authorization under section 564(c) of the Act are met, I am authorizing the emergency use of your MultiFiltrate PRO System and multiBic/multiPlus Solutions, as described in the Scope of Authorization (Section II) of this letter, subject to the terms of this authorization.

I. Criteria for Issuance of Authorization

I have concluded that the emergency use of the multiFiltrate PRO System device and multiBic/multiPlus Solutions, as described in the Scope of Authorization (Section II) of this letter to provide CRRT in an acute care environment, meets the criteria for issuance of an authorization under section 564(c) of the Act, because I have concluded that:

1. SARS-CoV-2, the virus that causes COVID-19, can cause a serious or life-threatening disease or condition, including severe respiratory illness and multiple organ failure, including acute kidney injury, to humans infected by this virus;

2. Based on the totality of scientific evidence available to FDA, it is reasonable to believe that your multiFiltrate PRO System and multiBic/multiPlus Solutions may be effective in delivering CRRT in an acute care environment, and that the known and potential benefits of the multiFiltrate PRO System and multiBic/multiPlus Solutions, when used for the indication above, outweigh the known and potential risks of the multiFiltrate PRO System and multiBic/multiPlus Solutions; and

3. There is no adequate, approved, and available alternative to the emergency use of the multiFiltrate PRO System and the multBic/multiPlus Solutions when there are shortages of FDA-approved alternatives during the COVID-19 pandemic.[6]

II. Scope of Authorization

[5] U.S. Department of Health and Human Services, *Declaration that Circumstances Exist Justifying Authorizations Pursuant to Section 564(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 360bbb-3*, 85 FR 18250 (April 1, 2020).
[6] No other criteria of issuance have been prescribed by regulation under Section 564(c)(4) of the Act.

I have concluded, pursuant to section 564(d)(1) of the Act, that the scope of this authorization is limited to the use of the multiFiltrate PRO System and multiBic/multiPlus Solutions to deliver CRRT to treat patients in an acute care environment during the COVID-19 pandemic.

Authorized Product Details

The multiFiltrate PRO System is designed to provide CRRT by controlling and monitoring extracorporeal blood and fluid circuits.

The following CRRT modalities are available with the multiFiltrate PRO System:

- CVVHD - Continuous Veno Venous Hemodialysis
- CVVH - Continuous Veno Venous Hemofiltration, with pre-dialyzer dilution, post-dialyzer dilution, and pre-post-dialyzer dilution
- CVVHDF - Continuous Veno Venous Hemodiafiltration, with both pre-dialyzer dilution and post dialyzer dilution

MultiFiltrate PRO System Components

multiFiltrate PRO Delivery Unit

A high-resolution touchscreen monitor and four mechanical buttons allow the user to view, monitor, and input or change parameters to manage the treatment. In the extracorporeal blood circuit, blood is pumped from the patient, through a dialyzer attached to the tubing cassette and back to the patient. Blood, filtrate, dialysate, replacement fluid and heparin pumps are used as indicated to meet individual patient's needs and various therapy modes. There is a range of options for delivering CRRT with pre-dialyzer, post-dialyzer or pre- and post-dialyzer dilution. Fluid balance is achieved via scale-based technology. Integrated heaters can be used to heat the dialysate and/or replacement fluids as necessary.

There are a total of four scales for continuous control of fluid. Scales 1 and 2 weigh the dialysates and/or replacement fluids. Scales 3 and 4 weigh the filtrate. The difference between these two sets of scales is monitored to control the fluid balance. The maximum load capacity of each scale is 12 Kg, allowing the user to load as much as 10 L of treatment solution per scale. Handles are located on the front and on the back for ease in transporting the device. The card slot allows for role-dependent access to machine functionality.

Disposable Bloodline/Tubing

The multiFiltrate PRO Hemodiafiltration (HDF) Cassette is used for any treatment modality with heparin anticoagulation.

Hemodialyzers/Hemofilters

Three models of the ultrafluX AV-series dialyzers are used with the system:

- AV-400
- AV-600
- AV-1000

Solutions

Dialysate Solutions

multiBic and multiPlus dialysate Solutions are provided in a two-compartment bag. One compartment contains 4.75L of a slightly alkaline hydrogen carbonate solution. The second compartment contains 0.25L of an acidic electrolyte, glucose solution. The two solutions are combined before use by opening the peel seam between the two compartments, yielding 5L of a ready-to-use sterile solution.

The dialysate bags are made of Biofine SiOx gas barrier foil, an environmentally friendly material which is manufactured without PVC, latex or DEHP. multiBic dialysate solutions are used for hemodialysis and hemodiafiltration modalities (Table 1).

Table 1: multiBic / multiPlus Dialysate Composition

	multiBic	multiPlus
Sodium (Na+) (mmol/L)	140	140
Potassium (K+) (mmol/L)	0, 2, 3, or 4	2
Magnesium (Mg2+) (mmol/L)	0.5	0.75
Calcium (Ca2+) (mmol/L)	1.5	1.5
Chloride (Cl-) (mmol/l)	109, 111, 112, or 113	110.5
Bicarbonate (HCO3-) (mmol/L)	35	35
Phosphate (mmol/L)	0	1
Glucose (mmol/L)	5.55	5.55

Replacement Fluids

Replacement solutions are regulated as drugs by the FDA. Labeling for products used exclusively as dialysate (e.g., multiPlus) contraindicates the use of dialysate solutions as replacement solutions (i.e. direct infusion into the bloodstream).

multiBic replacement solutions are provided in a two-compartment bag. One compartment contains 4.75L of a slightly alkaline hydrogen carbonate solution. The second compartment contains 0.25L of an acidic electrolyte, glucose solution. The two solutions are combined before use by opening the peel seam between the two compartments, yielding 5L of a ready-to-use sterile solution.

The bags are made of Biofine SiOx gas barrier foil, an environmentally friendly material which is manufactured without PVC, latex or DEHP. multiBic Solutions are used for hemodialysis, hemofiltration and hemodiafiltration modalities (Table 2).

Table 2: multiBic Replacement Fluid Composition

Sodium (Na+) (mmol/L)	140
Potassium (K+) (mmol/L)	0, 2, 3, or 4
Magnesium (Mg2+) (mmol/L)	0.5
Calcium (Ca2+) (mmol/L)	1.5
Chloride (Cl-) (mmol/L)	109, 111, 112, or 113
Bicarbonate (HCO3-) (mmol/L)	35
Phosphate (mmol/L)	0
Glucose (mmol/L)	5.55

Performance

The multiFiltrate PRO System and the multiBic/multiPlus Dialysate Solutions comply with the following standards:

- EN ISO 13485:2016 – Medical Devices – Quality Management Systems
- EN ISO 9001:2015 – Quality Management Systems
- MDD 93/42/CE
- ISO 11607-1:2019 - Packaging for terminally sterilized medical devices -- Part 1: Requirements for materials, sterile barrier systems and packaging systems
- ISO 11607-2:2019 - Packaging for terminally sterilized medical devices -- Part 2: Validation requirements for forming, sealing and assembly processes
- EN 1041:2008+A1:2013 – Information supplied by the manufacturer of medical devices
- EN ISO 15223-1:2016 – Medical devices – Symbols to be used with medical device labels, labelling and information to be supplied – Part 1: General requirements
- EN 556-1:2001/AC:2006 - Sterilization of medical devices - Requirements for medical devices to be designated "STERILE" - Part 1: Requirements for terminally sterilized medical devices
- ISO10993 series – Biological evaluation of medical devices
- EN ISO 14971:2012 Medical devices - Application of risk management to medical devices (ISO 14971:2007, Corrected version 2007-10-01)
- IEC 60601-1: 2005 + CORR.1:2006 + CORR.2:2007 + AM1:2012 - Medical electrical equipment - Part 1: General requirements for basic safety and essential performance
- IEC 60601-1-2: 2014 - Medical electrical equipment - Part 1-2: General requirements for basic safety and essential performance – Collateral Standard: Electromagnetic disturbances - Requirements and tests
- IEC 60601-2-16 Edition 5.0 2018-4 - Medical electrical equipment - Part 2-16: Particular requirements for the basic safety and essential performance of haemodialysis, haemodiafiltration and haemonfiltration equipment
- EN ISO 8637-1: 2017 – Extracorporeal systems for blood purification – Part 1: Haemodialyzers, haemodiafilters, haemofilters and haemoconcentrators
- EN ISO 8637-2:2018 Extracorporeal systems for blood purification - Part 2: Extracorporeal blood circuit for haemodialysers, haemodiafilters and haemofilters (ISO

8637-2:2018)
- EN 1707:1996 - Conical fittings with a 6 % (Luer) taper for syringes, needles and certain other medical equipment. Lock fittings
- EN ISO 80369-7:2017 Small-bore connectors for liquids and gases in healthcare applications – Part 7: Connectors for intravascular or hypodermic applications (ISO 80369-7:2016, Corrected version 2016-12-01)
- EN ISO 80369-20:2015 Small-bore connectors for liquids and gases in healthcare applications - Part 20: Common test methods (ISO 80369-20:2015)

MultiBic/multPlus replacement solutions
- All applicable European Pharmacopoeial (Ph. Eur.) and/or USP/NF standards.

The multiFiltrate PRO System and multiBic/multiPlus Solutions, when labeled consistently with the labeling authorized by FDA entitled "multiFiltrate PRO Instructions for Use," "Bloodline/Tubing systems for blood purification - Instructions for Use," "Ultraflux AV400S/600S/1000S Instructions for Use," "multiPlus Instructions for Use," and the "Summary of Product Characteristics (SmPC)" for the multiBic Solutions, (available at https://www.fda.gov/medical-devices/emergency-situations-medical-devices/emergency-use-authorizations),[7] is authorized under the terms and conditions of this EUA, despite the fact that it does not meet certain requirements otherwise required by applicable federal law.

Your multiFiltrate PRO System and multiBic/multiPlus Solutions are authorized to be accompanied by the following product-specific information pertaining to the emergency use, which is required to be made available to healthcare providers and patients:

- Fact Sheet for Healthcare Personnel: Emergency Use of multiFiltrate PRO System and multiBic/multiPlus Solutions during the COVID-19 Pandemic
- Fact Sheet for Patients: Emergency Use of multiFiltrate PRO System and multiBic/multiPlus Solutions during the COVID-19 Pandemic

I have concluded, pursuant to section 564(d)(2) of the Act, that it is reasonable to believe that the known and potential benefits of the multiFiltrate PRO System and multiBic/multiPlus Solutions, when used for CRRT in an acute care environment and used consistently within the Scope of Authorization of this letter (Section II), outweigh the known and potential risks of your multiFiltrate PRO System and multiBic/multiPlus Solutions.

I have concluded, pursuant to section 564(d)(3) of the Act, based on the totality of scientific evidence available to FDA, that it is reasonable to believe that the multiFiltrate PRO System and multiBic/multiPlus Solutions may be effective in providing CRRT in an acute care environment, when used consistently with the Scope of Authorization of this letter (Section II), pursuant to section 564(c)(2)(A) of the Act.

[7] As part of this authorization, the multiFiltrate PRO System and multiBic/multiPlus Solutions will be distributed with the labeling that accompanies these products for distribution in the European Union.

FDA has reviewed the scientific information available to FDA, including the information supporting the conclusions described in Section I above, and concludes that the multiFiltrate PRO System and multiBic/multiPlus Solutions, when used to provide CRRT in an acute care environment (as described in the Scope of Authorization of this letter (Section II)), meets the criteria set forth in section 564(c) of the Act concerning safety and potential effectiveness.

The emergency use of the authorized products under this EUA must be consistent with, and may not exceed, the terms of this letter, including the Scope of Authorization (Section II) and the Conditions of Authorization (Section IV). Subject to the terms of this EUA and under the circumstances set forth in the Secretary of HHS's determination under section 564(b)(1)(C) described above and the Secretary of HHS's corresponding declaration under section 564(b)(1), the multiFiltrate PRO System and multiBic/multiPlus Solutions, with the required labeling set forth in this section (Section II), are authorized to provide CRRT in an acute care environment.

III. Waiver of Certain FDA Requirements

I am waiving applicable current good manufacturing practice requirements, including the quality system requirements under 21 CFR Part 820 with respect to the design, manufacture, packaging, labeling, storage, and distribution of the authorized devices, including the multiFiltrate PRO System, and multiBic dialysate and multiPlus dialysate Solutions, that are used in accordance with this EUA Conditions of Authorization.

IV. Conditions of Authorization

Pursuant to section 564(e) of the Act, I am establishing the following conditions on this authorization:

Fresenius Medical Care

A. Fresenius Medical Care may request changes to the authorized labeling and fact sheets. Such requests will be made in consultation with, and require concurrence of, the Division of Renal, Gastrointestinal, Obesity and Transplant Devices (DHT3A)/Office of GastroRenal, ObGyn, General Hospital and Urology Devices (OHT3)/Office of Product Evaluation and Quality (OPEQ)/Center for Devices and Radiological Health (CDRH) or the Division of Cardiology and Nephrology (DCN)/Office of Cardiology, Hematology, Endocrinology, and Nephrology (OCHEN)/Office of New Drugs (OND)/Center for Drug Evaluation and Research (CDER), as appropriate.

B. Fresenius Medical Care may request changes to the components and materials. Such requests will be made in consultation with, and require concurrence of, DCN/OCHEN/OND/CDER or DHT3A/OHT3/OPEQ/CDRH, as appropriate.

C. Fresenius Medical Care may request changes to the Scope of Authorization (Section II in this letter) of the product. Such requests will be made in consultation with, and require concurrence of, the Office of Counterterrorism and Emerging Threats (OCET)/Office of the Chief Scientist (OCS)/Office of the Commissioner (OC), the DCN/OCHEN/OND/CDER, and the DHT3A/OHT3/OPEQ/CDRH.

D. Fresenius Medical Care may request the addition of other instruments and associated software for use with the product. Such requests will be made in consultation with, and require concurrence of, DHT3A/OHT3/OPEQ/CDRH.

E. For the multiBic Solutions used as a replacement solution, Fresenius Medical Care will continue to manufacture the multiBic Solutions in compliance with EU good manufacturing practice (GMP) and pursuant to the European Medicines Agency (EMA) marketing authorization.

F. Fresenius Medical Care will have a process in place to collect information on the performance of the multiFiltrate PRO System and multiBic dialysate and multiPlus dialysate Solutions and for reporting adverse events of which they become aware to FDA under 21 CFR Part 803. Adverse events of which the Fresenius Medical Care becomes aware will be reported to FDA.

G. For the multiBic Solutions when used as replacement solution, Fresenius Medical Care should have a process in place to ensure that adverse events and all medication errors associated with the use of the authorized multiBic Solutions reported to Fresenius Medical Care are reported to FDA, to the extent practicable given emergency circumstances. Prescribing health care providers or designee may report adverse events related to the use of multiBic Solutions during the pandemic to the FDA MedWatch system using one of the following methods:
   - Complete and submit the report online: https://www.accessdata.fda.gov/scripts/medwatch/index.cfm?action=reporting.home, or
   - By using a postage-paid Form FDA 3500 (available at https://www.fda.gov/safety/medical-product-safety-information/medwatch-forms-fda-safety-reporting

   Submitted reports should state: "use of multiBic Solution was under an EUA".

H. Fresenius Medical Care is authorized to make available additional information relating to the emergency use of the product that is consistent with, and does not exceed, the terms of this letter of authorization.

I. Fresenius Medical Care will notify FDA of any authorized distributor(s) of the product, including the name, address, and phone number of any authorized distributor(s), and provide authorized distributor(s) with a copy of this EUA.

Fresenius Medical Care and Authorized Distributor(s)[8]

J. Fresenius Medical Care and authorized distributor(s) will make multiFiltrate PRO System devices and multiBic/multiPlus Solutions available with the authorized labeling and fact sheets, described in the Scope of Authorization (Section II) of this letter.

K. Fresenius Medical Care and authorized distributor(s) will make available on their website(s) the Fact Sheet for Healthcare Providers and the Fact Sheet for Patients.

[8] "Authorized Distributor(s)" are identified by the sponsor in EUA requests as an entity allowed to distribute the product.

L. Fresenius Medical Care and authorized distributor(s) will ensure that any records associated with this EUA are maintained until otherwise notified by FDA. Such records will be made available to FDA for inspection upon request.

M. Through a process of inventory control, Fresenius Medical Care and authorized distributor(s) will maintain records of the healthcare settings to which they distribute the multiFiltrate PRO System and multiBic/multiPlus Solutions and number of multiFiltrate PRO Systems and multiBic/multiPlus Solutions they distribute.

N. Fresenius Medical Care and authorized distributor(s) are authorized to make available additional information relating to the emergency use of the product that is consistent with, and does not exceed, the terms of this letter of authorization.

Conditions Related to Printed Matter, Advertising and Promotion

O. All descriptive printed matter, including advertising and promotional material, relating to the use of the multiFiltrate PRO System device and multiBic/multiPlus Solutions shall be consistent with the authorized labeling, as well as the terms set forth in this EUA and the applicable requirements set forth in the Act and FDA regulations.

P. No descriptive printed matter, including advertising or promotional material, relating to the use of the multiFiltrate PRO System and multiBic/multiPlus Solutions may represent or suggest that such products are safe or effective for the delivery of CRRT in an acute care environment.

Q. All descriptive printed matter, including advertising and promotional material, relating to the use of the multiFiltrate PRO System device and multiBic/multiPlus Solutions clearly and conspicuously shall state that:

- the multiFiltrate PRO System device and multiBic/multiPlus Solutions have neither been cleared or approved to provide CRRT in an acute care environment;
- the multiFiltrate PRO System device and multiBic/multiPlus Solutions have been authorized by FDA under an EUA;
- the multiFiltrate PRO System device and multiBic/multiPlus Solutions are authorized only for the duration of the declaration that circumstances exist justifying the authorization of the emergency use of the multiFiltrate PRO System device and multiBic/multiPlus Solutions under section 564(b)(1) of the Act, 21 U.S.C. § 360bbb-3(b)(1), unless the authorization is terminated or revoked sooner.

V. Duration of Authorization

This EUA will be effective until the declarations that circumstances exist justifying the authorization of the emergency use of the multiFiltrate PRO System and multiBic/multiPlus

solutions during the COVID-19 pandemic are terminated under section 564(b)(2) of the Act or the EUA is revoked under section 564(g) of the Act.

Sincerely,

RADM Denise M. Hinton
Chief Scientist
Food and Drug Administration

Enclosures

May 1, 2020

Ashley Rhoades, MBS, RAC
Senior Associate, Regulatory Affairs
Gilead Sciences, Inc.
333 Lakeside Drive
Foster City, CA 94404

Dear Ms. Rhoades:

This letter is in response to your request that the Food and Drug Administration (FDA) issue an Emergency Use Authorization (EUA) for emergency use of remdesivir for the treatment of hospitalized 2019 coronavirus disease (COVID-19) patients, as described in the Scope of Authorization (section II) of this letter, pursuant to Section 564 of the Federal Food, Drug and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3).

On February 4, 2020, pursuant to Section 564(b)(1)(C) of the Act, the Secretary of the Department of Health and Human Services (HHS) determined that there is a public health emergency that has a significant potential to affect national security or the health and security of United States citizens living abroad, and that involves the virus that causes COVID-19.[1] On the basis of such determination, the Secretary of HHS on March 27, 2020, declared that circumstances exist justifying the authorization of emergency use of drugs and biologics during the COVID-19 outbreak, pursuant to section 564 of the Act, subject to terms of any authorization issued under that section.[2]

Remdesivir is a direct acting antiviral drug that inhibits viral RNA synthesis. It is an investigational drug and is not currently approved for any indication. Remdesivir has activity in cell culture and animal models against SARS-CoV, MERS-CoV, and SARS-CoV-2.

Based on review of the topline data from the randomized, double-blinded, placebo-controlled trial conducted by NIAID (NCT04280705) and from the Gilead-sponsored open-label trial that evaluated different durations of remdesivir (NCT04292899), it is reasonable to believe that the known and potential benefits of RDV outweigh the known and potential risks of the drug for the treatment of patients hospitalized with severe COVID-19.

Having concluded that the criteria for issuance of this authorization under 564(c) of the Act are met, I am authorizing the emergency use of remdesivir for treatment of COVID-19, as described

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[1] U.S. Department of Health and Human Services, *Determination of a Public Health Emergency and Declaration that Circumstances Exist Justifying Authorizations Pursuant to Section 564(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 360bbb-3. February 4, 2020.*

[2] U.S. Department of Health and Human Services, *Declaration that Circumstances Exist Justifying Authorizations Pursuant to Section 564(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 360bbb-3*, 85 FR 18250 (April 1, 2020).

in the Scope of Authorization section of this letter (Section II) and subject to the terms of this authorization.

I. Criteria for Issuance of Authorization

I have concluded that the emergency use of remdesivir for the treatment of COVID-19 when administered as described in the Scope of Authorization (section II) meet the criteria for issuance of an authorization under Section 564(c) of the Act, because:

1. SARS-CoV-2 can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus;
2. Based on the totality of scientific evidence available to FDA, it is reasonable to believe that remdesivir may be effective in treating COVID-19, and that, when used under the conditions described in this authorization, the known and potential benefits of remdesivir when used to treat COVID-19 outweigh the known and potential risks of such products; and
3. There is no adequate, approved, and available alternative to the emergency use of remdesivir for the treatment of COVID-19.[3]

II. Scope of Authorization

I have concluded, pursuant to Section 564(d)(1) of the Act, that the scope of this authorization is limited as follows:

- Distribution of the authorized remdesivir will be controlled by the United States (U.S.) Government for use consistent with the terms and conditions of this EUA. Gilead will supply remdesivir to authorized distributors[4], or directly to a U.S. government agency, who will distribute to hospitals and other healthcare facilities as directed by the U.S. Government, in collaboration with state and local government authorities, as needed;
- The remdesivir covered by this authorization will be used only to treat adults and children with suspected or laboratory confirmed COVID-19 and severe disease defined as SpO2 ≤ 94% on room air, requiring supplemental oxygen, mechanical ventilation, or extracorporeal membrane oxygenation (ECMO);
- Remdesivir is administered in an in-patient hospital setting via intravenous (IV) infusion by a healthcare provider; and

[3] No other criteria of issuance have been prescribed by regulation under Section 564(c)(4) of the Act.
[4] "Authorized Distributor(s)" are identified by Gilead as an entity or entities allowed to distribute authorized remdesivr.

- The use of remdesivir covered by this authorization should be in accordance with the dosing regimens as detailed in the authorized Facts Sheets.

Product Description

Remdesivir is a nucleoside ribonucleic acid (RNA) polymerase inhibitor. Remdesivir for injection, 100 mg, is a sterile, preservative-free lyophilized solid that is to be reconstituted with 19mL of sterile water for injection and diluted into 0.9% saline prior to intravenous (IV) administration. Following reconstitution, each single-dose, clear glass vial contains a 5 mg/mL remdesivir concentrated solution with sufficient volume to allow withdrawal of 20 mL. Remdesivir Injection, 5 mg/mL, is a sterile, preservative- free, clear, solution that is to diluted into 0.9% saline prior to intravenous (IV) administration. The authorized remdesivir vial label and/or the carton labeling is clearly marked for "emergency use authorization" or for "investigational use."[5]

Remdesivir for injection, 100 mg, vials should be stored below 30 °C until time of use. Remdesivir injection, 5 mg/mL vials should be stored at refrigerated temperatures (2 °C to 8 °C) until time of use. Following dilution with 0.9% saline, the solution can be stored for up to 4 hours at room temperature (20 °C to 25 °C) or 24 hours at refrigerated temperatures (2 °C to 8 °C).

Remdesivir is authorized to be accompanied by the following product-specific information pertaining to emergency use, which is required to be made available to healthcare providers and patients respectively:

- Fact Sheet for Health Care Providers: Emergency Use Authorization (EUA) of Remdesivir (GS-5734)
- Fact Sheet for Patients and Parent/Caregivers: Emergency Use Authorization (EUA) of Remdesivir for Coronavirus Disease 2019 (COVID-19)

I have concluded, pursuant to Section 564(d)(2) of the Act, that it is reasonable to believe that the known and potential benefits of remdesivir when used for the treatment of COVID-19 and used in accordance with this Scope of Authorization (Section II), outweigh its known and potential risks.

I have concluded, pursuant to Section 564(d)(3) of the Act, based on the totality of scientific evidence available to FDA, that it is reasonable to believe that remdesivir may be effective for the treatment of COVID-19 when used in accordance with this Scope of Authorization (Section II), pursuant to Section 564(c)(2)(A) of the Act.

Having reviewed the scientific information available to FDA, including the information supporting the conclusions described in Section I above, I have concluded that remdesivir (as described in this Scope of Authorization (Section II)) meets the criteria set forth in Section 564(c) of the Act concerning safety and potential effectiveness.

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[5] The product labeled "investigational use" is authorized for use under this EUA; FDA is not requiring it to be relabeled given the immediate need for the product.

The emergency use of your product under an EUA must be consistent with, and may not exceed, the terms of the Authorization, including the Scope of Authorization (Section II) and the Conditions of Authorization (Section IV). Subject to the terms of this EUA and under the circumstances set forth in the Secretary of HHS's determination under Section 564(b)(1)(C) described above and the Secretary of HHS's corresponding declaration under Section 564(b)(1), remdesivir is authorized for the treatment of suspected or laboratory confirmed COVID-19 in adults and children who are hospitalized with severe disease as described in the Scope of Authorization (section II) under this EUA, despite the fact that it does not meet certain requirements otherwise required by applicable federal law.

III. Conditions of Authorization

Pursuant to Section 564 of the Act, I am establishing the following conditions on this authorization:

Gilead Sciences, Inc. (Gilead)

A. Gilead will ensure that the authorized remdesivir, accompanied with the authorized labeling (i.e., Fact Sheets), is distributed to hospitals and healthcare facilities as directed by the U.S. Government, consistent with the terms of this letter.

B. Gilead will ensure that appropriate storage and cold chain is maintained.

C. Gilead will ensure that the terms of this EUA are made available to all relevant stakeholders (e.g., U.S. government agencies, state and local government authorities, authorized distributors, healthcare facilities, healthcare providers) involved in distributing or receiving authorized remdesivir. Gilead will provide to all relevant stakeholders a copy of this letter of authorization and communicate any subsequent amendments that might be made to this letter of authorization and its authorized accompanying materials (i.e., Fact Sheets).

D. Gilead may request changes to this authorization, including to the authorized Fact Sheets for remdesivir, and such changes may be permitted without amendment of this EUA, upon concurrence of the Office of Infectious Diseases/Office of New Drugs/Center for Drug Evaluation and Research (CDER), the Counter-Terrorism and Emergency Coordination Staff/Office of Center Director/CDER, and Office of Counterterrorism Emerging Threats/Office Chief Scientist/Office of Commissioner.

E. Gilead will report to FDA serious adverse events and all medication errors associated with the use of the authorized remdesivir that are reported to Gilead during the pandemic using either of the following options.

   Option 1: Submit reports through the Safety Reporting Portal (SRP) as described on the FDA SRP web page.

   Option 2: Submit reports directly through the Electronic Submissions Gateway (ESG) as described on the FAERS electronic submissions web page.

Submitted reports under both options should state: "use of remdesivir was under an EUA". For reports submitted under Option 1, include this language at the beginning of the question "Describe Event" for further analysis. For reports submitted under Option 2, include this language at the beginning of the "Case Narrative" field.

F. Through a process of inventory control, Gilead will maintain records regarding distribution of the authorized remdesivir (i.e., lot numbers, quantity, receiving site, receipt date).

G. Gilead will make available to FDA upon request any records maintained in connection with this EUA.

Hospitals and Other Healthcare Facilities to Whom the Authorized Remdesivir Is Distributed and Healthcare Providers Administering the Authorized Remdesivir

H. Healthcare facilities and healthcare providers will ensure that they are aware of the letter of authorization, and the terms herein, and that the authorized Fact Sheets are made available to healthcare providers and to patients and caregivers, respectively, through appropriate means.

I. Healthcare facilities and healthcare providers receiving remdesivir will track serious adverse events that are considered to be potentially attributable to remdesivir use and must report these to FDA in accordance with the Fact Sheet for Healthcare Providers. Complete and submit a MedWatch form (www.fda.gov/medwatch/report.htm), or Complete and submit FDA Form 3500 (health professional) by fax (1-800-FDA-0178) (these forms can be found via link above). Call 1-800-FDA-1088 for questions. Submitted reports should state, "use of remdesivir was under an EUA" at the beginning of the question "Describe Event" for further analysis.

J. Through a process of inventory control, healthcare facilities will maintain records regarding the dispensed authorized remdesivir (i.e., lot numbers, quantity, receiving site, receipt date), product storage, and maintain patient information (e.g., patient name, age, disease manifestation, number of doses administered per patient, other drugs administered).

K. Healthcare facilities will ensure that any records associated with this EUA are maintained until notified by Gilead and/or FDA. Such records will be made available to Gilead, HHS, and FDA for inspection upon request.

Conditions Related to Printed Matter, Advertising and Promotion

L. All descriptive printed matter, including advertising and promotional material, relating to the use of the remdesivir shall be consistent with the authorized labeling, as well as the terms set forth in this EUA and the applicable requirements set forth in the Act and FDA regulations.

M. No descriptive printed matter, including advertising or promotional material, relating to the use of the remdesivir may represent or suggest that such products are safe or effective.

N. All descriptive printed matter, including advertising and promotional material, relating to the use of the remdesivir clearly and conspicuously shall state that:

- the remdesivir have not been approved;
- the remdesivir have been authorized by FDA under an EUA;
- the remdesivir is authorized only for the duration of the declaration that circumstances exist justifying the authorization of the emergency use of the remdesivir under section 564(b)(1) of the Act, 21 U.S.C. § 360bbb-3(b)(1), unless the authorization is terminated or revoked sooner.

IV. Duration of Authorization

This EUA will be effective until the declaration that circumstances exist justifying the authorization of the emergency use of drugs and biologics for prevention and treatment of COVID-19 is terminated under Section 564(b)(2) of the Act or the EUA is revoked under Section 564(g) of the Act.

Sincerely,

Denise M. Hinton -S3

Digitally signed by Denise M. Hinton -S3
Date: 2020.05.01 14:56:27 -04'00'

RADM Denise M. Hinton
Chief Scientist
Food and Drug Administration

Enclosures

U.S. FOOD & DRUG ADMINISTRATION

May 8, 2020

Fresenius Kabi USA, LLC
Three Corporate Drive
Lake Zurich, IL 60047

Attention: Molly Ventrelli
Senior Vice President, Regulatory Affairs

Dear Ms. Ventrelli:

This letter is in response to your May 1, 2020, request that the Food and Drug Administration (FDA) issue an Emergency Use Authorization (EUA) for emergency use of Fresenius Propoven 2% Emulsion to maintain sedation via continuous infusion in patients greater than 16 years old who require mechanical ventilation in an Intensive Care Unit (ICU) setting during the 2019 coronavirus disease (COVID-19) pandemic, as described in the Scope of Authorization (Section II) of this letter, pursuant to Section 564 of the Federal Food, Drug and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3).

On February 4, 2020, pursuant to Section 564(b)(1)(C) of the Act, the Secretary of the Department of Health and Human Services (HHS) determined that there is a public health emergency that has a significant potential to affect national security or the health and security of United States citizens living abroad, and that involves the virus that causes COVID-19.[1] On the basis of such determination, the Secretary of HHS on March 27, 2020, declared that circumstances exist justifying the authorization of emergency use of drugs and biologics during the COVID-19 outbreak, pursuant to Section 564 of the Act, subject to terms of any authorization issued under that section.[2]

Fresenius Propoven 2% Emulsion is an intravenous (IV) sedative hypnotic drug that can be utilized to maintain sedation via continuous infusion in patients greater than 16 years old with suspected or confirmed COVID-19 who require mechanical ventilation in an ICU setting.

Based on published data from China and preliminary reports in the U.S., it has been noted that Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2), the virus that causes COVID-19, has led to an increased population with critical illness, necessitating sedation drug products for mechanically ventilated patients. As a result, there is a shortage of FDA-approved propofol available for use in mechanically ventilated critically ill patients, as well as shortages of

[1] U.S. Department of Health and Human Services, *Determination of a Public Health Emergency and Declaration that Circumstances Exist Justifying Authorizations Pursuant to Section 564(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 360bbb-3. February 4, 2020.*

[2] U.S. Department of Health and Human Services, *Declaration that Circumstances Exist Justifying Authorizations Pursuant to Section 564(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 360bbb-3*, 85 FR 18250 (April 1, 2020).

alternative FDA-approved drugs, dexmedetomidine and midazolam, which are approved for sedation of mechanically ventilated patients in the ICU setting. Based on the totality of scientific evidence available, FDA has concluded that it is reasonable to believe that the Fresenius Propoven 2% Emulsion may be effective to maintain sedation via continuous infusion in patients greater than 16 years old with suspected or confirmed COVID-19 who require mechanical ventilation in an ICU setting.

Having concluded that the criteria for issuance of this authorization under Section 564(c) of the Act are met, I am authorizing the emergency use of your Fresenius Propoven 2% Emulsion, as described in the Scope of Authorization (Section II) of this letter, subject to the terms of this authorization.

I. Criteria for Issuance of Authorization

I have concluded that the emergency use of Fresenius Propoven 2% Emulsion, as described in the Scope of Authorization (Section II) of this letter, to maintain sedation via continuous infusion in patients greater than 16 years old who require mechanical ventilation in an ICU setting, meets the criteria for issuance of an authorization under Section 564(c) of the Act, because I have concluded that:

1. SARS-CoV-2 can cause a serious or life-threatening disease or condition, including severe respiratory illness requiring mechanical ventilation, to humans infected by this virus;

2. Based on the totality of scientific evidence available to FDA, it is reasonable to believe that Fresenius Propoven 2% Emulsion may be effective to maintain sedation via continuous infusion in patients greater than 16 years old with suspected or confirmed COVID-19[3] who require mechanical ventilation in an ICU setting, and that, when used under the conditions described in this authorization, the known and potential benefits of Fresenius Propoven 2% Emulsion when used for the indication above outweigh the known and potential risks of such products; and

3. There is no adequate, approved, and available alternative to the emergency use of Fresenius Propoven 2% Emulsion due to shortages of FDA-approved alternatives during the COVID-19 pandemic.[4]

II. Scope of Authorization

I have concluded, pursuant to Section 564(d)(1) of the Act, that the scope of this authorization is limited as follows:

- Fresenius Propoven 2% Emulsion will be used only to maintain sedation via continuous infusion in patients greater than 16 years old who require mechanical ventilation.

[3] In the circumstances of this public health emergency, it would not be feasible to require healthcare providers to seek to limit Fresenius Propoven 2% Emulsion only to be used for patients with suspected or confirmed COVID-19; therefore, this authorization does not limit use to such patients.

[4] No other criteria of issuance have been prescribed by regulation under Section 564(c)(4) of the Act.

- Fresenius Propoven 2% Emulsion will be administered only by a licensed healthcare provider in an ICU setting.
- Fresenius Propoven 2% Emulsion will not be administered to pregnant women, unless there are no FDA-approved products available to maintain sedation for these patients should they require mechanical ventilation in an ICU setting.
- Fresenius Propoven 2% Emulsion will be used only in accordance with the dosing regimens as detailed in the authorized Facts Sheets.

Product Description

Fresenius Propoven 2% Emulsion (propofol) is classified as a sedative hypnotic drug. It is an injectable emulsion containing 20 mg/mL of propofol for continuous IV administration to maintain sedation in patients greater than 16 years old who require mechanical ventilation in an ICU setting.

Fresenius Propoven 2% Emulsion is authorized to be accompanied by the following product-specific information pertaining to emergency use (referred to as "authorized labeling"), which is required to be made available to healthcare providers and patients respectively:

- Fact Sheet for Health Care Providers: Emergency Use Authorization (EUA) of Fresenius Propoven 2% Emulsion
- Fact Sheet for Patients and Parent/Caregivers: Emergency Use Authorization (EUA) of Fresenius Propoven 2% Emulsion
- Diprivan and Fresenius Propoven 2% Emulsion Comparison Wall Chart
- Fresenius Propoven 2% Emulsion Advisory Stickers on double strength concentration for application to vial cap ("Advisory Stickers")

I have concluded, pursuant to Section 564(d)(2) of the Act, that it is reasonable to believe that the known and potential benefits of Fresenius Propoven 2% Emulsion, when used to maintain sedation via continuous infusion in patients greater than 16 years old with suspected or confirmed COVID-19 who require mechanical ventilation in an ICU setting when used in accordance with this Scope of Authorization (Section II), outweigh its known and potential risks.

I have concluded, pursuant to Section 564(d)(3) of the Act, based on the totality of scientific evidence available to FDA, that it is reasonable to believe that Fresenius Propoven 2% Emulsion may be effective to maintain sedation via continuous infusion in patients greater than 16 years old with suspected or confirmed COVID-19 who require mechanical ventilation in an ICU setting when used in accordance with this Scope of Authorization (Section II), pursuant to Section 564(c)(2)(A) of the Act.

Having reviewed the scientific information available to FDA, including the information supporting the conclusions described in Section I above, I have concluded that Fresenius Propoven 2% Emulsion (as described in this Scope of Authorization (Section II)) meets the criteria set forth in Section 564(c) of the Act concerning safety and potential effectiveness.

The emergency use of your product under an EUA must be consistent with, and may not exceed, the terms of the Authorization, including the Scope of Authorization (Section II) and the

Conditions of Authorization (Section IV). Subject to the terms of an EUA and under the circumstances set forth in the Secretary of HHS's determination under Section 564(b)(1)(C) described above and the Secretary of HHS's corresponding declaration under Section 564(b)(1), Fresenius Propoven 2% Emulsion is authorized to maintain sedation via continuous infusion in patients greater than 16 years old with suspected or confirmed COVID-19[5] who require mechanical ventilation in an ICU setting as described in the Scope of Authorization (Section II) under this EUA, despite the fact that it does not meet certain requirements otherwise required by applicable federal law.

III. Conditions of Authorization

Pursuant to Section 564 of the Act, I am establishing the following conditions on this authorization:

Fresenius Kabi USA, LLC

A. Fresenius Kabi USA, LLC may request changes to the authorized labeling as described in the Scope of Authorization (Section II) of this letter. Such requests will be made in consultation with, and require concurrence of, the Division of Anesthesiology, Addiction Medicine, and Pain Medicine (DAAMPM)/Office of Neuroscience (ON)/Office of New Drugs (OND)/Center for Drug Evaluation and Research (CDER), as appropriate.

B. Fresenius Kabi USA, LLC may request changes to the Scope of Authorization (Section II in this letter) of the product. Such requests will be made in consultation with, and require concurrence of, the Office of Counterterrorism and Emerging Threats (OCET)/Office of the Chief Scientist (OCS)/Office of the Commissioner (OC) and DAAMPM/ON/OND/CDER.

C. Fresenius Kabi USA, LLC will manufacture Fresenius Propoven 2% Emulsion in conformance with CGMPs and all appropriate specifications.

D. Fresenius Kabi USA, LLC will perform and document process validation for Fresenius Propoven 2% Emulsion in 100 mL vials concurrently with the first manufactured batches. Additionally, Fresenius Kabi USA, LLC will add at least three representative lots of Fresenius Propoven 2% Emulsion to the firm's stability program.

E. Fresenius Kabi USA, LLC will report to FDA serious adverse events and all medication errors associated with the use of the Fresenius Propoven 2% Emulsion of which they become aware during the pandemic, to the extent practicable given emergency circumstances, using either of the following options.

Option 1: Submit reports through the Safety Reporting Portal (SRP) as described on the FDA SRP web page.

[5] See footnote 3.

Option 2: Submit reports directly through the Electronic Submissions Gateway (ESG) as described on the FAERS electronic submissions web page.

Submitted reports under both options should state: "use of Fresenius Propoven 2% Emulsion was under an EUA". For reports submitted under Option 1, include this language at the beginning of the question "Describe Event" for further analysis. For reports submitted under Option 2, include this language at the beginning of the "Case Narrative" field.

Fresenius Kabi US, LLC and Authorized Distributors[6]

F. Fresenius Kabi USA, LLC will notify FDA of any authorized distributor(s) of the product, including the name, address, and phone number of any authorized distributor(s), and provide authorized distributor(s) with a copy of this EUA.

G. Fresenius Kabi USA, LLC and authorized distributor(s) will make Fresenius Propoven 2% Emulsion available with the authorized labeling as described in the Scope of Authorization (Section II) of this letter.

H. Fresenius Kabi USA, LLC and authorized distributor(s) will make available on their website(s) the Fact Sheet for Healthcare Providers and the Fact Sheet for Patients and Parent/Caregivers.

I. Through a process of inventory control, Fresenius Kabi USA, LLC and authorized distributor(s) will maintain records of the healthcare settings to which they distribute Fresenius Propoven 2% Emulsion and the number of Fresenius Propoven 2% Emulsion they distribute.

J. Fresenius Kabi USA, LLC and authorized distributor(s) will ensure that any records associated with this EUA are maintained until otherwise notified by FDA. Such records will be made available to FDA for inspection upon request.

K. Fresenius Kabi USA, LLC and authorized distributor(s) are authorized to make available additional information relating to the emergency use of the product that is consistent with, and does not exceed, the terms of this letter of authorization.

Hospitals and Other Healthcare Facilities to Whom the Authorized Fresenius Propoven 2% Emulsion Is Distributed and Healthcare Providers Administering the Authorized Fresenius Propoven 2% Emulsion

L. Healthcare facilities and healthcare providers will ensure that they are aware of the letter of authorization, and the terms herein, and that the authorized labeling (as described in the Scope of Authorization (Section II) of this letter) is made available to healthcare providers and to patients and caregivers through appropriate means.

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[6] "Authorized Distributor(s)" are identified by the sponsor in EUA requests as an entity allowed to distribute the product.

M. Through a process of inventory control, healthcare facilities will maintain records regarding the dispensed authorized Fresenius Propoven 2% Emulsion (i.e., lot numbers, quantity, receiving site, receipt date), product storage, and maintain patient information (e.g., patient name, age, disease manifestation, days of infusion per patient, other drugs administered).

N. Healthcare facilities will ensure that any records associated with this EUA are maintained until notified by Fresenius Kabi USA, LLC and/or FDA. Such records will be made available to Fresenius USA, LLC, HHS, and FDA for inspection upon request.

O. Healthcare facilities and prescribing health care providers or their designee receiving Fresenius Propoven 2% Emulsion will track all medication errors associated with the use of and all serious adverse events that are considered to be potentially attributable to Fresenius Propoven 2% Emulsion use and must report these to FDA in accordance with the Fact Sheet for Healthcare Providers using one of the following methods:

Option 1: Complete and submit a MedWatch form online (www.fda.gov/medwatch/report.htm)

Option 2: Complete and submit FDA Form 3500 (health professional) by fax (1-800-FDA-0178) (this form can be found via link above).

Call 1-800-FDA-1088 for questions. Submitted reports should state, "use of Fresenius Propoven 2% Emulsion was under an EUA" at the beginning of the question "Describe Event" for further analysis.

Conditions Related to Printed Matter, Advertising and Promotion

P. All descriptive printed matter, including advertising and promotional material, relating to the use of the Fresenius Propoven 2% Emulsion shall be consistent with the authorized labeling, as well as the terms set forth in this EUA and the applicable requirements set forth in the Act and FDA regulations.

Q. No descriptive printed matter, including advertising or promotional material, relating to the use of the Fresenius Propoven 2% Emulsion may represent or suggest that such products are safe or effective.

R. Except for the Advisory Stickers described in Section II, all descriptive printed matter, including advertising and promotional material, relating to the use of Fresenius Propoven 2% Emulsion clearly and conspicuously shall state that:

- the Fresenius Propoven 2% Emulsion is not FDA-approved;
- the Fresenius Propoven 2% Emulsion has been authorized by FDA for use under an EUA;

- the Fresenius Propoven 2% Emulsion is authorized only for the duration of the declaration that circumstances exist justifying the authorization of the emergency use under Section 564(b)(1) of the Act, 21 U.S.C. § 360bbb-3(b)(1), unless the authorization is terminated or revoked sooner.

IV. Duration of Authorization

This EUA will be effective until the declaration that circumstances exist justifying the authorization of the emergency use of drugs and biologics for prevention and treatment of COVID-19 is terminated under Section 564(b)(2) of the Act or the EUA is revoked under Section 564(g) of the Act.

Sincerely,

--/S/--

RADM Denise M. Hinton
Chief Scientist
Food and Drug Administration

Enclosures

U.S. FOOD & DRUG ADMINISTRATION

June 15, 2020

Gary L. Disbrow Ph.D.
Deputy Assistant Secretary
Director, Medical Countermeasure Programs
Biomedical Advanced Research and Development Authority (BARDA)
Office of Assistant Secretary for Preparedness and Response (ASPR)
U.S. Department of Health and Human Services (HHS)
330 Independence Ave, S.W., Room 640G
Washington, D.C. 20201

Dear Dr. Disbrow:

This letter is in response to your request, dated today, that the Food and Drug Administration (FDA) revoke the Emergency Use Authorization (EUA) for emergency use of oral formulations of chloroquine phosphate (CQ) and hydroxychloroquine sulfate (HCQ) to be distributed from the Strategic National Stockpile (SNS) issued on March 28, 2020. Like BARDA's earlier request to FDA to issue the EUA, BARDA's request to revoke the EUA is part of a collaborative, USG-interagency effort to rapidly respond to this continuously evolving public health emergency. Today's request to revoke is based on new information, including clinical trial data results, that have led BARDA to conclude that this drug may not be effective to treat COVID-19 [Coronavirus Disease 2019] and that the drug's potential benefits for such use do not outweigh its known and potential risks.

The authorization of a product for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revised or revoked when the criteria under section 564(b)(1) of the Act no longer exist, the criteria under section 564(c) of the Act for issuance of such authorization are no longer met, or other circumstances make such revision or revocation appropriate to protect the public health or safety.

FDA has determined that the criteria under section 564(c) of the Act for issuance of the EUA referenced above are no longer met. Under section 564(c)(2) of the Act, an EUA may be issued only if FDA concludes "that, based on the totality of scientific evidence available to the Secretary, including data from adequate and well-controlled clinical trials, if available, it is reasonable to believe that: (A) the product may be effective in diagnosing, treating, or preventing—(i) such disease or condition [. . . .]; and (B) the known and potential benefits of the product, when used to diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product [. . .]."

As explained in the attached memorandum, based on a review of new information and a reevaluation of information available at the time the EUA was issued, FDA now concludes that these criteria are no longer met. The bases for this decision include the following:

- We now believe that the suggested dosing regimens for CQ and HCQ as detailed in the Fact Sheets are unlikely to produce an antiviral effect.
- Earlier observations of decreased viral shedding with HCQ or CQ treatment have not been consistently replicated and recent data from a randomized controlled trial assessing probability of negative conversion showed no difference between HCQ and standard of care alone.
- Current U.S. treatment guidelines do not recommend the use of CQ or HCQ in hospitalized patients with COVID-19 outside of a clinical trial, and the NIH guidelines now recommend against such use outside of a clinical trial.
- Recent data from a large randomized controlled trial showed no evidence of benefit for mortality or other outcomes such as hospital length of stay or need for mechanical ventilation of HCQ treatment in hospitalized patients with COVID-19.

FDA has concluded that, based on this new information and other information discussed in the attached memorandum, it is no longer reasonable to believe that oral formulations of HCQ and CQ may be effective in treating COVID-19, nor is it reasonable to believe that the known and potential benefits of these products outweigh their known and potential risks. Accordingly, FDA revokes the EUA for emergency use of HCQ and CQ to treat COVID-19, pursuant to section 564(g)(2) of the Act. As of the date of this letter, the oral formulations of HCQ and CQ are no longer authorized by FDA to treat COVID-19.

While HCQ that has been distributed from SNS is no longer authorized under the EUA for the authorized use to treat hospitalized patients for COVID-19, FDA-approved HCQ can be distributed in interstate commerce. The CQ products covered by the EUA are not approved by FDA for any indication and therefore cannot be legally introduced into interstate commerce. In addition, under section 564(f)(2) of the Act, HCQ and CQ that were distributed from the SNS under this EUA remain authorized for emergency use to continue to treat any hospitalized patient to whom the authorized product has already been administered during the COVID-19 public health emergency, to the extent found necessary by such patient's attending physician.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

/s/

RADM Denise M. Hinton
Chief Scientist
Food and Drug Administration

Dated: September 3, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–20041 Filed 9–10–20; 8:45 am]

BILLING CODE 4164–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Review of Institutional Training Grants in Digestive Diseases and Nutrition.

Date: September 30, 2020.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Video Meeting).

Contact Person: Tian, Lan, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Suite 7016, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 496–7050, *tianl@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases

Special Emphasis Panel; Development of Swallowable Smart Pills/Devices (phased R21/R33).

Date: October 22, 2020.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Video Meeting).

Contact Person: Tian, Lan, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Suite 7016, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 496–7050, *tianl@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 8, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–20088 Filed 9–10–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Review Meeting.

Date: September 10, 2020.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Video Meeting).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7353, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898 *barnardm@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 8, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–20093 Filed 9–10–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Cell Biology Integrated Review Group Molecular and Integrative Signal Transduction Study Section.

Date: October 13, 2020.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Charles Selden, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301–451–3388, *seldens@mail.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Chemosensory Systems Study Section.

Date: October 15–16, 2020.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@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: September 4, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–20050 Filed 9–10–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Pediatrics Subcommittee, October 08, 2020, 8:00 a.m. to October 08, 2020, 5:00 p.m., National Institute of Child Health and Human Development, 6710B Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on August 14, 2020, 85 FR 49662.

The meeting format has changed from a Virtual Meeting to a Video Assisted Meeting.

The meeting is closed to the public.

Dated: September 4, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–20051 Filed 9–10–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Voice, Speech, and Language Application Review.

Date: October 28, 2020.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NSC Building, 6001 Executive Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sheo Singh, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, 6001 Executive Blvd., Room 8351, Bethesda, MD 20892, (301) 496–8683, *singhs@nidcd.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; NIDCD Institutional Training Grant Review.

Date: November 2, 2020.

Time: 1:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NSC Building, 6001 Executive Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Katherine Shim, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIH/NIDCD, 6001 Executive Blvd., Room 8351, Bethesda, MD 20892, (301) 496–8683, *katherine.shim@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: September 8, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–20094 Filed 9–10–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine and Oral Fluid Drug Testing for Federal Agencies

In notice document 2020–19209, appearing on pages 54393–54394, in the issue of September 1, 2020, make the following corrections:

1. On page 54394, in the first column, in the fifteenth through twentieth lines:

''Legacy Laboratory Services Toxicology, 1225 NE 2nd Ave, Portland, OR 97232, 503–413–5295/800–950–5295, MedTox Laboratories, Inc., 402 W County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244'', should read:

''Legacy Laboratory Services Toxicology, 1225 NE 2nd Ave, Portland, OR 97232, 503–413–5295/800–950–529

MedTox Laboratories, Inc., 402 W County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244''

2. On the same page, in the same column, in the thirty-second through thirty-ninth lines:

''Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840, Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)'', should read:

''Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)''

[FR Doc. C1–2020–19209 Filed 9–10–20; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7029–N–08]

60-Day Notice of Proposed Information Collection: Evaluation of Cohort 1 of the Moving to Work Demonstration Program Expansion

AGENCY: Office of the Assistant Secretary for Policy Development and Research, Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: The U.S. Department of Housing and Urban Development (HUD) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* November 10, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–5534 (this is not a toll-free number) or email at *Anna.P.Guido@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Evaluation of Cohort 1 of the Moving to Work Demonstration Program Expansion.

OMB Approval Number: Pending.

Type of Request: New collection.

Form Number: NA.

Description of the need for the information and proposed use: The Office of Policy Development and Research (PD&R), at the U.S.

Department of Housing and Urban Development (HUD), is proposing the collection of information for the *Evaluation of Cohort 1 of the Moving to Work Demonstration Program Expansion.*

Moving to Work (MTW) is a demonstration program that encourages public housing agencies (PHAs) to test ways to achieve three specific objectives: (1) Increase the cost effectiveness of federal housing programs, (2) increase housing choice for low-income families, and/or (3) encourage greater self-sufficiency of households receiving housing assistance. MTW designation gives PHAs relief from many of the regulations and statutory provisions that apply to the public housing and Housing Choice Voucher (HCV) programs. MTW agencies can also merge their public housing and HCV funds into a single block grant and use these funds (if desired) for local activities outside of the typical public housing and HCV programs, such as providing supportive services or developing housing for populations with special needs. In 2016, Congress authorized HUD to expand the MTW program by 100 high performing PHAs.

The MTW expansion statute emphasizes evaluating the MTW program, directing HUD to expand the program in cohorts that would allow for ''one specific policy change to be implemented. . . .'' and rigorously evaluated. The first cohort of the expansion will test the impact of MTW designation on small PHAs, defined for these purposes as PHAs administering no more than 1,000 housing units across their HCV and public housing programs. In Cohort 1, PHAs are free to implement any program and policy changes permissible under the MTW program. Under contract with HUD's Office of Policy Development and Research, Abt Associates Inc. will conduct an evaluation of Cohort 1 that includes a study of how PHAs use their MTW flexibility to meet the MTW program's goals and a study of the impact of MTW designation on cost effectiveness, self-sufficiency, and housing choice.

The Evaluation of Cohort 1 of the Moving to Work Demonstration Program Expansion will be implemented as a randomized control trial. To carry out the study, HUD randomly assigned the 43 eligible PHAs that submitted a Letter of Interest to HUD for Cohort 1 into one of two groups: A treatment group (33 PHAs) that is invited to complete the application for MTW designation and a control group (10 PHAs) that is not invited to complete the application for MTW designation and therefore is not permitted to receive MTW designation under Cohort 1.

The evaluation will compare the outcomes of the treatment group PHAs to the outcomes of the control group PHAs over a five-year period. To the extent possible, this evaluation will rely on analysis of secondary data that PHAs already prepare and submit to HUD, however, some primary data collection will be required.

This **Federal Register** Notice provides an opportunity to comment on the information collection for the evaluation. The evaluation will use the data described in this information collection request to clarify and expand on information provided in the existing data sources and to capture qualitative information about the experiences of study PHAs implementing activities related to cost effectiveness, self-sufficiency, or housing choice without MTW flexibility. The proposed information collection consists of: (1) Interviews with MTW (treatment group) PHAs; (2) online surveys to non-MTW (control group) PHAs; and (3) interviews with non-MTW (control group) PHAs.

Respondents: PHA Executive Directors and staff.

Estimated Number of Respondents: This information collection will affect approximately 129 PHA Executive Directors and Staff annually. HUD expects to collect data from approximately three staff at each the 33 treatment group PHAs each year, and approximately two staff at each of the ten control group PHAs every other year.

Estimated Time per Response: The interviews with PHA Executive Directors and staff in the treatment group agencies are expected to take up to 2 hours to complete. The interviews with PHA Executive Directors and staff in the control group agencies are expected to take up to 1.5 hours to complete. Finally, the online surveys with control group PHAs are expected to take 0.5 hours to complete.

Frequency of Response: Interviews with the treatment group PHAs are expected to take place once a year for each of five years. Interviews with the control group PHAs, and the online survey with control group PHAs, will take place every other year (year 1, year 3, and year 5 of data collection).

Estimated Total Annual Burden Hours: Data collection during years 1, 3, and 5 will require up to 233 hours in combined time for all interviews and survey responses. Data collection during years 2 and 4, when data is *not* collected form the control group PHAs, will require only 198 hours in combined time for all interviews and survey responses.

Estimated Total Annual Cost: The total estimated annual cost for this information collection during years 1, 3, and 5 is $12,148.62. The total estimated annual cost is calculated by multiplying the total number of respondent hours (233) by $52.14. $52.14 was the average hourly compensation (wages and benefits) for state and local government workers in December 2019 according to the Bureau of Labor Statistics (*https://www.bls.gov/news.release/pdf/ecec.pdf*). The total estimated annual cost for this information collection during years 2 and 4, when data is *not* collected form the control group PHAs, is $10,232.72. The total estimated annual cost is calculated by multiplying the total number of respondent hours (198) by $52.14. $52.14 was the average hourly compensation (wages and benefits) for state and local government workers in December 2019 according to the Bureau of Labor Statistics

Respondent's Obligation: Voluntary.

Legal Authority: The survey is conducted under Title 12, United States Code, Section 1701z and Section 3507 of the Paperwork Reduction Act of 1995, 44, U.S.C., 35, as amended.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hours per response	Annual burden hours	Hourly cost per response	Cost
Interviews: Treatment PHAs	99	1	1	2	198	$52.14	$10,232.72
Online Surveys: Control PHAs	10	1	1	0.5	5	52.14	260.70
Interviews: Control PHAs	20	1	1	1.5	30	52.14	1,564.20

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hours per response	Annual burden hours	Hourly cost per response	Cost
Total	129	.....	.....	.....	233	.....	12,148.62

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

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

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Assistant Secretary for Policy Development and Research, Seth D. Appleton, having reviewed and approved this document, is delegating the authority to electronically sign this document to submitter, Nacheshia Foxx, who is the Federal Register Liaison for HUD, for purposes of publication in the **Federal Register.**

Dated: September 8, 2020.

Nacheshia Foxx,

Federal Register Liaison for Housing and Urban Development.

[FR Doc. 2020–20062 Filed 9–10–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK940000.L14100000.BX0000.20X. LXSS001L0100]

Filing of Plats of Survey: Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of lands described in this notice are scheduled to be officially filed in the Bureau of Land Management (BLM), Alaska State Office, Anchorage, Alaska. The surveys, which were executed at the request of the Bureau of Indian Affairs and BLM, are necessary for the management of these lands.

DATES: The BLM must receive protests by October 13, 2020.

ADDRESSES: You may buy a copy of the plats from the BLM Alaska Public Information Center, 222 W 7th Avenue, Mailstop 13, Anchorage, AK 99513. Please use this address when filing written protests. You may also view the plats at the BLM Alaska Public Information Center, Fitzgerald Federal Building, 222 W 8th Avenue, Anchorage, AK, at no cost.

FOR FURTHER INFORMATION CONTACT: Douglas N. Haywood, Chief, Branch of Cadastral Survey, Alaska State Office, Bureau of Land Management, 222 W 7th Avenue, Anchorage, AK 99513; 907–271–5481; *dhaywood@blm.gov.* People who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the BLM during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lands surveyed are:

Copper River Meridian, Alaska

U.S. Survey No. 13841, accepted August 19, 2020, situated in Tps. 16 N., Rs. 12 and 13 E.
T. 18 N., R. 11 E., accepted August 6, 2020
T. 26 N., R. 15 E., accepted August 31, 2020
T. 27 N., R. 15 E., accepted August 31, 2020
T. 22 N., R. 16 E., accepted August 31, 2020
T. 23 N., R. 16 E., accepted August 31, 2020
T. 24 N., R. 16 E., accepted August 31, 2020
T. 25 N., R. 16 E., accepted August 31, 2020
T. 26 N., R. 16 E., accepted August 31, 2020
T. 27 N., R. 16 E., accepted August 31, 2020
T. 23 N., R. 17 E., accepted August 31, 2020
T. 24 N., R. 17 E., accepted August 31, 2020
T. 25 N., R. 17 E., accepted August 31, 2020
T. 26 N., R. 17 E., accepted August 31, 2020
T. 27 N., R. 17 E., accepted August 31, 2020
T. 27 N., R. 18 E., accepted August 31, 2020
T. 28 N., R. 18 E., accepted August 31, 2020
T. 26 N., R. 19 E., accepted August 31, 2020
T. 27 N., R. 19 E., accepted August 31, 2020
T. 28 N., R. 19 E., accepted August 31, 2020
T. 26 N., R. 20 E., accepted August 31, 2020
T. 27 N., R. 20 E., accepted August 31, 2020
T. 28 N., R. 20 E., accepted August 31, 2020

Fairbanks Meridian, Alaska

U.S. Survey No. 14510, accepted September 2, 2020, situated in T. 19 S., R. 1 E.
T. 6 S., R. 27 E., accepted September 2, 2020
T. 6 S., R. 28 E., accepted September 2, 2020

A person or party who wishes to protest one or more plats of survey identified above must file a written notice of protest with the State Director for the BLM in Alaska. The notice of protest must identify the plat(s) of survey that the person or party wishes to protest. You must file the notice of protest before the scheduled date of official filing for the plat(s) of survey being protested. The BLM will not consider any notice of protest filed after the scheduled date of official filing. A notice of protest is considered filed on the date it is received by the State Director for the BLM in Alaska during regular business hours; if received after regular business hours, a notice of protest will be considered filed the next business day. A written statement of reasons in support of a protest, if not filed with the notice of protest, must be filed with the State Director for the BLM in Alaska within 30 calendar days after the notice of protest is filed.

If a notice of protest against a plat of survey is received prior to the scheduled date of official filing, the official filing of the plat of survey identified in the notice of protest will be stayed pending consideration of the protest. A plat of survey will not be officially filed until the dismissal or resolution of all protests of the plat.

Before including your address, phone number, email address, or other personally identifiable information in a notice of protest or statement of reasons, you should be aware that the documents you submit, including your personally identifiable information, may be made publicly available in their entirety at any time. While you can ask the BLM to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 U.S.C. Chap. 3.

Douglas N. Haywood,

Chief Cadastral Surveyor, Alaska.

[FR Doc. 2020–20080 Filed 9–10–20; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0030681; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Michigan State University, East Lansing, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Michigan State University has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribes or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Michigan State University. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribes or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Michigan State University at the address in this notice by October 13, 2020.

FOR FURTHER INFORMATION CONTACT: Judith Stoddart, Associate Provost for University Collections and Arts Initiatives, Michigan State University, 466 W Circle Drive, East Lansing, MI 48824–1044, telephone (517) 432–2524, email *stoddart@msu.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of Michigan State University, East Lansing, MI. The human remains and associated funerary objects were removed from Antrim, Charlevoix, Chippewa, Ionia, Leelanau, and Mecosta Counties, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Michigan State University professional staff in consultation with representatives of the Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as Huron Potawatomi, Inc.); Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; and two non-federally recognized Indian groups, the Burt Lake Band of Ottawa and Chippewa Indians, and the Grand River Band of Ottawa Indians (hereafter referred to as ''The Consulted Tribes and Groups'').

An invitation to consult was extended to the Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Eastern Shawnee Tribe of Oklahoma; Forest County Potawatomi Community, Wisconsin; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Little Shell Tribe of Chippewa Indians of Montana; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Prairie Band Potawatomi Nation (previously listed as Prairie Band of Potawatomi Nation, Kansas); Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Seneca Nation of Indians (previously listed as Seneca Nation of New York); Seneca-Cayuga Nation (previously listed as Seneca-Cayuga Tribe of Oklahoma); Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Stockbridge Munsee Community, Wisconsin; Tonawanda Band of Seneca (previously listed as Tonawanda Band of Seneca Indians of New York); Turtle Mountain Band of Chippewa Indians of North Dakota; and the Wyandotte Nation, hereafter referred to as ''The Invited Tribes.''

History and Description of the Remains

On August 29, 1928, human remains representing, at minimum, two individuals were removed from the Antrim Creek site, which is located along Old Dixie Highway and by Grand Traverse Bay, in Antrim County, MI. The human remains (6839.1, 6839.2, 6839.3, 6839.4, 6839.5, 6839.6, 6839.7) were discovered by local resident Norton Pearl. On January 4, 1989, Mr. Pearl's descendant, Betty Beeby, donated the human remains to the Michigan State University Museum. No known individuals were identified. No associated funerary objects are present.

On July 27, 1966, human remains representing, at minimum, one individual were removed from the Zimmer site (20AN64), Antrim County, MI. The human remains (2590) and associated funerary objects were disturbed during the construction of a house foundation. The property owner, Martha Zimmer, contacted Michigan State University, which excavated the human remains and cultural items. No known individual was identified. The two associated funerary objects are chert flakes (2590).

On an unknown date, human remains representing, at minimum, one individual were removed from Beaver Island, Charlevoix County, MI. The human remains (2004.46.72) were acquired by Kalamazoo resident Donald Boudeman, who collected Southwest Native American material culture in the first half of the twentieth century. In

July of 1961, years after her husband's death, Donna Boudeman donated the human remains and parts of Mr. Boudeman's collection to Michigan State University Museum. No known individual was identified. No associated funerary objects are present.

In 1976 and 1977, human remains representing, at minimum, one individual were removed from Fort Brady (20CH51), Chippewa County, MI. The human remains (4513.105.04.03 F1, 4513.109.04.04.02 F2, 4513.099.04.02.02 F4, 4513.105.04.02 F4 & 5, 4513.109.04.03 F4, 4513.099.04.02.02 F4, 4513.109.04.04 F9) were excavated by Michigan State University while doing field work for the Sault Ste. Marie Archaeological Project. No known individual was identified. No associated funerary objects are present.

On an unknown date, human remains representing, at minimum, one individual were removed from the Muir site in West Muir, Ionia County, MI. On March 4, 1958, the Central Michigan Chapter of the Michigan Archeological Society donated the human remains (3350.1) to the Michigan State University Museum. No known individual was identified. The eight associated funerary objects are two celts (3350.2, 3350.3), one gorget (3350.4), two drifts (bone/antler pressure flakers) (3350.9, 3350.10), and three projectile points (3350.5, 3350.6, 3350.8). (One additional funerary object, a pipe (3350.7), is missing from the collection.)

On an unknown date, human remains representing, at minimum, three individuals were removed from the Ionia site, Ionia County, MI. No known individuals were identified. No associated funerary objects are present.

In 1890, human remains representing, at minimum, one individual were removed a few miles south of Portland on the Grand River, Ionia County, MI. The human remains (1031) were removed from a mound near Shimnecon, a former Native American village, by local resident Henry Clay Newman. On May 8, 1959, Mrs. David Baldwin and Henry Clay Newman donated the human remains to the Michigan State University Museum. The donors thought the human remains belonged to Chief Okemos. No known individual was identified. No associated funerary objects are present.

On an unknown date, human remains representing, at minimum, two individuals were removed from Leland, Leelanau County, MI. The Leelanau County Sheriff's Department, which was alerted to the discovery of the human remains (Compl. #1923), assigned the human remains a case number (2056–68) and transferred them to Michigan State University's Anthropology Forensic Laboratory. No known individuals were identified. No associated funerary objects are present.

On an unknown date, human remains representing, at minimum, five individuals were removed from an ''Indian mound'' near Rodney, Mecosta County, MI. In October of 1965, R. Leverette, a local resident, donated the human remains (2877.1) to the Michigan State University Museum. No known individuals were identified. No associated funerary objects are present.

Determinations Made by Michigan State University

Officials of Michigan State University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on archeological context, biological evidence, geographic location, and museum records.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 17 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 10 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.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land (Ionia County) from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Saginaw Chippewa Indian Tribe of Michigan.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land (Antrim, Charlevoix, Chippewa, Leelanau, and Mecosta Counties) from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Ottawa Tribe of Oklahoma; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; and the Turtle Mountain Band of Chippewa Indians of North Dakota.
- Treaties, Acts of Congress, or Executive Orders indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Ottawa Tribe of Oklahoma; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie

Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; and the Turtle Mountain Band of Chippewa Indians of North Dakota.

• According to other authoritative government sources, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Miami Tribe of Oklahoma.

• Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Ottawa Tribe of Oklahoma; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; and the Turtle Mountain Band of Chippewa Indians of North Dakota (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Representatives of any Indian Tribes or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Judith Stoddart, Associate Provost for University Collections and Arts Initiatives, Michigan State University, 466 W Circle Drive, East Lansing, MI 48824–1044, telephone (517) 432–2524, email *stoddart@msu.edu,* by October 13, 2020. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed. If joined to a request from one or more of The Tribes, the Burt Lake Band of Ottawa and Chippewa Indians, a non-federally recognized Indian group, may receive transfer of control of the human remains.

Michigan State University is responsible for notifying The Tribes, The Consulted Tribes and Groups, and The Invited Tribes that this notice has been published.

Dated: August 14, 2020.

Melanie O'Brien,

Manager, National Native American Graves Protection and Repatriation Act (NAGPRA) Program.

[FR Doc. 2020–20067 Filed 9–10–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0030682; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Michigan State University, East Lansing, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Michigan State University has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribes or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Michigan State University. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribes or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Michigan State University at the address in this notice by October 13, 2020.

FOR FURTHER INFORMATION CONTACT: Judith Stoddart, Associate Provost for University Collections and Arts Initiatives, Michigan State University, 466 W Circle Drive, East Lansing, MI 48824–1044, telephone (517) 432–2524, email *stoddart@msu.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of Michigan State University, East Lansing, MI. The human remains and associated funerary objects were removed from Arenac, Clinton, Huron, Iosco, and Midland Counties, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Michigan State University professional staff in consultation with representatives of the Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as Huron Potawatomi, Inc.); Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; and two non-federally recognized Indian groups, the Burt Lake Band of Ottawa and Chippewa Indians, and the Grand River Band of Ottawa Indians (hereafter referred to as ''The Consulted Tribes and Groups'').

An invitation to consult was extended to the Absentee-Shawnee Tribe of

Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Eastern Shawnee Tribe of Oklahoma; Forest County Potawatomi Community, Wisconsin; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Little Shell Tribe of Chippewa Indians of Montana; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Prairie Band Potawatomi Nation (previously listed as Prairie Band of Potawatomi Nation, Kansas); Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Seneca Nation of Indians (previously listed as Seneca Nation of New York); Seneca-Cayuga Nation (previously listed as Seneca-Cayuga Tribe of Oklahoma); Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Stockbridge Munsee Community, Wisconsin; Tonawanda Band of Seneca (previously listed as Tonawanda Band of Seneca Indians of New York); Turtle Mountain Band of Chippewa Indians of North Dakota; and the Wyandotte Nation, hereafter referred to as ''The Invited Tribes.''

History and Description of the Remains

On August 14, 1971, human remains representing, at minimum, one individual were removed from the AuGres site (20AC19), AuGres Township, Arenac County, MI. The human remains (4321.1, 4321.2, 4321.3, 4321.4b, 4321.5) and associated funerary objects were encountered by a construction crew. On October 23, 1974, the human remains were transferred to the Michigan State University Museum. No known individual was identified. The 66 associated funerary objects are one lot of beads (4321), one seed bead (4321.1), one lot of a glass bottle fragments, one grommet (4321.1), one lot of kettle scrap (4321.1), one rolled piece of flat lead or pewter (4321.1), one lot of rusted iron fragments (4321.1), one lot of flakes (4321.2), one lot of sherds (4321.2), one lot of vessel fragments (4321.2), nine worked lithics (4321.2), one charcoal sample (4321.3), one retouched flake (4321.3), eight flakes (4321.3), one lot of snail shell fragments (4321.3), five lithics (4321.5), one core (4321.4a), 12 flakes (4321.4a), two retouched flakes (4321.4a), two glass bottles (4321.4a), one lot of flakes (4321.4b), 10 utilized flakes and a projectile point fragment (4321.4b), one lot of snail shell fragments (4321.4b), and two lots of soil samples (4321.4b).

In 1969, human remains representing, at minimum, 17 individuals were removed from the Cutler site (20CL108), Clinton County, MI. Michigan State University graduate student Marla Buckmaster removed the human remains (3477) from a gravel pit located on property owned by Neal Cutler. No known individuals were identified. The 32 associated funerary objects are 11 lots of carbon samples (3477), one flake, 15 lots of ceramic sherds, and five ceramic sherds.

During the spring of 1966, human remains representing, at minimum, six individuals were removed from the Matthews site (20CL61), Clinton County, MI. Clyde Anderson, a resident of St. Johns, removed the human remains, as well as associated funerary objects, while exploring the area in search of an early nineteenth-century Native American village. He reburied the human remains in the summer of 1966. Later in 1966, the Upper Grand Valley Chapter of the Michigan Archaeological Society (UGVC) re-excavated the human remains. In 1970, UGVC donated the human remains and associated funerary objects to Michigan State University. No known individuals were identified. The 93 associated funerary objects are one lot of bark, one lot of beads with metal, one lot of beads and string, four lots of seed beads, one lot of spun beads, one lot of blanket twill with silver brooch impressions, two lots of fabric, one lot of fabric (weave and fiber), one lot of fabric and seed beads, one lot of felt-like fabric, three individual fabrics, four lots of fiber, one fiber, one lot of iron fragments, one lot of iron pieces, two lots of iron nails, one lot of organic matter, one lot of silver, one lot of wood fragments, three armbands, one bauble, two blankets, one box of fragmentary wood containing feathers, one brooch fragment, two brooches with diamond holes, one ear bob, one ear wheel, four gorgets, eight gunflints, one jewelry made of pewter, two knives, one knife with handle, one piece of leather, one piece of knotted leather, one lithic, one piece of woven matting, one nail, one pail fragment, one pail rim fragment, nine photos, one silk scarf, two lead shots, one spoon, three strike-a-lites, one strike-a-lite fragment, six tacks, and six tubes. (One funerary object, a pipe, is missing from the collection.)

On an unknown date, human remains representing, at minimum, two individuals were removed from the Kleinfeld site, Huron County, MI, and were transferred to Michigan State University's Forensic Anthropology Laboratory. No known individuals were identified. The one associated funerary object is a lot of lithics.

On an unknown date, human remains representing, at minimum, one individual were removed from the Pinnebog site, which is believed to be in Huron County, MI. No known individual was identified. No associated funerary objects are present.

In 1980, human remains representing, at minimum, 11 individuals were removed from the Brandt site (20IS46), Oscoda Township, Iosco County, MI. The human remains (5279) were discovered by the property owner, William Brandt, during trenching construction. The site, which was turned out to be a Late Archaic burial ground cemetery, was then excavated by Ms. Barbara Mead, Assistant Archaeologist of the Michigan Bureau of History, and Michigan State University graduate student Robert Kingsley. Following excavation, the human remains were transferred to Michigan State University, where they underwent examination by Anthropology Professor Dr. Norman Sauer and graduate student David A. Barondess. On September 11, 2019, the State of Michigan transferred control of two associated funerary objects to Michigan State University. No known individuals were identified. The two associated funerary objects are two side-notched projectile points (20IS46–1 and 20IS46–2).

On June 30, 2017, human remains representing, at minimum, two individuals were removed from an unnamed site (20MD310), Midland County, MI. The human remains (FA 040–17–I–01, FA 040–17–I–02) were disturbed during the construction of a house foundation. Property owner Stephen Jenkins contacted the Michigan State Police, which assigned the human remains a case number (FA 040–17). On July 17, 2017, the human remains and an associated funerary object were

transferred to Michigan State University's Forensic Anthropology Laboratory, where the remains were analyzed by Anthropology Professor Dr. Joseph Hefner. No known individuals were identified. The one associated funerary object is a hatchet head (FA–040–17).

Determinations Made by Michigan State University

Officials of Michigan State University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on archeological context, biological evidence, and geographic location.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 40 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 195 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.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Saginaw Chippewa Indian Tribe of Michigan.
- Treaties, Acts of Congress, or Executive Orders indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little Shell Tribe of Chippewa Indians of Montana; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; and the Turtle Mountain Band of Chippewa Indians of North Dakota.
- According to other authoritative government sources, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Miami Tribe of Oklahoma; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; and the Sac & Fox Tribe of the Mississippi in Iowa.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little Shell Tribe of Chippewa Indians of Montana; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; and the Turtle Mountain Band of Chippewa Indians of North Dakota (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Representatives of any Indian Tribes or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Judith Stoddart, Associate Provost for University Collections and Arts Initiatives, Michigan State University, 466 W Circle Drive, East Lansing, MI 48824–1044, telephone (517) 432–2524, email *stoddart@msu.edu,* by October 13, 2020. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

Michigan State University is responsible for notifying The Tribes, The Consulted Tribes and Groups, and The Invited Tribes that this notice has been published.

Dated: August 14, 2020.

Melanie O'Brien,

Manager, National Native American Graves Protection and Repatriation Act (NAGPRA) Program.

[FR Doc. 2020–20069 Filed 9–10–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0030680; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Michigan State University, East Lansing, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Michigan State University has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Michigan State University. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Michigan State University at the address in this notice by October 13, 2020.

FOR FURTHER INFORMATION CONTACT: Judith Stoddart, 466 W Circle Drive, East Lansing, MI 48824–1044, telephone (517) 432–2524, email *stoddart@msu.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of Michigan State University, East Lansing, MI. The human remains and associated funerary objects were removed from Arizona.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Michigan State University professional staff in consultation with representatives of the Hopi Tribe of Arizona and the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona. The Ak-Chin Indian Community (previously listed as Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona); Gila River Indian Community of the Gila River Indian Reservation, Arizona; Tohono O'odham Nation of Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico were invited but did not participate. Hereafter, the above Indian Tribes are referred to as ''The Consulted and Invited Tribes.''

History and Description of the Remains

On an unknown date, probably sometime in the 1920s or 1930s, human remains representing, at minimum, one individual were removed from an unknown location in Arizona. On October 10, 1961, the Michigan State University Museum took custody of these human remains and an associated funerary object as part of the Boudeman Collection. The donor was Mrs. Donna Boudeman. Her husband, Donald Boudeman, had collected in Alaska, Siberia, and continental North America in the 1920s and 1930s. On May 28, 2019, the human remains were found in Michigan State University's Forensic Anthropology Laboratory, and in July of 2019, the association of a ceramic vessel with the human remains was confirmed. No known individual was identified. The one associated funerary object (2005.59.1) is a Gila crematory urn.

Determinations Made by Michigan State University

Officials of Michigan State University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), 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.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary object and the Ak-Chin Indian Community (previously listed as Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona); Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request Judith Stoddart, Associate Provost for University Collections and Arts Initiatives, Michigan State University, 466 W Circle Drive, East Lansing, MI 48824–1044, telephone (517) 432–2524, email *stoddart@msu.edu,* by October 13, 2020. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary object to The Consulted and Invited Tribes may proceed.

Michigan State University is responsible for notifying The Consulted and Invited Tribes that this notice has been published.

Dated: August 14, 2020.

Melanie O'Brien,

Manager, National Native American Graves Protection and Repatriation Act (NAGPRA) Program.

[FR Doc. 2020–20068 Filed 9–10–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF JUSTICE

Notice of Proposed Administrative Settlement Agreement and Order on Consent for Removal Action Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

On September 1, 2020, the U.S. Department of Justice approved an Administrative Settlement Agreement and Order on Consent for Removal Action (ASAOC) at the Atlas Mill Site in Ouray County, Colorado, between the U.S. Department of Agriculture Forest Service Region 2 and Good Samaritan Trout Unlimited.

The ASAOC is authorized pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Under the terms of the ASAOC, Good Samaritan Trout Unlimited will conduct a non-time critical removal action on 8.8 acres that is contaminated by approximately 26,000 cubic yards of mill tailings and waste rock on the banks of Sneffels Creek in Ouray County, Colorado. Specifically, the Atlas Mine and Mill Site (Site) is located on the Grand Mesa, Uncompahgre and Gunnison National Forest about 8½ miles southwest of Ouray, Colorado, in the Mount Sneffels Mining District. In return for conducting the removal, the United States will provide a covenant not to sue or take administrative action under CERCLA at the Site where cleanup work is occurring.

The publication of this notice opens a period for public comment on the ASAOC. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *In the Matter of Atlas Mill Site, Ouray County, Colorado,* D.J. Ref. No. 90–11–3–09760/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	pubcomment-ees.enrd@usdoj.gov.
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the ASAOC may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the ASAOC upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $24.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Jeffrey Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2020–20084 Filed 9–10–20; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Committee on Equal Opportunities in Science and Engineering (CEOSE) 1173.

Date and Time: October 29, 2020; 1:00 p.m.–5:30 p.m.; October 30, 2020; 10:00 a.m.–3:30 p.m.

Place: National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314 (Virtual).

Type of Meeting: Open.

Contact Person: Dr. Bernice Anderson, Senior Advisor and CEOSE Executive Secretary, Office of Integrative Activities (OIA); National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Contact Information: 703–292–8040/*banderso@nsf.gov.*

Minutes: Meeting minutes and other information may be obtained from the CEOSE Executive Secretary at the above address or the website at *http://www.nsf.gov/od/oia/activities/ceose/index.jsp.*

Purpose of Meeting: To study data, programs, policies, and other information pertinent to the National Science Foundation and to provide advice and recommendations concerning broadening participation in science and engineering.

Agenda

Day 1: October 29, 2020

- Welcome, Introductions, Opening Remarks
- Report of the CEOSE Executive Liaison
- Joint Session with the BIO Advisory Committee
- NSF INCLUDES Update
- Discussion: 2019–2020 CEOSE Report and Plans for the Next Day

Day 2: October 30, 2020

- Welcome and Recap of Day 1
- Discussion: Women, Minorities, and Persons with Disabilities Digest
- Panel: NSB Vision 2030
- Reports of the CEOSE Liaisons
- Discussion with NSF Director and Chief Operating Officer
- NIH Presentation: Community Engagement-American Indian and Alaska Native (AI/AN) Communities
- Announcements, Closing Remarks, and Adjournment

Dated: September 8, 2020.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2020–20090 Filed 9–10–20; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Membership of National Science Foundation's Senior Executive Service Performance Review Board

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation is announcing the members of the Senior Executive Service Performance Review Board.

ADDRESSES: Comments should be addressed to Branch Chief, Executive Services, Division of Human Resource Management, National Science Foundation, Room W15219, 2415 Eisenhower Avenue, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Munz at the above address or (703) 292–2478.

SUPPLEMENTARY INFORMATION: The membership of the National Science Foundation's Senior Executive Service Performance Review Board is as follows:

F. Fleming Crim, Chief Operating Officer, Chairperson

Wonzie Gardner, Chief Human Capital Officer and Office Head, Office of Information and Resource Management

Karen Marrongelle, Assistant Director, Directorate for Education and Human Resources

Suzanne C. Iacono, Office Head, Office of Integrative Activities

Janis Coughlin-Piester, Deputy Office Head, Office of Budget, Finance and Award Management

Joanne Tornow, Assistant Director, Directorate for Biological Sciences

Erwin Gianchandani, Deputy Assistant Director, Directorate for Computer and Information Science and Engineering

Michael Wetklow, Deputy Chief Financial Officer and Division Director, Budget Division

William Malyszka, Division Director, Division of Human Resource Management and PRB Executive Secretary

This announcement of the membership of the National Science Foundation's Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

Dated: September 4, 2020.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2020–20053 Filed 9–10–20; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0194]

Development of NRC's Strategic Plan for Fiscal Years 2022 Through 2026

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment; public meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is requesting comments on its update of the NRC's Fiscal Years (FYs) 2022–2026 Strategic Plan. Specifically, the NRC would like input on the agency's strategic goals, actions to realize those goals, and how to address key challenges and external factors as described in the current agency's Strategic Plan, NUREG 1614, Volume 7, ''Strategic Plan Fiscal Years 2018–2022.'' The information will be used to inform the development of the NRC's FYs 2022–2026 Strategic Plan framework and evidence building and evaluation activities.

DATES: Submit comments by October 13, 2020. Comments received after this date

will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date. Furthermore, the NRC staff will hold a public webinar on September 22, 2020, to receive comments on the upcoming update of the NRC's FYs 2022–2026 Strategic Plan.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0194. Address questions about NRC Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Branch.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Carla Roque-Cruz, Office of the Executive Director for Operations, telephone: 301–415–1455, email: *Carla.Roque-Cruz@nrc.gov,* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0194, when contacting the NRC about the information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0194.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

B. Submitting Comments

Please include Docket ID NRC–2020–0194 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

The NRC is an independent agency established by the Energy Reorganization Act of 1974 that began operations in 1975 as a successor to the licensing and regulatory activities of the Atomic Energy Commission. The NRC's mission is to license and regulate the Nation's civilian use of radioactive materials to provide reasonable assurance of adequate protection of public health and safety and to promote the common defense and security and to protect the environment. In accordance with the Government Performance and Results (GPRA) Modernization Act of 2010, the NRC is required to submit its Strategic Plan to Congress the year following the start of a presidential term.

The Strategic Plan describes how the agency intends to achieve its two strategic goals: (1) Ensure the safe use of radioactive materials, and (2) ensure the secure use of radioactive materials. The plan provides an overview of the NRC's responsibilities and lays out the objectives, strategies, and key activities that will be used to achieve the agency's strategic goals. Moreover, with enactment of the Foundations for Evidence-Based Policymaking Act of 2018 (''Evidence Act'') (5 U.S.C. 312), agency strategic plans are to be supported by the inclusion of a Learning Agenda (*i.e.,* Evidence-Building Plan), which describes the activities agencies will undertake to answer important short-and-long term strategic and operational questions important to achieving the agency's mission. The Evidence Act also requires agencies to conduct and include in their strategic plan's a capacity assessment that will help agencies to assess their ability and infrastructure to carry out evidence building activities like foundational fact finding, performance measurement, policy analysis, and program evaluation, and identifying the data needed to answer those questions.

During the last few years, the NRC has been transforming in order to realize its vision of becoming a modern, risk-informed regulator and be in the best position to continue meeting its important safety and security mission well into the future. Transformation activities will help the NRC keep pace with the highly dynamic, interconnected environment in which it operates, and be prepared to regulate an industry that is innovative and pursuing technologies.

III. Specific Request for Comment

The NRC is interested in obtaining input from stakeholders, including professional organizations and interested individuals. The focus of this request is to gather information that will permit the NRC staff to develop the FYs 2022–2026 Strategic Plan framework.

The NRC does not intend to provide any responses to comments received during the public meeting. The public meeting will be noticed on the NRC's public meeting website at least 10 calendar days before the meeting. Members of the public should monitor the NRC's public meeting website at *http://www.nrc.gov/public-involve/public-meetings/index.cfm.*

The NRC will also post the meeting notice on the Federal Rulemaking website at *http://www.regulations.gov* under Docket ID NRC–2020–0194.

IV. Requested Information and Comments

The NRC is asking the public to comment on potential changes to the NRC's goals, objectives, strategies contributing activities as described in the current FYs 2018–2022 Strategic Plan, and the requirements of the Evidence Act as discussed in Section II of this document. The NRC welcomes comments from the public on any areas that they believe are relevant to these topics, and is particularly interested in receiving input on the following questions:

1. Do you have any specific recommendations or improvements to

consider in the development of the FYs 2022–2026 Strategic Plan?

2. What goals, objectives, or strategies within the NRC's current strategic plan should be added, enhanced, or modified in the FYs 2022–2026 Strategic Plan?

3. What contributing activities should be considered to support the safety and security goals, strategies, and objectives?

4. What external factors, opportunities and challenges should be considered during the development of the FYs 2022–2026 Strategic Plan?

5. As part of the Evidence Act, the NRC will include a learning agenda in the FYs 2022–2026 Strategic Plan. A learning agenda is a systematic plan for identifying and addressing policy questions relevant to the NRC's programs, policies, operations, and regulations. The learning agenda will describe the plan for building evidence to address agency priority questions. What priority question(s) (short- or long-term) do you believe the NRC should be asking within the learning agenda?

6. What improvements can the NRC make in regard to evidence building (*e.g.,* data, analysis, evaluations) to inform strategy, policymaking, program decisions, and regulations?

V. Public Meeting Information

The NRC staff will hold a public webinar on September 22, 2020, to receive comments on the update of the NRC's FYs 2022–2026 Strategic Plan. Additionally, the NRC will discuss the Agency's transformation activities for public input and comment on these activities and continue to seek the views of stakeholders in identifying opportunities to improve the agency's processes, procedures, and products. The webinar will be held online and will offer a telephone line for members of the public to submit comments. A court reporter will be recording all comments received during the webinar. The date and time for the webinar is as follows:

Date	Time	Location
9/22/2020	1:00 p.m. to 4:00 p.m. (EDT)	*Webinar Information:* Webinar address: *https://usnrc.webex.com/usnrc/onstage/g.php?MTID=edb8d9854a356d1c13bfc4f1339244bd1.* *Telephone Access:* Bridgeline: 800–369–1713 Participant Passcode: 5805934.

Persons interested in attending this meeting should monitor the NRC's Public Meeting Schedule website at *https://www.nrc.gov/pmns/mtg* for additional information, the meeting agenda, information on how to provide verbal comments, and access information for the meeting. Participants should register in advance of the meeting by visiting *https://usnrc.webex.com* and using the event number provided above. A confirmation email will be generated providing additional details and a link to the meeting. Those wishing to make verbal comments at the meeting should follow instructions listed on the NRC's Public Meeting Schedule website.

The NRC may post additional materials related to this document, including public comments, on the Federal Rulemaking website. The Federal Rulemaking website allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2020–0194); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

Dated: September 4, 2020.

For the Nuclear Regulatory Commission.

Margaret M. Doane,

Executive Director for Operations.

[FR Doc. 2020–20048 Filed 9–10–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0064]

Information Collection: Collection of Operator Simulator Training Data

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''Collection of Operator Simulator Training Data.''

DATES: Submit comments by November 10, 2020. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0064. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0064 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0064. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2020–0064 on this website.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* A copy of the collection of information and related instructions

may be obtained without charge by accessing ADAMS Accession No. ML17128A343. The supporting statements are available in ADAMS under Accession Nos. ML20178A317 and ML20178A318.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Please include Docket ID NRC–2020–0064 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* Collection of Operator Simulator Training Data.

2. *OMB approval number:* 3150–0234.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* N/A.

5. *How often the collection is required or requested:* Six times per year.

6. *Who will be required or asked to respond:* All holders of, or applicants for, a power reactor operating license under part 50 of title 10 of the Code of Federal Regulations (10 CFR), ''Domestic Licensing of Production and Utilization Facilities,'' except those that have certified that they have permanently ceased operations and have permanently removed all fuel from the reactor vessel.

All holders of, or applicants for, a power reactor combined license under 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.''

7. *The estimated number of annual responses:* 32.

8. *The estimated number of annual respondents:* 5.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 148 hours.

10. *Abstract:* This information collection request is to the holders of, or applicants for, a power reactor operating license under 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities,'' except those that have certified that they have permanently ceased operations and have permanently removed all fuel from the reactor vessel, and the holders of, or applicants for, a power reactor combined license under 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.''

This information collection is for the specified licensees to use the NRC-developed Scenario Authoring, Characterization and Debriefing Application (SACADA) software for their operator simulator training. The SACADA system was developed to collect licensed operator simulator training data to inform human reliability analysis (HRA) and to facilitate operator simulator training. The SACADA software can be used to author the simulation scenarios, facilitate the post simulation debriefing on crew performance, guide performance analysis, and generate various types of reports. The information entered into the SACADA database can be used to improve simulator training effectiveness and HRA. The South Texas Project Nuclear Operating Company (STPNOC) has used the software for its operator simulator training since 2012 and highly regards the software. The NRC welcomes more licensees to partner with the NRC to use the software. The licensees' participation in the information collection is voluntary. In the partnership, the NRC provides the SACADA software license, training, and technical support to the participating licensees, and the participating licensees grant NRC access to analyze the data to improve the NRC's HRA techniques. An agreement will be developed to specify the details.

To participate in the information collection, the licensee will notify the NRC contact that it is interested in evaluating the software. Then the NRC will provide additional information including an onsite briefing. If the licensee thinks the SACADA software could be beneficial, the NRC will provide a training session, the software license, and technical support for the licensee to pilot the use of the software in its simulator training. After the pilot study, the licensee will decide whether or not to partner with the NRC on the information collection. Either party can terminate the agreement at any time.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the estimate of the burden of the information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: September 4, 2020.

For the Nuclear Regulatory Commission (NRC).

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2020–20042 Filed 9–10–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0126]

Information Collection: Solicitation of Non-Power Reactor Operator Licensing Examination Data

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''Solicitation of Non-Power Reactor Operator Licensing Examination Data.''

DATES: Submit comments by November 10, 2020. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0126. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0126 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0126. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2020–0126 on this website.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The supporting statement and Non-Power Operator Licensing Email are available in ADAMS under Accession Nos. ML20178A337 and ML20178A335.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Please include Docket ID NRC–2020–0126 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* Solicitation of Non-Power Reactor Operator Licensing Examination Data.
2. *OMB approval number:* 3150–0235.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* N/A.
5. *How often the collection is required or requested:* Annually.
6. *Who will be required or asked to respond:* All holders of operating licenses for non-power reactors under the provision of part 50 of title 10 of the *Code of Federal Regulations,* ''Domestic Licensing of Production and Utilization Facilities,'' except those that have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel.
7. *The estimated number of annual responses:* 31.
8. *The estimated number of annual respondents:* 31.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 31
10. *Abstract:* The NRC annually request all non-power reactor licensees and applicants for an operating license to voluntarily send to the NRC: (1) Their projected number of candidates for initial operator licensing examinations and (2) the estimated dates of the examinations. This information is used to plan budgets and resources in regard to operator examination scheduling in order to meet the needs of the non-power nuclear community.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: September 4, 2020.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2020–20044 Filed 9–10–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0124]

Information Collection: Part 20 Respirator Protection Exemption Request for Non-Power Reactors/RTR And Part 20 Respirator Protection Exemption Request for Power Reactors Online Forms

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently

submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Part 20 Respirator Protection Exemption Request for Non-Power Reactors/RTR And Part 20 Respirator Protection Exemption Request for Power Reactors Online Forms.''

DATES: Submit comments by October 13, 2020. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0124 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0124. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2020–0124 on this website.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession Nos. ML20141L572 and ML20141L573. The supporting statement is available in ADAMS under Accession No. ML20170A357.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a renewal of an existing collection of information to OMB for review entitled, ''Part 20 Respirator Protection Exemption Request for Non-Power Reactors/RTR And Part 20 Respirator Protection Exemption Request for Power Reactors Online Forms.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on May 27, 2020, 85 FR 31816.

1. *The title of the information collection:* Part 20 Respirator Protection Exemption Request for Non-Power Reactors/RTR And Part 20 Respirator Protection Exemption Request for Power Reactors Online Forms.
2. *OMB approval number:* 3150–0014.
3. *Type of submission:* Extension.
4. *The form number if applicable:* There is no form number for the online submission forms.
5. *How often the collection is required or requested:* On Occasion.
6. *Who will be required or asked to respond:* All holders of, and certain applicants for, nuclear power plant construction permits and operating licenses under the provisions of part 50 of title of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities'' who seek exemptions from the medical evaluation frequency and fit-testing frequency requirements specified in 10 CFR 20.1703(c)(5)(iii) and 10 CFR 20.1703(c)(6) as allowed by 10 CFR 20.2301 ''Applications for exemptions.''
7. *The estimated number of annual responses:* 60.
8. *The estimated number of annual respondents:* 60.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 120.
10. *Abstract:* The NRC requested an emergency review of this information collection in order to add this form to the previously approved information collection OMB Control Number 3150–0014 for a period of 6 months. The purpose of this information collection is to request an extension of the approval of the Part 20 Respirator Protection Exemption Request for Non-Power Reactors/RTR and the Part 20 Respirator Protection Exemption Request for Power Reactors Online Forms. These forms simplify the filing the exemption requests because the existing system may be burdensome for licensees under current conditions. Under the existing collection under OMB Control No. 3150–0014, licensees are already able to seek exemptions from the requirements of 10 CFR part 20, ''Standards for Protection Against Radiation.'' This information collection only addresses the incremental burden change to this existing clearance due to the form and not the total burden for the clearance.

10 CFR part 20 contains specific requirements for respiratory protection. Due to the impacts of the COVID–19 public health emergency (PHE), the NRC will also consider exemption requests for the medical evaluation frequency and fit-testing frequency requirements specified in 10 CFR 20.1703(c)(5)(iii) and 10 CFR 20.1703(c)(6); these exemptions would allow delay of these requirements during the COVID–19 PHE as allowed by 10 CFR 20.2301 ''Applications for exemptions.''

Dated: September 4, 2020.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2020–20043 Filed 9–10–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0196]

Intent and Scope of the Physical Protection Upgrade Rule Requirements for Fixed Sites

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; withdrawal.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is withdrawing Regulatory Guide (RG) 5.61, ''Intent and Scope of the Physical Protection Upgrade Rule Requirements for Fixed Sites.'' This document is being withdrawn because the information in RG 5.61 is no longer needed. The reasons for the withdrawal are described in more detail under the ''Background'' Section of this document.

DATES: The withdrawal of RG 5.61 takes effect on September 11, 2020.

ADDRESSES: Please refer to Docket ID NRC–2020–0196 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0196. Address questions about NRC docket IDs in *regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it available in ADAMS) is provided the first time that a document is referenced. The basis for withdrawal of RG 5.61 is available in ADAMS under Accession No. ML20225A307.

FOR FURTHER INFORMATION CONTACT: Tim Harris, Office of Nuclear Security Incident Response, telephone: 301–287–3594, email: *Tim.Harris@nrc.gov and* Mekonen Bayssie, Office of Nuclear Regulatory Research, telephone: 301–415–1669, email: *Mekonen.Bayssie@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background

Regulatory Guide 5.61 was published in July 1980 to provide guidance to affected licensees in revising their physical protection plans in response to the requirements in part 73 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Physical Protection of Plants and Materials'' (November 28, 1979; 44 FR 68184). The RG explains the link between the performance capabilities provided in 10 CFR 73.45 and the fixed site physical protection system requirements in 10 CFR 73.46. Future applicants and licensees may use other more relevant regulatory guidance documents to meet those regulatory requirements.

The NRC is withdrawing RG 5.61, ''Intent and Scope of the Physical Protection Upgrade Rule Requirements for Fixed Sites,'' because the guide is no longer needed for several reasons. First, the regulatory requirements in 10 CFR 73.45 and 73.46 have not changed since 1979 and are well understood by existing licensees. Second, no new licensees that would possess and use formula quantities of strategic special nuclear material are expected in the foreseeable future. Third, the RG is predominately explanatory of the rulemaking rather than guidance on how to comply with the applicable requirements. Lastly, other guidance on developing security plans to meet the physical protection requirements in 10 CFR 73.46 are available. The basis for withdrawal of RG 5.61 is available in ADAMS under Accession No. ML20225A307.

II. General Consideration

The withdrawal of RG 5.61 does not alter any prior or existing NRC licensing approvals, or the acceptability of licensee commitments made regarding the withdrawn guidance. Although RG 5.61 is withdrawn, current licensees referencing this RG may continue to do so, and withdrawal does not affect any existing licenses or agreements. However, by withdrawing RG 5.61, the NRC no longer approves use of the guidance in future requests or applications for NRC licensing actions.

Dated: September 1, 2020.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2020–19713 Filed 9–10–20; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89774; File No. SR–PEARL–2020–12]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX PEARL Fee Schedule

September 4, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 25, 2020, MIAX PEARL, LLC (''MIAX PEARL'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX PEARL Fee Schedule (the ''Fee Schedule'') to increase the number of additional Limited Service MIAX Express Order Interface (''MEO'') Ports available to Market Makers.[3] The Exchange does not propose to amend the fees for additional Limited Service MEO Ports.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Market Maker'' or ''MM'' means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of the Exchange's Rules. *See* Exchange Rule 100.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to offer two (2) additional Limited Service MEO Ports to Market Makers. The Exchange does not propose to amend the fees charged for the additional Limited Service MEO Ports.

The Exchange initially filed the proposal to increase the number of Limited Service MEO Ports available to Market Makers on June 30, 2020, with no change to the actual fee amounts being charged.[4] The First Proposed Rule Change was published for comment in the **Federal Register** on July 20, 2020.[5] On August 25, 2020, the Exchange withdrew the First Proposed Rule Change.[6]

The Exchange notes that the First Proposed Rule Change did not receive any comment letters; however, the Exchange has determined to refile its proposal to increase the number of Limited Service MEO Ports available to Market Makers (without increasing the actual fee amounts) to provide further clarification regarding the Exchange's annual cost for providing additional Limited Service MEO Ports.

The Exchange currently offers different options of MEO Ports depending on the services required by an Exchange Member,[7] including a Full Service MEO Port-Bulk,[8] a Full Service MEO Port-Single,[9] and a Limited Service MEO Port.[10] Currently, a Member may be allocated two (2) Full-Service MEO Ports of either type, Bulk and/or Single, per Matching Engine, and up to eight (8) Limited Service MEO Ports, per Matching Engine. The two (2) Full-Service MEO Ports that may be allocated per Matching Engine to a Member currently may consist of: (a) Two (2) Full Service MEO Ports—Bulk; or (b) two (2) Full Service MEO Ports—Single. The Exchange also has a third option, option (c), which permits a Member to have one (1) Full Service MEO Port—Bulk, and one (1) Full Service MEO Port—Single.

The Exchange currently provides Market Makers the first two (2) requested Limited Service MEO Ports free of charge and charges $200 per month for Limited Service MEO Ports three (3) and four (4), $300 per month for Limited Service MEO Ports five (5) and six (6), and $400 per month for Limited Service MEO Ports seven (7) and eight (8). These fees have been unchanged since they were adopted in 2018.[11]

The Exchange originally added the Limited Service MEO Ports to enhance the MEO Port connectivity made available to Market Makers. Limited Service MEO Ports have been well received by Market Makers since their addition. The Exchange now proposes to offer to Market Makers the ability to purchase an additional two (2) Limited Service MEO Ports per matching engine over and above the current six (6) additional Limited Service MEO Ports per matching engine that are available for purchase by Market Makers. The Exchange proposes making a corresponding change to the text in the Port Fee table and to the text below the Port Fee table in Section 5(d) of the Fee Schedule to specify that Market Makers will now be limited to purchasing eight (8) additional Limited Service MEO Ports per matching engine, for a total of ten (10) per matching engine. All fees related to MEO Ports shall remain unchanged and Market Makers that voluntarily purchase the additional ninth or tenth Limited Service MEO Ports will be subject to the existing $400 monthly fee per port that is charged to Market Makers that request a seventh or eighth Limited Service MEO Port.

The Exchange is increasing the number of additional Limited Service MEO Ports because the Exchange is expanding its network. This network expansion is necessary due to increased customer demand and increased volatility in the marketplace, both of which have translated into increased message traffic rates across the network. Consequently, this network expansion, which increases the number of switches supporting customer facing systems, is necessary in order to provide sufficient access to new and existing Members, to maintain a sufficient amount of network capacity head-room, and to continue to provide the same level of service across the Exchange's low-latency, high-throughput technology environment.

Currently, the Exchange has 8 network switches that support the entire customer base of MIAX PEARL. The Exchange plans to increase this to 10 switches, which will increase the number of available customer ports by 25%. This increase in the number of available customer ports will enable the Exchange to continue to provide sufficient and equal access to the MIAX PEARL System to all Members. Absent the proposed increase in available MEO Ports, the Exchange projects that its current inventory will be depleted and it will lack sufficient capacity to continue to meet Members' access needs.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[12] in general, and furthers the objectives of Section 6(b)(5) of the Act[13] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that its proposal is consistent with the objectives of Section 6(b)(5) of the Act[14] because the proposed additional Limited Service MEO Ports will be

[4] *See* Securities Exchange Act Release No. 89316 (July 14, 2020), 85 FR 43898 (July 20, 2020) (SR–PEARL–2020–09) (the ''First Proposed Rule Change'').

[5] *Id.*

[6] *See* Comment Letter from Christopher Solgan, VP, Senior Counsel, the Exchange, dated August 24, 2020, notifying the Commission that the Exchange will withdraw the First Proposed Rule Change.

[7] The term ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of these Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[8] ''Full Service MEO Port—Bulk'' means an MEO port that supports all MEO input message types and binary bulk order entry. *See* the Definitions Section of the Fee Schedule.

[9] ''Full Service MEO Port—Single'' means an MEO port that supports all MEO input message types and binary order entry on a single order-by-order basis, but not bulk orders. *See* the Definitions Section of the Fee Schedule.

[10] ''Limited Service MEO Port'' means an MEO port that supports all MEO input message types, but does not support bulk order entry and only supports limited order types, as specified by the Exchange via Regulatory Circular. *See* the Definitions Section of the Fee Schedule.

[11] *See* Securities Exchange Act Release No. 83867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR–PEARL–2018–07).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(5).

available to all Market Makers and the current fees for the additional Limited Service MEO Ports apply equally to all Market Makers regardless of type, and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange is proposing to increase the number of available Limited Service MEO Ports because the Exchange is expanding its network. This network expansion is necessary due to increased customer demand and increased volatility in the marketplace, both of which have translated into increased message traffic rates across the network. Consequently, this network expansion, which increases the number of switches supporting customer facing systems, is necessary in order to provide sufficient and equal access to new and existing Members, to maintain a sufficient amount of network capacity head-room, and to continue to provide the same level of service across the Exchange's low-latency, high-throughput technology environment.

Currently, the Exchange has 8 network switches that support the entire customer base of MIAX PEARL. The Exchange plans to increase this to 10 switches, which will increase the number of available customer ports by 25%. This increase in the number of available customer ports will enable the Exchange to continue to provide sufficient and equal access to MIAX PEARL Systems for all Members. Absent the proposed increase in available MEO Ports, the Exchange projects that its current inventory will be depleted and it will lack sufficient capacity to continue to meet Members' access needs. Further, the Exchange notes that decision of whether to purchase two additional Limited Service MEO Ports is completely optional and it is a business decision for each Market Maker to determine whether the additional Limited Service MEO Ports are necessary to meet their business requirements.

The Exchange further believes that the availability of the additional Limited Service MEO Ports is equitable and not unfairly discriminatory because it will enable Market Makers to maintain uninterrupted access to the MIAX PEARL System and consequently enhance the marketplace by helping Market Makers to better manage risk, thus preserving the integrity of the MIAX markets, all to the benefit of and protection of investors and the public as a whole.

The Exchange also believes that its proposal is consistent with Section 6(b)(4) of the Act because only Market Makers that voluntarily purchase the two additional Limited Service MEO Ports will be charged the existing $400 monthly fee per port applicable to ports seven (7) and eight (8), which has been unchanged since adopted 2018.[15] The Exchange does not propose to amend the fees applicable to additional Limited Service MEO Ports which have been previously filed with the Commission and become effective after notice and public comment.[16] As stated above, the Exchange proposes to expand its network by making available two additional Limit Service MEO Ports due to increased customer demand and increased volatility in the marketplace, both of which have translated into increased message traffic rates across the network. The cost to expand the network in this manner is greater than the revenue the Exchange anticipates the additional Limited Service MEO Ports will generate. Specifically, the Exchange estimates it will incur a one-time cost of approximately $175,000 in capital expenditures on hardware, software, and other items to expand the network to make available the two additional Limited Service MEO Ports. This estimated cost also includes expense associated with providing the necessary engineering and support personnel to transition those Market Makers who wish to acquire the two additional Limited Service MEO Ports.

The Exchange projects that approximately six or seven Market Makers will elect to purchase the additional Limited Service MEO Ports, which will be subject to the existing monthly fee of $400 per port applicable to ports seven (7) and eight (8). Accordingly, the Exchange projects that the annualized revenue from the two additional Limited Service MEO Ports will be approximately $67,200 (assuming that seven Market Makers purchase the two additional Limited Service MEO Ports). Therefore, the Exchange's cost in expanding its network to provide its Members with the two additional Limited Service MEO Ports—approximately $175,000—is clearly greater than the anticipated annualized revenue the Exchange expects to bring in from the two additional Limited Service MEO Ports—approximately $67,200. Further, the Exchange anticipates it will incur approximately $88,636 in annual ongoing operating expense in order to support the expanded network and the two additional Limited Service MEO Ports. Thus, the Exchange is not generating a supra-competitive profit from the provision of these two additional Limited Service MEO Ports. In fact, even excluding the one-time capital expenditure cost of $175,000, the Exchange anticipates generating an annual loss from the provision of these two additional Limited Service MEO Ports of ($26,136)—that is, $67,200 in revenue minus $88,636 in expense equates to a loss of ($26,136) to support the additional ports annually.

Subjecting the two additional Limited Service MEO Ports to the existing $400 monthly fee per port applicable to ports seven (7) and eight (8) is also designed to encourage Market Makers to be efficient with their port usage, thereby resulting in a corresponding increase in the efficiency that the Exchange would be able to realize in managing its aggregate costs for providing the two additional ports. There is no requirement that any Market Maker maintain a specific number of Limited Service MEO Ports and a Market Maker may choose to maintain as many or as few of such ports as each Market Maker deems appropriate.

Finally, subjecting the two additional Limited Service MEO Ports to the existing $400 monthly fee applicable to ports seven (7) and eight (8) will help to encourage Limited Service MEO Port usage in a way that aligns with the Exchange's regulatory obligations. As a national securities exchange, the Exchange is subject to Regulation Systems Compliance and Integrity (''Reg. SCI'').[17] Reg. SCI Rule 1001(a) requires that the Exchange establish, maintain, and enforce written policies and procedures reasonably designed to ensure (among other things) that its Reg. SCI systems have levels of capacity adequate to maintain the Exchange's operational capability and promote the maintenance of fair and orderly markets.[18] By encouraging Members to be efficient with their usage of Limited MEO Ports, the current fee that will continue to apply to the proposed two (2) additional Limited Service MEO Ports will support the Exchange's Reg. SCI obligations in this regard by ensuring that unused ports are available to be allocated based on individual Members needs and as the Exchange's overall order and trade volumes increase.

B. Self-Regulatory Organization's Statement on Burden on Competition

MIAX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

[15] *See supra* note 11.

[16] *Id.*

[17] 17 CFR 242.1000–1007.

[18] 17 CFR 242.1001(a).

The proposed rule change will not impose a burden on competition but will benefit competition by enhancing the Exchange's ability to compete by providing additional services to market participants. It is not intended to address a competitive issue. Rather, the proposed increase in the number of additional Limited Service MEO Ports available per Market Maker is intended to allow the Exchange to increase its inventory of MEO Ports to meet increased Member demand. The Exchange is increasing the number of available additional Limited Service MEO Ports in response to Market Maker demand for increased connectivity to the MIAX PEARL System. The Exchange's current inventory may soon be insufficient to meet those needs. Again, the Exchange is not proposing to amend the fees for MEO Ports, just to increase the number of MEO Ports available per Market Maker. The Exchange also does not believe that the proposed rule change will impose a burden on intramarket competition because the two additional Limited Service MEO Ports will be available to all Market Makers on an equal basis. It is a business decision of each Market Maker whether to pay for the additional Limited Service MEO Ports.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[19] and Rule 19b–4(f)(2)[20] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2020–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–PEARL–2020–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2020–12 and should be submitted on or before October 2, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–20022 Filed 9–10–20; 8:45 am]

BILLING CODE 8011–01–P

[19] 15 U.S.C. 78s(b)(3)(A)(ii).

[20] 17 CFR 240.19b–4(f)(2).

[21] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2020–0052]

Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes an extension of an OMB-approved information collection.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov*

(SSA), Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov*

Or you may submit your comments online through *www.regulations.gov,* referencing Docket ID Number [SSA–2020–0052].

SSA submitted the information collection below to OMB for clearance. Your comments regarding this information collection would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than October 13, 2020. Individuals can obtain copies of this OMB clearance package by writing to *OR.Reports.Clearance@ssa.gov.*

Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery—0960–0788. SSA, as part of our continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on the ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery'' for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*). We developed this

collection as part of a Federal Government-wide effort to streamline the process for seeking feedback from the public on service delivery.

Under the auspices of Executive Order 12862, Setting Customer Service Standards, SSA conducts multiple satisfaction surveys each year. This proposed information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with SSA's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative, and actionable communications between SSA and our customers and stakeholders.

The solicitation of feedback will target areas such as: Timeliness; appropriateness; accuracy of information; courtesy; efficiency of service delivery; and resolution of issues with service delivery. We will assess responses to plan and inform efforts to improve or maintain the quality of service offered to the public. If we do not collect this information, we would not have access to vital feedback from customers and stakeholders on SSA's services.

We will only submit a collection for approval under this generic clearance if it meets the following conditions: (1) The collections are voluntary; (2) the collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government; (3) the collections are non-controversial and do not raise issues of concern to other Federal agencies; (4) any collection targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future; (5) we collect personally identifiable information (PII) only to the extent necessary and we do not retain it; (6) we will use information gathered only internally for general service improvement and program management purposes and we will not release it outside of the agency; (7) we will not use information we gather for the purpose of substantially informing influential policy decisions; and (8) information we gather will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. The respondents are recipients of SSA services (including most members of the public), professionals, and individuals who work on behalf of SSA beneficiaries.

Type of Request: Extension of an OMB-approved information collection.

Affected Public: Individuals and households, businesses and organizations, State, Local or Tribal government.

Total Estimated Number of Respondents: 5,454,212.

Below we provide projected average estimates for the next three years:

Annual Respondents: 1,818,404.

Annual Responses: 1,818,404.

Frequency of Response: Once per request.

Average Minutes per Response: 13 minutes (12.6912).

Estimated Annual Burden: 384,629 hours.

Dated: September 4, 2020.

Naomi Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2020–20047 Filed 9–10–20; 8:45 am]

BILLING CODE 4191–02–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 167 (Sub–No. 1189X)]

Consolidated Rail Corporation—Abandonment Exemption—in Hudson County, N.J.

AGENCY: Surface Transportation Board.

ACTION: Notice of Availability of the Draft Supplemental Environmental Assessment and request for comments.

SUMMARY: Notice is hereby given of the availability of the Draft Supplemental Environmental Assessment.

DATES: The Draft Supplemental Environmental Assessment will be available for public review and comment on September 10, 2020. Comments are due on October 19, 2020.

ADDRESSES: Comments on this Draft Supplemental Environmental Assessment should be submitted electronically on the STB's website: *https://prod.stb.gov.* Please refer to Docket No. AB 167 (Sub–No. 1189X) in all comments submitted.

FOR FURTHER INFORMATION CONTACT: Adam Assenza, 202–245–0301, *Adam.Assenza@stb.gov.*

SUPPLEMENTARY INFORMATION: On September 10, 2020, the Surface Transportation Board's (Board) Office of Environmental Analysis (OEA) issued a Draft Supplemental Environmental Assessment (DSEA) in the pending rail-line abandonment proceeding, *Consolidated Rail Corporation-Abandonment Exemption-in Hudson County, N.J.,* Docket No. AB 167 (Sub–No. 1189X), in which Conrail seeks authority to abandon the Harsimus Branch, a 1.36-mile rail line in Jersey City, N.J. Following the issuance of a Draft Environmental Assessment (EA) in 2009, the Board stayed the abandonment proceeding for several years while the parties litigated jurisdictional issues in court. The DSEA updates and addresses changed circumstances and new information since the issuance of the Draft EA, responds to comments on the Draft EA, and provides further opportunity for public comment on environmental issues under the National Environmental Policy Act (NEPA)

(historic issues are being considered in a separate process). Comments on the DSEA may be submitted electronically through the Board's website and are due on October 19, 2020.

Following receipt of comments on this DSEA, OEA will prepare and issue a Final EA. The issuance of the Final EA will conclude the NEPA review process for this abandonment proceeding. Once OEA completes both the Section 106 process and the NEPA review, the Board will consider the recommendations from OEA concerning the effects of the proposed abandonment on the environment and historic resources, will balance that information with the transportation merits of the proceeding, and will issue a final decision approving, denying, or approving with the imposition of conditions a grant of abandonment authority to Conrail.

Dated: September 8, 2020.

By the Board, Victoria Ruston, Director, Office of Environmental Analysis.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2020–20081 Filed 9–10–20; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Drone Advisory Committee (DAC); Notice of Public Meeting

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the Drone Advisory Committee.

DATES: The meeting will be held on October 22, 2020, between 9:00 a.m. to 4:00 p.m. Eastern Time.

Requests for reasonable accommodations must be received by October 8, 2020.

Requests to submit written materials to be reviewed during the meeting must be received no later than October 15, 2020.

ADDRESSES: The meeting will be held virtually. Members of the public who wish to observe the virtual meeting can access the livestream from either of the following FAA social media platforms on the day of the event, *https://www.facebook.com/FAA* or *https://www.youtube.com/FAAnews.* For copies of meeting minutes along with all other information please visit the DAC internet website at *https://www.faa.gov/uas/programs_partnerships/drone_advisory_committee/.*

FOR FURTHER INFORMATION CONTACT: Gary Kolb, UAS Stakeholder & Committee Liaison, Federal Aviation Administration, U.S. Department of Transportation, at *gary.kolb@faa.gov* or 202–267–4441. Any committee related request or request for reasonable accommodations should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The DAC was created under the Federal Advisory Committee Act (FACA), in accordance with Title 5 of the United States Code (5 U.S.C. App. 2) to provide the FAA with advice on key UAS integration issues by helping to identify challenges and prioritize improvements.

II. Agenda

At the meeting, the agenda will cover the following topics:

- Official Statement of the Designated Federal Officer
- Approval of the Agenda and Previous Meeting Minutes
- Opening Remarks
- FAA Update
- Industry-Led Technical Topics
- New Business/Agenda Topics
- Closing Remarks
- Adjourn

Additional details will be posted on the DAC internet website address listed in the **ADDRESSES** section at least 15 days in advance of the meeting.

III. Public Participation

The meeting will be open to the public and livestreamed. Members of the public who wish to observe the virtual meeting can access the livestream from either of the following FAA social media platforms on the day of the event, *https://www.facebook.com/FAA* or *https://www.youtube.com/FAAnews.* The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by October 8, 2020.

The FAA is not accepting oral presentations at this meeting due to time constraints. Written statements submitted by the deadline will be provided to the DAC members before the meeting. Any member of the public may submit a written statement to the committee at any time.

Issued in Washington, DC.

Erik W. Amend,

Manager, Executive Office, AUS–10, Federal Aviation Administration.

[FR Doc. 2020–20082 Filed 9–10–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2020–0013]

Agency Information Collection Activities: Request for Comments on the Renewal of a Previously Approved Information Collection

Correction

In Notice document 2020–15020, appearing on pages 42065–42066, in the issue of Monday July 13, 2020, make the following correction:

On page 42065, in the second column, in the heading ''**DATES:**'', the date reading ''July 13, 2020'' should read ''September 11, 2020''.

[FR Doc. C1–2020–15020 Filed 9–10–20; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2020–0027–N–20]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA seeks approval of the Information Collection Request (ICR) abstracted below. Before submitting this ICR to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified in the ICR.

DATES: Interested persons are invited to submit comments on or before November 10, 2020.

ADDRESSES: Submit comments and recommendations for the proposed ICR to Ms. Hodan Wells, Information Collection Clearance Officer at email: *hodan.wells@dot.gov* or telephone: (202) 493–0440. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in

response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days' notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. Specifically, FRA invites interested parties to comment on the following ICR regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes that soliciting public comment may reduce the administrative and paperwork burdens associated with the collection of information that Federal regulations mandate. In summary, FRA reasons that comments received will advance three objectives: (1) Reduce reporting burdens; (2) organize information collection requirements in a ''user-friendly'' format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Railroad Operating Rules.

OMB Control Number: 2130–0035.

Abstract: The collection of information associated with Title 49 Code of Federal Regulations (CFR) parts 217 and 218, *Railroad Operating Rules and Practices,* require railroads to file with FRA copies of their operating rules, timetables, timetable special instructions, and subsequent amendments. The regulations also require railroads to retain copies of these documents at their systems headquarters and make these documents available to FRA upon request. Additionally, 49 CFR 220.21(b) prescribes the collection of information by requiring railroads to retain one copy of their current operating rules with respect to radio communications and one copy of each subsequent amendment. Through these rules, FRA learns the condition of operating rules and practices of trains and instructions railroads provide their employees on operating practices.

Type of Request: Extension with change (revised estimates) of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Respondent Universe: 765 railroads.

Frequency of Submission: On occasion.

Reporting Burden:

CFR Section [1]	Respondent universe	Total annual responses	Average time per responses	Total annual burden hours	Total cost equivalent [2]
217.7(a)—Operating rules; filing and recordkeeping—Filing of code of operating rules, timetables, and timetable special instructions by Class I, Class II, Amtrak, and commuter railroads with FRA.	2 new railroads	2 documents	1 hour	2 hours	$154
—(b) Amendments to code of operating rules, timetables, and timetable special instructions by Class I, Class II, Amtrak, and commuter railroads with FRA.	53 railroads	312 revised documents.	20 minutes	104 hours	8,008
—(c) Class III and other railroads—Copy of code of operating rules, timetables, and timetable special instructions at system headquarters.	2 new railroads	2 documents	1 hour	2 hours	154
—(c) Class III and other railroads—Amendments to code of operating rules, timetables, and timetable special instructions at system headquarters.	798 railroads	1,596 copies	15 minutes	399 hours	30,723
217.9(b)(2)—Program of operational tests and inspections; recordkeeping—Written records documenting qualification of each railroad testing officer.	765 railroads	4,732 records	2 minutes	158 hours	12,166
—(c) Written program of operational tests and inspections.	2 new railroads	2 programs	10 hours	20 hours	2,300
—(d)(1) Records of operational tests/inspections.	765 railroads	9,120,000 test records and updates.	5 minutes	760,000 hours	58,520,000
—(d)(2) Railroad copy of current program operational tests/inspections—Amendments.	53 railroads	159 program revisions.	70 minutes	186 hours	14,322
—(e)(1)(i) Written quarterly review of operational tests/inspections by RRs other than passenger RRs.	8 Amtrak + Class I railroads.	32 reviews	2 hours	64 hours	4,928
—(e)(1)(ii) 6-month review of operational tests/inspections/naming of officer.	7 Class I railroads	14 reviews	2 hours	28 hours	2,156
—(e)(2) 6-month review by passenger railroads designated officers of operational testing and inspection data.	35 Amtrak + passenger railroads.	70 reviews	2 hours	140 hours	10,780

CFR Section [1]	Respondent universe	Total annual responses	Average time per responses	Total annual burden hours	Total cost equivalent [2]
—(e)(3) Records of periodic reviews	50 railroads	116 records	1 minute	2 hours	154
—(f)–(g) Annual summary of operational tests and inspections.	50 railroads	50 summary records.	1 hour	50 hours	3,850
—(h)(1)(i) RR amended program of operational tests/inspections.	765 railroads	6 revised programs.	30 minutes	3 hours	231
—(h)(1)(ii) FRA disapproval of RR program of operational tests/inspections and RR written response in support of program.	765 railroads	6 supporting documents.	1 hour	6 hours	462
218.97(c)(1) and (c)(4)—RR employee good faith challenge of RR directive.	10 workers	10 gd. faith challenges.	15 minutes	3 hours	231
—(c)(5) RR resolution of employee good faith challenge.	2 new railroads	5 responses	15 minutes	1 hour	77
—(d)(1) RR officer immediate review of unresolved good faith challenge.	2 new railroads	3 reviews	30 minutes	2 hours	154
—(d)(2) RR officer explanation to employee that Federal law may protect against employer retaliation for refusal to carry out work if employee refusal is a lawful, good faith act.	2 new railroads	3 answers	15 minutes	1 hour	77
—(d)(3) Employee written/electronic protest of employer final decision.	2 new railroads	3 written protests	15 minutes	1 hour	77
—(d)(3) Employee copy of protest	2 new railroads	3 copies	1 minute	0.1 hour	8
—(d)(4) Employer further review of good faith challenge after employee written request.	2 new railroads	2 further reviews	15 minutes	0.5 hours	39
—(d)(4) RR verification decision to employee in writing.	2 new railroads	2 decisions	15 minutes	0.5 hours	39
—(e) Recordkeeping and record retention—Employer's copy of written procedures at division headquarters.	2 new railroads	2 copies	5 minutes	0.2 hours	15
218.99(a)—Shoving or pushing movement—RR operating rule complying with section's requirements.	2 new railroads	2 rule modifications.	1 hour	2 hours	154
218.101(a)–(c)—Leaving equipment in the clear—Operating rule that complies with this section.	2 new railroads	2 rule modifications.	30 minutes	1 hour	77
218.103(a)(1)—Hand-Operated Switches—Operating Rule that Complies with this section.	2 new railroads	2 rule modifications.	30 minutes	1 hour	77
Total	765 railroads	9,257,138 responses.	N/A	772,010 hours	59,445,553

[1] Note: The current inventory estimates a total burden of 4,791,614 hours while the requesting inventory estimates a total burden of 772,010 hours. There is no change in the method of the collection. However, FRA determined some of the estimates were double counted and/or outdated, while other estimates were not PRA requirements, thus leading to the increased figures in the current inventory, which were decreased accordingly in this notice. Also, totals may not add due to rounding.

[2] The dollar equivalent cost is derived from the Surface Transportation Board's Full Year Wage A&B data series using the appropriate employee group hourly wage rate that includes a 75-percent overhead charge. The hourly wage rate used is $77 per hour ($44.27 * 1.75 = $77).

Total Estimated Annual Responses: 9,257,138.

Total Estimated Annual Burden: 772,010 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $59,445,553.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Brett A. Jortland,

Deputy Chief Counsel.

[FR Doc. 2020–20034 Filed 9–10–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2020–0071]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Under part 235 of title 49 of the Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that on August 10, 2020, Norfolk Southern Corporation (NS) petitioned the Federal Railroad Administration (FRA) seeking approval to discontinue or modify a signal

system. FRA assigned the petition Docket Number FRA–2020–0071.

Applicant: Norfolk Southern Corporation, T.A. Phillips, Senior Director—C & S Operations, 1200 Peachtree Street NE, Atlanta, GA 30309.

Specifically, NS requests permission to discontinue the traffic control system (TCS) on the Wolf Creek (WC) Branch Line of the Pocahontas Division, from milepost (MP) WC 0.0 to MP WC 22.4.

This discontinuance will include control points (CP) at Pilgrim, Peter Cave, Pigeon Roost, McClure, Bluebird, and Pevler, and four automatic signals. A new operative approach signal will be placed at MP WC 1.4 in approach to the CP Wolf Creek. All slide fences within the application limits will be retired. The main track between MP WC 0.0 and WC 22.4 will be converted to NS Rule 171 operation. The signaled sidings within the application limits at CP Pilgrim, Peter Cave, Pigeon Roost, and McClure will be made non-controlled, other than main track.

NS states that train operations in this area no longer support the need for TCS. The Wolf Creek Line is being operated under NS Operating Rule 292, Rusty Rail.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation (DOT), 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by October 26, 2020 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2020–20085 Filed 9–10–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Limitation on Claims for Judicial Review of Actions by FRA and Other Federal Agencies

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice announces final actions taken by the Federal Railroad Administration (FRA) and other agencies relating to the Long Bridge Project (Project) consistent with section (l) of Efficient Environmental Reviews for Project Decisionmaking.

DATES: By this notice, FRA is advising the public of final agency actions subject to 23 U.S.C. 139(l). A claim seeking judicial review of such actions for the railroad project described below will be barred unless the claim is filed on or before September 11, 2022. If a Federal law that authorizes judicial review of a claim provides a time period of less than two years for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Pauline Munz, Attorney-Advisor, Federal Railroad Administration, Office of Chief Counsel, (202) 493–0558, *pauline.munz@dot.gov,* or David Valenstein, Senior Advisor—Major Projects & Credit Programs, Federal Railroad Administration, Office of Railroad Policy and Development, (202) 493–6368, *david.valenstein@dot.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that FRA and other Federal agencies have taken final agency actions by issuing certain licenses, permits and approvals relating to the Project. The actions on the Project, as well as the laws under which such actions were taken, are described in the Project documentation issued to comply with the National Environmental Policy Act (NEPA). Interested parties may visit the Project website at *http://longbridgeproject.com/* or the FRA website at *https://railroads.dot.gov/.*

The Project involves construction of new two-track railroad bridges over the Potomac River and the George Washington Memorial Parkway (GWMP) between the existing railroad bridge and the Metrorail Bridge. The Project includes expansion of the Long Bridge Corridor, a 1.8-mile railroad corridor between RO Interlocking in Arlington, Virginia, and L'Enfant Interlocking near 10th Street SW in the District of Columbia, from two to four tracks and all necessary infrastructure improvements.

On September 3, 2020, FRA issued the Long Bridge Project Final Environmental Impact Statement/Record of Decision (Final EIS/ROD). In the Final EIS/ROD, FRA selected Action Alternative A, which would construct the Long Bridge Project as described above, and would retain the existing Long Bridge over the Potomac River and the railroad bridge over the GWMP. FRA determined that the Selected Alternative is the best option for the Project and that FRA's approval of the Selected Alternative is in the best interest of the public. FRA has further determined that all practicable measures to minimize environmental harm have been incorporated into Selected Alternative and that appropriate commitments are outlined in the FEIS/ROD.

This notice applies to all actions on the Project as of the issuance date of this notice. FRA's action, related actions taken by other agencies, and the laws under which such actions were taken are described further in the Final EIS/ROD. Such actions, include, but are not limited to, NEPA (42 U.S.C. 4321) and the Council on Environmental Quality Implementing Regulations for NEPA (40 CFR 1500–1508); Federal Railroad Administration Procedures for Considering Environmental Impacts (64 FR 28545); Efficient Environmental Reviews for Project Decisionmaking (23 U.S.C. 139); Section 4(f) of the United States Department of Transportation Act

of 1966 (49 U.S.C. 303); Section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. 306108); the Clean Air Act of 1970 (42 U.S.C. 7401); the Clean Water Act of 1972 (33 U.S.C. 1251); the Coastal Zone Management Act of 1972 (16 U.S.C. 1451); and the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Issued in Washington, DC.

Jamie P. Rennert,

Director, Office of Program Delivery.

[FR Doc. 2020–20009 Filed 9–10–20; 8:45 am]

BILLING CODE 4910–06–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 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 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 FURTHER INFORMATION CONTACT:

OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410.

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 (*www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On September 8, 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. FINYANUS, Yusuf (Arabic: فنيـــــانوس يوســف) (a.k.a. FENIANOS, Youssef; a.k.a. FENYANUS, Joseph; a.k.a. FINIANOS, Joseph; a.k.a. FINIANOS, Yusif), Lebanon; DOB 01 Jan 1964 to Dec 1964; POB Zgharta, Lebanon; citizen Lebanon; Gender Male (individual) [SDGT].

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224 for assisting in, sponsoring or providing financial, material, or technological support for, or financial or other services to or in support of, HIZBALLAH, an entity whose property and interests in property are blocked pursuant to E.O. 13224.

2. KHALIL, Ali Hassan (Arabic: خليــل حســن علــي), Bir Hasan, Lebanon; DOB 15 Jul 1964; POB Khiyam, Lebanon; citizen Lebanon; Gender Male (individual) [SDGT].

Designated pursuant to section 1(d)(i) of Executive Order 13224 for assisting in, sponsoring or providing financial, material, or technological support for, or financial or other services to or in support of, HIZBALLAH, an entity whose property and interests in property are blocked pursuant to E.O. 13224.

Dated: September 8, 2020.

Andrea Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2020–20098 Filed 9–10–20; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0881]

Agency Information Collection Activity: Lay/Witness Statement

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 10, 2020.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to

Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0881'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Danny S. Green at (202) 421–1354.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. 501, 38 U.S.C. 5103, and 38 U.S.C. 5101(a).

Title: Lay/Witness Statement (VA Form 21–10210).

OMB Control Number: 2900–0881.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–10210 is used by the claimant to gather lay or witness statements that support an existing claim for benefits or services. Without this information, VA may not be able to efficiently and successfully process claims that may require additional statements associated with a claim for benefits or services.

Affected Public: Individuals and households.

Estimated Annual Burden: 16,667 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 100,000.

By direction of the Secretary.

Danny S. Green,

VA Clearance Officer, Office of Quality, Performance and Risk (OQPR), Department of Veterans Affairs.

[FR Doc. 2020–20054 Filed 9–10–20; 8:45 am]

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FEDERAL REGISTER

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Part II

Department of Commerce

Bureau of Industry and Security

15 CFR Parts 743, 772, and 774
Wassenaar Arrangement 2018 Plenary Decisions Implementation; and Other Revisions Related to National Security Controls; Final Rule

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 743, 772, and 774

[Docket No. 200717–0194]

RIN 0694–AH77

Wassenaar Arrangement 2018 Plenary Decisions Implementation; and Other Revisions Related to National Security Controls

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) maintains, as part of its Export Administration Regulations (EAR), the Commerce Control List (CCL), which identifies certain items subject to Department of Commerce jurisdiction. This final rule revises the CCL and other corresponding parts of the EAR, to implement changes made to the Wassenaar Arrangement List of Dual-Use Goods and Technologies and Munitions List (WA Lists) maintained by the governments participating in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement, or WA) at the December 2018 WA Plenary meeting. The Wassenaar Arrangement advocates implementation of effective export controls on strategic items with the objective of improving regional and international security and stability. BIS published a final rule on May 23, 2019, implementing certain new controls on emerging technologies, as decided at the 2018 Plenary meeting. This rule harmonizes the CCL with the remaining decisions reached at the 2018 Plenary meeting by revising Export Control Classification Numbers (ECCNs) controlled for national security reasons in each category of the CCL, except Category 4. This rule also makes other associated changes to the EAR, as well as adjustments to license exception eligibility for national security-controlled items and revisions to reporting requirements.

DATES: This rule is effective September 11, 2020.

FOR FURTHER INFORMATION CONTACT: For general questions, contact Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce at 202–482–2440 or by email: *Sharron.Cook@bis.doc.gov.*

For technical questions contact:

Categories 0, 1 & 2: Joseph Giunta at 202–482–3127 or *Joseph.Giunta@bis.doc.gov.*

Category 3: Brian Baker at 202–482–5534 or *Brian.Baker@bis.doc.gov.*

Categories 4 & 5: Aaron Amundson or Anita Zinzuvadia 202–482–0707 or *Aaron.Amundson@bis.doc.gov* or *Anita.Zinzuvadia@bis.doc.gov.*

Category 6 (optics): John Varesi 202–482–1114 or *John.Varesi@bis.doc.gov.*

Category 6 (lasers and radar): Michael Rithmire 202–482–6105 or *Michael.Rithmire@bis.doc.gov.*

Category 6 (sensors and cameras): John Varesi 202–482–1114 or *John.Varesi@bis.doc.gov.*

Categories 7 & 9: Michael Rithmire 202–482–6105 or Michael Tu 202–482–6462 or *Michael.Rithmire@bis.doc.gov* or *Michael.Tu@bis.doc.gov.*

Category 8: Michael Tu 202–6462 or *Michael.Tu@bis.doc.gov.*

Category 9x515 (Satellites): Michael Tu 202–482–6462 or *Michael.Tu@bis.doc.gov.*

Category ''600 Series'' (Munitions Items): Jeffrey Leitz at 202–482–7417 or *Jeffrey.Leitz@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar or WA) (*https://www.wassenaar.org*) is a group of 42 like-minded Participating States committed to promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilizing accumulations of those items. As a Participating State, the United States has committed to controlling for export all items on the WA Lists. The lists were first established in 1996 and have been revised annually thereafter. Proposals for changes to the WA Lists that achieve consensus are approved by Participating States at annual plenary meetings. Participating States are charged with implementing the list changes as soon as possible after approval. The United States' implementation of changes to the WA Lists ensures U.S. companies have a level playing field with competitors in other WA Participating States.

By a final rule published on May 23, 2019 (84 FR 23886), BIS implemented changes decided at the December 2018 Plenary Meeting concerning five emerging technologies essential to the national security of the United States, specifically, discrete microwave transistors, continuity of operation software, post-quantum cryptography, underwater transducers designed to operate as hydrophones, and air-launch platforms. The changes in this rule, which reflect the remaining changes to the WA Lists that were approved at the December 2018 Plenary meeting, update the corresponding items listed in the EAR and reflect the most recent changes in technologies and conditions. Unless explicitly discussed below, the revisions made by this rule will not impact the number of license applications submitted to BIS.

Revisions to ECCNs in the Commerce Control List To Implement WA 2018 Plenary Decisions

Following are lists of the ECCNs in the CCL that are revised or added by this rule in order to implement the WA 2018 Plenary decisions. Each change is further described below, by category.

Revisions to (28) ECCNs: 0A617, 1C001, 2A001, 2B003, 2B006, 3A001, 3A002, 3B001, 3E003, 5E001, 5A002, 5D002, 5E002, 5E992, 6A003, 6A005, 7A002, 7A003, 7A005, 7D003, 7D005, 8A001, 8A002, 8B001, 9A010, 9A610, 9B001, and 9E003.

License Exception Revisions to ECCNs: 1C004: GBS; 8A001: LVS, STA; 8D001: TSR, STA; 8E001: TSR, STA.

New ECCNs: 6B002 (masks and reticles for optical sensors specified in 6A002.a.1.b or 6A002.a.1.d).

Conforming Changes to Eight ECCNs: 0A606, 1A008, 3A991, 6A002, 6E001, 6E002, 8D001, 8E001.

Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items]

0A606 Ground Vehicles and Related Commodities

WA decided to change the phrase ''other than those specified by . . .'' to ''not specified by'' as the more concise and consistent way, within the WA List, to indicate that items in an entry are controlled by that entry only if not controlled elsewhere. A similar phrase is used in 0A606.y.8 and is therefore changed for consistency (*i.e.,* ''other than those controlled by. . .'' is changed to ''not controlled by . . .'').

0A617 Miscellaneous ''Equipment,'' Materials, and Related Commodities

For reasons explained above in the description of changes to ECCN 0A606, the phrase ''other than those described in'' is changed to read ''not described in'' in 0A617.c.

Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'', and ''Toxins''

1A004 Protective and Detection Equipment and ''Components,'' not ''Specially Designed'' for Military Use

ECCN 1A004 is amended by adding License Exception GBS eligibility for 1A004.a, .b, and .c.2, because these items have a long history of approvals and are deemed not ''sensitive'' by the WA. In 2018, there were over 800 license applications with 796 approvals. There were two denials for 1A004.d that also would not have qualified under the License Exception GBS eligibility paragraph that is implemented by this rule. The addition of License Exception GBS eligibility for 1A004.a, .b, and .c.2 is estimated to alleviate the need for preparing and processing 200 license applications annually, thus alleviating the burden on reviewing agencies as well as private industry.

1A008 Charges, Devices and ''Components''

For reasons explained in the description of changes to ECCN 0A606, the phrase ''other than those specified by . . .'' is revised to read ''not specified by . . .'' in 1A008.d. This is changed for consistent treatment of this phrase throughout the CCL.

1C001 Materials ''Specially Designed'' for Absorbing Electromagnetic Radiation, or Intrinsically Conductive Polymers

This rule amends ECCN 1C001 by adding paragraph e. (specified planar absorbers) to exclusion Note 1, which is located after the introductory Items paragraph a, as well as a Technical Note to define the term ''open-cell foams''.

ANNEX to Category 1, ''List of Explosives (See ECCNs 1A004 and 1A008)''

In the List of Explosives that is in the Annex to Category 1, ''FOX 7'' is corrected by adding a hyphen (''FOX–7'') in paragraph 6 in order to make it consistent with the ''FOX–12'' in item 46 of this Annex.

Category 2—Materials Processing

2A001 Anti-Friction Bearings and Bearing Systems

The ISO citation reference in Note 2, located at the top of the Items paragraph, is being clarified by changing it from ''ISO 3290 as grade 5'' to read ''ISO 3290:2001 as grade G5'' in order to assist the public to find the correct standard by its citation and year of the standard to use for classification purposes. In Items paragraph .a (ball bearings and solid roller bearings), the phrase ''or Class 2'' is added to the ISO 492 tolerance class reference to clarify which tolerance class is required to satisfy 2A001.

2B003 ''Numerically Controlled'' Machine Tools

The Heading is amended by deleting the words ''or manual'' and moving much of the text to the Items paragraph of the List of Items Controlled in order to more clearly state the control text. With this change, there will be three subparagraphs that list separate control parameters previously listed in the Heading.

2B006 Dimensional Inspection or Measuring Systems, Equipment, Position Feedback Units and ''Electronic Assemblies''

Item paragraph b.1 is amended to replace ''a measuring range up to 0.2mm'' with ''0 to 0.2 mm of the 'measuring range' '' and adding Technical Note 2 to define 'measuring range'. The new text will clarify that for purposes of paragraph b.1 ''measuring range'' means the difference between the minimum and maximum working distance of the probe, and that the measuring range always starts from 0mm. This revision does not change the scope of control for this entry and clarifies the intent of this control.

The Technical Note to the Table on Deposition Techniques in Category 2

This rule corrects the punctuation of paragraph b.4 by replacing the comma with a semi-colon.

Category 3—Electronics

Product Group A. ''End Items'', ''Equipment'', ''Accessories'', ''Attachments'', ''Parts'', ''Components'', and ''Systems''

The N.B. at the beginning of Category 3, Product Group A, is amended by adding an ''or'' and replacing an ''or'' with ''to'' in order to harmonize the text with the WA List. In addition, Note 3 is added to alert the public to look in specified paragraphs of Category 3 for the classification of wafers (finished or unfinished). Exporters should now understand by reading the note that these wafers are to be evaluated against the control metric, as if they were finished.

3A001 Electronic Items

In the license exception section, under the License Exception GBS paragraph, this rule replaces the term ''vacuum electronic device amplifiers'' with ''vacuum electronic devices'' to reflect the correct name of the devices. This term is also added to part 772 ''Definitions of Terms Used in the EAR''.

Note 1 under 3A001.a is removed, because the note has been expanded and placed as Note 3 at the beginning of Category 3, Product Group A. Note 2 under 3A001.a is now designated as Note 1.

The Note under Item paragraph 3A001.a.2.c is amended by adding the word ''designed'', which narrows the decontrol note to apply only to integrated circuits of 3A001.a.2 that are designed for civil automobile or railway train applications.

The parameters for digital-to-analog converters (DAC) in 3A001.a.5.b are amended by revising 3A001.a.5.b.1 and 3A001.a.5.b.2 to fix the overlapping controls between the two subparagraphs. Specifically, ''but less than 12-bit'' is added to Item paragraph a.5.b.1, ''but not exceeding 3,500 MSPS'' is added to Item paragraph a.5.b.2, and a new subparagraph a.5.b.2.b is added to read ''An 'adjusted update rate' exceeding 3,500 MSPS.''

Technical Note 2, located below the introductory text of Item paragraph .b, is removed because the definition of ''vacuum electronic devices'' is moved to part 772 ''Definitions of Terms Used in the EAR''. As a result of this change, all of the single quotes around this term found in 3A001, 3A991.g, 3E003.g are replaced with double quotes to indicate it is a defined term located in part 772.

3A002 General Purpose ''Electronic Assemblies'', Modules and Equipment

Item paragraph a.6.b is amended by replacing the phrase ''A processor that performs analysis of the radio frequency signal data while it is being recorded'' with '''Signal processing'' of the radio frequency signal data while it is being recorded;''. Including the defined term ''signal processing,'' the definition of which is found in Part 772, more clearly sets out details of the processing done to the data.

Item paragraph 3A002.d.5 ''maximum frequency exceeding 90 GHz'' is re-designated as Item paragraph 3A002.d.6. New Item paragraph d.5 adds a control parameter for signal generators having the ability of frequency switching by means of a 'Radio Frequency (RF) modulation bandwidth' of digital baseband signals within specified frequency ranges. Three subparagraphs are added (subparagraphs d.5.a through d.5.c) to specify bandwidth and frequency ranges. Also, a Technical Note is added to define 'RF modulation bandwidth'. Signal generators meeting any of the parameters in 3A002.d.5 are subject to national security controls to

countries in NS column 2 of the Commerce Country Chart (see supplement no. 1 to part 738 of the EAR) and anti-terrorism controls to countries in AT column 1 of the Commerce Country Chart, as well as any end use or end user controls in part 744 of the EAR. As indicated in the license exception section of this ECCN, this paragraph is eligible for License Exception LVS ($5,000) if all the criteria for this license exception are met and none of the license exception restrictions in § 740.2 apply (see part 740 of the EAR). Transaction-based license exceptions may also be available (see part 740 of the EAR). Use of license exceptions and Validated End-user authorizations for this item may be subject to Wassenaar reporting requirements in § 743.1 of the EAR.

3A991 Electronic Devices, and ''Components'' Not Controlled by 3A001

The single quotes around the term ''vacuum electronic devices'' in 3A991.g are replaced with double quotes to indicate the term is defined in part 772. See above explanation under ECCN 3A001.

3B001 Equipment for the Manufacturing of Semiconductor Devices or Materials

Item paragraph 3B001.h ''multi-layer masks'' is amended by removing subparagraph h.1 (parameter of the substrate blank composition) and merging subparagraph h.2 with Item paragraph .h in order to focus the control solely on the lithography equipment wavelength.

3E003 Other ''Technology'' for the ''Development'' or ''Production'' of Specified Electronics

The single quotes around the term ''vacuum electronic devices'' in 3E003.g are replaced with double quotes to indicate the term is defined in part 772. See above explanation under ECCN 3A001.

Category 5—Part 1—''Telecommunications''

5E001 ''Technology''

This final rule makes an editorial revision in paragraph d.4 by removing two unnecessary spaces, so that the text reads ''0.1 nW''.

Category 5—Part 2—''Information Security''

5A002 ''Information Security'' Systems, Equipment and ''Components''

The Related Control Note 3 is amended by replacing the term ''Global Navigation Satellite Systems (GNSS)'' with the EAR defined term ''satellite navigation system,'' which includes Global Navigation Satellite Systems (GNSS) and Regional Navigation Satellite Systems (RNSS), see part 772.

Exclusion Note 2 of 5A002 is amended by adding a new paragraph j. that lists ''items specially designed for a 'connected civil industry application'''. Paragraph j. also includes 2 Technical Notes that define 'connected civil industry application' and 'non-arbitrary data'.

Paragraph 5A002.b is amended by replacing the existing text with ''Being a 'cryptographic activation token', *i.e.,* ''information security'' systems, equipment and ''components,'' that are 'cryptographic activation tokens' are controlled. A Technical Note is included to explain more about converting by means of ''cryptographic activation'' and enabling by means of ''cryptographic activation''.

5D002 ''Software''

Paragraph 5D002.b is amended by replacing a large portion of the text with ''having the characteristics of a 'cryptographic activation token' specified by 5A002.b'' to simplify the text and for consistency.

5E002 ''Technology''

Paragraph 5E002.b is amended by replacing a large portion of the text with the phrase ''having the characteristics of a 'cryptographic activation token' specified by 5A002.b'' to simplify the text and for consistency.

Category 6—Sensors and Lasers

6A002 Optical Sensors and Equipment, and ''Components'' Therefor

The Related Controls paragraph is amended by adding a seventh Note to refer to new ECCN 6B002 for masks and reticles that are ''specially designed'' for optical sensors specified by 6A002.a.1.b or 6A002.a.1.d.

6A003 Cameras, Systems or Equipment, and ''Components'' Therefor

In Note 3 to 6A003.b.4.b, located under 6A003.b.4.c, paragraph b.1 is amended by revising the exclusion parameter for imaging cameras with minimum horizontal or vertical 'Instantaneous-Field-of View (IFOV)' of ''at least 10 mrad (milliradians)'' to ''at least 2 mrad (milliradians)''. This change is an update to the parameter to address increased civilian use of imaging cameras with IFOV of at least 2 mrad.

6A005 ''Lasers,'' ''Components'' and Optical Equipment

The terms 'single transverse mode' and 'multiple transverse mode' are not defined in 6A005, but are used to distinguish between parameters for control. This rule adds Note 6 to 6A005 to define these terms using easily identifiable and measurable characteristics of lasers in order for the laser controls to be applied consistently. Therefore, single quotes are added around each of these terms throughout 6A005 to indicate these terms are defined within a Note in 6A005.

Paragraph 6A005.a.6.a is amended by adding a spectral bandwidth parameter for the control of single transverse mode non-tunable continuous wave lasers. This change is being made because the simplest way to characterize scalability of a laser is to specify the laser linewidth, which is essentially a measure of the spectral purity of the laser.

Paragraph 6A005.a.6.b.1 is amended by raising the output power from 500 W to 1000 W because the market for these single-mode lasers has matured substantially in recent years, resulting in increased demand for higher power and beam quality. Also, the lasers with lower power and beam quality have become more available in countries outside the WA membership.

Exclusion Note 2 to 6A005.a.6.b is amended by removing and reserving paragraph a., which stated ''having to do with output power exceeding 500 W but not exceeding 1 kW and all of the following: Beam Parameter Product (BPP) exceeding 0.7 mm•mrad.'' The associated Technical Note to paragraph a. is also removed. In addition, paragraph e. of the Note is amended by raising the upper limit of the output power range from 4 kW to 6 kW, in order to narrow the controls of solid state lasers to the performance of lasers that are available from outside the WA countries. Paragraphs f. and g. of the Note are removed and reserved because of technological advancement of multiple transverse mode industrial lasers.

6B002 Masks and Reticles, ''Specially Designed'' for Optical Sensors Specified by 6A002.a.1.b or 6A002.a.1.d

Masks and reticles are process tools for electronics components from which the design can be inferred. Masks and reticles are already controlled for integrated circuits in Category 3, under ECCN 3B001.g, when they are designed for circuits specified in 3A001. 6B002 is added to the CCL to control masks and reticles for optical sensors specified in

6A002.a.1.b or 6A002.a.1.d because the inferred design of these masks and reticles would allow the reproduction and/or the retro-engineering of such circuits. ECCN 6B002 items require a license for national security reasons for all countries that have an ''X'' under NS Column 2 and for anti-terrorism reasons for all countries that have an ''X'' under AT Column 1 on the Commerce Country Chart in supplement no. 1 to part 738. Adding masks and reticles to ECCN 6B002 will ensure they are controlled to these sensitive destinations.

As indicated under the list-based license exception section of ECCN 6B002, these items are eligible for license exceptions LVS ($5000), and GBS, so long as all the criteria of these license exceptions are met and none of the restrictions of § 740.2 apply. Other license exceptions, *e.g.,* RPL, GOV, and STA, may be available depending on the transaction details and eligibility criteria of the license exceptions in part 740.

6E001 and 6E002 ''Technology''

The License Requirements tables of ECCN 6E001 and 6E002 have been amended to revise the national security rows in order to add in the new ECCN 6B002. A license is required for ''technology'' for the ''development'' and ''production'' of masks and reticles controlled by 6B002 for national security and anti-terrorism reasons for countries with an ''X'' in column NS Column 1 or in column AT Column 1 in the Commerce Country Chart in supplement no. 1 to part 738 of the EAR. For technology that has a license requirement, License Exception TSR is available if all the criteria for TSR are met and none of the restrictions of § 740.2 apply. License Exception STA is available if none of the restrictions outlined in ECCN 6E001 or 6E002 apply, all the criteria of STA are met, and none of the restrictions of § 740.2 apply. Other license exceptions in part 740 may also be available depending on the details of the transaction.

Category 7—Navigation and Avionics

7A002 Gyros or Angular Rate Sensors

ECCN 7A002 is being amended by removing the parenthetical phrase (see list of items controlled) in the Heading because the list of items controlled section of the ECCN contains a list of characteristics instead of a list of items.

Paragraphs 7A002.a.1 and a.2 are amended by replacing ''A rate range'' with ''An angular rate range'' in order to more accurately describe the parameter that applies to the change rate of angle.

7A003 'Inertial Measurement Equipment or Systems'

ECCN 7A003 is amended by removing the parenthetical phrase (see list of items controlled) in the Heading because the list of items controlled section of the ECCN contains a list of characteristics instead of a list of items.

Paragraph a. of the Technical Note at the beginning of the Items paragraph is amended by replacing ''Global Navigation Satellite Systems (GNSS)'' with ''satellite navigation system'' in order to clarify that the control applies to all satellite navigation systems, not just those that have global coverage. The term ''satellite navigation system'' is added to § 772.1, thus the term is in double quotes.

7A005 ''Satellite Navigation System'' Receiving Equipment

ECCN 7A005 is amended by removing the parenthetical phrase (see list of items controlled) in the Heading, because the list of items controlled section of the ECCN contains a list of characteristics instead of a list of items.

The Heading, Related Controls, and the Note below Item paragraph 7A005.b are amended by replacing the term ''Global Navigation Satellite Systems (GNSS)'' with the newly defined term ''satellite navigation system'' for reasons stated in the explanation under ECCN 7A003 above.

7D003 Other ''Software''

ECCN 7D003.b.2 is amended by replacing the term ''Global Navigation Satellite Systems (GNSS)'' with the newly defined term ''satellite navigation system'' for reasons stated above under ECCN 7A003.

7D005 ''Software'' ''Specially Designed'' to Decrypt ''Satellite Navigation System'' Ranging Signals Designed for Government Use

The Heading is amended by replacing the term ''Global Navigation Satellite Systems (GNSS)'' with the newly defined term ''satellite navigation system'' for reasons stated above under ECCN 7A003.

Category 8—Marine

8A001 Submersible Vehicles and Surface Vessels

Paragraph 8A001.c is amended to specify all unmanned submersible vehicles controlled under ECCN 8A001. Unmanned submersible vehicles are moved from 8A001.d to 8A001.c.1, and 8A001.d is reserved. Unmanned tethered submersible vehicles are moved from 8A001.c to 8A001.c.2. The license requirements for the unmanned tethered submersible vehicles is unchanged and is controlled for national security reasons for NS column 2 countries. The License Exception LVS paragraph is amended by revising the reference to 8A001.d to read 8A001.c.1, and maintaining ineligibility for unmanned untethered submersible vehicles in 8A001.c.1.

8A002 Marine Systems, Equipment, ''Parts'' and ''Components''

Paragraph 8A002.d is amended by cascading the parameters into subparagraphs for clarity. There is no change in the scope of this control by this revision.

8B001 Water Tunnels

The Heading of 8B001 is amended by replacing ''having'' with ''designed to have'', replacing ''in the frequency range'' with ''within the frequency range'', and replacing ''from 0 to 500 Hz'' with ''exceeding 0 Hz but not exceeding 500 Hz'', in order to make clear that only water tunnels designed to meet these parameters are controlled by this entry and that background noise must be less than 100 dB within the frequency range exceeding 0 Hz, but not exceeding 500 Hz.

8D001 ''Software'' ''Specially Designed'' or Modified for the ''Development,'' ''Production'' or ''Use'' of Equipment or Materials, Controlled by 8A (Except 8A992), 8B or 8C and

8E001 ''Technology'' According to the General Technology Note for the ''Development'' or ''Production'' of Equipment or Materials, Controlled by 8A (Except 8A992), 8B or 8C

8D001 and 8E001 are amended by replacing the reference to 8A001.d with 8A001.c.1 in the License Exception TSR eligibility paragraph; and amending the Special Conditions for STA by removing the reference to 8A001.d, because unmanned submersible vehicles are moved from 8A001.d to 8A001.c.1, and 8A001.c is already listed in this paragraph.

Category 9—Aerospace and Propulsion

9A010 ''Specially Designed'' ''Parts,'' ''Components,'' Systems and Structures, for Launch Vehicles, Launch Vehicle Propulsion Systems or ''Spacecraft''

Paragraph 9A010.d (pulsed liquid rocket engines) is amended by moving the text within parentheses to a new Technical Note below the paragraph.

9A610 Military Aircraft and Related Commodities, Other Than Those Enumerated in 9A991.a

Note 2 to 9A610.a, which excludes from 9A610.a 'military aircraft' that were first manufactured before 1946, is amended by adding ''or ''lighter-than-air vehicles'''' after the words 'military aircraft,' because there was no intent to maintain controls on lighter-than-air vehicles from pre-1946, or their components.

9B001 Manufacturing Equipment, Tooling or Fixtures

The Heading of 9B001 is amended by adding ''manufacturing'' to the front and moving the ''specially designed for . . . .'' phrase to 9B001.b and 9B001.c. Item paragraph 9B001.a (Directional solidification or single crystal casting equipment) is amended by adding the parameter ''designed for ''superalloys'' to narrow the scope of control.

9E003 Other ''Technology''

Paragraph 9E003.a.7 (gas turbine engine ''parts'' or ''components'' using ''diffusion bonding'' ''technology'' controlled by 2D003.b) is removed and reserved, because it is redundant to other controls for such parts and components. Paragraph 9E003.a.7 is not necessary for several reasons. First, diffusion bonding is a subset of solid-state joining. Second, 9E003.a.6 presently controls diffusion bonding and other solid-state joining techniques when applied to the components of concern, *i.e.,* airfoil-to-disk blade combinations. Third, 9E003.a.1–5 also presently controls ''development'' and ''production'' ''technology'' for components of concern, regardless of construction method. Fourth, ECCN 1B003 covers the control of tools, dies, molds or fixtures for diffusion bonding of specified alloys in aircraft/aerospace applications, and ECCN 1E001 controls the ''technology'' ''required'' for the ''development'' or ''production'' of items controlled by ECCN 1B003. All of these other controls cover what was already controlled in paragraph 9E003.a.7, and therefore to end this redundancy, this paragraph is being removed.

Part 772—Definitions of Terms as Used in the Export Administration Regulations (EAR)

The definition of ''cryptography'' is amended by adding Note 2 to alert the public that ''cryptography'' includes decryption.

The definition of ''radiant sensitivity'' is amended by adding a period to the end of the definition.

The definition of ''satellite navigation system'' is added to § 772.1 in order to clarify that the term applies to all satellite navigation systems, not just those that have global coverage.

The definition of ''stability'' is amended by revising the Note to the definition to add accelerometers. The term ''stability'' is used in ECCN 7A001 (accelerometers), specifically in 7A001.a.1.a and a.1.b.

The definition of ''vacuum electronic devices'' is added to § 772.1. The term was defined in Technical Note 2 under 3A001.b, however, because it is used in two separate ECCNs 3A001.b.1 and 3E003, the definition is removed from 3A001 and added (unchanged) to § 772.1.

Supplement No. 6 to Part 774 ''Sensitive List''

Paragraph (3) is amended by re-designating paragraphs (3)(i) through (iii) as paragraphs (3)(iii) through (v) and adding new paragraph (3)(i) 3A001.b.2—''Monolithic Microwave Integrated Circuit'' (''MMIC'') amplifiers and new paragraph (3)(ii) 3A001.b.3—Discrete microwave transistors, because these items warrant higher levels of control and monitoring. New paragraphs (iv) 3D001and (v) 3E001 are amended by adding reference to 3A001.b.2 and 3A001.b.3. Items on the Sensitive List tend to be ineligible for license exceptions by WA Participating States or are subject to reporting requirements.

Paragraph (6)(xiii) is amended by merging Note 7 and Note 8. Therefore, Note 8 is removed.

Paragraphs (8)(i) ''8A001.b'' and introductory paragraphs (ii) ''8A002.b'', (vi) ''8D001'' and (viii) ''8E001'' are amended by replacing ''8A001.b to .d'' with ''8A001.b. to .c'' because the Item paragraph specifying unmanned submersible vehicles is moved from 8A001.d to 8A001.c.1.

Supplement No. 7 to Part 774—Very Sensitive List

The WA Very Sensitive List (VSL) is amended by revising paragraph (5) of Category 8 to replace paragraph citations ''8A001.d'' with ''8A001.c.1'' throughout paragraph (5), because the item 8A001.d is moved to c.1 in this final rule (see explanation above under 8A001).

Other National Security Revisions

This rule revises paragraph (b) in § 743.3 ''Thermal Imaging Camera Reporting'' by only requiring the report for exports of more than 100 thermal imaging devices in a monocular, biocular, or binocular configuration. This will reduce the burden on the public and only require the report for exports of concern.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA), 50 U.S.C. Sections 4801–4852. ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

Saving Clause

Shipments of items removed from license exception eligibility or eligibility for export, reexport or transfer (in-country) without a license as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on September 11, 2020, pursuant to actual orders for exports, reexports and transfers (in-country) to a foreign destination, may proceed to that destination under the previous license exception eligibility or without a license so long as they have been exported, reexported or transferred (in-country) before November 10, 2020. Any such items not actually exported, reexported or transferred (in-country) before midnight, on November 10, 2020, require a license in accordance with this final rule.

Executive Order Requirements

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

This rule has been designated a ''significant regulatory action'' under Executive Order 12866. The Wassenaar Arrangement (WA) has been established in order to contribute to regional and international security and stability, by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilizing accumulations. The aim is also to prevent the acquisition of these items by terrorists. There are presently 42 Participating States, including the United States, that seek through their national policies to ensure that transfers

of these items do not contribute to the development or enhancement of military capabilities that undermine these goals, and to ensure that these items are not diverted to support such military capabilities that undermine these goals. Implementation of the WA consensus decisions in a timely manner enhances the national security of the United States and global international trade.

This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

This rule is not subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because it is issued with respect to a national security function of the United States.

Paperwork Reduction Act Requirements

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This rule involves the following OMB approved collections of information subject to the PRA: 0694–0088, ''Multi-Purpose Application'', which carries a burden hour estimate of 29.6 minutes for a manual or electronic submission; 0694–0106, ''Reporting and Recordkeeping Requirements under the Wassenaar Arrangement,'' which carries a burden hour estimate of 21 minutes for a manual or electronic submission; 0694–0096 ''Five Year Records Retention Period,'' which carries a burden hour estimate of less than 1 minute; and 0607–0152 ''Automated Export System (AES) Program, which carries a burden hour estimate of 3 minutes per electronic submission. Specific license application submission estimates are discussed further in the preamble of this rule where the revision is explained. BIS estimates that revisions that are editorial, moving the location of control text on the Commerce Control List, or clarifications will result in no change in license application submissions. This rule revises Section 743.3 ''Thermal Imaging Reporting Requirements'' by narrowing the reporting requirement, which carried a burden hour estimate of 60 minutes per submission and 60 submissions per year under collection 0694–0137 ''License Exceptions and Exclusions.'' Because collection 0694–0137 applies to a group of collections with a burden hour estimate average based upon the burden hours and responses for a large total number of collections, the current burden hour estimate average for collection 0694–0137 is not affected by this rule's revision of the Section 743.3 ''Thermal Imaging Reporting Requirements,'' and therefore remains at 1.5 hours per submission.

Any comments regarding these collections of information, including suggestions for reducing the burden, may be sent to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

Administrative Procedure Act and Regulatory Flexibility Act Requirements

Pursuant to Section 4821 of ECRA, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation and delay in effective date.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

List of Subjects

15 CFR Part 743

Administrative practice and procedure, Reporting and recordkeeping requirements.

15 CFR Part 772

Exports.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 743, 772, and 774 of the Export Administration Regulations (15 CFR parts 730 through 774) are amended as follows:

PART 743—[AMENDED]

■ 1. The authority citation for part 743 is revised to read as follows:

Authority: 50 U.S.C. 4801 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223; 78 FR 16129; Notice of May 7, 2020, 85 FR 27639.

■ 2. Section 743.3 is amended by revising paragraph (b) to read as follows:

§ 743.3 Thermal imaging camera reporting.

* * * * *

(b) *Transactions to be reported.* Exports that are not authorized by an individually validated license of more than 100 thermal imaging cameras in a monocular, biocular or binocular configuration controlled by ECCN 6A003.b.4.b to a destination in Country Group A:1 (see supplement no. 1 to part 740 of the EAR), except Canada, must be reported to BIS.

* * * * *

PART 772—[AMENDED]

■ 3. The authority citation for part 772 is continues to read as follows:

Authority: 50 U.S.C. 4801 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 4. Section 772.1 is amended by:
■ a. Revising the definitions of ''cryptography'' and ''radiant sensitivity'';
■ b. Adding a definition for ''satellite navigation system'' in alphabetical order;
■ c. Revising the definition of ''stability''; and
■ d. Adding a definition for ''vacuum electronic devices'' in alphabetical order.

The revisions and additions read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Cryptography (Cat 5P2)—The discipline that embodies principles, means and methods for the transformation of data in order to hide its information content, prevent its undetected modification or prevent its unauthorized use. ''Cryptography'' is limited to the transformation of information using one or more 'secret parameters' (*e.g.,* crypto variables) and/or associated key management.

Notes:

1. ''Cryptography'' does not include 'fixed' data compression or coding techniques.

2. ''Cryptography'' includes decryption.

Technical Notes:

1. 'Secret parameter': A constant or key kept from the knowledge of others or shared only within a group.

2. 'Fixed': The coding or compression algorithm cannot accept externally

supplied parameters (*e.g.,* cryptographic or key variables) and cannot be modified by the user.

* * * * *

Radiant sensitivity (Cat 6)—Radiant sensitivity (mA/W) = 0.807 × (wavelength in nm) × 'Quantum Efficiency (QE)'.

Technical Note: *'QE' is usually expressed as a percentage; however, for the purposes of this formula 'QE' is expressed as a decimal number less than one, e.g., 78% is 0.78.*

* * * * *

Satellite navigation system (Cat 5P2, 7)—A system consisting of ground stations, a constellation of satellites, and receivers, that enables receiver locations to be calculated on the basis of signals received from the satellites. It includes Global Navigation Satellite Systems (GNSS) and Regional Navigation Satellite Systems (RNSS).

* * * * *

Stability (Cat 7) Standard deviation (1 sigma) of the variation of a particular parameter from its calibrated value measured under stable temperature conditions. This can be expressed as a function of time.

Note: *For gyroscopes and accelerometers, ''stability'' can be estimated by determining the Allan variance noise-analysis value at the integration period (i.e., sample time) consistent with the stated measurement period, which may include extrapolating the Allan variance noise analysis beyond the instability point into the rate/acceleration random walk or rate/acceleration ramp regions to an integration period consistent with the stated measurement period (Reference: IEEE Std. 952–1997 [R2008] or IEEE Std 1293–1998 [R2008]).*

* * * * *

Vacuum electronic devices (Cat 3) Electronic devices based on the interaction of an electron beam with an electromagnetic wave propagating in a vacuum circuit or interacting with radio-frequency vacuum cavity resonators. ''Vacuum electronic devices'' include klystrons, travelling-wave tubes, and their derivatives.

* * * * *

PART 774—[AMENDED]

■ 5. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. 4801 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0, ECCN 0A606 is revised to read as follow:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

0A606 Ground Vehicles and Related Commodities, as Follows (See List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry, except 0A606.b and .y.	NS Column 1
NS applies to 0A606.b.	NS Column 2
RS applies to entire entry, except 0A606.b and .y.	RS Column 1
RS applies to 0A606.b.	RS Column 2
RS applies to 0A606.y.	China, Russia, or Venezuela (see § 742.6(a)(7))
AT applies to entire entry.	AT Column 1
UN applies to entire entry, except 0A606.y.	See § 746.1(b) for UN controls

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: $1,500
GBS: N/A

Special Conditions for STA

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for any item in 0A606.a, unless determined by BIS to be eligible for License Exception STA in accordance with § 740.20(g) (License Exception STA eligibility requests for 9x515 and ''600 series'' items). (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 0A606.

List of Items Controlled

Related Controls: (1) The ground vehicles, other articles, technical data (including software) and services described in 22 CFR part 121, Category VII are subject to the jurisdiction of the International Traffic in Arms Regulations. (2) See ECCN 0A919 for foreign-made ''military commodities'' that incorporate more than a *de minimis* amount of U.S.-origin ''600 series'' controlled content.

Related Definitions: N/A
Items:

a. Ground vehicles, whether manned or unmanned, ''specially designed'' for a military use and not enumerated or otherwise described in USML Category VII.

Note 1 to paragraph .a: *For purposes of paragraph .a, ''ground vehicles'' include (i) tanks and armored vehicles manufactured prior to 1956 that have not been modified since 1955 and that do not contain a functional weapon or a weapon capable of becoming functional through repair; (ii) military railway trains except those that are armed or are ''specially designed'' to launch missiles; (iii) unarmored military recovery and other support vehicles; (iv) unarmored, unarmed vehicles with mounts or hard points for firearms of .50 caliber or less; and (v) trailers ''specially designed'' for use with other ground vehicles enumerated in USML Category VII or ECCN 0A606.a, and not separately enumerated or otherwise described in USML Category VII. For purposes of this note, the term ''modified'' does not include incorporation of safety features required by law, cosmetic changes (e.g., different paint or repositioning of bolt holes) or addition of ''parts'' or ''components'' available prior to 1956.*

Note 2 to paragraph .a: *A ground vehicle's being ''specially designed'' for military use for purposes of determining controls under paragraph .a. entails a structural, electrical or mechanical feature involving one or more ''components'' that are ''specially designed'' for military use. Such ''components'' include:*

a. Pneumatic tire casings of a kind ''specially designed'' to be bullet-proof;

b. Armored protection of vital ''parts'' (e.g., fuel tanks or vehicle cabs);

c. Special reinforcements or mountings for weapons;

d. Black-out lighting.

b. Other ground vehicles, ''parts'' and ''components,'' as follows:

b.1. Unarmed vehicles that are derived from civilian vehicles and that have all of the following:

b.1.a. Manufactured or fitted with materials or ''components'' other than reactive or electromagnetic armor to provide ballistic protection to level III (National Institute of Justice standard 0108.01, September 1985) or better;

b.1.b. A transmission to provide drive to both front and rear wheels simultaneously, including those vehicles having additional wheels for load bearing purposes whether driven or not;

b.1.c. Gross vehicle weight rating (GVWR) greater than 4,500 kg; *and*

b.1.d. Designed or modified for off-road use.

b.2. ''Parts'' and ''components'' having all of the following:

b.2.a. ''Specially designed'' for vehicles specified in paragraph .b.1 of this entry; *and*

b.2.b. Providing ballistic protection to level III (National Institute of Justice standard 0108.01, September 1985) or better.

Note 1 to paragraph b: *Ground vehicles otherwise controlled by 0A606.b.1 that contain reactive or electromagnetic armor are subject to the controls of USML Category VII.*

Note 2 to paragraph b: *ECCN 0A606.b.1 does not control civilian vehicles ''specially designed'' for transporting money or valuables.*

Note 3 to paragraph b: *''Unarmed'' means not having installed weapons, installed mountings for weapons, or special reinforcements for mounts for weapons.*

c. Air-cooled diesel engines and engine blocks for armored vehicles that weigh more than 40 tons.

d. Fully automatic continuously variable transmissions for tracked combat vehicles.

e. Deep water fording kits ''specially designed'' for ground vehicles controlled by ECCN 0A606.a or USML Category VII.

f. Self-launching bridge ''components'' not enumerated in USML Category VII(g) ''specially designed'' for deployment by ground vehicles enumerated in USML Category VII or this ECCN.

g. through w. [Reserved]

x. ''Parts,'' ''components,'' ''accessories,'' and ''attachments'' that are ''specially designed'' for a commodity enumerated or otherwise described in ECCN 0A606 (other than 0A606.b or 0A606.y) or a defense article enumerated in USML Category VII and not elsewhere specified on the USML or in 0A606.y.

Note 1: *Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacture where they are clearly identifiable by mechanical properties, material composition, geometry, or function as commodities controlled by ECCN 0A606.x are controlled by ECCN 0A606.x.*

Note 2: ''*Parts,*'' ''*components,*'' ''*accessories*'' *and* ''*attachments*'' *enumerated in USML paragraph VII(g) are subject to the controls of that paragraph.* ''*Parts,*'' ''*components,*'' ''*accessories*'' *and* ''*attachments*'' *described in ECCN 0A606.y are subject to the controls of that paragraph.*

y. Specific ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' for a commodity enumerated or otherwise described in this ECCN (other than ECCN 0A606.b) or for a defense article in USML Category VII and not elsewhere specified on the USML or the CCL, as follows, and ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' therefor:

y.1. Brake discs, rotors, drums, calipers, cylinders, pads, shoes, lines, hoses, vacuum boosters, and parts therefor;

y.2. Alternators and generators;

y.3. Axles;

y.4. Batteries;

y.5. Bearings (*e.g.,* ball, roller, wheel);

y.6. Cables, cable assembles, and connectors;

y.7. Cooling system hoses;

y.8. Hydraulic, fuel, oil, and air filters, not controlled by ECCN 1A004;

y.9. Gaskets and o-rings;

y.10. Hydraulic system hoses, fittings, couplings, adapters, and valves;

y.11. Latches and hinges;

y.12. Lighting systems, fuses, and ''components;''

y.13. Pneumatic hoses, fittings, adapters, couplings, and valves;

y.14. Seats, seat assemblies, seat supports, and harnesses;

y.15 Tires, except run flat; and

y.16 Windows, except those for armored vehicles.

■ 7. In Supplement No. 1 to part 774, Category 0, ECCN 0A617 is revised to read as follow:

0A617 Miscellaneous ''Equipment,'' Materials, and Related Commodities (See List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry, except 0A617.y.	NS Column 1
RS applies to entire entry, except 0A617.y.	RS Column 1
RS applies to 0A617.y.	China, Russia, or Venezuela (see § 742.6(a)(7))
AT applies to entire entry.	AT Column 1
UN applies to entire .. entry, except 0A617.y..	See § 764.1(b) for UN controls

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: $1500
GBS: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 0A617.

List of Items Controlled

Related Controls: (1) Defense articles, such as materials made from classified information, that are controlled by USML Category XIII, and technical data (including software) directly related thereto, are subject to the ITAR. (2) See ECCN 0A919 for foreign-made ''military commodities'' that incorporate more than a *de minimis* amount of U.S.-origin ''600 series'' controlled content. (3) For controls on self-contained diving and underwater swimming apparatus and related commodities, see ECCN 8A620.f. (4) For controls on robots, robot controllers, and robot end-effectors, see USML Category VII and ECCNs 0A606 and 2B007. (5) ''Libraries,'' *i.e.,* parametric technical databases, ''specially designed'' for military use with equipment controlled by the USML or a ''600 series'' ECCN are controlled by the technical data and technology controls pertaining to such items. (6) For controls on nuclear power generating equipment or propulsion equipment, including ''nuclear reactors,'' ''specially designed'' for military use, and ''parts'' and ''components'' ''specially designed'' therefor, see USML Categories VI, XIII, XV, and XX. (7) Simulators ''specially designed'' for military ''nuclear reactors'' are controlled by USML Category IX(b). (8) See USML Categories X, XI and XII for ''laser'' protection equipment (*e.g.,* eye and sensor protection) ''specially designed'' for military use. (9) ''Fuel cells'' ''specially designed'' for a defense article on the USML or a commodity controlled by a ''600 series'' ECCN are controlled according to the corresponding ''600 series'' ECCN for such end items. (10) See USML Category XV for controls on fuel cells ''specially designed'' for satellite or spacecraft.

Related Definitions: N/A

Items:

a. [Reserved]

b. Concealment and deception equipment ''specially designed'' for military application, including special paints, decoys, smoke or obscuration equipment and simulators, and ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' therefor, not controlled by USML Category XIII.

c. Ferries, bridges not described in ECCN 0A606 or USML Category VII, and pontoons, ''specially designed'' for military use.

d. Test models ''specially designed'' for the ''development'' of defense articles controlled by USML Categories IV, VI, VII and VIII.

e. [Reserved]

f. ''Metal embrittlement agents.''

g. through x. [Reserved]

y. Other commodities as follows, and ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' therefore:

y.1. Construction equipment ''specially designed'' for military use, including such equipment ''specially designed'' for transport in aircraft controlled by USML VIII(a) or ECCN 9A610.a.

y.2. ''Parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' for commodities in paragraph .y.1 of this entry, including crew protection kits used as protective cabs.

y.3. ISO intermodal containers or demountable vehicle bodies (*i.e.,* swap bodies), n.e.s., ''specially designed'' or 'modified' for shipping or packing defense articles or items controlled by a ''600 series'' ECCN.

Technical Note: *For the purpose of 0A617.y.3, 'modified' means any structural, electrical, mechanical, or other change that provides a non-military item with military capabilities equivalent to an item which is* ''*specially designed*'' *for military use.*

y.4. Field generators ''specially designed'' for military use.

y.5. Power controlled searchlights and control units therefor, ''specially designed'' for military use, and ''equipment'' mounting such units.

■ 8. In Supplement No. 1 to part 774, Category 1, ECCN 1A004 is revised to read as follow:

1A004 Protective and Detection Equipment and ''Components,'' Not ''Specially Designed'' for Military Use, as Follows (See List of Items Controlled).

License Requirements

Reason for Control: NS, CB, RS, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 2
CB applies to chemical detection systems and dedicated detectors therefor, in 1A004.c, that also have the technical characteristic.	CB Column 2
RS apply to 1A004.d	RS Column 2

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A

GBS: Yes for 1A004.a, .b, and .c.2.

List of Items Controlled

Related Controls: (1) See ECCNs *1A995,* 2B351, and 2B352. (2) See ECCN *1D003* for ''software'' ''specially designed'' or modified to enable equipment to perform the functions of equipment controlled under section *1A004.c* (Nuclear, biological and chemical (NBC) detection systems). (3) See ECCN *1E002.g* for control libraries (parametric technical databases) ''specially designed'' or modified to enable equipment to perform the functions of equipment controlled under *1A004.c* (Nuclear, biological and chemical (NBC) detection systems). (4) Chemical and biological protective and detection equipment specifically designed, developed, modified, configured, or adapted for military applications is ''subject to the ITAR'' (see 22 CFR parts 120 through 130, including USML Category XIV(f)), as is commercial equipment that incorporates ''parts'' or ''components'' controlled under that category except for domestic preparedness devices for individual protection that integrate ''components'' and ''parts'' identified in USML Category XIV(f)(4) when such ''parts'' or ''components'' are: (1) Integral to the device; (2) inseparable from the device; and (3) incapable of replacement without compromising the effectiveness of the device, in which case the equipment is subject to the export licensing jurisdiction of the Department of Commerce under ECCN *1A004.* (5) This entry does not control radionuclides incorporated in equipment listed in this entry—such materials are subject to the licensing jurisdiction of the Nuclear Regulatory Commission (See 10 CFR part 110).

Related Definitions: (1) 'Biological agents' means: Pathogens or toxins, selected or modified (such as altering purity, shelf life, virulence, dissemination characteristics, or resistance to UV radiation) to produce casualties in humans or animals, degrade equipment or damage crops or the environment. (2) 'Riot control agents' are substances which, under the expected conditions of use for riot control purposes, produce rapidly in humans sensory irritation or disabling physical effects which disappear within a short time following termination of exposure. (Tear gases are a subset of 'riot control agents.')

Items:

a. Full face masks, filter canisters and decontamination equipment therefor, designed or modified for defense against any of the following, and ''specially designed'' ''components'' therefor:

Note: *1A004.a includes Powered Air Purifying Respirators (PAPR) that are designed or modified for defense against agents or materials, listed in 1A004.a.*

Technical Notes: *For the purpose of 1A004.a:*

1. Full face masks are also known as gas masks.

2. Filter canisters include filter cartridges.

a.1. 'Biological agents';

a.2. 'Radioactive materials;'

a.3. Chemical warfare (CW) agents; *or*

a.4. 'Riot control agents', as follows:

a.4.a. α-Bromobenzeneacetonitrile, (Bromobenzyl cyanide) (CA) (CAS 5798–79–8);

a.4.b. [(2-chlorophenyl) methylene] propanedinitrile, (o-Chlorobenzylidenemalononitrile) (CS) (CAS 2698–41–1);

a.4.c. 2-Chloro-1-phenylethanone, Phenylacyl chloride (ω-chloroacetophenone) (CN) (CAS 532–27–4);

a.4.d. Dibenz-(b,f)-1,4-oxazephine, (CR) (CAS 257–07–8);

a.4.e. 10-Chloro-5, 10-dihydrophenarsazine, (Phenarsazine chloride), (Adamsite), (DM) (CAS 578–94–9);

a.4.f. N-Nonanoylmorpholine, (MPA) (CAS 5299–64–9);

b. Protective suits, gloves and shoes, ''specially designed'' or modified for defense against any of the following:

b.1. 'Biological agents';

b.2. 'Radioactive materials;' *or*

b.3. Chemical warfare (CW) agents;

c. Detection systems, ''specially designed'' or modified for detection or identification of any of the following, and ''specially designed'' ''components'' therefor:

c.1. 'Biological agents';

c.2. 'Radioactive materials;' *or*

c.3. Chemical warfare (CW) agents;

d. Electronic equipment designed for automatically detecting or identifying the presence of ''explosives'' (as listed in the annex at the end of Category 1) residues and utilizing 'trace detection' techniques (*e.g.,* surface acoustic wave, ion mobility spectrometry, differential mobility spectrometry, mass spectrometry).

Technical Note: *'Trace detection' is defined as the capability to detect less than 1 ppm vapor, or 1 mg solid or liquid.*

Note 1: *1A004.d does not apply to equipment ''specially designed'' for laboratory use.*

Note 2: *1A004.d does not apply to non-contact walk-through security portals.*

Note: *1A004 does not control:*

a. Personal radiation monitoring dosimeters;

b. Occupational health or safety equipment limited by design or function to protect against hazards specific to residential safety or civil industries, including:

1. Mining;

2. Quarrying;

3. Agriculture;

4. Pharmaceutical;

5. Medical;

6. Veterinary;

7. Environmental;

8. Waste management;

9. Food industry.

Technical Notes:

1. 1A004 includes equipment, ''components'' that have been 'identified,' successfully tested to national standards or otherwise proven effective, for the detection of or defense against 'radioactive materials' 'biological agents,' chemical warfare agents, 'simulants' or ''riot control agents,'' even if such equipment or ''components'' are used in civil industries such as mining, quarrying, agriculture, pharmaceuticals, medical, veterinary, environmental, waste management, or the food industry.

2. 'Simulant': A substance or material that is used in place of toxic agent (chemical or biological) in training, research, testing or evaluation.

3. For the purposes of 1A004, 'radioactive materials' are those selected or modified to increase their effectiveness in producing casualties in humans or animals, degrading equipment or damaging crops or the environment.

■ 9. In Supplement No. 1 to part 774, Category 1, ECCN 1A008 is revised to read as follow:

1A008 Charges, Devices and ''Components,'' as Follows (See List of Items Controlled).

License Requirements

Reason for Control: NS, UN, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 2
AT applies to entire entry.	AT Column 1
UN applies to entire entry.	See § 746.1(b) for UN controls

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: $3,000 for .a through .c; $6,000 for .d.
GBS: N/A

List of Items Controlled

Related Controls: (1) All of the following are ''subject to the ITAR'' (see 22 CFR parts 120 through 130):

a. High explosives and related equipment ''specially designed'' for military use;

b. Explosive devices or charges in this entry that utilize USML controlled energetic materials (See 22 CFR 121.1 Category V), if they have been specifically designed, developed, configured, adapted, or modified for a military application;

c. Shaped charges that have all of the following a uniform shaped conical liner with an included angle of 90 degrees or less, more than 2.0 kg of controlled materials, and a diameter exceeding 4.5 inches;

d. Detonating cord containing greater than 0.1 kg per meter (470 grains per foot) of controlled materials;

e. Cutters and severing tools containing greater than 10 kg of controlled materials;

f. With the exception of cutters and severing tools, devices or charges controlled by this entry where the USML controlled materials can be easily extracted without destroying the device or charge; *and*

g. Individual USML controlled energetic materials in this entry, even when compounded with other materials, when not incorporated into explosive devices or charges controlled by this entry or 1C992.

(2) See also ECCNs 1C011, 1C018, 1C111, 1C239, and 1C608 for additional controlled energetic materials. See ECCN 1E001 for the ''development'' or ''production'' ''technology'' for the commodities controlled by ECCN 1A008, but not for explosives or commodities that are ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

Related Definitions: N/A
Items:

a. 'Shaped charges' having all of the following:

a.1. Net Explosive Quantity (NEQ) greater than 90 g; *and*

a.2. Outer casing diameter equal to or greater than 75 mm;

b. Linear shaped cutting charges having all of the following, and ''specially designed'' ''components'' therefor:

b.1. An explosive load greater than 40 g/m; *and*

b.2. A width of 10 mm or more;

c. Detonating cord with explosive core load greater than 64 g/m;

d. Cutters, not specified by 1A008.b, and severing tools, having a NEQ greater than 3.5 kg.

Technical Note: *'Shaped charges' are explosive charges shaped to focus the effects of the explosive blast.*

Note: *The only charges and devices specified in 1A008 are those containing* ''*explosives*'' *(see list of explosives in the Annex at the end of Category 1) and mixtures thereof.*

■ 10. In Supplement No. 1 to part 774, Category 1, ECCN 1C001 is revised to read as follow:

1C001 Materials ''Specially Designed'' for Absorbing Electromagnetic Radiation, or Intrinsically Conductive Polymers, as Follows (See List of Items Controlled).

License Requirements

Reason for Control: NS, MT, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 1
MT applies to entire entry.	MT Column 1
AT applies to entire entry.	AT Column 1

Reporting Requirements

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A
GBS: N/A

Special Conditions for STA

STA: License Exception STA may not be used to ship any item in this entry to any of the destinations listed in Country Group A:6 (See Supplement No.1 to part 740 of the EAR).

List of Items Controlled

Related Controls: See also *1C101*
Related Definitions: N/A
Items:

a. Materials for absorbing frequencies exceeding 2×10^8 Hz but less than 3×10^{12} Hz.

Note 1: *1C001.a does not control:*

a. Hair type absorbers, constructed of natural or synthetic fibers, with non-magnetic loading to provide absorption;

b. Absorbers having no magnetic loss and whose incident surface is non-planar in shape, including pyramids, cones, wedges and convoluted surfaces;

c. Planar absorbers, having all of the following:

1. Made from any of the following:

a. Plastic foam materials (flexible or non-flexible) with carbon-loading, or organic materials, including binders, providing more than 5% echo compared with metal over a bandwidth exceeding ±15% of the center frequency of the incident energy, and not capable of withstanding temperatures exceeding 450 K (177 °C); or

b. Ceramic materials providing more than 20% echo compared with metal over a bandwidth exceeding ±15% of the center frequency of the incident energy, and not capable of withstanding temperatures exceeding 800 K (527 °C);

Technical Note: *Absorption test samples for 1C001.a. Note 1.c.1 should be a square at least 5 wavelengths of the center frequency on a side and positioned in the far field of the radiating element.*

2. Tensile strength less than 7×10^6 N/m^2; and

3. Compressive strength less than 14×10^6 N/m^2;

d. Planar absorbers made of sintered ferrite, having all of the following:

1. A specific gravity exceeding 4.4; and

2. A maximum operating temperature of 548 K (275 °C);

e. Planar absorbers having no magnetic loss and fabricated from 'open-cell foams' plastic material with a density of 0.15 grams/cm^3 or less.

Technical Note: *'Open-cell foams' are flexible and porous materials, having an inner structure open to the atmosphere. 'Open-cell foams' are also known as reticulated foams.*

Note 2: *Nothing in Note 1 releases magnetic materials to provide absorption when contained in paint.*

b. Materials not transparent to visible light and specially designed for absorbing near-infrared radiation having a wavelength exceeding 810 nm but less than 2,000 nm (frequencies exceeding 150 THz but less than 370 THz);

Note: *1C001.b does not apply to materials,* ''*specially designed*'' *or formulated for any of the following applications:*

a. ''*Laser*'' *marking of polymers; or*

b. ''*Laser*'' *welding of polymers.*

c. Intrinsically conductive polymeric materials with a 'bulk electrical conductivity' exceeding 10,000 S/m (Siemens per meter) or a 'sheet (surface) resistivity' of less than 100 ohms/square, based on any of the following polymers:

c.1. Polyaniline;

c.2. Polypyrrole;

c.3. Polythiophene;

c.4. Poly phenylene-vinylene; *or*

c.5. Poly thienylene-vinylene.

Note: *1C001.c does not apply to materials in a liquid form.*

Technical Note: *'Bulk electrical conductivity' and 'sheet (surface) resistivity' should be determined using ASTM D–257 or national equivalents.*

■ 11. In Supplement No. 1 to part 774, ''ANNEX to Category 1, List of Explosives (See ECCNs 1A004 and 1A008)'' is amended by revising paragraph 6 to read as follows:

ANNEX to Category 1, ''List of Explosives (See ECCNs 1A004 and 1A008)''

* * * * *

6. DADE (1,1-diamino-2,2-dinitroethylene, FOX-7) (CAS 145250–81–3);

* * * * *

■ 12. In Supplement No. 1 to part 774, Category 2, ECCN 2A001 is revised to read as follows:

2A001 Anti-Friction Bearings and Bearing Systems, as Follows, (See List of Items Controlled) and ''Components'' Therefor.

License Requirements

Reason for Control: NS, MT, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 2
MT applies to radial ball bearings having all tolerances specified in accordance with ISO 492 Tolerance Class 2 (or ANSI/ABMA Std 20 Tolerance Class ABEC–9, or other national equivalents) or better and having all the following characteristics: an inner ring bore diameter between 12 and 50 mm; an outer ring outside diameter between 25 and 100 mm; and a width between 10 and 20 mm.	MT Column 1
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: $3,000, N/A for MT
GBS: Yes, for 2A001.a, N/A for MT

List of Items Controlled

Related Controls: (1) See also *2A991.* (2) Quiet running bearings are ''subject to the ITAR'' (see 22 CFR parts 120 through 130.)
Related Definitions: Annular Bearing Engineers Committee (ABEC).
Items:

Note 1: *2A001.a includes ball bearing and roller elements ''specially designed'' for the items specified therein.*

Note 2: *2A001 does not control balls with tolerances specified by the manufacturer in accordance with ISO 3290:2001 as grade G5 (or national equivalents) or worse.*

a. Ball bearings and solid roller bearings, having all tolerances specified by the manufacturer in accordance with ISO 492 Tolerance Class 2 or Class 4 (or national equivalents), or better, and having both 'rings' and 'rolling elements', made from monel or beryllium;

Note: *2A001.a does not control tapered roller bearings.*

Technical Notes:

1. 'Ring'—annular part of a radial rolling bearing incorporating one or more raceways (ISO 5593:1997).

2. *'Rolling element'—ball or roller which rolls between raceways (ISO 5593:1997).*

b. [Reserved]

c. Active magnetic bearing systems using any of the following:

c.1. Materials with flux densities of 2.0 T or greater and yield strengths greater than 414 MPa;

c.2. All-electromagnetic 3D homopolar bias designs for actuators; *or*

c.3. High temperature (450 K (177 °C) and above) position sensors.

■ 13. In Supplement No. 1 to part 774, Category 2, ECCN 2B003 is revised to read as follows:

2B003 ''Numerically Controlled'' Machine Tools, ''Specially Designed'' for the Shaving, Finishing, Grinding or Honing of Hardened (R_c = 40 or More) Spur, Helical and Double-Helical Gears Having all of the Following.

License Requirements

Reason for Control: NS, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 2
AT applies to entire entry.	AT Column 1

Reporting Requirements

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: $5,000
GBS: N/A

List of Items Controlled

Related Controls: See also *2B993*
Related Definitions: N/A
Items:

a. A pitch diameter exceeding 1,250 mm;

b. A face width of 15% of pitch diameter or larger; *and*

c. A finished quality of AGMA 14 or better (equivalent to ISO 1328 class 3).

■ 14. Supplement No. 1 to part 774, Category 2, ECCN 2B006 is revised to read as follows:

2B006 Dimensional Inspection or Measuring Systems, Equipment, Position Feedback Units and ''Electronic Assemblies'', as Follows (See List of Items Controlled).

License Requirements

Reason for Control: NS, NP, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 2
NP applies to those items in 2B006.a, .b.1, b.3, and .c (angular displacement measuring instruments) that meet or exceed the technical parameters in 2B206.	NP Column 1
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A
GBS: N/A

List of Items Controlled

Related Controls: (1) See ECCNs *2D001* and *2D002* for ''software'' for items controlled under this entry. (2) See ECCNs *2E001* (''development''), *2E002* (''production''), and *2E201* (''use'') for technology for items controlled under this entry. (3) Also see ECCNs *2B206* and *2B996.*
Related Definitions: N/A
Items:

a. Computer controlled or ''numerically controlled'' Coordinate Measuring Machines (CMM), having a three dimensional length (volumetric) maximum permissible error of length measurement ($E_{0,MPE}$) at any point within the operating range of the machine (*i.e.,* within the length of axes) equal to or less (better) than (1.7 + L/1,000) µm (L is the measured length in mm) according to ISO 10360–2 (2009);

Technical Note: *The $E_{0,MPE}$ of the most accurate configuration of the CMM specified by the manufacturer (e.g., best of the following: Probe, stylus length, motion parameters, environment) and with ''all compensations available'' shall be compared to the 1.7 + L/1,000 µm threshold.*

b. Linear displacement measuring instruments or systems, linear position feedback units, and ''electronic assemblies'', as follows:

Note: *Interferometer and optical-encoder measuring systems containing a ''laser'' are only specified by 2B006.b.3.*

b.1. 'Non-contact type measuring systems' with a 'resolution' equal to or less (better) than 0.2 µm within 0 to 0.2 mm of the 'measuring range';

Technical Notes:

1. For the purposes of 2B006.b.1, 'non-contact type measuring systems' are designed to measure the distance between the probe and measured object along a single vector, where the probe or measured object is in motion.

2. For the purposes of 2B006.b.1, 'measuring range' means the distance between the minimum and maximum working distance.

b.2. Linear position feedback units ''specially designed'' for machine tools and having an overall ''accuracy'' less (better) than (800 + (600 × L/1,000)) nm (L equals effective length in mm);

b.3. Measuring systems having all of the following:

b.3.a. Containing a ''laser'';

b.3.b. A 'resolution' over their full scale of 0.200 nm or less (better); *and*

b.3.c. Capable of achieving a ''measurement uncertainty'' equal to or less (better) than (1.6 + L/2,000) nm (L is the measured length in mm) at any point within a measuring range, when compensated for the refractive index of air and measured over a period of 30 seconds at a temperature of 20±0.01 °C; *or*

Technical Note: *For the purposes of 2B006.b, 'resolution' is the least increment of a measuring device; on digital instruments, the least significant bit.*

b.4. ''Electronic assemblies'' ''specially designed'' to provide feedback capability in systems controlled by 2B006.b.3;

c. Rotary position feedback units ''specially designed'' for machine tools or angular displacement measuring instruments, having an angular position ''accuracy'' equal to or less (better) than 0.9 second of arc;

Note: *2B006.c does not control optical instruments, such as autocollimators, using collimated light (e.g., ''laser'' light) to detect angular displacement of a mirror.*

d. Equipment for measuring surface roughness (including surface defects), by measuring optical scatter with a sensitivity of 0.5 nm or less (better).

Note: *2B006 includes machine tools, other than those specified by 2B001, that can be used as measuring machines, if they meet or exceed the criteria specified for the measuring machine function.*

■ 15. In Supplement No. 1 to part 774, Category 2, under ''Category 2E—Materials Processing Table; Deposition Techniques,'' the Technical Note to Table on Deposition Techniques is revised to read as follows:

Category 2—Materials Processing

* * * * *

Category 2E—Materials Processing Table; Deposition Techniques

* * * * *

Technical Note to Table on Deposition Techniques: *Processes specified in Column 1 of the Table are defined as follows:*

a. Chemical Vapor Deposition (CVD) is an overlay coating or surface modification coating process wherein a metal, alloy, ''composite'', dielectric or ceramic is deposited upon a heated substrate. Gaseous reactants are decomposed or combined in the vicinity of a substrate resulting in the deposition of the desired elemental, alloy or compound material on the substrate. Energy for this decomposition or chemical reaction process may be provided by the heat of the substrate, a glow discharge plasma, or ''laser'' irradiation.

Note 1: *CVD includes the following processes: Directed gas flow out-of-pack deposition, pulsating CVD, controlled nucleation thermal decomposition (CNTD), plasma enhanced or plasma assisted CVD processes.*

Note 2: *Pack denotes a substrate immersed in a powder mixture.*

Note 3: *The gaseous reactants used in the out-of-pack process are produced using the same basic reactions and parameters as the pack cementation process, except that the substrate to be coated is not in contact with the powder mixture.*

b. Thermal Evaporation-Physical Vapor Deposition (TE–PVD) is an overlay coating process conducted in a vacuum with a pressure less than 0.1 Pa wherein a source of thermal energy is used to vaporize the coating material. This process results in the condensation, or deposition, of the evaporated species onto appropriately positioned substrates. The addition of gases to the vacuum chamber during the coating process to synthesize compound coatings is an ordinary modification of the process. The use of ion or electron beams, or plasma, to activate or assist the coating's deposition is also a common modification in this technique. The use of monitors to provide in-process measurement of optical characteristics and thickness of coatings can be a feature of these processes. Specific TE–PVD processes are as follows:

1. Electron Beam PVD uses an electron beam to heat and evaporate the material which forms the coating;

2. Ion Assisted Resistive Heating PVD employs electrically resistive heating sources in combination with impinging ion beam(s) to produce a controlled and uniform flux of evaporated coating species;

3. ''Laser'' Vaporization uses either pulsed or continuous wave ''laser'' beams to vaporize the material which forms the coating;

4. Cathodic Arc Deposition employs a consumable cathode of the material which forms the coating and has an arc discharge established on the surface by a momentary contact of a ground trigger. Controlled motion of arcing erodes the cathode surface creating a highly ionized plasma. The anode can be either a cone attached to the periphery of the cathode, through an insulator, or the chamber. Substrate biasing is used for non line-of-sight deposition;

Note: *This definition does not include random cathodic arc deposition with non-biased substrates.*

5. Ion Plating is a special modification of a general TE–PVD process in which a plasma or an ion source is used to ionize the species to be deposited, and a negative bias is applied to the substrate in order to facilitate the extraction of the species from the plasma. The introduction of reactive species, evaporation of solids within the process chamber, and the use of monitors to provide in-process measurement of optical characteristics and thicknesses of coatings are ordinary modifications of the process.

c. Pack Cementation is a surface modification coating or overlay coating process wherein a substrate is immersed in a powder mixture (a pack), that consists of:

1. The metallic powders that are to be deposited (usually aluminum, chromium, silicon or combinations thereof);

2. An activator (normally a halide salt); and

3. An inert powder, most frequently alumina.

Note: *The substrate and powder mixture is contained within a retort which is heated to between 1,030 K (757 °C) to 1,375 K (1,102 °C) for sufficient time to deposit the coating.*

d. Plasma Spraying is an overlay coating process wherein a gun (spray torch) which produces and controls a plasma accepts powder or wire coating materials, melts them and propels them towards a substrate, whereon an integrally bonded coating is formed. Plasma spraying constitutes either low pressure plasma spraying or high velocity plasma spraying.

Note 1: *Low pressure means less than ambient atmospheric pressure.*

Note 2: *High velocity refers to nozzle-exit gas velocity exceeding 750 m/s calculated at 293 K (20 °C) at 0.1 MPa.*

e. Slurry Deposition is a surface modification coating or overlay coating process wherein a metallic or ceramic powder with an organic binder is suspended in a liquid and is applied to a substrate by either spraying, dipping or painting, subsequent air or oven drying, and heat treatment to obtain the desired coating.

f. Sputter Deposition is an overlay coating process based on a momentum transfer phenomenon, wherein positive ions are accelerated by an electric field towards the surface of a target (coating material). The kinetic energy of the impacting ions is sufficient to cause target surface atoms to be released and deposited on an appropriately positioned substrate.

Note 1: *The Table refers only to triode, magnetron or reactive sputter deposition which is used to increase adhesion of the coating and rate of deposition and to radio frequency (RF) augmented sputter deposition used to permit vaporization of non-metallic coating materials.*

Note 2: *Low-energy ion beams (less than 5 keV) can be used to activate the deposition.*

g. Ion Implantation is a surface modification coating process in which the element to be alloyed is ionized, accelerated through a potential gradient and implanted into the surface region of the substrate. This includes processes in which ion implantation is performed simultaneously with electron beam physical vapor deposition or sputter deposition.

■ 16. In Supplement No. 1 to part 774, the introductory text for Category 3 is revised to read as follows:

Category 3—Electronics

A. ''End Items,'' ''Equipment,'' ''Accessories,'' ''Attachments,'' ''Parts,'' ''Components,'' and ''Systems''

Note 1: *The control status of equipment and ''components'' described in 3A001 or 3A002, other than those described in 3A001.a.3 to 3A001.a.10, or 3A001.a.12 to 3A001.a.14, which are ''specially designed'' for or which have the same functional characteristics as other equipment is determined by the control status of the other equipment.*

Note 2: *The control status of integrated circuits described in 3A001.a.3 to 3A001.a.9, or 3A001.a.12 to 3A001.a.14 that are unalterably programmed or designed for a specific function for other equipment is determined by the control status of the other equipment.*

N.B.: When the manufacturer or applicant cannot determine the control status of the other equipment, the control status of the integrated circuits is determined in 3A001.a.3 to 3A001.a.9, or 3A001.a.12 to 3A001.a.14.

Note 3: *The status of wafers (finished or unfinished), in which the function has been determined, is to be evaluated against the parameters of 3A001.a, 3A001.b, 3A001.d, 3A001.e.4, 3A001.g, 3A001.h, or 3A001.i.*

* * * * *

■ 17. In Supplement No. 1 to part 774, Category 3, ECCN 3A001 is revised to read as follows:

3A001 Electronic Items as Follows (See List of Items Controlled).

Reason for Control: NS, RS, MT, NP, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to ''Monolithic Microwave Integrated Circuit'' (''MMIC'') amplifiers in 3A001.b.2 and discrete microwave transistors in 3A001.b.3, except those 3A001.b.2 and b.3 items being exported or reexported for use in civil telecommunications applications.	NS Column 1
NS applies to entire entry.	NS Column 2
RS applies ''Monolithic Microwave Integrated Circuit'' (''MMIC'') amplifiers in 3A001.b.2 and discrete microwave transistors in 3A001.b.3, except those 3A001.b.2 and b.3 items being exported or reexported for use in civil telecommunications applications.	RS Column 1
MT applies to 3A001.a.1.a when usable in ''missiles''; and to 3A001.a.5.a when ''designed or modified'' for military use, hermetically sealed and rated for operation in the temperature range from below −54 °C to above +125 °C.	MT Column 1
NP applies to pulse discharge capacitors in in 3A001.e.2 and superconducting solenoidal electromagnets in 3A001.e.3 that meet or exceed the technical parameters in 3A201.a and 3A201.b, respectively.	NP Column 1
AT applies to entire entry.	AT Column 1

Reporting Requirements: See § 743.1 of the EAR for reporting requirements for exports under 3A001.b.2 or b.3 under License Exceptions, and Validated End-User authorizations.

License Requirements Note: *See § 744.17 of the EAR for additional license requirements for microprocessors having a processing speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more, including those incorporating ''information security'' functionality, and associated ''software'' and ''technology'' for the ''production'' or ''development'' of such microprocessors.*

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A for MT or NP; N/A for ''Monolithic Microwave Integrated Circuit'' (''MMIC'') amplifiers in 3A001.b.2 and discrete microwave transistors in 3A001.b.3, except those that are being exported or reexported for use in civil telecommunications applications.

Yes for:

$1,500: 3A001.c.

$3,000: 3A001.b.1, b.2 (exported or reexported for use in civil telecommunications applications), b.3 (exported or reexported for use in civil telecommunications applications), b.9, .d, .e, .f, and .g.

$5,000: 3A001.a (except a.1.a and a.5.a when controlled for MT), .b.4 to b.7, and b.12.

GBS: Yes for 3A001.a.1.b, a.2 to a.14 (except .a.5.a when controlled for MT), b.2 (exported or reexported for use in civil telecommunications applications), b.8 (except for ''vacuum electronic devices'' exceeding 18 GHz), b.9., b.10, .g, and .h.

Special Conditions for STA

STA: License Exception STA may not be used to ship any item in 3A001.b.2 or b.3, except those that are being exported or reexported for use in civil telecommunications applications, to any of the destinations listed in Country Group A:5 or A:6 (See Supplement No.1 to part 740 of the EAR).

List of Items Controlled

Related Controls: (1) See Category XV of the USML for certain ''space-qualified'' electronics and Category XI of the USML for certain ASICs, 'transmit/receive modules,' or 'transmit modules' ''subject to the ITAR'' (see 22 CFR parts 120 through 130). (2) See also 3A101, 3A201, 3A611, 3A991, and 9A515.

Related Definitions: 'Microcircuit' means a device in which a number of passive or active elements are considered as indivisibly associated on or within a continuous structure to perform the function of a circuit. For the purposes of integrated circuits in 3A001.a.1, 5×10^3 Gy(Si) = 5×10^5 Rads (Si); 5×10^6 Gy (Si)/s = 5×10^8 Rads (Si)/s.

Items:

a. General purpose integrated circuits, as follows:

Note 1: *Integrated circuits include the following types:*

—Monolithic integrated circuits;

—Hybrid integrated circuits;

—Multichip integrated circuits;

—Film type integrated circuits, including silicon-on-sapphire integrated circuits;

—Optical integrated circuits;

—''Three dimensional integrated circuits'';

—''Monolithic Microwave Integrated Circuits'' (''MMICs'').

a.1. Integrated circuits designed or rated as radiation hardened to withstand any of the following:

a.1.a. A total dose of 5×10^3 Gy (Si), or higher;

a.1.b. A dose rate upset of 5×10^6 Gy (Si)/s, or higher; *or*

a.1.c. A fluence (integrated flux) of neutrons (1 MeV equivalent) of 5×10^{13} n/cm^2 or higher on silicon, or its equivalent for other materials;

Note: *3A001.a.1.c does not apply to Metal Insulator Semiconductors (MIS).*

a.2. ''Microprocessor microcircuits,'' ''microcomputer microcircuits,'' microcontroller microcircuits, storage integrated circuits manufactured from a compound semiconductor, analog-to-digital converters, integrated circuits that contain analog-to-digital converters and store or process the digitized data, digital-to-analog converters, electro-optical or ''optical integrated circuits'' designed for ''signal processing,'' field programmable logic devices, custom integrated circuits for which either the function is unknown or the control status of the equipment in which the integrated circuit will be used in unknown, Fast Fourier Transform (FFT) processors, Electrical Erasable Programmable Read-Only Memories (EEPROMs), flash memories, Static Random-Access Memories (SRAMs), or Magnetic Random Access Memories (MRAMs), having any of the following:

a.2.a. Rated for operation at an ambient temperature above 398 K (+125 °C);

a.2.b. Rated for operation at an ambient temperature below 218 K (−55 °C); *or*

a.2.c. Rated for operation over the entire ambient temperature range from 218 K (−55 °C) to 398 K (125 °C);

Note: *3A001.a.2 does not apply to integrated circuits designed for civil automobile or railway train applications.*

a.3. ''Microprocessor microcircuits'', ''microcomputer microcircuits'' and microcontroller microcircuits, manufactured from a compound semiconductor and operating at a clock frequency exceeding 40 MHz;

Note: *3A001.a.3 includes digital signal processors, digital array processors and digital coprocessors.*

a.4. [Reserved]

a.5. Analog-to-Digital Converter (ADC) and Digital-to-Analog Converter (DAC) integrated circuits, as follows:

a.5.a. ADCs having any of the following:

a.5.a.1. A resolution of 8 bit or more, but less than 10 bit, with an output rate greater than 1.3 Giga Samples Per Second (GSPS);

a.5.a.2. A resolution of 10 bit or more, but less than 12 bit, with an output rate greater than 600 Mega Samples Per Second (MSPS);

a.5.a.3. A resolution of 12 bit or more, but less than 14 bit, with an output rate greater than 400 Mega Samples Per Second (MSPS);

a.5.a.4. A resolution of 14 bit or more, but less than 16 bit, with an output rate greater than 250 Mega Samples Per Second (MSPS); *or*

a.5.a.5. A resolution of 16 bit or more with an output rate greater than 65 Mega Samples Per Second (MSPS);

N.B.: For integrated circuits that contain analog-to-digital converters and store or process the digitized data see 3A001.a.14.

Technical Notes:

1. A resolution of n bit corresponds to a quantization of 2^n levels.

2. The number of bits in the output word is equal to the resolution of the ADC.

3. The output rate is the maximum output rate of the converter, regardless of architecture or oversampling.

4. For 'multiple channel ADCs', the outputs are not aggregated and the output rate is the maximum output rate of any single channel.

5. For 'interleaved ADCs' or for 'multiple channel ADCs' that are specified to have an interleaved mode of operation, the outputs are aggregated and the output rate is the maximum combined total output rate of all of the outputs.

6. Vendors may also refer to the output rate as sampling rate, conversion rate or throughput rate. It is often specified in megahertz (MHz) mega words per second or Mega Samples Per Second (MSPS).

7. For the purpose of measuring output rate, one sample per second is equivalent to one Hertz or one output word per second.

8. 'Multiple channel ADCs' are defined as devices which integrate more than one ADC, designed so that each ADC has a separate analog input.

9. 'Interleaved ADCs' are defined as devices which have multiple ADC units that sample the same analog input at different times such that when the outputs are aggregated, the analog input has been effectively sampled and converted at a higher sampling rate.

a.5.b. Digital-to-Analog Converters (DAC) having any of the following:

a.5.b.1. A resolution of 10-bit or more but less than 12-bit,with an 'adjusted update rate' of exceeding 3,500 MSPS; *or*

a.5.b.2. A resolution of 12-bit or more and having any of the following:

a.5.b.2.a. An 'adjusted update rate' exceeding 1,250 MSPS but not exceeding 3,500 MSPS, and having any of the following:

a.5.b.2.a.1. A settling time less than 9 ns to 0.024% of full scale from a full scale step; *or*

a.5.b.2.a.2. A 'Spurious Free Dynamic Range' (SFDR) greater than 68 dBc (carrier) when synthesizing a full scale analog signal of 100 MHz or the highest full scale analog signal frequency specified below 100 MHz; or

a.5.b.2.b. An 'adjusted update rate' exceeding 3,500 MSPS;

Technical Notes:

1. 'Spurious Free Dynamic Range' (SFDR) is defined as the ratio of the RMS value of the carrier frequency (maximum signal component) at the input of the DAC to the RMS value of the next largest noise or harmonic distortion component at its output.

2. SFDR is determined directly from the specification table or from the characterization plots of SFDR versus frequency.

3. A signal is defined to be full scale when its amplitude is greater than −3 dBfs (full scale).

4. 'Adjusted update rate' for DACs is:

a. For conventional (non-interpolating) DACs, the 'adjusted update rate' is the rate at which the digital signal is converted to an analog signal and the output analog values are changed by the DAC. For DACs where the interpolation mode may be bypassed (interpolation factor of one), the DAC should be considered as a conventional (non-interpolating) DAC.

b. For interpolating DACs (oversampling DACs), the 'adjusted update rate' is defined as the DAC update rate divided by the smallest interpolating factor. For interpolating DACs, the 'adjusted update rate' may be referred to by different terms including:

- *Input data rate*
- *input word rate*
- *input sample rate*
- *maximum total input bus rate*
- *maximum DAC clock rate for DAC clock input*

a.6. Electro-optical and ''optical integrated circuits'', designed for ''signal processing'' and having all of the following:

a.6.a. One or more than one internal ''laser'' diode;

a.6.b. One or more than one internal light detecting element; *and*

a.6.c. Optical waveguides;

a.7. 'Field programmable logic devices' having any of the following:

a.7.a. A maximum number of single-ended digital input/outputs of greater than 700; *or*

a.7.b. An 'aggregate one-way peak serial transceiver data rate' of 500 Gb/s or greater;

Note: *3A001.a.7 includes:*

—Simple Programmable Logic Devices (SPLDs);

—Complex Programmable Logic Devices (CPLDs);

—Field Programmable Gate Arrays (FPGAs);

—Field Programmable Logic Arrays (FPLAs);

—Field Programmable Interconnects (FPICs).

N.B.: For integrated circuits having field programmable logic devices that are combined with an analog-to-digital converter, see 3A001.a.14.

Technical Notes:

1. Maximum number of digital input/outputs in 3A001.a.7.a is also referred to as maximum user input/outputs or maximum available input/outputs, whether the integrated circuit is packaged or bare die.

2. 'Aggregate one-way peak serial transceiver data rate' is the product of the peak serial one-way transceiver data rate times the number of transceivers on the FPGA.

a.8. [Reserved]

a.9. Neural network integrated circuits;

a.10. Custom integrated circuits for which the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

a.10.a. More than 1,500 terminals;

a.10.b. A typical ''basic gate propagation delay time'' of less than 0.02 ns; *or*

a.10.c. An operating frequency exceeding 3 GHz;

a.11. Digital integrated circuits, other than those described in 3A001.a.3 to 3A001.a.10 and 3A001.a.12, based upon any compound semiconductor and having any of the following:

a.11.a. An equivalent gate count of more than 3,000 (2 input gates); *or*

a.11.b. A toggle frequency exceeding 1.2 GHz;

a.12. Fast Fourier Transform (FFT) processors having a rated execution time for an N-point complex FFT of less than ($N \log_2 N$)/20,480 ms, where N is the number of points;

Technical Note: *When N is equal to 1,024 points, the formula in 3A001.a.12 gives an execution time of 500* μ*s.*

a.13. Direct Digital Synthesizer (DDS) integrated circuits having any of the following:

a.13.a. A Digital-to-Analog Converter (DAC) clock frequency of 3.5 GHz or more and a DAC resolution of 10 bit or more, but less than 12 bit; *or*

a.13.b. A DAC clock frequency of 1.25 GHz or more and a DAC resolution of 12 bit or more;

Technical Note: *The DAC clock frequency may be specified as the master clock frequency or the input clock frequency.*

a.14. Integrated circuits that perform all of the following:

a.14.a. Analog-to-digital conversions meeting any of the following:

a.14.a.1. A resolution of 8 bit or more, but less than 10 bit, with an input sample rate greater than 1.3 Giga Samples Per Second (GSPS);

a.14.a.2. A resolution of 10 bit or more, but less than 12 bit, with an input sample rate greater than 1.0 Giga Samples Per Second (GSPS);

a.14.a.3. A resolution of 12 bit or more, but less than 14 bit, with an input sample rate greater than 1.0 Giga Samples Per Second (GSPS);

a.14.a.4. A resolution of 14 bit or more, but less than 16 bit, with an input sample rate greater than 400 Mega Samples Per Second (MSPS); *or*

a.14.a.5. A resolution of 16 bit or more with an input sample rate greater than 180 Mega Samples Per Second (MSPS); *and*

a.14.b. Any of the following:

a.14.b.1. Storage of digitized data; *or*

a.14.b.2. Processing of digitized data;

N.B. 1: For analog-to-digital converter integrated circuits see 3A001.a.5.a.

N.B. 2: For field programmable logic devices see 3A001.a.7.

b. Microwave or millimeter wave items, as follows:

Technical Note: *For purposes of 3A001.b, the parameter peak saturated power output may also be referred to on product data sheets as output power, saturated power output, maximum power output, peak power output, or peak envelope power output.*

b.1. ''Vacuum electronic devices'' and cathodes, as follows:

Note 1: *3A001.b.1 does not control ''vacuum electronic devices'' designed or rated for operation in any frequency band and having all of the following:*

a. Does not exceed 31.8 GHz; and

b. Is ''allocated by the ITU'' for radio-communications services, but not for radio-determination.

Note 2: *3A001.b.1 does not control non-''space-qualified'' ''vacuum electronic devices'' having all the following:*

a. An average output power equal to or less than 50 W; and

b. Designed or rated for operation in any frequency band and having all of the following:

1. *Exceeds 31.8 GHz but does not exceed 43.5 GHz; and*

2. Is ''allocated by the ITU'' for radio-communications services, but not for radio-determination.

b.1.a. Traveling-wave ''vacuum electronic devices,'' pulsed or continuous wave, as follows:

b.1.a.1. Devices operating at frequencies exceeding 31.8 GHz;

b.1.a.2. Devices having a cathode heater with a turn on time to rated RF power of less than 3 seconds;

b.1.a.3. Coupled cavity devices, or derivatives thereof, with a ''fractional bandwidth'' of more than 7% or a peak power exceeding 2.5 kW;

b.1.a.4. Devices based on helix, folded waveguide, or serpentine waveguide circuits, or derivatives thereof, having any of the following:

b.1.a.4.a. An ''instantaneous bandwidth'' of more than one octave, and average power (expressed in kW) times frequency (expressed in GHz) of more than 0.5;

b.1.a.4.b. An ''instantaneous bandwidth'' of one octave or less, and average power (expressed in kW) times frequency (expressed in GHz) of more than 1;

b.1.a.4.c. Being ''space-qualified''; *or*

b.1.a.4.d. Having a gridded electron gun;

b.1.a.5. Devices with a ''fractional bandwidth'' greater than or equal to 10%, with any of the following:

b.1.a.5.a. An annular electron beam;

b.1.a.5.b. A non-axisymmetric electron beam; *or*

b.1.a.5.c. Multiple electron beams;

b.1.b. Crossed-field amplifier ''vacuum electronic devices'' with a gain of more than 17 dB;

b.1.c. Thermionic cathodes, designed for ''vacuum electronic devices,'' producing an emission current density at rated operating conditions exceeding 5 A/cm^2 or a pulsed (non-continuous) current density at rated operating conditions exceeding 10 A/cm^2;

b.1.d. ''Vacuum electronic devices'' with the capability to operate in a 'dual mode.'

Technical Note: *'Dual mode' means the ''vacuum electronic device'' beam current can be intentionally changed between continuous-wave and pulsed mode operation by use of a grid and produces a peak pulse output power greater than the continuous-wave output power.*

b.2. ''Monolithic Microwave Integrated Circuit'' (''MMIC'') amplifiers that are any of the following:

N.B.: For ''MMIC'' amplifiers that have an integrated phase shifter see 3A001.b.12.

b.2.a. Rated for operation at frequencies exceeding 2.7 GHz up to and including 6.8 GHz with a ''fractional bandwidth'' greater than 15%, and having any of the following:

b.2.a.1. A peak saturated power output greater than 75 W (48.75 dBm) at any frequency exceeding 2.7 GHz up to and including 2.9 GHz;

b.2.a.2. A peak saturated power output greater than 55 W (47.4 dBm) at any frequency exceeding 2.9 GHz up to and including 3.2 GHz;

b.2.a.3. A peak saturated power output greater than 40 W (46 dBm) at any frequency exceeding 3.2 GHz up to and including 3.7 GHz; *or*

b.2.a.4. A peak saturated power output greater than 20 W (43 dBm) at any frequency exceeding 3.7 GHz up to and including 6.8 GHz;

b.2.b. Rated for operation at frequencies exceeding 6.8 GHz up to and including 16 GHz with a ''fractional bandwidth'' greater than 10%, and having any of the following:

b.2.b.1. A peak saturated power output greater than 10 W (40 dBm) at any frequency exceeding 6.8 GHz up to and including 8.5 GHz; *or*

b.2.b.2. A peak saturated power output greater than 5 W (37 dBm) at any frequency exceeding 8.5 GHz up to and including 16 GHz;

b.2.c. Rated for operation with a peak saturated power output greater than 3 W (34.77 dBm) at any frequency exceeding 16 GHz up to and including 31.8 GHz, and with a ''fractional bandwidth'' of greater than 10%;

b.2.d. Rated for operation with a peak saturated power output greater than 0.1 nW (−70 dBm) at any frequency exceeding 31.8 GHz up to and including 37 GHz;

b.2.e. Rated for operation with a peak saturated power output greater than 1 W (30 dBm) at any frequency exceeding 37 GHz up to and including 43.5 GHz, and with a ''fractional bandwidth'' of greater than 10%;

b.2.f. Rated for operation with a peak saturated power output greater than 31.62 mW (15 dBm) at any frequency exceeding 43.5 GHz up to and including 75 GHz, and with a ''fractional bandwidth'' of greater than 10%;

b.2.g. Rated for operation with a peak saturated power output greater than 10 mW (10 dBm) at any frequency exceeding 75 GHz up to and including 90 GHz, and with a ''fractional bandwidth'' of greater than 5%; *or*

b.2.h. Rated for operation with a peak saturated power output greater than 0.1 nW (−70 dBm) at any frequency exceeding 90 GHz;

Note 1: *[Reserved]*

Note 2: *The control status of the ''MMIC'' whose rated operating frequency includes frequencies listed in more than one frequency range, as defined by 3A001.b.2.a through 3A001.b.2.h, is determined by the lowest peak saturated power output control threshold.*

Note 3: *Notes 1 and 2 following the Category 3 heading for product group A. Systems, Equipment, and Components mean that 3A001.b.2 does not control ''MMICs'' if they are ''specially designed'' for other applications, e.g., telecommunications, radar, automobiles.*

b.3. Discrete microwave transistors that are any of the following:

b.3.a. Rated for operation at frequencies exceeding 2.7 GHz up to and including 6.8 GHz and having any of the following:

b.3.a.1. A peak saturated power output greater than 400 W (56 dBm) at any frequency exceeding 2.7 GHz up to and including 2.9 GHz;

b.3.a.2. A peak saturated power output greater than 205 W (53.12 dBm) at any frequency exceeding 2.9 GHz up to and including 3.2 GHz;

b.3.a.3. A peak saturated power output greater than 115 W (50.61 dBm) at any frequency exceeding 3.2 GHz up to and including 3.7 GHz; *or*

b.3.a.4. A peak saturated power output greater than 60 W (47.78 dBm) at any frequency exceeding 3.7 GHz up to and including 6.8 GHz;

b.3.b. Rated for operation at frequencies exceeding 6.8 GHz up to and including 31.8 GHz and having any of the following:

b.3.b.1. A peak saturated power output greater than 50 W (47 dBm) at any frequency exceeding 6.8 GHz up to and including 8.5 GHz;

b.3.b.2. A peak saturated power output greater than 15 W (41.76 dBm) at any frequency exceeding 8.5 GHz up to and including 12 GHz;

b.3.b.3. A peak saturated power output greater than 40 W (46 dBm) at any frequency exceeding 12 GHz up to and including 16 GHz; *or*

b.3.b.4. A peak saturated power output greater than 7 W (38.45 dBm) at any frequency exceeding 16 GHz up to and including 31.8 GHz;

b.3.c. Rated for operation with a peak saturated power output greater than 0.5 W (27 dBm) at any frequency exceeding 31.8 GHz up to and including 37 GHz;

b.3.d. Rated for operation with a peak saturated power output greater than 1 W (30 dBm) at any frequency exceeding 37 GHz up to and including 43.5 GHz;

b.3.e. Rated for operation with a peak saturated power output greater than 0.1 nW (−70 dBm) at any frequency exceeding 43.5 GHz; *or*

b.3.f. Other than those specified by 3A001.b.3.a to 3A001.b.3.e and rated for operation with a peak saturated power output greater than 5 W (37.0 dBm) at all frequencies exceeding 8.5 GHz up to and including 31.8 GHz;

Note 1: *The control status of a transistor in 3A001.b.3.a through 3A001.b.3.e, whose rated operating frequency includes frequencies listed in more than one frequency range, as defined by 3A001.b.3.a through 3A001.b.3.e, is determined by the lowest peak saturated power output control threshold.*

Note 2: *3A001.b.3 includes bare dice, dice mounted on carriers, or dice mounted in packages. Some discrete transistors may also be referred to as power amplifiers, but the status of these discrete transistors is determined by 3A001.b.3.*

b.4. Microwave solid state amplifiers and microwave assemblies/modules containing microwave solid state amplifiers, that are any of the following:

b.4.a. Rated for operation at frequencies exceeding 2.7 GHz up to and including 6.8

GHz with a ''fractional bandwidth'' greater than 15%, and having any of the following:

b.4.a.1. A peak saturated power output greater than 500 W (57 dBm) at any frequency exceeding 2.7 GHz up to and including 2.9 GHz;

b.4.a.2. A peak saturated power output greater than 270 W (54.3 dBm) at any frequency exceeding 2.9 GHz up to and including 3.2 GHz;

b.4.a.3. A peak saturated power output greater than 200 W (53 dBm) at any frequency exceeding 3.2 GHz up to and including 3.7 GHz; *or*

b.4.a.4. A peak saturated power output greater than 90 W (49.54 dBm) at any frequency exceeding 3.7 GHz up to and including 6.8 GHz;

b.4.b. Rated for operation at frequencies exceeding 6.8 GHz up to and including 31.8 GHz with a ''fractional bandwidth'' greater than 10%, and having any of the following:

b.4.b.1. A peak saturated power output greater than 70 W (48.54 dBm) at any frequency exceeding 6.8 GHz up to and including 8.5 GHz;

b.4.b.2. A peak saturated power output greater than 50 W (47 dBm) at any frequency exceeding 8.5 GHz up to and including 12 GHz;

b.4.b.3. A peak saturated power output greater than 30 W (44.77 dBm) at any frequency exceeding 12 GHz up to and including 16 GHz; *or*

b.4.b.4. A peak saturated power output greater than 20 W (43 dBm) at any frequency exceeding 16 GHz up to and including 31.8 GHz;

b.4.c. Rated for operation with a peak saturated power output greater than 0.5 W (27 dBm) at any frequency exceeding 31.8 GHz up to and including 37 GHz;

b.4.d. Rated for operation with a peak saturated power output greater than 2 W (33 dBm) at any frequency exceeding 37 GHz up to and including 43.5 GHz, and with a ''fractional bandwidth'' of greater than 10%;

b.4.e. Rated for operation at frequencies exceeding 43.5 GHz and having any of the following:

b.4.e.1. A peak saturated power output greater than 0.2 W (23 dBm) at any frequency exceeding 43.5 GHz up to and including 75 GHz, and with a ''fractional bandwidth'' of greater than 10%;

b.4.e.2. A peak saturated power output greater than 20 mW (13 dBm) at any frequency exceeding 75 GHz up to and including 90 GHz, and with a ''fractional bandwidth'' of greater than 5%; *or*

b.4.e.3. A peak saturated power output greater than 0.1 nW (−70 dBm) at any frequency exceeding 90 GHz; *or*

b.4.f. [Reserved]

N.B.:

1. For ''*MMIC*'' *amplifiers see 3A001.b.2.*

2. For 'transmit/receive modules' and 'transmit modules' see 3A001.b.12.

Note 1: *[Reserved]*

Note 2: *The control status of an item whose rated operating frequency includes frequencies listed in more than one frequency range, as defined by 3A001.b.4.a through 3A001.b.4.e, is determined by the lowest peak saturated power output control threshold.*

b.5. Electronically or magnetically tunable band-pass or band-stop filters, having more than 5 tunable resonators capable of tuning across a 1.5:1 frequency band (f_{max}/f_{min}) in less than 10 μs and having any of the following:

b.5.a. A band-pass bandwidth of more than 0.5% of center frequency; *or*

b.5.b. A band-stop bandwidth of less than 0.5% of center frequency;

b.6. [Reserved]

b.7. Converters and harmonic mixers, that are any of the following:

b.7.a. Designed to extend the frequency range of ''signal analyzers'' beyond 90 GHz;

b.7.b. Designed to extend the operating range of signal generators as follows:

b.7.b.1. Beyond 90 GHz;

b.7.b.2. To an output power greater than 100 mW (20 dBm) anywhere within the frequency range exceeding 43.5 GHz but not exceeding 90 GHz;

b.7.c. Designed to extend the operating range of network analyzers as follows:

b.7.c.1. Beyond 110 GHz;

b.7.c.2. To an output power greater than 31.62 mW (15 dBm) anywhere within the frequency range exceeding 43.5 GHz but not exceeding 90 GHz;

b.7.c.3. To an output power greater than 1 mW (0 dBm) anywhere within the frequency range exceeding 90 GHz but not exceeding 110 GHz; *or*

b.7.d. Designed to extend the frequency range of microwave test receivers beyond 110 GHz;

b.8. Microwave power amplifiers containing ''vacuum electronic devices'' controlled by 3A001.b.1 and having all of the following:

b.8.a. Operating frequencies above 3 GHz;

b.8.b. An average output power to mass ratio exceeding 80 W/kg; *and*

b.8.c. A volume of less than 400 cm^3;

Note: *3A001.b.8 does not control equipment designed or rated for operation in any frequency band which is* ''*allocated by the ITU*'' *for radio-communications services, but not for radio-determination.*

b.9. Microwave Power Modules (MPM) consisting of, at least, a traveling-wave ''vacuum electronic device,'' a ''Monolithic Microwave Integrated Circuit'' (''MMIC'') and an integrated electronic power conditioner and having all of the following:

b.9.a. A 'turn-on time' from off to fully operational in less than 10 seconds;

b.9.b. A volume less than the maximum rated power in Watts multiplied by 10 cm^3/W; *and*

b.9.c. An ''instantaneous bandwidth'' greater than 1 octave ($f_{max.} > 2f_{min}$,) and having any of the following:

b.9.c.1. For frequencies equal to or less than 18 GHz, an RF output power greater than 100 W; *or*

b.9.c.2. A frequency greater than 18 GHz;

Technical Notes:

1. To calculate the volume in 3A001.b.9.b., the following example is provided: For a maximum rated power of 20 W, the volume would be: 20 W × 10 cm³/W = 200 cm³.

2. The 'turn-on time' in 3A001.b.9.a. refers to the time from fully-off to fully operational, i.e., it includes the warm-up time of the MPM.

b.10. Oscillators or oscillator assemblies, specified to operate with a single sideband (SSB) phase noise, in dBc/Hz, less (better) than $-(126 + 20\log_{10}F - 20\log_{10}f)$ anywhere within the range of 10 Hz ≤ F ≤ 10 kHz;

Technical Note: *In 3A001.b.10, F is the offset from the operating frequency in Hz and f is the operating frequency in MHz.*

b.11. ''Frequency synthesizer'' ''electronic assemblies'' having a ''frequency switching time'' as specified by any of the following:

b.11.a. Less than 143 ps;

b.11.b. Less than 100 μs for any frequency change exceeding 2.2 GHz within the synthesized frequency range exceeding 4.8 GHz but not exceeding 31.8 GHz;

b.11.c. [Reserved]

b.11.d. Less than 500 μs for any frequency change exceeding 550 MHz within the synthesized frequency range exceeding 31.8 GHz but not exceeding 37 GHz; *or*

b.11.e. Less than 100 μs for any frequency change exceeding 2.2 GHz within the synthesized frequency range exceeding 37 GHz but not exceeding 90 GHz; *or*

b.11.f. [Reserved]

b.11.g. Less than 1 ms within the synthesized frequency range exceeding 90 GHz;

N.B.: For general purpose ''*signal analyzers*''*, signal generators, network analyzers and microwave test receivers, see 3A002.c, 3A002.d, 3A002.e and 3A002.f, respectively.*

b.12. 'Transmit/receive modules,' 'transmit/receive MMICs,' 'transmit modules,' and 'transmit MMICs,' rated for operation at frequencies above 2.7 GHz and having all of the following:

b.12.a. A peak saturated power output (in watts), P_{sat}, greater than 505.62 divided by the maximum operating frequency (in GHz) squared [$P_{sat} > 505.62\ W*GHz^2/f_{GHz}^2$] for any channel;

b.12.b. A ''fractional bandwidth'' of 5% or greater for any channel;

b.12.c. Any planar side with length d (in cm) equal to or less than 15 divided by the lowest operating frequency in GHz [$d \leq 15cm*GHz*N/f_{GHz}$] where N is the number of transmit or transmit/receive channels; *and*

b.12.d. An electronically variable phase shifter per channel.

Technical Notes:

1. A 'transmit/receive module' is a multifunction ''*electronic assembly*'' *that provides bi-directional amplitude and phase control for transmission and reception of signals.*

2. A 'transmit module' is an ''*electronic assembly*'' *that provides amplitude and phase control for transmission of signals.*

3. A 'transmit/receive MMIC' is a multifunction ''*MMIC*'' *that provides bi-directional amplitude and phase control for transmission and reception of signals.*

4. A 'transmit MMIC' is a ''*MMIC*'' *that provides amplitude and phase control for transmission of signals.*

*5. 2.7 GHz should be used as the lowest operating frequency (f_{GHz}) in the formula in 3A001.b.4.12.c for transmit/receive or transmit modules that have a rated operation range extending downward to 2.7 GHz and below [d≤15cm*GHz*N/2.7 GHz].*

6. 3A001.b.12 applies to 'transmit/receive modules' or 'transmit modules' with or without a heat sink. The value of d in 3A001.b.12.c does not include any portion of the 'transmit/receive module' or 'transmit module' that functions as a heat sink.

7. 'Transmit/receive modules' or 'transmit modules,' 'transmit/receive MMICs' or 'transmit MMICs' may or may not have N integrated radiating antenna elements where N is the number of transmit or transmit/receive channels.

c. Acoustic wave devices as follows and ''specially designed'' ''components'' therefor:

c.1. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices, having any of the following:

c.1.a. A carrier frequency exceeding 6 GHz;

c.1.b. A carrier frequency exceeding 1 GHz, but not exceeding 6 GHz and having any of the following:

c.1.b.1. A 'frequency side-lobe rejection' exceeding 65 dB;

c.1.b.2. A product of the maximum delay time and the bandwidth (time in μs and bandwidth in MHz) of more than 100;

c.1.b.3. A bandwidth greater than 250 MHz; *or*

c.1.b.4. A dispersive delay of more than 10 μs; *or*

c.1.c. A carrier frequency of 1 GHz or less and having any of the following:

c.1.c.1. A product of the maximum delay time and the bandwidth (time in μs and bandwidth in MHz) of more than 100;

c.1.c.2. A dispersive delay of more than 10 μs; *or*

c.1.c.3. A 'frequency side-lobe rejection' exceeding 65 dB and a bandwidth greater than 100 MHz;

Technical Note: *'Frequency side-lobe rejection' is the maximum rejection value specified in data sheet.*

c.2. Bulk (volume) acoustic wave devices that permit the direct processing of signals at frequencies exceeding 6 GHz;

c.3. Acoustic-optic ''signal processing'' devices employing interaction between acoustic waves (bulk wave or surface wave) and light waves that permit the direct processing of signals or images, including spectral analysis, correlation or convolution;

Note: *3A001.c does not control acoustic wave devices that are limited to a single band pass, low pass, high pass or notch filtering, or resonating function.*

d. Electronic devices and circuits containing ''components,'' manufactured from ''superconductive'' materials, ''specially designed'' for operation at temperatures below the ''critical temperature'' of at least one of the ''superconductive'' constituents and having any of the following:

d.1. Current switching for digital circuits using ''superconductive'' gates with a product of delay time per gate (in seconds) and power dissipation per gate (in watts) of less than 10^{-14} J; *or*

d.2. Frequency selection at all frequencies using resonant circuits with Q-values exceeding 10,000;

e. High energy devices as follows:

e.1. 'Cells' as follows:

e.1.a. 'Primary cells' having an 'energy density' exceeding 550 Wh/kg at 293 K (20 °C);

e.1.b. 'Secondary cells' having an 'energy density' exceeding 350 Wh/kg at 293 K (20 °C);

Technical Notes:

1. For the purpose of 3A001.e.1, 'energy density' (Wh/kg) is calculated from the nominal voltage multiplied by the nominal capacity in ampere-hours (Ah) divided by the mass in kilograms. If the nominal capacity is not stated, energy density is calculated from the nominal voltage squared then multiplied by the discharge duration in hours divided by the discharge load in Ohms and the mass in kilograms.

2. For the purpose of 3A001.e.1, a 'cell' is defined as an electrochemical device, which has positive and negative electrodes, an electrolyte, and is a source of electrical energy. It is the basic building block of a battery.

3. For the purpose of 3A001.e.1.a, a 'primary cell' is a 'cell' that is not designed to be charged by any other source.

4. For the purpose of 3A001.e.1.b, a 'secondary cell' is a 'cell' that is designed to be charged by an external electrical source.

Note: *3A001.e does not control batteries, including single-cell batteries.*

e.2. High energy storage capacitors as follows:

e.2.a. Capacitors with a repetition rate of less than 10 Hz (single shot capacitors) and having all of the following:

e.2.a.1. A voltage rating equal to or more than 5 kV;

e.2.a.2. An energy density equal to or more than 250 J/kg; *and*

e.2.a.3. A total energy equal to or more than 25 kJ;

e.2.b. Capacitors with a repetition rate of 10 Hz or more (repetition rated capacitors) and having all of the following:

e.2.b.1. A voltage rating equal to or more than 5 kV;

e.2.b.2. An energy density equal to or more than 50 J/kg;

e.2.b.3. A total energy equal to or more than 100 J; *and*

e.2.b.4. A charge/discharge cycle life equal to or more than 10,000;

e.3. ''Superconductive'' electromagnets and solenoids, ''specially designed'' to be fully charged or discharged in less than one second and having all of the following:

Note: *3A001.e.3 does not control ''superconductive'' electromagnets or solenoids ''specially designed'' for Magnetic Resonance Imaging (MRI) medical equipment.*

e.3.a. Energy delivered during the discharge exceeding 10 kJ in the first second;

e.3.b. Inner diameter of the current carrying windings of more than 250 mm; *and*

e.3.c. Rated for a magnetic induction of more than 8 T or ''overall current density'' in the winding of more than 300 A/mm^2;

e.4. Solar cells, cell-interconnect-coverglass (CIC) assemblies, solar panels, and solar arrays, which are ''space-qualified,'' having a minimum average efficiency exceeding 20% at an operating temperature of 301 K (28 °C) under simulated 'AM0' illumination with an irradiance of 1,367 Watts per square meter (W/m^2);

Technical Note: *'AM0', or 'Air Mass Zero', refers to the spectral irradiance of sun light in the earth's outer atmosphere when the distance between the earth and sun is one astronomical unit (AU).*

f. Rotary input type absolute position encoders having an ''accuracy'' equal to or less (better) than ± 1.0 second of arc and ''specially designed'' encoder rings, discs or scales therefor;

g. Solid-state pulsed power switching thyristor devices and 'thyristor modules', using either electrically, optically, or electron radiation controlled switch methods and having any of the following:

g.1. A maximum turn-on current rate of rise (di/dt) greater than 30,000 A/μs and off-state voltage greater than 1,100 V; *or*

g.2. A maximum turn-on current rate of rise (di/dt) greater than 2,000 A/μs and having all of the following:

g.2.a. An off-state peak voltage equal to or greater than 3,000 V; *and*

g.2.b. A peak (surge) current equal to or greater than 3,000 A;

Note 1: *3A001.g. includes:*

—Silicon Controlled Rectifiers (SCRs);

—Electrical Triggering Thyristors (ETTs);

—Light Triggering Thyristors (LTTs);

—Integrated Gate Commutated Thyristors (IGCTs);

—Gate Turn-off Thyristors (GTOs);

—MOS Controlled Thyristors (MCTs);

—Solidtrons.

Note 2: *3A001.g. does not control thyristor devices and 'thyristor modules' incorporated into equipment designed for civil railway or ''civil aircraft'' applications.*

Technical Note: *For the purposes of 3A001.g, a 'thyristor module' contains one or more thyristor devices.*

h. Solid-state power semiconductor switches, diodes, or 'modules', having all of the following:

h.1. Rated for a maximum operating junction temperature greater than 488 K (215 °C);

h.2. Repetitive peak off-state voltage (blocking voltage) exceeding 300 V; *and*

h.3. Continuous current greater than 1 A.

Technical Note: *For the purposes of 3A001.h, 'modules' contain one or more solid-state power semiconductor switches or diodes.*

Note 1: *Repetitive peak off-state voltage in 3A001.h includes drain to source voltage, collector to emitter voltage, repetitive peak reverse voltage and peak repetitive off-state blocking voltage.*

Note 2: *3A001.h. includes:*

—Junction Field Effect Transistors (JFETs);

—Vertical Junction Field Effect Transistors (VJFETs);

—Metal Oxide Semiconductor Field Effect Transistors (MOSFETs);

—Double Diffused Metal Oxide Semiconductor Field Effect Transistor (DMOSFET);

—Insulated Gate Bipolar Transistor (IGBT);

—High Electron Mobility Transistors (HEMTs);

—Bipolar Junction Transistors (BJTs);

—Thyristors and Silicon Controlled Rectifiers (SCRs);

—*Gate Turn-Off Thyristors (GTOs);*
—*Emitter Turn-Off Thyristors (ETOs);*
—*PiN Diodes;*
—*Schottky Diodes.*

Note 3: *3A001.h does not apply to switches, diodes, or 'modules', incorporated into equipment designed for civil automobile, civil railway, or ''civil aircraft'' applications.*

■ 18. In Supplement No. 1 to part 774, Category 3, ECCN 3A002 is revised to read as follows:

3A002 General Purpose ''Electronic Assemblies,'' Modules and Equipment, as Follows (See List of Items Controlled).

License Requirements

Reason for Control: NS, MT, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 2
MT applies to 3A002.h when the parameters in 3A101.a.2.b are met or exceeded.	MT Column 1
AT applies to entire entry.	AT Column 1

Reporting Requirements

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: $3,000: 3A002.a, .e, .f, and .g $5,000: 3A002.c to .d, and .h (unless controlled for MT);
GBS: Yes, for 3A002.h (unless controlled for MT)

Special Conditions for STA

STA: License Exception STA may not be used to ship any item in 3A002.g.1 to any of the destinations listed in Country Group A:6 (See Supplement No.1 to part 740 of the EAR).

List of Items Controlled

Related Controls: See Category XV(e)(9) of the USML for certain ''space-qualified'' atomic frequency standards ''subject to the ITAR'' (see 22 CFR parts 120 through 130). See also 3A101, 3A992 and 9A515.x.
Related Definitions: Constant percentage bandwidth filters are also known as octave or fractional octave filters.
Items:
a. Recording equipment and oscilloscopes, as follows:
a.1. to a.5. [Reserved]
N.B.: For waveform digitizers and transient recorders, see 3A002.h.
a.6. Digital data recorders having all of the following:
a.6.a. A sustained 'continuous throughput' of more than 6.4 Gbit/s to disk or solid-state drive memory; *and*
a.6.b. ''Signal processing'' of the radio frequency signal data while it is being recorded;

Technical Notes:

1. For recorders with a parallel bus architecture, the 'continuous throughput' rate is the highest word rate multiplied by the number of bits in a word.
2. 'Continuous throughput' is the fastest data rate the instrument can record to disk or solid-state drive memory without the loss of any information while sustaining the input digital data rate or digitizer conversion rate.
a.7. Real-time oscilloscopes having a vertical root-mean-square (rms) noise voltage of less than 2% of full-scale at the vertical scale setting that provides the lowest noise value for any input 3dB bandwidth of 60 GHz or greater per channel;

Note: *3A002.a.7 does not apply to equivalent-time sampling oscilloscopes.*

b. [Reserved]
c. ''Signal analyzers'' as follows:
c.1. ''Signal analyzers'' having a 3 dB resolution bandwidth (RBW) exceeding 10 MHz anywhere within the frequency range exceeding 31.8 GHz but not exceeding 37 GHz;
c.2. ''Signal analyzers'' having Displayed Average Noise Level (DANL) less (better) than −150 dBm/Hz anywhere within the frequency range exceeding 43.5 GHz but not exceeding 90 GHz;
c.3. ''Signal analyzers'' having a frequency exceeding 90 GHz;
c.4. ''Signal analyzers'' having all of the following:
c.4.a. ''Real-time bandwidth'' exceeding 170 MHz; *and*
c.4.b. Having any of the following:
c.4.b.1. 100% probability of discovery, with less than a 3 dB reduction from full amplitude due to gaps or windowing effects, of signals having a duration of 15 μs or less; *or*
c.4.b.2. A ''frequency mask trigger'' function, with 100% probability of trigger (capture) for signals having a duration of 15 μs or less;

Technical Notes:

1. Probability of discovery in 3A002.c.4.b.1 is also referred to as probability of intercept or probability of capture.
2. For the purposes of 3A002.c.4.b.1, the duration for 100% probability of discovery is equivalent to the minimum signal duration necessary for the specified level measurement uncertainty.

Note: *3A002.c.4 does not apply to those ''signal analyzers'' using only constant percentage bandwidth filters (also known as octave or fractional octave filters).*

c.5. [Reserved]
d. Signal generators having any of the following:
d.1. Specified to generate pulse-modulated signals having all of the following, anywhere within the frequency range exceeding 31.8 GHz but not exceeding 37 GHz:
d.1.a. 'Pulse duration' of less than 25 ns; *and*
d.1.b. On/off ratio equal to or exceeding 65 dB;
d.2. An output power exceeding 100 mW (20 dBm) anywhere within the frequency range exceeding 43.5 GHz but not exceeding 90 GHz;
d.3. A ''frequency switching time'' as specified by any of the following:
d.3.a. [Reserved]
d.3.b. Less than 100 μs for any frequency change exceeding 2.2 GHz within the frequency range exceeding 4.8 GHz but not exceeding 31.8 GHz;
d.3.c. [Reserved]
d.3.d. Less than 500 μs for any frequency change exceeding 550 MHz within the frequency range exceeding 31.8 GHz but not exceeding 37 GHz; *or*
d.3.e. Less than 100 μs for any frequency change exceeding 2.2 GHz within the frequency range exceeding 37 GHz but not exceeding 90 GHz;
d.3.f. [Reserved]
d.4. Single sideband (SSB) phase noise, in dBc/Hz, specified as being any of the following:
d.4.a. Less (better) than $-(126 + 20 \log_{10} F - 20\log_{10} f)$ for anywhere within the range of 10 Hz ≤ F ≤ 10 kHz anywhere within the frequency range exceeding 3.2 GHz but not exceeding 90 GHz; *or*
d.4.b. Less (better) than $-(206 - 20\log_{10} f)$ for anywhere within the range of 10 kHz < F ≤ 100 kHz anywhere within the frequency range exceeding 3.2 GHz but not exceeding 90 GHz;

Technical Note: *In 3A002.d.4, F is the offset from the operating frequency in Hz and f is the operating frequency in MHz.*

d.5. An 'RF modulation bandwidth' of digital baseband signals as specified by any of the following:
d.5.a. Exceeding 2.2 GHz within the frequency range exceeding 4.8 GHz but not exceeding 31.8 GHz;
d.5.b. Exceeding 550 MHz within the frequency range exceeding 31.8 GHz but not exceeding 37 GHz; or
d.5.c. Exceeding 2.2 GHz within the frequency range exceeding 37 GHz but not exceeding 90 GHz; *or*

Technical Note: *'RF modulation bandwidth' is the Radio Frequency (RF) bandwidth occupied by a digitally encoded baseband signal modulated onto an RF signal. It is also referred to as information bandwidth or vector modulation bandwidth. I/Q digital modulation is the technical method for producing a vector-modulated RF output signal, and that output signal is typically specified as having an 'RF modulation bandwidth'.*

d.6. A maximum frequency exceeding 90 GHz; *Note 1: For the purpose of 3A002.d, signal generators include arbitrary waveform and function generators.*

Note 2: *3A002.d does not control equipment in which the output frequency is either produced by the addition or subtraction of two or more crystal oscillator frequencies, or by an addition or subtraction followed by a multiplication of the result.*

Technical Notes:

1. The maximum frequency of an arbitrary waveform or function generator is calculated by dividing the sample rate, in samples/second, by a factor of 2.5.
2. For the purposes of 3A002.d.1.a, 'pulse duration' is defined as the time interval from the point on the leading edge that is 50% of

the pulse amplitude to the point on the trailing edge that is 50% of the pulse amplitude.

e. Network analyzers having any of the following:

e.1. An output power exceeding 31.62 mW (15 dBm) anywhere within the operating frequency range exceeding 43.5 GHz but not exceeding 90 GHz;

e.2. An output power exceeding 1 mW (0 dBm) anywhere within the operating frequency range exceeding 90 GHz but not exceeding 110 GHz;

e.3. 'Nonlinear vector measurement functionality' at frequencies exceeding 50 GHz but not exceeding 110 GHz; *or*

Technical Note: *'Nonlinear vector measurement functionality' is an instrument's ability to analyze the test results of devices driven into the large-signal domain or the non-linear distortion range.*

e.4. A maximum operating frequency exceeding 110 GHz;

f. Microwave test receivers having all of the following:

f.1. Maximum operating frequency exceeding 110 GHz; *and*

f.2. Being capable of measuring amplitude and phase simultaneously;

g. Atomic frequency standards being any of the following:

g.1. ''Space-qualified'';

g.2. Non-rubidium and having a long-term stability less (better) than 1×10^{-11}/month; *or*

g.3. Non-''space-qualified'' and having all of the following:

g.3.a. Being a rubidium standard;

g.3.b. Long-term stability less (better) than 1×10^{-11}/month; *and*

g.3.c. Total power consumption of less than 1 Watt.

h. ''Electronic assemblies,'' modules or equipment, specified to perform all of the following:

h.1. Analog-to-digital conversions meeting any of the following:

h.1.a. A resolution of 8 bit or more, but less than 10 bit, with an input sample rate greater than 1.3 billion samples per second;

h.1.b. A resolution of 10 bit or more, but less than 12 bit, with an input sample rate greater than 1.0 billion samples per second;

h.1.c. A resolution of 12 bit or more, but less than 14 bit, with an input sample rate greater than 1.0 billion samples per second;

h.1.d. A resolution of 14 bit or more but less than 16 bit, with an input sample rate greater than 400 million samples per second; *or*

h.1.e. A resolution of 16 bit or more with an input sample rate greater than 180 million samples per second; *and*

h.2. Any of the following:

h.2.a. Output of digitized data;

h.2.b. Storage of digitized data; *or*

h.2.c. Processing of digitized data;

N.B.: Digital data recorders, oscilloscopes, ''signal analyzers,'' signal generators, network analyzers and microwave test receivers, are specified by 3A002.a.6, 3A002.a.7, 3A002.c, 3A002.d, 3A002.e and 3A002.f, respectively.

Technical Note: *For multiple-channel ''electronic assemblies'' or modules, control status is determined by the highest single-channel specified performance.*

Note: *3A002.h includes ADC cards, waveform digitizers, data acquisition cards, signal acquisition boards and transient recorders.*

■ 19. In Supplement No. 1, Category 3, ECCN 3A991 is revised to read as follows:

3A991 Electronic Devices, and ''Components'' not Controlled by 3A001.

License Requirements

Reason for Control: AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
AT applies to entire entry.	AT Column 1

License Requirements Note: *See § 744.17 of the EAR for additional license requirements for microprocessors having a processing speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more, including those incorporating ''information security'' functionality, and associated ''software'' and ''technology'' for the ''production'' or ''development'' of such microprocessors.*

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A
GBS: N/A

List of Items Controlled

Related Controls: N/A
Related Definitions: N/A
Items:

a. ''Microprocessor microcircuits'', ''microcomputer microcircuits'', and microcontroller microcircuits having any of the following:

a.1. A performance speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more;

a.2. A clock frequency rate exceeding 25 MHz; *or*

a.3. More than one data or instruction bus or serial communication port that provides a direct external interconnection between parallel ''microprocessor microcircuits'' with a transfer rate of 2.5 Mbyte/s;

b. Storage integrated circuits, as follows:

b.1. Electrical erasable programmable read-only memories (EEPROMs) with a storage capacity;

b.1.a. Exceeding 16 Mbits per package for flash memory types; *or*

b.1.b. Exceeding either of the following limits for all other EEPROM types:

b.1.b.1. Exceeding 1 Mbit per package; *or*

b.1.b.2. Exceeding 256 kbit per package and a maximum access time of less than 80 ns;

b.2. Static random access memories (SRAMs) with a storage capacity:

b.2.a. Exceeding 1 Mbit per package; *or*

b.2.b. Exceeding 256 kbit per package and a maximum access time of less than 25 ns;

c. Analog-to-digital converters having any of the following:

c.1. A resolution of 8 bit or more, but less than 12 bit, with an output rate greater than 200 million words per second;

c.2. A resolution of 12 bit with an output rate greater than 105 million words per second;

c.3. A resolution of more than 12 bit but equal to or less than 14 bit with an output rate greater than 10 million words per second; *or*

c.4. A resolution of more than 14 bit with an output rate greater than 2.5 million words per second;

d. Field programmable logic devices having a maximum number of single-ended digital input/outputs between 200 and 700;

e. Fast Fourier Transform (FFT) processors having a rated execution time for a 1,024 point complex FFT of less than 1 ms;

f. Custom integrated circuits for which either the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

f.1. More than 144 terminals; *or*

f.2. A typical ''basic propagation delay time'' of less than 0.4 ns;

g. Traveling-wave ''vacuum electronic devices,'' pulsed or continuous wave, as follows:

g.1. Coupled cavity devices, or derivatives thereof;

g.2. Helix devices based on helix, folded waveguide, or serpentine waveguide circuits, *or* derivatives thereof, with any of the following:

g.2.a. An ''instantaneous bandwidth'' of half an octave or more; *and*

g.2.b. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.2;

g.2.c. An ''instantaneous bandwidth'' of less than half an octave; *and*

g.2.d. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.4;

h. Flexible waveguides designed for use at frequencies exceeding 40 GHz;

i. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (*i.e.,* ''signal processing'' devices employing elastic waves in materials), having either of the following:

i.1. A carrier frequency exceeding 1 GHz; *or*

i.2. A carrier frequency of 1 GHz or less; *and*

i.2.a. A frequency side-lobe rejection exceeding 55 Db;

i.2.b. A product of the maximum delay time and bandwidth (time in microseconds and bandwidth in MHz) of more than 100; *or*

i.2.c. A dispersive delay of more than 10 microseconds;

j. Cells as follows:

j.1. Primary cells having an energy density of 550 Wh/kg or less at 293 K (20 °C);

j.2. Secondary cells having an energy density of 300 Wh/kg or less at 293 K (20 °C);

Note: *3A991.j. does not control batteries, including single cell batteries.*

Technical Notes:

1. For the purpose of 3A991.j energy density (Wh/kg) is calculated from the nominal voltage multiplied by the nominal capacity in ampere-hours divided by the mass in kilograms. If the nominal capacity is not stated, energy density is calculated from the nominal voltage squared then multiplied by the discharge duration in hours divided by the discharge load in Ohms and the mass in kilograms.

2. For the purpose of 3A991.j, a 'cell' is defined as an electrochemical device, which has positive and negative electrodes, and electrolyte, and is a source of electrical energy. It is the basic building block of a battery.

3. For the purpose of 3A991.j.1, a 'primary cell' is a 'cell' that is not designed to be charged by any other source.

4. For the purpose of 3A991.j.2., a 'secondary cell' is a 'cell' that is designed to be charged by an external electrical source.

k. ''Superconductive'' electromagnets or solenoids ''specially designed'' to be fully charged or discharged in less than one minute, having all of the following:

Note: *3A991.k does not control ''superconductive'' electromagnets or solenoids designed for Magnetic Resonance Imaging (MRI) medical equipment.*

k.1. Maximum energy delivered during the discharge divided by the duration of the discharge of more than 500 kJ per minute;

k.2. Inner diameter of the current carrying windings of more than 250 mm; *and*

k.3. Rated for a magnetic induction of more than 8T or ''overall current density'' in the winding of more than 300 A/mm^2;

l. Circuits or systems for electromagnetic energy storage, containing ''components'' manufactured from ''superconductive'' materials ''specially designed'' for operation at temperatures below the ''critical temperature'' of at least one of their ''superconductive'' constituents, having all of the following:

l.1. Resonant operating frequencies exceeding 1 MHz;

l.2. A stored energy density of 1 MJ/M^3 or more; *and*

l.3. A discharge time of less than 1 ms;

m. Hydrogen/hydrogen-isotope thyratrons of ceramic-metal construction and rate for a peak current of 500 A or more;

n. Digital integrated circuits based on any compound semiconductor having an equivalent gate count of more than 300 (2 input gates);

o. Solar cells, cell-interconnect-coverglass (CIC) assemblies, solar panels, and solar arrays, which are ''space qualified'' and not controlled by 3A001.e.4.

■ 20. In Supplement No. 1 to part 774, Category 3, ECCN 3B001 is revised to read as follows:

3B001 Equipment for the Manufacturing of Semiconductor Devices or Materials, as Follows (See List of Items Controlled) and ''Specially Designed'' ''Components'' and ''Accessories'' Therefor.

License Requirements

Reason for Control: NS, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 2
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: $500

GBS: Yes, except a.3 (molecular beam epitaxial growth equipment using gas sources), .e (automatic loading multi-chamber central wafer handling systems *only* if connected to equipment controlled by 3B001. a.3, or .f), and .f (lithography equipment).

List of Items Controlled

Related Controls: See also *3B991*

Related Definitions: N/A

Items:

a. Equipment designed for epitaxial growth as follows:

a.1. Equipment designed or modified to produce a layer of any material other than silicon with a thickness uniform to less than ± 2.5% across a distance of 75 mm or more;

Note: *3B001.a.1 includes atomic layer epitaxy (ALE) equipment.*

a.2. Metal Organic Chemical Vapor Deposition (MOCVD) reactors designed for compound semiconductor epitaxial growth of material having two or more of the following elements: Aluminum, gallium, indium, arsenic, phosphorus, antimony, or nitrogen;

a.3. Molecular beam epitaxial growth equipment using gas or solid sources;

b. Equipment designed for ion implantation and having any of the following:

b.1. [Reserved]

b.2. Being designed and optimized to operate at a beam energy of 20 keV or more and a beam current of 10 mA or more for hydrogen, deuterium, or helium implant;

b.3. Direct write capability;

b.4. A beam energy of 65 keV or more and a beam current of 45 mA or more for high energy oxygen implant into a heated semiconductor material ''substrate''; *or*

b.5. Being designed and optimized to operate at beam energy of 20 keV or more and a beam current of 10mA or more for silicon implant into a semiconductor material ''substrate'' heated to 600 °C or greater;

c. [Reserved]

d. [Reserved]

e. Automatic loading multi-chamber central wafer handling systems having all of the following:

e.1. Interfaces for wafer input and output, to which more than two functionally different 'semiconductor process tools' controlled by 3B001.a.1, 3B001.a.2, 3B001.a.3 or 3B001.b are designed to be connected; *and*

e.2. Designed to form an integrated system in a vacuum environment for 'sequential multiple wafer processing';

Note: *3B001.e does not control automatic robotic wafer handling systems ''specially designed'' for parallel wafer processing.*

Technical Notes:

1. For the purpose of 3B001.e, 'semiconductor process tools' refers to modular tools that provide physical processes for semiconductor production that are functionally different, such as deposition, implant or thermal processing.

2. For the purpose of 3B001.e, 'sequential multiple wafer processing' means the capability to process each wafer in different 'semiconductor process tools', such as by transferring each wafer from one tool to a second tool and on to a third tool with the automatic loading multi-chamber central wafer handling systems.

f. Lithography equipment as follows:

f.1. Align and expose step and repeat (direct step on wafer) or step and scan (scanner) equipment for wafer processing using photo-optical or X-ray methods and having any of the following:

f.1.a. A light source wavelength shorter than 193 nm; *or*

f.1.b. Capable of producing a pattern with a ''Minimum Resolvable Feature size'' (MRF) of 45 nm or less;

Technical Note: *The 'Minimum Resolvable Feature size' (MRF) is calculated by the following formula:*

$$MRF = (\text{an exposure light source wavelength in nm}) \times (K \text{ factor}) \text{ numerical aperture}$$

where the K factor = 0.35

f.2. Imprint lithography equipment capable of production features of 45 nm or less;

Note: *3B001.f.2 includes:*
—Micro contact printing tools;
—Hot embossing tools;
—Nano-imprint lithography tools;
—Step and flash imprint lithography (S–FIL) tools.

f.3. Equipment ''specially designed'' for mask making having all of the following:

f.3.a. A deflected focused electron beam, ion beam or ''laser'' beam; *and*

f.3.b. Having any of the following:

f.3.b.1. A Full-Width Half-Maximum (FWHM) spot size smaller than 65 nm and an image placement less than 17 nm (mean + 3 sigma); *or*

f.3.b.2. [Reserved]

f.3.b.3. A second-layer overlay error of less than 23 nm (mean + 3 sigma) on the mask;

f.4. Equipment designed for device processing using direct writing methods, having all of the following:

f.4.a. A deflected focused electron beam; *and*

f.4.b. Having any of the following:

f.4.b.1. A minimum beam size equal to or smaller than 15 nm; *or*

f.4.b.2. An overlay error less than 27 nm (mean + 3 sigma);

g. Masks and reticles, designed for integrated circuits controlled by 3A001;

h. Multi-layer masks with a phase shift layer not specified by 3B001.g and designed to be used by lithography equipment having a light source wavelength less than 245 nm;

Note: *3B001.h. does not control multi-layer masks with a phase shift layer designed for the fabrication of memory devices not controlled by 3A001.*

i. Imprint lithography templates designed for integrated circuits by 3A001;

j. Mask ''substrate blanks'' with multilayer reflector structure consisting of molybdenum and silicon, and having all of the following:

j.1. ''Specially designed'' for 'Extreme Ultraviolet (EUV)' lithography; *and*

j.2. Compliant with SEMI Standard P37.

Technical Note: *'Extreme Ultraviolet (EUV)' refers to electromagnetic spectrum wavelengths greater than 5 nm and less than 124 nm.*

■ 21. In Supplement No. 1, Category 3, ECCN 3E003 is revised to read as follows:

3E003 Other ''Technology'' for the ''Development'' or ''Production'' of the Following (See List of Items Controlled).

License Requirements

Reason for Control: NS, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 1
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

TSR: Yes, except .f and .g

List of Items Controlled

Related Controls: See 3E001 for silicon-on-insulation (SOI) technology for the ''development'' or ''production'' related to radiation hardening of integrated circuits.

Related Definitions: N/A

Items:

a. Vacuum microelectronic devices;

b. Hetero-structure semiconductor electronic devices such as high electron mobility transistors (HEMT), hetero-bipolar transistors (HBT), quantum well and super lattice devices;

Note: *3E003.b does not control ''technology'' for high electron mobility transistors (HEMT) operating at frequencies lower than 31.8 GHz and hetero-junction bipolar transistors (HBT) operating at frequencies lower than 31.8 GHz.*

c. ''Superconductive'' electronic devices;

d. Substrates of films of diamond for electronic components;

e. Substrates of silicon-on-insulator (SOI) for integrated circuits in which the insulator is silicon dioxide;

f. Substrates of silicon carbide for electronic components;

g. ''Vacuum electronic devices'' operating at frequencies of 31.8 GHz or higher.

■ 22. In Supplement No. 1 to part 774, Category 5, ECCN 5E001 is revised to read as follows:

5E001 ''Technology'' as Follows (See List of Items Controlled).

License Requirements

Reason for Control: NS, SL, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 1
SL applies to ''technology'' for the ''development'' or ''production'' of equipment, functions or features controlled by 5A001.f.1, or for the ''development'' or ''production'' of ''software'' controlled by ECCN 5D001.a (for 5A001.f.1).	
AT applies to entire entry.	AT Column 1

Reporting Requirements

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

TSR: Yes, except for exports or reexports to destinations outside of those countries listed in Country Group A:5 (See Supplement No. 1 to part 740 of the EAR) of ''technology'' controlled by 5E001.a for the ''development'' or ''production'' of the following:

(1) Items controlled by 5A001.b.5 or 5A001.h; or

(2)''Software'' controlled by 5D001.a that is ''specially designed'' for the ''development'' or ''production'' of equipment, functions or features controlled by 5A001.b.5 or 5A001.h.

Special Conditions for STA

STA: License Exception STA may not be used to ship or transmit ''technology'' according to the General Technology Note for the ''development'' or ''production'' of equipment, functions or features specified by 5A001.b.3, b.5 or .h; or for ''software'' in 5D001.a that is specified in the STA paragraph in the License Exception section of ECCN 5D001 to any of the destinations listed in Country Group A:6 (See Supplement No. 1 to part 740 of the EAR).

List of Items Controlled

Related Controls: (1) See also 5E101, 5E980 and 5E991. (2) ''Technology'' for ''development'' or ''production'' of ''Monolithic Microwave Integrated Circuit'' (''MMIC'') amplifiers that meet the control criteria given at 3A001.b.2 is controlled in 3E001; 5E001.d refers only to that additional ''technology'' ''required'' for telecommunications.

Related Definitions: N/A

Items:

a. ''Technology'' according to the General Technology Note for the ''development'', ''production'' or ''use'' (excluding operation) of equipment, functions or features, controlled by 5A001 or ''software'' controlled by 5D001.a.

b. Specific ''technology'', as follows:

b.1. ''Technology'' ''required'' for the ''development'' or ''production'' of telecommunications equipment ''specially designed'' to be used on board satellites;

b.2. ''Technology'' for the ''development'' or ''use'' of ''laser'' communication techniques with the capability of automatically acquiring and tracking signals and maintaining communications through exoatmosphere or sub-surface (water) media;

b.3. ''Technology'' for the ''development'' of digital cellular radio base station receiving equipment whose reception capabilities that allow multi-band, multi-channel, multi-mode, multi-coding algorithm or multi-protocol operation can be modified by changes in ''software'';

b.4. ''Technology'' for the ''development'' of ''spread spectrum'' techniques, including ''frequency hopping'' techniques.

Note: *5E001.b.4 does not apply to ''technology'' for the ''development'' of any of the following:*

a. Civil cellular radio-communications systems; or

b. Fixed or mobile satellite Earth stations for commercial civil telecommunications.

c. ''Technology'' according the General Technology Note for the ''development'' or ''production'' of any of the following:

c.1. [Reserved]

c.2. Equipment employing a ''laser'' and having any of the following:

c.2.a. A transmission wavelength exceeding 1,750 nm;

c.2.b. [Reserved]

c.2.c. [Reserved]

c.2.d. Employing wavelength division multiplexing techniques of optical carriers at less than 100 GHz spacing; *or*

c.2.e. Employing analog techniques and having a bandwidth exceeding 2.5 GHz;

Note: *5E001.c.2.e does not control ''technology'' for commercial TV systems.*

N.B.: For ''technology'' for the ''development'' or ''production'' of non-telecommunications equipment employing a ''laser'', see Product Group E of Category 6, e.g., 6E00x.

c.3. Equipment employing ''optical switching'' and having a switching time less than 1 ms; *or*

c.4. Radio equipment having any of the following:

c.4.a. Quadrature-Amplitude-Modulation (QAM) techniques above level 1,024; *or*

c.4.b. Operating at input or output frequencies exceeding 31.8 GHz; *or*

Note: *5E001.c.4.b does not control ''technology'' for equipment designed or modified for operation in any frequency band which is ''allocated by the ITU'' for radio-communications services, but not for radio-determination.*

c.4.c. Operating in the 1.5 MHz to 87.5 MHz band and incorporating adaptive techniques providing more than 15 dB suppression of an interfering signal; *or*

c.5. [Reserved]

c.6. Mobile equipment having all of the following:

c.6.a. Operating at an optical wavelength greater than or equal to 200nm and less than or equal to 400nm; *and*

c.6.b. Operating as a ''local area network'';

d. ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of ''Monolithic Microwave Integrated Circuit'' (''MMIC'') amplifiers ''specially designed'' for telecommunications and that are any of the following:

Technical Note: *For purposes of 5E001.d, the parameter peak saturated power output may also be referred to on product data sheets as output power, saturated power output, maximum power output, peak power output, or peak envelope power output.*

d.1. Rated for operation at frequencies exceeding 2.7 GHz up to and including 6.8 GHz with a ''fractional bandwidth'' greater than 15%, and having any of the following:

d.1.a. A peak saturated power output greater than 75 W (48.75 dBm) at any frequency exceeding 2.7 GHz up to and including 2.9 GHz;

d.1.b. A peak saturated power output greater than 55 W (47.4 dBm) at any frequency exceeding 2.9 GHz up to and including 3.2 GHz;

d.1.c. A peak saturated power output greater than 40 W (46 dBm) at any frequency exceeding 3.2 GHz up to and including 3.7 GHz; *or*

d.1.d. A peak saturated power output greater than 20 W (43 dBm) at any frequency exceeding 3.7 GHz up to and including 6.8 GHz;

d.2. Rated for operation at frequencies exceeding 6.8 GHz up to and including 16 GHz with a ''fractional bandwidth'' greater than 10%, and having any of the following:

d.2.a. A peak saturated power output greater than 10W (40 dBm) at any frequency exceeding 6.8 GHz up to and including 8.5 GHz; or

d.2.b. A peak saturated power output greater than 5W (37 dBm) at any frequency exceeding 8.5 GHz up to and including 16 GHz;

d.3. Rated for operation with a peak saturated power output greater than 3 W (34.77 dBm) at any frequency exceeding 16 GHz up to and including 31.8 GHz, and with a ''fractional bandwidth'' of greater than 10%;

d.4. Rated for operation with a peak saturated power output greater than 0.1 nW (−70 dBm) at any frequency exceeding 31.8 GHz up to and including 37 GHz;

d.5. Rated for operation with a peak saturated power output greater than 1 W (30 dBm) at any frequency exceeding 37 GHz up to and including 43.5 GHz, and with a ''fractional bandwidth'' of greater than 10%;

d.6. Rated for operation with a peak saturated power output greater than 31.62 mW (15 dBm) at any frequency exceeding 43.5 GHz up to and including 75 GHz, and with a ''fractional bandwidth'' of greater than 10%;

d.7. Rated for operation with a peak saturated power output greater than 10 mW (10 dBm) at any frequency exceeding 75 GHz up to and including 90 GHz, and with a ''fractional bandwidth'' of greater than 5%; or

d.8. Rated for operation with a peak saturated power output greater than 0.1 nW (−70 dBm) at any frequency exceeding 90 GHz;

e. ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of electronic devices and circuits, ''specially designed'' for telecommunications and containing ''components'' manufactured from ''superconductive'' materials, ''specially designed'' for operation at temperatures below the ''critical temperature'' of at least one of the ''superconductive'' constituents and having any of the following:

e.1. Current switching for digital circuits using ''superconductive'' gates with a product of delay time per gate (in seconds) and power dissipation per gate (in watts) of less than 10^{-14} J; *or*

e.2. Frequency selection at all frequencies using resonant circuits with Q-values exceeding 10,000.

Category 5—Part 2—''Information Security''

■ 23. In Supplement No. 1 to part 774, Category 5, ECCN 5A002 is revised to read as follows:

5A002 ''Information Security'' Systems, Equipment and ''Components,'' as Follows (See List of Items Controlled).

License Requirements

Reason for Control: NS, AT, EI

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 1
AT applies to entire entry.	AT Column 1
EI applies to entire entry.	Refer to § 742.15 of the EAR

License Requirements Note: *See § 744.17 of the EAR for additional license requirements for microprocessors having a processing speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more, including those incorporating ''information security'' functionality, and associated ''software'' and ''technology'' for the ''production'' or ''development'' of such microprocessors.*

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: Yes: $500 for ''components''.
N/A for systems and equipment.
GBS: N/A
ENC: Yes for certain EI controlled commodities, see § 740.17 of the EAR for eligibility.

List of Items Controlled

Related Controls: (1) ECCN 5A002.a controls ''component'' providing the means or functions necessary for ''information security.'' All such ''components'' are presumptively ''specially designed'' and controlled by 5A002.a. (2) See USML Categories XI (including XI(b)) and XIII(b) (including XIII(b)(2)) for controls on systems, equipment, and components described in 5A002.d or .e that are subject to the ITAR. (3) For ''satellite navigation system'' receiving equipment containing or employing decryption see 7A005, and for related decryption ''software'' and ''technology'' see 7D005 and 7E001. (4) Noting that items may be controlled elsewhere on the CCL, examples of items not controlled by ECCN 5A002.a.4 include the following: (a) An automobile where the only 'cryptography for data confidentiality' 'in excess of 56 bits of symmetric key length, or equivalent' is performed by a Category 5—Part 2 Note 3 eligible mobile telephone that is built into the car. In this case, secure phone communications support a non-primary function of the automobile but the mobile telephone (equipment), as a standalone item, is not controlled by ECCN 5A002 because it is excluded by the Cryptography Note (Note 3) (See ECCN 5A992.c). (b) An exercise bike with an embedded Category 5—Part 2 Note 3 eligible web browser, where the only controlled cryptography is performed by the web browser. In this case, secure web browsing supports a non-primary function of the exercise bike but the web browser (''software''), as a standalone item, is not controlled by ECCN 5D002 because it is excluded by the Cryptography Note (Note 3) (See ECCN 5D992.c). (5) After classification or self-classification in accordance with § 740.17(b) of the EAR, mass market encryption commodities that meet eligibility requirements are released from ''EI'' and ''NS'' controls. These commodities are designated 5A992.c.

Related Definitions: N/A
Items:

a. Designed or modified to use 'cryptography for data confidentiality' having a 'described security algorithm', where that cryptographic capability is usable without ''cryptographic activation'' or has been activated, as follows:

a.1. Items having ''information security'' as a primary function;

a.2. Digital communication or networking systems, equipment or components, not specified in paragraph 5A002.a.1;

a.3. Computers, other items having information storage or processing as a primary function, and components therefor, not specified in paragraphs 5A002.a.1 or .a.2;

N.B.: For operating systems see also 5D002.a.1 and .c.1.

a.4. Items, not specified in paragraphs 5A002.a.1 to a.3, where the 'cryptography for data confidentiality' having 'in excess of a 'described security algorithm' meets all of the following:

a.4.a. It supports a non-primary function of the item; *and*

a.4.b. It is performed by incorporated equipment or ''software'' that would, as a standalone item, be specified by ECCNs 5A002, 5A003, 5A004, 5B002 or 5D002.

N.B. to paragraph a.4: See Related Control Paragraph (4) of this ECCN 5A002 for examples of items not controlled by 5A002.a.4.

Technical Notes:

1. For the purposes of 5A002.a, 'cryptography for data confidentiality' means ''cryptography'' that employs digital techniques and performs any cryptographic function other than any of the following:

1.a. ''Authentication;''

1.b. Digital signature;

1.c. Data integrity;

1.d. Non-repudiation;

1.e. Digital rights management, including the execution of copy-protected ''software;''

1.f. Encryption or decryption in support of entertainment, mass commercial broadcasts or medical records management; or

1.g. Key management in support of any function described in paragraphs 1.a to 1.f of this Technical Note paragraph 1.

2. For the purposes of 5A002.a, 'described security algorithm' means any of the following:

2.a. A ''symmetric algorithm'' employing a key length in excess of 56 bits, not including parity bits; or

2.b. An ''asymmetric algorithm'' where the security of the algorithm is based on any of the following:

2.b.1. Factorization of integers in excess of 512 bits (e.g., RSA);

2.b.2. Computation of discrete logarithms in a multiplicative group of a finite field of size greater than 512 bits (e.g., Diffie-Hellman over Z/pZ); or

2.b.3. Discrete logarithms in a group other than mentioned in paragraph 2.b.2 of this Technical Note in excess of 112 bits (e.g., Diffie-Hellman over an elliptic curve).

2.c. An ''asymmetric algorithm'' where the security of the algorithm is based on any of the following:

2.c.1. Shortest vector or closest vector problems associated with lattices (e.g., NewHope, Frodo, NTRUEncrypt, Kyber, Titanium);

2.c.2. Finding isogenies between Supersingular elliptic curves (e.g., Supersingular Isogeny Key Encapsulation); or

2.c.3. Decoding random codes (e.g., McEliece, Niederreiter).

Technical Note: *An algorithm described by Technical Note 2.c. may be referred to as being post-quantum, quantum-safe or quantum-resistant.*

Note 1: *Details of items must be accessible and provided upon request, in order to establish any of the following:*

a. Whether the item meets the criteria of 5A002.a.1 to a.4; or

b. Whether the cryptographic capability for data confidentiality specified by 5A002.a is usable without ''cryptographic activation.''

Note 2: *5A002.a does not control any of the following items, or specially designed ''information security'' components therefor:*

a. Smart cards and smart card 'readers/writers' as follows:

a.1. A smart card or an electronically readable personal document (e.g., token coin, e-passport) that meets any of the following:

a.1.a. The cryptographic capability meets all of the following:

a.1.a.1. It is restricted for use in any of the following:

a.1.a.1.a. Equipment or systems, not described by 5A002.a.1 to a.4;

a.1.a.1.b. Equipment or systems, not using 'cryptography for data confidentiality' having a 'described security algorithm'; or

a.1.a.1.c. Equipment or systems, excluded from 5A002.a by entries b. to f. of this Note; and

a.1.a.2. It cannot be reprogrammed for any other use; or

a.1.b. Having all of the following:

a.1.b.1. It is specially designed and limited to allow protection of 'personal data' stored within;

a.1.b.2. Has been, or can only be, personalized for public or commercial transactions or individual identification; and

a.1.b.3. Where the cryptographic capability is not user-accessible;

Technical Note to paragraph a.1.b of Note 2: *'Personal data' includes any data specific to a particular person or entity, such as the amount of money stored and data necessary for ''authentication.''*

a.2. 'Readers/writers' specially designed or modified, and limited, for items specified by paragraph a.1 of this Note;

Technical Note to paragraph a.2 of Note 2: *'Readers/writers' include equipment that communicates with smart cards or electronically readable documents through a network.*

b. Cryptographic equipment specially designed and limited for banking use or 'money transactions';

Technical Note to paragraph b. of Note 2: *'Money transactions' in 5A002 Note 2 paragraph b. includes the collection and settlement of fares or credit functions.*

c. Portable or mobile radiotelephones for civil use (e.g., for use with commercial civil cellular radio communication systems) that are not capable of transmitting encrypted data directly to another radiotelephone or equipment (other than Radio Access Network (RAN) equipment), nor of passing encrypted data through RAN equipment (e.g., Radio Network Controller (RNC) or Base Station Controller (BSC));

d. Cordless telephone equipment not capable of end-to-end encryption where the maximum effective range of unboosted cordless operation (i.e., a single, unrelayed hop between terminal and home base station) is less than 400 meters according to the manufacturer's specifications;

e. Portable or mobile radiotelephones and similar client wireless devices for civil use, that implement only published or commercial cryptographic standards (except for anti-piracy functions, which may be non-published) and also meet the provisions of paragraphs a.2 to a.4 of the Cryptography Note (Note 3 in Category 5—Part 2), that have been customized for a specific civil industry application with features that do not affect the cryptographic functionality of these original non-customized devices;

f. Items, where the ''information security'' functionality is limited to wireless ''personal area network'' functionality, meeting all of the following:

f.1. Implement only published or commercial cryptographic standards; and

f.2. The cryptographic capability is limited to a nominal operating range not exceeding 30 meters according to the manufacturer's specifications, or not exceeding 100 meters according to the manufacturer's specifications for equipment that cannot interconnect with more than seven devices;

g. Mobile telecommunications Radio Access Network (RAN) equipment designed for civil use, which also meet the provisions of paragraphs a.2 to a.4 of the Cryptography Note (Note 3 in Category 5—Part 2), having an RF output power limited to 0.1W (20 dBm) or less, and supporting 16 or fewer concurrent users;

h. Routers, switches or relays, where the ''information security'' functionality is limited to the tasks of ''Operations, Administration or Maintenance'' (''OAM'') implementing only published or commercial cryptographic standards;

i. General purpose computing equipment or servers, where the ''information security'' functionality meets all of the following:

i.1. Uses only published or commercial cryptographic standards; and

i.2. Is any of the following:

i.2.a. Integral to a CPU that meets the provisions of Note 3 in Category 5–Part 2;

i.2.b. Integral to an operating system that is not specified by 5D002; or

i.2.c. Limited to ''OAM'' of the equipment; or

j. Items specially designed for a 'connected civil industry application', meeting all of the following:

j.1. Being any of the following:

j.1.a. A network-capable endpoint device meeting any of the following:

j.1.a.1. The ''information security'' functionality is limited to securing 'non-arbitrary data' or the tasks of ''Operations, Administration or Maintenance'' (''OAM''); or

j.1.a.2. The device is limited to a specific 'connected civil industry application'; or

j.1.b. Networking equipment meeting all of the following:

j.1.b.1. Being specially designed to communicate with the devices specified by paragraph j.1.a. above; and

j.1.b.2. The ''information security'' functionality is limited to supporting the 'connected civil industry application' of devices specified by paragraph j.1.a. above, or the tasks of ''OAM'' of this networking equipment or of other items specified by paragraph j. of this Note; and

j.2. Where the ''information security'' functionality implements only published or commercial cryptographic standards, and the cryptographic functionality cannot easily be changed by the user.

Technical Notes:

1. 'Connected civil industry application' means a network-connected consumer or civil industry application other than ''information security'', digital communication, general purpose networking or computing.

2. 'Non-arbitrary data' means sensor or metering data directly related to the stability, performance or physical measurement of a system (e.g., temperature, pressure, flow rate, mass, volume, voltage, physical location, etc.), that cannot be changed by the user of the device.

b. Being a 'cryptographic activation token';

Technical Note: A 'cryptographic activation token' is an item designed or modified for any of the following:

1. Converting, by means of ''cryptographic activation'', an item not specified by Category 5—Part 2 into an item specified by 5A002.a or 5D002.c.1, and not released by the Cryptography Note (Note 3 in Category 5—Part 2); or

2. Enabling, by means of ''cryptographic activation'', additional functionality specified by 5A002.a of an item already specified by Category 5—Part 2;

c. Designed or modified to use or perform ''quantum cryptography;''

Technical Note: ''Quantum cryptography'' is also known as Quantum Key Distribution (QKD).

d. Designed or modified to use cryptographic techniques to generate channelizing codes, scrambling codes or network identification codes, for systems using ultra-wideband modulation techniques and having any of the following:

d.1. A bandwidth exceeding 500 MHz; *or*

d.2. A ''fractional bandwidth'' of 20% or more;

e. Designed or modified to use cryptographic techniques to generate the spreading code for ''spread spectrum'' systems, not specified by 5A002.d, including the hopping code for ''frequency hopping'' systems.

■ 24. In Supplement No. 1 to part 774, Category 5, ECCN 5D002 is revised to read as follows:

5D002 ''Software'' as Follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, AT, EI

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 1
AT applies to entire entry.	AT Column 1
EI applies to ''software'' in 5D002.a.1, a.3, .b, c.1 and c.3, for commodities or ''software'' controlled for EI reasons in ECCNs 5A002, 5A004 or 5D002.	Refer to § 742.15 of the EAR. **Note:** *Encryption software is controlled because of its functional capacity, and not because of any informational value of such software; such software is not accorded the same treatment under the EAR as other ''software'; and for export licensing purposes, encryption software is treated under the EAR in the same manner as a commodity included in ECCN 5A002*

License Requirements Note: *See § 744.17 of the EAR for additional license requirements for microprocessors having a processing speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more, including those incorporating ''information security'' functionality, and associated ''software'' and ''technology'' for the ''production'' or ''development'' of such microprocessors.*

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

TSR: N/A

ENC: Yes for certain EI controlled software, see § 740.17 of the EAR for eligibility.

List of Items Controlled

Related Controls: After classification or self-classification in accordance with § 740.17(b) of the EAR, mass market encryption software that meet eligibility requirements are released from ''EI'' and ''NS'' controls. This software is designated as 5D992.c.

Related Definitions: 5D002.a controls ''software'' designed or modified to use ''cryptography'' employing digital or analog techniques to ensure ''information security.''

Items:

a. ''Software'' ''specially designed'' or modified for the ''development,'' ''production'' or ''use'' of any of the following:

a.1. Equipment specified by 5A002 or ''software'' specified by 5D002.c.1;

a.2. Equipment specified by 5A003 or ''software'' specified by 5D002.c.2; *or*

a.3. Equipment specified by 5A004 or ''software'' specified by 5D002.c.3;

b. ''Software'' having the characteristics of a 'cryptographic activation token' specified by 5A002.b;

c. ''Software'' having the characteristics of, or performing or simulating the functions of, any of the following:

c.1. Equipment specified by 5A002.a, .c, .d or .e;

Note: *5D002.c.1 does not apply to ''software'' limited to the tasks of ''OAM'' implementing only published or commercial cryptographic standards.*

c.2. Equipment specified by 5A003; *or*

c.3. Equipment specified by 5A004.

d. [Reserved]

N.B.: See 5D002.b for items formerly specified in 5D002.d.

■ 25. In Supplement No. 1 to part 774, Category 5, ECCN 5E002 is revised to read as follows:

5E002 ''Technology'' as Follows (See List of Items Controlled).

License Requirements

Reason for Control: NS, AT, EI

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 1
AT applies to entire entry.	AT Column 1
EI applies to ''technology'' in 5E002.a for commodities or ''software'' controlled for EI reasons in ECCNs 5A002, 5A004 or 5D002, and to ''technology'' in 5E002.b..	Refer to § 742.15 of the EAR

License Requirements Notes:

(1) See § 744.17 of the EAR for additional license requirements for microprocessors having a processing speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more, including those incorporating ''information security'' functionality, and associated ''software'' and ''technology'' for the ''production'' or ''development'' of such microprocessors.

(2) When a person performs or provides technical assistance that incorporates, or otherwise draws upon, ''technology'' that was either obtained in the United States or is of US-origin, then a release of the ''technology'' takes place. Such technical assistance, when rendered with the intent to aid in the ''development'' or ''production'' of encryption commodities or software that would be controlled for ''EI'' reasons under ECCN 5A002, 5A004 or 5D002, may require authorization under the EAR even if the underlying encryption algorithm to be implemented is from the public domain or is not of U.S.-origin.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

TSR: N/A

ENC: Yes for certain EI controlled technology, see § 740.17 of the EAR for eligibility.

List of Items Controlled

Related Controls: See also 5E992. This entry does not control ''technology'' ''required'' for the ''use'' of equipment excluded from control under the Related Controls paragraph or the Technical Notes in ECCN 5A002 or ''technology'' related to equipment excluded from control under ECCN 5A002.

Related Definitions: N/A

Items:

a. ''Technology'' according to the General Technology Note for the ''development,'' ''production'' or ''use'' of equipment controlled by 5A002, 5A003, 5A004 or 5B002, or of ''software'' controlled by 5D002.a or 5D002.c.

b. ''Technology'' having the characteristics of a 'cryptographic activation token' specified by 5A002.b.

Note: *5E002 includes ''information security'' technical data resulting from procedures carried out to evaluate or determine the implementation of functions, features or techniques specified in Category 5—Part 2.*

■ 26. In Supplement No. 1 to part 774, Category 6, ECCN 6A002 is revised to read as follows:

6A002 Optical Sensors and Equipment, and ''Components'' Therefor, as Follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, MT, CC, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 2

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
MT applies to optical detectors in 6A002.a.1, or a.3 that are ''specially designed'' or modified to protect ''missiles'' against nuclear effects (*e.g.,* Electromagnetic Pulse (EMP), X-rays, combined blast and thermal effects), and usable for ''missiles''.	MT Column 1
RS applies to 6A002.a.1, a.2, a.3 (except a.3.d.2.a and a.3.e for lead selenide based focal plane arrays (FPAs)), .c, and .f.	RS Column 1
CC applies to police-model infrared viewers in 6A002.c.	CC Column 1
AT applies to entire entry.	AT Column 1
UN applies to 6A002.a.1, a.2, a.3 and .c.	See § 746.1(b) for UN controls

Reporting Requirements

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: $500 for 6A002.f.

$3,000; except N/A for MT and for 6A002.a.1, a.2, a.3, .c, and .f.

GBS: N/A

List of Items Controlled

Related Controls: (1) See USML Category XII(e) for infrared focal plane arrays, image intensifier tubes, and related parts and components, subject to the ITAR. (2) See USML Category XV(e) for space-qualified focal plane arrays subject to the ITAR. (3) See also ECCNs 6A102, 6A202, and 6A992. (4) See ECCN 0A919 for foreign-made military commodities that incorporate commodities described in 6A002. (5) Section 744.9 imposes a license requirement on commodities described in ECCN 6A002 if being exported, reexported, or transferred (in-country) for use by a military end-user or for incorporation into an item controlled by ECCN 0A919. (6) See USML Categories XII(e) and XV(e)(3) for read-out integrated circuits ''subject to the ITAR.'' (7) See 6B002 for masks and reticles, ''specially designed'' for optical sensors specified by 6A002.a.1.b or 6A002.a.1.d.

Related Definitions: N/A

Items:

a. Optical detectors as follows:

a.1. ''Space-qualified'' solid-state detectors as follows:

Note: *For the purpose of 6A002.a.1, solid-state detectors include ''focal plane arrays''.*

a.1.a. ''Space-qualified'' solid-state detectors having all of the following:

a.1.a.1. A peak response in the wavelength range exceeding 10 nm but not exceeding 300 nm; *and*

a.1.a.2. A response of less than 0.1% relative to the peak response at a wavelength exceeding 400 nm;

a.1.b. ''Space-qualified'' solid-state detectors having all of the following:

a.1.b.1. A peak response in the wavelength range exceeding 900 nm but not exceeding 1,200 nm; *and*

a.1.b.2. A response ''time constant'' of 95 ns or less;

a.1.c. ''Space-qualified'' solid-state detectors having a peak response in the wavelength range exceeding 1,200 nm but not exceeding 30,000 nm;

a.1.d. ''Space-qualified'' ''focal plane arrays'' having more than 2,048 elements per array and having a peak response in the wavelength range exceeding 300 nm but not exceeding 900 nm;

a.2. Image intensifier tubes and ''specially designed'' ''components'' therefor, as follows:

Note: *6A002.a.2 does not control non-imaging photomultiplier tubes having an electron sensing device in the vacuum space limited solely to any of the following:*

a. A single metal anode; or

b. Metal anodes with a center to center spacing greater than 500 µm.

Technical Note: *'Charge multiplication' is a form of electronic image amplification and is defined as the generation of charge carriers as a result of an impact ionization gain process. 'Charge multiplication' sensors may take the form of an image intensifier tube, solid state detector or ''focal plane array''.*

a.2.a. Image intensifier tubes having all of the following:

a.2.a.1. A peak response in the wavelength range exceeding 400 nm but not exceeding 1,050 nm;

a.2.a.2. Electron image amplification using any of the following:

a.2.a.2.a. A microchannel plate with a hole pitch (center-to-center spacing) of 12 µm or less; *or*

a.2.a.2.b. An electron sensing device with a non-binned pixel pitch of 500 µm or less, ''specially designed'' or modified to achieve 'charge multiplication' other than by a microchannel plate; *and*

a.2.a.3. Any of the following photocathodes:

a.2.a.3.a. Multialkali photocathodes (*e.g.,* S–20 and S–25) having a luminous sensitivity exceeding 350 µA/lm;

a.2.a.3.b. GaAs or GaInAs photocathodes; *or*

a.2.a.3.c. Other ''III–V compound'' semiconductor photocathodes having a maximum ''radiant sensitivity'' exceeding 10 mA/W;

a.2.b. Image intensifier tubes having all of the following:

a.2.b.1. A peak response in the wavelength range exceeding 1,050 nm but not exceeding 1,800 nm;

a.2.b.2. Electron image amplification using any of the following:

a.2.b.2.a. A microchannel plate with a hole pitch (center-to-center spacing) of 12 µm or less; *or*

a.2.b.2.b. An electron sensing device with a non-binned pixel pitch of 500 µm or less, ''specially designed'' or modified to achieve 'charge multiplication' other than by a microchannel plate; *and*

a.2.b.3. ''III/V compound'' semiconductor (*e.g.,* GaAs or GaInAs) photocathodes and transferred electron photocathodes, having a maximum ''radiant sensitivity'' exceeding 15 mA/W;

a.2.c. ''Specially designed'' ''components'' as follows:

a.2.c.1. Microchannel plates having a hole pitch (center-to-center spacing) of 12 µm or less;

a.2.c.2. An electron sensing device with a non-binned pixel pitch of 500 µm or less, ''specially designed'' or modified to achieve 'charge multiplication' other than by a microchannel plate;

a.2.c.3. ''III–V compound'' semiconductor (*e.g.,* GaAs or GaInAs) photocathodes and transferred electron photocathodes;

Note: *6A002.a.2.c.3 does not control compound semiconductor photocathodes designed to achieve a maximum ''radiant sensitivity'' of any of the following:*

a. 10 mA/W or less at the peak response in the wavelength range exceeding 400 nm but not exceeding 1,050 nm; or

b. 15 mA/W or less at the peak response in the wavelength range exceeding 1,050 nm but not exceeding 1,800 nm.

a.3. Non-''space-qualified'' ''focal plane arrays'' as follows:

N.B.: 'Microbolometer' non-''space-qualified'' ''focal plane arrays'' are only specified by 6A002.a.3.f.

Technical Note: *Linear or two-dimensional multi-element detector arrays are referred to as ''focal plane arrays'';*

Note 1: *6A002.a.3 includes photoconductive arrays and photovoltaic arrays.*

Note 2: *6A002.a.3 does not control:*

a. Multi-element (not to exceed 16 elements) encapsulated photoconductive cells using either lead sulphide or lead selenide;

b. Pyroelectric detectors using any of the following:

b.1. Triglycine sulphate and variants;

b.2. Lead-lanthanum-zirconium titanate and variants;

b.3. Lithium tantalate;

b.4. Polyvinylidene fluoride and variants; or

b.5. Strontium barium niobate and variants.

c. ''Focal plane arrays'' ''specially designed'' or modified to achieve 'charge multiplication' and limited by design to have a maximum ''radiant sensitivity'' of 10 mA/W or less for wavelengths exceeding 760 nm, having all of the following:

c.1. Incorporating a response limiting mechanism designed not to be removed or modified; and

c.2. Any of the following:

c.2.a. The response limiting mechanism is integral to or combined with the detector element; or

c.*2.b. The ''focal plane array'' is only operable with the response limiting mechanism in place.*

d. Thermopile arrays having less than 5,130 elements;

Technical Note: *A response limiting mechanism integral to the detector element is designed not to be removed or modified without rendering the detector inoperable.*

a.3.a. Non-''space-qualified'' ''focal plane arrays'' having all of the following:

a.3.a.1. Individual elements with a peak response within the wavelength range exceeding 900 nm but not exceeding 1,050 nm; *and*

a.3.a.2. Any of the following:

a.3.a.2.a. A response ''time constant'' of less than 0.5 ns; *or*

a.3.a.2.b. ''Specially designed'' or modified to achieve 'charge multiplication' and having a maximum ''radiant sensitivity'' exceeding 10 mA/W;

a.3.b. Non-''space-qualified'' ''focal plane arrays'' having all of the following:

a.3.b.1. Individual elements with a peak response in the wavelength range exceeding 1,050 nm but not exceeding 1,200 nm; *and*

a.3.b.2. Any of the following:

a.3.b.2.a. A response ''time constant'' of 95 ns or less; *or*

a.3.b.2.b. ''Specially designed'' or modified to achieve 'charge multiplication' and having a maximum ''radiant sensitivity'' exceeding 10 mA/W;

a.3.c. Non-''space-qualified'' non-linear (2-dimensional) ''focal plane arrays'' having individual elements with a peak response in the wavelength range exceeding 1,200 nm but not exceeding 30,000 nm;

N.B.: Silicon and other material based 'microbolometer' non-''space-qualified'' ''focal plane arrays'' are only specified by 6A002.a.3.f.

a.3.d. Non-''space-qualified'' linear (1-dimensional) ''focal plane arrays'' having all of the following:

a.3.d.1. Individual elements with a peak response in the wavelength range exceeding 1,200 nm but not exceeding 3,000 nm; *and*

a.3.d.2. Any of the following:

a.3.d.2.a. A ratio of 'scan direction' dimension of the detector element to the 'cross-scan direction' dimension of the detector element of less than 3.8; *or*

a.3.d.2.b. Signal processing in the detector elements;

Note: *6A002.a.3.d does not control ''focal plane arrays'' (not to exceed 32 elements) having detector elements limited solely to germanium material.*

Technical Note: *For the purposes of 6A002.a.3.d, 'cross-scan direction' is defined as the axis parallel to the linear array of detector elements and the 'scan direction' is defined as the axis perpendicular to the linear array of detector elements.*

a.3.e. Non-''space-qualified'' linear (1-dimensional) ''focal plane arrays'' having individual elements with a peak response in the wavelength range exceeding 3,000 nm but not exceeding 30,000 nm;

a.3.f. Non-''space-qualified'' non-linear (2-dimensional) infrared ''focal plane arrays'' based on 'microbolometer' material having individual elements with an unfiltered response in the wavelength range equal to or exceeding 8,000 nm but not exceeding 14,000 nm;

Technical Note: *For the purposes of 6A002.a.3.f, 'microbolometer' is defined as a thermal imaging detector that, as a result of a temperature change in the detector caused by the absorption of infrared radiation, is used to generate any usable signal.*

a.3.g. Non-''space-qualified'' ''focal plane arrays'' having all of the following:

a.3.g.1. Individual detector elements with a peak response in the wavelength range exceeding 400 nm but not exceeding 900 nm;

a.3.g.2. ''Specially designed'' or modified to achieve 'charge multiplication' and having a maximum ''radiant sensitivity'' exceeding 10 mA/W for wavelengths exceeding 760 nm; *and*

a.3.g.3. Greater than 32 elements;

b. ''Monospectral imaging sensors'' and ''multispectral imaging sensors'', designed for remote sensing applications and having any of the following:

b.1. An Instantaneous-Field-Of-View (IFOV) of less than 200 μrad (microradians); *or*

b.2. Specified for operation in the wavelength range exceeding 400 nm but not exceeding 30,000 nm and having all the following:

b.2.a. Providing output imaging data in digital format; *and*

b.2.b. Having any of the following characteristics:

b.2.b.1. ''Space-qualified''; *or*

b.2.b.2. Designed for airborne operation, using other than silicon detectors, and having an IFOV of less than 2.5 mrad (milliradians);

Note: *6A002.b.1 does not control ''monospectral imaging sensors'' with a peak response in the wavelength range exceeding 300 nm but not exceeding 900 nm and only incorporating any of the following non-''space-qualified'' detectors or non-''space-qualified'' ''focal plane arrays'':*

a. Charge Coupled Devices (CCD) not designed or modified to achieve 'charge multiplication'; or

b. Complementary Metal Oxide Semiconductor (CMOS) devices not designed or modified to achieve 'charge multiplication'.

c. 'Direct view' imaging equipment incorporating any of the following:

c.1. Image intensifier tubes having the characteristics listed in 6A002.a.2.a or 6A002.a.2.b;

c.2. ''Focal plane arrays'' having the characteristics listed in 6A002.a.3; *or*

c.3. Solid state detectors specified by 6A002.a.1;

Technical Note: *'Direct view' refers to imaging equipment that presents a visual image to a human observer without converting the image into an electronic signal for television display, and that cannot record or store the image photographically, electronically or by any other means.*

Note: *6A002.c does not control equipment as follows, when incorporating other than GaAs or GaInAs photocathodes:*

a. Industrial or civilian intrusion alarm, traffic or industrial movement control or counting systems;

b. Medical equipment;

c. Industrial equipment used for inspection, sorting or analysis of the properties of materials;

d. Flame detectors for industrial furnaces;

e. Equipment ''specially designed'' for laboratory use.

d. Special support ''components'' for optical sensors, as follows:

d.1. ''Space-qualified'' cryocoolers;

d.2. Non-''space-qualified'' cryocoolers having a cooling source temperature below 218 K (−55 °C), as follows:

d.2.a. Closed cycle type with a specified Mean-Time-To-Failure (MTTF) or Mean-Time-Between-Failures (MTBF), exceeding 2,500 hours;

d.2.b. Joule-Thomson (JT) self-regulating minicoolers having bore (outside) diameters of less than 8 mm;

d.3. Optical sensing fibers specially fabricated either compositionally or structurally, or modified by coating, to be acoustically, thermally, inertially, electromagnetically or nuclear radiation sensitive.

Note: *6A002.d.3 does not apply to encapsulated optical sensing fibers ''specially designed'' for bore hole sensing applications.*

e. [Reserved]

f. 'Read-Out Integrated Circuits' ('ROIC') ''specially designed'' for ''focal plane arrays'' specified by 6A002.a.3.

Note: *6A002.f does not apply to read-out integrated circuits ''specially designed'' for civil automotive applications.*

Technical Note: *A 'Read-Out Integrated Circuit' ('ROIC') is an integrated circuit designed to underlie or be bonded to a ''focal plane array'' (''FPA'') and used to read-out (i.e., extract and register) signals produced by the detector elements. At a minimum the 'ROIC' reads the charge from the detector elements by extracting the charge and applying a multiplexing function in a manner that retains the relative spatial position and orientation information of the detector elements for processing inside or outside the 'ROIC'.*

■ 27. In Supplement No. 1 to part 774, Category 6, ECCN 6A003 is revised to read as follows:

6A003 Cameras, Systems or Equipment, and ''Components'' Therefor, as Follows (See List of Items Controlled).

License Requirements

Reason for Control: NS, NP, RS, AT, UN

Control(s)	*Country Chart (see Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 2
NP applies to cameras controlled by 6A003.a.3 or a.4 and to plug-ins in 6A003.a.6 for cameras controlled by 6A003.a.3 or a.4.	NP Column 1

Control(s)	*Country Chart (see Supp. No. 1 to part 738)*
RS applies to 6A003.b.3, 6A003.b.4.a, 6A003.b.4.c and to items controlled in 6A003.b.4.b that have a frame rate greater than 60 Hz or that incorporate a focal plane array with more than 111,000 elements, or to items in 6A003.b.4.b when being exported or reexported to be embedded in a civil product. (But see § 742.6(a)(2)(iii) and (v) for certain exemptions).	RS Column 1
RS applies to items controlled in 6A003.b.4.b that have a frame rate of 60 Hz or less and that incorporate a focal plane array with not more than 111,000 elements if not being exported or reexported to be embedded in a civil product.	RS Column 2
AT applies to entire entry.	AT Column 1
UN applies to 6A003.b.3 and b.4.	See § 746.1(b) for UN controls

License Requirement Note: Commodities that are not subject to the ITAR but are of the type described in USML Category XII(c) are controlled as cameras in ECCN 6A003 when they incorporate a camera controlled in this ECCN.

Reporting Requirements

See § 743.3 of the EAR for thermal camera reporting for exports that are not authorized by an individually validated license of thermal imaging cameras controlled by ECCN 6A003.b.4.b to destinations in Country Group A:1 (see Supplement No. 1 to part 740 of the EAR), must be reported to BIS.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: $1,500, except N/A for 6A003.a.3 through a.6, b.1, b.3 and b.4
GBS: N/A

Special Conditions for STA

STA: License Exception STA may not be used to ship any commodity in 6A003.b.3 or b.4 to any of the destinations listed in Country Group A:6 (See Supplement No.1 to part 740 of the EAR).

List of Items Controlled

Related Controls: (1) See ECCNs 6E001 (''development''), 6E002 (''production''), and 6E201 (''use'') for technology for items controlled under this entry. (2) Also see ECCN 6A203. (3) See ECCN 0A919 for foreign made military commodities that incorporate cameras described in 6A003. (4) Section 744.9 imposes a license requirement on cameras described in 6A003 if being exported, reexported, or transferred (in-country) for use by a military end-user or for incorporation into a commodity controlled by ECCN 0A919. (5) See USML Category XII(c) and (e) for cameras subject to the ITAR.
Related Definitions: N/A
Items:

a. Instrumentation cameras and ''specially designed'' ''components'' therefor, as follows:

Note: *Instrumentation cameras, controlled by 6A003.a.3 to 6A003.a.5, with modular structures should be evaluated by their maximum capability, using plug-ins available according to the camera manufacturer's specifications.*

a.1. [Reserved]
a.2. [Reserved]
a.3. Electronic streak cameras having temporal resolution better than 50 ns;
a.4. Electronic framing cameras having a speed exceeding 1,000,000 frames/s;
a.5. Electronic cameras having all of the following:
a.5.a. An electronic shutter speed (gating capability) of less than 1μs per full frame; *and*
a.5.b. A read out time allowing a framing rate of more than 125 full frames per second;
a.6. Plug-ins having all of the following characteristics:
a.6.a. ''Specially designed'' for instrumentation cameras which have modular structures and that are controlled by 6A003.a; *and*
a.6.b. Enabling these cameras to meet the characteristics specified by 6A003.a.3, 6A003.a.4 or 6A003.a.5, according to the manufacturer's specifications;
b. Imaging cameras as follows:

Note: *6A003.b does not control television or video cameras* ''*specially designed*'' *for television broadcasting.*

b.1. Video cameras incorporating solid state sensors, having a peak response in the wavelength range exceeding 10 nm, but not exceeding 30,000 nm and having all of the following:
b.1.a. Having any of the following:
b.1.a.1. More than 4 x 10^6 ''active pixels'' per solid state array for monochrome (black and white) cameras;
b.1.a.2. More than 4 x 10^6 ''active pixels'' per solid state array for color cameras incorporating three solid state arrays; *or*
b.1.a.3. More than 12 x 10^6 ''active pixels'' for solid state array color cameras incorporating one solid state array; *and*
b.1.b. Having any of the following:
b.1.b.1. Optical mirrors controlled by 6A004.a.;
b.1.b.2. Optical control equipment controlled by 6A004.d.; *or*
b.1.b.3. The capability for annotating internally generated 'camera tracking data';

Technical Notes:

1. For the purposes of this entry, digital video cameras should be evaluated by the maximum number of ''*active pixels*'' *used for capturing moving images.*

2. For the purpose of this entry, 'camera tracking data' is the information necessary to define camera line of sight orientation with respect to the earth. This includes: (1) the horizontal angle the camera line of sight makes with respect to the earth's magnetic field direction and; (2) the vertical angle between the camera line of sight and the earth's horizon.

b.2. Scanning cameras and scanning camera systems, having all of the following:
b.2.a. A peak response in the wavelength range exceeding 10 nm, but not exceeding 30,000 nm;
b.2.b. Linear detector arrays with more than 8,192 elements per array; *and*
b.2.c. Mechanical scanning in one direction;

Note: *6A003.b.2 does not apply to scanning cameras and scanning camera systems,* ''*specially designed*'' *for any of the following:*

a. Industrial or civilian photocopiers;
b. Image scanners ''*specially designed*'' *for civil, stationary, close proximity scanning applications (e.g., reproduction of images or print contained in documents, artwork or photographs); or*
c. Medical equipment.

b.3. Imaging cameras incorporating image intensifier tubes having the characteristics listed in 6A002.a.2.a or 6A002.a.2.b;
b.4. Imaging cameras incorporating ''focal plane arrays'' having any of the following:
b.4.a. Incorporating ''focal plane arrays'' controlled by 6A002.a.3.a to 6A002.a.3.e;
b.4.b. Incorporating ''focal plane arrays'' controlled by 6A002.a.3.f; *or*
b.4.c. Incorporating ''focal plane arrays'' controlled by 6A002.a.3.g;

Note 1: *Imaging cameras described in 6A003.b.4 include* ''*focal plane arrays*'' *combined with sufficient* ''*signal processing*'' *electronics, beyond the read out integrated circuit, to enable as a minimum the output of an analog or digital signal once power is supplied.*

Note 2: *6A003.b.4.a does not control imaging cameras incorporating linear* ''*focal plane arrays*'' *with 12 elements or fewer, not employing time-delay-and-integration within the element and designed for any of the following:*

a. Industrial or civilian intrusion alarm, traffic or industrial movement control or counting systems;
b. Industrial equipment used for inspection or monitoring of heat flows in buildings, equipment or industrial processes;
c. Industrial equipment used for inspection, sorting or analysis of the properties of materials;
d. Equipment ''*specially designed*'' *for laboratory use; or*
e. Medical equipment.

Note 3: *6A003.b.4.b does not control imaging cameras having any of the following:*

a. A maximum frame rate equal to or less than 9 Hz;
b. Having all of the following:
1. Having a minimum horizontal or vertical 'Instantaneous-Field-of-View (IFOV)' of at least 2 mrad (milliradians);

2. Incorporating a fixed focal-length lens that is not designed to be removed;

3. Not incorporating a 'direct view' display; and

Technical Note: *'Direct view' refers to an imaging camera operating in the infrared spectrum that presents a visual image to a human observer using a near-to-eye micro display incorporating any light-security mechanism.*

4. Having any of the following:

a. No facility to obtain a viewable image of the detected field-of-view; or

b. The camera is designed for a single kind of application and designed not to be user modified; or

Technical Note:

'Instantaneous Field of View (IFOV)' specified in Note 3.b is the lesser figure of the 'Horizontal FOV' or the 'Vertical FOV'.

'Horizontal IFOV' = horizontal Field of View (FOV)/number of horizontal detector elements.

'Vertical IFOV'= vertical Field of View (FOV)/number of vertical detector elements.

c. The camera is ''specially designed'' for installation into a civilian passenger land vehicle and having all of the following:

1. The placement and configuration of the camera within the vehicle are solely to assist the driver in the safe operation of the vehicle;

2. Is operable only when installed in any of the following:

a. The civilian passenger land vehicle for which it was intended and the vehicle weighs less than 4,500 kg (gross vehicle weight); or

b. A ''specially designed'', authorized maintenance test facility; and

3. Incorporates an active mechanism that forces the camera not to function when it is removed from the vehicle for which it was intended.

Note: *When necessary, details of the items will be provided, upon request, to the Bureau of Industry and Security in order to ascertain compliance with the conditions described in Note 3.b.4 and Note 3.c in this Note to 6A003.b.4.b.*

Note 4: *6A003.b.4.c does not apply to 'imaging cameras' having any of the following characteristics:*

a. Having all of the following:

1. Where the camera is ''specially designed'' for installation as an integrated component into indoor and wall-plug-operated systems or equipment, limited by design for a single kind of application, as follows:

a. Industrial process monitoring, quality control, or analysis of the properties of materials;

b. Laboratory equipment ''specially designed'' for scientific research;

c. Medical equipment;

d. Financial fraud detection equipment; and

2. Is only operable when installed in any of the following:

a. The system(s) or equipment for which it was intended; or

b. A ''specially designed,'' authorized maintenance facility; and

3. Incorporates an active mechanism that forces the camera not to function when it is removed from the system(s) or equipment for which it was intended;

b. Where the camera is ''specially designed'' for installation into a civilian passenger land vehicle or passenger and vehicle ferries and having all of the following:

1. The placement and configuration of the camera within the vehicle or ferry are solely to assist the driver or operator in the safe operation of the vehicle or ferry;

2. Is only operable when installed in any of the following:

a. The civilian passenger land vehicle for which it was intended and the vehicle weighs less than 4,500 kg (gross vehicle weight);

b. The passenger and vehicle ferry for which it was intended and having a length overall (LOA) 65 m or greater; or

c. A ''specially designed'', authorized maintenance test facility; and

3. Incorporates an active mechanism that forces the camera not to function when it is removed from the vehicle for which it was intended;

c. Limited by design to have a maximum ''radiant sensitivity'' of 10 mA/W or less for wavelengths exceeding 760 nm, having all of the following:

1. Incorporating a response limiting mechanism designed not to be removed or modified; and

2. Incorporates an active mechanism that forces the camera not to function when the response limiting mechanism is removed; and

3. Not ''specially designed'' or modified for underwater use; or

d. Having all of the following:

1. Not incorporating a 'direct view' or electronic image display;

2. Has no facility to output a viewable image of the detected field of view;

3. The ''focal plane array'' is only operable when installed in the camera for which it was intended; and

4. The ''focal plane array'' incorporates an active mechanism that forces it to be permanently inoperable when removed from the camera for which it was intended.

Note: *When necessary, details of the item will be provided, upon request, to the Bureau of Industry and Security in order to ascertain compliance with the conditions described in Note 4 above.*

b.5. Imaging cameras incorporating solid-state detectors specified by 6A002.a.1.

■ 28. In Supplement No. 1 to part 774, Category 6, ECCN 6A005 is revised to read as follows:

6A005 ''Lasers,'' ''Components'' and Optical Equipment, as Follows (See List of Items Controlled), Excluding Items That Are Subject to the Export Licensing Authority of the Nuclear Regulatory Commission (See 10 CFR Part 110).

License Requirements

Reason for Control: NS, NP, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 2
NP applies to lasers controlled by 6A005.a.2, a.3, a.4, b.2.b, b.3, b.4, b.6.c, c.1.b, c.2.b, d.2, d.3.c, or d.4.c that meet or exceed the technical parameters described in 6A205.	NP Column 1
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A for NP items; $3,000 for all other items

GBS: Neodymium-doped (other than glass) ''lasers'' controlled by 6A005.b.6.d.2 (except 6A005.b.6.d.2.b) that have an output wavelength exceeding 1,000 nm, but not exceeding 1,100 nm, and an average or CW output power not exceeding 2 kW, and operate in a pulse-excited, non-''Q-switched'' multiple-transverse mode, or in a continuously excited, multiple-transverse mode; Dye and Liquid Lasers controlled by 6A005.c.1, c.2 and c.3, except for a pulsed single longitudinal mode oscillator having an average output power exceeding 1 W and a repetition rate exceeding 1 kHz if the ''pulse duration'' is less than 100 ns; CO ''lasers'' controlled by 6A005.d.2 having a CW maximum rated single or multimode output power not exceeding 10 kW; CO_2 or CO/CO_2 ''lasers'' controlled by 6A005.d.3 having an output wavelength in the range from 9,000 to 11,000 nm and having a pulsed output not exceeding 2 J per pulse and a maximum rated average single or multimode output power not exceeding 5 kW; and CO_2 ''lasers'' controlled by 6A005.d.3 that operate in CW multiple-transverse mode, and having a CW output power not exceeding 15 kW.

List of Items Controlled

Related Controls (1) See ECCN 6D001 for ''software'' for items controlled under this entry. (2) See ECCNs 6E001 (''development''), 6E002 (''production''), and 6E201 (''use'') for technology for items controlled under this entry. (3) Also see ECCNs 6A205 and 6A995. (4) See ECCN 3B001 for excimer ''lasers'' ''specially designed'' for lithography equipment. (5) ''Lasers'' ''specially designed'' or prepared for use in isotope separation are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110). (6) See USML Category XII(b) and (e) for laser systems or lasers subject to the ITAR. (7) See USML Category XVIII for certain laser-based directed energy weapon systems, equipment, and components subject to the ITAR.

Related Definitions: (1) 'Wall-plug efficiency' is defined as the ratio of ''laser'' output power (or ''average output power'') to total electrical input power required to operate the ''laser'', including the power supply/conditioning and thermal conditioning/

heat exchanger, see 6A005.a.6.b.1 and 6A005.b.6; (2) 'Non-repetitive pulsed' refers to ''lasers'' that produce either a single output pulse or that have a time interval between pulses exceeding one minute, see Note 2 of 6A005 and 6A005.d.6.

Items:

Notes:

1. Pulsed ''lasers'' include those that run in a continuous wave (CW) mode with pulses superimposed.

2. Excimer, semiconductor, chemical, CO, CO_2*, and 'non-repetitive pulsed' Nd:glass ''lasers'' are only specified by 6A005.d.*

Technical Note: *'Non-repetitive pulsed' refers to ''lasers'' that produce either a single output pulse or that have a time interval between pulses exceeding one minute.*

3. 6A005 includes fiber ''lasers''.

4. The control status of ''lasers'' incorporating frequency conversion (i.e., wavelength change) by means other than one ''laser'' pumping another ''laser'' is determined by applying the control parameters for both the output of the source ''laser'' and the frequency-converted optical output.

5. 6A005 does not control ''lasers'' as follows:

a. Ruby with output energy below 20 J;

b. Nitrogen;

c. Krypton.

6. For the purposes of 6A005.a and 6A005.b, 'single transverse mode' refers to ''lasers'' with a beam profile having an M^2*-factor of less than 1.3, while 'multiple transverse mode' refers to ''lasers'' with a beam profile having an* M^2*-factor of 1.3 or higher.*

a. Non-''tunable'' continuous wave ''(CW) lasers'' having any of the following:

a.1. Output wavelength less than 150 nm and output power exceeding 1W;

a.2. Output wavelength of 150 nm or more but not exceeding 510 nm and output power exceeding 30 W;

Note: *6A005.a.2 does not control Argon ''lasers'' having an output power equal to or less than 50 W.*

a.3. Output wavelength exceeding 510 nm but not exceeding 540 nm and any of the following:

a.3.a. 'Single transverse mode' output and output power exceeding 50 W; *or*

a.3.b. 'Multiple transverse mode' output and output power exceeding 150 W;

a.4. Output wavelength exceeding 540 nm but not exceeding 800 nm and output power exceeding 30 W;

a.5. Output wavelength exceeding 800 nm but not exceeding 975 nm and any of the following:

a.5.a. 'Single transverse mode' output and output power exceeding 50 W; *or*

a.5.b. 'Multiple transverse mode' output and output power exceeding 80 W;

a.6. Output wavelength exceeding 975 nm but not exceeding 1,150 nm and any of the following;

a.6.a. 'Single transverse mode' output and any of the following:

a.6.a.1. Average output power exceeding 1,000 W; *or*

a.6.a.2. Having all of the following:

a.6.a.2.a. Average output power exceeding 500 W; *and*

a.6.a.2.b. Spectral bandwidth less than 40 GHz; *or*

a.6.b. 'Multiple transverse mode' output and any of the following:

a.6.b.1. 'Wall-plug efficiency' exceeding 18% and output power exceeding 1,000 W; or

a.6.b.2. Output power exceeding 2 kW;

Note 1: *6A005.a.6.b does not control 'multiple transverse mode', industrial ''lasers'' with output power exceeding 2 kW and not exceeding 6 kW with a total mass greater than 1,200 kg. For the purpose of this note, total mass includes all ''components'' required to operate the ''laser,'' e.g., ''laser,'' power supply, heat exchanger, but excludes external optics for beam conditioning or delivery.*

Note 2: *6A005.a.6.b does not apply to 'multiple transverse mode', industrial ''lasers'' having any of the following:*

a. [Reserved];

b. Output power exceeding 1 kW but not exceeding 1.6 kW and having a BPP exceeding 1.25 mm•mrad;

c. Output power exceeding 1.6 kW but not exceeding 2.5 kW and having a BPP exceeding 1.7 mm•mrad;

d. Output power exceeding 2.5 kW but not exceeding 3.3 kW and having a BPP exceeding 2.5 mm•mrad;

e. Output power exceeding 3.3 kW but not exceeding 6 kW and having a BPP exceeding 3.5 mm•mrad;

f. [Reserved]

g. [Reserved]

h. Output power exceeding 6 kW but not exceeding 8 kW and having a BPP exceeding 12 mm•mrad; or

i. Output power exceeding 8 kW but not exceeding 10 kW and having a BPP exceeding 24 mm•mrad;

a.7. Output wavelength exceeding 1,150 nm but not exceeding 1,555 nm and any of the following:

a.7.a. 'Single transverse mode' and output power exceeding 50 W; *or*

a.7.b. 'Multiple transverse mode' and output power exceeding 80 W;

a.8. Output wavelength exceeding 1,555 nm but not exceeding 1,850 nm and output power exceeding 1 W;

a.9. Output wavelength exceeding 1,850 nm but not exceeding 2,100 nm, and any of the following:

a.9.a. 'Single transverse mode' and output power exceeding 1 W; *or*

a.9.b. 'Multiple transverse mode' output and output power exceeding 120 W; *or*

a.10. Output wavelength exceeding 2,100 nm and output power exceeding 1 W;

b. Non-''tunable'' ''pulsed lasers'' having any of the following:

b.1. Output wavelength less than 150 nm and any of the following:

b.1.a. Output energy exceeding 50 mJ per pulse and ''peak power'' exceeding 1 W; *or*

b.1.b. ''Average output power'' exceeding 1 W;

b.2. Output wavelength of 150 nm or more but not exceeding 510 nm and any of the following:

b.2.a. Output energy exceeding 1.5 J per pulse and ''peak power'' exceeding 30 W; *or*

b.2.b. ''Average output power'' exceeding 30 W;

Note: *6A005.b.2.b does not control Argon ''lasers'' having an ''average output power'' equal to or less than 50 W.*

b.3. Output wavelength exceeding 510 nm, but not exceeding 540 nm and any of the following:

b.3.a. 'Single transverse mode' output and any of the following:

b.3.a.1. Output energy exceeding 1.5 J per pulse and ''peak power'' exceeding 50 W; *or*

b.3.a.2. ''Average output power'' exceeding 50 W; *or*

b.3.b. 'Multiple transverse mode' output and any of the following:

b.3.b.1. Output energy exceeding 1.5 J per pulse and ''peak power'' exceeding 150 W; or

b.3.b.2. ''Average output power'' exceeding 150 W;

b.4. Output wavelength exceeding 540 nm but not exceeding 800 nm and any of the following:

b.4.a. ''Pulse duration'' less than 1 ps and any of the following:

b.4.a.1. Output energy exceeding 0.005 J per pulse and ''peak power'' exceeding 5 GW; *or*

b.4.a.2. ''Average output power'' exceeding 20 W; *or*

b.4.b. ''Pulse duration'' equal to or exceeding 1 ps and any of the following:

b.4.b.1. Output energy exceeding 1.5 J per pulse and ''peak power'' exceeding 30 W; *or*

b.4.b.2. ''Average output power'' exceeding 30 W;

b.5. Output wavelength exceeding 800 nm but not exceeding 975 nm and any of the following:

b.5.a. ''Pulse duration'' less than 1ps and any of the following:

b.5.a.1. Output energy exceeding 0.005 J per pulse and ''peak power'' exceeding 5 GW; *or*

b.5.a.2. 'Single transverse mode' output and ''average output power'' exceeding 20 W;

b.5.b. ''Pulse duration'' equal to or exceeding 1 ps and not exceeding 1 μs and any of the following:

b.5.b.1. Output energy exceeding 0.5 J per pulse and ''peak power'' exceeding 50 W;

b.5.b.2. 'Single transverse mode' output and ''average output power'' exceeding 20 W; *or*

b.5.b.3. 'Multiple transverse mode' output and ''average output power'' exceeding 50 W; *or*

b.5.c. ''Pulse duration'' exceeding 1 μs and any of the following:

b.5.c.1. Output energy exceeding 2 J per pulse and ''peak power'' exceeding 50 W;

b.5.c.2. 'Single transverse mode' output and ''average output power'' exceeding 50 W; *or*

b.5.c.3. 'Multiple transverse mode' output and ''average output power'' exceeding 80 W.

b.6. Output wavelength exceeding 975 nm but not exceeding 1,150 nm and any of the following:

b.6.a. ''Pulse duration'' of less than 1 ps, and any of the following:

b.6.a.1. Output ''peak power'' exceeding 2 GW per pulse;

b.6.a.2. ''Average output power'' exceeding 30 W; *or*

b.6.a.3. Output energy exceeding 0.002 J per pulse;

b.6.b. ''Pulse duration'' equal to or exceeding 1 ps and less than 1 ns, and any of the following:

b.6.b.1. Output ''peak power'' exceeding 5 GW per pulse;

b.6.b.2. ''Average output power'' exceeding 50 W; *or*

b.6.b.3. Output energy exceeding 0.1 J per pulse;

b.6.c. ''Pulse duration'' equal to or exceeding 1 ns but not exceeding 1 μs and any of the following:

b.6.c.1. 'Single transverse mode' output and any of the following:

b.6.c.1.a. ''Peak power'' exceeding 100 MW;

b.6.c.1.b. ''Average output power'' exceeding 20 W limited by design to a maximum pulse repetition frequency less than or equal to 1 kHz;

b.6.c.1.c. 'Wall-plug efficiency' exceeding 12%, ''average output power'' exceeding 100 W and capable of operating at a pulse repetition frequency greater than 1 kHz;

b.6.c.1.d. ''Average output power'' exceeding 150 W and capable of operating at a pulse repetition frequency greater than 1 kHz; *or*

b.6.c.1.e. Output energy exceeding 2 J per pulse; *or*

b.6.c.2. 'Multiple transverse mode' output and any of the following:

b.6.c.2.a. ''Peak power'' exceeding 400 MW;

b.6.c.2.b. 'Wall-plug efficiency' exceeding 18% and ''average output power'' exceeding 500 W;

b.6.c.2.c. ''Average output power'' exceeding 2 kW; or

b.6.c.2.d. Output energy exceeding 4 J per pulse; *or*

b.6.d. ''Pulse duration'' exceeding 1 μs and any of the following:

b.6.d.1. 'Single transverse mode' output and any of the following:

b.6.d.1.a. ''Peak power'' exceeding 500 kW;

b.6.d.1.b. 'Wall-plug efficiency' exceeding 12% and ''average output power'' exceeding 100 W; *or*

b.6.d.1.c. ''Average output power'' exceeding 150 W; *or*

b.6.d.2. 'Multiple transverse mode' output and any of the following:

b.6.d.2.a. ''Peak power'' exceeding 1 MW;

b.6.d.2.b. 'Wall-plug efficiency' exceeding 18% and ''average output power'' exceeding 500 W; *or*

b.6.d.2.c. ''Average output power'' exceeding 2 kW;

b.7. Output wavelength exceeding 1,150 nm but not exceeding 1,555 nm and any of the following:

b.7.a. ''Pulse duration'' not exceeding 1 μs and any of the following:

b.7.a.1. Output energy exceeding 0.5 J per pulse and ''peak power'' exceeding 50 W;

b.7.a.2. 'Single transverse mode' output and ''average output power'' exceeding 20 W; *or*

b.7.a.3. 'Multiple transverse mode' output and ''average output power'' exceeding 50 W; *or*

b.7.b. ''Pulse duration'' exceeding 1 μs and any of the following:

b.7.b.1. Output energy exceeding 2 J per pulse and ''peak power'' exceeding 50 W;

b.7.b.2. 'Single transverse mode' output and ''average output power'' exceeding 50 W; *or*

b.7.b.3. 'Multiple transverse mode' output and ''average output power'' exceeding 80 W;

b.8. Output wavelength exceeding 1,555 nm but not exceeding 1,850 nm, and any of the following:

b.8.a. Output energy exceeding 100 mJ per pulse and ''peak power'' exceeding 1 W; *or*

b.8.b. ''Average output power'' exceeding 1 W;

b.9. Output wavelength exceeding 1,850 nm but not exceeding 2,100 nm, and any of the following:

b.9.a. 'Single transverse mode' and any of the following:

b.9.a.1. Output energy exceeding 100 mJ per pulse and ''peak power'' exceeding 1 W; *or*

b.9.a.2. ''Average output power'' exceeding 1 W;

b.9.b. 'Multiple transverse mode' and any of the following:

b.9.b.1. Output energy exceeding 100 mJ per pulse and ''peak power'' exceeding 10 kW; *or*

b.9.b.2. ''Average output power'' exceeding 120 W; *or*

b.10. Output wavelength exceeding 2,100 nm and any of the following:

b.10.a. Output energy exceeding 100 mJ per pulse and ''peak power'' exceeding 1 W; *or*

b.10.b. ''Average output power'' exceeding 1 W;

c. ''Tunable'' lasers having any of the following:

c.1. Output wavelength less than 600 nm and any of the following:

c.1.a. Output energy exceeding 50 mJ per pulse and ''peak power'' exceeding 1 W; *or*

c.1.b. Average or CW output power exceeding 1W;

Note: *6A005.c.1 does not apply to dye ''lasers'' or other liquid ''lasers,'' having a multimode output and a wavelength of 150 nm or more but not exceeding 600 nm and all of the following:*

1. Output energy less than 1.5 J per pulse or a ''peak power'' less than 20 W; and

2. Average or CW output power less than 20 W.

c.2. Output wavelength of 600 nm or more but not exceeding 1,400 nm, and any of the following:

c.2.a. Output energy exceeding 1 J per pulse and ''peak power'' exceeding 20 W; *or*

c.2.b. Average or CW output power exceeding 20 W; *or*

c.3. Output wavelength exceeding 1,400 nm and any of the following:

c.3.a. Output energy exceeding 50 mJ per pulse and ''peak power'' exceeding 1 W; *or*

c.3.b. Average or CW output power exceeding 1 W;

d. Other ''lasers'', not controlled by 6A005.a, 6A005.b, or 6A005.c as follows:

d.1. Semiconductor ''lasers'' as follows:

Notes:

1. 6A005.d.1 includes semiconductor ''lasers'' having optical output connectors (e.g., fiber optic pigtails).

2. The control status of semiconductor ''lasers'' ''specially designed'' for other equipment is determined by the control status of the other equipment.

d.1.a. Individual single transverse mode semiconductor ''lasers'' having any of the following:

d.1.a.1. Wavelength equal to or less than 1,510 nm and average or CW output power, exceeding 1.5 W; *or*

d.1.a.2. Wavelength greater than 1,510 nm and average or CW output power, exceeding 500 mW;

d.1.b. Individual 'multiple-transverse mode' semiconductor ''lasers'' having any of the following:

d.1.b.1. Wavelength of less than 1,400 nm and average or CW output power, exceeding 15 W;

d.1.b.2. Wavelength equal to or greater than 1,400 nm and less than 1,900 nm and average or CW output power, exceeding 2.5 W; *or*

d.1.b.3. Wavelength equal to or greater than 1,900 nm and average or CW output power, exceeding 1 W;

d.1.c. Individual semiconductor ''laser'' 'bars' having any of the following:

d.1.c.1. Wavelength of less than 1,400 nm and average or CW output power, exceeding 100 W;

d.1.c.2. Wavelength equal to or greater than 1,400 nm and less than 1,900 nm and average or CW output power, exceeding 25 W; *or*

d.1.c.3. Wavelength equal to or greater than 1,900 nm and average or CW output power, exceeding 10 W;

d.1.d. Semiconductor ''laser'' 'stacked arrays' (two dimensional arrays) having any of the following:

d.1.d.1. Wavelength less than 1,400 nm and having any of the following:

d.1.d.1.a. Average or CW total output power less than 3 kW and having average or CW output 'power density' greater than 500 W/cm^2;

d.1.d.1.b. Average or CW total output power equal to or exceeding 3 kW but less than or equal to 5 kW, and having average or CW output 'power density' greater than 350W/cm^2;

d.1.d.1.c. Average or CW total output power exceeding 5 kW;

d.1.d.1.d. Peak pulsed 'power density' exceeding 2,500 W/cm^2; *or*

Note: *6A005.d.1.d.1.d does not apply to epitaxially-fabricated monolithic devices.*

d.1.d.1.e. Spatially coherent average or CW total output power, greater than 150 W;

d.1.d.2. Wavelength greater than or equal to 1,400 nm but less than 1,900 nm, and having any of the following:

d.1.d.2.a. Average or CW total output power less than 250 W and average or CW output 'power density' greater than 150 W/cm2;

d.1.d.2.b. Average or CW total output power equal to or exceeding 250 W but less than or equal to 500 W, and having average or CW output 'power density' greater than 50W/cm^2;

d.1.d.2.c. Average or CW total output power exceeding 500 W;

d.1.d.2.d. Peak pulsed 'power density' exceeding 500 W/cm^2; *or*

Note: *6A005.d.1.d.2.d does not apply to epitaxially-fabricated monolithic devices.*

d.1.d.2.e. Spatially coherent average or CW total output power, exceeding 15 W;

d.1.d.3. Wavelength greater than or equal to 1,900 nm and having any of the following:

d.1.d.3.a. Average or CW output 'power density' greater than 50 W/cm^2;

d.1.d.3.b. Average or CW output power greater than 10 W; *or*

d.1.d.3.c. Spatially coherent average or CW total output power, exceeding 1.5 W; *or*

d.1.d.4. At least one ''laser'' 'bar' specified by 6A005.d.1.c;

Technical Note: *For the purposes of 6A005.d.1.d, 'power density' means the total ''laser'' output power divided by the emitter surface area of the 'stacked array'.*

d.1.e. Semiconductor ''laser'' 'stacked arrays', other than those specified by 6.A005.d.1.d, having all of the following:

d.1.e.1. ''Specially designed'' or modified to be combined with other 'stacked arrays' to form a larger 'stacked array'; *and*

d.1.e.2. Integrated connections, common for both electronics and cooling;

Note 1: *'Stacked arrays', formed by combining semiconductor ''laser'' 'stacked arrays' specified by 6A005.d.1.e, that are not designed to be further combined or modified are specified by 6A005.d.1.d.*

Note 2: *'Stacked arrays', formed by combining semiconductor ''laser'' 'stacked arrays' specified by 6A005.d.1.e, that are designed to be further combined or modified are specified by 6A005.d.1.e.*

Note 3: *6A005.d.1.e does not apply to modular assemblies of single 'bars' designed to be fabricated into end to end stacked linear arrays.*

Technical Notes:

1. Semiconductor ''lasers'' are commonly called ''laser'' diodes.

2. A 'bar' (also called a semiconductor ''laser'' 'bar', a ''laser'' diode 'bar' or diode 'bar') consists of multiple semiconductor ''lasers'' in a one dimensional array.

3. A 'stacked array' consists of multiple 'bars' forming a two dimensional array of semiconductor ''lasers''.

d.2. Carbon monoxide (CO) ''lasers'' having any of the following:

d.2.a. Output energy exceeding 2 J per pulse and ''peak power'' exceeding 5 kW; *or*

d.2.b. Average or CW output power, exceeding 5 kW;

d.3. Carbon dioxide (CO_2) ''lasers'' having any of the following:

d.3.a. CW output power exceeding 15 kW;

d.3.b. Pulsed output with ''pulse duration'' exceeding 10 μs and any of the following:

d.3.b.1. ''Average output power'' exceeding 10 kW; *or*

d.3.b.2. ''Peak power'' exceeding 100 kW; *or*

d.3.c. Pulsed output with a ''pulse duration'' equal to or less than 10 μs and any of the following:

d.3.c.1. Pulse energy exceeding 5 J per pulse; *or*

d.3.c.2. ''Average output power'' exceeding 2.5 kW;

d.4. Excimer ''lasers'' having any of the following:

d.4.a. Output wavelength not exceeding 150 nm and any of the following:

d.4.a.1. Output energy exceeding 50 mJ per pulse; *or*

d.4.a.2. ''Average output power'' exceeding 1 W;

d.4.b. Output wavelength exceeding 150 nm but not exceeding 190 nm and any of the following:

d.4.b.1. Output energy exceeding 1.5 J per pulse; *or*

d.4.b.2. ''Average output power'' exceeding 120 W;

d.4.c. Output wavelength exceeding 190 nm but not exceeding 360 nm and any of the following:

d.4.c.1. Output energy exceeding 10 J per pulse; *or*

d.4.c.2. ''Average output power'' exceeding 500 W; *or*

d.4.d. Output wavelength exceeding 360 nm and any of the following:

d.4.d.1. Output energy exceeding 1.5 J per pulse; *or*

d.4.d.2. ''Average output power'' exceeding 30 W;

Note: *For excimer ''lasers'' ''specially designed'' for lithography equipment, see 3B001.*

d.5. ''Chemical lasers'' as follows:

d.5.a. Hydrogen Fluoride (HF) ''lasers';

d.5.b. Deuterium Fluoride (DF) ''lasers'';

d.5.c. 'Transfer lasers' as follows:

d.5.c.1. Oxygen Iodine (O_2-I) ''lasers'';

d.5.c.2. Deuterium Fluoride-Carbon dioxide (DF–CO_2) ''lasers'';

Technical Note: *'Transfer lasers' are ''lasers'' in which the lasing species are excited through the transfer of energy by collision of a non-lasing atom or molecule with a lasing atom or molecule species.*

d.6. 'Non-repetitive pulsed' Neodymium (Nd) glass ''lasers'' having any of the following:

d.6.a. A ''pulse duration'' not exceeding 1 μs and output energy exceeding 50 J per pulse; *or*

d.6.b. A ''pulse duration'' exceeding 1 μs and output energy exceeding 100 J per pulse;

e. ''Components'' as follows:

e.1. Mirrors cooled either by 'active cooling' or by heat pipe cooling;

Technical Note: *'Active cooling' is a cooling technique for optical ''components'' using flowing fluids within the subsurface (nominally less than 1 mm below the optical surface) of the optical component to remove heat from the optic.*

e.2. Optical mirrors or transmissive or partially transmissive optical or electro-optical-''components,'' other than fused tapered fiber combiners and Multi-Layer Dielectric gratings (MLDs), ''specially designed'' for use with controlled ''lasers'';

Note to 6A005.e.2: *Fiber combiners and MLDs are specified by 6A005.e.3.*

e.3. Fiber ''laser'' ''components'' as follows:

e.3.a. Multimode to multimode fused tapered fiber combiners having all of the following:

e.3.a.1. An insertion loss better (less) than or equal to 0.3 dB maintained at a rated total average or CW output power (excluding output power transmitted through the single mode core if present) exceeding 1,000 W; *and*

e.3.a.2. Number of input fibers equal to or greater than 3;

e.3.b. Single mode to multimode fused tapered fiber combiners having all of the following:

e.3.b.1. An insertion loss better (less) than 0.5 dB maintained at a rated total average or CW output power exceeding 4,600 W;

e.3.b.2. Number of input fibers equal to or greater than 3; *and*

e.3.b.3. Having any of the following:

e.3.b.3.a. A Beam Parameter Product (BPP) measured at the output not exceeding 1.5 mm mrad for a number of input fibers less than or equal to 5; *or*

e.3.b.3.b. A BPP measured at the output not exceeding 2.5 mm mrad for a number of input fibers greater than 5;

e.3.c. MLDs having all of the following:

e.3.c.1. Designed for spectral or coherent beam combination of 5 or more fiber ''lasers;'' *and*

e.3.c.2. CW ''Laser'' Induced Damage Threshold (LIDT) greater than or equal to 10 kW/cm^2;

f. Optical equipment as follows:

N.B.: For shared aperture optical elements, capable of operating in ''Super-High Power Laser'' (''SHPL'') applications, see the U.S. Munitions List (22 CFR part 121).

f.1. [Reserved]

N.B.: For items previously specified by 6A005.f.1, see 6A004.f.

f.2. ''Laser'' diagnostic equipment ''specially designed'' for dynamic measurement of ''SHPL'' system angular beam steering errors and having an angular ''accuracy'' of 10 μrad (microradians) or less (better);

f.3. Optical equipment and ''components'', ''specially designed'' for coherent beam combination in a phased-array ''SHPL'' system and having any of the following:

f.3.a. An ''accuracy'' of 0.1 μm or less, for wavelengths greater than 1 μm; *or*

f.3.b. An ''accuracy'' of λ/10 or less (better) at the designed wavelength, for wavelengths equal to or less than 1 μm;

f.4. Projection telescopes ''specially designed'' for use with ''SHPL'' systems;

g. 'Laser acoustic detection equipment' having all of the following:

g.1. CW ''laser'' output power greater than or equal to 20 mW;

g.2. ''Laser'' frequency stability equal to or better (less) than 10 MHz;

g.3. ''Laser'' wavelengths equal to or exceeding 1,000 nm but not exceeding 2,000 nm;

g.4. Optical system resolution better (less) than 1 nm; *and*

g.5. Optical Signal to Noise ratio equal or exceeding to 10^3.

Technical Note: *'Laser acoustic detection equipment' is sometimes referred to as a ''Laser'' Microphone or Particle Flow Detection Microphone.*

■ 29. In Supplement No. 1 to part 774, Category 6, ECCN 6B002 is added to read as follows:

6B002 Masks and Reticles, ''Specially Designed'' for Optical Sensors Specified by 6A002.a.1.b or 6A002.a.1.d.

License Requirements

Reason for Control: NS, AT

Control(s)	Country chart (see Supp. No. 1 to part 738)
NS applies to entire entry.	NS Column 2
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: $5,000
GBS: Yes

List of Items Controlled

Related Controls: N/A
Related Definitions: N/A
Items:

The list of items controlled is contained in the ECCN heading.

■ 30. In Supplement No. 1 to part 774, Category 6, ECCN 6E001 is revised to read as follows:

6E001 ''Technology'' According to the General Technology Note for the ''Development'' of Equipment, Materials or ''Software'' Controlled by 6A (Except 6A991, 6A992, 6A994, 6A995, 6A996, 6A997, 6A998, or 6A999.c), 6B (Except 6B995), 6C (Except 6C992 or 6C994), or 6D (Except 6D991, 6D992, or 6D993).

License Requirements

Reason for Control: NS, MT, NP, RS, CC, AT, UN

Control(s)	Country chart (see Supp. No. 1 to part 738)
NS applies to ''technology'' for items controlled by 6A001 to 6A008, 6B002 to 6B008, 6C002 to 6C005, or 6D001 to 6D003.	NS Column 1
MT applies to ''technology'' for items controlled by 6A002, 6A007, 6A008, 6A102, 6A107, 6A108, 6B008, 6B108, 6D001, 6D002, 6D102 or 6D103 for MT reasons.	MT Column 1
NP applies to ''technology'' for items controlled by 6A003, 6A005, 6A202, 6A203, 6A205, 6A225, 6A226, 6D001, or 6D201 for NP reasons.	NP Column 1
RS applies to ''technology'' for items controlled by 6A002.a.1, .a.2, .a.3, .c, or .f, 6A003.b.3 or .b.4, or 6A008.j.1.	RS Column 1
CC applies to ''technology'' for equipment controlled by 6A002 for CC reasons.	CC Column 1
AT applies to entire entry.	AT Column 1
UN applies to ''technology'' for equipment controlled by 6A002 or 6A003 for UN reasons.	See § 746.1(b) for UN controls

Reporting Requirements

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

TSR: Yes, except for the following: (1) Items controlled for MT reasons; (2) ''Technology'' for commodities controlled by 6A002, 6A004.e or 6A008.j.1; (3) ''Technology'' for 6A003 cameras, unless for ''technology'' for the integration of 6A003 cameras into camera systems ''specially designed'' for civil automotive applications; (4) ''Technology'' for ''software'' ''specially designed'' for ''space qualified'' ''laser'' radar or Light Detection and Ranging (LIDAR) equipment defined in 6A008.j.1 and controlled by 6D001 or 6D002; or (5) Exports or reexports to destinations outside of those countries listed in Country Group A:5 (See Supplement No. 1 to part 740 of the EAR) of ''technology'' for the ''development'' of the following: (a) Items controlled by 6A001.a.1.b, 6A001.a.1.e, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.3, 6A001.a.2.a.5, 6A001.a.2.a.6, 6A001.a.2.b, 6A001.a.2.d, 6A001.a.2.e., 6A004.c, 6A004.d, 6A006.a.2, 6A006.c.1, 6A006.d, 6A006.e, 6A008.d, 6A008.h, 6A008.k, 6B008, or 6D003.a; (b) Equipment controlled by 6A001.a.2.c or 6A001.a.2.f when ''specially designed'' for real time applications; or (c) ''Software'' controlled by 6D001 and ''specially designed'' for the ''development'' or ''production'' of equipment controlled by 6B008, or 6D003.a.

Special Conditions for STA

STA: License Exception STA may not be used to ship or transmit any technology in this entry to any of the destinations listed in Country Group A:6 (See Supplement No.1 to part 740 of the EAR).

List of Items Controlled

Related Controls: (1) Technical data directly related to satellites and all other items described in USML Category XV are subject to the ITAR under USML Category XV(f). (2) Technical data directly related to laser systems, infrared imaging systems, and all other items described in USML Category XII are subject to the ITAR under USML Category XII(f). (3) Technical data directly related to read-out integrated circuits described in USML Categories XII(e) or XV(e)(3) is subject to the ITAR under USML Categories XII(f) or XV(f), respectively. (4) See also 6E101, 6E201, and 6E991.
Related Definitions: N/A
Items:

The list of items controlled is contained in the ECCN heading.

■ 31. In Supplement No. 1 to part 774, Category 6, ECCN 6E002 is revised to read as follows:

6E002 ''Technology'' According to the General Technology Note for the ''Production'' of Equipment or Materials Controlled by 6A (Except 6A991, 6A992, 6A994, 6A995, 6A996, 6A997, 6A998 or 6A999.c), 6B (Except 6B995) or 6C (except 6C992 or 6C994).

License Requirements

Reason for Control: NS, MT, NP, RS, CC, AT, UN

Control(s)	Country chart (see Supp. No. 1 to part 738)
NS applies to ''technology'' for equipment controlled by 6A001 to 6A008, 6B002 to 6B008, or 6C002 to 6C005.	NS Column 1
MT applies to ''technology'' for equipment controlled by 6A002, 6A007, 6A008, 6A102, 6A107, 6A108, 6B008, or 6B108 for MT reasons.	MT Column 1
NP applies to ''technology'' for items controlled by 6A003, 6A005, 6A202, 6A203, 6A205, 6A225 or 6A226 for NP reasons.	NP Column 1
RS applies to ''technology'' for items controlled by 6A002.a.1, .a.2, .a.3, .c, or .f, 6A003.b.3 or .b.4, or 6A008.j.1.	RS Column 1
CC applies to ''technology'' for equipment controlled by 6A002 for CC reasons.	CC Column 1
AT applies to entire entry.	AT Column 1
UN applies to ''technology'' for equipment controlled by 6A002 or 6A003 for UN reasons.	See § 746.1(b) for UN controls

Reporting Requirements

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

TSR: Yes, except for the following:

(1) Items controlled for MT reasons;

(2) ''Technology'' for commodities controlled by 6A002, 6A004.e, or 6A008.j.1;

(3) ''Technology'' for 6A003 cameras, unless for ''technology'' for the integration of 6A003 cameras into camera systems ''specially designed'' for civil automotive applications ; or

(4) Exports or reexports to destinations outside of those countries listed in Country Group A:5 (See Supplement No. 1 to part 740 of the EAR) of ''technology'' for the ''production'' of the following: (a) Items controlled by 6A001.a.1.b, 6A001.a.1.e, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.3, 6A001.a.2.a.5, 6A001.a.2.a.6, 6A001.a.2.b, 6A004.c, 6A004.d, 6A006.a.2, 6A006.c.1, 6A006.d, 6A006.e, 6A008.d, 6A008.h, 6A008.k, or 6B008; and (b) Items controlled by 6A001.a.2.c or 6A001.a.2.f when ''specially designed'' for real time applications.

Special Conditions for STA

STA: License Exception STA may not be used to ship or transmit ''technology'' according to the General Technology Note for the ''production'' of equipment specified in the STA exclusion paragraphs found in the License Exception sections of by ECCNs 6A001, 6A002, 6A003, 6A004, 6A006, 6A008, or 6B008 to any of the destinations listed in Country Group A:6 (See Supplement No.1 to part 740 of the EAR).

List of Items Controlled

Related Controls: (1) Technical data directly related to satellites and all other items described in USML Category XV are subject to the ITAR under USML Category XV(f). (2) Technical data directly related to laser systems, infrared imaging systems, and all other items described in USML Category XII are subject to the ITAR under USML Category XII(f). (3) Technical data directly related to read-out integrated circuits described in USML Categories XII(e) or XV(e)(3) is subject to the ITAR under USML Categories XII(f) or XV(f), respectively. (4) See also 6E992.

Related Definitions: N/A

Items:

The list of items controlled is contained in the ECCN heading.

■ 32. In Supplement No. 1 to part 774, Category 7, ECCN 7A002 is revised to read as follows:

7A002 Gyros or Angular Rate Sensors, Having any of the Following, and ''Specially Designed'' ''Components'' Therefor.

License Requirements

Reason for Control: NS, MT, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 1
MT applies to commodities that meet or exceed the parameters of 7A102.	MT Column 1
AT applies to entire entry.	AT Column 1

License Requirement Note: *For the purpose of MT controls only, the term 'stability' is defined as a measure of the ability of a specific mechanism or performance coefficient to remain invariant when continuously exposed to a fixed operating condition. (This definition does not refer to dynamic or servo stability.) (IEEE STD 528–2001 paragraph 2.247)*

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A

GBS: N/A

List of Items Controlled

Related Controls: (1) See USML Category XII(e) for gyros or angular rate sensors subject to the ITAR. (2) See also ECCNs *7A102,* 7A611, and 7A994. (3) For angular or rotational accelerometers, see ECCN 7A001.b.

Related Definitions: N/A

Items:

a. Specified to function at linear acceleration levels less than or equal to 100 g and having any of the following:

a.1. An angular rate range of less than 500 degrees per second and having any of the following:

a.1.a. A ''bias'' ''stability'' of less (better) than 0.5 degree per hour, when measured in a 1 g environment over a period of one month, and with respect to a fixed calibration value; *or*

a.1.b. An ''angle random walk'' of less (better) than or equal to 0.0035 degree per square root hour; *or*

Note: *7A002.a.1.b does not control ''spinning mass gyros''.*

a.2. An angular rate range greater than or equal to 500 degrees per second and having any of the following:

a.2.a. A ''bias'' ''stability'' of less (better) than 4 degrees per hour, when measured in a 1 g environment over a period of three minutes, and with respect to a fixed calibration value; *or*

a.2.b. An ''angle random walk'' of less (better) than or equal to 0.1 degree per square root hour; *or*

Note: *7A002.a.2.b does not apply to ''spinning mass gyros''.*

b. Specified to function at linear acceleration levels exceeding 100 g.

■ 33. In Supplement No. 1 to part 774, Category 7, ECCN 7A003 is revised to read as follows:

7A003 'Inertial Measurement Equipment or Systems', Having any of the Following.

License Requirements

Reason for Control: NS, MT, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 1
MT applies to commodities in 7A003.d that meet or exceed the parameters of 7A103.	MT Column 1
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A

GBS: N/A

List of Items Controlled

Related Controls: (1) See also ECCNs *7A103,* 7A611, and 7A994. (2) See USML Category XII(d) for guidance or navigation systems subject to the ITAR.

Related Definitions: N/A

Items:

Note 1: *'Inertial measurement equipment or systems' incorporate accelerometers or gyroscopes to measure changes in velocity and orientation in order to determine or maintain heading or position without requiring an external reference once aligned. 'Inertial measurement equipment or systems' include:*

—Attitude and Heading Reference Systems (AHRSs);

—Gyrocompasses;

—Inertial Measurement Units (IMUs);

—Inertial Navigation Systems (INSs);

—Inertial Reference Systems (IRSs);

—Inertial Reference Units (IRUs).

Note 2: *7A003 does not apply to 'inertial measurement equipment or systems' which are certified for use on ''civil aircraft'' by civil aviation authorities of one or more Wassenaar Arrangement Participating States, see Supplement No. 1 to part 743 of the EAR.*

Technical Note: *'Positional aiding references' independently provide position, and include:*

a. ''Satellite navigation system'';

b. ''Data-Based Referenced Navigation'' (''DBRN'').

a. Designed for ''aircraft'', land vehicles or vessels, providing position without the use of 'positional aiding references', and having any of the following ''accuracies'' subsequent to normal alignment:

a.1. 0.8 nautical miles per hour (nm/hr) ''Circular Error Probable'' (''CEP'') rate or less (better);

a.2. 0.5% distanced travelled ''CEP'' or less (better); *or*

a.3. Total drift of 1 nautical mile ''CEP'' or less (better) in a 24 hr period;

Technical Note: *The performance parameters in 7A003.a.1, 7A003.a.2 and 7A003.a.3 typically apply to 'inertia measurement equipment or systems' designed for ''aircraft'', vehicles and vessels, respectively. These parameters result from the utilization of specialized non-positional aiding references (e.g., altimeter, odometer, velocity log). As a consequence, the specified performance values cannot be readily*

converted between these parameters. Equipment designed for multiple platforms are evaluated against each applicable entry 7A003.a.1, 7A003.a.2, or 7A003.a.3.

b. Designed for ''aircraft'', land vehicles or vessels, with an embedded 'positional aiding reference' and providing position after loss of all 'positional aiding references' for a period of up to 4 minutes, having an ''accuracy'' of less (better) than 10 meters ''CEP'';

Technical Note: *7A003.b refers to systems in which 'inertial measurement equipment or systems' and other independent 'positional aiding references' are built into a single unit (i.e., embedded) in order to achieve improved performance.*

c. Designed for ''aircraft'', land vehicles or vessels, providing heading or True North determination and having any of the following:

c.1. A maximum operating angular rate less (lower) than 500 deg/s and a heading ''accuracy'' without the use of 'positional aiding references' equal to or less (better) than 0.07 deg sec (Lat) (equivalent to 6 arc minutes rms at 45 degrees latitude); *or*

c.2. A maximum operating angular rate equal to or greater (higher) than 500 deg/s and a heading ''accuracy'' without the use of 'positional aiding references' equal to or less (better) than 0.2 deg sec (Lat) (equivalent to 17 arc minutes rms at 45 degrees latitude);

d. Providing acceleration measurements or angular rate measurements, in more than one dimension, and having any of the following:

d.1. Performance specified by 7A001 or 7A002 along any axis, without the use of any aiding references; *or*

d.2. Being ''space-qualified'' and providing angular rate measurements having an ''angle random walk'' along any axis of less (better) than or equal to 0.1 degree per square root hour.

Note: *7A003.d.2 does not apply to 'inertial measurement equipment or systems' that contain ''spinning mass gyros'' as the only type of gyro.*

■ 34. In Supplement No. 1 to part 774, Category 7, ECCN 7A005 is revised to read as follows:

7A005 ''Satellite Navigation System'' Receiving Equipment Having any of the Following and ''Specially Designed'' ''Components'' Therefor.

License Requirements

Reason for Control: NS, MT and AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to 7A005.b.	NS Column 1
MT applies to commodities in 7A005.b that meet or exceed the parameters of 7A105.	MT Column 1
AT applies to 7A005.b.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A

GBS: N/A

CIV: N/A

List of Items Controlled

Related Controls: (1) See also ECCNs 7A105, 7A611 and 7A994. Commercially available ''satellite navigation system'' receivers do not typically employ decryption or adaptive antennae and are classified as 7A994. (2) See USML Category XII(d) for ''satellite navigation system'' receiving equipment subject to the ITAR and USML Category XI(c)(10) for antennae that are subject to the ITAR. (3) Items that otherwise would be covered by ECCN 7A005.a are ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

Related Definitions: N/A

Items:

a. Employing a decryption algorithm ''specially designed'' or modified for government use to access the ranging code for position and time; *or*

b. Employing 'adaptive antenna systems'.

Note: *7A005.b does not apply to ''satellite navigation system'' receiving equipment that only uses ''components'' designed to filter, switch, or combine signals from multiple omni-directional antennas that do not implement adaptive antenna techniques.*

Technical Note: *For the purposes of 7A005.b 'adaptive antenna systems' dynamically generate one or more spatial nulls in an antenna array pattern by signal processing in the time domain or frequency domain.*

■ 35. In Supplement No. 1 to part 774, Category 7, ECCN 7D003 is revised to read as follows:

7D003 Other ''Software'' as Follows (See List of Items Controlled).

License Requirements

Reason for Control: NS, MT, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 1
MT applies to ''software'' for equipment controlled for MT reasons. MT does not apply to ''software'' for equipment controlled by 7A008.	MT Column 1
AT applies to entire entry.	AT Column 1

Reporting Requirements

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

TSR: N/A

Special Conditions for STA

STA: License Exception STA may not be used to ship or transmit software in 7D003.a or .b to any of the destinations listed in Country Group A:6 (See Supplement No. 1 to part 740 of the EAR).

List of Items Controlled

Related Controls: See also 7D103 and 7D994.

Related Definitions: 'Data-Based Referenced Navigation' ('DBRN') systems are systems which use various sources of previously measured geo-mapping data integrated to provide accurate navigation information under dynamic conditions. Data sources include bathymetric maps, stellar maps, gravity maps, magnetic maps or 3–D digital terrain maps.

Items:

a. ''Software'' ''specially designed'' or modified to improve the operational performance or reduce the navigational error of systems to the levels controlled by 7A003, 7A004 or 7A008;

b. ''Source code'' for hybrid integrated systems which improves the operational performance or reduces the navigational error of systems to the level controlled by 7A003 or 7A008 by continuously combining heading data with any of the following:

b.1. Doppler radar or sonar velocity data;

b.2. ''Satellite navigation system'' reference data; *or*

b.3. Data from 'Data-Based Referenced Navigation' ('DBRN'') systems;

c. [Reserved]

d. [Reserved]

N.B. For flight control ''source code,'' see 7D004.

e. Computer-Aided-Design (CAD) ''software'' ''specially designed'' for the ''development'' of ''active flight control systems'', helicopter multi-axis fly-by-wire or fly-by-light controllers or helicopter ''circulation controlled anti-torque or circulation-controlled direction control systems'', whose ''technology'' is controlled by 7E004.b.1, 7E004.b.3 to b.5, 7E004.b.7 to b.8, 7E004.c.1 or 7E004.c.2.

■ 36. In Supplement No. 1 to part 774, Category 7, ECCN 7D005 is revised to read as follows:

7D005 ''Software'' ''Specially Designed'' To Decrypt ''Satellite Navigation System'' Ranging Signals Designed for Government Use.

License Requirements

Reason for Control: NS, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 1
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

TSR: N/A

List of Items Controlled

Related Controls: N/A

Related Definitions: N/A

Items:

The list of items controlled is contained in the ECCN heading.

■ 37. In Supplement No. 1 to part 774, Category 8, ECCN 8A001 is revised to read as follows:

8A001 Submersible Vehicles and Surface Vessels, as Follows (See List of Items Controlled).

License Requirements

Reason for Control: NS, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 2
AT applies to entire entry.	AT Column 1

Reporting Requirements

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations.

List Based License Exceptions (See part 740 for a Description of All License Exceptions)

LVS: $5,000; N/A for 8A001.b and .c.1
GBS: N/A

Special Conditions for STA

STA: License Exception STA may not be used to ship any commodity in 8A001.b, or 8A001.c to any of the destinations listed in Country Group A:6 (See Supplement No. 1 to part 740 of the EAR).

List of Items Controlled

Related Controls: For the control status of equipment for submersible vehicles, see: Category 6 for sensors; Categories 7 and 8 for navigation equipment; Category 8A for underwater equipment.
Related Definitions: N/A
Items:

a. Manned, tethered submersible vehicles designed to operate at depths exceeding 1,000 m;

b. Manned, untethered submersible vehicles having any of the following:

b.1. Designed to 'operate autonomously' and having a lifting capacity of all the following:

b.1.a. 10% or more of their weight in air; *and*

b.1.b. 15 kN or more.

b.2. Designed to operate at depths exceeding 1,000 m; *or*

b.3. Having all of the following:

b.3.a. Designed to continuously 'operate autonomously' for 10 hours or more; *and*

b.3.b. 'Range' of 25 nautical miles or more;

Technical Notes:

1. For the purposes of 8A001.b, 'operate autonomously' means fully submerged, without snorkel, all systems working and cruising at minimum speed at which the submersible can safely control its depth dynamically by using its depth planes only, with no need for a support vessel or support base on the surface, sea-bed or shore, and containing a propulsion system for submerged or surface use.

2. For the purposes of 8A001.b, 'range' means half the maximum distance a submersible vehicle can 'operate autonomously'.

c. Unmanned submersible vehicles as follows:

c.1. Unmanned submersible vehicles having any of the following:

c.1.a. Designed for deciding a course relative to any geographical reference without real-time human assistance;

c.1.b. Acoustic data or command link; *or*

c.1.c. Optical data or command link exceeding 1,000 m;

c.2. Unmanned, submersible vehicles, not specified in 8A001.c.1, having all of the following:

c.2.a. Designed to operate with a tether;

c.2.b. Designed to operate at depths exceeding 1,000 m; *and*

c.2.c. Having any of the following:

c.2.c.1. Designed for self-propelled maneuver using propulsion motors or thrusters specified by 8A002.a.2; *or*

c.2.c.2. Fiber optic data link;

d. [Reserved]

e. Ocean salvage systems with a lifting capacity exceeding 5 MN for salvaging objects from depths exceeding 250 m and having any of the following:

e.1. Dynamic positioning systems capable of position keeping within 20 m of a given point provided by the navigation system; *or*

e.2. Seafloor navigation and navigation integration systems, for depths exceeding 1,000 m and with positioning ''accuracies'' to within 10 m of a predetermined point.

■ 38. In Supplement No. 1 to part 774, Category 8, ECCN 8A002 is revised to read as follows:

8A002 Marine Systems, Equipment, ''Parts'' and ''Components,'' as Follows (See List of Items Controlled).

License Requirements

Reason for Control: NS, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 2
AT applies to entire entry.	AT Column 1

Reporting Requirements

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: $5,000; N/A for 8A002.o.3.b
GBS: Yes for manipulators for civil end uses (*e.g.,* underwater oil, gas or mining operations) controlled by 8A002.i.2 and having 5 degrees of freedom of movement; and 8A002.r.

Special Conditions for STA

STA: License Exception STA may not be used to ship any commodity in 8A002.b, h, j, o.3, or p to any of the destinations listed in Country Group A:6 (See Supplement No.1 to part 740 of the EAR).

List of Items Controlled

Related Controls: (1) See also 8A992 and for underwater communications systems, see Category 5, Part I—Telecommunications. (2) See also 8A992 for self-contained underwater breathing apparatus that is not controlled by 8A002 or released for control by the 8A002.q Note. (3) For electronic imaging systems ''specially designed'' or modified for underwater use incorporating image intensifier tubes specified by 6A002.a.2.a or 6A002.a.2.b, see 6A003.b.3. (4) For electronic imaging systems ''specially designed'' or modified for underwater use incorporating ''focal plane arrays'' specified by 6A002.a.3.g, see 6A003.b.4.c. (5) Section 744.9 imposes a license requirement on commodities described in 8A002.d if being exported, reexported, or transferred (in-country) for use by a military end-user or for incorporation into an item controlled by ECCN 0A919.
Related Definitions: N/A
Items:

a. Systems, equipment, ''parts'' and ''components,'' ''specially designed'' or modified for submersible vehicles and designed to operate at depths exceeding 1,000 m, as follows:

a.1. Pressure housings or pressure hulls with a maximum inside chamber diameter exceeding 1.5 m;

a.2. Direct current propulsion motors or thrusters;

a.3. Umbilical cables, and connectors therefor, using optical fiber and having synthetic strength members;

a.4. ''Parts'' and ''components'' manufactured from material specified by ECCN 8C001;

Technical Note: *The objective of 8A002.a.4 should not be defeated by the export of 'syntactic foam' controlled by 8C001 when an intermediate stage of manufacture has been performed and it is not yet in its final component form.*

b. Systems ''specially designed'' or modified for the automated control of the motion of submersible vehicles controlled by 8A001, using navigation data, having closed loop servo-controls and having any of the following:

b.1. Enabling a vehicle to move within 10 m of a predetermined point in the water column;

b.2. Maintaining the position of the vehicle within 10 m of a predetermined point in the water column; *or*

b.3. Maintaining the position of the vehicle within 10 m while following a cable on or under the seabed;

c. Fiber optic pressure hull penetrators;

d. Underwater vision systems having all of the following:

d.1. ''Specially designed'' or modified for remote operation with an underwater vehicle; *and*

d.2. Employing any of the following techniques to minimize the effects of back scatter:

d.2.a. Range-gated illuminators; *or*

d.2.b. Range-gated ''laser'' systems;

e. [Reserved]

f. [Reserved]

g. Light systems ''specially designed'' or modified for underwater use, as follows:

g.1. Stroboscopic light systems capable of a light output energy of more than 300 J per flash and a flash rate of more than 5 flashes per second;

g.2. Argon arc light systems ''specially designed'' for use below 1,000 m;

h. ''Robots'' ''specially designed'' for underwater use, controlled by using a dedicated computer and having any of the following:

h.1. Systems that control the ''robot'' using information from sensors which measure force or torque applied to an external object, distance to an external object, or tactile sense between the ''robot'' and an external object; *or*

h.2. The ability to exert a force of 250 N or more or a torque of 250 Nm or more and using titanium based alloys or ''composite'' ''fibrous or filamentary materials'' in their structural members;

i. Remotely controlled articulated manipulators ''specially designed'' or modified for use with submersible vehicles and having any of the following:

i.1. Systems which control the manipulator using information from sensors which measure any of the following:

i.1.a. Torque or force applied to an external object; *or*

i.1.b. Tactile sense between the manipulator and an external object; *or*

i.2. Controlled by proportional master-slave techniques and having 5 degrees of 'freedom of movement' or more;

Technical Note: *Only functions having proportionally related motion control using positional feedback are counted when determining the number of degrees of 'freedom of movement'.*

j. Air independent power systems ''specially designed'' for underwater use, as follows:

j.1. Brayton or Rankine cycle engine air independent power systems having any of the following:

j.1.a. Chemical scrubber or absorber systems, ''specially designed'' to remove carbon dioxide, carbon monoxide and particulates from recirculated engine exhaust;

j.1.b. Systems ''specially designed'' to use a monoatomic gas;

j.1.c. Devices or enclosures, ''specially designed'' for underwater noise reduction in frequencies below 10 kHz, or special mounting devices for shock mitigation; *or*

j.1.d. Systems having all of the following:

j.1.d.1. ''Specially designed'' to pressurize the products of reaction or for fuel reformation;

j.1.d.2. ''Specially designed'' to store the products of the reaction; *and*

j.1.d.3. ''Specially designed'' to discharge the products of the reaction against a pressure of 100 kPa or more;

j.2. Diesel cycle engine air independent systems having all of the following:

j.2.a. Chemical scrubber or absorber systems, ''specially designed'' to remove carbon dioxide, carbon monoxide and particulates from recirculated engine exhaust;

j.2.b. Systems ''specially designed'' to use a monoatomic gas;

j.2.c. Devices or enclosures, ''specially designed'' for underwater noise reduction in frequencies below 10 kHz, or special mounting devices for shock mitigation; *and*

j.2.d. ''Specially designed'' exhaust systems that do not exhaust continuously the products of combustion;

j.3. ''Fuel cell'' air independent power systems with an output exceeding 2 kW and having any of the following:

j.3.a. Devices or enclosures, ''specially designed'' for underwater noise reduction in frequencies below 10 kHz, or special mounting devices for shock mitigation; *or*

j.3.b. Systems having all of the following:

j.3.b.1. ''Specially designed'' to pressurize the products of reaction or for fuel reformation;

j.3.b.2. ''Specially designed'' to store the products of the reaction; *and*

j.3.b.3. ''Specially designed'' to discharge the products of the reaction against a pressure of 100 kPa or more;

j.4. Stirling cycle engine air independent power systems having all of the following:

j.4.a. Devices or enclosures, ''specially designed'' for underwater noise reduction in frequencies below 10 kHz, or special mounting devices for shock mitigation; *and*

j.4.b. ''Specially designed'' exhaust systems which discharge the products of combustion against a pressure of 100 kPa or more;

k. [Reserved]

l. [Reserved]

m. [Reserved]

n. [Reserved]

o. Propellers, power transmission systems, power generation systems and noise reduction systems, as follows:

o.1. [Reserved]

o.2. Water-screw propeller, power generation systems or transmission systems, designed for use on vessels, as follows:

o.2.a. Controllable-pitch propellers and hub assemblies, rated at more than 30 MW;

o.2.b. Internally liquid-cooled electric propulsion engines with a power output exceeding 2.5 MW;

o.2.c. ''Superconductive'' propulsion engines or permanent magnet electric propulsion engines, with a power output exceeding 0.1 MW;

o.2.d. Power transmission shaft systems incorporating ''composite'' material ''parts'' or ''components'' and capable of transmitting more than 2 MW;

o.2.e. Ventilated or base-ventilated propeller systems, rated at more than 2.5 MW;

o.3. Noise reduction systems designed for use on vessels of 1,000 tonnes displacement or more, as follows:

o.3.a. Systems that attenuate underwater noise at frequencies below 500 Hz and consist of compound acoustic mounts for the acoustic isolation of diesel engines, diesel generator sets, gas turbines, gas turbine generator sets, propulsion motors or propulsion reduction gears, ''specially designed'' for sound or vibration isolation and having an intermediate mass exceeding 30% of the equipment to be mounted;

o.3.b. 'Active noise reduction or cancellation systems' or magnetic bearings, ''specially designed'' for power transmission systems;

Technical Note: *'Active noise reduction or cancellation systems' incorporate electronic control systems capable of actively reducing equipment vibration by the generation of anti-noise or anti-vibration signals directly to the source.*

p. Pump jet propulsion systems having all of the following:

p.1. Power output exceeding 2.5 MW; *and*

p.2. Using divergent nozzle and flow conditioning vane techniques to improve propulsive efficiency or reduce propulsion-generated underwater-radiated noise;

q. Underwater swimming and diving equipment as follows;

q.1. Closed circuit rebreathers;

q.2. Semi-closed circuit rebreathers;

Note: *8A002.q does not control individual rebreathers for personal use when accompanying their users.*

N.B. For equipment and devices ''specially designed'' for military use see ECCN 8A620.f.

r. Diver deterrent acoustic systems ''specially designed'' or modified to disrupt divers and having a sound pressure level equal to or exceeding 190 dB (reference 1 μPa at 1 m) at frequencies of 200 Hz and below.

Note 1: *8A002.r does not apply to diver deterrent systems based on under-water explosive devices, air guns or combustible sources.*

Note 2: *8A002.r includes diver deterrent acoustic systems that use spark gap sources, also known as plasma sound sources.*

■ 39. In Supplement No. 1 to part 774, Category 8, ECCN 8B001 is revised to read as follows:

8B001 Water Tunnels Designed to Have a Background Noise of Less Than 100 dB (Reference 1 μPa, 1 Hz) Within the Frequency Range Exceeding 0 Hz But Not Exceeding to 500 Hz and Designed for Measuring Acoustic Fields Generated by a Hydro-Flow Around Propulsion System Models.

License Requirements

Reason for Control: NS, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 2
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a description of All license exceptions)

LVS: $3,000
GBS: N/A

List of Items Controlled

Related Controls: N/A
Related Definitions: N/A
Items:

The list of items controlled is contained in the ECCN heading.

■ 40. In Supplement No. 1 to part 774, Category 8, ECCN 8D001 is revised to read as follows:

8D001 ''Software'' ''Specially Designed'' or Modified for the ''Development,'' ''Production'' or ''use'' of Equipment or Materials, Controlled by 8A (Except 8A992), 8B or 8C.

License Requirements

Reason for Control: NS, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 1
AT applies to entire entry.	AT Column 1

Reporting Requirements

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

TSR: Yes, except for exports or reexports to destinations outside of those countries listed in Country Group A:5 (See Supplement No. 1 to part 740 of the EAR) of ''software'' ''specially designed'' for the ''development'' or ''production'' of equipment controlled by 8A001.b, 8A001.c.1, or 8A002.o.3.b.

Special Conditions for STA

STA: License Exception STA may not be used to ship or transmit ''software'' ''specially designed'' for the ''development'' or ''production'' of equipment in 8A001.b, 8A001.c, 8A002.b, 8A002.h, 8A002.j, 8A002.o.3 or 8A002.p to any of the destinations listed in Country Group A:6 (See Supplement No. 1 to part 740 of the EAR).

List of Items Controlled

Related Controls: N/A
Related Definitions: N/A
Items:

The list of items controlled is contained in the ECCN heading.

■ 41. In Supplement No. 1 to part 774, Category 8, ECCN 8E001 is revised to read as follows:

8E001 ''Technology'' According to the General Technology Note for the ''Development'' or ''Production'' of Equipment or Materials, Controlled by 8A (Except 8A992), 8B or 8C.

License Requirements

Reason for Control: NS, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 1
AT applies to entire entry.	AT Column 1

Reporting Requirements

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

TSR: Yes, except for exports or reexport to destinations outside of those countries listed in Country Group A:5 (Supplement No. 1 to part 740 of the EAR) of ''technology'' for items controlled by 8A001.b, 8A001.c.1 or 8A002.o.3.b.

Special Conditions for STA

STA: License Exception STA may not be used to ship or transmit ''technology'' according to the General Technology Note for the ''development'' or ''production'' of equipment specified by 8A001.b, 8A001.c, 8A002.b, 8A002.h, 8A002.j, 8A002.o.3 or 8A002.p to any of the destinations listed in Country Group A:6 (See Supplement No.1 to part 740 of the EAR).

List of Items Controlled

Related Controls: N/A
Related Definitions: N/A
Items:

The list of items controlled is contained in the ECCN heading.

Category 9—Aerospace and Propulsion

■ 42. In Supplement No. 1 to part 774, Category 9, ECCN 9A010 is revised to read as follows:

9A010 ''Specially Designed'' ''Parts,'' ''Components,'' Systems and Structures, for Launch Vehicles, Launch Vehicle Propulsion Systems or ''Spacecraft''. (See Related Controls Paragraph.)

List of Items Controlled

Related Controls: (1) See USML Category IV of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130) and ECCN 9A604 for paragraphs 9A010.a, .b and .d. (2) See USML Category XV of the ITAR and ECCN 9A515 for paragraph 9A010.c. (3) See Supplement No. 4 to part 774, Order of Review for guidance on the process for determining classification of items.

Related Definitions: N/A
Items:

a. ''Parts'', ''components'' and structures, each exceeding 10 kg and ''specially designed'' for launch vehicles manufactured using any of the following:

a.1. ''Composite'' materials consisting of ''fibrous or filamentary materials'' specified by 1C010.e and resins specified by 1C008 or 1C009.b;

a.2. Metal ''matrix'' ''composites'' reinforced by any of the following:

a.2.a. Materials specified by 1C007;

a.2.b. ''Fibrous or filamentary materials'' specified by 1C010; *or*

a.2.c. Aluminides specified by 1C002.a; *or*

a.3. Ceramic ''matrix'' ''composite'' materials specified by 1C007;

Note: *The weight cut-off is not relevant for nose cones.*

b. ''Parts'', ''components'' and structures, ''specially designed'' for launch vehicle propulsion systems specified by 9A005 to 9A009, manufactured using any of the following:

b.1. ''Fibrous or filamentary materials'' specified by 1C010.e and resins specified by 1C008 or 1C009.b;

b.2. Metal ''Matrix ''composites'' reinforced by any of the following:

b.2.a. Materials specified by 1C007;

b.2.b. ''Fibrous or filamentary materials'' specified by 1C010; *or*

b.2.c. Aluminides specified by 1C002.a; *or*

b.3. Ceramic ''matrix'' ''composite'' materials specified by 1C007;

c. Structural components and isolation systems, specially designed to control actively the dynamic response or distortion of ''spacecraft'' structures;

d. Pulsed liquid rocket engines with thrust-to-weight ratios equal to or more than 1 kN/kg and a 'response time' of less than 30 ms.

Technical Note: *For the purposes of 9A010.d, 'response time' means the time required to achieve 90% of total rated thrust from start-up.*

■ 43. In Supplement No. 1 to part 774, Category 9, ECCN 9A610 is revised to read as follows:

9A610 Military Aircraft and Related Commodities, Other Than Those Enumerated in 9A991.a (See List of Items Controlled).

License Requirements

Reason for Control: NS, RS, MT, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry except: 9A610.b; parts and components controlled in 9A610.x if being exported or reexported for use in an aircraft controlled in 9A610.b; and 9A610.y.	NS Column 1
RS applies to entire entry except: 9A610.b; parts and components controlled in 9A610.x if being exported or reexported for use in an aircraft controlled in 9A610.b; and 9A610.y.	RS Column 1
RS applies to 9A610.y.	China, Russia, or Venezuela (see § 742.6(a)(7))
MT applies to 9A610.t, .u, .v, and .w.	MT Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry except 9A610.y.	See § 746.1(b) for UN controls

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: $1,500
GBS: N/A

Special Conditions for STA

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for any item in 9A610.a (*i.e.,* ''end item'' military aircraft), unless determined by BIS to be eligible for License Exception STA in accordance with § 740.20(g) (License Exception STA eligibility requests for 9x515 and ''600 series'' items). (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 9A610.

List of Items Controlled

Related Controls: (1) Military aircraft and related articles that are enumerated in USML Category VIII, and technical data (including software) directly related thereto, are subject to the ITAR. (2) See ECCN 0A919 for controls on foreign-made ''military commodities'' that incorporate more than a de minimis amount of U.S.-origin ''600 series'' controlled content. (3) See USML Category XIX and ECCN 9A619 for controls on military aircraft gas turbine engines and related items.

Related Definitions: In paragraph .y of this entry, the term 'fluid' includes liquids and gases.

Items:

a. 'Military Aircraft' ''specially designed'' for a military use that are not enumerated in USML paragraph VIII(a).

Note 1: *For purposes of paragraph .a the term 'military aircraft' means the LM–100J aircraft and any aircraft ''specially designed'' for a military use that are not enumerated in USML paragraph VIII(a). The term includes: Trainer aircraft; cargo aircraft; utility fixed wing aircraft; military helicopters; observation aircraft; military non-expansive balloons and other lighter-than-air aircraft; and unarmed military aircraft, regardless of origin or designation. Aircraft with modifications made to incorporate safety of flight features or other FAA or NTSB modifications such as transponders and air data recorders are ''unmodified'' for the purposes of this paragraph .a.*

Note 2: *9A610.a does not control 'military aircraft' or ''lighter-than-air vehicles'' that:*

a. Were first manufactured before 1946;

b. Do not incorporate defense articles enumerated or otherwise described on the U.S. Munitions List, unless the items are required to meet safety or airworthiness standards of civil aviation authorities of a Wassenaar Arrangement Participating State; and

c. Do not incorporate weapons enumerated or otherwise described on the U.S. Munitions List, unless inoperable and incapable of being returned to operation.

b. L–100 aircraft manufactured prior to 2013.

c.–d. [Reserved]

e. Mobile aircraft arresting and engagement runway systems for aircraft controlled by either USML Category VIII(a) or ECCN 9A610.a.

f. Pressure refueling equipment and equipment that facilitates operations in confined areas, ''specially designed'' for aircraft controlled by either USML paragraph VIII(a) or ECCN 9A610.a.

g. Aircrew life support equipment, aircrew safety equipment and other devices for emergency escape from aircraft controlled by either USML paragraph VIII(a) or ECCN 9A610.a.

h. Parachutes, paragliders, complete parachute canopies, harnesses, platforms, electronic release mechanisms, ''specially designed'' for use with aircraft controlled by either USML paragraph VIII(a) or ECCN 9A610.a, and ''equipment'' ''specially designed'' for military high altitude parachutists, such as suits, special helmets, breathing systems, and navigation equipment.

i. Controlled opening equipment or automatic piloting systems, designed for parachuted loads.

j. Ground effect machines (GEMS), including surface effect machines and air cushion vehicles, ''specially designed'' for use by a military.

k. through s. [Reserved]

t. Composite structures, laminates, and manufactures thereof ''specially designed'' for unmanned aerial vehicles controlled under USML Category VIII(a) with a range equal to or greater than 300 km.

Note to paragraph .t: *Composite structures, laminates, and manufactures thereof ''specially designed'' for unmanned aerial vehicles controlled under USML Category VIII(a) with a maximum range less than 300 km are controlled in paragraph .x of this entry.*

u. Apparatus and devices ''specially designed'' for the handling, control, activation and non-ship-based launching of UAVs controlled by either USML paragraph VIII(a) or ECCN 9A610.a, and capable of a range equal to or greater than 300 km.

Note to paragraph .u: *Apparatus and devices ''specially designed'' for the handling, control, activation and non-ship-based launching of UAVs controlled by either USML paragraph VIII(a) or ECCN 9A610.a with a maximum range less than 300 km are controlled in paragraph .x of this entry.*

v. Radar altimeters designed or modified for use in UAVs controlled by either USML paragraph VIII(a) or ECCN 9A610.a., and capable of delivering at least 500 kilograms payload to a range of at least 300 km.

Note to paragraph .v: *Radar altimeters designed or modified for use in UAVs controlled by either USML paragraph VIII(a) or ECCN 9A610.a. that are not capable of delivering at least 500 kilograms payload to a range of at least 300 km are controlled in paragraph .x of this entry.*

w.1. Pneumatic hydraulic, mechanical, electro-optical, or electromechanical flight control systems (including fly-by-wire and fly-by-light systems) and attitude control equipment designed or modified for UAVs controlled by either USML paragraph VIII(a) or ECCN 9A610.a., and capable of delivering at least 500 kilograms payload to a range of at least 300 km.

Note to paragraph .w.1: *Pneumatic, hydraulic, mechanical, electro-optical, or electromechanical flight control systems (including fly-by-wire and fly-by-light systems) and attitude control equipment designed or modified for UAVs controlled by either USML paragraph VIII(a) or ECCN 9A610.a., not capable of delivering at least 500 kilograms payload to a range of at least 300 km are controlled in paragraph .x of this entry.*

w.2. Flight control servo valves designed or modified for the systems in 9A610.w.1. and designed or modified to operate in a vibration environment greater than 10g rms over the entire range between 20Hz and 2 kHz.

Note to paragraph .w: *Paragraphs 9A610.w.1. and 9A610.w.2. include the systems, equipment and valves designed or modified to enable operation of manned aircraft as unmanned aerial vehicles.*

x. ''Parts,'' ''components,'' ''accessories,'' and ''attachments'' that are ''specially designed'' for a commodity enumerated or otherwise described in ECCN 9A610 (except for 9A610.y) or a defense article enumerated or otherwise described in USML Category VIII and not elsewhere specified on the USML or in 9A610.y, 9A619.y, or 3A611.y.

y. Specific ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' for a commodity subject to control in this entry, ECCN 9A619, or for a defense article in USML Categories VIII or XIX and not elsewhere specified in the USML or the CCL, and other aircraft commodities ''specially designed'' for a military use, as follows, and ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' therefor:

y.1. Aircraft tires;

y.2. Analog gauges and indicators;

y.3. Audio selector panels;

y.4. Check valves for hydraulic and pneumatic systems;

y.5. Crew rest equipment;

y.6. Ejection seat mounted survival aids;

y.7. Energy dissipating pads for cargo (for pads made from paper or cardboard);

y.8. Fluid filters and filter assemblies;

y.9. Galleys;

y.10. Fluid hoses, straight and unbent lines (for a commodity subject to control in this entry or defense article in USML Category VIII), and fittings, couplings, clamps (for a commodity subject to control in this entry or defense article in USML Category VIII) and brackets therefor;

y.11. Lavatories;

y.12. Life rafts;

y.13. Magnetic compass, magnetic azimuth detector;

y.14. Medical litter provisions;

y.15. Cockpit or cabin mirrors;

y.16. Passenger seats including palletized seats;

y.17. Potable water storage systems;

y.18. Public address (PA) systems;

y.19. Steel brake wear pads (does not include sintered mix or carbon/carbon materials);

y.20. Underwater locator beacons;

y.21. Urine collection bags/pads/cups/pumps;

y.22. Windshield washer and wiper systems;

y.23. Filtered and unfiltered panel knobs, indicators, switches, buttons, and dials;

y.24. Lead-acid and Nickel-Cadmium batteries;

y.25. Propellers, propeller systems, and propeller blades used with reciprocating engines;

y.26. Fire extinguishers;

y.27. Flame and smoke/CO_2 detectors;

y.28. Map cases;

y.29. 'Military Aircraft' that were first manufactured from 1946 to 1955 that do not incorporate defense articles enumerated or otherwise described on the U.S. Munitions List, unless the items are required to meet safety or airworthiness standards of a Wassenaar Arrangement Participating State; and do not incorporate weapons enumerated or otherwise described on the U.S. Munitions List, unless inoperable and incapable of being returned to operation;

y.30. ''Parts,'' ''components,'' ''accessories,'' and ''attachments,'' other than electronic items or navigation equipment, for use in or with a commodity controlled by ECCN 9A610.h;

y.31. Identification plates and nameplates; *and*

y.32. Fluid manifolds.

■ 44. In Supplement No. 1 to part 774, Category 9, ECCN 9B001 is revised to read as follows:

9B001 Manufacturing Equipment, tooling or Fixtures, as Follows (See List of Items Controlled).

License Requirements

Reason for Control: NS, MT, AT

Control(s)	*Country chart (see Supp. No.1 to part 738)*
NS applies to entire entry.	NS Column 1
MT applies to equipment for engines controlled under 9A001 for MT reasons and for engines controlled under 9A101.	MT Column 1
AT applies to entire entry.	AT Column 1

Reporting Requirements

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: $5,000, except N/A for MT
GBS: Yes, except N/A for MT

Special Conditions for STA

STA: License Exception STA may not be used to ship commodities in 9B001 to any of the destinations listed in Country Group A:6 (See Supplement No. 1 to Part 740 of the EAR).

List of Items Controlled

Related Controls: For ''specially designed'' production equipment of systems, subsystems, ''parts'' and ''components'' controlled by *9A005* to *9A009, 9A011, 9A101, 9A105* to *9A109, 9A111,* and *9A116* to *9A119* usable in ''missiles'' see *9B115.* See also *9B991.*
Related Definitions: N/A
Items:

a. Directional solidification or single crystal casting equipment designed for ''superalloys'';

b. Casting tooling, ''specially designed'' for manufacturing gas turbine engine blades, vanes or ''tip shrouds'', manufactured from refractory metals or ceramics, as follows:

b.1. Cores;

b.2. Shells (moulds);

b.3. Combined core and shell (mould) units;

c. Directional-solidification or single-crystal additive-manufacturing equipment, ''specially designed'' for manufacturing gas turbine engine blades, vanes or ''tip shrouds''.

■ 45. In Supplement No. 1 to part 774, Category 9, ECCN 9E003 is revised to read as follows:

9E003 Other ''Technology'' as Follows (See List of Items Controlled).

License Requirements

Reason for Control: NS, SI, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 1
SI applies to 9E003.a.1 through a.8,.h, .i, and .k.	See § 742.14 of the EAR for additional information
AT applies to entire entry.	AT Column 1

Reporting Requirements

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

TSR: N/A

Special Conditions for STA

STA: License Exception STA may not be used to ship or transmit any technology in 9E003.a.1, 9E003.a.2 to a.5, 9E003.a.8, or 9E003.h to any of the destinations listed in Country Group A:6 (See Supplement No. 1 to Part 740 of the EAR).

List of Items Controlled

Related Controls: (1) Hot section ''technology'' specifically designed, modified, or equipped for military uses or purposes, or developed principally with U.S. Department of Defense funding, is ''subject to the ITAR'' (see 22 CFR parts 120 through 130). (2) ''Technology'' is subject to the EAR when actually applied to a commercial ''aircraft'' engine program. Exporters may seek to establish commercial application either on a case-by-case basis through submission of documentation demonstrating application to a commercial program in requesting an export license from the Department Commerce in respect to a specific export, or in the case of use for broad categories of ''aircraft,'' engines, ''parts'' or ''components,'' a commodity jurisdiction determination from the Department of State.

Related Definitions: N/A
Items:

a. ''Technology'' ''required'' for the ''development'' or ''production'' of any of the following gas turbine engine ''parts,'' ''components'' or systems:

a.1. Gas turbine blades, vanes or ''tip shrouds'', made from directionally solidified (DS) or single crystal (SC) alloys and having (in the 001 Miller Index Direction) a stress-rupture life exceeding 400 hours at 1,273 K (1,000°C) at a stress of 200 MPa, based on the average property values;

Technical Note: *For the purposes of 9E003.a.1, stress-rupture life testing is typically conducted on a test specimen.*

a.2. Combustors having any of the following:

a.2.a. 'Thermally decoupled liners' designed to operate at 'combustor exit temperature' exceeding 1,883 K (1,610 ° C);

a.2.b. Non-metallic liners;

a.2.c. Non-metallic shells; *or*

a.2.d. Liners designed to operate at 'combustor exit temperature' exceeding 1,883 K (1,610 °C) and having holes that meet the parameters specified by 9E003.c;

Note: *The ''required'' ''technology'' for holes in 9E003.a.2 is limited to the derivation of the geometry and location of the holes.*

Technical Notes:

1. 'Thermally decoupled liners' are liners that feature at least a support structure designed to carry mechanical loads and a combustion facing structure designed to protect the support structure from the heat of combustion. The combustion facing structure and support structure have independent thermal displacement (mechanical displacement due to thermal load) with respect to one another, i.e., they are thermally decoupled.

2. 'Combustor exit temperature' is the bulk average gas path total (stagnation) temperature between the combustor exit plane and the leading edge of the turbine inlet guide vane (i.e., measured at engine station T40 as defined in SAE ARP 755A) when the engine is running in a 'steady state mode' of operation at the certificated maximum continuous operating temperature.

N.B.: See 9E003.c for ''technology'' ''required'' for manufacturing cooling holes.

a.3. ''Parts'' or ''components,'' that are any of the following:

a.3.a. Manufactured from organic ''composite'' materials designed to operate above 588 K (315 °C);

a.3.b. Manufactured from any of the following:

a.3.b.1. Metal ''matrix'' ''composites'' reinforced by any of the following:

a.3.b.1.a. Materials controlled by 1C007;

a.3.b.1.b. ''Fibrous or filamentary materials'' specified by 1C010; *or*

a.3.b.1.c. Aluminides specified by 1C002.a; *or*

a.3.b.2. Ceramic ''matrix'' ''composites'' specified by 1C007; *or*

a.3.c. Stators, vanes, blades, tip seals (shrouds), rotating blings, rotating blisks or 'splitter ducts', that are all of the following:

a.3.c.1. Not specified in 9E003.a.3.a;

a.3.c.2. Designed for compressors or fans; *and*

a.3.c.3. Manufactured from material controlled by 1C010.e with resins controlled by 1C008;

Technical Note: *A 'splitter duct' performs the initial separation of the air-mass flow between the bypass and core sections of the engine.*

a.4. Uncooled turbine blades, vanes or ''tip shrouds'' designed to operate at a 'gas path temperature' of 1,373 K (1,100 °C) or more;

a.5. Cooled turbine blades, vanes or ''tip-shrouds'', other than those described in 9E003.a.1, designed to operate at a 'gas path temperature' of 1,693 K (1,420 °C) or more;

Technical Notes:

1. 'Gas path temperature' is the bulk average gas path total (stagnation) temperature at the leading edge plane of the turbine component when the engine is running in a 'steady state mode' of operation at the certificated or specified maximum continuous operating temperature.

2. The term 'steady state mode' defines engine operation conditions, where the engine parameters, such as thrust/power, rpm and others, have no appreciable fluctuations, when the ambient air temperature and pressure at the engine inlet are constant.

a.6. Airfoil-to-disk blade combinations using solid state joining;

a.7. [Reserved]

a.8. 'Damage tolerant' gas turbine engine rotor ''parts'' or ''components'' using powder metallurgy materials controlled by 1C002.b;*or*

Technical Note: *'Damage tolerant' ''parts'' and ''components'' are designed using methodology and substantiation to predict and limit crack growth.*

a.9. [Reserved]

N.B.: For ''FADEC systems'', see 9E003.h.

a.10. [Reserved]

N.B.: For adjustable flow path geometry, see 9E003.i.

a.11. Hollow fan blades;

b. ''Technology'' ''required'' for the ''development'' or ''production'' of any of the following:

b.1. Wind tunnel aero-models equipped with non-intrusive sensors capable of transmitting data from the sensors to the data acquisition system; *or*

b.2. ''Composite'' propeller blades or propfans, capable of absorbing more than 2,000 kW at flight speeds exceeding Mach 0.55;

c. ''Technology'' ''required'' for manufacturing cooling holes, in gas turbine engine ''parts'' or ''components'' incorporating any of the ''technologies'' specified by 9E003.a.1, 9E003.a.2 or 9E003.a.5, and having any of the following:

c.1. Having all of the following:

c.1.a. Minimum 'cross-sectional area' less than 0.45 mm^2;

c.1.b. 'Hole shape ratio' greater than 4.52; *and*

c.1.c. 'Incidence angle' equal to or less than 25°; *or*

c.2. Having all of the following:

c.2.a. Minimum 'cross-sectional area' less than 0.12 mm^2;

c.2.b. 'Hole shape ratio' greater than 5.65; *and*

c.2.c. 'Incidence angle' more than 25°;

Note: *9E003.c does not apply to ''technology'' for manufacturing constant radius cylindrical holes that are straight through and enter and exit on the external surfaces of the component.*

Technical Notes:

1. For the purposes of 9E003.c, the 'cross-sectional area' is the area of the hole in the plane perpendicular to the hole axis.

2. For the purposes of 9E003.c, 'hole shape ratio' is the nominal length of the axis of the hole divided by the square root of its minimum 'cross-sectional area'.

3. For the purposes of 9E003.c, 'incidence angle' is the acute angle measured between the plane tangential to the airfoil surface and the hole axis at the point where the hole axis enters the airfoil surface.

4. Techniques for manufacturing holes in 9E003.c include ''laser'', water jet, Electro-Chemical Machining (ECM) or Electrical Discharge Machining (EDM) methods.

d. ''Technology'' ''required'' for the ''development'' or ''production'' of helicopter power transfer systems or tilt rotor or tilt wing ''aircraft'' power transfer systems;

e. ''Technology'' for the ''development'' or ''production'' of reciprocating diesel engine ground vehicle propulsion systems having all of the following:

e.1. 'Box volume' of 1.2 m^3 or less;

e.2. An overall power output of more than 750 kW based on 80/1269/EEC, ISO 2534 or national equivalents; *and*

e.3. Power density of more than 700 kW/m^3 of 'box volume';

Technical Note: *'Box volume' is the product of three perpendicular dimensions measured in the following way:*

Length: The length of the crankshaft from front flange to flywheel face;

Width: The widest of any of the following:

a. The outside dimension from valve cover to valve cover;

b. The dimensions of the outside edges of the cylinder heads; or

c. The diameter of the flywheel housing;

Height: The largest of any of the following:

a. *The dimension of the crankshaft centerline to the top plane of the valve cover (or cylinder head) plus twice the stroke; or*

b. The diameter of the flywheel housing.

f. ''Technology'' ''required'' for the ''production'' of ''specially designed'' ''parts'' or ''components'' for high output diesel engines, as follows:

f.1. ''Technology'' ''required'' for the ''production'' of engine systems having all of the following ''parts'' and ''components'' employing ceramics materials controlled by 1C007:

f.1.a Cylinder liners;

f.1.b. Pistons;

f.1.c. Cylinder heads; *and*

f.1.d. One or more other ''part'' or ''component'' (including exhaust ports, turbochargers, valve guides, valve assemblies or insulated fuel injectors);

f.2. ''Technology'' ''required'' for the ''production'' of turbocharger systems with single-stage compressors and having all of the following:

f.2.a. Operating at pressure ratios of 4:1 or higher;

f.2.b. Mass flow in the range from 30 to 130 kg per minute; *and*

f.2.c. Variable flow area capability within the compressor or turbine sections;

f.3. ''Technology'' ''required'' for the ''production'' of fuel injection systems with a ''specially designed'' multifuel (*e.g.,* diesel or jet fuel) capability covering a viscosity range from diesel fuel (2.5 cSt at 310.8 K (37.8 °C)) down to gasoline fuel (0.5 cSt at 310.8 K (37.8 °C)) and having all of the following:

f.3.a. Injection amount in excess of 230 mm^3 per injection per cylinder; *and*

f.3.b. Electronic control features ''specially designed'' for switching governor characteristics automatically depending on fuel property to provide the same torque characteristics by using the appropriate sensors;

g. ''Technology'' ''required'' for the development'' or ''production'' of 'high output diesel engines' for solid, gas phase or liquid film (or combinations thereof) cylinder wall lubrication and permitting operation to temperatures exceeding 723 K (450 °C), measured on the cylinder wall at the top limit of travel of the top ring of the piston;

Technical Note: '*High output diesel engines' are diesel engines with a specified brake mean effective pressure of 1.8 MPa or more at a speed of 2,300 r.p.m., provided the rated speed is 2,300 r.p.m. or more.*

h. ''Technology'' for gas turbine engine ''FADEC systems'' as follows:

h.1. ''Development'' ''technology'' for deriving the functional requirements for the ''parts'' or ''components'' necessary for the ''FADEC system'' to regulate engine thrust or shaft power (*e.g.,* feedback sensor time constants and accuracies, fuel valve slew rate);

h.2. ''Development'' or ''production'' ''technology'' for control and diagnostic ''parts'' or ''components'' unique to the ''FADEC system'' and used to regulate engine thrust or shaft power;

h.3. ''Development'' ''technology'' for the control law algorithms, including ''source code'', unique to the ''FADEC system'' and used to regulate engine thrust or shaft power;

Note: *9E003.h does not apply to technical data related to engine-''aircraft'' integration required by civil aviation authorities of one or more Wassenaar Arrangement Participating States (See Supplement No. 1 to part 743 of the EAR) to be published for general airline use (e.g., installation manuals, operating instructions, instructions for continued airworthiness) or interface functions (e.g., input/output processing, airframe thrust or shaft power demand).*

i. ''Technology'' for adjustable flow path systems designed to maintain engine stability for gas generator turbines, fan or power turbines, or propelling nozzles, as follows:

i.1. ''Development'' ''technology'' for deriving the functional requirements for the ''parts'' or ''components'' that maintain engine stability;

i.2. ''Development'' or ''production'' ''technology'' for ''parts'' or ''components''

unique to the adjustable flow path system and that maintain engine stability;

i.3. ''Development'' ''technology'' for the control law algorithms, including ''source code'', unique to the adjustable flow path system and that maintain engine stability;

Note: *9E003.i does not apply to ''technology'' for any of the following:*

a. Inlet guide vanes;

b. Variable pitch fans or prop-fans;

c. Variable compressor vanes;

d. Compressor bleed valves; or

e. Adjustable flow path geometry for reverse thrust.

j. ''Technology'' ''required'' for the ''development'' of wing-folding systems designed for fixed-wing ''aircraft'' powered by gas turbine engines.

N.B.: For ''technology'' ''required'' for the ''development'' of wing-folding systems designed for fixed-wing ''aircraft'' specified in USML Category VIII (a), see USML Category VIII (i).

k. ''Technology'' not otherwise controlled in 9E003.a.1 through a.8, a.10, and .h and used in the ''development'', ''production'', or overhaul of hot section ''parts'' or ''components'' of civil derivatives of military engines controlled on the U.S. Munitions List.

■ 46. Supplement No. 6 to part 774 is amended by revising paragraphs (3), (6)(xiii), and (8)(i) and (ii), (vi), and (viii) to read as follows:

Supplement No. 6 to Part 774—Sensitive List

* * * * *

(3) Category 3

(i) 3A001.b.2—''Monolithic Microwave Integrated Circuit'' (''MMIC'') amplifiers that are any of the following:

(A) Rated for operation at frequencies exceeding 2.7 GHz up to and including 6.8 GHz with a ''fractional bandwidth'' greater than 15%, and having any of the following:

(A.1.) A peak saturated power output greater than *300 W (54.8 dBm)* at any frequency exceeding 2.7 GHz up to and including 2.9 GHz;

(A.2.) A peak saturated power output greater than *300 W (54.8 dBm)* at any frequency exceeding 2.9 GHz up to and including 3.2 GHz;

(A.3.) A peak saturated power output greater than *300 W (54.8 dBm)* at any frequency exceeding 3.2 GHz up to and including 3.7 GHz; or

(A.4.) A peak saturated power output greater than *120 W (50.8 dBm)* at any frequency exceeding 3.7 GHz up to and including 6.8 GHz;

(B) Rated for operation at frequencies exceeding 6.8 GHz up to and including *12 GHz* with a ''fractional bandwidth'' greater than 10%, and having any of the following:

(B.1) A peak saturated power output greater than *25 W (44 dBm)* at any frequency exceeding 6.8 GHz up to and including 8.5 GHz; or

(B.2.) A peak saturated power output greater than *25 W (44 dBm)* at any frequency exceeding 8.5 GHz up to and including *12 GHz.*

(ii) 3A001.b.3—Discrete microwave transistors that are any of the following:

(A) Rated for operation at frequencies exceeding 2.7 GHz up to and including 6.8 GHz and having any of the following:

(A.1.) A peak saturated power output greater than *600 W (57.8 dBm)* at any frequency exceeding 2.7 GHz up to and including 2.9 GHz;

(A.2.) A peak saturated power output greater than *600 W (57.8 dBm)* at any frequency exceeding 2.9 GHz up to and including 3.2 GHz;

(A.3.) A peak saturated power output greater than *600 W (57.8 dBm)* at any frequency exceeding 3.2 GHz up to and including 3.7 GHz; or

(A.4.) A peak saturated power output greater than *130 W (51.2 dBm)* at any frequency exceeding 3.7 GHz up to and including 6.8 GHz;

(B) Rated for operation at frequencies exceeding 6.8 GHz up to and including *12 GHz* and having any of the following:

(B.1.) A peak saturated power output greater than *130 W (51.2 dBm)* at any frequency exceeding 6.8 GHz up to and including 8.5 GHz;

(B.2.) A peak saturated power output greater than *60 W (47.8 dBm)* at any frequency exceeding 8.5 GHz up to and including 12 GHz.

(iii) 3A002.g.1.

(iv) 3D001—''Software'' ''specially designed'' for the ''development'' or ''production'' of equipment controlled under 3A001.b.2, 3A001.b.3, and 3A002.g.1.

(v) 3E001—''Technology'' according to the General Technology Note for the ''development'' or ''production'' of equipment controlled under 3A001.b.2, 3A001.b.3, and .3A002.g.1.

* * * * *

(6) Category 6

* * * * *

(xiii) 6A002.a.3—Subject to the following additional notes:

Note 1: *6A002.a.3 does not apply to the following ''focal plane arrays'' in this Supplement:*

a. Platinum Silicide (PtSi) ''focal plane arrays'' having less than 10,000 elements;

b. Iridium Silicide (IrSi) ''focal plane arrays''.

Note 2: *6A002.a.3 does not apply to the following ''focal plane arrays'' in this Supplement:*

a. Indium Antimonide (InSb) or Lead Selenide (PbSe) ''focal plane arrays'' having less than 256 elements;

b. Indium Arsenide (InAs) ''focal plane arrays'';

c. L Lead Sulphide (PbS) ''focal plane arrays'';

d. Indium Gallium Arsenide (InGaAs) ''focal plane arrays''.

Note 3: *6A002.a.3 does not apply to Mercury Cadmium Telluride (HgCdTe) ''focal plane arrays'' as follows in this Supplement:*

a. 'Scanning Arrays' having any of the following:

1. 30 elements or less; or

2. Incorporating time delay-and-integration within the element and having 2 elements or less;

b. 'Staring Arrays' having less than 256 elements.

Technical Notes:

a. 'Scanning Arrays' are defined as ''focal plane arrays'' designed for use with a scanning optical system that images a scene in a sequential manner to produce an image;

b. 'Staring Arrays' are defined as ''focal plane arrays'' designed for use with a nonscanning optical system that images a scene.

Note 6: *6A002.a.3 does not apply to the following ''focal plane arrays'' in this List:*

a. Gallium Arsenide (GaAs) or Gallium Aluminum Arsenide (GaAlAs) quantum well ''focal plane arrays'' having less than 256 elements;

b. Microbolometer ''focal plane arrays'' having less than 8,000 elements.

Note 7: *6A002.a.3.g does not apply to ''focal plane arrays'', ''specially designed'' or modified to achieve 'charge multiplication', as follows:*

a. Linear (1-dimensional) arrays having 4,096 elements or less.

b. Non-linear (2-dimensional) arrays having all of the following;

b.1. A total of 250,000 elements or less; and

b.2. A maximum of 4,096 elements in each dimension.

* * * * *

(8) Category 8

(i) 8A001.b to .c.

(ii) 8A002.b—Systems specially designed or modified for the automated control of the motion of submersible vehicles specified by 8A001.b through .c using navigation data having closed loop servo-controls and having any of the following:

(A) Enabling a vehicle to move within 10 m of a predetermined point in the water column;

(B) Maintaining the position of the vehicle within 10 m of a predetermined point in the water column; or

(C) Maintaining the position of the vehicle within 10 m while following a cable on or under the seabed.

* * * * *

(vi) 8D001—''Software'' specially designed for the ''development'' or ''production'' of equipment in 8A001.b to .c, 8A002.b (as described in this Supplement), 8A002.h, 8A002.j, 8A002.o.3, or 8A002.p.

* * * * *

(viii) 8E001—''Technology'' according to the General Technology Note for the ''development'' or ''production'' of equipment specified by 8A001.b to .c, 8A002.b (as described in this Supplement), 8A002.h, 8A002.j, 8A002.o.3, or 8A002.p.

* * * * *

■ 47. Supplement No. 7 to part 774 is amended by revising paragraph (5) to read as follows:

Supplement No. 7 to Part 774—Very Sensitive List

* * * * *

(5) Category 8

(i) 8A001.b.

(ii) 8A001.c.1.

(iii) 8A002.o.3.b.

(iv) 8D001—''Software'' specially designed for the ''development'' or ''production'' of equipment specified by 8A001.b, 8A001.c.1, or 8A002.o.3.b.

(v) 8E001—''Technology'' according to the General Technology Note for the ''development'' or ''production'' of equipment specified by 8A001.b, 8A001.c.1, or 8A002.o.3.b.

* * * * *

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2020–16286 Filed 9–10–20; 8:45 am]

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Part III

Department of Homeland Security

8 CFR Parts 1, 103, 204, et al.
Collection and Use of Biometrics by U.S. Citizenship and Immigration Services; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 1, 103, 204, 207, 208, 209, 210, 212, 214, 215, 216, 235, 236, 240, 244, 245, 245a, 264, 287, 316, 333, and 335

[CIS No. 2644–19 USCIS Docket No. USCIS–2019–0007]

RIN 1615–AC14

Collection and Use of Biometrics by U.S. Citizenship and Immigration Services

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule proposes to amend DHS regulations concerning the use and collection of biometrics in the enforcement and administration of immigration laws by U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Border Protection (CBP), and U.S. Immigration and Customs Enforcement (ICE). First, DHS proposes that any applicant, petitioner, sponsor, beneficiary, or individual filing or associated with an immigration benefit or request, including United States citizens, must appear for biometrics collection without regard to age unless DHS waives or exempts the biometrics requirement. Second, DHS proposes to authorize biometric collection, without regard to age, upon arrest of an alien for purposes of processing, care, custody, and initiation of removal proceedings. Third, DHS proposes to define the term biometrics. Fourth, this rule proposes to increase the biometric modalities that DHS collects, to include iris image, palm print, and voice print. Fifth, this rule proposes that DHS may require, request, or accept DNA test results, which include a partial DNA profile, to prove the existence of a claimed genetic relationship and that DHS may use and store DNA test results for the relevant adjudications or to perform any other functions necessary for administering and enforcing immigration and naturalization laws. Sixth, this rule would modify how VAWA and T nonimmigrant petitioners demonstrate good moral character, as well as remove the presumption of good moral character for those under the age of 14. Lastly, DHS proposes to further clarify the purposes for which biometrics are collected from individuals filing immigration applications or petitions, to include criminal history and national security background checks; identity enrollment, verification, and management; secure document production, and to administer and enforce immigration and naturalization laws.

The changes proposed in this rule are intended to: Provide DHS with the flexibility to change its biometrics collection practices and policies to ensure that necessary adjustments can be made to meet emerging needs, enhance the use of biometrics beyond background checks and document production to include identity verification and management in the immigration lifecycle, enhance vetting to lessen the dependence on paper documents to prove identity and familial relationships, preclude imposters, and improve the consistency in biometrics terminology within DHS .

DATES: Written comments must be submitted on this rule on or before October 13, 2020. Comments on the Paperwork Reduction Act section of this rule (the information collection discussed therein) must be received on or before November 10, 2020.

ADDRESSES: You may submit comments on the entirety of this proposed rule package, identified by DHS Docket No. USCIS–2019–0007, through the *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the website instructions for submitting comments.

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, USCIS cannot accept comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives. Due to COVID–19, USCIS is also not accepting mailed comments at this time. If you cannot submit your comment by using *http://www.regulations.gov,* please contact Samantha Deshommes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by telephone at 202–272–8377 for alternate instructions.

Collection of Information: You must submit comments on the collection of information discussed in this notice of proposed rulemaking to either DHS' docket or the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA). OIRA will have access to and view the comments submitted in the docket. OIRA submissions can also be sent using any of the following alternative methods:

- *Email (alternative): DHSDeskOfficer@omb.eop.gov* (include the docket number and ''Attention: Desk Officer for U.S. Citizenship and Immigration Services, DHS'' in the subject line of the email).
- *Fax:* 202–395–6566.
- *Mail:* Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503; Attention: Desk Officer, U.S. Citizenship and Immigration Services, DHS.

FOR FURTHER INFORMATION CONTACT: Michael J. McDermott, Security and Public Safety Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Ave. NW, Washington, DC 20529–2240, telephone (202) 272–8377 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Table of Contents

Table of Abbreviations

AAC Accompanied Alien Children
ASC Application Support Center
AWA Adam Walsh Child Protection and Safety Act
BFR Biometrics fee ratio
CBP U.S. Customs and Border Protection
CJIS FBI Criminal Justice Information Services
CPMS Customer Profile Management System
DHS Department of Homeland Security
DNA deoxyribonucleic acid
DOS Department of State
FBI Federal Bureau of Investigation
ICE U.S. Immigration and Customs Enforcement

IDENT Automated Biometric Identification System
IdHS Identity History Summary
IIRIRA Illegal Immigration Reform and Immigrant Responsibility Act
IMBRA International Marriage Broker Regulation Act
INA Immigration and Nationality Act
NTA Notice to Appear (issued to initiate removal proceedings under INA section 240)
OBIM DHS Office of Biometric Identity Management
RAIO Refugee, Asylum, and International Operations
SEVP Student and Exchange Visitor Program
TVPRA Trafficking Victims Protection Reauthorization Act
UAC Unaccompanied Alien Children
USCIS U.S. Citizenship and Immigration Services
USRAP United States Refugee Admissions Program
VAWA Violence Against Women Act

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule. The Department of Homeland Security (DHS) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that provide the most assistance to DHS 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.

Instructions: All submissions received must include the agency name and USCIS Docket No. USCIS–2019–0007 for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

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

II. Executive Summary

As previously stated, this rule proposes to amend DHS regulations concerning the use and collection of biometrics in the administration and enforcement of immigration and naturalization laws as well as the adjudication of benefit requests. This Executive Summary summarizes the changes made by this rule so readers may obtain a brief overview of the changes DHS proposes herein without reading the entire rule. DHS has included full legal citations of authorities, explanations, and more details regarding the proposed changes in the section of the main preamble that discusses the background, need, and authority for the change.

A. Purpose and Summary of the Regulatory Action

DHS has general and specific statutory authority to collect or require submission of biometrics from applicants, petitioners, and beneficiaries for immigration benefits; and from aliens upon their arrest for purposes of processing, care, custody, and initiation of removal proceedings.[1] [2] As detailed in the Authority section of the preamble that follows this Executive Summary, the Immigration and Nationality Act (INA) at section 103(a), 8 U.S.C. 1103(a), provides general authority for DHS to collect or require submission of biometrics and specific authority in several sections.[3] DHS currently collects, stores, and uses biometrics for the following purposes: Conducting background checks to determine eligibility for a benefit or other request; document production associated with an application, petition, or other request for certain immigration and naturalization benefits or actions; and performing other functions related to administering and enforcing the immigration and naturalization laws such as identity verification upon issuance of a Notice to Appear (NTA) under section 240 of the INA.

DHS is precluded in many cases from approving, granting, or providing immigration benefits to individuals with a record of certain criminal offenses or administrative violations. Criminal histories are relevant because they are used to determine eligibility for both discretionary and non-discretionary immigration benefits. Therefore, DHS must include national security considerations and criminal history background checks in its adjudications. Several statutes authorize DHS to conduct biometric collection in relation to national security and public safety purposes, as well as for document production. Other statutes authorize DHS to collect the biometrics of U.S. citizen and lawful permanent resident petitioners of family-based immigrant and nonimmigrant fiancé(e) petitions to determine if a petitioner has been convicted of certain crimes. In addition, certain laws and executive branch guidance requires DHS to have a robust system for biometrics collection, storage, and use related to providing adjudicating immigration benefits and performing other functions necessary for administering and enforcing of immigration and naturalization laws.

Current regulations also provide both general authorities for the collection of biometrics in connection with administering immigration and naturalization benefits requests and administering and enforcing immigration laws. For example, any applicant, petitioner, sponsor, beneficiary, or individual filing a benefit request may be required to appear for biometrics collection. *See* 8 CFR 103.2(b)(9). DHS currently has authority to require an individual to submit biometric information to conduct background and security checks and perform other functions related to administering and enforcing immigration laws. *See* 8 CFR 103.16(a). DHS proposes to change the regulations in a number of ways.

The immigration benefit request adjudications process requires DHS to verify the identity of an individual applying for or seeking to receive any benefit, and also requires national security and criminal history background checks to determine if such an individual is eligible for the benefit. The adjudication includes a review of the individual's current immigration status, current immigration filings, past immigration filings, and whether previous benefits were granted or denied. Immigration laws preclude DHS from granting many immigration and naturalization benefits to individuals with certain criminal or administrative violations, or with certain disqualifying characteristics, while also providing DHS discretion in granting an immigration benefit in many instances.

[1] This rule proposes changes to the regulations governing collection of biometrics for benefit requests administered by U.S. Citizenship and Immigration Services (USCIS). It also impacts U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE), which have immigration enforcement responsibilities that may require collection, use, and storage of biometrics and use USCIS systems or service forms for which biometrics would be required by this rule. Those provisions are discussed further below. For example, ICE, Student and Exchange Visitor Program (SEVP) uses USCIS Form I–539, Application to Extend/Change Nonimmigrant Status, and Form I–765, Application for Employment Authorization Document. This rule generally does not propose to authorize CBP or ICE to expand biometrics collections beyond either agency's current, independent authorities. However, this rule does propose to authorize CBP and ICE to expand their current biometrics collections for immigration benefit requests to individuals under the age of 14 and authorizes collection of additional biometrics modalities.

[2] For the purposes of this rule, DHS is including all requests processed by USCIS in the term ''benefit request'' or ''immigration benefit request'' although the form or request may not be to request a benefit. For example, deferred action is solely an exercise of prosecutorial discretion by DHS and not an immigration benefit, but would fit under the definition of ''benefit request'' at 8 CFR 1.2 for purposes of this rule.

[3] The applicable statutory sections of each provision are explained in the body of the preamble which follows this Executive Summary.

DHS conducts checks to determine if an individual has a history that could render him or her inadmissible or removable, a criminal record, an association with human rights violations, or involvement in terrorist activities or organizations. The current DHS biometric collection process for benefits adjudication begins with the collection of an individual's photograph, fingerprints, and signature at an authorized biometric collection site. Collections outside the United States may be conducted on behalf of DHS by other federal agencies. Under this rule, DHS may also require, request, or accept DNA (deoxyribonucleic acid) test results as evidence of genetic relationships.

While DHS has the authority to collect biometrics from any applicant, petitioner, sponsor, beneficiary, requestor, or individual filing or associated with a request, or to perform other functions related to administering and enforcing the immigration and naturalization laws, submission of biometrics is only mandatory for certain benefit requests and enforcement actions upon request of DHS. For all other benefit requests and enforcement actions, DHS must decide, in accordance with its statutory and regulatory authorities, if the request or enforcement action justifies collection of biometrics and notify the individual where they will be collected when a collection is warranted and for what purposes they will be used. DHS has decided that the more limited focus on background checks and document production is outdated because immigration benefit request adjudication and the enforcement and administration of immigration laws include verifying identity and determining whether or not the individual poses a risk to national security or public safety. DHS has decided that it is necessary to increase routine biometric collections to include individuals associated with immigration benefits and to perform other functions related to administering and enforcing the immigration and naturalization laws. Therefore, DHS proposes in this rule that any applicant, petitioner, sponsor, beneficiary, or individual filing or associated [4] with a certain benefit or request, including U.S. citizens and without regard to age, must appear for biometrics collection unless DHS waives or exempts the requirement.[5] In addition to removing the age restrictions in the context of adjudicating immigration benefit requests, DHS is also removing the age restrictions for biometrics collection in the context of Notice to Appear (NTA) issuance for the same purposes (*i.e.,* identity verification, national security and criminal history background checks, etc.). *See* Proposed 8 CFR 236.5.

DHS emphasizes that it is not proposing an absolute biometrics collection requirement. Rather, the purpose of this rule is to provide notice that every individual requesting a benefit before or encountered by DHS is subject to the biometrics requirement unless DHS waives or exempts it. This notice will be added to relevant forms in the Privacy Notice. The increased use of biometrics by DHS will include identity management in the immigration lifecycle, which will enable it to transition to a person-centric model to organize and manage its records, manage unique identities, verify immigration records, and will reduce reliance on biographic data for identity management in the immigration lifecycle. Biographic data possess inherent inconsistencies that could result in immigration benefits being granted to ineligible applicants or imposters. Using biometrics for identity verification and management in the immigration lifecycle will help ensure that an individual's immigration records pertain only to that individual, and help DHS locate, maintain, and update the individual's immigration status, previously submitted identity documentation, as well as certain biographic data. DHS proposes to collect biometrics at any age to ensure the immigration records created for children can be related to their adult records later, help combat child trafficking, smuggling, and labor exploitation by facilitating identity verification, while confirming the absence of criminal history or associations with terrorist organizations or gang membership.

DHS also plans to implement a program of continuous immigration vetting, and require that aliens be subjected to continued and subsequent evaluation to ensure they continue to present no risk of causing harm subsequent to their entry. This rule proposes that any individual alien who is present in the United States following an approved immigration benefit may be required to submit biometrics unless and until they are granted U.S. citizenship. The rule further proposes that a lawful permanent resident or U.S. citizen may be required to submit biometrics if he or she filed an application, petition, or request in the past and it was either reopened or the previous approval is relevant to an application, petition, or benefit request currently pending with DHS.

The changes to the use and collection of biometrics and expanded scope of populations also are pertinent to U.S. Immigration and Customs Enforcement (ICE) and the Executive Office for Immigration Review (EOIR), a component of the U.S. Department of Justice (DOJ), given that immigration judges and the Board of Immigration Appeals (BIA) are prohibited from granting relief or protection from removal to an alien 14 years of age or older unless an ICE attorney reports that all required ''identity, law enforcement, or security investigations or examinations'' have been completed. *See* INA section 262, and 8 CFR 1003.1(d)(6), 1003.47(g). ICE relies, in part, on USCIS biometric collection in this regard. Further, DHS has leeway in terms of the exact types of such background and security checks. *See Background and Security Investigations in Proceedings Before Immigration Judges and the Board of Immigration Appeals,* 70 FR 4743, 4744 (2005) (''There is no need for this rule to specify the exact types of background and security checks that DHS may conduct with respect to aliens in proceedings.'').

DHS recognizes that removing the age restrictions associated with biometrics collection in DHS regulations, without removing the age restrictions in DOJ EOIR regulations, could create disparate processes for biometric collections in immigration adjudications. Specifically, a child under 14 may be required to submit biometrics for an application submitted to USCIS, but the same child would be exempt from biometrics for an application submitted with DOJ EOIR. These disparate authorities could also cause confusion given USCIS collects biometrics at its ASCs for many applications and petitions adjudicated by EOIR. However, DHS and DOJ will continue to be bound by their respective regulations. To the extent that any controversy may arise interpreting DHS and DOJ regulations regarding the removal of age restrictions for biometrics collection, until DOJ removes its age restrictions DHS intends to follow DOJ regulations with respect to age restrictions when collecting

[4] By ''associated'' DHS means a person with substantial involvement in the immigration benefit request, such as a named derivative, beneficiary, petitioner's signatory, or co-applicant. DHS will not require biometrics to be submitted by agents, representatives, interpreters, preparers, or guardians.

[5] The terms ''file,'' ''submit,'' ''associated with'' or variations thereof, as used throughout this rule, do not encompass attorneys and accredited representatives, although attorneys and accredited representatives may physically ''file'' or ''submit'' a request on behalf of a client.

biometrics for an application or petition that will be adjudicated by EOIR.

DHS anticipates that by removing age restrictions on the collection of biometrics this rule will enhance the ability of ICE and CBP to identify fraudulent biological relationships claimed at the border and upon apprehension.[6] Under the current interpretation of the *Flores* Settlement Agreement, DHS typically releases alien minors apprehended at the border from its detention facilities within 20 days—often in conjunction with the adults with whom these minors were encountered. This may encourage the proliferation of fraudulent family unit schemes wherein unrelated adults and children claim biological relationships in order to secure prompt release into the United States. Alien smuggling organizations are aware of this loophole and are taking full advantage of it, placing children into the hands of adult strangers, so they can pose as families and be released from immigration custody after crossing the border, creating another safety issue for these children. DHS's ability to collect biometrics, including DNA, regardless of a minor's age, will allow DHS to accurately verify or refute claimed genetic relationships among apprehended aliens and ensure that unaccompanied alien children (UACs) are properly identified and cared for.[7]

Regarding the use of DNA evidence, where evidence of a relationship is required, this rule proposes to grant DHS express authority to require, request, or accept DNA test results from relevant parties as evidence of a claimed genetic relationship.[8] DHS recognizes that there are qualifying family members, such as adopted children, who do not have a genetic relationship to the individual who makes an immigration benefit request on their behalf. To the extent the rule discusses using DNA evidence to establish qualifying relationships in support of certain immigration benefit requests, it is referring only to genetic relationships that can be demonstrated through DNA testing. Current regulations generally require documentary evidence such as marriage and birth certificates, and secondary evidence such as medical records, school records, religious documents, and affidavits to support claims based on familial relationships. DHS currently does not have in place express regulatory provisions to require, request, or accept DNA testing results to prove genetic relationships, but because documentary evidence may be unreliable or unavailable, in some situations, individuals are allowed to voluntarily submit DNA test results. Under this rule, DHS may expressly require, request, or accept DNA evidence to demonstrate the existence of the claimed genetic relationship. DHS proposes to treat raw DNA (the physical sample taken from the applicable individual) that is taken as a distinctive biometric modality from the other biometric modalities it is authorized to collect, and not handle or share any raw DNA for any reason beyond the original purpose of submission (*e.g.,* to establish or verify a claimed genetic relationship), unless DHS is required to share by law. DNA test results, which include a partial DNA profile, like other evidence of a familial relationship, becomes part of the record, and DHS will store and share DNA test results, which include a partial DNA profile, for adjudication purposes, or to perform any other functions necessary for administering and enforcing immigration and naturalization laws, to the extent permitted by law.

In recent years, government agencies have grouped together identifying features and actions, such as fingerprints, photographs, and signatures under the broad term, biometrics. The terms, biometric ''information,'' ''identifiers,'' or ''data,'' are used to refer to all of these features, including additional features such as iris image, palm print, DNA, and voice print.As a result, DHS has adopted the practice of referring to fingerprints and photographs collectively as ''biometrics,'' ''biometric information,'' or ''biometric services.'' Most laws on the subject do not specify individual biometric modalities such as iris image, palm print, voice print, DNA, and/or any other biometric modalities that may be collected from an individual in the future. DHS is proposing to update the terminology in the applicable regulations to uniformly use the term ''biometrics.'' DHS seeks to utilize a single, inclusive term comprehensively throughout regulations and form instructions. DHS proposes to define the term, ''biometrics,'' to clarify and fully explain its authority to collect more than just ''fingerprints'' in connection with administering and enforcing the immigration and naturalization benefits or other services, and to expressly define ''biometrics'' to include a wider range of modalities than just fingerprints and photographs. DHS proposes to define the term ''biometrics'' to mean ''the measurable biological (anatomical and physiological) or behavioral characteristics used for identification of an individual,'' including a list of modalities of biometric collection. *See* proposed 8 CFR 1.2. Further, DHS proposes the following biometrics as authorized biometric modalities that DHS may request, require, or accept from individuals in connection with services provided by DHS and to perform other functions related to administering and enforcing the immigration and naturalization laws:

- Fingerprint;
- palm print;
- photograph (facial images specifically for facial recognition, as well as photographs of physical or anatomical features such as scars, skin marks, and tattoos);
- signature;
- voice print;
- iris image; and
- DNA (DNA test results, which include a partial DNA profile attesting to genetic relationship).

The proposed definition of biometrics would authorize the collection of specific biometric modalities and the use of biometrics for: Identity enrollment, verification, and management in the immigration lifecycle; national security and criminal history background checks to support determinations of eligibility for immigration and naturalization benefits; the production of secure identity documents; and to perform other functions related to administering and enforcing the immigration and naturalization laws. DHS has internal procedural safeguards to ensure technology used to collect, assess, and store the differing modalities is accurate, reliable, and valid. Further, as with any other USCIS petition or application, if a decision will be adverse to an applicant or petitioner and is based on derogatory information the agency considered, he/she shall be advised of that fact and offered an opportunity to rebut the information. 8 CFR 103.2(b)(16)(i). DNA, while a biometric, would only be collected in limited circumstances to verify the existence of a claimed genetic relationship. To conform to the proposed changes that would expand biometric collection, DHS proposes to

[6] To clarify, DHS is not proposing DNA collection at ports of entry.

[7] For example, between July 2019 and November 2019, DHS, identified 432 incidents of fraudulent family claims by conducting a Rapid DNA testing under a pilot program named Operation Double Helix. This is over 20% of the total family units tested (1,747).

[8] This rule is not concerned with, and creates no authority to limit, DNA sample collection required by 34 U.S.C. 40702(a)(1)(A) and 28 CFR 28.12 from individuals who are arrested, facing charges, or convicted and from non-United States persons who are detained under the authority of the United States.

remove individual references to ''fingerprints,'' ''photographs,'' and/or ''signatures'' and replace them with the term ''biometrics.''

DHS originally codified restrictions on the ages of individuals from whom biometrics could be collected based on the policies, practice, or technological limitations. For biometrics use to expand to identity management and verification in the immigration lifecycle, this rule would allow for biometric collection from any individual, without age limitation; thus, DHS proposes to remove all age limitations or restrictions on biometrics collection from the regulations in the context of both immigration benefit requests, entering or exiting the United States, NTA issuance, and to perform other functions related to administering and enforcing the immigration and naturalization laws.

DHS also proposes to consolidate sections of 8 CFR providing what USCIS can or will do with an immigration benefit request when required biometrics are not submitted and how biometrics appointments can be rescheduled. In addition, DHS is proposing to remove and/or replace language that applies to paper filings with language that encourages electronic filing. References to position titles, form numbers, mailing addresses, copies, and office jurisdiction are proposed to be removed. In addition, internal USCIS processes are proposed to be removed from the regulatory text. DHS is also proposing to clarify submission of passport-style paper photographs with certain applications or petitions, and eliminating outdated requirements for submitting photographs with immigration benefit requests. Photograph submission and use requirements of the INA would be met in the future by electronic photograph collection.

DHS is also proposing to require biometrics from U.S. citizens or lawful permanent residents when they submit a family-based visa petition. DHS has determined that U.S. citizen and lawful permanent resident petitioners must submit biometrics in order for DHS to comply with the Adam Walsh Child Protection and Safety Act of 2006 (AWA),[9] which prohibits DHS from approving family-based immigrant visa petitions and nonimmigrant fiancé(e) visa petitions if the petitioner has been convicted of certain offenses. In addition, the International Marriage Broker Regulation Act (IMBRA)[10] provides that petitioners for an alien fiancé(e) or alien spouse must submit criminal conviction information for certain crimes. To comply with AWA and IMBRA, DHS proposes to require biometrics from all family-based petitioners, which would allow DHS to review a Federal Bureau of Investigation (FBI) report of the petitioner's criminal history. The proposed requirement would extend to family-based petitions for a spouse, fiancé(e), parent, unmarried child under 21 years of age, unmarried son or daughter 21 years of age or over, married son or daughter of any age, sibling, and any derivative beneficiary immigrant or nonimmigrant visa based on a familial relationship.

DHS proposes to require Violence Against Women Act (VAWA) self-petitioners appear for biometric collection, and to remove the requirement that self-petitioners who have resided in the United States submit police clearance letters as evidence of good moral character because DHS will be able to obtain the self-petitioner's criminal history using the biometrics. VAWA self-petitioners are currently required to provide (1) a personal statement from the self-petitioner, (2) police clearance letters from the self-petitioner's places of residence for the three years before filing, and (3) other credible evidence, including affidavits from third parties attesting to the self-petitioner's good moral character. DHS proposes to require biometrics from VAWA self-petitioners to obtain the self-petitioner's criminal history and support identity enrollment, verification, and management in the immigration lifecycle and conduct national security and criminal history background checks. The proposed change will reduce the evidence required to establish good moral character for many self-petitioners, however law enforcement clearances are still required for self-petitioners who recently resided outside the United States. In addition, DHS proposes that good moral character for a VAWA self-petitioner may extend beyond the three years immediately before filing. *See* generally 8 CFR 316.10(a)(2). DHS further proposes to remove the automatic presumption of good moral character for VAWA self-petitioners under 14 years of age. Self-petitioners under 14 would submit biometrics like any other VAWA self-petitioner.

Similarly, DHS proposes to eliminate the requirement that T nonimmigrant adjustment of status applicants submit self-reported police clearance letters, unless they lived outside the United States during the requisite period. Adjudicators would assess good moral character based on the applicant's criminal history, national security background check, and any other credible and relevant evidence submitted. DHS also proposes to amend 8 CFR 245.23(g) to refer to the relevant ''continuous period'' rather than ''continued presence,'' and to provide that USCIS would be able to consider the applicant's conduct beyond the requisite period, where earlier conduct is relevant to the applicant's moral character and conduct during the requisite period does not reflect a reform of character.

DHS also proposes to remove the presumption of good moral character for T nonimmigrant adjustment of status applicants under 14 years of age. The rule provides that such applicants will submit biometrics that USCIS will use in the determination of good moral character and provides USCIS with the authority to require additional evidence of good moral character. Proposed 8 CFR 245.23(g). The proposed changes would remove the superfluous need for police clearance letters from T nonimmigrant adjustment applicants.

DHS proposes to collect biometrics and perform background checks on U.S. citizen and lawful permanent resident principals of a regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Public Law 102–395, 106 Stat. 1828, 8 U.S.C. 1153 note (''Such pilot program shall involve a regional center in the United States for the promotion of economic growth[.]''). USCIS would review the results of national security and criminal history background checks in order to decide whether the principals of the intending or existing regional center, and the regional center itself, are bona fide and capable of credibly promoting such economic growth. This proposal would provide USCIS relevant information regarding whether the regional center will, or is continuing to, promote economic growth in accordance with regional center program requirements.

DHS also proposes to remove 8 CFR 216.4(b)(1) and (2), and 216.6(b)(1) and (2) to clarify interview procedures for conditional permanent residents, to reduce potential redundancies, and ensure greater uniformity within DHS operations.

[9] Public Law 109–248, section 402; 120 Stat. 587, 622 (July 27, 2006); INA 204(a)(1)(A)(viii) & (B)((i)(I).

[10] Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Public Law 109–162, 119 Stat. 2960 (2006); and (VAWA 2013), Public Law 113–4, sections 807–8, 127 Stat. 54, 112–17; 8 U.S.C. 1375a); INA sections 214(d)(1), (3).

DHS does not plan to immediately expand all of its programs to provide that all new biometrics modalities would be required of all potentially amenable individuals as of the effective date of a potential final rule. Only those revised forms that propose to add a particular biometric collection or DNA submission requirement in conjunction with this rule (as described in the Paperwork Reduction Act (PRA) section of this preamble) will be immediately subject to new biometrics, modalities, or DNA requirements. DHS proposes that DHS component agencies may expand or contract their biometrics submission requirements within the parameters of this rule in the future by notice in the **Federal Register** or updated form instructions.

USCIS is authorized to collect an $85 biometric services fee, but has proposed to incorporate the biometric services costs into the underlying immigration benefit request fees for which biometric services are applicable in a recent final rule. *See U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,* 85 FR 46788 (Aug. 3, 2020) (Fee Rule). The $85 biometric services fee required by 8 CFR 103.7(b)(1)(i)(C) that DHS estimates will be collected as a result of this proposed rule will not be collected if the Fee Rule takes effect before this rule does.

B. Summary of Costs and Benefits

DHS proposes to expand the collection of biometrics to require any individual filing or associated with an immigration benefit or request to appear for biometrics collection, and, if applicable, pay the $85 biometric services fee unless exempted or waived from appearing and/or paying for such biometrics collection. This proposed rule would also change current regulations by defining the term ''biometrics'' to clarify and fully explain DHS's regulatory authority to collect biometrics information. The proposal to expand the collection of biometrics would impact certain populations without regard to age or U.S. citizenship status. Additionally, DHS proposes to further clarify the purposes for which biometrics are collected, stored, and utilized. Last, this rule proposes that DHS may require, request, or accept the submission of DNA or DNA test results to verify a claimed genetic relationship.

DHS estimates that under the proposed rule, from those seeking an immigration benefit, about 2.17 million new biometrics submissions will be collected annually, and the resulting biometrics submitting population will increase from 3.90 million currently to 6.07 million, and, from a generalized collection rate across all forms of 46 percent currently to 71.2 percent (projected). The increase in biometrics submissions would accrue to three population segments: (i) A small subset of forms in which biometrics collection is collected routinely in which the age-eligible population will expand; (ii) the broadening of routine collection to a dozen or so forms in which collection is not currently routine; and (iii) the expansion of the age-eligible biometrics population to a collection of forms characterized by very low filing volumes, unspecified forms, and forms in which DHS does not intend to broadly extend collection on a routine basis at this time. USCIS is also removing the age restrictions for biometrics collection in the context of an NTA issuance. However, the issuance of an NTA is not an ''application, petition, or other request for certain immigration and naturalization benefits.'' *See* 8 CFR 103.7(b)(1)(i)(C). For this stated reason, USCIS will not (and does not currently) collect the $85 biometrics services fee from those whose DNA was collected in the course of being issued NTAs or for other immigration law enforcement purposes. Based on FY 2018 statistics, the proposed rule, could result in DHS collecting biometrics from as many as 63,000 additional individuals under the age of 14 years annually associated with NTAs.[11]

The proposed rule would expand the collection of the $85 biometric services fee to include any individual appearing for biometrics collection in connection with a benefit request unless the individual is statutorily exempt from paying the biometric services fee or if he or she has received a fee waiver. DHS estimates that there will be 1.63 million new biometrics fee payments annually. The annual quantified costs associated with submitting new biometrics submissions could be $158.9 million, and the costs associated with the new fees could be $138.4 million, for a combined total of $297.3 million in quantified costs. There could be some unquantified impacts related to privacy concerns for risks associated with the collection and retention of biometric information, as discussed in DHS's Privacy Act compliance documentation. However, this rule would not create new impacts in this regard but would expand the population that could have privacy concerns. When costs of $705,555 are incorporated to include fees the FBI would collect for providing fingerprint-based and name-based Criminal History Record Information (CHRI) checks for NTAs, the annual costs are about $298 million.

In addition, DHS proposes to expand its regulatory authority so that it may require, request, or accept DNA or DNA test results, which include a partial DNA profile, to prove the existence of a genetic relationship for any benefit request where such a relationship must be established, such as certain family-based benefit requests, including but not limited to the following:

- Petition for Alien Relative (Form I–130);
- Refugee/Asylee Relative Petition (Form I–730);
- Application for T Nonimmigrant Status, Supplement A (Form I–914A);
- Petition for U Nonimmigrant Status, Supplement A (Form I–918A);
- Petition for Qualifying Family Member of a U–1 Nonimmigrant (Form I–929);
- Application for Certificate of Citizenship (Form N–600);
- Application for Citizenship and Issuance of Certificate Under Section 322 (Form N–600K);
- And any other form where the existence of a genetic relationship is at issue for a beneficiary, dependent, derivative, rider, or other qualifying family member.

DHS is not proposing with this rule to require in all cases proof of a genetic relationship submission in connection with these forms via raw DNA or DNA test results, which include a partial DNA profile. However, the rule will allow immediately for DHS, in its discretion, to request, require, or accept DNA or DNA test results, which include a partial DNA profile, for individual benefit requests requiring proof of a genetic relationship. Since the actual volume cannot be predicted at this time with accuracy, DHS conducted a sensitivity analysis using a range of 10 to 100 percent to estimate the potential costs for eligible populations associated with these family-based benefit requests. The costs to principal filers and beneficiaries/qualifying family members who may submit DNA or DNA test results, which include a partial DNA profile, to establish a genetic relationship in support of these benefit requests would range from $22.4 million to $224.1 million annually, in undiscounted terms.

Combining the cost of the biometrics collection (in both the benefits and law

[11] To be clear, DHS is not estimating that this rule would result in the issuance of 63,000 *additional* NTAs by its components; rather, 63,000 NTAs were issued in FY 2018 to minors under the age of 14 who would be subject to biometric collection (for the purpose of verifying identify) under the parameters of this proposed rule.

enforcement contexts) with the DNA costs, DHS estimated the total monetized costs of the proposed rule at three points of the DNA submission range, to represent a lower bound (10 percent), a midrange (50 percent), and a high range (90 percent). In undiscounted terms, the ten-year (2021–2030) costs could range from $3,204.1 to $4,996.9 million, with a midrange of $4,100.5 million. At a 3 percent rate of discount, the ten-year present values could range from $2,773.2 million, to $4,262.4 million, with a midrange of $3,497.8 million. At a 7 percent rate of discount, the ten-year present values could range from $2,250.4 million to $3,509.6 million, with a midrange of $2,880.0 million. The average annualized equivalence costs could range from $320.4 million to $499.7 million, with a midrange of $410 million.

The proposed rule would provide benefits that are not possible to quantify. Qualitatively, the proposed rule would provide individuals requesting certain immigration and naturalization benefits with a more reliable system for verifying their identity when submitting a benefit request. This would limit the potential for identity theft while also reducing the likelihood that DHS would be unable to verify an individual's identity and consequently deny the benefit. In addition, the proposal to allow individuals to use DNA testing as evidence to demonstrate the existence of a claimed genetic relationship would provide them the opportunity to demonstrate a genetic relationship using a quicker and more effective technology than the blood testing method currently provided for in the regulations. *See* 8 CFR 204.2(d)(2)(vi).

The proposed rule would benefit the U.S. Government by enabling DHS with more fidelity and efficiency in identity verification, identity management in the immigration lifecycle, and vetting of individuals seeking certain immigration and naturalization benefits, as well as in DHS functions related to law enforcement purposes. The expanded use of biometrics stands to provide DHS with the improved ability to identify and limit fraud because biometrics technology measures unique physical characteristics that are more difficult to falsify than documentary evidence of biographic information, when collected under controlled circumstances and retained and used for a limited period of time. Biometrics would also help reduce the administrative burden involved in identity verification and the performance of criminal history checks, by reducing the need for manual document review and name-based security checks. The proposed rule also would enhance the U.S. Government's capability to identify criminal activity and protect vulnerable groups by supporting identity enrollment and verification in the immigration lifecycle by extending the collection of biometrics to populations under certain benefit requests.

Table 1 provides a more detailed summary of the proposed provisions and their impacts.

TABLE 1—SUMMARY OF PROVISIONS AND IMPACTS

Proposed change	Expected cost of the provision	Expected benefit of the provision
DHS proposes to expand collection of biometrics to require any individual filing or associated with an immigration benefit or request to appear for biometrics collection without regard to age.	Individuals Submitting Biometrics— ..... *Quantitative:* ..... • Total annual direct costs of the proposed rule: ○ $158,940,196 for about 2.17 million ..... individuals to submit ..... biometrics ..... ○ $138,356,283 for about 1.63 million new $85 biometric services fees.	Individuals Submitting Biometrics— *Qualitative:* • The proposed rule provides individuals requesting certain immigration and naturalization benefits with a more reliable system for verifying their identity when submitting a benefit request. This would limit the potential for identity theft. It would also reduce the likelihood that DHS would not be able to verify an individual's identify and therefore possibly deny a benefit request. Government— *Qualitative:* • DHS would be able to routinely collect biometrics information from children under the age of 14, and therefore, increase the U.S. Government's capabilities of determining the identity of a child who may be vulnerable to gang affiliation, human trafficking child sex trafficking, forced labor exploitation, and alien smuggling. • The proposed rule would provide a benefit to the U.S. Government by enabling DHS to know with greater certainty the identity of individuals requesting certain immigration and naturalization benefits. The expanded use of biometric information would provide DHS with the ability to limit identity fraud because biometrics technologies measure unique physical characteristics and more difficult to falsify than biographic documents.

TABLE 1—SUMMARY OF PROVISIONS AND IMPACTS—Continued

Proposed change	Expected cost of the provision	Expected benefit of the provision
DHS proposes to increase the biometric modalities that it uses to collect biometrics information for benefits adjudication and law enforcement purposes to include the following: Palm prints, facial and iris image, and voice prints.	Government— ..... *Qualitative:* ..... • DHS does not know what the costs of expanding biometrics collection to the government in terms of assets and equipment; it is possible that costs could be incurred for the new equipment and information technologies and typologies needed to collect, process, store, and utilize biometrics, including software updates; cameras that are able to collect iris and facial images; devices used to record a voice print; and other equipment.	Government— *Qualitative:* • Use of the new biometric technologies would allow DHS to keep up with technological developments in this area and adjust collection practices for both convenience for applicants and petitioners and to ensure the improved service for all stakeholders.
DHS may require, request, or accept the submission of DNA or DNA test results, which include a partial DNA profile, to verify the existence of a claimed genetic relationship for benefits adjudication and law enforcement purposes.	Individuals Submitting DNA Evidence— ..... *Quantitative:* ..... • Potential annual costs for principal filers and beneficiaries/qualifying family members to submit DNA evidence range from $22.4 million to $224.1 million. These figures are based on current costs and depend on how many individuals submit DNA evidence in support of a family-based benefit request. • There will be no cost to the individuals from whom DHS will require DNA sample for law enforcement purposes. Government— *Qualitative:* • USCIS facilitates collection of DNA from individuals outside the United States for transmission to accredited laboratories in the United States to ensure proper chain of custody. USCIS currently reimburses the Department of State for the collection of DNA in countries where it does not have a presence. DHS does not currently know how many individuals would submit DNA under the proposed rule but there is the potential for additional costs if the Department of State facilitates additional DNA testing.	Individuals Submitting DNA test result Evidence— *Quantitative:* • DNA testing would provide a means to demonstrate a claimed genetic relationship using a quicker and more effective technology than the current reliance on primary and secondary records and document-based evidence that may be unreliable or unavailable.
DHS is proposing to remove the age restrictions for biometrics collection in the context of Notice to Appear (NTA) issuance for the same reasons (*i.e.,* identity verification, criminal history background checks, etc.).	Individuals Submitting Biometrics— ..... *Quantitative:* ..... None; there would be no opportunity or travel related costs associated with biometrics collection from individuals for NTAs. Government— *Quantitative:* There could be costs of $705,555 annually accruing to fees the FBI would collect for providing fingerprint-based and name-based Criminal History Record Information (CHRI) checks.	Individuals Submitting Biometrics Government— *Qualitative:* The collection of biometrics on children under the age of 14 associated with NTAs would significantly assist DHS in its mission to combat human trafficking, child sex trafficking, forced labor exploitation, and alien smuggling.

In addition to the impacts summarized above and as required by Office of Management and Budget (OMB) Circular A–4, Table 2 presents the prepared accounting statement showing the costs associated with this proposed regulation.[12]

[12] OMB Circular A–4 is *available at https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf.* The DHS notes that the primary estimate reported here reflects the average of the highest 50 percent DNA submission rate (100 percent) and the lowest (0 percent). It also corresponds to the 50 percent midrange along the spectrum 10–90 percent that we utilize on grounds that realistically, there will be some collection (a positive rate) but not complete (100 percent) collection.

TABLE 2—OMB A–4 ACCOUNTING STATEMENT

[$ millions, 2019]

Category	Primary estimate	Minimum estimate	Maximum estimate	Source citation (RIA, preamble, etc.)
BENEFITS				
Monetized Benefits	Not estimated	Not estimated	Not estimated	Preamble.
Annualized quantified, but un-monetized, benefits.	0	0	0	Preamble.
Unquantified Benefits	The proposed rule would limit identity fraud and improve USCIS identity management systems. Additionally, the proposed rule would enhance the U.S. Government's capability to identify criminal activities and protect vulnerable populations. The removal of age restrictions and the proposal to collect on all NTAs under the age of 14 would assist DHS in its mission to combat human trafficking, child sex trafficking, forced labor exploitation, and alien smuggling.			Preamble and RIA.
COSTS				
Annualized monetized costs for 10 year period starting in 2021 to 2030 (discount rate in parenthesis).	(3%) $410 (7%) $410	$320.4 $320.4	$499.7 $499.7	RIA. RIA.
Annualized quantified, but un-monetized, costs	There could be costs germane to the procurement of equipment, information technology and typology, and systems possibly needed to support the increased biometrics modalities. There could also be a cost for transferring information regarding biometrics for the NTAs issued to individuals under age 14.			Preamble and RIA.
Qualitative (unquantified) costs	N/A.			
TRANSFERS				
Annualized monetized transfers: "on budget"	N/A	N/A	N/A	Preamble.
From whom to whom?	N/A	N/A	N/A	Preamble.
Annualized monetized transfers: "off-budget"	N/A	N/A	N/A	Preamble.
From whom to whom?	N/A	N/A	N/A	Preamble.

Miscellaneous analyses/category	Effects	Source citation (RIA, preamble, etc.)
Effects on state, local, and/or tribal governments.	None	Preamble.
Effects on small businesses	There could be small entity impacts to EB–5 regional centers incurred by biometrics collection germane to the regional center principals. DHS believes these would be indirect but does not know how they could impact the regional center. There are currently 884 approved regional centers and DHS analysis based on limited available suggests that most regional centers could be small entities in terms of their RFA.	Preamble.
Effects on wages	None	Preamble
Effects on growth	None	Preamble.

DHS emphasizes that the costs could vary from the figures reported herein. As is detailed in the analysis, in order to estimate the population of future biometrics submissions, it was necessary to extrapolate certain metrics and conditions to the non-existent (in context) future populations. Although DHS believes the methodology employed is appropriate, because the future actual generalized and form-specific collection rate of biometrics are unknown, the actual populations and costs could vary. In addition, the costs rely on a lower-end average wage to account for opportunity costs associated with biometrics submissions. If, on average, the wage is higher than that relied upon, the costs could vary as well. This regulatory impact analysis is the best available estimate of the future benefits and costs. Actual results will depend on a number of factors including programmatic, operational,

and practical considerations in the implementation of the collection of biometrics under this rule.

In summary, the proposed rule would enable DHS to conduct the administration and adjudication of immigration benefit requests with increased fidelity, and is conducive to the evolution to a person-centric model for organizing and managing its records, enhanced and continuous vetting, and reduced dependence on paper documents, as is described more fully in the preamble.

III. Background and Purpose

A. Legal Authority and Guidance for DHS Collection and Use of Biometrics

DHS has general and specific statutory authority to collect or require submission of biometrics from applicants, co-applicants, petitioners, requestors, derivatives, beneficiaries and others directly associated with a request for immigration benefits; and for purposes incident to apprehending, arresting, processing, and care and custody of aliens. First, the INA at section 103(a), 8 U.S.C. 1103(a), provides general authority to DHS to administer and enforce immigration laws, including issuing forms, regulations, instructions, other papers, and such other acts the Secretary of Homeland Security (the Secretary) deems necessary to carry out the INA. The INA also provides specific authority for DHS to collect or require submission of biometrics in several sections.

- INA section 235(d)(3), 8 U.S.C. 1225(d)(3), provides that the Secretary and any immigration officer will:

> . . . have power . . . 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.

- INA 287(b), 8 U.S.C. 1357(b), provides DHS authority to, ''. . . take and consider evidence concerning the privilege of any person to enter, reenter, pass through, or reside in the United States, or concerning any matter which is material or relevant to the enforcement of this chapter and the administration of the Service.''
- INA sections 333 and 335, 8 U.S.C. 1444 and 1446, require the submission of photographs and a personal investigation before an application for naturalization, citizenship or other similar requests may be approved.
- INA section 262(a), 8 U.S.C. 1302(a), provides direct statutory authority for the collection of fingerprints for the purpose of registering aliens.
- INA section 264(a), 8 U.S.C. 1304(a), provides that the Secretary is authorized to prepare forms for the registration and fingerprinting of aliens, aged 14 and older, in the United States, as required by INA section 262.

DHS interprets the broad statutory authority described above as authority for the collection of biometrics when such information is material or relevant to the furtherance of DHS' delegated authority to administer and enforce the INA. DHS' delegated authority includes the adjudication of requests for immigration benefits, as well as authority to ''register and fingerprint aliens in the United States.'' [13] Establishing and verifying an individual's identity through the use of biometrics falls within DHS' authority in the adjudication of immigration benefits and administration and enforcement of immigration laws.

Several other statutes authorize the collection of biometrics by DHS. In 1997, when funding the agency for 1998, Congress directed the former Immigration and Naturalization Service (INS), which preceded the creation of DHS, not to accept any fingerprint cards collected by entities outside the INS for immigration benefits, except in certain instances when collected by law enforcement agencies and in certain overseas situations. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1998, Title I, Public Law 105–119, 111 Stat. 2440, 2447–2448 (1997). Previously, certain ''designated fingerprint services'' entities could collect fingerprints. After passage of this law, which necessitated a change in INS' practices, INS established the Application Support Centers (ASCs) which exist nationwide today and are operated by DHS for the collection of biometrics for immigration benefits. *See* 63 FR 12979 (Mar. 17, 1998). The 1998 appropriations law also provided for the former INS to charge a fee for fingerprinting. A fingerprinting fee was first charged in March 1998, and has evolved into the biometric services fee in 8 CFR 103.7(b)(1)(i)(C).[14]

[13] 6 U.S.C. 271(b); *see also* Department of Homeland Security Delegation Number: 0150.1, Delegation To the Bureau of Citizenship and Immigration Services (June 5, 2003), *available at https://www.hsdl.org/?view&did=234775* (viewed Nov. 12, 2019).

[14] Another section of the INA specifically authorizes USCIS to collect fees for fingerprinting, biometric, and other necessary services under the Temporary Protected Status (TPS) program. 8 U.S.C. 1254b; DHS Appropriations Act of 2010, Public Law 111–83, sec. 549, 123 Stat. 2142, 2177 (2009).

1. Background Checks

DHS is precluded in many cases from approving, granting, or providing immigration benefits to individuals with a record of certain criminal offenses or administrative violations.[15] Whether granting a benefit is discretionary or not, criminal histories are relevant because they are used to determine eligibility for both discretionary and non-discretionary benefits. Additionally, DHS is mandated to protect the American public from terrorist attacks by foreign nationals admitted to the United States, by ''identify[ing] individuals who seek to enter the United States . . . who support terrorism, violent extremism, acts of violence toward any group or class of people within the United States, or who present a risk of causing harm subsequent to their entry.'' *See* Executive Order (E.O.) No. 13780, *Protecting the Nation from Foreign Terrorist Entry into the United States,* at section 5(a), 82 FR 13209, 13215 (Mar. 9, 2017) (E.O. 13780). Therefore, DHS adjudications must include national security considerations and criminal history background checks.

For example, one statute precludes the filing of a family-based immigrant petition by someone who has been convicted of a ''specified offense against a minor.'' *See* INA section 204(a)(1)(A)(viii), 8 U.S.C. 1154(a)(1)(A)(viii). The criminal and security-related grounds of inadmissibility found in INA section 212(a)(2)–(3), 8 U.S.C. 1182(a)(2)–(3), apply to many benefits, such as adjustment to lawful permanent resident status, refugee status, and Temporary Protected Status (TPS). The INA provides that refugee applicants must be admissible as immigrants and the criminal, security, and terrorism-related grounds of inadmissibility apply to refugee applicants. *See* INA section 207(c)(1), 8 U.S.C. 1157(c)(1); INA section 212, 8 U.S.C. 1182. The INA provides that asylum may be granted on a discretionary basis. *See* INA section 208(a)(1)(A), 8 U.S.C. 1158(a)(1)(A). It provides that asylum applicants are subject to mandatory criminal and security bars. *See* INA section 208(b)(2)(A), 8 U.S.C. 1158(b)(2)(A). Sections of the INA apply the criminal, security, and terrorism-related bars to TPS applicants, including the mandatory asylum bars above. *See* INA sections 244(c)(2)(A)(iii)–(B), 8 U.S.C.

[15] DHS would like to note that limitations on biometric collection or use in this proposed rule would not impact existing law enforcement authorities or other national security or intelligence gathering activities.

1254a (c)(2)(A)(iii)–(B). Various INA sections require that adjustment of status applicants be admissible in order to qualify. *See, e.g.,* sections 245(a)(2) and 209(b)(5), 8 U.S.C. 1255(a)(2) and 8 U.S.C. 1159(b)(5). The INA also provides a good moral character requirement for any applicant to be naturalized. *See* INA section 316(a)(3), 8 U.S.C. 1427(a)(3).

Other statutes authorize DHS to conduct biometric services in relation to national security and public safety purposes. For example, Congress directed in the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107–56, 115 Stat. 354 (2001), reauthorized by Public Law 114–23, 129 Stat. 268 (2015) (codified at note to 8 U.S.C. 1365a), that ''biometric technology'' should be utilized in the development of the integrated entry-exit system originally mandated by the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Public Law 104–208, 110 Stat. 3009 (1996) (codified at 8 U.S.C. 1365a). The Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108–458, 118 Stat. 3638 (2004) (codified as amended at 8 U.S.C. 1365b), required the completion of a biometric data system to facilitate efficient immigration benefits processing and to protect the United States by preventing the entry of terrorists. For USCIS, any limitations on the collection or use of biometrics in this draft rule does not impact DHS law enforcement authorities or other national security or intelligence gathering activities.

Background checks are also required by EOIR regulation for aliens who apply for relief and protection in removal proceedings. Specifically, immigration judges and the BIA are prohibited from granting relief and protection to an alien unless an ICE attorney reports that all required ''identity, law enforcement, or security investigations or examinations'' have been completed. *See* 8 CFR 1003.1(d)(6), 1003.47(g). Indeed, as pertaining to asylum applications, there is a statutory basis for such background checks as well. *See* 8 U.S.C. 1158(d)(5)(A)(i); *see also* 8 CFR 1208.10. Once again, to the extent that any controversy may arise interpreting DHS and DOJ regulations regarding the removal of age restrictions for biometrics collection, until DOJ removes its age restrictions, DHS intends to follow DOJ regulations with respect to age restrictions when collecting biometrics for an application or petition that will be adjudicated by EOIR.

2. Secure Document Production

Still other statutes authorize or require the collection of biometrics for secure document production. For example, photographs are required by statute to create certificates of naturalization. INA section 333(a), 8 U.S.C. 1444(a). Additionally, an alien granted asylum will be granted an employment authorization document (EAD) that shall at a minimum contain the fingerprint and photograph of such alien. 8 U.S.C. 1738. Relatedly, the Enhanced Border Security and Visa Entry Reform Act of 2002 (Border Security Act), Public Law 107–173, 116 Stat. 543 (2002), requires that DHS issue aliens machine-readable, tamper-resistant visas and other travel and entry documents using biometric identifiers. 8 U.S.C. 1732(b)(1).

3. Biometric Collection From U.S. Citizens and Lawful Permanent Residents

DHS is also authorized to collect the biometrics of U.S. citizen and lawful permanent resident petitioners of family-based immigrant petitions, and U.S. citizen petitioners of nonimmigrant fiancé(e) petitions, to determine if a petitioner has been convicted of certain crimes pursuant to the AWA, Public Law 109–248, 120 Stat. 587 (2006) (codified as amended in scattered sections of 18 and 42 U.S.C.) (see sections 402(a) and (b) for the applicable immigration provisions), and IMBRA, Public Law 109–162, 119 Stat. 2960 (2006) (codified as amended at 8 U.S.C. 1375a). The AWA:

- Prohibits U.S. citizens and lawful permanent residents who have been convicted of any ''specified offense against a minor'' from filing a family-based immigrant visa petition on behalf of any beneficiary, unless the Secretary determines in his or her sole and unreviewable discretion that the petitioner poses ''no risk'' to the beneficiary. INA section 204(a)(1)(A)(viii)(I), (B)(i)(II); 8 U.S.C. 1154(a)(1)(A)(viii)(I), (B)(i)(II).
- Renders ineligible to file ''K'' nonimmigrant fiancé(e) petitions those U.S. citizens convicted of such offenses, unless the Secretary determines in his or her sole and unreviewable discretion that the petitioner poses ''no risk'' to the fiancé(e) beneficiary. INA section 101(a)(15)(K), 8 U.S.C. 1101(a)(15)(K).

Independent of the AWA, USCIS is also required to disclose information regarding certain violent arrests and convictions for some U.S.C. petitioners who file K-visas for fiancés or spouses in accordance with IMBRA, 8 U.S.C. 1375a.

4. Administrative Guidance

This proposed rule is also consistent with non-statutory guidance on effective mechanisms for foreign national vetting, screening, and identification. DHS was directed by executive branch guidance to take actions that require a robust system for biometrics collection, storage, and use related to providing adjudication and naturalization services of immigration benefits. For example, with respect to secure documents, Homeland Security Presidential Directive (HSPD) 11, ''*Comprehensive Terrorist-Related Screening Procedures,*'' (August 27, 2004) directs DHS to ''incorporate security features . . . that resist circumvention to the greatest extent possible.'' DHS is directed to consider the ''. . . information individuals must present, including, as appropriate, the type of biometric identifier[s] or other form of identification or identifying information to be presented, at particular screening opportunities.'' DHS was also directed to expand the use of biometrics, consistent with applicable law, to identify and screen for individuals who may pose a threat to national security by HSPD 24, ''Biometrics for Identification and Screening to Enhance National Security,'' (June 5, 2008). In addition, E.O. 13780 requires DHS to implement a program, as part of the process for adjudications, to identify individuals who seek to enter the United States on a fraudulent basis, who support terrorism, violent extremism, acts of violence toward any group or class of people within the United States, or who present a risk of causing harm subsequent to their entry. 82 FR 13209, 13215 (Mar. 9, 2017). The E.O. provides that the program must include screening and vetting standards and procedures, a mechanism to ensure that applicants are who they claim to be, assess whether applicants may commit, aid, or support any kind of violent, criminal, or terrorist acts after entering the United States, and evaluation of all grounds of inadmissibility or grounds for the denial of other immigration benefits. *Id.* Further, National Security Presidential Memorandum—7 established the DHS-led National Vetting Center to improve vetting ''to identify potential threats to national security, border security, homeland security, and public safety'', and included expanding biometric integration, sharing, and use to that end.[16]

[16] National Security Presidential Memorandum—7, SUBJECT: Integration, Sharing, and Use of National Security Threat Actor Information to Protect Americans (Oct. 5, 2017), available at

B. The Use of Biometrics by DHS

Current regulations provide both general authorities for the collection of biometrics in connection with administering and enforcing the immigration and naturalization benefits as well as requirements specific to certain benefit types.[17] In a related provision, an applicant, petitioner, sponsor, beneficiary, or individual filing a benefit request may be required to appear for biometrics. *See* 8 CFR 103.2(b)(9). In addition, DHS has the authority to require biometrics and the associated biometric services fee from any applicant, petitioner, sponsor, beneficiary, or requestor, or individual filing or seeking a benefit request on a case-by-case basis, through form instructions, or through a **Federal Register** notice. *Id.*

The former INS first used fingerprints for immigration processing solely for the purpose of performing criminal history background checks related to applications for which eligibility required good moral character or non-existence of a record of certain criminal offenses. *See, e.g.,* 63 FR 12979 (Mar. 17, 1998) (prohibiting the former INS from accepting fingerprints for the purpose of conducting criminal background checks unless collected by certain U.S. Government entities). The beneficiary or applicant would submit fingerprints which were then checked against FBI databases to determine if they matched any criminal activity on file. The fingerprints were not retained by the INS and delays in processing would often result in individuals needing to submit fingerprints multiple times for the same application. Photographs were not historically collected by INS as a biometric identifier. For those immigration benefit requests that required a photograph to produce a resulting identity document, the regulations required submission of a passport-style photograph. *See, e.g.,* 8 CFR 264.1, 264.5 (requiring identical photographs).

Today, DHS handles biometrics differently. Biometrics are still used in criminal history background checks for immigration benefits where good moral character or absence of certain criminal offenses are required, as well as for overall national security vetting. In addition, biometrics may be stored by DHS and used to verify an individual's identity in subsequent encounters with DHS. These encounters could vary from travel to and from the United States, where an individual may encounter CBP officers, to arrest and detention, by law enforcement components such as ICE, to initiation of removal proceedings.

DHS also uses collected biometric information for document production related to immigration benefits and status, including but not limited to: Travel Documents (Form I–512L), Permanent Resident Cards (Form I–551), Employment Authorization Documents (Form I–766), Certificates of Citizenship (Form N–560), Certificates of Naturalization (Form N–550), Replacement Certificates of Citizenship (Form N–561), and Replacement Certificates of Naturalization (Form N–570).[18] Most of these secure documents are created using the photograph (and signature) that is taken by DHS at an ASC, and not the paper photograph mailed with the benefit request.[19]

As part of the benefit adjudications process, DHS must first verify the identity of an individual applying for or seeking any benefit. Identity verification protects against fraud and imposters. Second, DHS must determine if the individual is eligible to receive the requested benefit. That determination may focus on the criminal, national security, and immigration history of the individual, depending on the eligibility requirements for the particular benefit type, and is accomplished through national security and criminal history background checks.

The immigration history review includes a review of the individual's current immigration status, current immigration filings, past immigration filings, and whether previous benefits were granted or denied. DHS conducts national security and criminal history background checks on individuals applying for an immigration benefit because U.S. immigration laws preclude DHS from granting many immigration and naturalization benefits to individuals with certain criminal or administrative violations, or with certain disqualifying characteristics (*e.g.,* certain communicable diseases or association with terrorist organizations), while also providing DHS discretion in granting an immigration benefit in many instances.[20]

DHS conducts multiple types of national security and criminal history background checks including but not limited to: (1) Name-based checks, (2) FBI fingerprint-based checks, and (3) biometrics checks against the Automated Biometric Identification System (IDENT), the FBI Next Generation Identification system, and the Department of Defense (DoD) Automated Biometric Identification System (ABIS).).[21] [22] [23] DHS also uses biometrics to determine if an individual has activities in their background such as an association with human rights violations, involvement in terrorist activities, or affiliation with terrorist organizations rendering them inadmissible. To that end, DHS may vet an individual's biometrics against data sets of foreign partners in accordance with international arrangements.[24]

https://www.whitehouse.gov/presidential-actions/national-security-presidential-memorandum-7/.

[17] *See, e.g.,* 8 CFR 103.16(a), 204.2(a)(2) (requiring evidence of the claimed relationship), 204.3(c)(3) (requiring fingerprinting), 204.2(d)(2)(vi) (authorizing blood testing), 245a.2(d) (requiring photographs and a completed fingerprint card), 316.4(a) (referring to form instructions which may require photographs and fingerprinting).

[18] *See also* 8 U.S.C. 1732(b) (requiring machine-readable travel and entry documents containing biometric identifiers); 8 CFR 264.1(b); Application to Register Permanent Residence or Adjust Status (Form I–485); Application to Replace Permanent Resident Card (Form I–90); Application for Employment Authorization (Form I–765); Application for Certificate of Citizenship (Form N–600); Application for Naturalization (Form N–400); Application for Replacement Naturalization/Citizenship Document (N–565).

[19] The paper photograph is retained and may be used to verify the identity of an applicant who is required to be interviewed by comparing it to the digitally captured photograph or the applicant's motor vehicle operator's license.

[20] *See, e.g.,* INA section 208(b)(2)(A), 8 U.S.C. 1158(b)(2)(A) (mandatory bars to asylum); INA section 245(a)(2), 8 U.S.C. 1255(a)(2) (admissibility requirements for adjustment of status applicants); INA section 316(a)(3), 8 U.S.C. 1427(a)(3) (good moral character requirement for naturalization).

[21] IDENT will be replaced by a system called the Homeland Advanced Recognition Technology (HART). DHS will use the term ''IDENT'' in this rule to refer to both the current and successor systems.

[22] The FBI NGI system is operated by the FBI/CJIS Division, and provides the criminal justice community with multi-modal biometric and criminal history information. *See* Privacy Impact Assessment Update for Biometric Interoperability Between the U.S. Department of Homeland Security and the U.S. Department of Justice (Oct. 13, 2011). FBI's NGI database, in turn, also provides access to DoD's ABIS database.

[23] DoD's ABIS system is operated by the DoD, and contains biometric records of individuals encountered overseas by the DoD that include KSTs. The biographic and biometric data from ABIS is also transferred to the DoD's Special Operations Force Exhibition (SOFEX) Portal for additional biometric matching. Once complete, the NGI system forwards responses back from both the NGI and the ABIS systems to the IDENT system. When data is initially submitted and processed through IDENT, NGI, and ABIS, an ICE Analyst conducts biometric and biographic checks against other law enforcement and classified Intelligence Community databases before processing, exploiting, summarizing, and disseminating findings to the relevant ICE Attaché and Biometric Identification Transnational Migration Alert Program (BITMAP) PMT.

[24] *See, e.g.,* Five Country Conference High Value Data Sharing Protocol, Nov. 2009; Statement of Mutual Understanding on Information Sharing among the Department of Citizenship Immigration Canada (CIC) and the U.S. Immigration and Naturalization Service (INS) and the U.S. Department of State (DOS), Feb. 2003; Agreement between the U.S. and Canada for the sharing of Visa and Immigration Information, Dec. 13, 2012, T.I.A.S. No. 13–1121; and Agreement between the

Continued

The DHS biometrics process for benefits adjudication purposes begins with the collection of an individual's biometrics at an authorized biometrics collection site, including DHS offices, ASCs, military installations, U.S. consular offices abroad, and, in some cases, federal, state, and local law enforcement installations. Domestically, DHS established a robust program to allow individuals to provide biometrics at ASC facilities, and generally individuals are scheduled to appear at a location close to their address of record. DHS also established mobile biometrics collection capabilities domestically for those who are homebound, or for certain remote locations, as well as outside the United States to support biometrics collection in the United States Refugee Admissions Program (USRAP). For other collections outside the United States, biometrics may be handled differently. When biometrics are required on a DHS-adjudicated form and DHS does not have a presence in that country, the Department of State (DOS) will continue to collect biometrics on behalf of DHS. In cases where DOS will issue a boarding foil, immigrant visa, or non-immigrant visa associated with a DHS form, DOS will continue to collect biometrics under its existing authority.

Currently, DHS biometrics consist of a photograph, fingerprints, and signature to conduct identity, eligibility, national security, criminal history background checks, and in certain situations, voluntary DNA testing to verify a claimed genetic relationship. For certain family-based benefit requests, where other evidence proves inconclusive, DHS accepts DNA test results obtained from approved laboratories (along with other necessary identifiers, such as a name and date of birth), as evidence to assist in establishing the existence of genetic relationships. *See* 8 CFR 204.2(d)(2)(vi). In these limited cases, DHS requires that DNA test results establish a sufficient probability of the existence of the alleged relationship to be accepted as probative evidence of that relationship.

DHS is bound by the confidentiality provisions of Section 1367 of title 8 of the U.S. Code, ''Penalties for disclosure of information'' (originally enacted as Section 384 of the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (IIRIRA)). All DHS officers and employees are generally prohibited from permitting use by or disclosure to anyone other than a sworn officer or employee of DHS, DOS, or DOJ of any information relating to a beneficiary of a pending or approved request for certain victim-based immigration benefits, such as an abused spouse waiver of the joint filing requirement, a VAWA self-petition by a spouse or child of an abused U.S. citizen or lawful permanent resident, VAWA cancellation of removal or suspension of deportation, or application for T or U nonimmigrant status, including the fact that they have applied for such a benefit. Importantly, the protection against disclosure extends to all records or other information, including those that do not specifically identify the individual as an applicant or beneficiary of the T Visa, U Visa, or VAWA protections. Therefore, the biometric collection contemplated here would also be protected from disclosure in accordance with the requirements and exceptions found in 8 U.S.C. 1367. Thus, DHS has not separately codified the Section 1367 protections in this proposed rule.

IV. Discussion of Proposed Changes

A. Use Biometrics for Identity Management and Enhanced Vetting

DHS requires the submission of biometrics for several immigration benefit requests and for law enforcement purposes, including functions incident to apprehending, arresting, processing, and care and custody of aliens.[25] In addition, DHS has the authority to require biometrics and the associated biometric services fee from any applicant, petitioner, sponsor, beneficiary, or requestor, or individual filing a request on a case-by-case basis, through form instructions or as provided in a **Federal Register** notice. 8 CFR 103.2(b)(9), 103.7(b)(1)(i)(C), 103.17. Under that construct, although DHS has the authority to collect biometrics from any applicant, petitioner, sponsor, beneficiary, or requestor, or individual filing a request, biometrics are only mandatory for certain benefit requests. For all others, DHS must decide if the benefit requested, or circumstances of the request, justifies collection of biometrics and, if so, notify an individual that their biometrics are required along with when and where they should be collected.

DHS's use of biometrics for criminal history background checks and document production is outdated and not fully in conformity with current biometrics use policies by government agencies.[26] In addition, as outlined above, DHS has the legal authority to administer and enforce immigration laws and collect biometrics when such information is necessary to that authority. For individuals, any adjudication necessarily includes verifying identity and determining whether or not the individual poses a risk to national security or public safety in those instances where these factors may impact eligibility for an immigration benefit and upon arrest of an alien for purposes of processing, care, custody, and initiation of removal proceedings.

Biometrics collection upon apprehension or arrest by DHS will accurately identify the individuals encountered, and verify any claimed genetic relationship. This in turn will allow DHS to make better informed decisions as to the processing, transporting, and managing custody of aliens subject to DHS's law enforcement authorities. Having more reliable data about detainees' identities will increase safety of DHS detention facilities for both DHS law enforcement officers and the detainees. It would also eliminate an incentive that currently exists for unscrupulous individuals to jeopardize the health and safety of minors to whom they are unrelated, transporting the minors on a dangerous journey across the United States border, and claiming to be the parents of unrelated minors in order to claim to be a ''family unit'' and thus obtain a relatively quick release from DHS custody.

Thus, DHS decided that it is necessary to increase the use of collected biometric information beyond only eligibility and admissibility determinations to include identity management in the immigration lifecycle and continuous immigration vetting. To accomplish this goal, DHS proposes in this rule to flip the current construct from one where biometrics may be collected based on past practices, regulations, or the form instructions for a particular benefit, to a system under which biometrics are required for any immigration benefit

U.S. and the Government of the United Kingdom of Great Britain and Northern Ireland for the Sharing of Visa, Immigration, and Nationality Information, April 18, 2013, T.I.A.S. No. 13–1108.

[25] *See, e.g.,* 8 CFR 204.310(a)(3)(ii), 210.2(c)(2)(i), 210.5(b)(2), 212.7(e)(3)(i), 214.11(d)(5)–(7), 214.11(m)(2), 214.2(w)(15), 244.6, 244.17, 245.15(g)(1), 245.21(b), 245a.2(d), 245a4(b)(4), 248.3, 1(a)–(b).

[26] *See, e.g., Individuals with Multiple Identities in Historical Fingerprint Enrollment Records Who Have Received Immigration Benefits,* Department of Homeland Security, Office of Inspector General, Office of Inspections and Special Reviews, OIG–17–111 (Sept. 2017); *Potentially Ineligible Individuals Have Been Granted U.S. Citizenship Because of Incomplete Fingerprint Records,* Department of Homeland Security, Office of Inspector General, Office of Inspections and Special Reviews, OIG–16–130 (Sept. 2016); *Review of U.S. Citizenship and Immigration Services' Alien Security Checks,* Department of Homeland Security, Office of Inspector General, Office of Inspections and Special Reviews, OIG–06–06 (Nov. 2005).

request unless DHS determines that biometrics are unnecessary. Therefore, DHS proposes that any applicant, petitioner, sponsor, beneficiary, or individual filing or associated with a benefit or other request, including U.S. citizens and without regard to age, must appear for biometrics collection, unless DHS or its designee affirmatively decides to not issue a biometrics appointment notice to the individual, or unless DHS waives or exempts the requirement in the form instructions, a **Federal Register** notice, or as otherwise provided by law or regulation. DHS may waive or exempt the biometrics requirement at its discretion or based on a request for reasonable accommodation. *See* proposed 8 CFR 103.16(a)(1). The Department will make reasonable efforts that are also consistent with the Government's need for biometrics in certain contexts, and will follow all required procedures that are applicable under the Americans with Disabilities Act and the Federal Rehabilitation Act.[27]

However, DHS does not propose to impose an absolute biometrics collection requirement in all instances for all forms filed with the agency.[28] There may be limited circumstances where biometric collection would be unnecessary or duplicative. A particular application or petition (*e.g.,* an inadmissibility waiver request) may not require its own biometric collection because a different application or petition filed in conjunction with the first application or petition already carries a biometrics collection requirement. Under limited circumstances, DHS proposes to retain discretion to exempt certain forms from the biometric collection requirement because it would result in waste or redundancy to both the agency and the public. For example, when an applicant files an Application to Register Permanent Residence or Adjust Status (Form I–485) biometrics are collected from all applicants. However, if the same applicant also files an Application for Waiver of Grounds of Inadmissibility (Form I–601) due to an inadmissibility concern, that form is associated with the Form I–485. There is no need to independently require biometrics collection in conjunction with Form I–601 because DHS is already collecting biometrics in association with Form I–485. Form I–601 would never be filed without an associated form carrying a biometrics collection requirement (*i.e.,* an immigrant visa application, adjustment of status application, certain non-immigrant visa applications, etc.).

In this type of situation, DHS recognizes that there is no value in imposing a biometric collection for forms that are only filed in conjunction with other forms that already require biometrics collection. Consequently, the DHS forms that are being revised and posted in accordance with the PRA for public comments do not include an absolute requirement for biometrics collection. Instead, the revised form instructions put the applicant on notice that every individual who is an applicant, petitioner, derivative, beneficiary, or sponsor of an immigration benefit request or other request submitted to DHS is required to provide biometrics unless DHS waives or exempts the requirement and that the applicant will be notified of the time and place for the appointment. For those forms for which DHS proposes to mandate biometrics in all cases as proposed under this rule, DHS included the requirement for payment of the biometric services fee with the underlying application or petition filing (unless there is an approved fee waiver). See the PRA section of this rule for information on how to comment on the proposed form instructions for implementing the changes proposed in this rule.

1. Identity Management

DHS is proposing to use biometrics for identity management in the immigration lifecycle for several reasons. Most importantly, DHS is transitioning to a person-centric model for organizing and managing its records. DHS plans to begin using biometrics to establish and manage unique identities as it organizes and verifies immigration records in a highly-reliable, on-going, and continuous manner. Currently, DHS relies on declared biographic data for identity management in the immigration lifecycle. Once an identity has been enrolled in IDENT and established within DHS, future activities and encounters may be added to the original enrollment and will be confirmed through identity verification at various points in the immigration lifecycle. Identity verification may be done outside of the United States (by DHS or DOS) or within the United States (at ASCs, USCIS offices, or other DHS facilities). Identity verification also allows the reuse of enrolled identity data (both biometric and biographic) that has already been vetted. Such reuse reduces the amount of erroneous or conflicting data that can be entered into systems, and reduces the cost and complexity of repetitive collection and validation. Reusable fingerprints allow for more immediate and recurrent background checks, and reusable photographs allow for quick production of documents with high consistency and integrity.

DHS recognizes that biometric reuse is acceptable, when there is identity verification, but in the case of children biometric reuse could be impacted by the rapidly changing physical attributes of children. DHS has a duty to the public to ensure that immigration benefits are granted only to those who are eligible for them, to ensure that no benefit is provided to the wrong individual, and to verify that individuals entering the country are who they say they are. *See generally* INA section 103, 8 U.S.C. 1103 (charging DHS with the administration and enforcement of the INA). A biometrically-based, person-centric records model would ensure that an individual's records are complete and pertain only to that individual. Under this model, DHS would be able to easily locate, maintain, and update the correct individual's information such as: Current address (physical and mailing), immigration status, or to associate previously submitted identity documentation, such as birth certificates and marriage licenses, in future adjudications thereby reducing duplicative biographic or evidentiary collections.

Biometrics are unique to each individual and provide USCIS with tools for identity management while improving the services provided to those who submit immigration benefit requests. With regard to age, DHS proposes to reserve the authority to collect biometrics at any age to ensure the immigration records created for children can more assuredly be related to their subsequent adult records despite changes to their biographic information. USCIS notes that with respect to these biometrics, as with any other agency decision on a petition or application, if a decision will be adverse to an applicant or petitioner and is based on derogatory information the agency considered, he/she will be advised of that fact and offered an opportunity to rebut the information. 8 CFR 103.2(b)(16)(i).

Another key driver for eliminating the age restrictions for biometric collection is the number of Unaccompanied Alien Children (UAC) and Accompanied

[27] As explained more fully later in this preamble, DHS is not proposing that the requirement that any applicant, petitioner, sponsor, beneficiary, or individual filing or associated with a benefit or other request, including U.S. citizens and without regard to age, must appear for biometrics collection will apply to DNA.

[28] Only certain family-based benefit requests would be impacted by the proposed provision to allow, request, or require DNA evidence to establish a claimed genetic relationship.

Alien Children (AAC) being intercepted at the border. The DHS proposal to remove age restrictions will help combat human trafficking, specifically human trafficking of children, including the trafficking and exploitation of children forced to accompany adults traveling to the United States with the goal of avoiding detention and exploit immigration laws.

Beginning in July 2019 DHS has been conducting a small-scale pilot program where, with consent from individuals presenting themselves as family units, officers use Rapid DNA testing technologies as a precise and focused investigative tool to identify suspected fraudulent families and vulnerable children who may be potentially exploited. Between July 1, 2019 and November 7, 2019, DHS encountered 1747 self-identified family units with indicators of fraud who were referred for additional screening. Of this number, DHS identified 432 incidents of fraudulent family claims (over 2020 percent).

Collecting biometrics on children that DHS encounters would permit definitive identification of them and may show that they have been reported missing. Generally, DHS plans to use the biometric information collected from children for identity management in the immigration lifecycle only, but will retain the authority for other uses in its discretion, such as background checks and for law enforcement purposes. DHS does not intend to routinely submit all UAC or AAC biometrics to the FBI for criminal history background checks; rather, the biometrics collected from the majority of these children would be stored in IDENT [29] to help DHS with future encounters. USCIS is authorized to share relevant information with law enforcement or other DHS components, including ''biometrics'' for identity verification and, consequently, it may share DNA test results, which include a partial DNA profile, with other agencies as it does other record information pursuant to existing law.

DHS will have the express authority to send UAC or AAC biometrics to the FBI for criminal history background checks, but depending on the DHS component encountering the individual, may only send biometrics to the FBI if DHS had some articulable derogatory information on the subject and needed to confirm criminal history or an association with other illegal or terrorist organizations in the interests of public safety and national security. Biometrics collected for the identification of genetic relationships at the border would be maintained in law enforcement systems for future identify verification, subject to the restrictions found in proposed 8 CFR 103.16.

2. Enhanced and Continuous Vetting

Individuals with certain types of criminal convictions, or those who present a threat to national security or public safety are not eligible for certain benefits. Benefit eligibility determinations in these cases often focus on the criminal, national security, and immigration history of the individual. The immigration history review considers the individual's current immigration status, past immigration filings, and whether previous benefits were granted or denied. DHS conducts national security and criminal history background checks on individuals applying for or seeking an immigration benefit because U.S. immigration laws preclude DHS from granting many immigration and naturalization benefits to individuals with certain criminal or administrative violations, or with certain disqualifying characteristics (*e.g.,* certain communicable diseases or association with terrorist organizations), while also providing DHS discretion in granting an immigration benefit in many instances. *See, e.g.,* INA section 208(b)(2)(A), 8 U.S.C. 1158(b)(2)(A) (mandatory bars to asylum); INA section 245(a)(2), 8 U.S.C. 1255(a)(2) (admissibility requirements for adjustment of status applicants and agency discretion); and INA section 316(a)(3), 8 U.S.C. 1427(a)(3) (good moral character requirement for naturalization).

Biometrics are collected and or referenced throughout the immigration law administration and enforcement lifecycle, from first application, encounter, or apprehension to naturalization or removal. In the enforcement context, biometric collection when an individual is first encountered can help officers detect fraudulent identities and relationships between adults and children. This helps identify child smuggling, trafficking, and exploitation. It can also help identify when an adult who has been previously encountered is posing as child. Collection of biometrics during removal proceedings is primarily to identify that the individual is the correct individual being removed.

As part of the adjudication process, DHS needs a strong system for the collection and use of biometrics from foreign nationals who enter or wish to enter the United States in order to, as directed by the President, ''identify individuals who seek to enter the United States on a fraudulent basis, who support terrorism, violent extremism, acts of violence toward any group or class of people within the United States, or who present a risk of causing harm subsequent to their entry.'' *See* E.O. 13780 section 5, 82 FR 13209, 13215 (Mar. 9, 2017). The changes proposed in this rule would assist DHS in developing appropriate means for ensuring the proper collection of all information necessary for a rigorous evaluation of any grounds of inadmissibility or grounds for the denial of an immigration benefit. *Id.*

In addition, as part of the effort to implement Uniform Screening and Vetting Standards for All Immigration Programs, DHS plans to implement a program of continuous immigration vetting. Under continuous vetting, DHS may require aliens to be subjected to continued and subsequent evaluation of eligibility for their immigration benefits to ensure they continue to present no risk of causing harm subsequent to their entry. This rule proposes that any individual alien who is present in the United States following an approved immigration benefit may be required to submit biometrics unless and until they are granted U.S. citizenship.[30] The rule further proposes that a lawful permanent resident or U.S. citizen may be required to submit biometrics if he or she filed an application, petition, or request in the past, and it was either reopened or the previous approval is relevant to an application, petition, or benefit request currently pending with USCIS. Proposed 8 CFR 103.16(c)(2).

DHS welcomes public comment on the increased use of biometrics beyond criminal history background checks, to include identity management in the immigration lifecycle and enhanced vetting or other purposes, as well as any relevant data, information, or proposals.

B. Verify Identity, Familial Relationships, and Preclude Imposters

1. Use of DNA Evidence [31]

U.S. citizens and lawful permanent residents petitioning for a biological

[29] IDENT is the DHS enterprise repository for biometrics and provides biometric identification management services to DHS Components with technology for matching, storing, and sharing biometric data. DHS Office of Biometric Identity Management (OBIM) is the lead designated provider of biometric identity services for DHS, and maintains the largest biometric repository in the U.S. government. See *www.dhs.gov/obim* (last visited June 15, 2020).

[30] *See* DHS Privacy Impact Assessment for Continuous Immigration Vetting (Feb. 14, 2019), *available at https://www.dhs.gov/privacy.*

[31] T The DNA Fingerprint Act authorizes the Attorney General to collect DNA from individuals arrested, facing charges, convicted, or from non-U.S. persons who are detained under the authority

family member, or individuals seeking to include a biological family member as a dependent or derivative (accompanying or follow-to-join) in an application for an immigration benefit, must demonstrate the existence of the claimed genetic relationship, and current regulations generally require documentary evidence such as marriage and birth certificates as primary evidence of such a claimed relationship.[32] In the absence of primary evidence, acceptable secondary evidence includes medical records, school records, religious documents, and affidavits. *See, e.g.,* 8 CFR 204.2(d)(2). However, documentary evidence may be unreliable or unavailable, and individuals need additional means to establish claimed genetic relationships to avoid denial of a petition, application, or other benefit request. USCIS currently accepts DNA test results from laboratories accredited by the AABB (formerly the American Association of Blood Banks) as proof of the existence of a claimed genetic relationship where other evidence is unavailable.[33]

DHS proposes to revise its regulations to provide that DNA genetic testing can be required, requested, or accepted as probative evidence, either primary or secondary, to establish a claimed genetic relationship where required.[34] *See* proposed 8 CFR 103.16(e). DNA is the only biometric that can verify a claimed genetic relationship. Current regulations allow USCIS to require Blood Group Antigen or Human Leukocyte Antigen (HLA) tests to prove parentage only after other forms of evidence were inconclusive. *See* 8 CFR 204.2(d)(2)(vi). But those tests are no longer widely available and are not as conclusive as a DNA test because, while blood-typing can be used as proof that an individual is not a child's biological parent, it cannot be used to *confirm* the individual *is* the child's parent.[35] According to the AABB, DNA testing provides the most reliable scientific test available to resolve a genetic relationship and replaced older serological testing such as blood typing and serological HLA typing.[36] Blood tests are also more invasive than DNA tests, DNA collection generally does not require blood to be drawn from any individuals tested, and the most common method is a noninvasive buccal (mouth) swab.

DHS proposes to define the term ''DNA'' in regulation as ''deoxyribonucleic acid, which carries the genetic instructions used in the growth, development, functioning, and reproduction of all known living organisms.'' Proposed 8 CFR 1.2. When DHS uses the term ''DNA'' in this rule it is a reference to the raw genetic material, typically saliva, collected via buccal swab from an individual in order to facilitate DNA testing to establish genetic relationships. DHS will only require, request, or accept DNA testing to verify a claimed genetic relationship. DHS will not store or share any raw DNA or biological samples, other than to the extent necessary to facilitate the DNA testing (by using an on-site automated machine or transmitting to the AABB-accredited laboratory conducting the testing), unless DHS is required to share by law. Proposed 8 CFR 103.16(e).

For DHS, there are two different means of actually testing the raw DNA to verify a claimed genetic relationship. After DNA samples are collected, an individual's raw DNA material would then be either tested locally by an automated machine (*i.e.,* Rapid DNA) [37] or mailed to a traditional AABB-accredited laboratory for testing. This testing allows for the comparison of partial DNA profiles to determine the statistical probability that the individuals tested have the claimed genetic relationship. In either case, a partial DNA profile would be produced as a result of the test. When DHS uses the term ''partial DNA profile'' it is a reference to a visual or printed partial representation of a small portion of an individual's particular DNA characteristics. An individual's partial DNA profile is a biometric identifier as unique as their fingerprints. Significantly, when an individual's DNA is tested in order to verify a claimed genetic relationship, the test does not reveal medical or hereditary conditions. The particular genetic markers profiled for relationship testing are markers used to verify the claimed genetic relationship. More specifically, the partial DNA profile created for relationship testing is actually a very small portion of an individual's full DNA characteristics. At present, DHS relationship tests profile between 16 and 24 genetic markers out of the nearly two million genetic markers typically contained in human DNA. In contrast with raw DNA or biological samples, which will not be shared or stored under any circumstances unless required to share by law, DHS may store or share DNA test results, which include a partial DNA profile, with other law enforcement agencies to the extent permitted by and necessary to enforce and administer the immigration and naturalization laws. Proposed 8 CFR 103.16(e).

The testing entity conducts the DNA test, either automatically by machine or in a traditional laboratory environment, and generates a DNA test result. DHS uses the term ''DNA test result'' as a reference to the ultimate scientific conclusion made by the AABB-accredited testing entity as to the claimed genetic relationship. The DNA test result is represented by a probability or percentage of the likelihood of the existence of the claimed genetic relationship as a result of comparing at least two partial DNA profiles. DHS has established by policy what minimum threshold probability for the relationship that it would accept in verifying a claimed genetic relationship, depending on the particular relationship claimed (*i.e.,* parent, full-sibling, half-sibling, etc.).[38] DNA test results which

of the United States. 34 U.S.C. 40702. The implementing DOJ regulations require any agency of the United States that arrests or detains individuals or supervises individuals facing charges to collect DNA samples from individuals who are arrested, facing charges, or convicted, and from non-United States persons who are detained under the authority of the United States. 28 CFR 28.12(b). DHS notes that the DNA collection requirements of 34 U.S.C. 40702 and 28 CFR part 28, subpart B are for law enforcement identification purposes, whereas this rule proposes to establish the authority for the use of DNA to verify claimed genetic relationships in the adjudication of immigration benefit requests.

[32] *See, e.g.,* 8 CFR 103.2(b)(2)(i); 204.2(c)(2)(ii), (d)(2)(i)–(iii), (d)(5)(ii), (f)(2)(i)–(iii), (g)(2)(i)–(iii); 207.7(e); 208.21(f), 245.11(b), 245.15(l)(2), 254.24(h)(1)(iii).

[33] Although most of the collection of DNA samples is performed by the AABB-accredited laboratory conducting the testing, for individuals residing overseas, DHS or the Department of State facilitate collection and transmission of the DNA sample to the laboratory to ensure regularity in the collection and proper chain of custody of the DNA sample.

[34] This includes requiring, requesting, or accepting DNA testing to establish a genetic relationship with a birth parent in the context of a petition to classify a beneficiary as an orphan under INA 101(b)(1)(F) or as a Convention adoptee under INA 101(b)(1)(G).

[35] Gunther Geserick & Ingo Wirth, *Genetic Kinship Investigation from Blood Groups to DNA Markers,* 39 Transfus Med Hemother 163–75 (2012), *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3375130/.*

[36] AABB, Standards for Relationship Testing Laboratories, Appendix 10—Immigration Testing (14th ed. 2019).

[37] The Department of Homeland Security (DHS) Science and Technology Directorate (S&T) has been working in conjunction with DoD and DOJ to fund the development of cost-effective Rapid DNA equipment to allow non-technical users with appropriate training to analyze the DNA of individuals in a field setting and receive reliable results in about one hour.

[38] *See DNA Evidence of Sibling Relationships,* PM 602.0106.1, issued April 17, 2018 (establishing the threshold probabilities for full and half sibling relationships); *Genetic Relationship Testing; Suggesting DNA Tests Revisions to the Adjudicators Field Manual (AFM) Chapter 21 (AFM Update AD07–25),* signed by Michael Aytes, Associate

Continued

include a partial DNA profile, where they indicate a sufficient probability of the existence of the relationship tested, are now accepted as a probative evidence to establish parent and sibling genetic relationships. *See Matter of Ruzku,* 26 I&N Dec. 731 (BIA 2016).

Consistent with current practice, the DNA test results obtained by DHS, which contain the ultimate probability of relationship and a partial DNA profile, would be retained in the individual's Alien file (A-file) and made part of the record. USCIS may use and store DNA test results with other law enforcement agencies to the extent permitted by and necessary to administer and enforce the immigration and naturalization laws. Proposed 8 CFR 103.16(e).

Currently, DHS allows individuals in certain situations to voluntarily submit DNA test results from AABB-accredited laboratories [39] where other documentary evidence is inconclusive or unavailable.[40] This rule proposes to clarify that DHS may require, request, or accept DNA testing from relevant parties to a benefit request, where probative, as evidence of a claimed genetic relationship. It also proposes to clarify that DHS may consider DNA test results in adjudicating certain immigration benefits as a means of verifying a claimed genetic relationship. And the rule proposes to clarify DHS's authority to collect raw DNA from relevant parties and either perform a DNA relationship test with an AABB-accredited machine in-house or send the raw DNA to a traditional AABB-accredited lab for DNA testing. DHS requests comments on all aspects of this proposal, including the collection, use, and retention of DNA evidence.

2. Special Treatment of DNA Evidence

While DNA is fundamentally a biometric identifier, DHS recognizes the increased sensitivity surrounding the use of genetic information. DHS believes the other biometric modalities that will be collected are sufficient for most of the goals of this rule. *See* proposed 8 CFR 1.2 (definition of biometrics); proposed 8 CFR 103.16(a) (biometric collection). Therefore, DHS proposes to treat raw DNA as a distinctive biometric modality from the other biometric modalities it is authorized to collect. *See* proposed 8 CFR 1.2 (definition of DNA); proposed 8 CFR 103.16(e). For purposes of DNA collected under this rule, DHS proposes that it will not handle or share any raw DNA for any reason beyond the original purpose of submission (*i.e.,* to establish or verify the claimed genetic relationship), unless DHS is required to share by law. DHS would only store, use, and share DNA test results, which include a partial DNA profile derived from the raw DNA, as provided by the testing entity or as produced by DHS, for adjudication purposes and would retain the results to perform any other functions necessary for administering and enforcing immigration and naturalization laws, to the extent permitted by law. DHS would also only use the raw DNA and DNA test results, which include a partial DNA profile, for the original purpose of submission (*i.e.,* to establish or verify the claimed genetic relationship) or as authorized by the immigration and naturalization laws. DHS components are authorized to share relevant information with law enforcement or other DHS components and, consequently, it may share DNA test results, which include a partial DNA profile, with other agencies when there are national security, public safety, fraud, or other investigative needs, but always pursuant to existing law. Proposed 8 CFR 103.16(e). DHS especially welcomes comments on these proposed provisions.

3. Identity Management

DHS must ensure that immigration benefits are not fraudulently obtained and are granted to the rightful person, and that individuals entering the country are who they say they are. As part of the benefit adjudications process, USCIS must verify the identity of an individual applying for or seeking any benefit to protect against fraud and imposters. In all circumstances, DHS must identify persons using aliases after prior immigration encounters and assist in efforts to prevent human smuggling and trafficking. Currently DHS relies mainly on documentary, paper evidence of identity in administering its programs. Unfortunately, there is no guaranteed way to prevent the manufacturing, counterfeiting, alteration, sale, and/or use of identity documents or other fraudulent documents to circumvent immigration laws or for identity theft. On the other hand, biometric identifiers are not transferrable and may provide confirmation of an individual's identity. Therefore, DHS believes that the best approach to address the vulnerabilities in the immigration process, preclude imposters, and deter fraud would be to rely more on biometrics for identity management in the immigration lifecycle.

C. Flexibility in Biometrics Requirements

1. Definition of Biometrics

In recent years, government agencies have grouped together identifying features and actions, such as fingerprints, photographs, and signatures under the broad term, biometrics.[41] The terms, biometric ''information,'' ''identifiers,'' or ''data'' are used to refer to all of these features, including additional features such as iris image, palm print, DNA, and voice print.[42] For example, authorities such as 18 U.S.C. 1028(d)(7)(B) and 17 CFR 162.30(b)(8) refer to identifying information including ''unique biometric data, such as fingerprint, voice print or iris image, or other unique physical representation.'' The term ''biometrics'' is also used in other laws and regulations. *See, e.g.,* 18 U.S.C. 1028(d)(7)(B), 17 CFR 162.30(b)(8), 21 CFR 11.3(b)(3), and 27 CFR 73.3. As a result, DHS has adopted the practice of referring to fingerprints and photographs collectively as ''biometrics,'' ''biometric information,'' or ''biometric services.''

For example, the instructions for Application to Replace Permanent Resident Card (Form I–90) refer to a ''biometric services appointment,'' while the, Application for Asylum and for Withholding of Removal (Form I–589), refers to ''biometrics, including fingerprints and photographs.'' Many forms also include a signature as a type of biometric identifier. *See* instructions

Director, Domestic Operations, issued March 19, 2008 (establishing voluntary or suggested nature of DNA testing to verify claimed relationships and citing AABB testing standards); DOS, Foreign Affairs Manual 9 FAM 601.11–1(A)(a)(2) (CT: VISA–936 Sept. 10, 2019) (stating that DNA ''test results reporting a 99.5 percent or greater degree of certainty'' may be accepted by consular officers as ''sufficient to support a biological relationship between a parent and child in visa cases''); *see also Matter of Ruzku,* 26 I&N Dec. 731 (BIA 2016) (holding direct sibling-to-sibling DNA test results reflecting a 99.5 percent degree of certainty or higher that a full sibling biological relationship exists should be accepted and considered to be probative evidence of the relationship).

[39] *See* AABB home page at *http://www.aabb.org/Pages/default.aspx* (last visited Apr. 7, 2020).

[40] *See* Genetic Relationship Testing; Suggesting DNA Tests Revisions to the Adjudicators Field Manual (AFM) Chapter 21 (AFM Update AD07–25), signed by Michael Aytes, Associate Director, Domestic Operations, issued March 19, 2008 (establishing voluntary or suggested nature of DNA testing to verify claimed relationships and citing AABB testing standards).

[41] *See* Federal Bureau of Investigation (FBI), Criminal Justice Information Services Division (CJIS), Fingerprints and Other Biometrics, Next Generation Identification (NGI), *https://www.fbi.gov/services/cjis/fingerprints-and-other-biometrics/ngi* (last visited Apr. 7, 2020).

[42] *See* FBI, CJIS, Fingerprints and Other Biometrics, *https://www.fbi.gov/services/cjis/fingerprints-and-other-biometrics* (last visited Apr. 7, 2020).

for Form I–485 which references providing ''fingerprints, photograph, and/or signature.'' Most laws on the subject do not specify individual biometric modalities such as iris image, palm print, voice print, DNA, and/or any other biometric modalities that may be collected from an individual in the future. *See, e.g.,* 8 U.S.C. 1732(b)(1) (requiring the issuance of travel documents that use biometric identifiers recognized by international standards organizations). By proposing to update the terminology in the regulations to uniformly use the term ''biometrics'' DHS seeks to utilize a single, inclusive term comprehensively throughout regulations and form instructions.

DHS proposes to define the term, ''biometrics,'' to clarify and expand its authority to collect more than just fingerprints in connection while administering and enforcing the immigration and naturalization benefits or other services. To do this, DHS proposes to expressly define ''biometrics'' to include a wider range of modalities than just fingerprints and photographs. DHS proposes to define the term ''biometrics'' to mean ''the measurable biological (anatomical and physiological) or behavioral characteristics used for identification of an individual.'' Proposed 8 CFR 1.2. Further, DHS proposes the following biometrics as authorized biometric modalities that may be requested or required from individuals in connection the administration and enforcement of immigration and naturalization laws:

- Fingerprint;
- palm print;
- photograph (including facial images specifically for facial recognition, as well as photographs of physical or anatomical features such as scars, skin marks, and tattoos);
- signature;
- voice print;
- iris image; and
- DNA (DNA test results, which include a partial DNA profile attesting to genetic relationship).

The term ''biometric modality'' is used to describe a type or class of biometric system. The collection of a biometric implies its use in a system used to identify an individual; hence the use of the term ''modality.'' ''Modality'' is often interchanged, or used in conjunction, with the term ''biometric'' because the collection of a biometric implies automation. For example, an individual's face is a biometric, but DHS intends to collect a photograph or image of an individual's face, making a facial photograph the modality. Similarly, an individual's iris is a biometric, but DHS intends to collect a photograph or image of an individual's iris, making an iris image the ''modality.'' An individual's voice is a ''biometric,'' but DHS intends to collect an audible recording of an individual's voice, making a voice print the ''modality.'' Finally, an individual's raw DNA is a ''biometric,'' but upon testing, the partial DNA profile becomes the ''modality'' and the DNA test result is the memorialization or evidence of the existence of the claimed genetic relationship. DHS will collect a photograph, fingerprint, audible recording, DNA, etc., for use in facial recognition, fingerprint recognition, iris image recognition, voice recognition, DNA testing, etc.

The proposed definition of biometrics would authorize the collection of specific biometric modalities and the use of biometrics for: Identity enrollment, verification, and management in the immigration lifecycle; national security and criminal history background checks; determinations of eligibility for immigration and naturalization benefits; and the production of secure identity documents. *See* proposed 8 CFR 1.2. DNA, while a biometric, would only be collected by USCIS in limited circumstances to verify the existence of a claimed genetic relationship where relevant to the administration and enforcement of immigration and naturalization laws. *See* proposed 8 CFR 1.2 and 8 CFR 103.16(e).

2. Additional Modalities

In addition to the current use of fingerprints [43] as a biometric modality, DHS proposes to begin requesting biometric collection (now and through emerging technologies) with the following additional biometric modalities: Iris, palm, face, voice, and DNA.[44] The technology for collecting and using biometrics has undergone constant and rapid change.[45] DHS needs to keep up with technological developments that will be used by the FBI and agencies with which we will be sharing and comparing biometrics in this area and adjust collection and retention practices for both convenience and security, and to ensure the maximum level of service for all stakeholders. USCIS also has internal procedural safeguards to ensure technology used to collect, assess, and store the differing modalities is accurate, reliable, and valid. Additionally, as with any other USCIS petition or application, if a decision will be adverse to an applicant or petitioner and is based on derogatory information the agency considered, he/she shall be advised of that fact and offered an opportunity to rebut the information. 8 CFR 103.2(b)(16)(i). Therefore, DHS proposes that, as of the effective date of this rule, it would begin collecting new biometrics modalities as follows.

a. Iris Image

DHS proposes to collect and use iris images as a biometric modality. Iris as a biometric modality is a valuable identifier especially for individuals whose fingerprints are unclassifiable or unattainable through loss of fingers, hand amputation, normal wear in the ridges and patterns over time (*i.e.,* due to age, types of employment, etc.), or deliberate eradication/distortion of fingerprint ridges to avoid identification and detection. Iris scanning biometric technology measures the unique patterns in the colored circle of the eye to verify and authenticate identity. Biometric iris recognition is fast, accurate, and offers a form of identification verification that requires no physical contact to collect an iris image. DHS intends to collect iris images as part of the ASC and mobile biometric enrollment process to enroll and verify identity against IDENT, as well as to assist in the adjudication process by verifying against previous immigration encounters.

b. Palm Print

DHS proposes to add palm prints as a biometrics modality in this rule. This proposal is consistent with what the FBI has announced as part of its Next Generation Identification (NGI) initiative for the development of the requirements for and deployment of an integrated National Palm Print Service.[46] Law enforcement agencies indicate that at least 30 percent of the prints lifted from crime scenes—from knife hilts, gun grips, steering wheels,

[43] Currently USCIS does not routinely use photographs or signatures for identity verification purposes other than for document production and visual verification of the photo.

[44] DNA, while included in the list of additional modalities, is a distinct modality and is discussed at length separately above.

[45] FBI, Science and Technology Branch, *https://www.fbi.gov/about/leadership-and-structure/science-and-technology-branch* (last visited Apr. 7, 2020).

[46] *See* Executive Office of the President, National Science and Technology Council, Committee on Technology, Committee on Homeland and National Security, Subcommittee on Biometrics, Palm Print Recognition, *https://www.fbi.gov/file-repository/about-us-cjis-fingerprints_biometrics-biometric-center-of-excellences-palm-print-recognition.pdf/view*. For a basic explanation of NGI, see also *https://www.fbi.gov/services/cjis/fingerprints-and-other-biometrics/ngi.https://www.fbi.gov/file-repository/about-us-cjis-fingerprints_biometrics-biometric-center-of-excellences-palm-print-recognition.pdf/view*.

and window panes—are of palms, not fingers. For this reason, capturing and scanning latent palm prints is becoming an area of increasing interest among the law enforcement community. The National Palm Print Service is being developed to improve law enforcement's ability to exchange a more complete set of biometric information, make additional identifications, and improve the overall accuracy of identification through criminal history records. Collecting palm prints would permit DHS to align our background checks capability with the total available records at the FBI Criminal Justice Information Services (CJIS), keep current with the changing records of law enforcement, and make sure immigration benefit background checks are as accurate and complete as possible. Therefore, DHS proposes to reserve the authority to incorporate palm prints into its biometrics collection.

c. Facial Image

DHS proposes to use facial photographs to reduce the burden of visiting an ASC for individuals previously biometrically enrolled by USCIS. For example, 1:1 face biometric verification can be used in determining whether an applicant is who he/she is claiming to be and allowing EAD re-issuance for certain immigration benefits. Facial recognition can also be used to verify an identity if fingerprints are unobtainable subsequent to the initial biometric enrollment at an ASC. Currently, CBP is undergoing a separate rulemaking and concurrently piloting the use of facial recognition at several airports and early results are very favorable, with suggested potential benefits of the program in identifying fraud. CBP has identified three imposters in less than 40 days using facial recognition.[47] DHS would also use facial images and facial recognition technology for fraud, public safety or criminal history background checks, and national security screening and vetting. Facial photographs, as a biometric modality, are already collected by DHS primarily for the purpose of secure document production. DHS has collected facial photographs for some time, such as for identity verification at ports of entry; however, DHS is proposing to increase the authorized use of a previously collected biometric modality, facial photographs, to include a facial recognition system.

d. Voice Print

DHS proposes to collect and use voice prints as a biometric modality. DHS can use voice as a biometric in several ways to improve identity verification in several business processes. First, when immigration benefits are submitted electronically, an individual's voice print can be used to indicate that the individual who submitted the application is the same person who subsequently returns to access or change information.

Second, an individual's voice print can be used for integration into the call center process to accomplish faster, automated identification. Collecting and using an individual's voice print may reduce concerns about the caller's identity. With simpler identification and less effort, individuals will more effectively be able to call for assistance or inquire about the status of a pending immigration benefit request. The current identity verification process is typically more time-consuming than voice; on an average day USCIS receives 50,000 phone calls[48] on the toll-free national call center line and the use of a voice biometric holds the promise of significantly reducing the time to verify a person's identity. Voice biometrics can be passive, where the user can say anything and a match is made from the voice to a voiceprint, or it can be active, where the caller is asked to recite a previously captured passphrase. Either way, the process is a natural, effortless way to identify the caller.

Third, voice verification could be used for identity verification in remote locations where an interview is required to adjudicate a benefit being sought, reducing the need for an applicant to travel to a USCIS Office. Finally, USCIS may also use voice prints, where applicable, to identify indicia of fraud, screen for public safety or criminal history, and vet potential national security issues.

DHS welcomes public comment on the various proposed modalities, reliability of technology, suggestions for alternative modalities, as well as its proposal for future modalities.

3. Improve Regulations To Facilitate Electronic Filing

a. Clarify Terms

To conform with the proposed changes to expand biometric collection as previously discussed, DHS proposes to remove restrictive language elsewhere in regulations. Therefore, DHS proposes to remove individual references to ''fingerprints,'' ''photographs,'' and/or ''signatures'' where appropriate, and replace them with the more appropriate term ''biometrics.'' DHS proposes the following changes to replace references to ''fingerprint'' with ''biometrics'' or to remove ''biometrics'' references on account of proposed 8 CFR 103.16:

- Deleting 8 CFR 204.3(c)(3), which requires biometric submissions from prospective adoptive parent(s), or adult members of the adoptive parents' household, and outlining potential waivers;
- Removing the fingerprint requirement at 8 CFR 204.4(d)(1), and references to fingerprint and completed background checks as elements specifically mentioned in 8 CFR 204.4(g)(2)(ii) regarding the determination that a sponsor is of good moral character;
- Deleting biometric submission and fee requirements in 8 CFR 204.5(p)(4);
- Deleting and reserving 8 CFR 204.310(b), which outlines the biometrics, waiver, and alternative evidentiary requirements for the Application for Determination of Suitability to Adopt a Child from a Convention Country (Form I–800A);
- Deleting the reference to biometric information and 8 CFR 1.2 in 8 CFR 207.1(a);
- Replacing ''fingerprint processing'' in the second sentence of 8 CFR 208.7(a)(2) with ''an interview or biometric collection'';
- Removing the biometrics submission requirement from 8 CFR 209.1(b);
- Revising 8 CFR 208.10, on account of proposed 8 CFR 103.2 and 103.16;
- Removing and reserving 8 CFR 210.1(b); and
- Replacing ''must be fingerprinted for the purpose of issuance of Form I–688A'' with ''submit biometrics'', and replacing ''shall'' with ''will'' in proposed 8 CFR 210.2(c)(2)(iv), and ''presentation or completion of Form FD–258 (Fingerprint Card)'' with ''biometric collection'' in proposed 8 CFR 210.2(c)(3)(iv).

b. Remove Age Restrictions

DHS originally codified several of its regulatory biometric submission requirements with restrictions on the

[47] *See* Customs and Border Protection, Dulles CBP's New Biometric Verification Technology Catches Third Impostor in 40 Days (Oct. 2, 2018), *https://www.cbp.gov/newsroom/national-media-release/dulles-cbp-s-new-biometric-verification-technology-catches-third*. More generally, for the use of facial biometrics for international travelers, see Biometrics at *https://www.cbp.gov/travel/biometrics* (last visited Apr. 7, 2020).

[48] *See* DHS, USCIS, A Day in the Life of USCIS, *https://www.uscis.gov/about-us-0* (last visited Apr. 7, 2020).

ages of individuals from whom biometrics could be collected. The codified ages were based on the policies and practices at the time such as not running criminal history background checks on children [49] or technological limitations on collecting fingerprints from elderly persons.[50] As stated earlier, DHS proposes that biometrics uses expand beyond criminal history background checks to include identity management and verification in the immigration lifecycle. Identity verification and management in the immigration lifecycle via biometrics is even more important in the case of children because their physical appearances can change relatively rapidly and children often lack identity documents.

Consistent with this determination, DHS is removing the age restrictions for biometric collection writ large, including those for NTA issuance. *See* 8 CFR 236.5. DHS has authority, under the immigration laws,[51] to issue Notice to Appear (Form I–862) and Notice of Referral to Immigration Judge (Form I–863), which are thereafter filed with the Immigration Court to commence removal proceedings under the INA. In removing the age restrictions for biometric collection relating to NTA issuance, DHS is ensuring that every individual's identity is established or verified—regardless of age—when they are placed in removal proceedings under the INA. Just as with the granting of immigration benefits, biographical identifiers are of limited use when verifying identity because individuals share common names and an individual may misrepresent his or her identity when facing immigration enforcement action. Furthermore, with respect to children under the age of 14 issued who are issued NTAs, the collection of biometric information to determine identity will significantly assist DHS in its mission to combat human trafficking, child sex trafficking, forced labor exploitation, and alien smuggling, while simultaneously promoting national security, public safety, and the integrity of the immigration system.

DHS is authorized to share relevant information internally and with other law enforcement agencies, including ''biometrics'' and, consequently, is proposing that it may share DNA test results, which include a partial DNA profile, with other agencies where there are national security, public safety, fraud, or other investigative needs, but always consistent with any legal limitations on such information sharing. For those reasons, the removal of age restrictions may lead to more frequent biometric collections compared to adults. Therefore, because the proposed requirements in this rule, requiring appearance for biometric collection or interview would apply to any individual, without age limitation, DHS proposes to remove all age limitations or restrictions on biometrics collection. However, DHS also proposes that the biometric collection may be waived at DHS's discretion. *See* proposed 8 CFR 103.16.

Under the authority granted by the proposed rule, individual DHS components will be able to establish an age threshold for biometric collection specific to that component's operational needs. Immigration officers may collect biometrics, pursuant to the authority granted in 8 U.S.C. 1357(b) from individuals under the age of 14 categorically or on a case-by-case basis, depending on the circumstances. DHS interprets 8 U.S.C. 1357(f)(1) as requiring fingerprinting and photographing of aliens 14 years or older in removal proceedings, but DHS interprets that authority as not prohibiting the collection of biometrics from aliens younger than 14 as authorized by other laws. Removing the age restrictions associated with biometric collections from the regulations will permit DHS components maximum flexibility in their day-to-day operations.

DHS reviewed statutes containing requirements for individuals to submit biometrics to DHS at a certain age and determined those statutes do not restrict or limit the collection of biometrics to these ages. First, INA section 262(b), 8 U.S.C. 1302, states, ''Whenever any alien attains his fourteenth birthday in the United States he shall, within thirty days thereafter, apply in person for registration and to be fingerprinted.'' Second, INA section 264(a), 8 U.S.C. 1304, provides that the Secretary is authorized ''to prepare forms for the registration and fingerprinting of aliens'' aged 14 and older in the United States, as required by INA section 262. DHS interprets section 264(a) as requiring that biometrics be submitted by lawful permanent residents aged 14 and older, but not as imposing a lower age limit prohibiting DHS from requiring anyone, including lawful permanent residents or individuals seeking immigration benefits who are under the age of 14, from submitting biometrics as authorized by other laws.

c. Remove Redundant Provisions

DHS proposes in this rule to have one regulatory provision that governs the requirement to submit biometrics for all immigration benefit requests. Proposed 8 CFR 103.16. This new provision will also include the requirements for rescheduling and the acceptable reasons for failure to submit biometrics unless waived. *Id.* In addition, DHS proposes to consolidate the multiple sections of 8 CFR providing what USCIS can or will do with an immigration benefit request when required biometrics are not submitted. For example, 8 CFR 240.68(b) currently provides that failure to comply with fingerprint processing requirements without reasonable excuse may result in dismissal of the asylum application or waiver of the right to adjudication by an asylum officer. Because proposed 8 CFR 103.16 will apply to all immigration benefits adjudicated by USCIS, there is no need for a separate provision for what happens in the context of an asylum application submitted pursuant to 8 CFR 240.68. Therefore, DHS is proposing to either revise separate provisions regarding failure to submit biometrics to cross-reference 8 CFR 103.16 or remove them entirely. *See* proposed 8 CFR 103.2(b)(9), 103.16(b), 208.10, 240.68, 240.70(d)(4), and 245.7.

d. Remove Unnecessary Procedures and Requirements

DHS is proposing changes in this rule consistent with continued efforts to provide flexibility for applicants, petitioners, requestors and associated individuals to submit biometrics, file benefit requests, and provide supporting documentation, as well as for USCIS to receive and process those requests in an electronic environment. In sections of the regulations governing biometrics submission requirements, DHS is also proposing to remove and/or replace language that applies solely to paper filings and benefit requests with language that is applicable in both a paper and electronic environment. For example, references to position titles, form numbers, mailing, copies, and office jurisdiction are proposed to be removed, replacing ''the director,'' ''service office having jurisdiction over the prior petition,'' ''service legalization

[49] ''Children'' and ''minor'' are used interchangeably here and without regard to any single or specific INA definition.

[50] *See Fingerprint Waiver Policy for All Applicants for Benefits under the Immigration and Naturalization Act and Procedures for Applicants Whose Fingerprint Responses Expire after the Age Range during Which Fingerprints are Required* by Michael Pearson, Executive Associate Commissioner, Office of Field Operations United States Department of Justice, Immigration and Naturalization Service, dated July 20, 2001 (waiving general fingerprinting requirements for certain ages and classifications of individuals otherwise required under regulation).

[51] *See, e.g.,* INA sections 103(a), 239; 8 CFR 2.1, 239.1.

office,'' ''legalization office,'' ''service office designated for this purpose,'' and ''The INS,'' with ''USCIS'' in 8 CFR 204.4(d)(1), 210.2(c)(2)(iv), 210.2(c)(4)(iii) and 210.5(b). In proposed 8 CFR 204.4(d)(1), the internal USCIS process is removed from the regulatory text, by replacing the requirement that petitioners submit documents within one year of the date requested, with a deadline provided in the request. Similarly, in proposed 8 CFR 208.21(d), the specific procedure regarding transmissions to the U.S. Embassy or consulate is deleted from the regulatory text. In other sections, requirements to provide a paper fingerprint card or FD–258 are revised to simply require ''biometrics.'' *See* 8 CFR 210.2(c)(2)(i), 210.2(c)(4), 240.68, 240.70, 245a.2(e)(1)(iii) and 245a.4(b)(5)(i)(C).

To promote electronic filing and lessen dependence on paper, DHS is also proposing to clarify the regulatory requirements for submitting passport-style paper photographs with certain applications or petitions. DHS proposes to eliminate references to the ''ADIT-style'' photograph requirement as outdated and revising any requirement for submitting photographs with immigration benefit requests to reference photographs ''as required by form instruction.'' *See* proposed 8 CFR 103.16 and 333.1. USCIS may continue requiring paper photographs to be submitted with a benefit request, where required by form instruction, to use in its adjudications for either identity verification or document production. However, as proposed, under no circumstances would submission of passport-style photographs relieve an individual from their obligation to appear for biometric collection.

DHS believes that the photograph submission and use requirements in the INA may be met in the future by electronic photographs collected by USCIS as a biometric identifier. INA section 333, 8 U.S.C. 1444, states:

> (a) Three identical photographs of the applicant shall be signed by and furnished by each applicant for naturalization or citizenship. One of such photographs shall be affixed by the Attorney General to the original certificate of naturalization issued to the naturalized citizen and one to the duplicate certificate of naturalization required to be forwarded to the Service.
>
> (b) Three identical photographs of the applicant shall be furnished by each applicant for—
>
> (1) a record of lawful admission for permanent residence to be made under section 249;
>
> (2) a certificate of derivative citizenship;
>
> (3) a certificate of naturalization or of citizenship;
>
> (4) a special certificate of naturalization;
>
> (5) a certificate of naturalization or of citizenship, in lieu of one lost, mutilated, or destroyed;
>
> (6) a new certificate of citizenship in the new name of any naturalized citizen who, subsequent to naturalization, has had his name changed by order of a court of competent jurisdiction or by marriage; and
>
> (7) a declaration of intention.
>
> One such photograph shall be affixed to each such certificate issued by the Attorney General and one shall be affixed to the copy of such certificate retained by the Service.

As DHS interprets INA section 333, its requirements may be met when an individual's photographs are obtained by USCIS, signed, and furnished by the individual when USCIS or its designee collects the individual's biometrics. Therefore, DHS proposes to revise 8 CFR 333.1 to provide that every applicant under section 333 of the Act must provide photographs as prescribed by USCIS in the applicable form instructions.

D. Biometrics Requirement for United States Citizens and Lawful Permanent Residents

While the focus of attention in the immigration context is usually on foreign nationals, aliens, and immigrants, DHS is also proposing to require biometrics from U.S. citizens or lawful permanent residents when they submit a family-based visa petition. *See* proposed 8 CFR 103.16. Current regulations only *require* biometrics from applicants, petitioners, their spouses, and all adult members of the household in the intercountry adoption context involving orphan and Hague Adoption Convention cases. *See* 8 CFR 204.3(c)(3); 8 CFR 204.310(b). For family-based petitioners filing Petition for Alien Relative (Form I–130) or Petition for Alien Fiancé(e) (Form I–129F), the regulations are silent with respect to the routine submission of a petitioner's biometrics in support of a petition. *See generally* 8 CFR 204.1 and 214.2(k). As discussed below, DHS has determined that U.S. citizen and lawful permanent resident petitioners must submit biometrics in order for DHS to comply with existing laws.

1. The Adam Walsh Child Protection and Safety Act of 2006

The INA bars USCIS from approving any family-based immigrant visa petitions and nonimmigrant fiancé(e) visa petitions filed by a U.S. citizen or lawful permanent resident petitioner if he or she has been convicted of any ''specified offense against a minor'' unless the Secretary first determines in his or her sole and unreviewable discretion that the petitioner poses ''no risk'' to the beneficiary and/or derivative beneficiaries. *See* INA sections 204(a)(1)(A)(viii)(I) & (B)(i)(II), 8 U.S.C. 1154(a)(1)(A)(viii)(I) & (B)(i)(II), and 101(a)(15)(K), 8 U.S.C. 1101(a)(15)(K), as amended.

The AWA [52] defines ''specified offense against a minor'' as an offense against a minor that involves any of the following:

- An offense (unless committed by a parent or guardian) involving kidnapping.
- An offense (unless committed by a parent or guardian) involving false imprisonment.
- Solicitation to engage in sexual conduct.
- Use in a sexual performance.
- Solicitation to practice prostitution.
- Video voyeurism as described in 18 U.S.C. 1801.
- Possession, production, or distribution of child pornography.
- Criminal sexual conduct involving a minor, or the use of the internet to facilitate or attempt such conduct.
- Any conduct that by its nature is a sex offense against a minor.

2. The International Marriage Broker Regulation Act

IMBRA [53] provides that petitioners for a K nonimmigrant visa for an alien fiancé(e) (K–1) or alien spouse (K–3) must submit with his or her Form I–129F criminal conviction information for the petitioner on any of the following ''specified crimes'':

- Domestic violence, sexual assault, child abuse and neglect, dating violence, elder abuse, and stalking;
- Homicide, murder, manslaughter, rape, abusive sexual contact, sexual exploitation, incest, torture, trafficking, peonage, holding hostage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, or an attempt to commit any of these crimes; and
- Crimes relating to a controlled substance or alcohol where the petitioner has been convicted on at least three occasions and where such crimes did not arise from a single act.

If a petitioner indicates that he or she has been convicted by a court or by a military tribunal for one of these specified crimes, or if USCIS ascertains through relevant background checks that the petitioner was convicted, the

[52] Adam Walsh Child Protection and Safety Act of 2006 section 111(7), Public Law 109–248, 120 Stat. 587, 592 (2006) (codified at 34 U.S.C. 20911(7) after editorial reclassification).

[53] Violence Against Women and Department of Justice Reauthorization Act of 2005 (T 2005), Public Law 109–162, 119 Stat. 2960 (2006); and (VAWA 2013), Public Law 113–4, sections 807–8, 127 Stat. 54, 112–17; 8 U.S.C. 1375a); INA sections 214(d)(1), (3).

petitioner is required to submit certified copies of all court and police records showing the charges and dispositions for every such conviction. *See* USCIS Form I–129F and Form I–129F Instructions, Part 3. If the petition is approved, the petitioner's Form I–129F (including all criminal background information submitted by the petitioner and any related criminal conviction information that USCIS discovers during the course of conducting its routine background check) must be provided to DOS. *Id.; see also* 8 U.S.C. 1375a(a)(5)(A)(iii). DOS will then disclose this information to the beneficiary during the consular interview. *See* Form I–129F Instructions, Part 3.

3. All Family-Based Petitioners

USCIS is committed to complying with and furthering the purposes of AWA and IMBRA so that intended beneficiaries of family-based visa petitions are not placed at risk of harm from the persons who seek to facilitate their immigration to the United States. Without complete biometrics for all family-based petitioners, USCIS is required to rely only on name-based criminal checks to assess AWA and IMBRA. These name-based checks do not identify all offenders with visa petitions who have been convicted of qualifying crimes under AWA and/or IMBRA. Name-based checks only yield petitioners who are *currently* required to register as a sex offender or who have a *current* order of protection in place. However, AWA and IMBRA apply to all family-based petitioners with qualifying convictions regardless of when the criminality occurred, and whether they are currently registered sex offenders or subject to an order of protection. The current reliance on name-based checks means that certain family-based visa petitioners are not currently identified and vetted under AWA and IMBRA because USCIS does not routinely request biometrics from these populations. Requiring biometrics collection for all family-based petitioners will result in production of an official FBI criminal history result (currently referred to as an Identity History Summary ''IdHS'' and formerly referred to as a Record of Arrest and Prosecution ''RAP sheet'') which provides greater accuracy and detail relating to the petitioner's criminal history.

USCIS already requires biometrics from all applicants, petitioners, their spouses, and all adult members of the household in the intercountry adoption context involving orphan and Hague Adoption Convention cases as part of its evaluation of the prospective adoptive parents' suitability to adopt a foreign-born child.[54] 8 CFR 204.3(c)(3), 8 CFR 204.310(b). USCIS likewise needs to review the criminal histories of other petitioners before approving a family-based immigration benefit. USCIS needs to utilize biometrics to conduct criminal history background checks to identify individuals convicted of any ''specified offense against a minor'' or ''specified crime'' and prevent the approval of a petition in violation of the AWA or without the proper disclosure required by IMBRA.[55] Therefore, DHS proposes to amend the regulations governing the requirements for USCIS Form I–130 and Form I–129F to require those petitioners to routinely submit biometrics as required by proposed 8 CFR 103.16. *See* proposed 8 CFR 204.1(h) and 8 CFR 214.2(k)(1).

Affected family-based petitions include those petitioning for the following individuals:

- Spouse;
- Fiancé(e);
- Parent;
- Unmarried child under 21 years of age;
- Unmarried son or daughter over 21 years of age or over;
- Married son or daughter of any age;
- Sibling; or
- Any derivative beneficiary permitted to receive an immigrant or nonimmigrant visa based on his or her familial relationship to the beneficiary of such petition.

See INA sections 101(a)(15)(K), 201(b)(2)(A)(i) and 203(a) and (d), 8 U.S.C. 1101(a)(15)(K), 1151(b)(2)(A)(i) and 1153(a) and (d) (governing nonimmigrant fiancé(e)s, immediate relatives, and family-based preference and derivative categories/classifications).

4. Violence Against Women Act (VAWA) Self-Petitioners

Separate from the AWA and IMBRA provisions discussed above, VAWA self-petitioners are currently not generally required to submit biometrics for adjudication. For many immigrant victims of domestic violence, battery, or extreme cruelty, the U.S. citizen or lawful permanent resident family members who sponsor their applications threaten to withhold legal immigration sponsorship as a tool of abuse. VAWA allows abused immigrants to petition for legal status in the United States without relying on abusive U.S. citizen or lawful permanent resident spouses, parents, or children to petition for and sponsor their immigrant petition and Form I–485. The purpose of the VAWA program is to allow victims the opportunity to ''self-petition'' or independently seek legal immigration status. DHS proposes in this rule that any applicant, petitioner, sponsor, beneficiary, or individual filing or associated with a benefit or other request must appear for biometrics collection unless biometrics are waived. Accordingly, DHS proposes to remove the regulations that provide that VAWA self-petitioners are not required to appear for biometric collection. In addition, as noted in the PRA section of this preamble, DHS proposes to revise the applicable forms to require VAWA self-petitioners to comply with the biometrics submission requirement proposed in this rule.

VAWA self-petitioners are currently not subject to biometric collection and they establish good moral character required under 8 CFR 204.2(c)(2)(v) and 204.2(e)(2)(v) by: (1) Personal statement from the self-petitioner; (2) police clearance letters from the self-petitioner's places of residence for the three years before filing; and (3) other credible evidence, including affidavits from third parties attesting to the self-petitioner's good moral character. USCIS does not currently use biometrics to verify the identity of the self-petitioner or verify the accuracy or completeness of the disclosed criminal history information.

The proposed requirement for biometrics collection for VAWA self-petitioners would result in production of the self-petitioner's IdHS which provides greater accuracy and detail relating to the self-petitioner's criminal history. This would accomplish several goals. First, it would support the identity enrollment, verification, and management in the immigration lifecycle purpose for USCIS biometrics collection. Second, it supports the national security and criminal history background checks purpose for USCIS biometrics collection because relying on self-petitioners to obtain and present appropriate local police clearance letters is not the most reliable means of obtaining, or verifying, an accurate and complete criminal history for a self-petitioner. Third, it will simplify the petition for the self-petitioner as well as the adjudication for USCIS by reducing the evidence required to establish good moral character. The self-petitioner will

[54] In intercountry adoption cases, DHS must be satisfied that proper care will be provided to the child if admitted to the United States. INA section 101(b)(1)(F), (G), 8 U.S.C. 1101(F), (G).

[55] INA section 204(a)(1)(A)(viii)(I) & (B)(i)(II), 8 U.S.C. 1154(a)(1)(A)(viii)(I) & (B)(i)(II), and INA section 101(a)(15)(K), 8 U.S.C. 1101(a)(15)(K), as amended by the Adam Walsh Act, tit. IV, sec. 402, 120 Stat. at 622.

not need to contact the police department in every city in which he or she has lived and USCIS will not need to analyze multiple police letters for their findings. Due to certain limitations with biometric information sharing among foreign countries, self-petitioners who resided outside the United States in the three years before filing will still have to provide a law enforcement clearance, criminal background check, or similar report issued by an appropriate authority from any jurisdiction in which the self-petitioner resided for six or more months during the three year period immediately preceding the filing of the self-petition.

The proposed revision to 8 CFR 204.2(c)(2)(v) and 204.2(e)(2)(v) to require biometrics from VAWA self-petitioners will eliminate the need for self-petitioners who resided in the United States three years before filing to obtain multiple police or law enforcement clearance letters. The majority of self-petitioners would only need to travel to one USCIS ASC for biometrics collection. Further, USCIS adjudicators would no longer need to verify past addresses against police clearance letters, as the information discovered by collecting biometrics for a criminal history and national security background checks will be credible and relevant evidence when considering the good moral character requirement.

Consistent with other adjudicative determinations of good moral character, DHS proposes that, when assessing good moral character for a VAWA self-petitioner, USCIS may consider the self-petitioner's conduct beyond the three years immediately before filing, where: (1) The earlier conduct or acts appear relevant to a determination of the self-petitioner's present moral character; and (2) the conduct of the self-petitioner during the three years immediately before filing does not reflect that there has been a reform of character from an earlier period. *See generally* 8 CFR 316.10(a)(2). USCIS currently allows officers to look outside the 3-year period if there is reason to believe that the self-petitioner may not have been a person of good moral character during that time. This has been a long-standing practice at USCIS and memorialized in both a 2005 policy and the preamble to the 1996 VAWA regulation. See, Policy Memorandum, William R. Yates, Associate Director of Operations, *USCIS Memorandum Determinations of Good Moral Character in VAWA-Based Self-Petitions*—HQOPRD 70/8.1/8.2 (January 19, 2005); 61 FR 13065, 13066 (Mar. 26, 1996); USCIS is simply clarifying this point in the regulatory text.

DHS further proposes to revise 8 CFR 204.2(e)(2)(v) to remove the automatic presumption of good moral character for VAWA self-petitioners under 14 years of age. Rather, DHS proposes that VAWA self-petitioners under 14 years of age will submit biometrics like any other VAWA self-petitioner, which USCIS will use in the determination of good moral character and which preserves USCIS's discretionary authority to require that VAWA self-petitioners provide additional evidence of good moral character. *See* proposed 8 CFR 204.2(e)(2)(v). DHS does not believe this change is a significant departure from the existing regulatory scheme or that it will burden self-petitioners under 14 generally, because they will still not be required to submit evidence of good moral character apart from biometrics as initial evidence with their self-petitions. Furthermore, the existing presumption is rebuttable. USCIS may currently request evidence of good moral character for self-petitioning children under 14 years of age if USCIS has reason to believe the self-petitioning child lacks good moral character. The proposed structure is intended to align the VAWA provisions with the agency's goals regarding biometrics collection from all applicants, petitioners, sponsors, derivatives, dependents, beneficiaries and individuals, without regard to age, unless USCIS waives or exempts the biometrics requirement, while still preserving USCIS' authority to define evidentiary requirements for demonstrating good moral character for child VAWA self-petitioners in its discretion. Additionally, as with any other USCIS petition or application, if a decision will be adverse to an applicant or petitioner and is based on derogatory information the agency considered, he/she shall be advised of that fact and offered an opportunity to rebut the information. *See* 8 CFR 103.2(b)(16)(i).

5. T Nonimmigrant Adjustment of Status Applicants

Similar to the VAWA self-petitioners discussed above, applicants applying to adjust status based on underlying T nonimmigrant status also have a good moral character requirement. The INA permits the Secretary to grant T nonimmigrant status to individuals who are or were victims of a severe form of trafficking in persons who have complied with any reasonable request by a law enforcement agency for assistance in the investigation or prosecution of a crime involving acts of trafficking in persons (unless they are under 18 years of age or are unable to cooperate due to physical or psychological trauma). *See* INA section 101(a)(15)(T)(i)(I), (III), 8 U.S.C. 1101(a)(15)(T)(i)(I), (III). After the grant of T nonimmigrant status, an individual can apply for lawful permanent residence under INA section 245(l) and 8 CFR 245.23 by filing a Form I–485. Among several other eligibility requirements, an applicant seeking to adjust under INA 245(l) must demonstrate good moral character from the date of lawful admission as a T nonimmigrant until the time USCIS adjudicates his or her adjustment of status application. 8 CFR 245.23(g).

Good moral character for T nonimmigrant adjustment applicants is presently assessed by the applicant's affidavits, the results of biometric-based security checks, the submission of a ''local police clearance or a state-issued criminal background check,'' and other credible evidence. 8 CFR 245.23(g). There are several concerns with the use of affidavits and police clearance letters to establish good moral character where the applicant has resided domestically for the requisite period. First, local police clearance letters for domestic residences will become unnecessary with the publication of this rule, which will authorize biometrics for all applicants and petitioners, including T nonimmigrant adjustment of status applicants. DHS proposes in this rule that any applicant, petitioner, sponsor, derivative, dependent, beneficiary, or individual filing or associated with a benefit or other request must appear for biometrics collection unless biometrics are exempted or waived. Second, official criminal history results from biometric-based security checks provide a more reliable means for obtaining, or verifying, an accurate and complete criminal history for an applicant than official criminal history results from that rely on applicants to obtain and present appropriate local police clearances or state-issued criminal background checks. Third, the submission of local police clearance letters is already redundant, because T nonimmigrant adjustment of status applicants are currently subject to a biometrics requirement, and it logically follows that the regulation should reflect that adjudicators assess good moral character with the most reliable and comprehensive evidence available for good moral character (*i.e.,* official criminal history results from the biometric-based security checks). *Cf. Matter of Castillo-Perez,* 27 I&N Dec. 664, 666–67 (A.G. 2019) (discussing meaning of ''good moral character'' and explaining that ''an alien's criminal record is highly probative of whether he possesses good moral character'').

Presently, USCIS requires biometrics for T adjustment of status applicants, however, the regulations also require applicants to submit police clearance letters, if available, which adjudicators consider in addition to other credible evidence when determining good moral character. For these reasons, DHS proposes to eliminate the requirement that applicants applying to adjust status based on underlying T nonimmigrant status submit self-obtained police clearance letters, unless they lived outside the United States during the requisite period.

There are several benefits to eliminating this police clearance requirement. First, requiring adjudicators to assess good moral character based in part on an official FBI criminal history result or IdHS provides greater accuracy and detail relating to the T nonimmigrant adjustment applicant's criminal history. Second, it supports the national security and criminal history background checks purpose for USCIS biometrics collection. Third, it will simplify the application and adjudication for the T nonimmigrant adjustment of status applications. The applicant will not need to contact the police department in every city in which he or she has lived and USCIS will not need to analyze multiple police letters for their findings. Due to certain limitations with biometric information sharing among foreign countries, applicants who resided outside the United States in the requisite period will still have to provide a law enforcement clearance, criminal background check, or similar report issued by an appropriate authority from any jurisdiction in which the applicant resided during the requisite period.

DHS notes that USCIS currently assesses good moral character based on biometric-based security check results and other relevant evidence in the file and it does not require T nonimmigrant adjustment applicants to obtain multiple police or law enforcement clearance letters unless they lived outside the United States. Thus the proposed revision of 8 CFR 245.23(g) would simply codify the current USCIS policy and practice. Applicants would only need to travel to a USCIS ASC for biometrics collection. Further, USCIS adjudicators would no longer be required to verify past addresses against police clearance letters, because the information discovered by reviewing the applicant's criminal history and national security background check result will be the most relevant, probative, and reliable evidence when assessing the good moral character requirement.

DHS also proposes to clarify language referring to the requisite period of good moral character for T nonimmigrant adjustment of status applicants. The current regulation references evaluating good moral character during a requisite period of ''continued presence.'' 8 CFR 245.23(g)(1). ''Continued presence'' is an established term in the immigration and trafficking in persons context, but is not the correct term to refer to the period relevant to USCIS' evaluation of good moral character. Rather, USCIS believes the current language was intended to refer to the requirement that the applicant be physically present ''for a continuous period of at least 3 years since the date of admission as a nonimmigrant'' or ''continuous period during the investigation or prosecution of acts of trafficking.'' *See* INA 245(l)(1)(A). Therefore, DHS proposes to amend 8 CFR 245.23(g) to refer to the relevant ''continuous period'' rather than ''continued presence.'' Consistent with other adjudicative determinations of good moral character, when assessing good moral character for T nonimmigrant adjustment applicants, USCIS would be able to consider the applicant's conduct beyond the requisite period, where: (1) The earlier conduct or acts appear relevant to a determination of the applicant's present moral character; and (2) the conduct of the applicant during the requisite period does not reflect that there has been a reform of character from an earlier period. *See generally* 8 CFR 316.10(a)(2).

DHS further proposes to revise 8 CFR 245.23(g) to remove the presumption of good moral character for T nonimmigrant adjustment of status applicants under 14 years of age. Rather, the rule provides that such applicants will submit biometrics like any other applicant, and it preserves USCIS' discretionary authority to require that applicants provide additional evidence of good moral character. Proposed 8 CFR 245.23(g). DHS does not believe this change is a significant departure from the existing regulatory scheme or that it will burden applicants under 14 generally, because they will still not be required to submit evidence of good moral character apart from biometrics as initial evidence with their applications. Furthermore, the existing presumption is rebuttable. USCIS may currently request evidence of good moral character for applicants under 14 years of age if USCIS has reason to believe the applicant lacks good moral character. The proposed changes would remove the superfluous need for police clearance letters from T nonimmigrant adjustment applicants and remove the good moral character presumption for T nonimmigrant adjustment of status applicants under age 14. As noted in the PRA section of this preamble, DHS will revise the applicable forms to eliminate the police clearance letter requirement for T nonimmigrant adjustment applicants concomitant with this rule.

DHS proposes this change to align the T nonimmigrant adjustment of status provisions with the agency's goals regarding biometrics collection from all applicants, petitioners, sponsors, derivatives, dependents, beneficiaries and individuals, including identity management in the immigration lifecycle, without regard to age, unless USCIS waives or exempts the biometrics requirement, while still preserving USCIS' authority to define the evidentiary requirements for child applicants to demonstrate good moral character requirements in its discretion.

6. Regional Center Principals Under the EB–5 Program

DHS proposes to require biometrics collection and perform biometric-based criminal history and national security background checks, as well as for purposes of identity verification, on all regional center principals, including U.S. citizens and lawful permanent residents, of an intending or existing regional center as part of its determination of whether the regional center will, or is continuing to, promote economic growth in accordance with regional center program requirements. DHS proposes that the biometric collection for background checks also extend, if the regional center principal is a legal entity or organization, to those persons having ownership, control, or beneficial interest in such principal legal entity or organization. Further, DHS proposes that the biometrics requirement may also include additional collections or checks for purposes of continuous vetting. INA section 203(b)(5), 8 U.S.C. 1153(b)(5), authorizes the EB–5 program, and the regional center program was authorized in 1992 in an appropriations act.[56] The regulations at 8 CFR 204.6 contain the requirements for employment creation aliens under INA section 203(b)(5), 8 U.S.C. 1153(b)(5), including those investing under the regional center program (also known as the Immigrant Investor Program), and criteria for the designation of regional centers.

[56] Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, Public Law 102–395, sec. 610, 106 Stat 1828, 1874 (1992).

With respect to the requirements for regional centers, DHS regulations at 8 CFR 204.6 require the submission of a proposal describing how the regional center, an economic unit, will promote economic growth. DHS regulation at 8 CFR 204.6 also requires updated information to demonstrate continued promotion of economic growth in compliance with program requirements once an economic unit is designated as a regional center. As part of these determinations, USCIS considers whether the principals of the intending or designated regional center, and the regional center itself, are bona fide and capable of credibly promoting such economic growth. Background checks using the biometrics of the principals would provide information relevant to this determination such as instances of fraud, financial crimes, or other activities that would demonstrate a lack of ability to promote economic growth. For example, USCIS could consider whether an applicant for regional center principal had convictions for fraud or financial misconduct, as directly bearing on their ability to promote economic growth, as required by 8 CFR 204.6. Using biometrics, USCIS would screen and vet the applicant for regional center principal in an effort to protect the investors in the regional center.

In the EB–5 regional center program, the applicant is the entity seeking regional center designation. ''Principals'' of a regional center are collectively any persons or entities that own, are in a position of executive managerial authority over, or are otherwise in a position to control, influence, or direct the management or policies of, the regional center entity. In the event that the principal of the regional center entity is a legal entity or organization, USCIS will require biometrics from all persons having ownership, control, or beneficial interest in that legal entity or organization. To identify potential national security concerns relating to regional centers and the individuals who operate them, biometric-based background checks on principals would provide USCIS with relevant information on the people who control the regional centers and interact with immigrant investors and the credibility of the projects they sponsor. USCIS already conducts background checks on regional center principals based on Social Security numbers.

Biometric-based background checks would also help USCIS verify identities of principals, because there are identified trends of regional centers engaging in fraud.[57] USCIS tracks when regional centers are terminated; a list is publicly available from USCIS.[58] With respect to regional center termination, mandating biometrics and conducting biometric-based background checks would strengthen USCIS' ability to determine whether a regional center, including through its principals, continues to serve the purpose of promoting economic growth in compliance with program requirements. *See* 8 CFR 204.6(m)(6).

DHS welcomes public comment on all aspects of this proposal, including expanding biometric collection to U.S. citizen or lawful permanent resident family-based petitioners in order to comply with AWA and IMBRA, expanding biometric collection to VAWA self-petitioners, eliminating police clearance letters for VAWA self-petitioners and T nonimmigrant adjustment applicants, modifying the VAWA self-petitioner and T nonimmigrant adjustment applicant's good moral character requirements for those under 14 years of age, and expanding biometric collection to U.S. citizen and lawful permanent resident principals of an intending or existing regional center under the EB–5 program, as well as additional collections or checks for purposes of continuous vetting.

E. Interviews

DHS also proposes to amend its regulations to remove 8 CFR 216.4(b)(1) and (2), and 216.6(b)(1) and (2) because the four sections are purely operational and superfluous given the statutory requirements and regulatory revisions at proposed 8 CFR 103.2(b)(9). *See* INA sections 216 and 216A; 8 U.S.C. 1186a and 1186b. The proposed changes would not alter regulatory eligibility requirements, but rather would clarify certain interview procedures for conditional permanent residents to reduce potential redundancies and ensure greater uniformity within USCIS operations.

1. Alien Spouses

Seeking the removal of the conditional basis for status—under INA section 216, 8 U.S.C. 1186a, and INA section 216(c)(2), 8 U.S.C 1186a(c)(2)—requires that the alien spouse and the petitioning spouse appear for a personal interview, although DHS may waive the interview requirement in its discretion. *See* INA section 216(d)(3), 8 U.S.C. 1186a(d)(3). Under this rule, DHS is proposing to remove current 8 CFR 216.4(b)(1) because it simply repeats the authority in INA section 216(d)(3), which allows DHS to waive the interview requirement in its discretion in such cases as may be appropriate. Furthermore, proposed 8 CFR 103.2(b)(9)(ii) provides equivalent discretionary authority to waive such interviews. Because the decision to waive the mandatory interview is purely discretionary, and 8 CFR 216.4(b)(1) simply reiterates this discretion, it serves no purpose, especially since determining whether the eligibility requirements for removal of conditions in 8 CFR 216.4(c) were established is central to the adjudication of the petition itself.

DHS also proposes to remove 8 CFR 216.4(b)(1) because it contains unnecessary procedural requirements and outdated terms. For example, the mention of ''regional service center director'' is unnecessary because 8 CFR 1.2 already describes the interchangeability of certain terms such as ''director.'' Such references are purely internal and operational.

2. Alien Investors

When seeking the removal of the conditional basis for status under INA section 216A, 8 U.S.C. 1186b, INA section 216A(c)(1)(B), 8 U.S.C. 1186b(c)(1)(B), generally requires petitioners who file a USCIS Petition by Entrepreneur to Remove Conditions on Permanent Resident Status (Form I–829) to be interviewed before final adjudication of the petition, although DHS may waive the interview requirement in its discretion. INA section 216A(d)(3), 8 U.S.C. 1186b(d)(3). USCIS recently updated 8 CFR 216.6 to make certain technical changes in the *EB–5 Immigrant Investor Program Modernization,* Final Rule. *See* 84 FR 35750. Under current regulations, USCIS reviews the petition to remove conditions and the supporting documents to determine whether to waive the interview. 8 CFR 216.6(b)(1). If the eligibility requirements for removal of conditions in 8 CFR

[57] *See* U.S. Government Accountability Office (GAO), GAO–15–696, Immigrant Investor Program: Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefits (2015), *available at https://www.gao.gov/products/GAO-15-696;* GAO, GAO–16–431T, Immigrant Investor Program: Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefits (2016), *available at https://www.gao.gov/products/GAO-16-431T;* and GAO, GAO–16–828, Immigrant Investor Program: Progress Made to Detect and Prevent Fraud, but Additional Actions Could Further Agency Efforts (2016), *available at https://www.gao.gov/products/GAO-16-828.*

[58] *See* Regional Center Terminations, *https://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-immigrant-investor-process/regional-center-terminations* (last visited Apr. 7, 2020).

216.6(c)(1) have been satisfied, USCIS may waive the interview and approve the petition. 8 CFR 216.6(b)(1). If the eligibility requirements for removal of conditions in 8 CFR 216.6(c)(1) have not been satisfied, USCIS may require that an interview of the investor be conducted. 8 CFR 216.6(b)(1). In addition, under current 8 CFR 216.6(b)(2), unless waived, an interview is conducted by a USCIS immigration officer at the office that has jurisdiction over the location of the investor's commercial enterprise in the United States, the investor's residence in the United States, or the location of the adjudication of the petition, at the agency's discretion.

DHS proposes to modify 8 CFR 216.6 in this rule, because DHS is seeking to reduce redundancy and make its interview and waiver procedures more uniform and consistent across adjudications, as permitted by law. DHS proposes to remove current 8 CFR 216.6(b)(1) because it is redundant with INA section 216A(d)(3), which allows DHS to waive the interview requirement in its discretion in such cases as may be appropriate, and it is not necessary to codify the reason such a waiver may be appropriate in regulations. In addition, proposed 8 CFR 103.2(b)(9)(ii) provides that an interview may be waived by DHS (for an entire population or on a case-by-case basis) solely at its discretion. As the decision whether to waive the mandatory interview is purely discretionary, and the regulation simply reiterates this discretion, the regulation serves no purpose, especially since determining whether the eligibility requirements for removal of conditions in 8 CFR 216.6(c)(1) were established is central to the adjudication of the petition itself.

Additionally, for both alien spouses and investors, DHS is proposing to remove current 8 CFR 216.4(b)(2) and 216.6(b)(2) regarding interview location because the statute already sets parameters for the location of the interview, requiring the interview to be conducted at a location convenient to the parties involved. *See* INA section 216(d)(3), 8 U.S.C. 1186a(d)(3); INA section 216A(d)(3), 8 U.S.C. 1186b(d)(3). Furthermore, proposed 8 CFR 103.2(b)(9) will address interview requirements generally, making 216.4(b)(2) unnecessary. DHS is also proposing to remove current 8 CFR 216.6(b)(2) so that interviews may be conducted at the locations listed above or at other locations convenient to the parties, taking into account workload, operational needs and capabilities as they evolve.

Lastly, 8 CFR 216.4(b)(3) and 216.6(b)(3) will be redesignated as proposed 8 CFR 216.4(b) and 216.6(b) respectively. Proposed 8 CFR 103.2(b)(9)(iv) provides that failure to appear for a scheduled interview without prior authorization may result in a variety of consequences, including termination of conditional permanent resident status. Under proposed 8 CFR 216.4(b) and 216.6(b), failure to appear for an interview in connection with an alien spouse or investor petition, when requested by USCIS, will result in automatic termination of the alien's permanent resident status. DHS proposes that the petitioners may, before the interview, request, for good cause, (such as, for lack of proper notice of the interview) that the interview be rescheduled or withdraw the petition. Proposed 8 CFR 103.2(b)(9)(v). However, the provisions at proposed 8 CFR 216.4(b) and 216.6(b) would still permit petitioners to request rescheduling or waiver of the interview, for good cause, if the petitioners failed to appear. With respect to a showing of exceptional circumstances for good cause in the asylum context, USCIS proposes to maintain the status quo. The exceptional circumstances standard is vital to the asylum context as it is a part of the existing regulations, an important tool to referring missed interview cases to an immigration judge without adjudication, and is also applied when an applicant misses a hearing before the immigration judge and is ordered removed in absentia—an order which can only be re-opened by showing exceptional circumstances.

F. Proposed Implementation

1. Phased-In Additional Biometrics Collection

DHS does not plan to immediately expand all biometric programs to provide that all populations or all new modalities would be required as of the date the new regulations proposed in this rule take effect. Only those revised forms that propose to add a particular biometric submission requirement in conjunction with this rule (as described in the PRA section of this preamble) will be immediately subject to new biometric requirements, though this rule permits DHS to request, require, or accept DNA and associated DNA test results for individual benefit requests at its discretion. As provided in proposed 8 CFR 103.16, DHS may expand or contract its biometrics submission requirements in the future by notice in the **Federal Register** or updated form instructions. DHS will comply with the PRA, 44 U.S.C. 3501 *et seq.,* requirements for imposing new information collections when it decides to collect biometrics from a new category of filers or to collect new biometric modalities.[59]

2. Collection of the Biometric Services Fee

USCIS is authorized to collect an $85 biometric services fee from any individual who is required to submit biometric information to pay for background checks and have their biometric information collected, stored, and used for certain immigration and naturalization benefits (other than asylum or refugee status). 8 CFR 103.7(b)(1)(i)(C). Effective October 2, 2020, DHS is incorporating the fee for biometric services into the underlying immigration benefit request fees for which biometric services are applicable to simplify the fee structure, reduce rejections of benefit requests for failure to include the biometric services fee, and better reflect how USCIS uses biometric information. 85 FR 46788 (Aug. 3, 2020). The additional fees that DHS estimates will be collected as a result of this proposed rule will not materialize if that rule takes effect before this rule does.

G. Evidence of Age and Birth Parentage for an Adopted Child

DHS proposes to require a copy of a prospective adopted child beneficiary's birth certificate to establish the child's identity and age, and the identities of the child's birth parents. Proposed 8 CFR 204.2(d)(2)(vii). INA section 101(b)(1)(E), 8 U.S.C. 1101(b)(1)(E), can be the basis of the approval of an immigrant visa petition filed by a U.S. citizen or an alien lawfully admitted for permanent residence on behalf of an adopted child whose adoption meets the requirements of INA 101(b)(1)(E). Under INA 101(b)(1)(E), an adopted child is the adoptive parent's child for immigration purposes, if the adoptive parent adopted the child before the child reached the age of 16 (or 18 if the sibling exception at INA 101(b)(1)(E)(ii) applies), and the child has jointly resided with the adoptive parent in a bona fide parent child relationship for at least two years, and has been under the legal custody of the adoptive parent for at least two years. To show that the adopted child was under the requisite age, the petitioner must prove the beneficiary's date of birth. To show a bona fide parent child relationship, the petitioner must,

[59] Form revisions requiring a new biometric submission will also be subjected to public notice in accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3512, and its implementing regulations at 5 CFR 1320.

among other things, identify the beneficiary's birth parents and show that they no longer reside with the child in a parent-child relationship and no longer exert primary parental control over the child. The best evidence to show age and birth parentage is a birth certificate issued by civil authorities. Therefore, DHS proposes to require that the petitioner submit a copy of the beneficiary's birth certificate, if available, to establish the beneficiary's identity, age, and the identities of the beneficiary's birth parents. Proposed 8 CFR 204.2(d)(2)(vii).

DHS additionally proposes to update the regulation to align with INA section 101(b)(1)(E)(ii), 8 U.S.C. 1101(b)(1)(E)(ii), which provides that a beneficiary adopted while under age 18 (rather than age 16) may qualify as an adopted child under that provision if he or she is the birth sibling of a child described in INA section 101(b)(1)(E)(i) or (F)(i), was adopted by the same adoptive parent(s), and otherwise meet the requirements of INA section 101(b)(1)(E). While the INA uses the term ''natural sibling,'' DHS generally uses the term ''birth siblings'' synonymously, which includes half-siblings but does not include adoptive siblings. Proposed 8 CFR 204.2(d)(2)(vii).

DHS is soliciting public comment on all aspects of implementation, including alternative implementation plans (phased-in or otherwise).

V. Statutory and Regulatory Requirements

A. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory 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 (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 proposed rule is an economically significant regulatory action because it exceeds the $100 million threshold, under section 3(f)(1) of E.O. 12866. Accordingly, the OMB has reviewed this proposed regulation.

1. Summary

DHS proposes to expand the collection of biometrics to require any individual filing or associated with an immigration benefit or request to appear for biometrics collection, and, if applicable, pay the $85 biometric services fee unless exempted or waived from appearing and/or paying for such biometrics collection. This proposed rule would also change current regulations by defining the term ''biometrics'' to clarify and expand DHS' regulatory authority to collect biometrics information. The proposal to expand the collection of biometrics would impact certain populations without regard to age or U.S. citizenship status. Additionally, DHS proposes to further clarify the purposes for which biometrics are collected, stored, and utilized. Last, this rule proposes that DHS may require, request, or accept the submission of DNA or DNA test results to verify a claimed genetic relationship.

DHS estimates that under the proposed rule, about 2.17 million new biometrics submissions will be collected annually, and the resulting biometrics submitting population will increase from 3.90 million currently to 6.07 million, and, from a generalized collection rate across all forms of 46 percent currently to 71.2 percent (projected). The increase in biometrics submissions would accrue to three population segments: (i) A small subset of forms in which biometrics collection is collected routinely in which the age-eligible population will expand; (ii) the broadening of routine collection to a dozen or so forms in which collection is not currently routine; and (iii) the expansion of the age-eligible biometrics population to a collection of forms characterized by very low filing volumes, unspecified forms, and forms in which DHS does not intend to broadly extend collection on a routine basis at this time. DHS is also removing the age restrictions for biometrics collection in the context of an NTA issuance. However, the issuance of an NTA is not an ''application, petition, or other request for certain immigration and naturalization benefits.'' *See* 8 CFR 103.7(b)(1)(i)(C). For this stated reason, USCIS will not (and does not currently) collect the $85 biometrics services fee from individuals whose DNA was collected in the course of being issued NTAs or for other immigration law enforcement purposes. Based on FY 2018 statistics, under the proposed rule DHS could collect biometrics from as many as 63,000 individuals under the age of 14 years old annually associated with NTAs.[60]

The proposed rule would expand the collection of the $85 biometric services fee to include any individual appearing for biometrics collection in connection with a benefit request unless the individual is statutorily exempt from paying the biometric services fee or if he or she has received a fee waiver. DHS estimates that there will be 1.63 million new biometrics fee payments annually. The annual quantified costs associated with submitting new biometrics submissions could be $158.9 million, and the costs associated with the new fees could be $138.4 million, for a combined total of $297.3 million in quantified costs. There could be some unquantified impacts related to privacy concerns for risks associated with the collection and retention of biometric information, as discussed in DHS's Privacy Act compliance documentation. However, this rule would not create new impacts in this regard but would expand the population that could have privacy concerns. When costs of $705,555 are incorporated to include fees the FBI would collect for providing fingerprint-based and name-based Criminal History Record Information (CHRI) checks for NTAs, the annual costs are about $298 million.

The proposed rule would expand the collection of the $85 biometric services fee to include any individual appearing for biometrics collection unless the individual is statutorily exempt from paying the biometric services fee or if they have received a fee waiver. DHS estimates that there will be 1.63 million new biometrics fee payments annually. The annual costs associated with submitting new biometrics submissions could be $158.9 million, and the costs associated with the new fees could be $138.4 million, for a combined total of $297.3 million. When costs of $705,555 are incorporated to include fees the FBI would collect for providing fingerprint-based and name-based Criminal History Record Information (CHRI) checks for NTAs, the annual costs are $280 million.

In addition, DHS proposes to expand its regulatory authority so that it may require, request, or accept DNA evidence to demonstrate the existence of a genetic relationship for any benefit request where such a relationship must be established, such as certain family-

[60] As noted earlier, DHS is not estimating that this rule would result in the issuance of 63,000 *additional* NTAs by its components; rather, 63,000 NTAs were issued in FY 2018 to minors under the age of 14 who would be subject to biometric collection (for the purpose of verifying identify) under the parameters of this proposed rule.

based benefit requests, including but not limited to the following:

- Petition for Alien Relative (Form I–130);
- Refugee/Asylee Relative Petition (Form I–730);
- Application for T Nonimmigrant Status Supplement A (Form I–914A);
- Petition for U Nonimmigrant Status Supplement A (Form I–918A);
- Petition for Qualifying Family Member of a U–1 Nonimmigrant (Form I–929);
- Application for Certificate of Citizenship (Form N–600);
- Application for Citizenship and Issuance of Certificate Under Section 322 (Form N–600K);
- And any other form where the existence of a genetic relationship is at issue for a beneficiary, dependent, derivative, rider, or other qualifying family member.

DHS is not proposing with this rule to require DNA submission for such forms generally. However, the rule will immediately allow DHS to require, request, or accept DNA or DNA test results, in its discretion, for individual benefit requests to verify a claimed genetic relationship, where establishing a claimed genetic relationship is required. Since the actual volume cannot be predicted at this time with accuracy, DHS conducted a sensitivity analysis using a range of 10 to 100 percent to estimate the potential costs for eligible populations associated with these family-based benefit requests. The costs to principal filers and beneficiaries/qualifying family members who may submit biometrics to establish a genetic relationship in support of these benefit requests would range from $22.4 million to $224.1 million annually, in undiscounted terms. Depending on the actual future DNA submission rate, the total annual costs of the rule could range from $319.6 to $521.3 million annually.

Combining the cost of the biometrics (which includes the service fees and NTA fees) with the DNA costs, DHS estimated the total monetized costs of the proposed rule at three parts of the DNA submission range to represent a lower bound (10 percent), a midrange (50 percent), and a high range (90 percent). In undiscounted terms, the ten-year (2021–2030) costs could range from $3,204.1 to $4,996.9 million, with a midrange of $4,100.5 million. At a 3 percent rate of discount, the ten-year present values could range from $2,773.2 million, to $4,262.4 million, with a midrange of $3,497.8 million. At a 7 percent rate of discount, the ten-year present values could range from $2,250.4 million, to $3,509.6 million, with a midrange of $2,880.0 million. The average annualized costs could range from $320.4 million to $499.7 million, with a midrange of $410 million.

The proposed rule would provide benefits that DHS has not been able to quantify. Qualitatively, the proposed rule would provide individuals requesting certain immigration and naturalization benefits with a more reliable system for verifying their identity when submitting a benefit request. This would limit the potential for identity theft while also reducing the likelihood that DHS would be unable to verify an individual's identity and consequently deny the benefit. In addition, the proposal to allow individuals to use DNA testing as evidence to demonstrate the existence of a claimed genetic relationship would provide them the opportunity to demonstrate a genetic relationship using a quicker, less intrusive, and more effective technology than the blood tests currently provided for in the regulations. *See* 8 CFR 204.2(d)(2)(vi).

The proposed rule would benefit the U.S. Government by enabling DHS with more fidelity and efficiency in identity management in the immigration lifecycle and vetting of individuals seeking certain immigration and naturalization benefits. The expanded use of biometrics stands to provide DHS with the ability to identify and limit fraud because biometrics comprise unique physical characteristics that are difficult to falsify and that do not change over time. Biometrics would also help reduce the administrative burden involved in identity verification and the performance of criminal history checks, by reducing the need for manual document review and name-based security checks. The proposed rule would also enhance the U.S. Government's capability to identify criminal activity and protect vulnerable groups by extending the collection of biometrics to populations under certain benefit requests.

Table 1 provides a more detailed summary of the proposed provisions and their impacts.

TABLE 1—SUMMARY OF PROVISIONS AND IMPACTS

Proposed change	Expected cost of the provision	Expected benefit of the provision
DHS proposes to expand collection of biometrics to require any individual filing or associated with an immigration benefit or request to appear for biometrics collection without regard to age.	Individuals Submitting Biometrics— ..... *Quantitative:* • Total annual direct costs of the proposed rule:. ○ $158,940,196 for about 2.17 million individuals to submit biometrics. ○ $138,356,283 for about 1.63 million new $85 biometric services fees.	Individuals Submitting Biometrics— *Qualitative:* • The proposed rule provides individuals requesting certain immigration and naturalization benefits with a more reliable system for verifying their identity when submitting a benefit request. This would limit the potential for identity theft. It would also reduce the likelihood that DHS would not be able to verify an individual's identify and therefore possibly deny a benefit request. Government— *Qualitative:* • DHS would be able to routinely collect biometrics information from children under the age of 14, and therefore, increase the U.S. Government's capabilities of determining the identity of a child who may be vulnerable to gang affiliation, human trafficking child sex trafficking, forced labor exploitation, and alien smuggling.

TABLE 1—SUMMARY OF PROVISIONS AND IMPACTS—Continued

Proposed change	Expected cost of the provision	Expected benefit of the provision
		• The proposed rule would provide a benefit to the U.S. Government by enabling DHS to verify with greater certainty the identity of individuals requesting certain immigration and naturalization benefits. The expanded use of biometric information would provide DHS with the ability to limit identity fraud because biometrics are unique physical characteristics and more difficult to falsify.
DHS proposes to increase the biometric modalities that it uses to collect biometrics information to include the following: Palm prints, facial and iris image, and voice prints.	Government— *Qualitative:* • DHS does not know what the costs of expanding biometrics collection to the government in terms of assets and equipment; it is possible that costs could be incurred for the new equipment and information technologies and typologies needed to collect, process, store, and utilize biometrics, including software updates; cameras that are able to collect iris and facial images; devices used to record a voice print; and other equipment. • DHS does not know what the costs of expanding biometrics collection to the DHS in terms of assets and equipment; it is possible that costs could be incurred for the new equipment and information technologies and typologies needed to collect, process, store, and utilize biometrics, including software updates; cameras that are able to collect iris and facial images; devices used to record a voice print; and other equipment.	Government— *Qualitative:* • Use of the new biometric technologies would allow DHS to keep up with technological developments in this area and adjust collection practices for both convenience and to ensure the maximum level of service for all stakeholders.
DHS may require, request, or accept the submission of DNA or DNA test results to verify the existence of a claimed genetic relationship.	Individuals Submitting DNA Evidence— ..... *Quantitative:* • Potential annual costs for principal filers and beneficiaries/qualifying family members to submit DNA evidence range from $22.4 million to $224.1 million depending on how many individuals submit DNA evidence in support of a family-based benefit request. Government— *Qualitative:* • USCIS currently reimburses the Department of State for the collection of DNA in countries where it does not have a presence. DHS does not currently know how many individuals would submit DNA under the proposed rule but there is the potential for additional costs if the Department of State facilitates additional DNA testing.	Individuals Submitting DNA Evidence— *Quantitative:* • DNA testing would give individuals the opportunity to demonstrate a genetic relationship using a quicker, less intrusive, and more effective technology.
DHS is proposing to remove the age restrictions for biometrics collection in the context of Notice to Appear (NTA) issuance for the same reasons (*i.e.,* identity verification, criminal history background checks, etc.).	Individuals Submitting Biometrics— ..... *Quantitative:* *None; there would be no opportunity or travel related costs associated with NTA collection to individuals.* Government— *Quantitative:* There could costs of $705,555 annually accruing to fees the FBI would collect for providing fingerprint-based and name-based Criminal History Record Information (CHRI) checks.	Individuals Submitting Biometrics Government— *Qualitative:* The collection of biometrics on children under the age of 14 associated with NTAs would significantly assist DHS in its mission to combat human trafficking, child sex trafficking, forced labor exploitation, and alien smuggling.

In addition to the impacts summarized above and as required by Office of Management and Budget (OMB) Circular A–4, Table 2 presents the prepared accounting statement showing the costs associated with this proposed regulation.[61]

TABLE 2—OMB A–4 ACCOUNTING STATEMENT

[$ millions, 2019]

Category	Primary estimate	Minimum estimate	Maximum estimate	Source citation (RIA, preamble, etc.)
Benefits				
Monetized Benefits	Not estimated	Not estimated	Not estimated	Preamble.
Annualized quantified, but un-monetized, benefits.	0	0	0	Preamble.
Unquantified Benefits	The proposed rule would limit identity fraud and improve USCIS identity management systems. Additionally, the proposed rule would enhance the U.S. Government's capability to identify criminal activities and protect vulnerable populations. The removal of age restrictions and the proposal to collect on all NTAs under the age of 14 would assist DHS in its mission to combat human trafficking, child sex trafficking, forced labor exploitation, and alien smuggling.			Preamble and RIA.
Costs				
Annualized monetized costs for 10 year period starting in 2021 to 2030 (discount rate in parenthesis).	(3%) $410 (7%) $410	$320.4 $320.4	$499.7 $499.7	RIA. RIA.
Annualized quantified, but un-monetized, costs	There could be costs germane to the procurement of equipment, information technology and typology, and systems possibly needed to support the increased biometrics modalities. There could also be a cost to transferring information regarding biometrics for the NTAs issued to individuals under age 14.			Preamble and RIA.
Qualitative (unquantified) costs	N/A.			
TRANSFERS				
Annualized monetized transfers: "on budget"	N/A	N/A	N/A	Preamble.
From whom to whom?	N/A	N/A	N/A	Preamble.
Annualized monetized transfers: "Off-budget"	N/A	N/A	N/A	Preamble.
From whom to whom?	N/A	N/A	N/A	Preamble.

Miscellaneous analyses/category	Effects	Source citation (RIA, preamble, etc.)
Effects on state, local, and/or tribal governments.	None	Preamble.
Effects on small businesses	There could be small entity impacts to EB–5 regional centers incurred by biometrics collection germane to the regional center principals. DHS believes these would be indirect but does not know how they could impact the regional center. There are currently 884 approved regional centers and DHS analysis based on limited available suggests that most regional centers could be small entities in terms of the RFA.	Preamble.
Effects on wages	None	Preamble.
Effects on growth	None	Preamble.

[61] OMB Circular A–4 is *available at https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf.* The primary estimate reported here reflects the average of the highest DNA submission rate (100 percent) and the lowest (0 percent). It also corresponds to the 50 percent midrange along the spectrum 10–90 percent that we utilize on grounds that realistically, there will be some collection (a positive rate) but not complete (100 percent) collection.

DHS emphasizes that the costs could vary from the figures reported herein. As detailed in the analysis, in order to estimate the population of future biometrics submissions, it was necessary to extrapolate certain metrics and conditions to the non-existent (in context) future populations. Although DHS believes the methodology employed is appropriate, because the future actual generalized and form-specific collection rate of biometrics are unknown, the actual populations and costs could vary. In addition, the costs rely on a lower-end average wage to account for opportunity costs associated with biometrics submissions. If, on average, the wage is higher than that relied upon, the costs could vary as well. This regulatory impact analysis is the best available estimate of the future benefits and costs. Actual results will depend on a number of factors, including policy, programmatic, operational and practical considerations in the implementation of the collection of biometrics requirements under this rule.

In summary, the proposed rule would enable USCIS to conduct the administration and adjudication of immigration benefit requests with increased fidelity, and is conducive to the evolution to a person-centric model for organizing and managing its records, enhanced and continuous vetting, and reduced dependence on paper documents, as is described more fully in the preamble.

2. Background and Purpose of the Proposed Rule

Current statutes and regulations provide USCIS the authority to collect biometrics information with immigration and naturalization benefit requests.[62] USCIS has the authority to collect biometrics and the associated biometric services fee from an applicant, petitioner, sponsor, beneficiary, requestor, or individual filing an immigration request on a case-by-case basis, through form instructions, or through a **Federal Register** notice.[63] Based on the relevant statutory and regulatory authorities, USCIS collects, stores, and utilizes biometrics to conduct background checks to determine eligibility for an immigration benefit or other request; and, for document production associated with certain immigration and naturalization benefits or actions.

The USCIS biometrics process begins with the collection of an individual's biometric information at an authorized location, including USCIS offices, ASCs, military installations, and U.S. consular offices abroad. Currently, the types of biometrics information that USCIS collects generally consist of a photograph, fingerprints, and signature. For certain refugee or asylum family-based petitions, USCIS also suggests the submission of DNA test results obtained from approved laboratories, as either primary or secondary evidence to assist in establishing the existence of claimed genetic relationships.

Although DHS has broad authority to collect biometrics from populations associated with immigration benefit requests, collection is only mandatory and routine for certain age groups and forms.[64] As a result, there are substantial populations associated with immigration benefit requests that do not routinely submit biometrics. In Fiscal Year (FY) 2017, for example, about 3.93 million people submitted biometrics across 8.53 million immigration applications, petitions, and requests, yielding a generalized biometrics collection rate of 46 percent for that year.[65]

For individuals who currently do not provide biometric information in support of an immigration benefit request, USCIS mainly relies on biographical information for identity management in the immigration lifecycle. Such biographical information is provided as part of the benefit request package.[66] However, biographical information provided by individuals is generally not constant, consistent, or inherently unique. For example, biographical information can include an individual's height, weight, or other physical characteristics that are very likely to change over time and can be similar to the physical characteristics of others. Additionally, biographical information utilized for identity management in the immigration lifecycle imposes an administrative burden for USCIS adjudicators, as the document management and review associated with maintaining immigration files and verifying identities involve intensive manual processes. Finally, some biographical information is not inherently unique by definition, as there are numerous individuals around the world share names and dates of birth.

Some individuals who are not currently required to submit biometrics information may pose a risk to vulnerable populations. For example, U.S. citizen and lawful permanent resident petitioners are not currently required to routinely submit biometrics information in support of family-based immigrant and nonimmigrant fiancé(e) petitions, except for orphan and Hague Adoption Convention-related applications and petitions. Accordingly, DHS has limited capabilities to determine if a petitioner has been convicted of criminal conduct associated with the AWA and the IMBRA.[67] Moreover, DHS does not routinely collect biometric information from children under the age of 14, and therefore, has limited capabilities to determine the identity of a child who may be vulnerable to human trafficking, child sex trafficking, forced labor exploitation, alien smuggling, or other exploitative transgressions. For example, a vulnerable child with similar characteristics to a child who has lawful immigration status may be moved across U.S. state and international borders under the assumed identity of that other child. Collecting biometrics from individuals who do not currently submit such information would provide DHS with further data, information, and tools to more effectively protect such vulnerable populations.

The proposed rule would change current regulations and the overall DHS biometrics protocol in several ways. First, DHS proposes to define the term ''biometrics'' to clarify and expand its regulatory authority to collect biometrics information. Second, DHS proposes to expand the collection of biometrics information to require any individual filing or associated with immigration benefits or requests to appear for biometrics collection without regard to age or U.S. citizenship status. The expansion of biometrics would concurrently expand the collection of the $85 biometric services fee.[68] Third, DHS proposes to further clarify the purposes for which biometrics are

[62] *See generally* INA section 103(a), 8 U.S.C. 1103, INA section 235(d)(3), 8 U.S.C. 1225(d)(3), and INA section 287(b), 8 U.S.C. 1357(b). For a list of specific authorities, refer to the preamble, Section III. Background. A. Legal Authority and Guidance for USCIS Collection and Use of Biometrics.

[63] *See* 8 CFR 103.2(b)(9).

[64] USCIS routinely collects biometric information and the $85 biometric services fee from individuals between the ages of 14 and 79.

[65] Multiple people may be associated with one filing or one person may submit multiple, simultaneous or sequential requests.

[66] Biographic information provided by individuals can include birth certificates and marriage licenses, among other physical types of information.

[67] USCIS currently uses name-based checks to determine if a petitioner has been convicted of a criminal activity.

[68] This proposal would not include any individual that receives a fee waiver or any individual who is statutorily exempt from paying the $85 biometric services fee. The proposal would also remove any existing age requirements for submitting the $85 biometric services fee.

collected, stored, and utilized. Fourth, DHS proposes to increase the biometric modalities that it is authorized to collect to include the following: Palm prints, facial and iris image, voice prints, and DNA. Fifth, this rule proposes that DHS may require, request or accept the submission of DNA or DNA test results, which include a partial DNA profile, to verify the existence of a claimed genetic relationship.

The proposed rule would provide the U.S. Government with tools to verify with greater certainty the identity of individuals requesting immigration and naturalization benefits. The expanded use of biometrics technologies and information provides DHS with the ability to strengthen national security and limit identity fraud because biometrics are unique characteristics and more difficult to falsify than biographic information alone. In addition, the use of biometrics information for identity verification would be more efficient and reduce the administrative burdens associated with verifying identities and performing criminal history checks. The proposed rule would also enhance the U.S. Government's capability to identify criminal activities and protect vulnerable populations. Further, it is conducive and relevant to the evolution to a person-centric model for organizing and managing of immigration records, enhanced and continuous vetting, and reduced dependence on paper documents.

3. Population

The ensuing analysis presents an extensive array of data points, calculations, and technical details. Estimating the populations that would be impacted requires multiple interlinked steps across overlapping population segments. To assist readability, some key points applicable to the biometrics-specific (*i.e.,* non-DNA) proposal are presented upfront. DHS identified the baseline population as the annual average volume of biometrics submissions, which has been heavily concentrated within in a small subset of specific USCIS forms. It is necessary to identify this baseline because technically it will be impacted by the rule, even though DHS does not expect it to incur additional monetized costs. The new populations that the rule will impact accrue to the ''expansion'' of the baseline in terms of the heavy-concentration forms due to the removal of age restrictions, as well as a broadening of biometrics collection to forms in which biometrics have not been routinely collected. The expansion of the population subject to biometrics would also increase the fee-paying population. Because the new populations do not exist yet in context—including those involving the expanded baseline—DHS must develop logically and mathematically sound procedures in order to carry out the calculations needed to estimate these populations who are newly subject to biometric collection and fees. Such estimation requires extrapolations, and while the methodology employed is sound, it is possible that the past will not mimic the future, as it relates to a specific form, grouping of forms, or biometrics collection in general.

For the five-year span from FY 2013 to FY 2017, an average of 3.61 million individuals who filed for an immigration benefit or request were required to submit biometrics. In this analysis, DHS assumes that this population would continue to submit biometrics, although the modalities would expand, as has been noted above and explained in more detail in the preamble. First, DHS would collect biometrics from certain populations from which DHS already has the authority to collect biometrics without a change in the regulations, but does not currently do so routinely. The biometrics-submitting population would be broadened across form types as a result. Second, the elimination of the current age restrictions for submitting biometrics so that individuals of any age might be requested to submit biometrics information under the proposed rule would expand the biometrics submissions within the form types already embedded in the existing population (and will apply to the new populations appropriate to the expanded form types). Finally, DHS would require, request, or accept DNA evidence from certain populations to establish or verify a claimed genetic relationship.

DHS estimates the different populations that would be impacted by this proposed rule through five analytical phases. The first phase (Phase I) involves identifying the number of individuals who would continue to submit biometrics in the absence of this proposed rule. This group is referred to throughout this analysis as ''baseline'' (interchangeable with ''past,'' ''current,'' or ''existing'') population and is derived by using historical biometric submissions data. This group would likely face a very minor additional time burden to submit biometrics information, including palm prints, facial and iris image, or voice prints as a result of this proposed rule due to the increased modalities, but DHS did not estimate any additional monetized costs for this because the time increase for this group is expected to be small.

In the second phase (Phase II), DHS presents the underlying logic and formulas that are used to estimate the additional populations, not yet existent in context, that could be impacted by the proposed rule. These resultant formulas will be applied to the populations that would be impacted by the proposed elimination of the age restrictions, the broadening of collection across forms, the biometrics service fee, proposal to require, request, or accept DNA evidence to verify a claimed genetic relationship. In the third phase (Phase III), DHS develops the additional populations that could be impacted as a result of the proposed elimination of the age restrictions for collecting biometrics and the broadening of biometrics collection. Four such formulas are requisite.

The fourth phase (Phase IV) focuses on the biometric fee payments. The final phase estimates the populations that would be impacted by the proposed provision to require, request, or accept DNA evidence to verify a claimed genetic relationship.

a. Phase I Baseline Data—Populations Who Currently Submit Biometrics and DNA Evidence

In Phase I of this analysis, DHS develops the baseline, as the set of biometrics submitted in the past. It is the population who would continue to submit biometrics in the absence of the proposed rule, including all eligible applicants, petitioners, sponsors, beneficiaries, requestors, or individuals who currently submit biometrics information at an ASC in support of an immigration or naturalization benefit request. Because specific USCIS forms are used to request immigration benefits, and biometrics are submitted under certain USCIS form types, DHS uses the form type to group data and then formulate its baseline population estimates.

To derive the baseline population, DHS has delineated Phase I into five steps. The first step provides a description of the data sources and technical approach for deriving the baseline population. Second, DHS presents the number of biometric submissions by form. The third step quantifies the filing volume for Application to Extend/Change Nonimmigrant Status (Form I–539) including the total number of applicants, co-applicants, and derivative family members, pursuant to the following. As of March 22, 2019, DHS started to routinely collect biometrics information from all Form I–539

applicants, co-applicants, and derivative family members.[69] Therefore, DHS includes the Form I–539 population in the baseline. Fourth, DHS quantifies the baseline biometrics fee-paying volume. Fifth, DHS identifies the number of current DNA tests that are used to demonstrate a claimed genetic relationship in support of a family-based benefit request.

(i) Step 1: Data Description and Technical Approach

Based on current practice, when an individual appears at a USCIS facility for a biometrics appointment, their photograph, signature, and right index fingerprint is digitally collected and stored in the Customer Profile Management System (CPMS) database, which is the USCIS data repository for biometrics information. For eligible populations between the ages of 14 and 79, ten fingerprints are also collected and stored in CPMS. For this baseline analysis, the biometrics collection volume data originates from the CPMS database.

The baseline population consists of individuals who submit biometric information under one immigration benefit request. For certain forms, as well as for certain biometric appointments, an individual may submit biometrics in support of each individual immigration benefit request. Under these circumstances, there is a one-to-one match between the biometrics information submitted and the benefit request. However, there are instances where it is possible for an individual to have a single biometrics appointment in support of multiple forms, meaning the individual would only submit biometric information once, and not separately, for each individual immigration benefit request. Although this scenario represents a one-to-multiple match between the biometric information submitted and the immigration benefits requested, the physical act of submitting biometric information can be tracked under a primary form type in the CPMS database. A form may be logged as the primary form based upon the type of biometric data being submitted, the type of benefit being requested, or the order with which an individual's paperwork is received. Conversely, there are also instances where it is possible for multiple individuals to have biometrics appointments in support of a single form, meaning one immigration benefit request would yield multiple biometrics appointments and collections (*i.e.,* Form I–539 requiring biometrics for primary applicant and any derivatives/family members, Application for Advance Processing of an Orphan Petition (Form I–600A) requiring biometrics for all adult household members, etc.). In the baseline population, a single physical biometric transaction is accounted for under one primary form type to avoid double-counting.

(ii) Step 2: Baseline Biometric Submissions by Form

Data captured in CPMS reveals that for the five-year span of FY 2013 to FY 2017, an average of 3.61 million individuals submitted biometrics information annually to USCIS in support of immigration and naturalization benefit requests (Table 5).[70] In FY 2017, a total of 3.93 million individuals submitted biometrics information compared to 3.19 million in FY 2013. The largest volume over the period occurred in FY 2015, when over 4.20 million individuals submitted biometrics information to USCIS.

TABLE 5—BIOMETRIC SUBMISSIONS BY FORM GROUPING

[FY 2013–FY 2017]

Form	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	5-year average	5-year percent of total
"Prev-9":							
N–400	778,172	779,221	772,648	961,092	1,013,252	860,877	23.78
I–90	554,918	790,069	780,050	743,589	770,552	727,836	20.11
I–765	421,011	391,650	800,711	489,553	588,008	538,187	14.87
I–485	459,298	506,991	494,664	500,369	547,755	501,815	13.86
I–589	95,938	116,668	173,248	230,900	304,308	184,212	5.09
I–821D	350,339	102,192	242,101	125,489	224,899	209,004	5.77
I–131	89,146	87,012	87,755	88,977	86,299	87,838	2.43
I–751	185,587	172,478	93,359	71,823	83,417	121,333	3.35
I–601A	16,381	37,293	48,978	52,654	67,494	44,560	1.23
Prev-9	2,950,790	2,983,574	3,493,514	3,264,446	3,685,984	3,275,662	90.49
Phase III	1,310	944	949	1,307	874	1,077	0.03
Other	240,295	197,593	708,628	327,032	241,730	343,055	9.48
Total	3,192,395	3,182,111	4,203,091	3,592,785	3,928,588	3,619,794	100

Over this 5-year period, 90.49 percent [71] of biometric submissions were associated with the following nine forms:

a. Application for Naturalization (Form N–400);

b. Application to Replace Permanent Resident Card (Form I–90);

c. Application for Employment Authorization (Form I–765);

d. Application to Register Permanent Residence or Adjust Status (Form I–485);

e. Application for Asylum and for Withholding of Removal (Form I–589);

f. Consideration of Deferred Action for Childhood Arrivals (Form I–821D);

g. Application for Travel Document (Form I–131);

[69] *See* USCIS, Update: USCIS to Publish Revised Form I–539 and New Form I–539A on March 8, *https://www.uscis.gov/news/alerts/update-uscis-publish-revised-form-i-539-and-new-form-i-539a-march-8* (last reviewed/updated March 5, 2019).

[70] Biometric data can be processed and stored on other USCIS systems, but CPMS is the database that represents the aggregated collection of biometrics by primary form type. We note that not all biometric modalities were covered in every data point we count as a biometric submission. The figures in the baseline represent at least one type of biometric collected with an associated benefit request. In this sense, we treat ''biometric'' as essentially a binary action—either it was collected or it was not without passing out individual modalities.

[71] Calculation: 3,275,662 average biometric submissions by 9 form-types/3,619,794 total biometric submissions = 90.49 percent (rounded).

h. Petition to Remove the Conditions of Residence (Form I–751); and

i. Application for Provisional Unlawful Presence Waiver (Form I–601A).

Because this set of forms is central to the ensuing analysis, we designate their prevalence under the term ''Prev-9.''

The remaining forms not broken out by specific type in Table 5 have been separated into two groups. The first group is referred to in this analysis as Phase III Forms and represents the set under which DHS does not routinely collect biometrics information, but instead collect biometric information on a case-by-case basis.[72] Under the proposed rule, DHS would broaden routine collection of biometrics to these existing forms (the new populations apropos to this group are developed in Phase III of this analysis, which is why we label them as such, although they are not the only set discussed in that phase). From FY 2013 to FY 2017, the Phase III Forms accounted for a very small 0.03 percent of total biometric submissions.[73]

The second group is referred to as ''Other'' and includes three sub-categories of forms. The first sub-category includes forms where DHS does not routinely collect biometrics information but does so on a case-by-case basis. However, in contradistinction to the Phase III Forms, DHS does not plan currently to broadly increase biometrics collection for eligible populations under these forms.[74] The second category includes forms where DHS does routinely collect biometrics; the overall volume of biometric data makes up less than 10 percent of biometric submissions. For these forms, DHS will rely on characteristics from Prev-9 to estimate the additional populations who would submit biometrics specifically as a result of the proposed removal of the age restrictions for submitting biometrics. The third category includes forms for which there is no specific form designation within the CPMS database.[75] From FY 2013 to FY 2017, the Other group represented just under a tenth, 9.48 percent, of biometric submissions.[76]

(iii) Step 3: Filing Volume for Form I–539

DHS calculates the filing volumes for Form I–539 to account for populations who began to routinely submit biometrics information in the second quarter of 2019. USCIS made revisions to Form I–539, informing the public of DHS's intention to collect biometrics information from all eligible nonimmigrant principal applicants, co-applicants, and derivative family members. Because DHS started to collect biometrics information from the Form I–539 population before the publication of this proposed rule, DHS includes this population in its baseline.

From FY 2013 to FY 2017, USCIS received an average of 280,767 Form I–539 applications annually consisting of 199,696 primary applicants and 81,017 co-applicants and derivative family members (Table 6). Because all Form I–539 applicants, co-applicants, and their derivative family members are now required to submit biometric data, DHS relies on the historic filing volumes for the baseline number of individuals who submit biometric information in support of a Form I–539 benefit request.[77]

TABLE 6—FORM I–539 VOLUMES BY APPLICANTS, CO-APPLICANTS AND DERIVATIVES

[FY 2013–FY 2017]

Sub-population	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	5-year avg.
Primary Applicant	149,581	158,513	181,080	216,302	293,004	199,696
Applicants, Co-applicants and Derivative Family Members	56,643	63,552	73,976	88,236	122,947	81,071
Total	206,224	222,065	255,056	304,538	415,951	280,767

To estimate the number of individuals who currently submit biometric data, DHS uses the five-year average population of biometric submissions for each form type, which includes the Prev-9, Phase III Forms, the Other categories from Table 5 and the Form I–539 population (Table 6). In total, DHS uses a baseline population of 3,900,561 average biometric submissions per year, which is comprised of the 3,275,662 biometric submissions under Prev-9; 1,077 under the Phase V form types; 343,055 under the Other form types; and, 280,767 under the Form I–539 population. The relevant figures are condensed in Table 7, and DHS utilizes these baseline in support of remaining sections of the analysis.

TABLE 7—CURRENT BIOMETRIC SUBMISSIONS BY CATEGORIES

[Baseline, 5-year average]

Form category	5-year average
Prev-9 Forms	3,275,662
Phase V Form Types	1,077
Other Forms	343,055
Subtotal	3,619,794
+ Form I–539	280,767

[72] DHS may request biometrics on a case-by-case basis when the adjudicating officer would like to establish an identity prior to adjudicating a benefit. This could occur when there are any potential identify or fraud issues. DHS may also request biometrics information in compliance with the AWA or IMBRA.

[73] Calculation: 1,077 average biometric submissions by Phase V forms/3,619,794 average biometric submissions = 0.03 percent (rounded).

[74] For some of the forms in the Other category, biometrics submissions were actually zero. However, many of these had very small filing volumes as well. For some forms in the Other category, DHS is removing the requirement to submit biometrics information in support of a benefit request. DHS is removing the biometrics requirement because these individuals need to concurrently file with other forms where biometrics information is currently required.

[75] This may happen when biometrics information has not been assigned to a primary form in the CPMS database.

[76] Calculation: 343,055 average biometric submissions by Other forms/3,619,794 average biometric submissions = 9.48 percent.

[77] DHS expects less than 100 percent of Form I–539 applicants, co-applicants, and derivative family members to submit biometrics due to the existence of exemptions and waivers. However, DHS is not able to identify Form I–539 filers that file concurrently with other forms from current existing data sources. Therefore, DHS assumes that 100 percent of Form I–539 applicants, co-applicants, and derivative family members will submit biometrics for the purposes of this analysis.

TABLE 7—CURRENT BIOMETRIC SUBMISSIONS BY CATEGORIES—Continued

[Baseline, 5-year average]

Form category	5-year average
Baseline (Total)	3,900,561

(iv) Step 4: Baseline Biometrics Fee-Paying Volume

The proposed expansion of biometrics collection would increase the volume of service fees. DHS currently collects the $85 biometric services fee payments from all individuals submitting biometrics associated with a benefit request unless there are specific age restrictions for submitting the $85 biometric services fee associated with each benefit request or there is an approved fee waiver.[78] However, several factors warrant consideration before assessing the populations that currently submit the $85 biometric services collection fee. Foremost, anyone who submitted a biometrics fee by definition also submitted biometrics—but the converse does not hold. As such, the volume of biometric submissions by primary form does not reflect the volume of $85 biometrics service fee payments. This discrepancy is primarily due to the existence of fee exemptions and fee waivers for immigration benefit requests. DHS grants fee exemptions that are required by statute.[79] Under this proposed rule, the appropriate portions of the biometrics fee-paying population will continue to receive fee exemptions for biometric services. The current (and future) biometrics fee population is by definition smaller than the biometrics population.

In addition, individuals may apply for and be granted a fee waiver for certain immigration benefits and services.[80] In general, fee-waiver requests are reviewed by considering whether the applicant is receiving a means-tested benefit, whether the applicant's household income level renders him or her unable to pay, or whether recent financial hardship renders an inability to pay. With regard to the biometric services fee, USCIS waives the $85 fee based on the inability to pay if the underlying benefit application is granted a fee waiver. For instance, if an applicant receives a fee waiver for a particular form filing fee, he or she will generally also receive a waiver for the biometrics fee. Under this proposed rule, DHS assumes that the same portions of the biometrics fee-paying population would continue to receive fee waivers for biometric services fees. In other words, the rule does not alter or impact the fee waiver protocol currently in place.

For the three-year span of FY 2015 to FY 2017, an average of 2,771,279 biometric services fee payments were received by USCIS (Table 8).[81] DHS uses the average baseline value of 2,771,279 individual payments and the baseline volume of biometric submissions to derive population estimates for the number of individuals who would pay the $85 biometric services fee as a result of the proposed provision to eliminate the age restrictions for submitting biometrics and paying the biometric services fee.

TABLE 8—BIOMETRIC FEE VOLUMES, ALL FORMS

[FY 2015–FY 2017]

Fiscal year	Fee-paying volume
FY 2015	2,765,927
FY 2016	2,746,261
FY 2017	2,801,648
Average	2,771,279

(v) Step 5: DNA Testing Volume

The proposed rule would provide USCIS with the authority to require, request, or accept DNA evidence to verify a claimed genetic relationship. The proposed rule would allow relevant filers to use DNA evidence to establish a claimed genetic relationship where relevant for certain immigration benefit requests, including but not limited to the following:[82]

- Petition for Alien Relative (Form I–130);
- Refugee/Asylee Relative Petition (Form I–730);
- Application of T Nonimmigrant Status (Form I–914A);
- Petition for U Nonimmigrant Status (Form I–918A);
- Petition for Qualifying Family Member of a U–1 Nonimmigrant (Form I–929);
- Application for Certificate of Citizenship (Form N–600);
- Application for Citizenship and Issuance of Certificate Under Section 322 (Form N–600K); and
- Any other form where the existence of a claimed genetic relationship is at issue for a beneficiary, derivative, rider, or qualifying family member.[83]

These family-based applications and petitions have been included in the proposed rule because DNA testing is a technology that can be used to verify a claimed genetic relationship where one is required for these benefit requests. Additionally, DNA testing, by verifying or not verifying genetic relationships, would help DHS to identify criminal activity (*i.e.,* immigration fraud, visa fraud, etc.) and protect vulnerable populations associated with human trafficking, child sex trafficking, forced labor exploitation, and alien smuggling.

Certain immigration benefit requestors are currently able to establish the existence of a genetic relationship with family who wish to immigrate to the United States. The petitioner may submit, on a voluntary basis, DNA test results as evidence to establish authenticity of the claimed genetic relationship.

DNA test results are only accepted by USCIS from laboratories accredited by the AABB. However, testing occurs between the petitioner and his or her claimed biological relative, the latter of whom may be located domestically or abroad. In general, the petitioner submits his or her DNA evidence at a U.S.-accredited AABB lab, while the beneficiary/qualifying family member submits his or her DNA evidence at an

[78] Certain benefit requests, such as Form I–765 and Form I–131, have specific age requirements for paying the $85 biometric services fee. DHS proposes to remove these age requirements.

[79] See INA section 245(l)(7), 8 U.S.C. 1255(l)(7). DHS is required by law to permit certain applicants to request a fee waivers including Violence Against Women Act (VAWA) self-petitioners, INA section 245(*l*)(7), 8 U.S.C. 1255(*l*)(7), T Visas—Victims of Severe Form of Trafficking, INA section 101(a)(15)(T), 8 U.S.C. 1101(a)(15)(T), U Visas—Victims of Criminal Activity, INA section 101(a)(15)(U), 8 U.S.C. 1101(a)(15)(U), Battered spouses of A, G, E–3, or H nonimmigrants, INA section 106, 8 U.S.C. 1105a, Battered spouses or children of a lawful permanent resident or U.S. citizen, INA section 240A(b)(2), 8 U.S.C. 1229b(b)(2), and Temporary Protected Status—as in effect on March 31, 1997, INA section 244(a)(3), 8 U.S.C. 1254a(a)(3).

[80] See 8 CFR 103.7(c) and *https://www.uscis.gov/i-912*.

[81] As a result of possible inaccuracies regarding the volume of biometric service fee payments in FY 2013 and FY 2014, the fee-paying volume for biometrics services is only reported from FY 2015 to FY 2017. The source of the data is USCIS, Office of the Chief Financial Officer (OCFO).

[82] As was mentioned earlier in the preamble, DHS recognizes that there are qualifying family members, such as adopted children, who do not have a genetic relationship to the individual who files an immigration benefit request on their behalf. To the extent the rule discusses using DNA evidence to establish qualifying relationships in support of certain immigration benefit requests, it is referring only to genetic relationships that can be demonstrated through DNA testing.

[83] This includes requiring, requesting, or accepting DNA testing to establish a genetic relationship with a birth parent in the context of a petition to classify a beneficiary as an orphan under INA section 101(b)(1)(F) or as a Convention adoptee under INA section 101(b)(1)(G), 8 U.S.C. 1101(b)(1)(F) or (G), respectively.

overseas facility.[84] For DNA evidence submitted at an international U.S. Government facility, DHS historically facilitated the collection through USCIS Refugee, Asylum, and International Operations (RAIO) Directorate's international offices, and it has a memorandum of understanding with DOS to facilitate the collection in countries where USCIS does not have a presence.

The data used to make the following calculations come from the RAIO Directorate. Table 9 summarizes the total number of DNA tests that were submitted to USCIS and DOS in support of immigration benefit requests for Forms I–130, I–730, and the Haitian Family Reunification Parole Program.[85] From FY 2015 to FY 2017, a total of 34,150 DNA tests were submitted to USCIS including 18,345 DNA tests that were collected by USCIS and 15,805 DNA tests that were collected by DOS.[86] During this period, an annual average of 11,383 DNA tests were submitted to USCIS, including an average of 6,115 DNA tests collected by USCIS and 5,268 DNA tests collected by DOS. DHS uses these annual average volumes to account for the current collection of DNA evidence in support of an immigration benefit request.

TABLE 9—DNA TEST SUBMISSIONS AT INTERNATIONAL FACILITIES FOR FORM I–130, FORM I–730, THE HAITIAN FAMILY REUNIFICATION PAROLE PROGRAM, THE CUBAN FAMILY REUNIFICATION PAROLE PROGRAM, AND THE FILIPINO WWII VETERANS PAROLE PROGRAM

[FY 2015–FY 2017]

Fiscal year	Number of DNA collections (USCIS)	Number of DNA collections (DOS)	Total
2015	7,769	5,748	13,517
2016	6,735	5,961	12,696
2017	3,841	4,096	7,937
Total	18,345	15,805	34,150
Average	6,115	5,268	11,383

b. Phase II—Formulas for Estimating Additional Biometrics Populations

New populations would be created by the rule, in context, via the general proposals to broaden collection across an expanded set of forms and remove age restrictions, and the proposal to allow more DNA submissions. Since the populations are not yet existent in context, DHS must develop appropriate tools to extrapolate certain conditions forward. Here, formulas to estimate the additional populations (and sub-populations relevant to specific cost factors) that would be impacted by the proposed rule are developed. Specifically, four formulas are required, and the purpose of this current Phase II is to motivate their underlying logic and setup.

- *Biometrics Collection Rate (BCR):* A measurement of the proportion of biometric submissions out of the total age-eligible population within a form type.
- *Biometrics Fee Ratio (BFR):* A measurement of the proportion of biometric services fee payments out of the total age-eligible biometrics fee-paying population.
- *Biometrics Age Multiplier (BAM):* A measurement of the extra number of biometric submissions for the Other form type category due to the proposed elimination of the age restrictions for submitting biometrics.
- *Dependents Multiplier (DM):* A measurement of the number of principal applicants or petitioners relative to the number of claimed genetic relationships.

(i) Biometrics Collection Rate

DHS develops a BCR, a formula estimating the proportion of biometric submissions out of the total current age-eligible population within a form type. In this analysis, the BCR will be applied to certain populations to estimate the additional population that would submit biometrics. The BCR formula is provided below (Formula 1):

Formula 1: Biometrics Collection Rate (BCR)

$$BCR = \frac{BI}{P}$$

[84] DNA tests can be submitted in the United States at an accredited AABB lab if the principal and biological family members are all in the country. Alternatively, DNA tests can be submitted at an official overseas government facility. DHS is only able to quantify the exact number of DNA tests where at least one of the individuals is submitting his or her DNA evidence overseas. Although DHS does not track the location of the petitioner or biological family members giving his or her DNA evidence, based on the experience of USCIS' Refugee, Asylum and International Operations (RAIO), DHS expects that most DNA submissions at overseas facilities are from eligible biological family members and most principal applicants or petitioners submitting DNA would submit their DNA evidence within the United States.

[85] Only certain family-based benefit requests would be impacted by the proposed provision to allow, request, or require DNA evidence to establish a biological relationship. The DNA tests associated with Form I–130 and Form I–730 are the only family-based benefit requests that would be impacted by the proposed rule that currently use DNA evidence to establish a biological relationship. Additionally, DHS is unable to identify separately the specific number of DNA tests associated with each form, the Haitian Family Reunification Parole (HFRP) Program, the Cuban Family Reunification Parole (CFRP) Program, and the Filipino World War II Veterans Parole (FWVP) Program. Therefore, DHS is using the aggregate number of DNA submissions to estimate the baseline population.

[86] The relevant data and information in Table 10 was provided by USCIS RAIO was only available for 3 fiscal years, from FY 2015 to FY 2017.

Where BCR represents the Biometrics Collection Rate for a specific form type, BI represents intensity, as the average number of individuals who currently submit biometrics information by form type in a fiscal year and P represents the volume of age-eligible benefit requests associated with a form type by fiscal year.[87]

Calibration will be undertaken in the next phase, when the actual population estimates are conducted, but we introduce point of discussion here. An important consideration relevant to biometrics collection for eligible populations under each of the Prev-9 forms involves the number of biometric submissions that are collected as a proportion of the total filing volume for specific forms. There may be a low volume of biometric submissions relative to the filing volume (a low BCR). The heavy concentration of biometric submissions within this grouping does not map directly to a relatively intense rate of biometric collection within each form in this group. The reason is that biometrics may be submitted under a separate primary form when someone concurrently files multiple immigration benefit requests. As will be shown in Phase III, two prevalent forms, Forms I–765 and I–131, invoke ''artificially'' low BCRs, as biometrics information is only collected on certain requests, or, biometrics information may be collected under another form if an individual concurrently files multiple forms.

(ii) Biometrics Fee Ratio

DHS uses the current volumes of biometric services fee payments (Table 8) and current volume of biometric submissions (Table 5) to estimate the additional populations that would pay the $85 biometric services fee (due to the removal of age restrictions and the broadening of collection). Although USCIS accounts for the financial inflow of resources originating from the $85 biometric services fee, the CPMS database accounts for the number of biometric submissions by primary form type, which may not match the form type for which the $85 biometric services fee is collected. For example, an individual concurrently files Form I–821D and Form I–765 but would only have to submit the $85 biometric services fee with the Form I–765 application. However, the individual's biometric information may be logged under Form I–821D in the CPMS database. This is true for all form types with the exception of Form I–589, as these applicants may not submit biometrics information under another form type and they are exempt from the $85 biometric services fee. As a result, DHS uses the total volume of biometric services fee payments and the overall volume of biometric submissions (with the exception of Form I–589) to derive a BFR, a formula identifying the portion of individuals who pay the biometric services fee out of the total population of those submitting biometrics who may be required to pay the $85 biometrics fee.

The formula for the BFR calculation is provided below (Formula 2):

Formula 2: Biometrics Fee Ratio

$$BFR = \frac{F}{BI}$$

Where BFR represents the Biometrics Fee Ratio, F is the estimated number of individuals who pay the biometric services fee in a fiscal year and BI represents the number of biometric submissions in a given fiscal year, which was introduced above in the BCR setup. The BFR is calculated by comparing the biometric fee-paying volumes to total biometric submissions (with the exception for Form I–589) for each fiscal year, for reasons explained above. In FY 2017, for example, a BFR of 0.77 obtains by dividing a volume of 2.80 million biometric service fee payments by a total of by 3.62 million biometric submissions (Table 10). For every known non-exempt benefit request with a biometric submission, DHS estimates that in 2017, 77 percent of individuals pay the biometric services fee payment while the remaining 23 percent of individuals receive a fee exemption, a biometric services fee waiver, or they fall outside of the current age restrictions for submitting the $85 biometric services fee. Since the calculation of the BFR is relatively straightforward, it is compiled here and referred to downstream as needed. Table 10 provides the BFR calculations for each fiscal year, including a 3-year average BFR of 0.75 that will be used for subsequent calculations.[88]

TABLE 10—BIOMETRIC FEE RATIO, ALL FORMS

[FY 2015–FY 2017]

Fiscal year	Fee-paying volume	Biometric submissions (excludes Form I–589)	Biometrics fee rate (BFR)
FY 2015	2,765,927	4,029,843	0.69
FY 2016	2,746,261	3,361,885	0.82
FY 2017	2,801,648	3,624,280	0.77
Average	2,771,279	3,672,003	0.75

It is noted that the BFR calculation of .75 relies on the total volumes across the three years, and is thus implicitly weighted (it takes into account the relative magnitude of yearly submissions). However, the unweighted average would be very similar, at 0.76.

(iii) Biometrics Age Multiplier

From FY 2013 to FY 2017, an average of 343,055 biometric submissions (just under 10 percent of the total) annually were classified as Other. DHS does not explicitly plan to broadly increase collection here, but nonetheless, there are populations within this classification that could be impacted by the proposed elimination of the age restrictions for collecting biometrics. Since this group contains non-specific form types, DHS cannot determine the appropriate filing volumes, and therefore an additional step (in addition to the employment of the BCR, as will be shown) will be needed to estimate the new biometrics population under this Other category. DHS constructs an age multiplier to estimate the maximum population within the Other classification who would submit biometrics information as a result of the proposed provision to eliminate the age restrictions for submitting biometrics.

[87] The BCR for different form types may vary due to the eligibility categories and age characteristics of the filers and dependents.

[88] DHS notes that the general BFR of .75 is essentially weighted by year since it is calculated by dividing the total three-year fee payments by the three-year volume of biometrics. The unweighted (raw) average would be very similar, at .76.

The relevant metric is an age multiplier based on the proportion of filers or benefit requests for individuals between the ages of 14 and 79 relative to the total volume of filers or benefit requests for each of the Prev-9 form types where biometrics are routinely collected. The formula for the age multiplier is (Formula 3):

Formula 3: Biometrics Age Multiplier Formula

$$BAM = \frac{T}{ESP}$$

Where BAM is the 5-year average age multiplier for a form type; T is the 5-year total number of filers or benefit requests; and, ESP (Eligible Sub-population) is the 5-year total number of filers or benefit requests between the ages of 14 and 79. To annotate one specific example, between FY 2013 and FY 2017, a Form I–485 BAM of 1.095 is calculated by dividing a total of 670,560 benefit requests by 612,148 benefit requests for individuals between the ages of 14 and 79.[89] For every Form I–485 benefit request for individuals between the ages of 14 and 79, there are approximately 1.095 Form I–485 benefit requests for individuals of all ages.

Table 11 provides a summary of the age multiplier for each of the Prev-9 form types, including the total number of filers and benefit requestors by age segment between FY 2013 and FY 2017. Using these figures, the 5-year average age multiplier across all 9 form types would be 1.047.

TABLE 11—AGE MULTIPLIER, PREV-9 FORM TYPES

[FY 2013–FY 2017]

Form type	Age segments (5-year average)			Age multiplier
	All ages	Ages 14–79	Ages under 14; +79	
N–400	850,695	839,601	11,094	1.013
I–90	738,704	703,707	34,997	1.050
I–765	1,960,672	1,892,366	68,307	1.036
I–485	670,560	612,148	58,412	1.095
I–821D	371,068	370,838	230	1.001
I–589	127,499	111,597	15,902	1.142
I–751	165,738	164,441	1,297	1.008
I–131	441,226	409,699	31,527	1.077
I–601A	45,640	45,633	7	1.000
Average Age Multiplier	.....	.....	.....	1.047

In contradistinction to the BFR, the BAM is a raw average; that is, it is unweighted across form types volumes, such that each form's particular value receives an equal weight.

(iv) Dependents Multiplier

The proposed rule would allow or require certain filers to use DNA evidence to verify a claimed genetic relationship in support of certain immigration benefit requests, including, but not limited to: Form I–130; Form I–360, Form I–730; Form I–914A; Form I–918A; Form I–929; and any other form where the existence of a claimed genetic relationship is at issue for a beneficiary, derivative, rider, or qualifying family member. Based on current processes, each individual DNA test would incur a separate cost. For instance, a principal seeking a benefit request for 3 eligible beneficiaries or qualifying family members would incur 3 separate costs for the DNA testing.[90]

Therefore, DHS is using a dependents multiplier (DM) to estimate the average number of dependents who may be required to submit DNA tests with the principal immigration benefit requestor. Specifically, DHS calculates a DM based on the proportion of applicants or petitioners relative to the number of applications or beneficiaries/qualifying family members for each of the forms where DNA evidence would likely be used to verify a claimed genetic relationship.[91] In certain circumstances, DHS uses the 5-year [92] average DM to estimate the number of applicants or petitioners and beneficiaries/qualifying family members who could be eligible to submit DNA evidence under the proposed rule. The formula for the DM is (Formula 4):

[89] Calculation: 670,560 average Form I–485 benefit requests/612,148 average Form I–485 benefit requests between the ages of 14 and 79 = 1.095 (rounded). When you multiply an age multiplier of 1.095 by 612,148, the number of Form I–485 beneficiaries between the ages of 14 and 79, the resulting figure is 670,032. This figure is less than the overall number of Form I–485 beneficiaries (670,560) because the age multiplier has been rounded.

[90] The principal would need to pay 3 separate fees. The first fee would cover the cost of the DNA test with the first dependent, while the second and third fee would cover the additional costs for the remaining family members. However, the principal petitioner and the dependents would each incur separate travel and time burden costs.

[91] In instances where it is possible to identify the claimed biological relationship between the principal applicant and petitioner, DHS is using only these figures to derive the DM. In instances where it is not possible to identify the claimed biological relationship, DHS derives a DM based upon the total volume of principal applicants and their dependents.

[92] DHS uses data from FY 2013 to FY 2017 to make these calculations.

Formula 4: Dependents Multiplier Formula

$$DM = \frac{T}{P}$$

Where DM is the dependents multiplier for a form type in a given fiscal year; T is the total number of benefit requests; and P is the number of petitioners or principal benefit requests by form type. For example, the FY 2017 Form I–130 DM of 1.38 is obtained by dividing a total of 455,275 benefit requests for beneficiaries with a claimed genetic relationship by a total of 328,737 unique petitioners who are directly affiliated with these Form I–130 petitions.[93] Based on this approach, DHS is estimating the average DM for forms where it is possible to verify the principal filers' claimed genetic relationship with beneficiaries or qualifying family members, including DMs for Forms I–130, I–730, and I–929. DHS is using the average DM for these forms to estimate the number of petitioners and beneficiaries or qualifying family members who could submit DNA evidence to verify a claimed genetic relationship in instances where it is not possible to identify the petitioner's relationship with the beneficiary or qualifying family member, including calculations for Form I–914A and Form I–918A.[94] The calibration for a generalized DM will be provided in the relevant following section.

c. Phase III—Estimating New Populations That Would Submit Biometrics

Having first identified the baseline volume of biometric submissions and, second, having developed requisite metrics, DHS can proceed to estimate the new populations that would submit biometrics under the proposed rule. Foremost, Table 12 provides the BCRs for Prev-9.

TABLE 12—BIOMETRICS COLLECTION RATE (BCR) FOR THE PREV-9 FORMS

Form	Biometrics	Baseline population	BCR
N–400	860,877	850,695	1.012
I–90	727,836	738,704	0.985
I–765	538,187	1,892,366	0.284
I–485	501,815	612,148	0.820
I–589	184,212	88,072	2.092
I–821D	209,004	370,838	0.564
I–131	87,838	409,699	0.214
I–751	121,333	164,441	0.738
I–601A	44,560	45,633	0.976

Table 12 reproduces the average five-year biometrics submissions (Table 5) and introduces the baseline population—the current age-eligible population from which the biometrics was obtained (in other words, the basis of BCR). An explanation of the results in Table 12 is needed before proceeding to estimation. Forms N–400 and I–90 currently have complete collection, essentially, which is evidenced by the respective BCRs near unity. Forms N–400 and I–90 currently do not have age restrictions for biometrics collection. The BCR of 2.092 for Form I–765, is driven by derivative family members submitting biometrics along with the principal asylum applicants. For the Forms I–765 and I–131, significant portions of these populations currently do not submit biometrics information under these primary forms, and the BCRs are artificially low. The primary issue for Form I–765 is the large amount of concurrent filings. Form I–131 has concurrent filings as well, but the low collection rate is because of the limited number of eligibility categories that currently are required to submit biometrics.[95]

To estimate the new populations, DHS proceeded as follows. First, DHS analyzed Forms I–765 and I–131 separately so removed them from this analysis. Second, Forms N–400, I–90, and I–589 essentially have no additional eligible population to draw from and have been excluded. DHS obtained the average five-year filing volumes for the requisite sub-group of four forms and subtracted the current baseline. The resulting figures shown in Table 13 represent the population for each form that currently is not age-eligible but would be under the rule. The BCR for each form was multiplied by the new age-eligible population to obtain the new biometrics population for each form. The results are presented in the last column of Table 13, and total to 48,992.

TABLE 13—NEW BIOMETRICS POPULATION WITHIN THE PREV-9 SET DUE TO THE REMOVAL OF AGE RESTRICTIONS

Form	New age-eligible	BCR	New population
I–485	58,412	0.820	47,898
I–821D	230	0.564	130

[93] Calculation: FY 2017 DM for Form I–130 = 328,737 Form I–130 eligible benefit requests/ 455,275 Unique Petitioners = 1.38 DM (rounded).

[94] For these forms, DHS is only able to identify the number of dependents who have an eligibility category based upon a claimed biological relationship. All information pertaining to the petitioner has been removed to protect the identities of applicants and petitioners under Form I–914A and Form I–918A.

[95] Only two eligibility categories under Form I–131 are required to submit biometrics. Specifically, all applicants for a Refugee Travel Document or a Reentry Permit must complete biometrics at a USCIS ASC or, if applying for a Refugee Travel Document while outside of the United States, at an overseas USCIS facility.

TABLE 13—NEW BIOMETRICS POPULATION WITHIN THE PREV-9 SET DUE TO THE REMOVAL OF AGE RESTRICTIONS—Continued

Form	New age-eligible	BCR	New population
I–751	1,297	0.738	957
I–601A	7	0.976	7
Total	.....	.....	48,992

The first component of the new biometrics population is 48,992 (Table 13 above), obtained above for a sub-group of four forms within Prev-9, for which there are three more. Three other sub-groups will be examined. As has been stated earlier, the goal is to broadly collect biometrics while taking into consideration that there will be exemptions and waivers. Consequently, a proxy for BCR for estimation should be less than unity, but be positive and relatively high. Table 14 shows the five BCRs selected from Prev-9, noting that Form I–90 is retained here even though collection is almost complete for this form. The representative group is assessed to be reasonable and have a good deal of range, from .584 to .985. Since it is desirable to have as many relevant forms as possible in the proxy collection, we examined the BCRs for the remaining forms in the Other category (for cases in which the form type was not ambiguous or unspecified) and proceeded to add two, which are the only forms peripheral to Prev-9 that have high BCRs: Form I–914, Application for T Nonimmigrant Status; and Form I–918, Petition for U Nonimmigrant Status. The respective BCRs for these two additional forms, in order, are .952 and .819, as is shown in Table 14.

TABLE 14—AVERAGE BCR FOR SET OF APPROPRIATE FORMS

Selected Prev-9 Forms	BCR
I–90	0.985
I–485	0.820
I–821D	0.564
I–751	0.738
I–601A	0.976
Added Forms:	
I–918	.819
I–914	.952
Raw BCR for regrouped set	.8363

The unweighted (raw) average is utilized because we do not have a priori information on which forms (or sub-group of them) would have a BCR closest to the not yet existing, in context, rule population. Similarly, there is no ''target'' or desired BCR that we seek to impugn to the generalized population under the proposed rule. Hence, we use the raw average as opposed to a weighted one, because the former weights each BCR in the group equally. For the subgroup of forms, we obtain the unweighted average BCR of .8363 (or 86.63 percent).

Equipped with a workable BCR metric to extrapolate, the second new population component can be estimated. First, DHS obtained filing information for the Form I–765 and was able to parse out filings that were non-concurrent with other forms. Excluding the I–765 biometrics population submitted in the baseline, there was an average of 1,124,648 annual filings for which biometrics could be collected in the future. Multiplying this population by the BCR of .8363 yields 940,543 potential new biometrics submissions. We do not have enough information to parse out concurrent filings for the I–131, but obtained the difference in average filings and biometrics submissions, of 353,388. Applying the general BCR yields 295,539 possible new biometrics submissions. The total of the two forms is 1,236,082, which is the second component of the new biometrics population.

The third new population component accrues to the set of forms described as Phase III forms, in which biometrics is not broadly collected on currently, but that DHS plans to routinely collect on in the future. DHS obtained the total average filing volume for this set of forms, and annotates the discussion with one particular form, Application for Regional Center Designation Under the Immigrant Investor Program, (Form I–924). As explained in the preamble, DHS will collect biometrics for the principals of regional centers. Regional center principals are typically key leaders in the center, but information concerning them are not captured in formal DHS databases, but rather in individual adjudication reports involving the business plans. DHS was able to sample 130 Annual Certification of Regional Center (Form I–924A) filings from 2017 and found that the average number of principals per regional center is 2.6, which we round up to three. The average filing figure is 428, which is the annual filings for the Forms I–924 and I–924A, which results in a population of 1,284.[96]

The total filing volume for the relevant group of forms, including the above estimate for regional center principals, is 1,043,606. Subtracting from this total the average of just 1,077 current biometrics collections yields 1,042,529, which, when multiplied by the BCR of .8363, yields 871,867. This is the third component of the new biometrics population, and it is the portion that applies to the dozen or so forms for which DHS would routinely collect biometrics under the rubric of the proposed rule.

Denoting the current biometrics collection for the Other category as OB,

[96] This population that combines I–924 initial and I–924 Amendments essentially captures new regional center applications plus filings from the 884 regional centers (as of June 13, 2019) that are approved by USCIS via earlier initial filings but submit revised or updated projects.

which is 343,055 (Table 5), the new population is obtained via the equation: $OB \times BCR \times (BAM - 1)$, which yields 13,484. This is the fourth and final component of the new biometrics population.

The four new sub-populations representing future biometrics are summarized in Table 15.

TABLE 15—SUMMARY OF NEW BIOMETRICS POPULATIONS

Group	Baseline	New	Total
Regrouped prevalent set	2,649,637	48,992	2,698,629
Forms I–765/I–131	626,025	1,236,082	1,862,107
Phase III forms expansion	1,077	871,867	872,944
Other	343,055	13,484	356,539
Sums	3,619,794	2,170,425	5,790,219

As Table 15 connotes in the final row, the biometrics submitting population will grow by about 2.17 million annually. The baseline excludes the biometrics recently collected for the Form I–539. When the average biometrics for this form (280,767) are added back, the total biometrics submitting population would jump from 3.90 million (the current baseline derived earlier in the analysis) to 6.07 million. As a result, the generalized biometrics collection rate would rise from 46 to 71.2 percent (based on 2017 figures).

d. Phase IV—Population Estimates for the Biometric Services Fee

In Phase III DHS estimated that the biometrics submitting population would grow by over 2.17 million due to removing age restrictions and expanding collection across more forms. Having made this estimate, it is straightforward to take the next step and estimate the new biometrics fee paying population. The I–589 population is statutorily exempt from the fee, and N–400 applicants over 75 years of age do not pay the fee. However, neither of these two forms incurred new biometrics population segments, and are thus immaterial to this portion of the analysis. There is not a biometric services fee for the Form I–821D, to which we subtract the very small number of its 130 estimated new biometrics submissions (Table 14) from the new population. Applying the BFR of .75 to the adjusted new population, the new biometrics fee population is 1,627,721 and a total of 4,399,000 fee submissions would be collected annually in the future. The fee paying population would increase from 32.5 percent to 51.6 percent.

e. Phase V—Expanded DNA Collection

The proposed rule would allow, request, or require certain populations to use DNA evidence to verify a claimed genetic relationship in support of certain benefit requests. This current Phase V focuses on population estimates for certain benefit requests where an individual would be eligible to submit DNA evidence in support of a claimed genetic relationship. DNA test results can be used to establish or verify a claimed genetic relationship.[97] Therefore, where possible, DHS estimates the number of individuals who would submit DNA tests due to the proposed rule by first identifying the total number of applicants or petitioners and beneficiaries/qualifying family members who may be eligible to submit DNA tests from the total annual volume of receipts for the form types including Forms I–130, I–730, I–914, Form I–918, and I–929.[98] DHS then uses statistical characteristics from these population estimates to calibrate a DM, which is used to estimate eligible populations when there is missing information regarding the number of principal applicants or petitioners filing on behalf of their beneficiaries/qualifying family members.

For example, Table 16 provides a list of relative categories that a Form I–130 petitioner can file on behalf of. Of these different relative types, 7 relative types represent a potential for a claimed genetic relationship between the petitioner and beneficiary (see highlighted Form I–130 relative types). For instance, a Form I–130 petitioner filing on behalf of a 17-year old child under the eligibility category, ''unmarried child under 21 of permanent resident, 203(a)(2)(A) INA,'' represents one claimed genetic relationship that could be verified through DNA testing. To estimate the number of Form I–130 petitioners and beneficiaries who could submit DNA evidence, DHS quantifies the number of unique petitioners and beneficiaries who submit a Form I–130 based on one of the 7 relative types that would allow for DNA testing.[99]

In FY 2017, for example, DHS estimates 466,148 Form I–130 beneficiaries were classified under one of the 7 relative types that involved a claimed genetic relationship.[100] At the same time, DHS estimates that 344,032 Form I–130 petitioners filed on behalf of these beneficiaries. Therefore, the FY 2017 DM for Form I–130 is 1.35.[101] In the context of this, there were 11.35

[97] DNA test results from an AABB-accredited lab can be used to validate a biological relationship. Although there is no expiration date for DNA test results examining a specific biological relationship, some AABB labs only keep the DNA test results for around 30 days. This means the test result documentation would either need to be maintained in the applicant, petitioner or beneficiary's USCIS file or the documentation would need to be maintained by the applicant or petitioner paying for the DNA test. For the purposes of this analysis, DHS assumes that any applicant, petitioner or beneficiary associated with a benefit request would only submit his or her DNA evidence once annually regardless of the number of benefit requests with which they may be associated. These estimates are made by using a unique ID for each eligible applicant, petitioner or beneficiary to include the full name, birth date and fiscal year of the form receipt for each individual.

[98] DHS proposes to require, request, or accept DNA evidence in support of these family-based benefit requests because DNA testing is an established technology that can help determine if there is a biological relationship between two individuals. Additionally, DNA testing for these family-based benefit requests would help DHS identify criminals and protect vulnerable populations under AWA and IMBRA.

[99] The petitioner may file on behalf of multiple family members, and though this includes individuals to whom the petitioner is not biologically related, such as stepchildren and adopted children, most of these claimed relationships are relationships that could be verified through DNA testing. The petitioner would only need to submit DNA evidence on one occasion, as would each of his or her genetic relatives. . . . In addition, the DNA test results are valid indefinitely, meaning the test results could be used in subsequent benefit requests if the results are retained in USCIS files or the petitioner has an official copy of the test results. Therefore, DHS has used the fiscal year time stamp, full name and date of birth of the applicant, petitioner, and beneficiary to count the number of unique identities within a given fiscal year. This is done to avoid instances where one filer may be filing on behalf of multiple relatives or the same individuals could be filing multiple benefit requests in a given year for which previous DNA test results would be valid.

[100] Data provided by the USCIS Office of Performance and Quality.

[101] Calculation: 344,032 Form I–130 beneficiaries/466,148 Form I–130 petitioners = 1.35. (rounded)

beneficiaries with a claimed genetic relationship per unique petitioner.[102]

TABLE 16—RELATIVE TYPES CONSIDERED FOR DNA TESTING FOR FORM I–130 BENEFICIARIES

Husband or wife of U.S. Citizen, 201(b) INA.
Unmarried child (under age 21) of U.S. Citizen, 201(b) INA.
Unmarried son or daughter (21 or older) of U.S.C., 203(a)(1) INA.
Married son or daughter of U.S. Citizen, 203(a)(3) INA.
Parent of U.S. Citizen, 201(b) INA.
Brother or sister of U.S. Citizen, 203(a)(4) INA.
Fiancé(e) of U.S. Citizen, 214(k) INA.
Husband or wife of permanent resident, 203(a)(2)(A) INA.
Unmarried child under 21 of permanent resident, 203(a)(2)(A) INA.
Unmarried son or daughter (21 or older) of permanent resident, 203(a)(2)(B) INA.

Source: USCIS Analysis.
* **Note:** Relatives with claimed genetic relationships are highlighted in gray.

Although DHS is able to estimate the number of eligible genetic relationships within the total annual volume of receipts for certain form types, such as populations under Forms I–130, I–730, and I–929, for other form types the definitive nature of the genetic relationship is missing or there is not enough data to provide statistically valid inferences.[103] Therefore, DHS uses the average DM of Forms I–130, I–730, and I–929, and the average number of eligible qualifying family members for Forms I–914A, and I–918A, with a claimed genetic relationship to estimate the number of eligible Form I–914 applicants and Form I–918 petitioners who could submit DNA evidence under the proposed rule.[104] This grouping of forms are non-exhaustive, as USCIS may require, request, or accept DNA evidence to verify the existence of a claimed genetic relationship for other forms where the existence of a genetic relationship is at issue for a beneficiary, derivative, rider, or qualifying family member.

From FY 2013 to FY 2017, DHS estimates an average of 328,737 Form I–130 petitioners filing on behalf of 455,275 Form I–130 beneficiaries with a claimed genetic relationship. Over this same period of time, an average of 6,252 Form I–730 petitioners filed on behalf of 11,098 Form I–730 beneficiaries with a claimed genetic relationship. Also, from FY 2013 to FY 2017, an average of 131 Form I–929 petitioners filed on behalf of 174 Form I–929 qualifying family members with a claimed genetic relationship. The unweighted average DM for these three forms is 1.50,[105] comprising a Form I–130 DM of 1.38,[106] a Form I–730 DM of 1.78,[107] and a Form I–929 of 1.34.[108]

TABLE 17—POPULATIONS WITH CLAIMED GENETIC RELATIONSHIPS, FORM I–130, FORM I–730 AND FORM I–929

[FY 2013–FY 2017]

Form	Petitioner/applicant	Beneficiary/qualifying family member (genetic relationship)	Dependents multiplier
I–130	328,737	455,275	1.38
I–730	6,252	11,098	1.78
I–929	131	174	1.33
Average			1.50

From FY 2013 to FY 2017, an average of 528 Form I–914A qualifying family members and 13,151 Form I–918A qualifying family members requested an immigration benefit based upon a claimed genetic relationship (Table 17). Applying the average for Forms I–130, I–730, and I–929 DM of 1.50 to these populations, DHS estimates an average of 352 [109] Form I–914A applicants and 8,767 Form I–918A petitioners filing on behalf of qualifying family members with a claimed genetic relationship.

[102] A Form I–130 petitioner must file a benefit request for each eligible family member. As a result, these figures represent the total number of petitioners and beneficiaries in a given fiscal year.

[103] Those filing under Form I–914 and Form I–918 are able to file a benefit request on behalf of themselves or an eligible family member. Those applying for their own benefit request are required to file Form I–914 and Form I–918, while those filing for an eligible family member are required to file Form I–914A and Form I–918A.

[104] DHS uses this approach because it assumes the number of applicants or petitioners relative to the number of dependents to be similar for these family-based benefit requests.

[105] Calculation: (Form I–130 DM of 1.38 + Form I–730 DM of 1.78 + Form I–929 DM of 1.33)/3 = 1.50 (rounded).

[106] Calculation: 455,275 Form I–130 dependents/328,737 Form I–130 petitioners = 1.38 (rounded).

[107] Calculation: 11,098 Form I–730 dependents/6,252 Form I–730 petitioners = 1.78 (rounded).

[108] Calculation: 174 Form I–929 dependents/131 Form I–929 petitioners = 1.33 (rounded).

[109] Calculation: 528 Form I–929 DNA tests for dependents/1.50 DM = 352 principal filers (rounded).

TABLE 18—POPULATIONS WITH CLAIMED GENETIC RELATIONSHIPS, FORM I–914A, FORM I–918A
[FY 2013–FY 2017]

Form	Derived principal petitioner/applicant (genetic relationship)	Eligible qualifying family members (genetic relationship)	Average dependents multiplier (Form I–130, Form I–730 and Form I–929)
I–914A	352	528	1.50
I–918A	8,767	13,151	1.50

Source: USCIS Analysis using data from USCIS Office of Performance and Quality (OPQ).

In total, DHS estimates 824,465 individuals who are associated with a benefit request based upon a claimed genetic relationship (Table 18). Of this total, 344,239 were principal applicants and petitioners who claimed genetic relationships with 480,226 beneficiaries/qualifying family members. Under the proposed rule, DHS would require, request, or accept DNA evidence to establish or verify a claimed genetic relationship. However, DHS currently accepts DNA test results for 11,383 beneficiaries (on average, Table 8). Using the average DM of 1.50, DHS estimates there are currently 7,589 principal filers who submit DNA evidence in support of a claimed genetic relationship.[110] After accounting for the number of individuals who are currently submitting DNA evidence, DHS estimates there are 805,493 individuals who could be impacted by the proposed rule. Of this total, there are 336,650 principal applicants and petitioners with claimed genetic relationships with 468,843 beneficiaries/qualifying family members.

TABLE 19—POPULATIONS WITH CLAIMED GENETIC RELATIONSHIPS, FORM I–130, FORM I–730, FORM I–929, FORM I–914A AND FORM I–918A
[FY 2013–FY 2017]

Form	Principal petitioner/ applicant	Eligible dependent (genetic relationship)	Total
I–130	328,737	455,275	784,012
I–730	6,252	11,098	17,350
I–914A	352	528	880
I–918A	8,767	13,151	21,918
I–929	131	174	305
Total	344,239	480,226	824,465
Baseline	7,589	11,383	18,972
Total Incremental	336,650	468,843	805,493

Supplemental Population—NTAs

Figures were provided by DHS components for FY 2018 for the NTAs under age 14, and the relevant population[111] is 62,716.[112]

4. Costs and Benefits of the Proposed Rule

The benefit-cost analysis is separated into two sections. The first section focuses on the total costs of submitting biometrics, including the proposed use of new modalities to collect biometric information. The increased biometrics services fees are also covered here. The second section is concerned with the costs associated with the proposed provision to require, request, or accept DNA evidence to establish a claimed genetic relationship.

a. Costs to the Biometric-Submitting New Population

The proposed rule would increase the types of biometric modalities required to establish and verify an identity, including the potential use of iris and facial image, palm print, and voice print. Although DHS would implement the use of these proposed technologies, it does not expect a considerable increase in the time burden for an individual to submit biometric information to USCIS. Currently, an individual submits a photograph as part of their biometrics appointment. Under the proposed rule, DHS would be able to collect an individual's iris and facial image by using the same process to take a photograph.[113] Similarly, during a biometrics appointment an individual currently submits an index finger press print, an 8 fingerprints, or a full '10-roll' fingerprint. Under the proposed rule, DHS would also collect an individual's palm print by using the same procedure and equipment, which may take a few additional seconds. The proposed rule would also include an individual's voice print, which would take a few seconds to record. For these reasons, DHS does not expect the time burden to increase substantially beyond the current estimate of 1 hour and 10 minutes. However, DHS has not

[110] Calculation: 13,151 Form I–918A DNA tests for dependents/1.50 DM = 8,767 principal filers (rounded).

[111] The collection of biometrics will not result in 62,716 additional NTAs being issued by DHS components, rather this population of 62,716 received NTAs in FY2018. Under the proposed authority in this rule, DHS estimates that it would issue NTAs to the same population but collect biometrics from the under-14-year-old population that receives an NTA to establish or verify their identity.

[112] The population figure is broken out as follows: Under ICE Enforcement Removal Operations (ERO), Administrative actions, 1,712, Criminal cases, 0, and other NTAs, 2,083. Under Homeland Security Investigations, 123. Under CBP, Office of Field Operations, 19,340, Border Patrol (apprehensions), 39,458.

[113] The photograph would be taken with a camera that has the capacity to collect iris image or facial recognition.

conducted any pilot programs or field tests to test this expectation. Therefore, the population that we have described throughout this analysis as the baseline that currently submits biometrics would not incur a quantified impact from this proposed rule in terms of costs.

New populations that would submit biometrics would incur the opportunity costs of time to submit biometric information at an ASC. Because of this, the wage that individuals earn becomes central to the cost estimates. DHS will rely on the minimum wage. In some DHS rule-makings, the estimates of distributional impacts and time related opportunity costs were linked to the federal minimum wage. The federal minimum wage is $7.25, which, when burdened for benefits by a multiple of 1.46, is $10.59 per hour.[114] This reliance is grounded in the notion that most would be new entrants to the labor force and would not be expected to earn relatively high wages. In this proposed rule-making, we rely on a slightly more robust ''prevailing'' minimum wage of $8.25. As is reported by the Economic Policy Institute, many states have their own minimum wage, and, even within states, there are multiple tiers.[115] Although the minimum wage could be considered a lower-end bound on true earnings, the prevailing minimum wage is fully burdened, at $12.05, which is 13.8 percent higher than the federal minimum wage.[116]

DHS is aware that some forms, such as the Immigrant Petition by Alien Entrepreneur (Form I–526) and Form I–924 are linked to investment-authorization and that the minimum wage may not be realistic for these forms. However, the populations associated with these forms are relatively very small, and therefore it would not make much difference to overall costs to assign them a higher wage. While DHS does not rule out the possibility that some portion of the population might earn wages at the average level for all occupations, without solid a priori information, relying on the prevailing and benefits burdened minimum wage is justifiable. DHS welcomes public comment on this issue.

Individuals would need to travel to an ASC for their appointment.[117] DHS estimates that the average round-trip distance to an ASC is 50 miles, and that the average travel time for the trip is 2.5 hours.[118] The cost of travel also includes a mileage charge based on the estimated 50-mile round trip at the 2019 General Services Administration rate of $0.58 per mile.[119] DHS estimates the total cost of traveling to an ASC to submit biometrics is $59.13, which is the sum of $29 in direct travel costs and $30.13 in time-related opportunity costs.[120]

Because an individual would spend one hour and 10 minutes (1.17 hours) at an ASC to submit biometric information, the total opportunity cost of time is $14.10 per appointment (separate from the fee and travel-related costs).

DHS estimates the total cost for an individual to submit biometrics by summing the opportunity cost of time to submit biometrics and the total traveling costs for biometric services. The total cost for an individual to submit biometrics is $73.23 without the service fee and $158.23 with the $85 fee.

To determine the annual cost of submitting biometrics, DHS applies the previously discussed individual costs to the populations estimated in Phase III of the analysis. DHS estimated that 2,170,425 additional individuals would submit biometrics under the proposed rule. At a per-filer cost of $73.23, total biometrics submission costs would be $158,940,196. An estimated 1,627,721 new biometrics fee payments would generate $138,356,283 in new fee-related costs. The two cost segments tally to $297,296,479.

In terms of biometric collection from individuals encountered by DHS for law enforcement purposes, *e.g.,* upon apprehension for removal from the United States, under the INA, any scenario there is not likely to be a cost to these individuals whose biometrics are collected for purposes of NTA issuance. With respect to other DHS components (*i.e.,* ICE ERO, CBP OFO, and Border Patrol) individuals who fall into the category would generally be in custody when biometrics are collected, and, as such, there would be no opportunity costs or travel-related costs to the individual . . . USCIS does not take individuals into custody, so the biometric collections for USCIS will not be in a custodial setting, but will nevertheless result in no cost to individuals. USCIS NTA issuance is currently, as well as historically, predicated on the denial of an immigration benefit request. USCIS resubmits the previously collected biometrics associated with the underlying, denied benefit request to the FBI for updated criminal history information prior to NTA issuance. We expect that there will be some costs that can be monetized that would accrue to USCIS as part of the fees it pays to the FBI for Criminal History Record Information (CHRI) checks submitted by authorized users (it is noted that law enforcement agencies within DHS do not pay the fee, but USCIS is not a law enforcement agency). There could be relatively minor costs to USCIS associated with transferring background check data. The fee that the FBI charges to USCIS was revised most recently to $11.25 at 83 FR 48335.[121] Based on the population of 62,716, the costs annually would be $705,555 (62,716 NTAs multiplied by $11.25). Adding this to the biometrics costs above yields a total cost of $298,002,034 annually.

Over a 10-year time period, in non-discounted terms, the costs would be $2,980 million. At three and seven percent rates of discount, the 10-year present values of the combined costs are, in order, $2,542 million and $2,093 million. Since the annual inputs to the discounting system is the same each year, the average annualized

[114] The benefits-to-wage multiplier is calculated by the Bureau of Labor Statistics (BLS) as (Total Employee Compensation per hour)/(Wages and Salaries per hour) = $36.32/$24.91 = 1.458 (1.46 rounded). *See https://www.bls.gov/news.release/archives/ecec_03192019.pdf.* Calculation for annual federal minimum salary: Hourly wage of $10.59 × 2,080 annual work hours = $15,080.

[115] The Economic Policy Institute (EPI) report (2016) is available at: *https://www.epi.org/publication/when-it-comes-to-the-minimum-wage-we-cannot-just-leave-it-to-the-states-effective-state-minimum-wages-today-and-projected-for-2020//.* There are multiple tiers of minimum wages across many states that apply to size of business (revenue and employment), occupations, working hours, and other criteria. Some of these variations per state are described at: *https://www.minimum-wage.org* (last visited Apr 7, 2020).

[116] Calculations (1) for prevailing minimum wage: $8.25 hourly wage × benefits burden of 1.46 = $12.05; (2) (($12.05 wage − $10.59 wage)/$10.59)) wage = .1378, which rounded and multiplied by 100 = 13.8 percent.

[117] DHS expects the majority of biometrics appointments to occur in the United States at an ASC facility. However, in certain instances individuals may submit biometrics at an overseas USCIS or Department of State facility. However, because DHS does not currently have data tracking the specific number of biometric appointments that occur overseas, it uses the cost and travel time estimates for submitting biometrics at an ASC as an approximate estimate for all populations submitting biometrics in support of a benefit request.

[118] *See* DHS Final Rule, Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives, 78 FR 535 (Jan. 3, 2013).

[119] The General Services Administration mileage rate of $0.58, effective January 1, 2019, available at *https://www.gsa.gov/travel/plan-book/transportation-airfare-pov-etc/privately-owned-vehicle-mileage-rates/pov-mileage-rates-archived* (last visited Apr. 7, 2020).

[120] We note here that in a particular aspect, the costs that would accrue to travel to an ASC may be overstated. It is logical that since children cannot drive, families could travel together, reducing the number of individuals separately incurring travel costs. We do not have salient information for which we could quantify this possibility.

[121] The notice, with an effective date of January 1, 2019, is found at: *https://www.federalregister.gov/documents/2018/09/24/2018-20644/fbi-criminal-justice-information-services-division-user-fee-schedule.*

equivalence cost, at either rate of discount, is the same as the non-discounted annual cost, which is $298 million.

b. Costs Involving DNA Submissions

The second section of this analysis evaluates the total cost of submitting DNA evidence in support of a benefit request. DHS performs this analysis by first considering the fees associated with submitting evidence for DNA testing. Next, DHS considers the time burden for submitting DNA evidence. Finally, DHS addresses the travel and time burden costs of traveling to an accredited AABB lab and an overseas USCIS or DOS facility. The compilation of these costs segments will comprise the total costs involving new DNA submissions.

The process for submitting DNA evidence begins when the principal applicant or petitioner submits DNA evidence at an accredited AABB laboratory, including a fee of approximately $440 to test the first genetic relationship, and $220 for each additional test.[122] The principal applicant or petitioner would pay the fee directly to the accredited AABB laboratory. For beneficiaries/qualifying family members outside of the United States, a DNA testing kit is sent from the AABB lab to a USCIS or DOS facility located overseas.[123] For all DNA tests conducted outside of the United States, the beneficiaries/qualifying family members would be responsible for paying a trained professional who swabs his or her cheek to collect the DNA sample. DHS estimates this DNA swab test would cost the beneficiary an average of $100 per DNA collection.[124] Therefore, for a DNA test conducted overseas, the total cost would be $540 to test the first genetic relationship and $320 for each additional test.[125]

DHS does not currently track the time burden estimates for submitting DNA evidence at an AABB accredited lab or to a trained professional at a U.S. Government/DOS international facility. Therefore, DHS does not attempt to quantify these specific costs in the proposed rule. Similarly, DHS does not currently track the travel cost or time burden for traveling to an AABB lab. However, most AABB labs have affiliates throughout the country where applicants and petitioners can submit DNA evidence. There would be added travel/other costs involved, and DHS welcomes public comment on such costs.

Some petitioners and beneficiaries/qualifying family members who submit DNA evidence to establish a genetic relationship in support of a benefit request would have to travel to an international USCIS or DOS U.S. Government office. Once again, DHS does not have specific information regarding the distance needed to travel to an approved international facility. Furthermore, DHS expects the travel distance to visit an overseas U.S. Government office to be higher due to a limited presence in most foreign countries.

In the first year this rule becomes effective, DHS estimates there would be a maximum of 336,650 principal applicants or petitioners filing on behalf of 468,843 beneficiaries/qualifying family members based upon a claimed genetic relationship. Because the DNA testing costs decline once the first genetic relationship has been tested, DHS estimates there are 336,650 DNA tests affiliated with the first DNA test and 132,193 DNA tests affiliated with additional family members.[126] Based on these possibilities the total DNA testing fees would be $224,092,760, which comprise $181,791,000 to test a first genetic relationship and $42,301,760 to test additional family members with a claimed genetic relationship (Table 20).

TABLE 20—DNA TESTS AND ASSOCIATED COSTS

Population/fee	Principal petitioner/ applicant (genetic relationship)	Eligible beneficiaries/ qualifying family members (genetic relationship)	Total
DNA Fees:			
Population	336,650	132,193	468,843
Test Fees	$540.00	$320.00	
Total Cost	$181,791,000	$42,301,760	$224,092,760

Source: USCIS Analysis using data from USCIS Office of Performance and Quality (OPQ) and Refugee, Asylum and International Operations.

Because DHS does not know with certainty how many individuals would be requested or required (or would elect to submit) DNA evidence to be used to verify a claimed genetic relationship, we present the following sensitivity analysis in order to cover potential range of costs. Table 21 shows the range of values for the percentage of principal applicants or petitioners and the percentage of beneficiaries/qualifying family members who would be eligible to submit DNA evidence in support of a benefit request under this proposed rule.

TABLE 21—TOTAL RANGE OF COSTS FOR SUBMITTING DNA EVIDENCE

Percent of principal petitioners/applicants and dependents submitting DNA evidence	Number of principal petitioners	Number of dependents	Total cost
10%	33,665	46,884	$22,409,276
20%	67,330	93,769	44,818,552

[122] United States Department of State, P–3 Frequently Asked Questions: DNA, Bureau of Population, Refugees, and Migration, Bureau of Population, Refugees, and Migration.

[123] DHS expects most DNA tests for dependents to occur at an overseas facility. However, it is possible for a dependent to submit their DNA evidence at an AABB lab.

[124] USCIS International Operations Division (IO) in the Refugee, Asylum, and International Operations Directorate (RAIO) estimates $100 for such costs.

[125] Calculation (total DNA Cost when 1st Beneficiary is Residing Overseas) = $440 DNA Test + $100 Swab Fee = $540. Calculation (total DNA Cost for Each Additional Beneficiary Residing Overseas) = $220 DNA Test + $100 Swab Fee = $320.

[126] Calculation: 468,843 beneficiaries/qualifying family members with a claimed biological relationship—336,650 principal applicants or petitioners = 132,193 DNA tests for additional family members.

TABLE 21—TOTAL RANGE OF COSTS FOR SUBMITTING DNA EVIDENCE—Continued

Percent of principal petitioners/applicants and dependents submitting DNA evidence	Number of principal petitioners	Number of dependents	Total cost
30%	100,995	140,653	67,227,828
40%	134,660	187,537	89,637,104
50%	168,325	234,422	112,046,380
60%	201,990	281,306	134,455,656
70%	235,655	328,190	156,864,932
80%	269,320	375,074	179,274,208
90%	302,985	421,959	201,683,484
100%	336,650	468,843	224,092,760

DHS will not attempt to discount all of the range, above, and instead provides low, midrange, and high-end estimates. Since it is reasonable to assume that some collection will occur, but, that it will not be complete (100 percent), we set the range values at 10, 50, and 90 percent. In that order, the undiscounted ten-year costs in millions are $224.1, $1,120.5, and $2.016.8. In order again, the ten-year discounted present values at a 3 percent rate of discount, are, in millions, $191.2, $955.8, and $1,720.4. In order again, the ten-year discounted present values at a 7 percent rate of discount, are, in millions, $157.4, $787.0, and $1,416.5. The biometrics consist of a photograph, fingerprints, and signature to conduct identity, eligibility, national security, criminal history background checks, and in certain situations, biological average annualized equivalence costs are the same at either rate of discount and correspond to the undiscounted figures in Table 21. Having parsed out the biometrics (which includes the service fees and NTA fees) costs and the DNA-related costs, the two bins can next be collated to estimate the total costs of the proposed rule. For this we present Table 22, which provides the undiscounted and discounted costs based on the three DNA data-range points suggested above.

TABLE 22—TOTAL MONETIZED COSTS OF THE PROPOSED BIOMETRICS RULE

[Millions]

	DNA-low (10%)	DNA-midrange (50%)	DNA-high (90%)
10 year costs:			
• Undiscounted	$3,204.1	$4,100.5	$4,996.9
• 3% discount	2,733.2	3,497.8	4,262.4
• 7% discount	2,250.4	2,880.0	3,509.6
Average Annual:			
• Undiscounted	320.4	410.0	499.7
• 3% discount	320.4	410.0	499.7
• 7% discount	320.4	410.0	499.7

c. Costs to the Federal Government

Under the proposed rule, three cost modules could impact the Federal Government. The first cost module is attendant with the capacity of DHS to process biometrics for additional populations. As previously stated, the population that would submit biometrics at an ASC would increase due to elimination of the age restrictions and the expansion of collection across a broadened set of form types. In annual terms, the population that would submit biometrics would increase from a baseline volume of 3,900,561 to an estimated volume of 6,070,986. This increase would represent an increase of 2.17 million annual biometric submissions and pull up the general collection rate across all USCIS forms above 70 percent.

The DHS ASC contract was designed to be flexible in order to process varying benefit request volumes. The pricing mechanism within this contract embodies such flexibility. Specifically, the ASC contract is aggregated by USCIS District and each District has five volume bands with its pricing mechanism. As a general principle, the pricing strategy takes advantage of economies of scale in that larger biometric processing volumes have smaller corresponding biometric processing prices.[127] For example, Table 23 provides an illustrative example of the pricing mechanism for a USCIS District. This particular district has a monthly fixed cost of $25,477.79, which would cover all biometric submissions under a volume of 8,564. However, the price per biometric submission decreases from an average cost of $6.66 for volumes between a range of 8,565 and 20,524 to an average of $5.19 once the total monthly volume exceeds 63,503. In other words, average cost is a decreasing function of the biometrics submissions volume.

[127] Economies of scale is a technical term that is used to describe the process whereby the greater the quantity of output produced (in this case more biometric service appointments) the lower the per-unit fixed cost or per-unit variable costs.

TABLE 23—ILLUSTRATIVE PRICING MECHANISM FOR A DISTRICT PROCESSING BIOMETRIC APPOINTMENTS

District X	Volume band	Min volume	Max volume	Costs
Baseline: Fixed price per month	AA	0	8,564	$25,477.79
Fixed price per person processed	AB	8,565	20,524	6.66
Fixed price per person processed	AC	20,525	31,752	5.94
Fixed price per person processed	AD	31,753	63,504	5.53
Fixed price per person processed	AE	63,505	95,256	5.19

Source: USCIS, Immigration Records and Identity Services Directorate (IRIS).

In addition, the maximum monthly volume of biometric submissions allowed by the current ASC contract is 1,633,968 and the maximum annual volume is 19,607,616. It is important to note that these are theoretical volumes, as DHS has never processed this many applicants in a month or in a year. However, based on the current ASC contract, DHS expects that an additional 2.17 million biometric submissions per year would not impact DHS' ability to process these additional populations. In addition, DHS does not expect the Federal Government to incur additional costs as a result of the additional volumes that may submit biometrics under the proposed rule due to the diminishing cost structure presented in Table 23. Stated differently, even though volumes could vary from those estimated in this analyses, the upper bound on the maximum volume stipulated by the ASC contract is many times greater than the realistic volume increase due to the proposed rule (and is in fact greater than the total volume of USCIS filings). It is noted here that our claim against rising costs to ASCs is based on the total volume of the ASC contract and the total volume of expected biometric submissions; and, the example we provided showing decreasing unit costs (on average) was for a specific USCIS processing district. It is possible that for any individual district, the volume of new biometrics submissions might pull the totals to a level that would surpass the budget allocation for that district. If this occurs, costs could conceivably rise or budgets may need to be increased. While the above discussion centers on USCIS budgetary costs, it is possible that real resource costs to the economy could accrue to higher volumes.

The second cost module accrues to the ability to use and implement the proposed modalities, such as iris and facial images, palm print, and voice print, to collect biometrics in support of a benefit request. Although DHS is not currently able to quantify the aggregate cost for implementing the proposed modalities, it does calculate a unit cost estimate to provide an demonstrative example of the costs that may be incurred by the Federal Government.

The camera that is currently used to collect an applicant, petitioner, beneficiary or sponsor's photograph has a unit cost of $471.[128] Under the proposed rule, a camera that has the capacity to collect iris image or facial recognition would cost an average of $650, representing an additional cost of $179 per camera.[129] DHS does not know yet whether existing cameras could be upgraded to collect iris images and facial recognition, so it is possible that the rule would result in costs equal to the full costs of replacing cameras ($650 plus any costs of removing old cameras and installing new ones). However, DHS believes that because the current cameras were purchased in 2016, USCIS likely would have refreshed these cameras before the implementation date of this rule, even in the absence of the rule.

Under the proposed rule, palm print may also be used for identity management in the immigration lifecycle. While DHS currently has the equipment that could collect the palm print of an individual, there may be some computing software updates that would need to be modified to accommodate the appropriate collection of this biometric evidence. Although DHS does not have cost estimates for such software or any associated information technology typology at this time, it has no reason to expect that such software updates would impose significant costs. Another modality that may be used to collect biometrics is related to an individual's voice print. It is possible to collect a voice print using standard electronic equipment such as microphones installed in cell phones, desk phones, computers, and laptops. However, USCIS, in collaboration with DHS Science and Technology, is searching for a cost-effective and ergonomic device that will ensure, among other things, the quality of the recording; provide consistency across different communication networks (*e.g.,* network carriers such as AT&T and Verizon); and, ensure enough flexibility to accommodate individuals with various physical characteristics, but does not know yet how many such devices it may need to procure.[130] At this time, DHS is not planning to procure expensive or specialized equipment to collect an individual's voice print. DHS cannot predict the costs of such equipment at this time.

The third cost module involves the costs of facilitating DNA collection to establish or verify a claimed genetic relationship. As previously stated, individuals submitting DNA evidence in the United States would be responsible for paying the associated DNA testing fees. However, when the applicant, petitioner, or beneficiary/qualifying family member submits DNA evidence outside of the United States, DHS facilitates DNA collection at USCIS Government offices or, if USCIS does not have an office in that country, DOS has agreed to facilitate collection of DNA.

DHS does not currently charge a fee for facilitating the collection of DNA. At this time, DHS plans to incur all future costs for facilitating the collection of DNA evidence. As previously stated, DOS facilitates the collection of DNA and USCIS reimburses DOS on a per case basis. Table 24 provides a summary of costs associated with DNA collection facilitated by DOS. From FY 2015 to FY 2017, USCIS paid DOS an average of $263.95 per DNA collection facilitated by DOS.[131] Of the average 11,383 DNA tests that were used to establish a genetic relationship annually between FY 2015 and FY 2017, DHS facilitated 53.7 percent [132] and DOS facilitated 46.3 percent.[133]

[128] Source: USCIS, IRIS.

[129] Calculation: $650 − $471 = $179 additional cost to purchase a camera that can collect iris print or facial images.

[130] The device would have similar features to a webcam and it would be able to adjust for a person's height.

[131] Calculation: $1,390,595 Average Cost/5,268 average number of DNA tests = $263.95 (rounded).

[132] Calculation: 6,115 USCIS-facilitated DNA tests/11,383 total DNA tests = 53.72 percent (rounded).

[133] Calculation: 5,268 DOS-facilitated DNA tests/11,383 total DNA tests = 46.28 percent (rounded).

DHS is unable to project how many new DNA tests facilitated by DOS will take place annually. DHS will not be conducting a DNA test for all the applications or petitions where a genetic relationship is relevant or claimed. Instead, DHS will only require or request DNA when a claimed genetic relationship cannot be verified through other/documentary means. In addition, applicants can volunteer on their own to submit DNA, but DHS has no method to project the number of people who will submit it. Additionally, a percentage of people will receive a request from USCIS to appear for DNA collection, but will fail to appear (resulting in no collection). For the reasons, projecting a number is difficult.

TABLE 24—USCIS COSTS PER OVERSEAS DNA COLLECTION FACILITATED BY DOS

[FY 2015–FY 2017]

Fiscal year	# of DNA collections (USCIS)	# of DNA collections (DOS)	Total DNA tests	Total cost for DOS facilitation	Avg. cost per DNA test facilitated by DOS
2015	7,769	5,748	13,517	$1,862,697	$324.06
2016	6,735	5,961	12,696	1,368,646	229.60
2017	3,841	4,096	7,937	940,442	229.60
Total	18,345	15,805	34,150	4,171,785	
Average	6,115	5,268	11,383	1,390,595	263.95

Source: USCIS analysis using data from Refugee, Asylum and International Operations.

d. Benefits to the Federal Government, Applicants, Petitioners, Sponsors, Beneficiaries, Requestors, or Individuals Filing an Immigration Request

The proposed rule provides individuals requesting certain immigration and naturalization benefits with a more reliable system for verifying their identity when submitting a benefit request. This would limit the potential for identity theft and reduce the likelihood that DHS would not be able to verify an individual's identity and consequently deny an otherwise approvable benefit. In addition, the proposed rule would allow individuals to use DNA testing as primary or secondary evidence to establish or verify a claimed genetic relationship.[134] According to AABB, DNA testing provides the most reliable scientific test currently available to establish a genetic relationship.[135] Therefore, DNA testing would give individuals the opportunity to demonstrate a genetic relationship using a more expedient, less intrusive, and more effective technology than the blood tests currently provided for in the regulations. *See* 8 CFR 204.2(d)(2)(vi)

The proposed rule would provide a benefit to the U.S. Government by enabling DHS to know with greater certainty the identity of individuals requesting certain immigration and naturalization benefits. The expanded use of biometrics would provide DHS with the ability to limit identity fraud because biometrics are unique physical characteristics and more difficult to falsify. In addition, using biometrics for identity verification would reduce the administrative burden of manual paper review involved in verifying identities and performing criminal history checks.

The proposed rule would also enhance the U.S. Government's capability to identify criminal activity and protect vulnerable populations. For example, the proposed provision to collect biometrics of U.S. citizen and lawful permanent resident petitioners of family-based immigrant and nonimmigrant fiancé(e) petitions would enable DHS to determine if a petitioner has been convicted of certain crimes under the AWA and IMBRA. The proposed rule would also improve the capability of the U.S. Government to combat human trafficking, child sex trafficking, forced labor exploitation, and alien smuggling. Currently, individuals under the age of 14 do not routinely submit biometrics in support of a benefit request. As a result, DHS' system for verifying the identity of vulnerable children is not as robust as it could be. For example, a vulnerable child with similar biographical characteristics to a child who has lawful immigration status in the United States may be moved across the border under the assumed identity of that other child, although DHS does not have specific data to identify the entire scope of this problem.[136] Under the proposed rule, DHS would be able to use biometrics to verify a child's identity, which would be particularly useful in instances where biometrics are used to verify the identities of UAC and AAC.

There could be some unquantified impacts related to privacy concerns for risks associated with the collection and retention of biometric information, as discussed in DHS's Privacy Act compliance documentation. However, this rule would not create new impacts in this regard but would expand the population that could have privacy concerns.

Finally, the provisions proposed in this biometrics rule provide DHS with the flexibility needed to implement, and are conducive to and compatible with, the USCIS evolution toward a person-centric model for organizing and managing its records, enhanced and continuous vetting, and a reduced dependence on paper documents.

5. Other Impacts

DHS does not expect that the proposed rule would create impacts to the national labor force or that of individual states. In addition, DHS does not expect tax impacts or any distributional impacts from the proposed rule.

In the below supplemental section, information and data is provided concerning additional DHS component activity linked to this proposed rule.

[134] Currently, DNA evidence is only used as secondary evidence, after primary evidence (*e.g.,* medical records; school records) have proved inconclusive.

[135] AABB, *Standards for Relationship Testing Laboratories,* App. 9—Immigration Testing. (13th ed. Jan. 1, 2018), *available at http://www.aabb.org/sa/Pages/Standards-Portal.aspx.*

[136] *See* generally, Department of Homeland Security Strategy to Combat Human Trafficking, the Importation of Goods Produced with Forced Labor, and Child Sexual Exploitation (January 2020). *https://www.dhs.gov/sites/default/files/publications/20_0115_plcy_human-trafficking-forced-labor-child-exploit-strategy.pdf.* See also, ''ICE HSI El Paso, USBP identify more than 200 'fraudulent families' in last 6 months,'' ICE News Release, dated October 17, 2019. *https://www.ice.gov/news/releases/ice-hsi-el-paso-usbp-identify-more-200-fraudulent-families-last-6-months.*

Summary

Under this proposed rule DHS will authorize biometric collection from aliens regardless of age during enforcement actions requiring identity verification. In addition, DHS will be authorized collect biometrics, such as DNA, to verify claimed genetic relationships in cases where we suspect fraud. The authority to collect biometrics without any age restrictions will aid in criminal investigations or to identify victims in human trafficking cases and child smuggling.

As a result of this proposed rule, DHS will be able to collect the biometrics of all minors during their initial immigration enforcement processing, which will require some operational changes for agents in the field. No new resources or system changes would be required as a result of this proposed rule. The current equipment, including the mobile biometrics units and the databases used to record the case files of aliens in custody, have the capabilities and capacity to include biometrics for the new population cohorts of under 14 years old and over 79 years old. The most significant impact will be informing and retraining staff of the change.

Background

Currently, the use of DNA is almost exclusively used to support the investigation of criminal cases when ICE is prosecuting aliens. The removal of age limits for the collection of biometrics and simultaneously authorizing DNA testing in order to verify a claimed genetic relationship under the proposed rule will assist ICE in performing functions necessary for effectively administering and enforcing immigration and naturalization laws.

Currently, when ICE arrests an alien, fingerprints are collected as part of the process of building an A-file on the alien. A handheld mobile biometrics application called ''EDDIE'' is used to facilitate the collection and recordkeeping of aliens in ICE custody. This handheld application effectively and efficiently collects fingerprints and photographs in about 30 seconds, which are then transferred to IDENT. Collecting biometrics is essential to determining what action to take in an individual's immigration case. ICE does this by sending a query to IDENT and multiple databases managed by the FBI. The results from this query will reveal the individual's immigration history, including past removal orders, criminal charges, or historical custodial information from CBP or ICE.

As part of current procedures, ICE collects fingerprints from aliens (between the ages of 14 years and 79 years) when they are first encountered and when they are being removed. In FY 2018, ICE made 158,581 administrative arrests, which includes the taking of fingerprints and, if it is the individual's first encounter with DHS, creating a file. As part of the removal process, ICE will take a person's fingerprints again to verify identity prior to departure; in FY 2018, 256,085 individuals were removed, including 2,711 family units (at least one adult and one child) and 5,571 UAC. Table S1 provides data on ICE arrests and removals, noting that ICE ''Arrests'' represent only arrests by ICE law enforcement personnel, are generally within the boards of the continental United States, and do not include the cases that CBP initially apprehends and referrers to ICE for detention.

	FY 2016	FY 2017	FY 2018
Table S1(A)—ICE Arrests [137]			
Administrative Arrests	110,104	143,470	158,581
Table S1(B)—ICE Removals [138]			
Adult	240,255	226,119	256,085
Family Units	1,728	2,326	2,711
UAC	2,545	3,598	5,571

Currently, ICE collects DNA in two limited situations, first, on a case-by-case basis to identify instances of fraudulent claims of biological relationships at the border and, second, to support the investigation of criminal prosecutions. This NPRM relates to the first ICE purpose of DNA collection, specifically, to identify instances of fraudulent claims of biological relationships at the border. This fraud scheme generally involves adult non-U.S. persons and unrelated children posing as family units to DHS authorities. Family unit fraud can lead to, or stem from, other crimes, including immigration violations, identity and benefit fraud, alien smuggling, human trafficking, foreign government corruption, and child exploitation.

DHS initiated a pilot program in FY 2019 to combat fraudulent family claims using Rapid DNA testing kits provided through a contract with a vendor for $5.28 million. The contract included an estimated 50,000 DNA testing kits, and equipment to enable the collection of DNA from an individual using a cheek swab, and running an analysis using a desktop unit. Results from this process takes approximately 90 minutes. The collection of Rapid DNA profiles for identification and comparison can only be applied for determining if a family unit exists. As such, any Rapid DNA profile match that is less than a parent-child match (*i.e.,* less than a 99.5 percent DNA profile match) will be considered a negative match under ICE's Rapid DNA testing.[139]

Population

As part of its enforcement actions, ICE encounters two types of minors, those accompanied by an adult purported family member and those not accompanied by an adult family member. All minors will go through ICE's current initial book-in process, which includes collecting fingerprints and, when needed, a photograph. However, under the proposed rule minors, regardless of age, will also have their biometrics collected and enrolled in IDENT. Table S2 breaks out ICE UACs Taken into custody be certain age groups.

[137] Fiscal Year 2018 ICE Enforcement and Removal Operations Report, *available at: https://www.ice.gov/doclib/about/offices/ero/pdf/eroFY2018Report.pdf.*

[138] *Id.*

[139] Privacy Impact Assessment for the Rapid DNA Operational Use *https://www.dhs.gov/sites/default/files/publications/privacy-pia-ice-rapiddna-june2019_1.pdf.*

TABLE S2—UACs TAKEN INTO ICE CUSTODY

Age groups	FY 2015	FY 2016	FY 2017	FY 2018 YTD (4/21/2018)
0–4 years	674	1,176	853	549
5 years–14 years	9,466	17,096	11,300	5,310

The removal of age restrictions associated with biometrics collection, specifically those found at 8 CFR 215.8 and 8 CFR 235.1, will also impact CBP operations. CBP currently has the authority to collect biometrics for individuals applying for admission to the United States at points of entry (POEs) only if they are age 14 and above and under the age of 79. *See* 8 CFR 235.1. CBP has the same authority, and restrictions, for those departing the United States at POEs. *See* 8 CFR 215.8. CBP data on applicants for admission are included below at Table S3.

TABLE S3—CBP GENERAL ADMISSIONS DATA

Passenger volume (arrivals)	FY 2018	FY 2019
Alien/Non-Immigrant	185,593,344	187,851,637
<14	13,756,960	13,460,997
>79	1,788,112	1,825,199

The new populations for purpose of this rule are the ''under 14'' and ''over 79'' only. Additionally, it should be noted that CBP biometric collection at the POEs is fundamentally different than USCIS biometric collection at the ASCs. Unlike collection at the ASCs, there is no appointment made, no time to travel to a collection site, no biometrics services fee, and CBP is not charged a fee by the FBI for criminal history information (where necessary). Furthermore, CBP does not currently track all departures from the United States POEs. For purposes of this economic analysis, DHS assumes that every individual who enters subsequently departs, so CBP would have the authority to collect biometrics for the departing populations under 14 and over 79 as well.

Costs and Benefits

The costs of the proposed rule to DHS will stem from new guidance that will inform the staff of the change in operational procedures for booking in minors. DHS' equipment used for collecting biometrics and the systems that house the information will not be impacted. DHS has enough mobile biometric devices to meet the needs of ICE as a result of this rule.

ERO guidance on biometric collection will announce via a broadcast message, and in the training academy where agents are instructed in the proper procedures for biometric collection. Lastly, the annual refresher training required of all ERO staff will also need to be updated to reflect the elimination of age restrictions for biometrics. After the first year there will only be the reoccurring cost of the annual refresher training and the instructions given at the training academy.

The new guidance and training required as a result of removing the age restrictions for biometrics collection will take on average one hour of each employee's time. All ERO staff at headquarters, in the field, and at the academy will be required to take the training which will cost approximately $288,373 in the first year. In September 2019, there were 6,814 ERO staff nationally across 24 field offices, the average Federal Government General Schedule (GS) pay scale for staff in the field was a GS 10. In September 2019, there were 1,001 ERO staff, the average GS at headquarters was a GS 12. During FY 2018, there were 326 new agents at the academy who would spend an estimated one hour on the correct procedures for biometrics collection. The cost of informing all of ERO would occur within the first year, and no new additional training would be required after the first year. The current refresher training on biometrics collection would be updated to no longer include the age restrictions for biometrics, but would not require retraining of current procedures.

TABLE S3—EXPECTED TRAINING COSTS

	Headquarters	Field offices	Academy	Total
Size of ERO Staff	1,001	6,814	326	8,141
Average GS level	GS–12 step 07	GS–10 step 07	GS–8 step 01.	
Total cost for per hour of training	$47,998	$233,099	$7,276	$288,373

The proposed changes will result in numerous operational benefits, such as improving the identification of all minors throughout the duration of their immigration cases, and will help DHS better protect vulnerable populations from human trafficking, child sex trafficking, forced labor exploitation, and alien smuggling. By removing the age restrictions to allow the biometrics collection for minors, DHS can identify situations where a minor was trafficked multiple times or smuggled by transnational organized crime groups to the U.S. border. Using DNA to verify claimed genetic relationships is the most effective tool to deter fraud and trafficking. Further, by allowing DHS components to identify previously encountered aliens quickly and accurately, the rule efforts helps to preserve DHS resources and improve records management.

This rule generally does not propose to authorize CBP or ICE to expand biometrics collections beyond either agency's current, independent

authorities. However, this rule does propose to authorize CBP and ICE to expand their current biometrics collections for immigration benefit requests to individuals under the age of 14 and authorizes collection of additional biometrics modalities. DHS proposes to collect biometrics, without regard to age, upon apprehension, arrest, or repatriation for purposes of processing, care, and custody of aliens. DHS anticipates that this rule will assist ICE and CBP in identifying fraudulent familial relation claims at the border and upon apprehension. Collecting DNA to verify a claimed genetic relationship with an accompanying adult would aid DHS with the identification and care of UACs. In FY 2017 ICE had 12,153 minors under the age of 14 in custody, and in FY 2018 (year to date 4/21/2018) there were a total of 5,859 minors under the age of 14 in ICE custody.

DHS recognizes that some individuals who submit biometrics/DNA could possibly be apprehensive about doing so and may be have concerns germane to privacy, intrusiveness, and security Data security can be considered a cost. For example, companies insure against data breaches, as the insurance payment can be a valuation proxy for security. In terms of this proposed rule, data security is an intangible cost, and we do not rule out the possibility that there are costs that cannot be monetized that accrue to aspects of privacy and data security. Finally, DHS notes that based on the discussion above, a salient estimate of future ICE and CBP biometrics collections cannot be determined. Furthermore, the logistics associated with such collections are not expected to impose costs to CBP or ICE. However, DHS cannot rule out the possibility that there could be costs that cannot be presently identified. DHS welcomes public comment on this and related topics.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (March 29, 1996), requires federal agencies to consider the potential impact of regulations on small entities during the development of their rules. The term ''small entities'' comprises small businesses, not-for-profit organizations that are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

DHS has reviewed this regulation in accordance with the RFA and believes that the vast majority of the population impacted will not involve small entities. DHS estimates that about 2.17 million individuals and entities could be impacted by this proposed rule annually in terms of incurring monetized costs. Almost all of this total involves individuals who would submit biometrics in support of individual benefit requests which are not covered by the RFA. However, the population accruing to regional centers, which are the regional center principals, could be considered entities in terms of the RFA. Therefore, DHS has prepared an initial regulatory flexibility analysis (IRFA). In addition, DHS will discuss one hypothetical scenario that could involve small entities.

1. Initial Regulatory Flexibility Analysis

Under the Regional Center Program, foreign nationals base their EB–5 petitions on investments in new commercial enterprises (NCEs) located within ''regional centers.'' DHS regulations define a regional center as an economic unit, public or private, that promotes economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment. The small entity status of regional centers is difficult to assess because there is a lack of official data on employment, income, and industry classification for these entities, primarily because these centers generally are not actual businesses. Such a determination is also difficult because regional centers can be structured in a variety of different ways, and can involve multiple business and financial activities, some of which may play a direct or indirect role in linking investor funds to new commercial enterprises and job-creating projects or entities. DHS was not able to identify most of the entities in any of the public or private databases. For purposes of the small entity analysis, DHS did not focus on the bundled capital investment amounts (either $1 million or $500,000 minimum per investor) that currently are invested into an NCE. Such investments amounts are not indicative of whether the regional center is appropriately characterized as a small entity for purposes of the RFA. Due to the lack of regional center revenue data, DHS assumes regional centers collect revenue primarily through the administrative fees charged to investors. DHS was able, despite data constraints, to obtain some information under some specific assumptions to develop a methodology to analyze the small entity status of regional centers, as will be explained in detail under section D. In summary, DHS was able to determine that a significant number of regional centers may be small entities. However, DHS cannot conclusively determine the impact of this proposed rule on those small entities.

a. Description of the Reasons Why the Action by the Agency Is Being Considered

While DHS has the authority to collect biometrics from any applicant, petitioner, sponsor, beneficiary, or requestor, or individual filing a benefit request, biometrics are only mandatory for certain benefit requests. For all others, USCIS must decide if the request justifies collection of biometrics and, if so, notify the individual of where they will be collected. DHS has decided that this focus on background checks and document production is outdated because immigration benefit request adjudication includes verifying identity and determining whether or not the individual poses a risk to national security or public safety, in those instances where these factors may impact eligibility for an immigration benefit. DHS has decided that it is necessary to increase the use of biometrics from determining when biometrics may or should be collected in a case, to requiring routine biometric collections from individuals associated with certain immigration benefits. Therefore, DHS proposes in this rule that any applicant, petitioner, sponsor, beneficiary, or individual filing or associated with a benefit or other request, including U.S. citizens and without regard to age, must appear for biometrics collection, unless USCIS waives or exempts the requirement.

b. Succinct Statement of the Objectives and Legal Basis the Proposed Rule

The changes proposed in this rule would provide DHS with the flexibility to change its biometrics collection practices and policies to ensure that DHS can make adjustments necessary to meet emerging needs, such as national security, public safety, or fraud concerns; enhance the use of biometrics beyond national security and criminal history background checks and document production, to include identity management in the immigration lifecycle and enhanced vetting, to lessen the dependence on paper documents to prove identity and familial relationships and preclude imposters; and improve the consistency in biometrics terminology within DHS.

USCIS has broad general and specific authority to collect or require submission of biometrics from applicants, petitioners, and beneficiaries for immigration benefits. Section 103(a)

of the INA, 8 U.S.C. 1103(a), provides general authority to DHS to administer and enforce immigration laws, including issuing forms, regulations, instructions, other papers, and such other acts the Secretary deems necessary to carry out the INA. The INA also provides specific authority for DHS to collect or require submission of biometrics in several sections, as is described more fully in the preamble.

c. Description and Estimate of the Number of Small Entities To Which the Proposed Rule Will Apply

To perform the small entity analysis, DHS reviewed data from Form I–924 submissions. Specifically, DHS reviewed certain data for 574 regional centers with approved Forms I–924 in FY 2017, that actually had Form I–526 investment petitions submitted under their purview that year, such as the administrative fee that the regional center may charge to investors as well as plans and projections concerning investors. DHS assumes that these administrative fees contribute to the revenues of regional centers.[140] Thus, to approximate regional center revenue, DHS multiplied the administrative fees by the number of associated EB–5 investors who filed a Form I–526 per regional center.

DHS obtained the number of investors per regional center and proceeded to refine the regional center cohort by removing regional centers that did not have relevant data, that have been terminated, and that had no affiliated Form I–526 petitions associated with them (as those would present no information that could be used in the analysis). For the purposes of this analysis, DHS assumes that each Form I–526 associated with a regional center represents an instance in which the regional center will receive an administrative fee that will contribute to the regional center's revenue. Although DHS cannot assume that administrative fees are paid when the forms are filed, this analysis assumes the fees will be paid eventually.

For the approved regional centers that had data available for analysis, we obtained a cohort of 95 regional centers that were associated with 6,308 individual investors. Analysis reveals that the number of investors per regional center varies substantially, with a range of 2,272. The distribution is highly right-skewed, with a mean of 85, a median of 39, and a skewness value of 8. These results indicate that the median is a proper measure for central location. Next, DHS analyzed the administrative fees in the cohort. The distribution is tight (or clustered closely together) with both the mean and median at $50,000. Next DHS estimated revenues for each regional center in the analytical cohort by multiplying the total number of investors who filed a Form I–526 per regional center by its administrative fee, which yielded a median revenue amount of $1,250,000 over the period considered. To determine the appropriate size standard for the regional centers, DHS extensively reviewed various NAICS codes. DHS determined that NAICS code 522310, Mortgage and Nonmortgage Loan Brokers defined as an ''industry [that] comprises establishments primarily engaged in arranging loans by bringing borrowers and lenders together on a commission or fee basis,'' may be an appropriate NAICS industry in which regional centers might be found given the typical activities undertaken by regional center-associated NCEs (loaning EB–5 capital to the job-creating entities) and the role typically undertaken by regional centers in facilitating those activities. The SBA size standard for the NAICS category chosen is based on a revenue of $7.5 million. DHS compared the revenues of the 95 regional centers against this size standard and concludes that approximately 89 percent of regional centers may be small entities for the purposes of this IRFA.

While DHS believes the methodology described in this section can lead to reasonable assumptions on the number of small entities that may be regional centers, DHS still cannot determine the exact impact of this rule on those small entities from the proposal. For example, if the costs related to biometrics and the service fee are incurred to regional centers via the principal, it is possible that the costs could be passed on to investors. Furthermore, we have identified the population related to Form I–924 and Form I–924A based on investor submissions in 2018. The entire cohort of 884 currently approved regional centers could also be considered small entities since they could, in any future year, also have submissions under their purview.

In addition to the discussion of regional centers, DHS also highlights a possible scenario that could involve small entities. In some cases, a U.S. citizen or lawful permanent resident sole proprietor could petition for family members using an employment based form. However, in such a case the biometrics would apply to identity management in the immigration lifecycle and vetting of both the petitioner and the beneficiary, but for the petitioner it would be on a case-by-case basis, not a routine biometrics collection. For such an instance, USCIS may need to verify identity or screen for fraud, but the likelihood of such a scenario is remote. Hence DHS expects minimal to no impact to small entities under this possible scenario. DHS welcomes public comment on the small entity status and any potential impacts to such small entities involving EB–5 regional centers or other entities.

c. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

This rule would not directly impose any reporting, recordkeeping, or other compliance requirements on small entities. Additionally, this rule would not require any additional professional skills.

d. Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap or Conflict With the Proposed Rule

DHS is unaware of any relevant federal rule that may duplicate, overlap, or conflict with the proposed rule.

e. Description of Any Significant Alternatives to the Proposed Rule Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

DHS is not aware of any alternatives to the proposed rule that accomplish the stated objectives and that would minimize the economic impact of the proposed rule on small entities as this rule imposes no direct costs on small entities. If there are costs incurred to small entities, the costs would be indirect since they accrue to the regional center principal rather than directly to the regional center. Biometrics are a unique system for identity vetting and management and DHS does not believe there are alternatives in the context of the needs outlined for the proposed rule. DHS requests comments and seeks alternatives from the public that will accomplish the same objectives.

[140] The administrative fees charged to the investor may cover various charges related to the economic impact analysis, legal fees, business plan development, and immigration services fees.

f. Description of Combating Family Unit Fraud at the Southern Border and the Impact of Immigration and Customs Enforcement Use of Rapid DNA on Small Entities

To combat family unit fraud in the immigration system, following a competitive solicitation process, ICE contracted with a vendor to provide personnel and equipment to conduct Rapid DNA analysis at the southern border. Rapid DNA, or Rapid DNA analysis, is a term used to describe the streamlined process of developing a DNA profile from a reference sample buccal (cheek) swab and permitting a trained human technician to analyze any inconclusive DNA results. The entire Rapid DNA testing process takes approximately 90 minutes. ICE's Rapid DNA testing contract cost $5.28 million and covered a 5-month period between June and November of 2019. This fixed-cost contract included up to 50,000 testing kits and 14 DNA processing instruments.

The entity that received this contract with ICE is not a small business according to the Small Business Administration size standard for testing laboratories which is set at a maximum revenue of $16.5 million. Rather, it is part of the testing laboratories industry and in 2018 it had a total revenue of $18.16 million, with a total of 126 employees.

C. Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This proposed rule would result in an annual effect on the economy of $100 million or more. As small businesses may be impacted under this proposed regulation, DHS has prepared a Regulatory Flexibility Act (RFA) analysis.

D. Unfunded Mandates Reform Act of 1995

The Unfunded Mandate 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, in the aggregate, or by the private sector. Title II of UMRA requires each federal agency to prepare a written statement assessing the effects of any federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any 1 year by state, local, and tribal governments, in the aggregate, or by the private sector. The value equivalent of $100 million in 1995 adjusted for inflation to 2018 levels by the Consumer Price Index for All Urban Consumer (CPI–U) is $165 million.

Although this proposed rule does exceed the $100 million expenditure threshold in an annual year when adjusted for inflation ($165 million in 2018 dollars), this rulemaking does not contain such a mandate. Requiring individuals to provide biometrics information would not result in any expenditures by the State, local, and tribal governments, or by the private sector. The requirements of Title II of UMRA, therefore, do not apply, and DHS has not prepared a statement under UMRA.

E. Executive Order 13132 (Federalism)

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of E.O. 13132 (Federalism), it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988, 61 FR 4729 (Feb. 5, 1996).

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all agencies are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule. Table 24 identifies the PRA action being taken on the listed information collections as a result of this rulemaking.

TABLE 24—IMPACTS TO USCIS FORMS

Form No.	Form title	PRA action
I–102	Application for Replacement/Initial Nonimmigrant Arrival-Departure Document.	No material/non-substantive change to a currently approved collection.
I–129	Petition for Nonimmigrant Worker	No material/non-substantive change to a currently approved collection.
I–129CW	Petition for CNMI-Only Nonimmigrant Transition Worker	Revision of a currently approved collection.
I–129F	Petition for Alien Fiancée	Revision of a currently approved collection.
I–129S	Nonimmigrant Petition Based on Blanket L Petition	No material/non-substantive change to a currently approved collection.
I–130 (I–130A)	Petition for Alien Relative	Revision of a currently approved collection.
I–131	Application for Travel Document—Reentry Permit, Refugee Travel Document, Advance Parole Document.	Revision of a currently approved collection.
I–131A	Application for Travel Document (Carrier Documentation)	Revision of a currently approved collection.
I–134	Affidavit of Support	Revision of a currently approved collection.
I–140	Immigrant Petition for Alien Workers	Revision of a currently approved collection.
I–191	Application for Relief Under Former Section 212(c) of the INA.	Revision of a currently approved collection.
I–192	Application for Advance Permission to Enter as Nonimmigrant Pursuant to Section 212(d)(3)(A)(ii) of the INA, Section 212(d)(13) of the INA, or Section 212(d)(14) of the INA.	Revision of a currently approved collection.
I–212	Application for Permission to Reapply for Admission into the United States after Deportation or Removal.	Revision of a currently approved collection.
I–290B	Notice of Appeal or Motion	No material/non-substantive change to a currently approved collection.
I–360	Petition for Amerasian, Widow(er), or Special Immigrant	Revision of a currently approved collection.

TABLE 24—IMPACTS TO USCIS FORMS—Continued

Form No.	Form title	PRA action
I–485	Application to Register Permanent Residence or Adjust Status.	Revision of a currently approved collection.
I–485 Sup A	Supplement A to Form I–485, Adjustment of Status Under Section 245(i).	Revision of a currently approved collection.
I–485J	Confirmation of Bona Fide Job Offer or Request for Job Portability Under INA Section 204(j).	Revision of a currently approved collection.
I–526	Immigrant Petition by Alien Entrepreneur	Revision of a currently approved collection.
I–539	Application to Extend/Change Nonimmigrant Status	Revision of a currently approved collection.
I–539A	Supplemental Information for Application to Extend/Change Nonimmigrant Status.	Revision of a currently approved collection.
I–566	Inter-Agency Record of Request—A, G or NATO Dependent Employment Authorization or Change/Adjustment To/From A, G, NATO Status.	Revision of a currently approved collection.
I–589	Application for Asylum and for Withholding of Removal	Revision of a currently approved collection.
I–590	Registration for Classification as a Refugee	Revision of a currently approved collection.
I–600	Petition to Classify Orphan as an Immediate Relative and Application for Advance Processing of Orphan Petition.	Revision of a currently approved collection.
I–600A	Application for Advance Processing of an Orphan Petition	Revision of a currently approved collection.
I–601	Application for Waiver of Ground of Inadmissibility	Revision of a currently approved collection.
I–601A	Application for Provisional Unlawful Presence Waiver	Revision of a currently approved collection.
I–602	Application by Refugee for Waiver of Grounds of Excludability.	No material/non-substantive change to a currently approved collection.
I–612	Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act.	No material/non-substantive change to a currently approved collection.
I–690	Application for Waiver of Grounds of Inadmissibility	No material/non-substantive change to a currently approved collection.
I–698	Application to Adjust Status from Temporary to Permanent Resident.	Revision of a currently approved collection.
I–730	Refugee/Asylee Relative Petition	Revision of a currently approved collection.
I–751	Petition to Remove the Conditions on Residence	Revision of a currently approved collection.
I–765	Application for Employment Authorization	Revision of a currently approved collection.
I–765V	Application for Employment Authorization for Abused Nonimmigrant Spouse.	Revision of a currently approved collection.
I–817	Application for Benefits Under the Family Unity Program	Revision of a currently approved collection.
I–821	Application for Temporary Protected Status	Revision of a currently approved collection.
I–821D	Request for Deferred Action for Childhood Arrival	No material/non-substantive change to a currently approved collection.
I–824	Application for Action on an Approved Application	No material/non-substantive change to a currently approved collection.
I–829	Petition by Entrepreneur to Remove Conditions	Revision of a currently approved collection.
I–864	Affidavit of Support Under Section 213A of the Act	Revision of a currently approved collection.
I–864A	Contract Between Sponsor and Household Member	Revision of a currently approved collection.
I–864EZ	Affidavit of Support Under Section 213A of the Act	Revision.
I–864W	Request for Exemption for Intending Immigrant's Affidavit of Support.	Revision.
I–881	Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Sec. 203 of Pub. L. 105–100).	Revision of a currently approved collection.
I–90	Application to Replace Permanent Resident Card	No material/non-substantive change to a currently approved collection.
I–907	Request for Premium Processing Service	Revision of a currently approved collection.
I–914	Application for T Nonimmigrant Status; Application for Immediate Family Member of T–1 Recipient; & Declaration of Law Enforcement Officer for Victim of Trafficking in Persons.	Revision of a currently approved collection.
I–914A	Supplement A to Form I–914, Application for Family Member of T–1 Recipient.	Revision of a currently approved collection.
I–914B	Supplement B to Form I–914, Declaration of Law Enforcement Office for Victim of Trafficking in Persons.	Revision of a currently approved collection.
I–918	Petition for U Nonimmigrant Status	Revision of a currently approved collection.
I–918A	Form I–918, Supplement A, Petition for Qualifying Family Member of U–1 Recipient.	Revision of a currently approved collection.
I–918B	Form I–918, Supplement B, U Nonimmigrant Status Certification.	Revision of a currently approved collection.
I–924	Application for Regional Center Under the Immigrant Investor Pilot Program.	Revision of a currently approved collection.
I–924A	Annual Certification of Regional Center	Revision of a currently approved collection.
I–929	Petition for Qualifying Family Member of a U–1 Nonimmigrant.	Revision of a currently approved collection.
N–300	Application to File Declaration of Intention	Revision of a currently approved collection.
N–336	Request for Hearing on a Decision in Naturalization Proceedings Under Section 336.	Revision of a currently approved collection.

TABLE 24—IMPACTS TO USCIS FORMS—Continued

Form No.	Form title	PRA action
N–400	Application for Naturalization	Revision of a currently approved collection.
N–470	Application to Preserve Residence for Naturalization	Revision of a currently approved collection.
N–565	Application for Replacement Naturalization/Citizenship Document.	Revision of a currently approved collection.
N–600	Application for Certificate of Citizenship	Revision of a currently approved collection.
N–600K	Application for Citizenship and Issuance of Certificate Under Section 322.	Revision of a currently approved collection.

1. Various USCIS Forms

Under the PRA, all agencies are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule. This rule will require non-substantive edits to the forms identified in the table above as ''No material/non-substantive change to a currently approved collection.'' These edits include: Updates to the Biometric Services Appointment language; removal of a biometric services fee paragraph; and removal of references to specific biometrics modalities, such as fingerprints. In accordance with the PRA, USCIS has submitted a PRA Change Worksheet, Form OMB 83–C, and amended information collection instruments for each of these forms to OMB for review and approval.

USCIS Form I–129CW

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 OMB Control Number 1615–0111 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition for CNMI-Only Nonimmigrant Transition Worker.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–129CW; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. An employer uses this form to petition USCIS for an alien to temporarily enter as a nonimmigrant into the CNMI to perform services or labor as a CNMI-Only Transitional Worker (CW–1). An employer also uses this form to request an extension of stay or change of status on behalf of the alien worker.

(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 Form I–129CW is 3,749 and the estimated hour burden per response is 3 hours; the estimated total number of respondents for the information collection biometrics is 7,498 and the estimated hour burden per response is 3.67 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 38,765 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 $459,253.

USCIS Form I–129F

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 OMB Control Number 1615–0001 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition for Alien Fiancé(e).

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–129F; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. To date, through the filing of this form a U.S. citizen may facilitate the entry of his/her spouse or fiancé(e) into the United States so that a marriage may be concluded within 90 days of entry between the U.S. citizen and the beneficiary of the petition. This form must be used to cover the provisions of section 1103 of the Legal Immigration Family Equity Act of 2000 which allows the spouse or child of a U.S. citizen to enter the United States as a nonimmigrant. The Form I–129F is the only existing form which collects the requisite information so that an adjudicator can make the appropriate decisions.

(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 Form I–129F is 52,135 and the estimated hour burden per response is 3.25 hours; the estimated total number of respondents for the information collection biometrics is 52,135 and the estimated hour burden per response is 3.67 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 360,774 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 $8,941,153.

USCIS Form I–130 (I–130A)

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 OMB Control Number 1615–0012 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition for Alien Relative.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–130; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information collected on this form is used to establish the existence of a relationship between the U.S. citizen or lawful permanent resident petitioner and certain alien relative beneficiaries who wish to immigrate to 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 Form I–130 is 978,500 and the estimated hour burden per response is 2 hours; the estimated total number of respondents for the information collection Form I–130A is 45,614 and the estimated hour burden per response is 0.8333 hours; the estimated total number of respondents for the information collection biometrics is 1,024,114 and the estimated hour burden per response is 3.67 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 5,753,495 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 $391,400,000.

USCIS Form I–131

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 OMB Control Number 1615–0013 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Travel Document.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–131; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Certain aliens, principally permanent or conditional residents, refugees or asylees, applicants for adjustment of status, aliens in TPS, and aliens abroad seeking humanitarian parole must apply for a travel document to lawfully enter or reenter the United

States. Eligible recipients of deferred action under childhood arrivals (DACA) may now request an advance parole documents based on humanitarian, educational and employment reasons. Lawful permanent residents may now file requests for travel permits (transportation letter or boarding foil).

(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 Form I–131 is 483,920 and the estimated hour burden per response is 1.9 hours; the estimated total number of respondents for the information collection biometrics is 84,000 and the estimated hour burden per response is 3.67 hours; the estimated total number of respondents for the information collection Form I–131 passport-style photos is 380,000 and the estimated hour burden per response is 0.5 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 1,417,728 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 $146,072,480.

USCIS Form I–131A

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 OMB Control Number 1615–0135 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Travel Document (Carrier Documentation).

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–131A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. USCIS uses the information provided on Form I–131A to verify the status of permanent or conditional residents, and determine whether the applicant is eligible for the requested travel document.

(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 Form I–131A is 4,110 and the estimated hour burden per response is 0.92 hours; the estimated total number of respondents for the information collection biometrics is 4,110 and the estimated hour burden per response is 3.67 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 15,084 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 $704,620.

USCIS Form I–134

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 OMB Control Number 1615–0014 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Affidavit of Support.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–134; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. USCIS and DOS consular officers use this form to determine whether an applicant for a visa, adjustment of status, or entry to the United States may possibly be excludable on the ground that he or she is likely to become a public charge.

(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 Form I–134 is 2,500 and the estimated hour burden per response is 1.75 hours; the estimated total number of respondents for the information collection biometrics is 2,500 and the estimated hour burden per response is 3.67 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 13,550 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 $10,625.

USCIS Form I–140

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 OMB Control Number 1615–0015 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Immigrant Petition for Alien Workers.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–140; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit U.S. employers may file this petition for certain alien beneficiaries to receive an employment-based immigrant visa.

(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 Form I–140 is 225,637 and the estimated hour burden per response is 1.08 hours; the estimated total number of respondents for the collection biometrics is 225,637 and the estimated hour burden per response is 3.67 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 1,071,776 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 $93,977,810.

USCIS Form I–191

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 OMB Control Number 1615–0016 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Relief under Former Section 212(c) of the Immigration and Nationality Act.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–191; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. USCIS and EOIR use the information on the form to properly assess and determine whether the applicant is eligible for a waiver under former section 212(c) of INA.

(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 Form I–191 is 240 and the estimated hour burden per response is 1.50 hours; the estimated total number of respondents for the information collection biometrics is 240 and the estimated hour burden per response is 3.67 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 1,241 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 $30,300.

USCIS Form I–192

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 OMB Control Number 1615–0017 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Advance Permission to Enter as Nonimmigrant.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–192; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The data collected will be used by CBP and USCIS to determine whether the applicant is eligible to enter the United States temporarily under the provisions of section 212(d)(3), 212(d)(13), and 212(d)(14) of the INA. The respondents for this information collection are certain inadmissible nonimmigrant aliens who wish to apply for permission to enter the United States and applicants for T or petitioners for U nonimmigrant status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–192 is 68,050 and the estimated hour burden per response is 1.5 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 102,075 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 $16,672,250.00.

USCIS Form I–212

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 OMB Control Number 1615–0018 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Permission to Reapply for Admission into the United States After Deportation or Removal.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–212; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Sections 212(a)(9)(A) and 212(a)(9)(C) of the INA render an alien inadmissible to the United States unless he or she obtains the consent to reapply (also known as permission to reapply) for admission to the United States. An alien who is inadmissible under these provisions has either been removed (deported, or excluded) from the United States, or illegally reentered after having been removed (deported, or excluded), or illegally reentered after having accrued more than one year of unlawful presence in the United States. The information collection required on Form I–212, is necessary for USCIS to determine whether the applicant is eligible to file the waiver. If the application is approved, the alien will be permitted to apply for admission to the United States, after being granted a visa with DOS as either an immigrant or a nonimmigrant.

(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 Form I–212 is 4,183 and the estimated hour burden per response is 2 hours; the estimated total number of respondents for the information collection I–212, CBP e-SAFE Filing is 700 and the estimated hour burden per response is 2 hours; the estimated total number of respondents for the information collection biometrics is 4,183 and the estimated hour burden per response is 3.67 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 25,118 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 $613,854.

USCIS Form I–360

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 OMB Control Number 1615–0020 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition for Amerasian, Widow(er), or Special Immigrant.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–360; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Form I–360 may be used by an Amerasian; a widow or widower of a U.S. citizen; a battered or abused spouse or child of a U.S. citizen or lawful permanent resident; a battered or abused parent of a U.S. citizen son or daughter; or a special immigrant (religious worker, Panama Canal company employee, Canal Zone government employee, U.S. Government employee in the Canal Zone; physician, international organization employee or family member, juvenile court dependent; armed forces member; Afghanistan or Iraq national who supported the U.S. Armed Forces as a translator; Iraq national who worked for the or on behalf of the U.S. Government in Iraq; or Afghan national who worked for or on behalf of the U.S. Government or the International Security Assistance Force in Afghanistan) who intend to establish their eligibility to immigrate to the United States. The data collected on this form is reviewed by USCIS to determine if the petitioner may be qualified to obtain the benefit. The data collected on this form will also be used to issue an EAD upon approval of the petition for battered or abused spouses, children, and parents, if requested.

(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 Form I–360 (Iraqi & Afghan Petitioners) is 2,874 and the estimated hour burden per response is 3.1 hours; the estimated total number of respondents for the information collection Form I–360 (Religious Worker) is 2,393 and the estimated hour burden per response is 2.35 hours; the estimated total number of respondents for the information collection Form I–360 (All Others) is 14,362 and the estimated hour burden per response is 2.1 hours; and the estimated total number of respondents for the information collection biometrics for VAWA and Special Immigrant Juvenile self-petitioners is 32,240 and the estimated hour burden per response is 3.67 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 154,105 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 $2,404,430.

USCIS Form I–485

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 OMB Control Number 1615–0023 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application to Register Permanent Residence or Adjust Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–485; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information on Form I–485 will be used to request and determine eligibility for adjustment of permanent residence status. Supplement A is used to adjust status under section 245(i) of the INA.

(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 Form I–485 is 382,264 and the estimated hour burden per response is 6.42 hours; the estimated total number of respondents for the information collection Form I–485A is 36,000 and the estimated hour burden per response is 1.25 hours; the estimated total number of respondents for the information collection Form I–485 Supplement J is 28,039 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection biometrics is 382,264 and the estimated hour burden per response is 3.67 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 3,930,353 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 $131,116,552.

USCIS Form I–526

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 OMB Control Number 1615–0026 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Immigrant Petition by Alien Entrepreneur.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–526; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The form is used to petition for classification as an alien entrepreneur as provided by sections 121(b) and 162(b) of the Immigration Act of 1990. The data collected on this form will be used by USCIS to determine eligibility for the requested immigration benefit.

(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 Form I–526 is 15,799 and the estimated hour burden per response is 1.83 hours; the estimated total number of respondents for the information collection of biometrics is 15,799 and the estimated hour burden per response is 3.67 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 86,895 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 $17,378,900.

USCIS Form I–539

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 OMB Control Number 1615–0003 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application to Extend/Change Nonimmigrant Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–539; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form will be used for nonimmigrants to apply for an extension of stay, for a change to another nonimmigrant classification, or for obtaining V nonimmigrant 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 Form I–539 (paper) is 174,289 and the estimated hour burden per response is 2 hours; the estimated total number of respondents for the information collection Form I–539 (e-file) is 74,696 and the estimated hour burden per response is 1.083 hours; the estimated total number of respondents for the information collection Supplement A is 54,375 and the estimated hour burden per response is .50 hours; the estimated total number of respondents for biometrics processing is 373,477 and the estimated hour burden per response is 3.67 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 1,827,323 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 $42,700,928.

USCIS Form I–566

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 OMB Control Number 1615–0027 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Interagency Record of Request A, G, or NATO Dependent Employment Authorization or Change/Adjustment To/From A, G, or NATO Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–566; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The data on this form is used by DOS to certify to USCIS the eligibility of dependents of A or G principals requesting employment authorization, as well as for NATO/Headquarters, Supreme Allied Commander Transformation (NATO/HQ SACT) to certify to USCIS similar eligibility for dependents of NATO principals. DOS also uses this form to certify to USCIS that certain A, G or NATO nonimmigrants may change their status to another nonimmigrant status. USCIS uses data collected on this form in the adjudication of change or adjustment of status applications from aliens in A, G, or NATO classifications. USCIS also uses Form I–566 to notify DOS of the results of these adjudications.

(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 Form I–566 is 5,800 and the estimated hour burden per response is 1.42 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 8,236 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 $746,750.00.

USCIS Form I–589

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 OMB Control Number 1615–0067 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Asylum and for Withholding of Removal.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–589; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Form I–589 is necessary to determine whether an alien applying for asylum and/or withholding of removal in the United States is classified as refugee, and is eligible to remain 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 Form I–589 is approximately 114,000 and the estimated hour burden per response is 12 hours per response; and the estimated number of respondents providing biometrics is 110,000 and the estimated hour burden per response is 3.67 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,771,700 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 $46,968,000.

USCIS Form I–590

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 OMB Control Number 1615–0068 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Registration for Classification as a Refugee.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–590; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The Form I–590 is the primary document in all refugee case files and becomes part of the applicant's A-file. It is the application form by which a person seeks refugee classification and resettlement in the United States. It documents an applicant's legal testimony (under oath) as to his or her identity and claim to refugee status, as well as other pertinent information including marital status, number of children, military service, organizational memberships, and violations of law. In addition to being the application form submitted by a person seeking refugee classification, Form I–590 is used to document that an applicant was interviewed by USCIS and record the decision by the USCIS officer to approve or deny the applicant for classification as a refugee. Regardless of age, each person included in the case must have his or her own Form I–590. Refugees applying to CBP for admission must have a stamped I–590 in their travel packet in order to gain admission as a refugee. They do not have refugee status until they are admitted by CBP.

(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 Form I–590 is 50,000 and the estimated hour burden per response is 3.25 hours; the estimated total number of respondents for the information collection I–590 Request for Review is 1,500 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection Form I–590 DNA evidence is 100 and the estimated hour burden per response is 2 hours; the estimated total number of respondents for the information collection biometrics is 51,600 and the estimated hour burden per response is 0.33 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 181,228 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 $12,000.

USCIS Form I–600, I–600A

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 OMB Control Number 1615–0028 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition to Classify Orphan as an Immediate Relative and Application for Advance Processing of Orphan Petition.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–600; I–600A; Supplement 1; Supplement 2; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households; A U.S. adoptive parent may file a petition to classify an orphan as an immediate relative through Form I–600 under section 101(b)(1)(F) of the INA. A U.S. prospective adoptive parent may file Form I–600A in advance of the Form I–600 filing and USCIS will make a determination regarding the prospective adoptive parent's eligibility to file Form I–600A and their suitability and eligibility to properly parent an orphan. A U.S. adoptive parent may file a petition to classify an orphan as an immediate relative through Form I–600 under section 101(b)(1)(F) of the INA. If a U.S. prospective/adoptive parent has an adult member of his or her household, as defined at 8 CFR 204.301, the prospective/adoptive parent must include the Supplement 1 when filing both Form I–600A and Form I–600. Form I–600/I–600A Supplement 2, Consent to Disclose Information, is an optional form that may be filed to authorize USCIS to disclose case-related information that would otherwise be protected under the Privacy Act, 5 U.S.C. 552a to adoption service providers or other individuals. Authorized disclosures will assist USCIS in the adjudication of Forms I–600A and I–600.

(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 Form I–600 is 1,200 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection Form I–600A is 2,000 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection Form I–600A Supplement 1 is 301 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection Form I–600A Supplement 2 is 1,260 and the estimated hour burden per response is 0.25 hours; the estimated total number of respondents for the home study information collection is 2,500 and the estimated hour burden per response is 25 hours; the estimated total number of respondents for the biometrics information collection is 2,520 and the estimated hour burden per response is 3.67 hours; and the estimated total number of respondents for the biometrics-DNA information collection

is 2 and the estimated hour burden per response is 6 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 75,576 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 $7,679,232.

USCIS Form I–601

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 OMB Control Number 1615–0029 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Waiver of Grounds of Inadmissibility.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–601; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Form I–601 is necessary for USCIS to determine whether the applicant is eligible for a waiver of inadmissibility under section 212 of the INA. Furthermore, this information collection is used by individuals who are seeking TPS.

(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 Form I–601 is 20,194 and the estimated hour burden per response is 1.75 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 35,340 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 $7,497,023.

USCIS Form I–601A

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 OMB Control Number 1615–0123 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Provisional Unlawful Presence Waiver of Inadmissibility.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–601A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households: Individuals who are immediate relatives of U.S. citizens and who are applying from within the United States for a waiver of inadmissibility under INA section 212(a)(9)(B)(v) prior to obtaining an immigrant visa abroad.

(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 Form I–601A is 63,000 and the estimated hour burden per response is 1.5 hours; the estimated total number of respondents to the information collection biometrics is 63,000 and the estimated hour burden per response is 3.67 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 325,710 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $3,413,812.

USCIS Form I–698

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 OMB Control Number 1615–0035 in the body of the letter and the agency name. To avoid duplicate submissions,

please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application to Adjust Status from Temporary to Permanent Resident.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–698; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and households. The data collected on Form I–698 is used by USCIS to determine the eligibility to adjust an applicant's residence status. The form serves the purpose of standardizing requests for the benefit, and ensuring that basic information required to assess eligibility is provided by applicants. A person who has been granted temporary residence under Section 245A of the INA is eligible to apply to USCIS to adjust to permanent resident status no later than 43 months after their approval for temporary residence.

(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 Form I–698 is 100 and the estimated hour burden per response is 1.25 hours; and the estimated total number of respondents for the information collection biometrics is 100 and the estimated hour burden per response is 3.67 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 492 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 $49,000.

USCIS Form I–730

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 OMB Control Number 1615–0037 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Refugee/Asylee Relative Petition.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–730; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Form I–730 is used by a refugee or asylee to file on behalf of his or her spouse and/or children for follow-to-join benefits provided that the relationship to the refugee/asylee existed prior to their admission to 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 Form I–730 is 6,039 and the estimated hour burden per response is 0.677 hours; the estimated total number of respondents for the information collection biometrics is 6,039 and the estimated hour burden per response is 3.67 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 26,191 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 $1,592,500.

USCIS Form I–751

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 OMB Control Number 1615–0038 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection; Extension.

(2) *Title of the Form/Collection:* Petition to Remove the Conditions on Residence.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–751; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information collected on Form I–751 is used by USCIS to verify the alien's status and determine whether he or she is eligible to have the conditions on his or her status removed. Form I–751 serves the purpose of standardizing requests for benefits and ensuring that basic information required to assess eligibility is provided by petitioners. USCIS also collects biometric information from the alien to verify their identity and check or update their background information.

(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 Form I–751 is 159,119 and the estimated hour burden per response is 3.75 hours; the estimated total number of respondents for the information collection biometrics is 160,076 and the estimated hour burden per response is 3.67 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,771,654 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 $19,492,078.

USCIS Form I–765

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 OMB Control Number 1615–0040 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Employment Authorization.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–765; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. USCIS uses Form I–765 to collect the information that is necessary to determine if an alien is eligible for an initial EAD, a new replacement EAD, or a subsequent EAD upon the expiration of a previous EAD under the same eligibility category. Aliens in many immigration statuses are required to possess an EAD as evidence of work authorization. To be authorized for employment, an alien must be lawfully admitted for permanent residence or authorized to be so employed by the INA or under regulations issued by DHS. Pursuant to statutory or regulatory authorization, certain classes of aliens are authorized to be employed in the United States without restrictions as to location or type of employment as a condition of their admission or subsequent change to one of the indicated classes. USCIS may determine the validity period assigned to any document issued evidencing an alien's authorization to work in the United States. These classes are listed in 8 CFR 274a.12.

(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 Form I–765 is 2,096,000 and the estimated hour burden per response is 4.5 hours; the estimated total number of respondents for the information collection biometrics is 2,096,000 and the estimated hour burden per response is 3.67 hours; the estimated total number of respondents for the information collection Form I–765WS is 266,148 and the estimated hour burden per response is .50 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 17,145,276 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 $346,615,520.

USCIS Form I–765V

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 OMB Control Number 1615–0137 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Employment Authorization for Abused Nonimmigrant Spouse.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–765V; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. USCIS will use Form I–765V to collect the information that is necessary to determine if the applicant is eligible for an initial EAD or renewal EAD as a qualifying abused nonimmigrant spouse. Aliens are required to possess an EAD as evidence of work authorization. To be authorized for employment, an alien must be lawfully admitted for permanent residence or authorized to be so employed by the INA or under regulations issued by DHS. Pursuant to statutory or regulatory authorization, certain classes of aliens are authorized to be employed in the United States without restrictions as to location or type of employment as a condition of their admission or subsequent change to one of the indicated classes. USCIS may determine the validity period assigned to any document issued evidencing an alien's authorization to work 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–765V is 1,000 and the estimated hour burden per response is 3 hours; the estimated total number of respondents for the information collection biometrics is 1,000 and the estimated hour burden per response is 3.67 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 6,670 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 $265,000.

USCIS Form I–817

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 OMB Control Number 1615–0005 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Family Unity Benefits.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–817; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households: This information collected will be used to determine whether the applicant meets the eligibility requirements for benefits under 8 CFR 236.14 and 245a.33. Per 8 CFR 236.15(d), an alien under Family Unity Program is authorized to be employed in the United States and will receive an EAD after USCIS granted the benefits. Therefore, USCIS will issue an EAD and approval notice to the applicant. The respondents for this information collection are foreign nationals who apply for Family Unity Benefits 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 Form I–817 is 1,358 and the estimated hour burden per response is 2 hours; the estimated total number of respondents for the information collection biometrics is 1,358 and the estimated hour burden per response is 3.67 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 7,700 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 $166,355.

USCIS Form I–821

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 OMB Control Number 1615–0043 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Temporary Protected Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–821; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information provided will be used by the USCIS to determine whether an applicant for TPS meets eligibility requirements.

(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 Form I–821 is 4,000 and the estimated hour burden per response is 2.41 hours; the estimated total number of respondents for the information collection biometrics is 4,000 and the estimated hour burden per response is 3.67 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 24,320 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 $490,000.

USCIS Form I–821D

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 OMB Control Number 1615–0124 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Consideration of Deferred Action for Childhood Arrivals.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–821D; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. As part of the administration of its programs, USCIS exercises its prosecutorial discretion on a case by case basis to defer action on instituting removal proceedings against individuals.

(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 Form I–821D initial requests is 40,819 and the estimated hour burden per response is 3 hours; the estimated total number of respondents for the information collection Form I–821D renewal requests is 418,775 and the estimated hour burden per response is 3 hours; the estimated total number of respondents for the information collection biometrics is 459,594 and the estimated hour burden per response is 3.67 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 3,065,492 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 $50,555,340.

USCIS Form I–824

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 OMB Control Number 1615–0044 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Action on an Approved Application or Petition.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–824; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This information collection is used to request a duplicate approval

notice, as well as to notify and to verify the U.S. consulate that a petition has been approved or that a person has been adjusted to permanent resident status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–824 is 11,500 and the estimated hour burden per response is 0.42 hours; the estimated total number of respondents for the information collection biometrics is 11,500 and the estimated hour burden per response is 3.67 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 47,035 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 $1,480,625.

USCIS Form I–829

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 OMB Control Number 1615–0045 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition by Entrepreneur to Remove Conditions on Permanent Resident Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–829; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form is used by a conditional resident alien entrepreneur who obtained such status through a qualifying investment, to apply to remove conditions on his or her conditional residence.

(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 Form I–829 is 3,500 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection biometrics is 3,500 and the estimated hour burden per response is 3.67 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 26,845 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 $428,750.

USCIS Form I–864, I–864A, I–864EZ

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 OMB Control Number 1615–0075 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Affidavit of Support under Section 213A of the INA and Notification of Reimbursement of Means-Tested Benefits.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–864; I–864EZ; I–864A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. USCIS uses the data collected on Form I–864 to determine whether the sponsor has the ability to support the sponsored alien under section 213A of the INA. This form standardizes evaluation of a sponsor's ability to support the sponsored alien and ensures that basic information required to assess eligibility is provided by petitioners. Form I–864A is a contract between the sponsor and the sponsor's household members. It is only required if the sponsor used the income of his or her household members to reach the required 125 percent of the federal poverty guidelines. The contract holds these household members jointly and severally liable for the support of the sponsored immigrant. The information collection required on Form I–864A is necessary for public benefit agencies to enforce the Affidavit of Support in the event the sponsor used income of his or her household members to reach the required income level and the public benefit agencies are

requesting reimbursement from the sponsor.

USCIS uses Form I–864EZ in exactly the same way as Form I–864; however, less information is collected from the sponsors as less information is needed from those who qualify in order to make a thorough adjudication.

(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 Form I–864 is 453,345 and the estimated hour burden per response is 6 hours; the estimated total number of respondents for Form I–864A is 215,800 and the estimated hour burden per response is 1.75 hours; the estimated total number of respondents for Form I–864EZ is 100,000 and the estimated hour burden per response is 2.5 hours; the information collection biometrics is 2,822,762 and the estimated hour burden per response is 3.67 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this information collection of information is 6,170,482 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this information collection is $135,569,525.

USCIS Form I–881

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 OMB Control Number 1615–0072 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Suspension of Deportation or Special Rule Cancellation of Removal.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–881; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Form I–881 is used by USCIS asylum officers, EOIR immigration judges, and BIA board members to determine eligibility for suspension of deportation or special rule cancellation of removal under Section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA).

(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 Form I–881 is 520 and the estimated hour burden per response is 12 hours; the estimated total number of respondents for the information collection biometrics is 858 and the estimated hour burden per response is 3.67 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 9,389 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 $258,505.

USCIS Form I–907

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 OMB Control Number 1615–0048 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Premium Processing Service.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–907; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. USCIS uses the information provided on Form I–907 to provide petitioners the opportunity to request faster processing of certain employment-based petitions and applications.

(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 form I–907 is 319,301 and the estimated hour burden per response is 0.58 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 185,195 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 $78,228,500.

USCIS Form I–914, I–914A

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 OMB Control Number 1615–0099 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for T Nonimmigrant Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–914; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information on all three parts of the form will be used to determine whether applicants meet the eligibility requirements for benefits. This application incorporates information pertinent to eligibility under the Victims of Trafficking and Violence Protection Act (VTVPA), Public Law 106–386, and a request for employment.

(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 Form I–914 is 980 and the estimated hour burden per response is 2.25 hours; the estimated total number of respondents for the information collection Form I–914A is 1,024 and the estimated hour burden per response is 1 hours; the estimated total number of respondents for the information collection Form I–914B law enforcement officer completion activity is 245 and the estimated hour burden per response is 3.5 hours; the estimated total number of respondents for the information collection Form I–914B contact by respondent to law enforcement is 245 and the estimated hour burden per response is 0.25 hours; the estimated total number of respondents for the information collection biometrics is 1,759 and the estimated hour burden per response is 3.67 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 11,502 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 $1,986,400.

USCIS Form I–918, I–918A

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 OMB Control Number 1615–0104 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition For U Nonimmigrant Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–918 Supplements A and B; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households; Federal, State, and local governments. This petition permits victims of certain qualifying criminal activity and their immediate family members to apply for temporary nonimmigrant classification. This nonimmigrant classification provides temporary immigration benefits, potentially leading to permanent resident status, to certain victims of criminal activity who: Suffered substantial mental or physical abuse as a result of having been a victim of criminal activity; have information regarding the criminal activity; and assist government officials in investigating and prosecuting such criminal activity.

(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 Form I–918 is 36,000 and the estimated hour burden per response is 5 hours; the estimated total number of respondents for the information collection Form I–918A is 25,000 and the estimated hour burden per response is 1.5 hours; the estimated total number of respondents for the information collection Form I–918B is 36,000 and the estimated hour burden per response

is 1 hour; the estimated total number of respondents for the information collection biometrics is 61,000 and the estimated hour burden per response is 3.67 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 477,370 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 $259,250.

USCIS Form I–924, I–924A

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 OMB Control Number 1615–0061 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Regional Center Under the Immigrant Investor Program.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–924; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The data collected on Form I–924 and Form I–924A is used by USCIS to determine eligibility for an entity to be designated as a regional center, under the Immigrant Investor Pilot Program created by section 610 of Public Law 102–395 (October 6, 1992). A regional center is defined as any economic unit, public or private, engaged in the promotion of economic growth, improved regional productivity, job creation, and increased domestic capital investment. Alien entrepreneurs (EB–5 alien investors) admitted to the United States under section 203(b)(5) of the INA may meet the job creation requirements under INA section 203(b)(5)(A)(ii) through the creation of indirect jobs through capital investments made in commercial enterprises that are affiliated with regional centers that are designated for participation in the pilot program. The requirements for obtaining and terminating the regional center designation for participation in the pilot program are in 8 CFR 204.6(m)(3).

(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 of Form I–924 is 400 and the estimated hour burden per response is 51 hours; the estimated total number of respondents for the information collection of Form I–924A Instructions is 882 and the estimated hour burden per response is 14 hours; the estimated total number of respondents for the information collection of Form I–924A Compliant Review is 40 and the estimated hour burden per response is 24 hours; the estimated total number of respondents for the information collection of Form I–924A Site Visit is 40 and the estimated hour burden per response is 16 hours; biometrics is 400 and the estimated hour burden per response is 3.67 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 34,216 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 $1,410,200.

USCIS Form I–929

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 OMB Control Number 1615–0106 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition for Qualifying Family Member of a U–1 Nonimmigrant.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–929; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Section 245(m) of the INA allows certain qualifying family members who have never held U nonimmigrant status to seek lawful permanent residence or apply for immigrant visas. Before such family members may apply for adjustment of

status or seek immigrant visas, the U–1 nonimmigrant who has been granted adjustment of status must file an immigrant petition on behalf of the qualifying family member using Form I–929. Form I–929 is necessary for USCIS to make a determination that the eligibility requirements and conditions are met regarding the qualifying family member.

(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 Form I–929 is 1,500 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection biometrics is 1,500 and the estimated hour burden per response is 3.67 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 7,005 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 $183,750.

USCIS Form N–336

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 OMB Control Number 1615–0050 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Request for Hearing on a Decision in Naturalization Proceedings under Section 336.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N–336; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form provides a method for applicants, whose applications for naturalization are denied, to request a new hearing by an Immigration Officer of the same or higher rank as the denying officer, within 30 days of the original decision.

(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 Form N–336 (paper) is 4,500 and the estimated hour burden per response is 2.75 hours; the estimated total number of respondents for the information collection Form N–336 (e-filing) is 500 and the estimated hour burden per response is 2.5 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 13,625 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 $2,317,500.

USCIS Form N–400

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 OMB Control Number 1615–0052 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Naturalization.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N–400; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Form N–400 allows USCIS to fulfill its mission of fairly adjudicating naturalization applications and only naturalizing statutorily eligible individuals. Naturalization is the process by which U.S. citizenship is granted to a foreign citizen or national after he or she fulfills the requirements established by Congress in the INA. USCIS uses Form N–400 to verify that the applicant has met the requirements for naturalization.

(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 Form N–400 (paper) is 567,314 and the estimated hour burden per response is 9.17 hours; the estimated total number of respondents for the information collection Form N–400 (e-filing) is 214,186 and the

estimated hour burden per response is 3.5 hours; the estimated total number of respondents for the information collection biometrics is 778,000 and the estimated hour burden per response is 3.67 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 8,807,180 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 $346,768,928.

USCIS Form N–470

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 OMB Control Number 1615–0056 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application to Preserve Residence for Naturalization.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N–470; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information collected on Form N–470 will be used to determine whether an alien who intends to be absent from the United States for a period of one year or more is eligible to preserve residence for naturalization purposes.

(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 Form N–470 is 330 and the estimated hour burden per response is 0.6 hours; the estimated total number of respondents for the information collection biometrics processing is 330 and the estimated hour burden per response is 3.67 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 561 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 $40,425.

USCIS Form N–565

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 OMB Control Number 1615–009 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Replacement Naturalization/Citizenship Document.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N–565; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The form is provided by USCIS to determine the applicant's eligibility for a replacement document. An applicant may file for a replacement if he or she was issued one of the documents described above and it was lost, mutilated, or destroyed, or if the applicant's name was changed by a marriage or by court order after the document was issued and now seeks a document in the new name. If the applicant is a naturalized citizen who desires to obtain recognition as a citizen of the United States by a foreign country, he or she may apply for a special certificate for that purpose.

(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 Form N–565 (paper filing) is 18,552 and the estimated hour burden per response is 1.33 hours; the estimated total number of respondents for the information collection Form N–565 (online filing) is 9,138 and the estimated hour burden per response is 0.917 hours; the estimated total number of respondents for the information collection biometrics is 27,690 and the estimated hour burden per response is 3.67 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 138,450 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $3,392,025.

USCIS Form N–600

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 OMB Control Number 1615–0057 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Certificate of Citizenship.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N–600; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Form N–600 collects information from respondents who are requesting a Certificate of Citizenship because they acquired U.S. citizenship either by birth abroad to a U.S. citizen parent(s), adoption by a U. S. citizen parent(s), or after meeting eligibility requirements after the naturalization of a foreign born parent. This form is also used by applicants requesting a Certificate of Citizenship because they automatically became a citizen of the United States after meeting eligibility requirements for acquisition of citizenship by foreign-born children. USCIS uses the information collected on Form N–600 to determine if a Certificate of Citizenship can be issued to the applicant.

(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 Form N–600 (paper) is 33,000 and the estimated hour burden per response is 1.58 hours; the estimated total number of respondents for the information collection Form N–600 (e-filing) is 34,000 and the estimated hour burden per response is .75 hours; the estimated total number of respondents for the information collection biometrics is 67,000 and the estimated hour burden per response is 3.67 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 323,530 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 $8,331,250.

USCIS Form N–600K

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 OMB Control Number 1615–0087 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule 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.

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Citizenship and Issuance of Certificate Under Section 322.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N–600K; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Form N–600K is used by children who regularly reside in a foreign country to claim U.S. citizenship based on eligibility criteria met by their U.S. citizen parent(s) or grandparent(s). The form may be used by both biological and adopted children under age 18. USCIS uses information collected on this form to determine that the child has met all of the eligibility requirements for naturalization under section 322 of the INA. If determined eligible, USCIS will naturalize and issue the child a Certificate of Citizenship before the child reaches age 18.

(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 Form N–600K (paper) is 1,300 and the estimated hour burden per response is 2.08 hours; the estimated total number of respondents for the information collection Form N–600K (e-filing) is 1,700 and the estimated hour burden per response is 1.5 hours; the estimated total number of respondents for the information collection biometrics is 3,000 and the estimated hour burden per response is 3.67 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 16,264 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 $372,375.

H. Family Assessment

This regulation may affect family well-being as that term is defined in section 654 of the Treasury General Appropriations Act, 1999, Public Law 105–277, Div. A, 112 Stat. 2681–528 (Oct. 21, 1998), as amended, 5 U.S.C. 601 note. This action has been assessed in accordance with the criteria specified by section 654(c). This regulation will enhance family well-being by helping DHS adjudicate immigration benefit requests, address national security, public safety, fraud concerns, and preclude imposters.

I. National Environmental Policy Act

DHS Directive (Dir) 023–01 Rev. 01 establishes the procedures that DHS and its components use to comply with the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) regulations for implementing NEPA. 40 CFR parts 1500–1508. The CEQ regulations allow federal agencies to establish, with CEQ review and concurrence, categories of actions (''categorical exclusions'') which experience has shown do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an environmental assessment or environmental impact statement. 40 CFR 1507.3(b)(2)(ii) and 1508.4. Dir. 023–01 Rev. 01 establishes categorical exclusions that DHS has found to have no such effect. Dir. 023–01 Rev. 01 Appendix A Table 1. For an action to be categorically excluded from further NEPA review, Dir. 023–01 Rev. 01 requires the action to 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. Dir. 023–01 Rev. 01 section V.B (1)–(3).

DHS analyzed this action and does not consider it to significantly affect the quality of the human environment. This proposed rule would only change USCIS biometrics collection and a few immigration benefit request requirements. DHS has determined that this rule does not individually or cumulatively have a significant effect on the human environment because it fits within categorical exclusion number A3(d) in Dir. 023–01 Rev. 01, Appendix A, Table 1, for rules that interpret or amend an existing regulation without changing its environmental effect. This rule is not part of a larger action and presents no extraordinary circumstances creating the potential for significant environmental effects. This rule is categorically excluded from further NEPA review.

J. Congressional Review Act

The Congressional Review Act (5 U.S.C. 801 *et seq.*) requires rules to be submitted to Congress before taking effect. If implemented as proposed, we will submit to Congress and the Comptroller General of the United States a report regarding the issuance of the final rule before its effective date, as required by 5 U.S.C. 801.

K. Executive Order 13175

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.

L. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standard bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Executive Order 12630

This rule would not cause the taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

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

Executive Order 13045 requires agencies to consider the impacts of environmental health risk or safety risk that may disproportionately affect children. DHS has reviewed this rule and determined that this rule is not a covered regulatory action under Executive Order 13045. Although the rule is economically significant, it would not create an environmental risk to health or risk to safety that might disproportionately affect children. Therefore, DHS has not prepared a statement under this executive order.

O. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to consider the impact of rules that significantly impact the supply, distribution, and use of energy. DHS has reviewed this rule and determined that this rule would not have a significant adverse effect on the supply, distribution, or use of energy. Therefore, this rule does not require a Statement of Energy Effects under Executive Order 13211.

P. Signature

The Acting Secretary of Homeland Security, Chad F. Wolf, having reviewed and approved this document, is delegating the authority to electronically sign this document to Chad R. Mizelle, who is the Senior Official Performing the Duties of the General Counsel for DHS, for purposes of publication in the **Federal Register**.

List of Subjects

8 CFR Part 1

Administrative practice and procedure, Immigration.

8 CFR Part 103

Administrative practice and procedure, Powers and Duties; Availability of Records; Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 204

Administrative practice and procedure, Aliens, Immigration, Employment, Petitions, Reporting, Passports and visas, and recordkeeping requirements.

8 CFR Part 207

Immigration, Refugees, Reporting and recordkeeping requirements.

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 209

Aliens, Immigration, Refugees.

8 CFR Part 210

Aliens, Migrant labor, Reporting and recordkeeping requirements.

8 CFR Part 212

Documentary requirements: Nonimmigrants; Waivers; Admission of certain inadmissible aliens; Parole.

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 215

Controls of Aliens Departing from the United States; Electronic Visa Update System.

8 CFR Part 216

Conditional Basis of Lawful Permanent Residence Status.

8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 236

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 240

Administrative practice and procedure, Immigration.

8 CFR Part 244

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 245a

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 264

Reporting and recordkeeping requirements.

8 CFR Part 287

Immigration, Law enforcement officers.

8 CFR Part 316

Citizenship and naturalization, Reporting and recordkeeping requirements.

8 CFR Part 333

Photographs.

8 CFR Part 335

Examination on application for naturalization.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1—DEFINITIONS

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

Authority: 8 U.S.C. 1101; 8 U.S.C. 1103; 5 U.S.C. 301; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

■ 2. Section 1.2 is amended by adding definitions for ''Biometrics'' and ''DNA'' in alphaetical order to read as follows:

§ 1.2 Definitions.

* * * * *

Biometrics means the measurable biological (anatomical and physiological) or behavioral characteristics of an individual, including an individual's fingerprints, palm prints, photograph (facial image), signature, iris (iris image), voice (voice print), and/or DNA (partial DNA profile) (subject to the limitations in 8 CFR 103.16(d)(2).

* * * * *

DNA means deoxyribonucleic acid, which carries the genetic instructions used in the growth, development, functioning, and reproduction of all known living organisms.

* * * * *

PART 103—IMMIGRATION BENEFITS; BIOMETRIC REQUIREMENTS; AVAILABILITY OF RECORDS

■ 3. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2; Pub. L. 112–54.

■ 4. Section 103.2 is amended by revising paragraphs (b)(2)(i), (b)(9), and (b)(13) to read as follows:

§ 103.2 Submission and adjudication of benefit requests.

* * * * *

(b) * * *

(2) * * *

(i) *General.* The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant, petitioner, or requestor must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant, petitioner, or requestor must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence. If DHS requires submission of specific biometrics, under 8 CFR part 103.16, neither secondary evidence nor affidavits will overcome the unavailability of the requested biometrics.

* * * * *

(9) *Appearance for interview.* (i) DHS may require any applicant, petitioner, sponsor, beneficiary, or individual filing a benefit or other request, or any group or class of such individuals submitting requests, to appear for an interview at any time. Such appearance may also be required by law, regulation, form instructions, or **Federal Register** notice applicable to the request type.

(ii) An interview may be waived by DHS, for an entire population or on a case-by-case basis, solely at its discretion.

(iii) Each individual required to appear under this paragraph will be provided notice of the date, time, and location of an interview.

(iv) Failure to appear for a scheduled interview without prior authorization from USCIS may result in denial, administrative closure, dismissal of the applicable immigration benefit request or other request, waiver of the right to an interview, or termination of status, if applicable. USCIS may reschedule the interview at its discretion.

(v) Any individual required to appear under this paragraph or any individual authorized to file an application, petition, or benefit request on behalf of an individual who may be required to appear under this paragraph may, before the scheduled date and time of the appearance, either:

(A) For good cause, request that the interview be rescheduled; or

(B) If applicable, withdraw the application, petition, benefit request, or

any other request as provided in 8 CFR 103.2(b)(6).

(vi) For an asylum application or asylum-related benefit, see 8 CFR 208.10.

* * * * *

(13) *Effect of failure to respond to a request for evidence or failure to submit evidence or respond to a notice of intent to deny.* If the petitioner, applicant, or requestor fails to respond to a request for evidence or to a notice of intent to deny by the required date, the benefit request may be summarily denied as abandoned, denied based on the record, or denied for both reasons. If other requested material necessary to the processing and approval of a case are not submitted by the required date, the application, petition, benefit request, or any other request may be summarily denied as abandoned.

■ 5. Revise § 103.16 to read as follows:

§ 103.16 Biometrics services.

(a) *Collection*—(1) *Required unless waived.* Any applicant, petitioner, sponsor, derivative, dependent, beneficiary, or individual filing or associated with benefit requests as defined in this chapter, or any other request or form of relief, must submit biometrics to DHS unless the request is exempted or the requirement is waived by DHS. DHS may waive the requirement in accordance with paragraph (a)(5) of this section, a **Federal Register** notice, or as otherwise provided by law or regulation. This section applies only to individuals submitting applications, petitions, or requests to USCIS, including United States citizens, without regard to age.

(2) *Frequency of submission.* DHS may collect biometrics for an individual more than once or, at its discretion, reuse previously collected biometrics, as necessary.

(3) *Method of submission.* When not exempted or waived, DHS will prescribe the manner in which biometric collection is to be conducted in a notice to the individual. Each individual will be provided notice of the date, time, and location of his or her appointment for biometrics collection. DHS will schedule the biometric collection at the nearest appropriate location to the individual, unless there is good cause to schedule at another location.

(4) *Removal of exemption.* DHS may change its decision to exempt biometrics for a form, program, or group at a later date and will provide public notification of the change.

(5) *Waiver of biometrics.* DHS may waive the biometrics collection requirement for an individual or grant an exemption thereof for an entire group as follows:

(i) For an individual waiver, initiated by DHS at DHS's discretion, or based on a request for a reasonable accommodation because of age, disability, or other reasons making it impossible or unreasonable to appear for biometrics or provide a prescribed biometric. In such instances, when photographs are required as part of the biometrics collection, USCIS will provide an alternative mechanism to meet the requirement.

(ii) For exemption of an entire group, if the Secretary (or Secretary's designee) determines that biometrics, or certain biometric modalities, for that form, program, or group are not required and that an exemption would be in the Government's interest and consistent with other applicable law, DHS will provide notice in the applicable form instructions, a **Federal Register** notice, by posting notification on the USCIS website, or any combination thereof.

(iii) As otherwise provided by law or regulation.

(iv) Aliens who request a benefit that results in a secure identity document must submit a photograph in accordance with the requirements prescribed by DHS regardless of any exemption or waiver on the submission of biometrics that he or she may be provided.

(6) *Intercountry adoption biometrics.* For intercountry adoption-related applications and petitions under 8 CFR 204.3, or 8 CFR 204.301 to 204.314, in addition to the individuals identified in paragraph (a)(1), USCIS will collect biometrics for the applicant or petitioner's spouse and each additional adult member of the prospective adoptive parents' household, regardless of citizenship, as defined at 8 CFR 204.301. The particular intercountry adoption-related application or petition will state this requirement, where it applies, in the form instructions.

(7) *Reschedule submission.* DHS or its designee may reschedule the biometrics collection at its discretion, or where, before issuing the biometrics notice, DHS received a valid change of address request but the biometrics notice was not sent to the updated address.

(8) *Reschedule timing.* An individual may reschedule their biometrics collection appointment prior to the appointment, for any cause, one time.

(b) *Failure to appear for biometrics collection.* If an individual fails to appear without good cause when DHS or its designee scheduled a biometrics appointment:

(1) *Waiver of rights.* DHS will, as appropriate, deem any right to an interview waived, deny, reopen, refer to the Executive Office for Immigration Review, dismiss, and/or take any other administrative action on any associated pending immigration benefit or other request; or

(2) *Revocation.* DHS may terminate, rescind, or revoke the individual's immigration status, petition, benefit, or relief, where authorized by law.

(3) *Asylum applicants.* For an asylum application or asylum-related benefit, ''good cause'' requires a showing of exceptional circumstances see 8 CFR 208.10.

(c) *Updates to biometrics*—(1) *During adjudication.* Unless waived or exempted, any applicant, petitioner, sponsor, beneficiary, or individual filing or certain individuals associated with a benefit or other request as described in this chapter, including U.S. citizens and lawful permanent residents, must appear as requested to submit biometrics to DHS upon notice while the benefit or other request is pending with DHS.

(2) *After approval.* Any individual alien may be required to submit biometrics again for purposes of continuous vetting, unless and until he or she is granted U.S. citizenship. A lawful permanent resident or United States citizen may be required to submit biometrics if he or she filed an application, petition, or request in the past and it was either reopened or the previous approval is relevant to an application, petition, or benefit request currently pending with DHS. Regional center principals and, if the principal is a legal entity or organization, persons having ownership, control, or a beneficial interest in the principal legal entity or organization, including U.S. citizens, may also be required to submit biometrics again for purposes of continuous vetting.

(d) *Use and retention*—(1) *Biometrics other than DNA.* DHS may store biometrics, other than raw DNA, submitted by an individual as required by this section and use or reuse these biometrics to conduct background and security checks, verify identity, produce documents, determine eligibility for immigration and naturalization benefits, or as necessary for administering and enforcing immigration and naturalization laws. Biometrics collected, other than DNA, may be shared with appropriate federal, state, and local law enforcement; or intelligence community entities; foreign governments, as authorized by law and/or international agreements.

(2) *DNA evidence as proof of a genetic relationship.* (i) DHS may require, request, or accept the submission of

DNA or DNA test results to verify a claimed genetic relationship or determine whether a genetic relationship exists. DHS may use and store DNA test results, which include a partial DNA profile, as evidence of a claimed genetic relationship:

(A) To determine eligibility for immigration and naturalization benefits; or,

(B) To perform any other functions necessary for administering and enforcing immigration and naturalization laws.

(ii) DHS may at its discretion consider DNA test results, which include a partial DNA profile, as primary or secondary evidence of the claimed genetic relationships for any benefit or request.

(iii) DHS will only use and handle raw DNA as long as necessary to obtain DNA test results, which include a partial DNA profile. DHS will destroy raw DNA once these test results are obtained, and DHS will not share DNA test results unless required by law. The DNA test results, which include a partial DNA profile, on any individual obtained as part of the benefit request will remain a part of the file and record of proceeding, DHS will store and may share DNA test results, which include a partial DNA profile, for immigration adjudication purposes or for law enforcement purposes to the extent permitted by law.

PART 204—IMMIGRANT PETITIONS

■ 6. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1184, 1186a, 1255, 1324a, 1641; 8 CFR part 2.

■ 7. Section 204.2 is amended by:
■ a. Revising paragraphs (a)(2), (c)(2)(v), (d)(2)(iv);
■ b. Removing paragraph (d)(2)(vi);
■ c. Redesignating paragraph (d)(2)(vii) as (d)(2)(vi); and
■ d. Revising (e)(2)(v);

The revisions read as follows:

§ 204.2 Petitions for relatives, widows and widowers, and abused spouses, children, and parents.

* * * * *

(a) * * *

(2) *Evidence for petition for a spouse.* In addition to evidence of United States citizenship or lawful permanent resident status, the petitioner must also provide evidence of the claimed relationship. A petition submitted on behalf of a spouse must be accompanied by:

(i) Photograph(s) of the petitioner as described in the relevant form instructions,

(ii) Photograph(s) of the beneficiary as described in the relevant form instructions,

(iii) A certificate of marriage issued by civil authorities; and,

(iv) Proof of the legal termination of all previous marriages of both the petitioner and the beneficiary.

(v) Photographs that do not comply with form instructions may be accepted by USCIS when the petitioner or beneficiary reside(s) in a region where such photographs are unavailable.

(c) * * *

(2) * * *

(v) *Good moral character.* The self-petitioner's good moral character is determined upon review of any credible and relevant evidence, which includes, but is not limited to, evidence submitted by the self-petitioner and criminal history information obtained through the self-petitioner's biometrics. USCIS will assess the good moral character of the self-petitioner for a three year period immediately preceding the filing of the self-petition. USCIS may consider the self-petitioner's conduct beyond the three years preceding the petition filing, if the earlier conduct and acts appear relevant to a determination of the self-petitioner's present moral character, and the conduct of the self-petitioner during the three-year period does not reflect that there has been a reform of character from an earlier period. Self-petitioners who lived outside the United States during the three year period immediately preceding the filing of the self-petition must submit a law enforcement clearance, criminal background check, or similar report issued by an appropriate authority from any jurisdiction in which the self-petitioner resided for six or more months during the three year period immediately preceding the filing of the self-petition.

* * * * *

(d) * * *

(2) * * *

(vii) *Primary evidence for an adopted child or son or daughter.* A petition may be submitted on behalf of an adopted child or son or daughter by a U.S. citizen or lawful permanent resident if the adoption took place before the beneficiary's sixteenth birthday (or eighteenth birthday if the sibling exception at INA 101(b)(1)(E)(ii) applies), and if the child has been in the legal custody of the adopting parent or parents and has resided with the adopting parent or parents for at least two years. A copy of the beneficiary's birth certificate issued by the appropriate civil authority, establishing the beneficiary's identity, age, and birth parentage, and a certified copy of the adoption decree, issued by the appropriate civil authority, must accompany the petition.

* * * * *

(e) * * *

(2) * * *

(v) *Good moral character.* The self-petitioner's good moral character is determined upon review of any credible and relevant evidence, which includes, but is not limited to, evidence submitted by the self-petitioner and criminal history information obtained through the self-petitioner's biometrics. USCIS will assess the good moral character of the self-petitioner for a three year period immediately preceding the filing of the self-petition. USCIS may consider the self-petitioner's conduct beyond the three years preceding the petition filing, if the earlier conduct and acts appear relevant to a determination of the self-petitioner's present moral character, and the conduct of the self-petitioner during the three-year period does not reflect that there has been a reform of character from an earlier period. Self-petitioners who lived outside the United States during the three year period immediately preceding the filing of the self-petition must submit a law enforcement clearance, criminal background check, or similar report issued by an appropriate authority from any jurisdiction in which the self-petitioner resided for six or more months during the three year period immediately preceding the filing of the self-petition. All self-petitioners age 14 and over are required to submit evidence of good moral character as initial evidence with their application. For self-petitioners under the age of 14, USCIS may request evidence of good moral character at any time, in its discretion.

* * * * *

§ 204.3 [Amended]

■ 8. Section 204.3 is amended by removing paragraph (c)(3).

■ 9. Section 204.4 is amended by revising paragraphs (d)(1) and (g)(2)(ii) to read as follows:

§ 204.4 Amerasian child of a United States citizen.

* * * * *

(d) * * *

(1) *Preliminary processing.* Upon initial submission of a petition with the preliminary processing documentary evidence required in paragraph (f)(1) of this section, USCIS will adjudicate the petition to determine whether there is reason to believe the beneficiary was fathered by a United States citizen, and if so request that the petitioner submit

the evidence required by paragraph (f)(1) of this section and any additional evidence required. The petitioner must submit all required documents within the deadline provided in the request or the petition will be considered to have been abandoned. To reactivate an abandoned petition, the petitioner must submit a new Petition for Amerasian, Widow(er), or Special Immigrant without the previously submitted documentation to USCIS.

* * * * *

(g) * * *

(2) * * *

(ii) Failure to meet the sponsorship requirements, including the completed background check, if USCIS finds that the sponsor is not of good moral character.

■ 10. Section 204.5 is amended by revising paragraph (p)(4) to read as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(p) * * *

(4) *Application for employment authorization.* To request employment authorization, an eligible applicant described in paragraph (p)(1), (2), or (3) of this section must properly file an application for employment authorization, with USCIS, with the appropriate fee, in accordance with 8 CFR 274a.13(a) and the form instructions. Employment authorization under this paragraph may be granted solely in 1-year increments.

§ 204.310 [Amended]

■ 11. Section 204.310 is amended by removing and reserving paragraph (b).

PART 207—ADMISSION OF REFUGEES

■ 12. The authority citation for part 207 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1157, 1159, 1182; 8 CFR part 2.

■ 13. Section 207.1 is amended by revising paragraph (a) to read as follows:

§ 207.1 Eligibility.

(a) *Filing.* Any alien who believes he or she is a refugee as defined in section 101(a)(42) of the Act, and is included in a refugee group identified in section 207(a) of the Act, may apply for admission to the United States by submitting an application and the required evidence, in accordance with the form instructions. The application will be considered filed when it is completed and signed before a USCIS officer.

* * * * *

■ 14. Section 207.7 is amended by revising paragraphs (d), (e), and (f)(2) to read as follows:

§ 207.7 Derivatives of refugees.

* * * * *

(d) *Filing.* A principal refugee admitted under section 207(c)(1) of the Act may request following-to-join benefits for his or her spouse and unmarried, minor child(ren) (whether the spouse and children are inside or outside the United States) by filing a separate Request for Refugee/Asylee Relative petition in accordance with the form instructions for each qualifying family member. The request may only be filed by the principal refugee. Family members who derived their refugee status are not eligible to request derivative benefits on behalf of their spouse and child(ren). A separate Request for Refugee/Asylee Relative petition must be filed for each qualifying family member within two years of the refugee's admission to the United States unless USCIS determines that the filing period should be extended for humanitarian reasons. There is no time limit imposed on a family member's travel to the United States once the Request for Refugee/Asylee Relative petition has been approved, provided that the relationship of spouse or child continues to exist and approval of the Request for Refugee/Asylee Relative petition has not been subsequently reopened and denied. There is no fee for this benefit request.

(e) *Evidence.* (1) Evidence must be provided as required by form instructions for the Registration for Classification as Refugee and/or Request for Refugee/Asylee Relative, as applicable, which establishes that:

(i) The principal refugee applicant has the claimed relationship to the derivative where the derivative is accompanying the principal, or

(ii) The petitioner was previously admitted as a principal refugee and that the petitioner has the claimed relationship to the following to join derivative.

(2) The derivative refugee applicant or beneficiary may be required to provide additional evidence to establish eligibility.

(3) The burden of proof is on the petitioner to establish by a preponderance of the evidence that he or she is an eligible petitioner and the following to join beneficiary is an eligible spouse or child.

(f) * * *

(2) *Spouse or child outside the United States.* When a spouse or child of a refugee is outside the United States and the Request for Refugee/Asylee Relative is approved, USCIS will notify the refugee of such approval.

* * * * *

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 15. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Pub. L. 110–229; 8 CFR part 2.

■ 16. Section 208.21 is amended by revising paragraph (d) and (f) to read as follows:

§ 208.21 Admission of the asylee's spouse and children.

* * * * *

(d) *Spouse or child outside the United States.* When a spouse or child of an alien granted asylum is outside the United States, the asylee may request accompanying or following-to-join benefits for his or her spouse or child(ren) by filing a separate Request for Refugee/Asylee Relative for each qualifying family member in accordance with the form instructions. A separate Request for Refugee/Asylee Relative for each qualifying family member must be filed within two years of the date in which the asylee was granted asylum, unless USCIS determines that the filing period should be extended for humanitarian reasons. When the Request for Refugee/Asylee Relative is approved, USCIS will notify the asylee of such approval. The approval of the Request for Refugee/Asylee Relative will remain valid for the duration of the relationship to the asylee and, in the case of a child, while the child is under 21 years of age and unmarried, provided also that the principal's status has not been revoked. However, the approved Request for Refugee/Asylee Relative will cease to confer immigration benefits after it has been used by the beneficiary for admission to the United States as a derivative of an asylee.

* * * * *

(f) *Burden of proof.* (1) The burden of proof is on the principal alien or petitioner to establish by a preponderance of the evidence that he or she is eligible to file for this benefit and that the individual on whose behalf he/she is making a request under this section is an eligible spouse or child.

(2) Evidence must be provided as required by form instructions for the Application for Asylum and for Withholding of Removal or Request for Refugee/Asylee Relative, as applicable, which establishes that:

(i) The principal alien or petitioner has the claimed relationship to the

derivative where the derivative is accompanying the principal, or

(ii) the petitioner was previously granted status as a principal asylee and that the petitioner has the claimed relationship to the following to join derivative.

(3) The derivative asylum applicant or beneficiary may be required to provide additional evidence to establish eligibility.

* * * * *

PART 209—ADJUSTMENT OF STATUS OF REFUGEES AND ALIENS GRANTED ASYLUM

■ 17. The authority citation for part 209 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1157, 1158, 1159, 1228, 1252, 1282; Title VII of Public Law 110–229; 8 CFR part 2.

■ 18. Section 209.1 is amended by revising paragraph (b) to read as follows:

§ 209.1 Adjustment of status of refugees.

* * * * *

(b) *Application.* Upon admission to the United States, every refugee entrant will be notified of the requirement to submit an adjustment of status application one year after entry.

* * * * *

■ 19. Section 209.2 is amended by revising paragraph (c) to read as follows:

§ 209.2 Adjustment of status of alien granted asylum.

* * * * *

(c) *Application.* An application for the benefits of section 209(b) of the Act may be filed on an Application to Register Permanent Residence or Adjust Status, with the correct fee, and in accordance with the form instructions. If an alien has been placed in removal proceedings, the application can be filed and considered only in proceedings under section 240 of the Act.

* * * * *

PART 210—SPECIAL AGRICULTURAL WORKERS

■ 20. The authority citation for part 210 continues to read as follows:

Authority: 8 U.S.C. 1103, 1160, 8 CFR part 2.

§ 210.1 [Amended]

■ 21. Section 210.1 is amended by removing and reserving paragraph (b).

■ 22. Section 210.2 is amended by revising paragraphs (c)(2)(i), (iv), (c)(3)(iv), and (c)(4)(iii) to read as follows:

§ 210.2 Application for temporary resident status.

* * * * *

(c) * * *

(2) * * *

(i) An Application for Temporary Resident Status as a Special Agricultural Worker must be filed with the required fee.

* * * * *

(iv) Each applicant, regardless of age, must appear at the appropriate USCIS office and submit biometrics, unless USCIS waives or exempts biometrics pursuant to 8 CFR 103.16. Each applicant will be interviewed by an immigration officer, except that the interview may be waived on a case-by-case basis at its discretion.

(3) * * *

(iv) An applicant at an overseas processing office whose application is recommended for approval will be provided with an entry document attached to the applicant's file. Upon admission to the United States, the applicant must contact USCIS for biometric collection, examination of the applicant's file, and issuance of employment authorization.

(4) * * *

(iii) *Conditions of admission.* Aliens who present a preliminary application will be admitted to the United States for a period of ninety (90) days with authorization to accept employment, if they are determined by an immigration officer to be admissible to the United States. Such aliens are required, within that ninety-day period, to submit evidence of eligibility which meets the provisions of § 210.3; appear for biometric collection; obtain a report of medical examination in accordance with paragraph (d) of this section; and submit to USCIS a complete application as defined in § 210.1(c). USCIS may, for good cause, extend the ninety-day period and grant further authorization to accept employment in the United States if an alien demonstrates he or she was unable to perfect an application within the initial period. If an alien described in this paragraph fails to submit a complete application to USCIS within ninety days or within such additional period as may have been authorized, his or her application may be denied for lack of prosecution, without prejudice.

* * * * *

■ 23. Section 210.5 is amended by revising paragraph (b) to read as follows:

§ 210.5 Adjustment to permanent resident status.

* * * * *

(b) *Biometrics collection.* To obtain proof of permanent resident status an alien described in paragraph (a) of this section must follow USCIS instructions for obtaining a Permanent Resident Card, including verifying identity and submitting biometrics. The alien may appear before the date of adjustment if requested to do so by USCIS. The Permanent Resident Card will be issued after the date of adjustment.

* * * * *

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 24. The authority citation for part 212 continues to read as follows:

Authority: 6 U.S.C. 111, 202, 236 and 271; 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1185, 1187, 1223, 1225, 1226, 1227, 1255, 1359; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458); 8 CFR part 2.

■ 25. Section 212.7 is amended by removing paragraph (e)(6) and redesignating paragraphs (e)(7) through (e)(14) as paragraphs (e)(6) through (e)(13).

PART 214—NONIMMIGRANT CLASSES

■ 26. 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 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Public Law 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.

■ 27. Section 214.2 is amended by revising paragraphs (e)(23)(viii) and (k)(1) and removing and reserving paragraph (w)(15) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(e) * * *

(23) * * *

(viii) *Information for background checks.* An applicant for E–2 CNMI Investor status or any applicant for derivative status as a spouse or child of an E–2 CNMI Investor, must submit biometrics as required under 8 CFR 103.16.

* * * * *

(k) * * *

(1) *Petition and supporting documents.* To be classified as a fiancé or fiancée as defined in section 101(a)(15)(K)(i) of the Act, an alien must be the beneficiary of an approved visa petition filed on a Petition for Alien Fiancé(e).

* * * * *

§ 214.11 [Amended]

■ 28. Section 214.11 is amended by removing the term ''fingerprint'' from the definition ''Bona fide determination'' and adding the term ''biometrics'' in its place.

■ 29. Section 214.15 is amended by revising paragraph (f)(1) to read as follows:

§ 214.15 Certain spouses and children of lawful permanent residents.

* * * * *

(f) * * *

(1) *Contents of application.* To apply for V nonimmigrant status, an eligible alien must:

(i) Submit an Application to Extend/Change Nonimmigrant Status, in accordance with the form instructions and with the appropriate fee;

(ii) Appear for biometric collection;

(iii) Submit a Medical Examination of Aliens Seeking Adjustment of Status, without the vaccination supplement; and

(iv) Submit Evidence of eligibility as described by Application to Extend/Change Nonimmigrant Status Supplement A and in paragraph (f)(2) of this section.

* * * * *

PART 215—CONTROLS OF ALIENS DEPARTING FROM THE UNITED STATES; ELECTRONIC VISA UPDATE SYSTEM

■ 30. The authority citation for part 215 continues to read as follows:

Authority: 6 U.S.C. 202(4), 236; 8 U.S.C. 1101, 1103, 1104, 1184, 1185 (pursuant to Executive Order 13323 (Dec. 30, 2003)), 1365a note, 1379, 1731–32; and 8 CFR part 2.

■ 31. Section 215.8 is amended by revising the section heading and removing and reserving paragraph (a)(2)(i) to read as follows:

§ 215.8 Requirements for biometrics from aliens on departure from the United States.

(a) * * *

(2) * * *

(i) [Reserved]

* * * * *

■ 32. Section 215.9 is revised to read as follows:

§ 215.9 Temporary Worker Visa Exit Program.

An alien admitted on certain temporary worker visas at a port of entry participating in the Temporary Worker Visa Exit Program must also depart at the end of his or her authorized period of stay through a port of entry participating in the program and must present designated biographic and/or biometrics upon departure. U.S. Customs and Border Protection will publish a Notice in the **Federal Register** designating which temporary workers must participate in the Temporary Worker Visa Exit Program, which ports of entry are participating in the program, which biographic and/or biometrics would be required, and the format for submission of that information by the departing designated temporary workers.

PART 216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS

■ 33. The authority for part 216 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1154, 1184, 1186a, 1186b, and 8 CFR part 2.

§ 216.4 [Amended]

■ 34. Section 216.4 is amended by removing paragraphs (b) introductory text, (b)(1) and (2) and redesignating paragraph (b)(3) as (b).

§ 216.6 [Amended]

■ 35. Section 216.6 is amended by removing paragraphs (b) introductory text, (b)(1) and (2) and redesignating paragraph (b)(3) as (b).

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

■ 36. The authority for part 235 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E.O. 13323, 69 FR 241, 3 CFR, 2004 Comp., p. 278) 1201, 1224, 1225, 1226, 1228, 1365a note, 1365b, 1379, 1731–32; Title VII of Public Law 110–229; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458); Pub. L. 112–54.

■ 37. Section 235.1 is amended by:

■ A. In paragraph (f)(1)(iv), removing the words ''paragraph (d)(1)(ii)'' and adding in its place ''paragraph (f)(1)(ii)'' and

■ B. Removing and reserving paragraph (f)(1)(iv)(A).

■ 38. Section 235.7 is amended by revising the last sentence of paragraph (a)(3) and revising paragraph (a)(4)(vi) to read as follows:

§ 235.7 Automated inspection services.

(a) * * *

(3) * * * Notwithstanding the provisions of 8 CFR part 264, biometric collection in the manner prescribed by DHS may be required to participate in the PORTPASS program.

(4) * * *

(vi) If biometrics are required to assist in a determination of eligibility at that POE, the applicant will be so advised by DHS, before submitting his or her application. The applicant will also be informed at that time of any biometric fee for conducting the biometric collection and any identity verification and national security and criminal history background checks.

* * * * *

PART 236—APPREHENSION AND DETENTION OF INADMISSIBLE AND DEPORTABLE ALIENS; REMOVAL OF ALIENS ORDERED REMOVED

■ 39. The authority citation for part 236 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1231, 1362; 18 U.S.C. 4002, 4013(c)(4); 8 CFR part 2.

■ 40. Section 236.5 is revised as follows:

§ 236.5 Biometrics.

Every alien against whom proceedings based on inadmissibility under section 212(a) of the INA or deportability under section 237 of the INA are initiated, including proceedings under sections 235, 238(b), and 240 of the INA, must submit biometrics at a time and place determined by DHS. DHS may also require submission of biometrics for any alien who is subject to INA section 241(a)(5) or 8 CFR 217.4(b) or (c).

PART 240—VOLUNTARY DEPARTURE, SUSPENSION OF DEPORTATION AND SPECIAL RULE CANCELLATION OF REMOVAL

■ 41. The authority citation for part 240 continues to read as follows:

Authority: 8 U.S.C. 1103; 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; secs. 202 and 203, Pub. L. 105–100 (111 Stat. 2160, 2193); sec. 902, Pub. L. 105–277 (112 Stat. 2681); 8 CFR part 2.

■ 42. Section 240.21 is amended by revising (b)(2)(ii)(D) to read as follows:

§ 240.21 Suspension of deportation and adjustment of status under section 244(a) of the Act (as in effect before April 1, 1997) and cancellation of removal and adjustment of status under section 240A(b) of the Act for certain nonpermanent residents.

(b) * * *

(2) * * *

(ii) * * *

(D) Two photograph(s) meeting the requirements in the instructions to the relevant form.

■ 43. Section 240.63 is amended by revising the third and fourth sentences of paragraph (a) to read as follows:

§ 240.63 Application process.

(a) * * * Each application must be filed with the filing fee as provided in 8 CFR 103.7 and the form instructions,

or a request for a fee waiver must be filed. The fact that an applicant has also applied for asylum does not exempt the applicant from any fee for other benefit requests.

* * * * *

■ 44. Section 240.67 is amended by revising paragraph (a) as follows:

§ 240.67 Procedure for interview before an asylum officer.

(a) *Interview and biometric collection.* USCIS will notify each applicant to appear for an interview only after USCIS has scheduled the applicant for biometric collection in accordance with 8 CFR 103.16 and initiated national security and criminal history background checks.

* * * * *

■ 45. Section 240.68 is revised to read as follows:

§ 240.68 Failure to appear at an interview before an asylum officer or failure to follow requirements for biometrics.

Failure to appear for a scheduled interview or biometrics will be handled in accordance with 8 CFR 103.2(b)(9) and 103.16, respectively.

■ 46. Section 240.70 is amended by revising paragraph (d)(4) to read as follows:

§ 240.70 Decision by the Service.

* * * * *

(d) * * *

(4) The applicant failed to appear for a scheduled interview with an asylum officer or failed to comply with biometrics requirements and such failure was not excused by USCIS, unless the application is dismissed.

* * * * *

PART 244—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED FOREIGN STATES AND PERSONS WITHOUT NATIONALITY WHO LAST HABITUALLY RESIDED IN A TPS DESIGNATED STATE

■ 47. The authority citation for part 244 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1254a note, 8 CFR part 2.

■ 48. Section 244.6(a) is revised to read as follows:

§ 244.6 Application.

(a) An application for Temporary Protected Status must be submitted in accordance with the form instructions, the applicable country-specific **Federal Register** notice that announces the procedures for TPS registration or re-registration and, except as otherwise provided in this section, with the appropriate fees as described in 8 CFR 103.7(b)(1).

* * * * *

■ 49. Section 244.17 is amended by revising paragraph (a) to read as follows:

§ 244.17 Periodic registration.

(a) Aliens granted Temporary Protected Status must re-register periodically in accordance with USCIS instructions. Such registration applies to nationals of those foreign states designated for more than one year by DHS or where a designation has been extended for a year or more. Applicants for re-registration must apply during the period provided by USCIS. Applicants re-registering do not need to pay the fee that was required for initial registration except the biometric services fee and if requesting employment authorization, the application fee for employment authorization. By completing the application, applicants attest to their continuing eligibility. Such applicants do not need to submit additional supporting documents unless USCIS requests them to do so.

* * * * *

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

■ 50. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; Pub. L. 105–100, section 202, 111 Stat. 2160, 2193; Pub. L. 105–277, section 902, 112 Stat. 2681; Pub. L. 110–229, tit. VII, 122 Stat. 754; 8 CFR part 2.

■ 51. Section 245.15 is amended by revising paragraph (h) to read as follows:

§ 245.15 Adjustment of status of certain Haitian nationals under the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA).

* * * * *

(h) *Application and supporting documents.* Each applicant for adjustment of status must file an application on the form prescribed by USCIS with the appropriate fee. Each application must be accompanied by:

(1) A copy of the applicant's birth certificate or other record of birth;

(2) A report of medical examination, as specified in § 245.5;

(3) Two photographs unless waived by USCIS;

(4) A copy of the Arrival-Departure Record, issued at the time of the applicant's arrival in the United States, if the alien was inspected and admitted or paroled;

* * * * *

■ 52. Section 245.21 is amended by revising paragraph (b) to read as follows:

§ 245.21 Adjustment of status of certain nationals of Vietnam, Cambodia, and Laos (section 586 of Pub. L. 106–429).

* * * * *

(b) *Application.* An applicant must submit an application on the form designated by USCIS with the fee specified in 8 CFR 103.7(b)(1) and in accordance with the form instructions. Applicants must also appear for biometrics collection as described in 8 CFR 103.16.

* * * * *

■ 53. Section 245.23 is amended by revising paragraph (g) to read as follows:

§ 245.23 Adjustment of aliens in T nonimmigrant classification.

* * * * *

(g) *Good moral character.* A T–1 nonimmigrant applicant for adjustment of status under this section must demonstrate that he or she has been a person of good moral character since first being lawfully admitted as a T–1 nonimmigrant and until USCIS completes the adjudication of their application for adjustment of status. Claims of good moral character will be evaluated on a case-by-case basis, taking into account section 101(f) of the Act and the standards of the community. USCIS will assess the good moral character of the applicant for the requisite continuous period as described in section 245(l)(1)(A) of the Act. USCIS will determine an applicant's good moral character as follows:

(1) Reviewing any credible and relevant evidence, which includes, but is not limited to, criminal history information obtained through the applicant's biometrics and evidence submitted by the applicant.

(2) USCIS may consider the applicant's conduct beyond the requisite period, if the earlier conduct and acts appear relevant to a determination of the applicant's present moral character, and the conduct of the applicant during the requisite period does not reflect that there has been a reform of character from an earlier period.

(3) Applicants who lived outside the United States during the requisite period must submit a law enforcement clearance, criminal background check, or similar report issued by an appropriate authority from any jurisdiction in which the applicant resided during the requisite period.

(4) All T nonimmigrant applicants for adjustment of status age 14 and over are required to submit evidence of good moral character as initial evidence with their application. For T nonimmigrant applicants for adjustment of status under the age of 14, USCIS may request

evidence of good moral character at any time, in its discretion.

PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT

■ 54. The authority citation for part 245a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1255a and 1255a note.

■ 55. Section 245a.2 is amended by revising paragraphs (d) introductory text, (d)(2)(ii), the last sentence of paragraph (e)(1) and paragraph (j) to read as follows:

§ 245a.2 Application for temporary residence.

* * * * *

(d) *Documentation.* Evidence to support an alien's eligibility for the Legalization Program must include documents establishing proof of identity, proof of residence, and proof of financial responsibility, as well as biometrics and a completed medical report of examination. All documentation submitted will be subject to verification. USCIS may deny applications submitted with unverifiable documentation. Failure by an applicant to authorize release to USCIS of information protected by the Privacy Act and/or related laws in order for USCIS to adjudicate a claim may result in denial of the benefit sought. Acceptable supporting documents for these three categories are discussed below.

* * * * *

(2) * * *

(ii) *Proof of common identity.* The most persuasive evidence is a document issued in the assumed name which identifies the applicant by biometrics. Other evidence which will be considered are affidavit(s) by a person or persons other than the applicant, made under oath, which identify the affiant by name and address, state the affiant's relationship to the applicant and the basis of the affiant's knowledge of the applicant's use of the assumed name. Affidavits accompanied by a photograph which has been identified by the affiant as the individual known to affiant under the assumed name in question will carry greater weight.

* * * * *

(e) * * *

(1) * * * The applicant must appear for a personal interview and for biometric collection as scheduled.

* * * * *

(j) *Interview.* Each applicant will be interviewed by an immigration officer; USCIS may waive the interview on a case-by-case basis, at its discretion.

* * * * *

■ 56. Section 245a.3 is amended by removing ''(ADIT processing)'' from the last sentence of paragraph (b)(1) and revising paragraph (e) to read as follows:

§ 245a.3 Application for adjustment from temporary to permanent resident status.

* * * * *

(e) *Interview.* Each applicant will be interviewed by an immigration officer, except that the adjudicative interview may be waived by DHS on a case-by-case basis at its discretion. An applicant failing to appear for a scheduled interview may, for good cause, be afforded another interview. Where an applicant fails to appear for more than one scheduled interview, his or her application will be held in abeyance until the end of 43 months from the date of the application for temporary residence was approved and adjudicated on the basis of the existing record.

* * * * *

■ 57. Section 245a.4 is amended by revising paragraph (b)(4) introductory text, (b)(4)(ii)(D), (b)(5)(i), and (b)(10) to read as follows:

§ 245a.4 Adjustment to lawful resident status of certain nationals of countries for which extended voluntary departure has been made available.

* * * * *

(b) * * *

(4) *Documentation.* Evidence to support an alien's eligibility for temporary residence status must include documents establishing proof of identity, proof of nationality, proof of residence, and proof of financial responsibility, as well as biometrics, and a completed medical report of examination. USCIS may deny any applications submitted with unverifiable documentation. USCIS may deny the benefit sought where an applicant fails to authorize release to USCIS of information protected by the Privacy Act or related laws in order for USCIS to adjudicate a benefit request. Acceptable supporting documents for the four categories of documentation are discussed as follows:

* * * * *

(ii) * * *

(D) Other credible documents, including those created by, or in the possession of USCIS, or any other documents (excluding affidavits) that, when taken singly, or together as a whole, establish the alien's nationality.

* * * * *

(5) *Filing of application.* (i) An Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act must be filed with USCIS as provided in the form instructions. The applicant must appear for a personal interview and biometrics collection as scheduled. USCIS may, at its discretion:

(A) Require the applicant to file the application in person; or

(B) Require the applicant to file the application by mail; or

(C) Permit the filing of applications whether by mail or in person.

* * * * *

(10) *Interview.* Each applicant, regardless of age, must appear at the appropriate USCIS office to be interviewed by an immigration officer, except that the interview may be waived on a case-by-case basis at USCIS' discretion.

* * * * *

■ 58. Section 245a.12 is amended by revising paragraphs (b) and (d) to read as follows:

§ 245a.12 Filing and applications.

* * * * *

(b) *Filing of applications in the United States.* USCIS has jurisdiction over all applications for the benefits of LIFE legalization under this Subpart B. All applications filed with USCIS for the benefits of LIFE Legalization must be submitted in accordance with application form instructions. After proper filing of the application, USCIS will notify the applicant to appear for an interview and biometric collection.

* * * * *

(d) *Application and supporting documentation.* Each applicant for LIFE Legalization adjustment of status must properly file an Application to Register Permanent Residence or Adjust Status, in accordance with the form instructions and with the appropriate fee(s). An applicant should complete Part 2 of the Application to Register Permanent Residence or Adjust Status by checking box ''h—other'' and writing ''LIFE Legalization'' next to that block. Each application must be properly filed in accordance with the form instructions and with the appropriate fee, and accompanied by:

(1) A report of medical examination, as specified in 8 CFR 245.5.

(2) Two photographs, as described in the instructions to the Application to Register Permanent Residence or Adjust Status.

(3) Proof of application for class membership in CSS, LULAC, or Zambrano class action lawsuits as described in § 245a.14.

(4) Proof of continuous residence in an unlawful status since before January 1, 1982 through May 4, 1988, as described in § 245a.15.

(5) Proof of continuous physical presence from November 6, 1986, through May 4, 1988, as described in § 245a.16.

(6) Proof of citizenship skills as described in § 245a.17. This proof may be submitted either at the time of filing the application, subsequent to filing the application but before the interview, or at the time of the interview.

* * * * *

PART 264—REGISTRATION, BIOMETRIC COLLECTION, AND VETTING

■ 59. The authority citation for part 264 continues to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1303–1305; 8 CFR part 2.

■ 60. The heading for part 264 is revised as set forth above.

■ 61. Section 264.1 is amended by revising the section heading, and paragraphs (e) and (g) to read as follows:

§ 264.1 Registration and biometric collection.

* * * * *

(e) *Biometrics exemption.* (1) For purposes of this chapter, DHS will not collect biometrics under this section from nonimmigrant aliens who are:

(i) Admitted as foreign government officials, employees, and their immediate family members; international organization representatives, officers, employees, and their immediate family members; NATO representatives, officers, employees, and their immediate family members; and holders of diplomatic visas while they maintain such nonimmigrant status.

(ii) Nationals of countries which do not require biometrics collection of United States citizens temporarily residing therein.

(iii) Aliens exempted under this provision may be required to appear for DHS to collect a photograph that can be used to create a secure identity document.

(2) Every nonimmigrant alien not included in paragraph (e)(1) of this section who departs from the United States within one year of his or her admission may be exempted from biometrics collection, provided he or she maintains his or her nonimmigrant status during that time; each such alien who has not previously provided biometrics will apply at once if he or she remains in the United States in excess of one year.

(3) Every nonimmigrant alien that has not previously had biometrics collected will apply at once upon his or her failure to maintain his or her nonimmigrant status.

* * * * *

(g) *Registration and biometrics of children.* Within 30 days after reaching the age of 14, any alien in the United States not exempt from alien registration under the INA and this chapter must apply for registration and submit biometrics, unless biometrics collection is waived by USCIS. This requirement does not preclude DHS from requiring any alien under the age of 14 who is not exempt from alien registration to submit biometrics.

(1) *Permanent residents.* If an alien who is a lawful permanent resident of the United States is temporarily absent from the United States when he or she reaches age 14, he or she must apply for registration and submit biometrics within 30 days of his or her return to the United States in accordance with applicable form instructions. Furthermore the alien must surrender any prior evidence of alien registration and USCIS will issue the alien new evidence of alien registration.

(2) *Others.* In the case of an alien who is not a lawful permanent resident, the alien's previously issued registration document will be noted to show that he or she has been re-registered and the date of re-registration.

* * * * *

§ 264.2 [Amended]

■ 62. Section 264.2 is amended by removing and reserving paragraph (d);

§ 264.5 [Amended]

■ 63. Section 264.5(i) is removed.

PART 287—FIELD OFFICERS; POWERS AND DUTIES

■ 64. The authority citation for part 287 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1225, 1226, 1251, 1252, 1357; Homeland Security Act of 2002,. Pub. L. 107–296 (6 U.S.C. 1, *et. seq.*); 8 CFR part 2.

■ 65. Section 287.11(b)(3) is amended by revising the last sentence to read as follows:

§ 287.11 Pre-enrolled Access Lane.

* * * * *

(b) * * *

(3) * * * DHS may require applicants to submit to biometrics collection, and DHS may provide that biometric data to Federal, State, and local government agencies for the purpose of determining eligibility to participate in the PAL program.

* * * * *

PART 333—PHOTOGRAPHS

■ 66. The authority citation for part 333 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443.

■ 67. Section 333.1 is revised to read as follows:

§ 333.1 Required photographs.

Every applicant under section 333 of the Act must provide photographs as prescribed by USCIS in the applicable form instructions.

PART 335—EXAMINIATION ON APPLICATION FOR NATURALIZATION

■ 68. The authority citation for part 335 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443, 1447.

■ 69. Section 335.2 is amended by revising paragraph (b)(3) to read as follows:

§ 335.2 Examination of applicant.

* * * * *

(b) * * *

(3) Confirmation from the Federal Bureau of Investigation that the biometrics or biometric data submitted for the criminal background check has been rejected.

* * * * *

Chad R. Mizelle,

Senior Official Performing the Duties of the General Counsel, U.S. Department of Homeland Security.

[FR Doc. 2020–19145 Filed 9–4–20; 4:15 pm]

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Part IV

Department of Health and Human Services

42 Part 71
Control of Communicable Diseases; Foreign Quarantine: Suspension of the Right To Introduce and Prohibition of Introduction of Persons Into United States From Designated Foreign Countries or Places for Public Health Purposes; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 71

[Docket No. CDC–2020–0033]

RIN 0920–AA76

Control of Communicable Diseases; Foreign Quarantine: Suspension of the Right To Introduce and Prohibition of Introduction of Persons Into United States From Designated Foreign Countries or Places for Public Health Purposes

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services (HHS) issues this final rule to amend the Foreign Quarantine Regulations administered by the Centers for Disease Control and Prevention (CDC). This final rule provides a procedure for the CDC Director to suspend the right to introduce and prohibit introduction, in whole or in part, of persons from such foreign countries or places as the Director shall designate in order to avert the danger of the introduction of a quarantinable communicable disease into the United States, and for such period of time as the Director may deem necessary for such purpose.

DATES: This final rule is effective on October 13, 2020.

FOR FURTHER INFORMATION CONTACT: Nina Witkofsky, Acting Chief of Staff, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–10, Atlanta, GA 30329. Telephone: 404–639–7000; email: *cdcregulations@cdc.gov.*

SUPPLEMENTARY INFORMATION: This final rule is organized as follows:

Table of Contents

I. Summary

This final rule is effective on October 13, 2020, unless the interim final rule (IFR) entitled Control of Communicable Diseases; Foreign Quarantine: Suspension of Introduction of Persons Into United States From Designated Foreign Countries or Places for Public Health Purposes (85 FR 16559) (Mar. 24, 2020), or the Centers for Disease Control & Prevention's (CDC) Order on covered aliens, Control of Communicable Diseases; Foreign Quarantine: Suspension of Introduction of Persons into United States from Designated Foreign Countries or Places for Public Health Purposes, (85 FR 16559) (Mar. 24, 2020), as amended, is vacated or enjoined by a court, in which case, the Secretary will publish a document in the **Federal Register** announcing an updated effective date for this rule.

The U.S. Department of Health and Human Services (HHS) finalizes the interim final rule (IFR) entitled *Control of Communicable Diseases; Foreign Quarantine: Suspension of Introduction of Persons Into United States From Designated Foreign Countries or Places for Public Health Purposes* (85 FR 16559) published on March 24, 2020, to implement section 362 of the Public Health Service (PHS) Act, 42 U.S.C. 265.

HHS/CDC implements section 362 because the Surgeon General's statutory authority under section 362 passed by operation of law to the Secretary of Health and Human Services (HHS Secretary),[1] who delegated his or her statutory authority to the CDC Director (Director).

Through this rulemaking, HHS/CDC establishes final regulations under which the Director may suspend the right to introduce and prohibit, in whole or in part, the introduction of persons into the United States for such period of time as the Director may deem necessary to avert the serious danger of the introduction of a quarantinable communicable disease into the United States. This rulemaking does not address the ''property'' prong of the statute because existing regulations already do so. The final rule uses the term ''quarantinable communicable disease'' instead of ''communicable disease'' to specify that this regulation is only meant to apply to communicable diseases that are included on the

[1] The statute assigns this authority to the Surgeon General of the Public Health Service. Nevertheless, Reorganization Plan No. 3 of 1966 abolished the Office of the Surgeon General and transferred all statutory powers and functions of the Surgeon General and other officers of the Public Health Service and of all agencies of or in the Public Health Service to the Secretary of Health, Education, and Welfare, now the Secretary of Health and Human Services, 31 FR 8855–01, 80 Stat. 1610 (June 25, 1966), *see also* Public Law 96–88, Sec. 509(b), October 17, 1979, 93 Stat. 695 (codified at 20 U.S.C. Sec. 3508(b)). Sections 361 through 369 of the PHS Act (42 U.S.C. Sec.'s 264–272) have been delegated from the HHS Secretary to the CDC Director. References in the PHS Act to the Surgeon General are to be read in light of the transfer of statutory functions and re-designation. Although the Office of the Surgeon General was re-established in 1987, the Secretary of HHS has retained the authorities previously held by the Surgeon General.

Federal list of quarantinable communicable diseases, which is a subset of ''communicable diseases'' specified by Executive Order of the President.[2] Specifically, this final rule permits the Director to prohibit, in whole or in part, the introduction into the United States of persons from designated foreign countries (or one or more political subdivisions or regions thereof) or places, only for such period of time that the Director deems necessary to avert the serious danger of the introduction of a quarantinable communicable disease, by issuing an Order in which the Director determines that:

(1) By reason of the existence of any quarantinable communicable disease in a foreign country (or one or more political subdivisions or regions thereof) or place there is serious danger of the introduction of such quarantinable communicable disease into the United States; and

(2) This danger is so increased by the introduction of persons from such country (or one or more political subdivisions or regions thereof) or place that a suspension of the right to introduce such persons into the United States is required in the interest of public health.

The final rule defines key statutory and regulatory language to clarify when and under what circumstances the Director may exercise the section 362 authority by issuing an administrative Order. The regulatory text of this final rule sets forth only definitions and procedures. No action can or will be taken under this final rule absent an administrative Order issued by the Director.

First, the final rule defines ''introduction into the United States'' of persons to mean the movement of a person from a foreign country (or one or more political subdivisions or regions thereof) or place, or series of foreign countries or places, into the United States so as to bring the person into contact with persons or property in the United States, in a manner that the Director determines to present a risk of transmission of a quarantinable communicable disease to persons, or a risk of contamination of property with a quarantinable communicable disease, even if the quarantinable communicable disease has already been introduced, transmitted, or is spreading within the United States.

This definition clarifies that ''introduction'' does not necessarily conclude the instant that a person first steps onto U.S. soil. The introduction of a person into the United States can occur not only when a person first steps onto U.S. soil, but also when a person on U.S. soil moves further into the United States, and begins to come into contact with persons or property in ways that increase the risk of transmitting the quarantinable communicable disease. A person's presence in the United States may still constitute a violation of a section 362 Order regardless of the length of time the person has been present in the country in direct contravention of the Order.

The final rule next defines ''[p]rohibit, in whole or in part, the introduction into the United States of persons'' to mean ''to prevent the introduction of persons into the United States by suspending any right to introduce into the United States, physically stopping or restricting movement into the United States, or physically expelling from the United States some or all of the persons.'' This is consistent with the text and legislative history of the statute. Congress sought to provide the Executive Branch, to the maximum extent allowed under the Constitution, the power to prevent the introduction of communicable diseases into the country. The power to expel is critical to upholding the intent of Congress in situations where neither HHS/CDC, nor other Federal agencies, nor state or local governments have the facilities and personnel necessary to quarantine, isolate, or conditionally release the number of persons who would otherwise increase the serious danger of the introduction of the communicable disease into the United States. In those situations, the rapid expulsion of persons from the United States may be the most effective public health measure that HHS/CDC can implement within the finite resource of HHS/CDC and its Federal, State, and local partners. Absent the power to expel, the problem that Congress sought to avoid—the introduction of communicable diseases—may occur despite the best efforts of HHS/CDC.

The final rule defines ''serious danger of the introduction of such quarantinable communicable disease into the United States'' as ''the probable introduction of one or more persons capable of transmitting the quarantinable communicable disease into the United States, even if persons or property in the United States are already infected or contaminated with the quarantinable communicable disease.'' The final rule recognizes that people may be capable of transmitting a quarantinable communicable disease without actually knowing it, and their movement may result in the transmission of the disease to others. This regulatory definition clarifies that, even if persons in the United States are already infected with a quarantinable communicable disease, the probable introduction of additional persons capable of transmitting the disease in the same or different localities nevertheless presents a serious danger of the introduction of the disease into the United States. This clarification is informed by HHS/CDC's experience during the coronavirus disease 2019 (COVID–19) pandemic and the Federal government's past use of section 362 and its predecessor statute. Because COVID–19 meets the definition for a severe acute respiratory syndrome, it is included in those quarantinable communicable diseases identified by Executive Order.

This final rule defines ''place'' to mean ''any location specified by the Director, including any carrier, as that term is defined in 42 CFR 71.1, whatever the carrier's flag, registry, or country of origin.'' This definition clarifies that when HHS refers to ''place'' in this final rule, it refers to territories within or outside of a country, and also to carriers, regardless of the carrier's flag, registry, or country of origin. A ''carrier'' is defined in 42 CFR 71.1 to mean ''a ship, aircraft, train, road vehicle, or other means of transport, including military.''

This final rule defines ''suspension of the right to introduce'' to mean to cause the temporary cessation of the effect of any law, rule, decree, or order pursuant to which a person might otherwise have the right to be introduced or seek introduction into the United States.[3]

[2] Exec. Order 13295 (Apr. 4, 2003), as amended by Exec. Order 13375 (Apr. 1, 2005) and Exec. Order 13674 (July 31, 2014) (the current list of diseases includes cholera, diphtheria, infectious tuberculosis, plague, smallpox, yellow fever, viral hemorrhagic fevers (including Lassa, Marburg, Ebola, Crimean-Congo, South American, and others not yet isolated or named), severe acute respiratory syndromes (including Middle East Respiratory Syndrome and COVID–19), and influenza caused by novel or reemergent influenza viruses that are causing, or have the potential to cause a pandemic).

[3] Aliens who are outside the United States have no right to entry under either the Constitution or the immigration laws. *See, e.g.,* 8 U.S.C. Sec. 1225(a)(1) (defining ''applicant for admission'' as an alien ''who arrives in the United States''); *Sale* v. *Haitian Ctrs. Council, Inc.,* 509 U.S. 155, 173 (1993) (''the presumption that Acts of Congress do not ordinarily apply outside our borders would support an interpretation of [a provision providing for deportation proceedings] as applying only within United States territory.''); *United States ex. rel Knauff* v. *Shaugnessy,* 338 U.S. 537, 542 (1950) (''At the outset we wish to point out that an alien who seeks admission to this country may not do so under any claim of right. Admission of aliens to the United States is a privilege granted by the sovereign United States Government. Such privilege is

Continued

Congress's use of the terms ''suspension'' and ''right to introduce''—rather than just ''introduce''—means that that section 362 grants the Director the authority to temporarily suspend the effect of any law, rule, decree, or order by which a person would otherwise have the right to be introduced or seek introduction into the U.S. The legislative history indicates that Congress, in enacting section 362's predecessor, sought to give the Executive Branch the authority to suspend immigration when required in the interest of public health. This authority is available only in rare circumstances when ''required in the interest of the public health.'' 42 U.S.C. 265.

This final rule also sets out the information that the Director must include in any order issued pursuant to this final rule. The Director must, as practicable, consult with relevant Federal departments and agencies and provide them with a copy of any order before issuing the order, and provide guidance to the affected agencies regarding implementation of any orders issued pursuant to this final rule. Any such order must include a statement of the following:

(1) The foreign countries (or one or more political subdivisions or regions thereof) or places from which the introduction of persons is being prohibited;

(2) the period of time or circumstances under which the introduction of any persons or class of persons into the United States is being prohibited;

(3) the conditions under which that prohibition on introduction will be effective, in whole or in part, including any relevant exceptions that the Director determines are appropriate;

(4) the means by which the prohibition will be implemented; and

(5) the serious danger posed by the introduction of the quarantinable communicable disease in the foreign country or countries (or one or more political subdivisions or regions thereof) or places from which the introduction of persons is being prohibited.

The Director may also provide that certain persons are excepted in an order. For example, the Director may except: aliens whose travel falls within the scope of section 11 of the United Nations Headquarters Agreement or who would otherwise be allowed entry into the United States pursuant to U.S. obligations under applicable international agreements; diplomatic travelers; U.S. government employees; and those travelling for humanitarian purposes. The Director may also provide in an Order that another Federal agency or a state or local government implementing the order may carry out the exception in the Order under certain circumstances.

granted to an alien only upon such terms as the United States shall prescribe.'').

II. Policy Rationale and Factual Basis for Final Rule

This final rule is critical to protecting U.S. public health because Federal Orders requiring the quarantine,[4] isolation,[5] or conditional release[6] of persons arriving into the United States from foreign countries may be inadequate to protect public health from the serious danger of the introduction into the United States of a quarantinable communicable disease. Simply put, quarantine, isolation, and conditional release have practical limitations. Federal quarantine and isolation permitted under section 361 of the PHS Act—where HHS/CDC funds and operates residential facilities with 24-hour wrap-around services for persons arriving into the United States from a foreign country—may be scalable and effective for hundreds of persons, but not thousands of them. Even then, Federal quarantine and isolation require substantial resources and are not sustainable for extended periods of time. Ordering a conditional release or, alternatively, recommending that individuals self-isolate or self-quarantine at home or elsewhere without direct public health supervision, requires fewer government resources and can be scalable and sustainable for larger populations. Conditional release orders and recommendations to self-isolate or self-quarantine may be effective for persons who have a home (or similar residence) in the United States and can provide complete and accurate contact information for use in monitoring and contact tracing by State or local public health officials. But such public health measures may be ineffective for persons who lack a home (or similar residence) in the United States or contact information that is usable by public health authorities.

The issuance of conditional release orders, or recommendations to self-isolate or self-quarantine, may also be inadequate if the persons arriving into the United States must first spend time in congregate settings—such as on carriers or in certain government facilities. In congregate settings, travelers infected with a quarantinable communicable disease (whether asymptomatic or symptomatic) may spread the disease to other travelers or government personnel or private sector workers, who may, in turn, spread disease to the domestic population. In such a scenario, the subsequent separation of the original, infected traveler would not mitigate the spread of disease through other individuals who interacted with the traveler in the congregate setting.

Congress provided the Secretary an additional tool for protecting public health when a communicable disease exists in a foreign country and there is a serious danger of the introduction of the disease into the United States under section 362. As the Secretary's delegate, the Director may exercise his or her section 362 authority to avert the serious danger of the introduction of the disease by issuing an order suspending the right to introduce and prohibiting the introduction of persons from a foreign country or place. The Director has the flexibility to prohibit the introduction of some persons under section 362, while issuing orders for the quarantine, isolation, or conditional release of other persons under section 361 of the PHS Act and its implementing regulations. To achieve the purpose of section 362, the Director also has the discretion to tailor the exercise of the section 362 authority to the specific danger, which may turn on epidemiological factors, as well as the time, setting, and geographic location of the danger. This final rule establishes a flexible procedure for tailoring the exercise of the section 362 authority in response to the current COVID–19 pandemic and to address future public health threats.

The policy rationale for this final rule is grounded in HHS/CDC's experience during the COVID–19 pandemic. When HHS/CDC has acted to prevent the movement of potentially exposed persons and property into the United States, as described below, HHS/CDC has slowed the introduction of COVID–19 into the United States and reduced the exposure of government personnel

[4] Under 42 CFR Sec. 71.1(b), quarantine means the separation of an individual or group reasonably believed to have been exposed to a quarantinable communicable disease, but who is/are not yet ill, from others who have not been so exposed, to prevent the possible spread of the quarantinable communicable disease.

[5] Under 42 CFR Sec. 71.1(b), isolation means the separation of an individual or group who is reasonably believed to be infected with a quarantinable communicable disease from those who are healthy to prevent the spread of the quarantinable communicable disease.

[6] Under 42 CFR Sec. 71.1(b), conditional release means surveillance as defined under part 71 and includes public health supervision through in-person visits by a health official or designee, telephone, or through any electronic or internet-based means as determined by the Director.

and private sector workers in congregate settings to COVID–19. HHS/CDC has also conserved the finite government resources available for the domestic response to the COVID–19 pandemic.

HHS/CDC's actions regarding the U.S. Department of Homeland Security's (DHS) U.S. Customs and Border Protection (CBP) facilities at or near the U.S. borders with Canada and Mexico, which are discussed more fully below, are one example of how this final rule enables HHS/CDC to mitigate the serious danger of the introduction of a quarantinable communicable disease into the United States. COVID–19 is present in Canada and Mexico, and there is a serious danger that persons traveling from those countries will introduce COVID–19 into CBP facilities, and ultimately the interior of the United States. CBP facilities are not structured or equipped for quarantine, isolation, or social distancing during a pandemic involving a highly contagious disease such as COVID–19. In particular, Border Patrol stations were designed for the purpose of short-term holding in a congregate setting, and those facilities generally lack the areas needed to quarantine or isolate aliens for COVID–19. The Director determined that measures such as quarantine, isolation, and social distancing would be a challenge to conduct and sustain at CBP facilities, as acknowledged in the CDC Interim Guidance on Management of Coronavirus Disease 2019 (COVID–19) in Correctional and Detention Facilities.[7] He was concerned that infected aliens in the congregate areas of the CBP facilities might spread COVID–19 to others in the same areas. Such spread of COVID–19 within CBP facilities might result in CBP personnel needing to self-quarantine or self-isolate (or worse, cause them to become seriously ill or die), potentially degrading the ability of CBP to perform all functions necessary to fulfill its mission, and increasing the strain on local healthcare systems. The Director mitigated the public health risks in CBP facilities—and the potential downstream risks to U.S. public health and national security more broadly—by issuing an Order under section 362 prohibiting the introduction of certain ''covered aliens'' into CBP facilities.

HHS/CDC actions regarding cruise ships are another example of how preventing the movement of potentially exposed persons into the United States has slowed the introduction of COVID–19 into the United States. In early 2020, cruise ships carrying thousands of crew and passengers were continuing to travel between international ports. As crew and passengers became infected with COVID–19, disembarkation in major U.S. port cities presented a danger of introduction of COVID–19 into the United States. HHS/CDC and other Federal, state, and local agencies deployed hundreds of personnel to disembark and quarantine or isolate travelers. This intervention averted the danger presented by those travelers who entered quarantine or isolation at Federal sites, but it was not sustainable operationally because of the resources needed to maintain it. Nor did such efforts mitigate COVID–19 transmission on cruise ships generally, or the continuing risk of cruise ships introducing COVID–19 into U.S. ports. HHS/CDC therefore exercised its authorities under sections 361 and 365 of the PHS Act to issue a *No Sail Order and Suspension of Further Embarkation* (85 FR 16628), published on March 14, 2020,[8] to ''prevent the spread of disease and ensure cruise ship passenger and crew health.''

Another policy rationale for this final rule is that it addresses the ever-present risk that future pandemics may present new or different challenges that demand the prompt exercise of the section 362 authority. A new virus could have a longer incubation period than severe acute respiratory syndrome coronavirus 2 (SARS-CoV–2) (the virus that causes COVID–19) or cause a disease that takes longer to run its course.[9] In such scenarios, the issuance and maintenance of Federal quarantine, isolation, and conditional release orders would consume even more resources than the 2020 interventions with cruise ships. HHS/CDC would need to have a rule implementing section 362 in place to promptly implement public health measures tailored to the danger presented by the virus. Those measures could include quarantine, isolation, or conditional release under section 361, prohibition of the introduction of persons under section 362, or some combination of the two.

The policy rationale and factual basis for this final rule are detailed further below.

A. HHS/CDC's Experience Is That Travel and Migration Can Impact the Spread of Quarantinable Communicable Diseases

Medical and scientific knowledge have increased dramatically in the past century. But so have international travel and migration, which play a significant role in the global transmission of quarantinable communicable diseases that pose risks for vulnerable populations.[10] Travelers can transmit quarantinable communicable diseases without actually knowing it, and thereby increase the risk of introduction of quarantinable communicable diseases into the United States. The risk increases significantly when travelers are in congregate settings, such as terminals or carriers with shared sitting, sleeping, eating, or recreational areas, all of which may be conducive to disease transmission.[11]

The speed and far reach of global travel have been factors in prior outbreaks that expanded to numerous continents.[12] Examples include: Severe Acute Respiratory Syndrome (SARS), caused by a coronavirus (SARS-CoV) in

[7] *Interim Guidance on Management of Coronavirus Disease 2019 (COVID–19) in Correctional and Detention Facilities,* Ctrs. for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html* (last updated Jul. 22, 2020).

[8] This Order was subsequently modified and extended on April 9, 2020 (effective, April 15, 2020) (85 FR 21004, (Apr. 15, 2020)) and July 16, 2020 (85 FR 44805, (July 21, 2020)).

[9] HHS/CDC's experience with other viruses informs this concern. Notably, Ebola has an incubation period of 2–21 days. *See* Estimating the Future Number of Cases in the Ebola Epidemic—Liberia and Sierra Leone, 2014–2015, 63 MMWR Supplement 5, Ctrs. for Disease Control & Prevention, *https://www.cdc.gov/mmwr/preview/mmwrhtml/su6303a1.htm* (last updated Sep. 26, 2014) (The mean incubation period for Ebola is 6.3 days, with a median of 5.5 days and a 99th percentile at 21 days).

[10] *See, e.g.,* Institute of Medicine (US) Forum on Microbial Threats, *Infectious Disease Movement in a Borderless World: Workshop Summary,* Nat'l Acad.'s Press (US); 2010, (available at: *https://www.ncbi.nlm.nih.gov/books/NBK45728/*) (hereinafter ''Infectious Disease Movement in a Borderless World''); Wilson, ME, *Travel and the Emergence of Infectious Diseases,* 1 Emerging Infectious Diseases 2, 39–46 (1995), (available at: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2626831/*); Tatem, A.J., Rogers, D.J. & Hay, S., *Global Transport Networks and Infectious Disease Spread,* Adv. Parasitology 62, 293–343 (2006), (available at: *https://www.researchgate.net/publication/7133296*).

[11] *See, e.g., Travelers' Health: Cruise Ship Travel,* Chapter 8, Ctrs. for Disease Control & Prevention, *https://wwwnc.cdc.gov/travel/yellowbook/2020/travel-by-air-land-sea/cruise-ship-travel* (last updated June 24, 2019) (noting that the ''often crowded, semi-enclosed environments onboard ships can facilitate the spread of person-to-person, foodborne, or waterborne diseases''); *Public Health Guidance for Potential Exposure to COVID–19 Associated with International or Domestic Travel,* Ctrs. for Disease Control & Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/php/risk-assessment.html* (last updated Aug. 6, 2020).

[12] Infectious Disease Movement in a Borderless World (noting that ''swine-origin H1N1 has spread globally, its movement hastened by global air travel'' and [i]t is easy to see how travelers could play a key role in the global epidemiology of infections that are transmitted from person to person, such as HIV, SARS, tuberculosis, influenza, and measles'') (citing Hufnagel L, Brockmann D, & Geisel T., *Forecast and Control of Epidemics in a Globalized World,* Proceedings of the Nat.'l Acad. of Sci.'s 2004;101(42):15124–15129).

2003; the H1N1 influenza pandemic in 2009; tuberculosis; measles; Middle East Respiratory Syndrome (MERS) caused by a coronavirus (MERS-CoV) in 2012; and Ebola virus disease in 2014 and 2018. All of these diseases posed significant public health risks, especially given how quickly the diseases spread.

The 2009–2010 H1N1 influenza pandemic is particularly relevant to this final rule. Although the virus was first identified mid-April 2009 in the United States, the initial cases of 2009 H1N1 influenza occurred in Mexico, and by late April 2009 transmission of the virus in Mexico involved person-to-person spread with multiple generations of transmission.[13] The first two cases of a novel H1N1 influenza were discovered in San Diego County, California, and Imperial County, California.[14] While San Diego and Imperial Counties are roughly 100 miles apart, both are less than 25 miles from the U.S.-Mexico border, which suggested cross-border transmission of the disease. Soon after, public health officials discovered additional H1N1 cases in the two California counties and two H1N1 cases in Texas, another border State.[15] At the same time, CDC identified the novel virus in samples from Mexico, some of which had been collected from patients who were ill before the first two U.S. patients, which suggested cross-border transmission of the disease.[16] Subsequent epidemiologic investigations indicated that outbreaks had occurred in Mexico in March and early April 2009, and that by the end of April the disease was widespread in Mexico; cases had also been identified in Canada.[17] HHS/CDC estimates that between April 12, 2009, and April 10, 2010, approximately 60.8 million cases, 274,304 hospitalizations, and 12,469 deaths occurred in the United States due to H1N1 influenza.[18] It is possible that had HHS/CDC suspended the introduction of persons from Mexico into the United States early in the pandemic, fewer individuals might have fallen ill or died from H1N1 influenza.

Global travel has increased since the H1N1 influenza pandemic. By 2018, international visits to the United States totaled almost 25 million more per year than in 2009, when the H1N1 influenza pandemic occurred, and approximately 5 million more per year than in 2014, when the Ebola virus disease outbreak occurred.[19] Despite the decrease in travel in 2020 due to COVID–19 concerns, HHS/CDC expects that the procedures in this final rule will be vital to public health going forward.

B. The Response of the United States to the Coronavirus Disease 2019 (COVID–19) Pandemic Shows That This Final Rule Is in the Interest of U.S. Public Health

Since the COVID–19 pandemic began, the United States has undertaken a variety of actions to limit the movement of persons into the country and thereby mitigate the danger of the introduction of COVID–19 into the country. Those actions have included the Director's exercise of the section 362 authority and have proven effective notwithstanding the contagiousness of COVID–19. This rulemaking finalizes procedures that the Director needs to exercise the section 362 authority and protect public health now and in the future.

1. COVID–19 Is a Highly Contagious Disease That Threatens Vulnerable Populations

Because the CDC Director has determined that COVID–19 meets the definition of a severe acute respiratory syndrome as listed in Executive Order 13674, COVID–19 is a quarantinable communicable disease. It is caused by a novel (new) coronavirus, SARS-CoV–2, that was first identified as the cause of an outbreak of respiratory illness that began in the city of Wuhan in the Hubei Province of the People's Republic of China (PRC) in late 2019 and quickly spread worldwide. On January 30, 2020, the World Health Organization (WHO) declared that the outbreak of COVID–19 is a Public Health Emergency of International Concern.[20] The following day, the Secretary of HHS declared COVID–19 a public health emergency under the PHS Act.[21] On March 11, 2020, the WHO declared COVID–19 a pandemic. On March 13, 2020, the President issued a Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID–19) Outbreak.[22]

As of August 24, 2020, there were 23,057,288 confirmed cases worldwide. COVID–19 has caused over 800,000 deaths globally,[23] compared to 774 global deaths from the 2003 SARS outbreak,[24] 866 global deaths from MERS between April 2012 and January 2020,[25] and an estimated 151,700 to 575,400 deaths during the first year of the 2009 H1N1 influenza pandemic.[26] Compared to other respiratory diseases, the mortality scale of the COVID–19 pandemic is surpassed in modern times only by the 1918 influenza pandemic, which claimed an estimated 50 million lives around the world.[27]

While much is still unknown about the transmission of COVID–19, it is

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[13] Outbreak of Swine-Origin Influenza A (H1N1) Virus Infection—Mexico, March–April 2009, Ctrs. for Disease Control & Prevention, *https://www.cdc.gov/mmwr/preview/mmwrhtml/mm5817a5.htm* (last updated June 16, 2010); *The 2009 H1N1 Pandemic: Summary Highlights, April 2009–April 2010, Ctrs. for Disease Control & Prevention, https://www.cdc.gov/h1n1flu/cdcresponse.htm* (last updated Aug. 3, 2010).

[14] *Swine Influenza A (H1N1) Infection in Two Children—Southern California, March–April 2009,* Ctrs. for Disease Control & Prevention, *https://www.cdc.gov/mmwr/preview/mmwrhtml/mm5815a5.htm* (last updated Apr. 22, 2009).

[15] Update: Swine Influenza A (H1N1) Infections—California and Texas, April 2009, 16 MMWR Morb Mortal Wkly Rep. 58, 435–37 (May 2009), (available at: *https://pubmed.ncbi.nlm.nih.gov/19407739/*); *The 2009 H1N1 Pandemic: Summary Highlights, April 2009–April 2010,* Ctrs. for Disease Control & Prevention, *https://www.cdc.gov/h1n1flu/cdcresponse.htm* (last updated Aug. 3, 2010).

[16] *The 2009 H1N1 Pandemic: Summary Highlights, April 2009–April 2010,* Ctrs. for Disease Control & Prevention, *https://www.cdc.gov/h1n1flu/cdcresponse.htm* (last updated Aug. 3, 2010).

[17] Outbreak of Swine-Origin Influenza A (H1N1) Virus Infection—Mexico, March–April 2009. Ctrs. for Disease Control & Prevention, *https://www.cdc.gov/mmwr/preview/mmwrhtml/mm5817a5.htm* (last updated May 7, 2009).

[18] *Sundar S. Shrestha, et al., Estimating the burden of 2009 pandemic influenza A (H1N1) in the United States (April 2009–April 2010),* Clin. Infect. Dis. 2011 Jan 1;52 Suppl 1:S75–82.

[19] *See Fast Facts: United States Travel and Tourism Industry—2009, 2014 and 2018,* Int'l Trade Admin., (available at: *https://travel.trade.gov/outreachpages/download_data_table/Fast_Facts_2009.pdf; https://travel.trade.gov/outreachpages/download_data_table/Fast_Facts_2014.pdf; https://travel.trade.gov/outreachpages/download_data_table/Fast_Facts_2018.pdf*).

[20] *WHO Director-General's statement on IHR Emergency Committee on Novel Coronavirus (2019-nCoV) (Jan. 30, 2020),* WHO, *https://www.who.int/dg/speeches/detail/who-director-general-s-statement-on-ihr-emergency-committee-on-novel-coronavirus-(2019-ncov)* (last visited Aug. 27, 2020).

[21] *Determination that a Public Health Emergency Exists,* U.S. Dep't of Health & Human Serv.'s (Jan. 31, 2020), *https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx.*

[22] *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID–19) Outbreak,* The White House (Mar. 13, 2020), *https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/.*

[23] WHO Sit. Rep. 205 (Aug. 24, 2020), WHO, *https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200812-covid-19-sitrep-205.pdf?sfvrsn=627c9aa8_2.*

[24] *Severe Acute Respiratory Syndrome (SARS): SARS Basics Fact Sheet,* Ctrs. for Disease Control & Prevention, *https://www.cdc.gov/sars/about/fs-sars.html* (last updated Dec. 6, 2017).

[25] *MERS situation update, January 2020,* WHO, *http://www.emro.who.int/pandemic-epidemic-diseases/mers-cov/mers-situation-update-january-2020.html* (last visited Aug. 27, 2020).

[26] *Influenza (Flu): 2009 H1N1 Pandemic (H1N1pdm09 virus),* Ctrs. for Disease Control & Prevention, *https://www.cdc.gov/flu/pandemic-resources/2009-h1n1-pandemic.html* (last updated June 11, 2019).

[27] *Id.; The Deadliest Flu: The Complete Story of the Reconstruction of the 1918 Pandemic Virus,* Ctrs. for Disease Control & Prevention, *https://www.cdc.gov/flu/pandemic-resources/reconstruction-1918-virus.html* (last updated Dec. 17, 2019).

clear that COVID–19 is highly contagious. HHS/CDC estimates that the viral transmissibility (R_0) of COVID–19 is around 2.5, but may be as high as 4, meaning that a single infected person will on average infect between 2 to 4 others. Identifying those infected with COVID–19 can be difficult, as asymptomatic cases are currently believed to represent roughly 40% of all COVID–19 infections. The infectiousness of asymptomatic individuals is believed to be about 75% of the infectiousness of symptomatic individuals. HHS/CDC's current best estimate is that between 40 to 50% of infections are transmitted prior to symptom onset (pre-symptomatic transmission).[28]

Symptoms of COVID–19 may include fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, and diarrhea, and typically appear 2–14 days after exposure to the virus.[29] Manifestations of severe disease include severe pneumonia, acute respiratory distress syndrome (ARDS), septic shock, and multi-organ failure.[30] Mortality rates are higher among seniors and those with certain underlying medical conditions, such as chronic obstructive pulmonary disease (COPD), serious heart conditions, cancer, Type 2 diabetes, and those with compromised immune systems.[31] There are large differences in fatality rate among age and race cohorts.[32]

Early data suggest older people are more likely to have serious COVID–19 illness, with 8 out of 10 COVID–19-related deaths in the United States being among adults over the age of 65.[33] The congregate care settings of nursing homes and long-term care facilities, where people reside in confined areas with staff rotating through, increases the risk of COVID–19 transmission. As of August 16, 2020, an estimated 49,871 nursing home residents died of COVID–19 in the United States,[34] representing approximately 30% of all deaths in the United States.[35] Prompt identification and isolation of infected persons is key to reduce further transmission in congregate settings.

2. The United States Has Taken Broad Actions To Slow the Introduction of COVID–19 Into the Country and Protect Vulnerable Populations

The United States has taken numerous actions to avert the cross-border transmission of COVID–19, including presidential proclamations suspending entry into the United States by certain foreign nationals, bringing home U.S. citizens and lawful permanent residents (LPRs) from around the world, quarantine or isolation of repatriates and cruise ship travelers, the CDC ''No Sail Order'' limiting cruise ship operations, temporarily limiting travel from Mexico and Canada into the United States along the United States-Mexico and United States-Canada land borders to ''essential travel,'' and the CDC Order prohibiting the introduction of covered aliens into CBP facilities. HHS/CDC believes that the Federal quarantine and isolation may have slowed the introduction and spread of COVID–19 into the United States. But they consumed unsustainable levels of government resources in the process. In contrast, the actions taken to prevent the movement of potentially infected persons or contaminated articles into the United States have reduced the danger of COVID–19 to government personnel and private sector workers in congregate settings, and reduced the danger of the introduction of COVID–19 into the United States, while consuming more sustainable levels of government resources. The balance between the costs and benefits of actions taken to prevent the movement of potentially infected persons or contaminated articles into the United States is one of the reasons why this final rule implementing the section 362 authority is vital to U.S. public health now and in the future.

a. Immigration and Nationality Act Section 212(f) Proclamations

The President has exercised his authority under section 212(f) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(f), and other applicable law, to issue a series of proclamations suspending entry into the country of certain aliens who were physically present in the PRC (excluding the Special Administrative Regions of Hong Kong and Macau), the Islamic Republic of Iran, the Schengen Area (comprised of 26 countries in Europe), the United Kingdom (excluding overseas territories outside of Europe), the Republic of Ireland, or the Federative Republic of Brazil within 14 days preceding their entry or attempted entry into the United States. In the proclamations, the President determined that the foreign countries were experiencing widespread person-to-person transmission of COVID–19, and the United States was ''unable to effectively evaluate and monitor'' travelers entering from the foreign countries, which ''threaten[ed] the security of our transportation system and infrastructure and the national security,'' and that the unrestricted entry of foreign nationals who were physically present in those countries was therefore detrimental to the interests of the United States.[36] The proclamations are the first use of the 212(f) authority aimed at averting the introduction of a communicable disease into the country.[37]

The Director assesses that the proclamations probably mitigated the introduction of COVID–19 into the United States. By suspending the entry of thousands of aliens from countries with widespread, ongoing person-to-person transmission of COVID–19, the President reduced the number of infected persons who could enter the country. As previously discussed, a

[28] *COVID–19 Pandemic Planning Scenarios: Updated July 10, 2020,* Ctrs. for Disease Control & Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios-h.pdf.*

[29] *Coronavirus Disease 2019 (COVID–19): Symptoms of Coronavirus,* Ctrs. for Disease Control & Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html* (last updated May 13, 2020).

[30] Sevim Zaim, et al., *COVID–19 and Multiorgan Response,* 00 Current Problems in Cardiology 2020, (available at: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7187881/pdf/main.pdf*).

[31] *Coronavirus Disease 2019 (COVID–19): People with Certain Medical Conditions,* Ctrs. for Disease Control & Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html* (last updated July 30, 2020).

[32] *See National Center for Health Statistics: Weekly Updates by Select Demographic and Geographic Characteristics—Provisional Death Counts for Coronavirus Disease 2019 (COVID–19),* Ctrs. for Disease Control & Prevention, *https://www.cdc.gov/nchs/nvss/vsrr/covid_weekly/index.htm* (last visited Aug. 31, 2020).

[33] *Coronavirus Disease 2019 (COVID–19): Older Adults,* Ctrs. for Disease Control & Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html* (last updated Aug. 16, 2020).

[34] *COVID–19 Nursing Home Data,* Ctrs. for Medicare and Medicaid Serv.'s (submitted data as of week ending Aug. 16, 2020), *https://data.cms.gov/stories/s/COVID-19-Nursing-Home-Data/bkwz-xpvg/* (last visited Sep. 1, 2020).

[35] Based on 167,201 total deaths in the United States. *See* WHO Sit. Rep. 209, WHO (Aug. 16, 2020), *https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200816-covid-19-sitrep-209.pdf?sfvrsn=5dde1ca2_2.*

[36] Proclamation No. 10042, 85 FR 32291 (May 28, 2020) (amending Proclamation 10041); Proclamation No. 10041, 85 FR 31933 (May 28, 2020) (Federative Republic of Brazil); Proclamation No. 9996, 85 FR 15341 (Mar. 18, 2020) (United Kingdom and Republic of Ireland); Proclamation No. 9993, 85 FR 15045 (Mar. 15, 2020) (Schengen Area); Proclamation No. 9992, 85 FR 12855 (Mar. 4, 2020) (Islamic Republic of Iran); Proclamation No. 9984, 85 FR 6709 (Feb. 5, 2020) (PRC).

[37] Ben Harrington, CONG. RSCH. SERV., LSB10458, Presidential Actions to Exclude Aliens Under INA § 212 (f) (May 4, 2020) (available at: *https://crsreports.congress.gov/product/pdf/LSB/LSB10458*).

single infected person will on average infect between 2 to 4 others. Therefore, the reduction in the number of infected persons entering the United States probably helped prevent a larger number of people in the United States from becoming infected with COVID–19.

b. Quarantine and Isolation of Repatriates and Cruise Ship Travelers

One of the United States' early initiatives in response to the COVID–19 pandemic was to repatriate U.S. citizens (and their immediate family members) from Hubei Province, PRC, which was then the epicenter of the pandemic.[38] It took place in January and February 2020, and HHS/CDC is unaware of a repatriation and quarantine operation in the modern history of the United States that matched the initiative in size and scope. It involved numerous HHS agencies, including CDC, the Office of the Assistant Secretary for Preparedness and Response (ASPR), the Office of the Assistant Secretary for Financial Resources (ASFR), the U.S. Public Health Service Commissioned Corps (PHSCC), and the Administration for Children and Families (ACF).[39] It also involved the U.S. Department of State, the U.S. Department of Homeland Security (DHS), and the Department of Defense (DOD), as well as various State agencies.[40]

The operation required the agencies to secure charter flights from the PRC to the United States, secure and prepare appropriate facilities to house individuals, transport individuals to and from these facilities, implement infection-control and infection-prevention measures at the facilities, test and medically monitor individuals, and provide ''wrap-around'' services for individuals (*e.g.,* food and other necessary personal services).[41] The agencies had to secure sites because the Federal government no longer operates Public Health Service hospitals capable of acting as dedicated quarantine and isolation facilities able to house hundreds of people for multiple weeks.[42] The securing of sites was challenging because when the agencies identified suitable facilities, local officials sometimes objected to the use of the facilities.[43] To provide housing for the repatriates, the agencies ultimately secured military facilities for use as quarantine sites, hotels for use as isolation sites, and beds at hospitals for persons who required medical care. Those sites accepted approximately 800 individuals, the vast majority of whom were repatriates, from Hubei Province.

During the same time frame, cruise ships—including the *Diamond Princess* (Asia), the *Grand Princess* (California to Mexico, California to Hawaii), the *Ruby Princess* (Australia), and seven Nile River cruise ships—were associated with a number of COVID–19 clusters and outbreaks.[44] In February 2020, the *Diamond Princess* experienced what, at the time, was the largest cluster of COVID–19 cases outside of PRC and included a number of U.S. citizens. HHS/CDC, the Department of State and other agencies repatriated approximately 329 travelers from the *Diamond Princess* to the United States, where they entered quarantine or isolation at Federal sites.[45] Following an outbreak onboard the U.S.-bound *Grand Princess* in March 2020, HHS/CDC and other agencies conducted a massive operation to disembark and quarantine or isolate approximately 2,000 travelers from the *Grand Princess* at Federal sites. Approximately 2,300 individuals entered quarantine or isolation at Federal sites from the repatriations and disembarkations from the *Diamond Princess* and *Grand Princess* cruise ships.

To the best of HHS/CDC's knowledge, the combined Federal quarantine and isolation of individuals from the cruise ships and flights from Hubei Province, constitute the largest and most burdensome Federal quarantine and isolation operation in modern American history. Quarantine sites required support staffs of hundreds of Federal personnel and contractors working around-the-clock. The entire operation lasted approximately eight weeks and consumed thousands of working hours.

One of the key agency components of the operation was the National Disaster Medical System (NDMS), which is a federal partnership (between HHS, DOD, VA, and DHS) led by HHS/ASPR. NDMS includes a cadre of approximately 5,000 part-time Federal employees who are civilian doctors, nurses, and other healthcare professionals, and who are activated for short-term, two-week deployments in response to natural disasters and other emergencies.[46] The NDMS leverages healthcare personnel in jurisdictions unaffected by the emergency by temporarily federalizing those individuals so they may operate where local resources are overtaxed.[47] A more protracted operation may have deprived State and local health systems of the services of the NDMS personnel for extended periods of time during the COVID–19 pandemic. It would also have limited the ability of HHS/ASPR to

[38] *Transcript for CDC Media Telebriefing: Update on 2019 Novel Coronavirus (2019–nCoV),* Ctrs. for Disease Control & Prevention (Jan. 31. 2020), *https://www.cdc.gov/media/releases/2020/t0131-2019-novel-coronavirus.html* (last visited Aug. 31, 2020).

[39] *See* Sarah A. Lister, Cong. Rsch. Serv., r46219, *Overview of U.S. Domestic Response to Coronavirus Disease 2019 (COVID–19)* (last updated Mar. 2, 2020), at *12 (available at: *https://crsreports.congress.gov/product/pdf/R/R46219*).

[40] *Id.* at *11–*12; David Vergun, *DOD, Other Government Departments Take Coronavirus Response Measures,* U.S. Dep't. of Def. (Jan. 31, 2020), *https://www.defense.gov/Explore/News/Article/Article/2069255/dod-other-government-departments-take-coronavirus-response-measures/.*

[41] *See e.g.,* SOC Shift Brief 2019–2020 Coronavirus Response, U.S. Dep't of Health & Human Serv.'s Assistant Sec'y for Preparedness & Response (Feb. 8, 2020, 8:00 p.m. EDT) (on file with HHS); *see also* Proposed Courses of Action (COAs) & Activities for Grand Princess Cruise Ship, U.S. Dep't of Health & Human Serv.'s at *2 (Mar. 6, 2020, 11:30 a.m. EDT) (on file with HHS).

[42] *See* Richard A. Bienia, M.D., M.P.H., Emanuel Stein, M.D., M.P.H., & Baroline H. Bienia, M.S., *United States Public Health Service Hospitals (1798–1981)—The End of an Era,* 308 N. Engl. J. Med. 166–168 (1983), (available at: *https://www.nejm.org/doi/full/10.1056/NEJM198301203080329?journalCode=nejm&journalCode=nejm&journalCode=nejm&journalCode=nejm&journalCode=nejm&journalCode=nejm&journalCode=nejm&journalCode=nejm&journalCode=nejm&journalCode=nejm&journalCode=nejm&journalCode=nejm&journalCode=nejm&journalCode=nejm&journalCode=nejm&journalCode=nejm&journalCode=nejm&journalCode=nejm&journalCode=nejm*).

[43] On one occasion, a California city sued HHS and California. The district court, without finding a violation of law by HHS, issued a temporary restraining order preventing the use of a proposed quarantine site. TRO and Order Setting Aside Expedited Hr'g, *City of Costa Mesa* v. *United States.,* No. 20–cv–00368 (C.D.Cal.), (Feb. 21, 2020), ECF No. 9. Since HHS had to make decisions about the use of the site quickly, the temporary restraining order and subsequent litigation operated as a veto on the use of the site.

[44] *See* No Sail Order and Suspension of Further Embarkation, 85 FR 16628 (Mar. 24, 2020); Frances Mao, *Coronavirus: How did Australia's Ruby Princess cruise debacle happen?,* BBC (Mar. 24, 2020), *https://www.bbc.com/news/world-australia-51999845.*

[45] *Public Health Responses to COVID–19 Outbreaks on Cruise Ships—Worldwide, February–March 2020,* Ctrs. for Disease Control & Prevention (Mar. 27, 2020), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm.*

[46] *NDMS Teams,* Off. of the Assistant Sec'y for Preparedness & Response, U.S. Dep't. of Health & Human Serv.'s, Nat'l Disaster Med. Sys., *https://www.phe.gov/Preparedness/responders/ndms/ndms-teams/Pages/default.aspx* (last visited Aug. 11, 2020); *Disaster Medical Assistance Teams,* Off. of the Assistant Sec'y for Preparedness & Response, U.S. Dep't. of Health & Human Serv.'s, Nat'l Disaster Med. Sys., *https://www.phe.gov/Preparedness/responders/ndms/ndms-teams/Pages/dmat.aspx* (last visited Aug. 31, 2020).

[47] *NDMS Teams,* Off. of the Assistant Sec'y for Preparedness & Response, U.S. Dep't. of Health & Human Serv.'s, Nat'l Disaster Med. Sys., *https://www.phe.gov/Preparedness/responders/ndms/ndms-teams/Pages/default.aspx* (last visited Aug. 11, 2020); *Calling on NDMS,* Off. of the Assistant Sec'y for Preparedness & Response, U.S. Dep't. of Health & Human Serv.'s, Nat'l Disaster Med. Sys., *https://www.phe.gov/Preparedness/responders/ndms/Pages/calling-ndms.aspx* (last visited Aug. 31, 2020).

re-deploy the NDMS to other emergencies (*e.g.,* hurricanes).

Moreover, hundreds of other Federal personnel from HHS agencies—including ASPR, CDC, and the U.S. Public Health Service—were deployed for quarantine and isolation operations. The U.S. Departments of Homeland Security, Defense, and State also contributed personnel and resources. During a public health emergency, many of the agency personnel would ordinarily perform Federal coordinating functions. A more expansive or protracted field operation would have jeopardized the ability of some of the agencies to perform their ordinary functions.

While the Federal quarantine and isolation operation addressed the immediate risk of individual repatriates and cruise ship travelers introducing COVID–19 into the United States, it was not a prospective solution. That is, it did not address the continuing risk of COVID–19 transmission onboard cruise ships. Nor did it address the continuing risk of cruise ships or other vessels introducing COVID–19 into the United States in the future. An ongoing Federal quarantine and isolation operation was not a scalable or sustainable option for mitigating either of those continuing risks given the finite resources of the relevant Federal agencies and the other pressing demands of the COVID–19 pandemic response.

As explained below, CDC's experience with the Federal quarantine and isolation orders and the resulting operation has informed its decision-making regarding its No Sail Order for cruise ships, its Order prohibiting the introduction of covered aliens into the United States, and ultimately this final rule.

c. The CDC No Sail Order for Cruise Ships

In March 2020, the risk of cruise ships introducing COVID–19 into the United States remained despite the Federal quarantine or isolation of thousands of cruise ship travelers. To address this ongoing concern, on March 14, 2020, the Director issued a No Sail Order under sections 361 and 365 of the PHS Act and 42 CFR 70.2 and 71.32 for all cruise ships of a certain capacity with itineraries anticipating an overnight stay for passengers or crew that had not voluntarily suspended operation.[48] This No Sail Order was subsequently modified and extended, effective April 15, 2020,[49] and again on July 16, 2020,[50] to include cruise ships that had previously voluntarily suspended operations, as well as requiring additional measures to prevent the further introduction, transmission, and spread of disease. The current No Sail Order remains in place until September 30, 2020, or until the expiration of the Secretary's declaration that COVID–19 constitutes a public health emergency, or the Director rescinds or modifies the Order based on specific public health or other considerations, whichever occurs first.

As noted above, the No Sail Order was issued, in part, under section 361(a) of the PHS Act. Section 361(a) is a sweeping grant of authority permitting the Director to ''make and enforce such regulations as in his judgment are necessary to prevent the *introduction* . . . of communicable diseases from foreign countries into the States or possessions[ ].'' (emphasis added). One of those regulations, 42 CFR 71.32(b), is equally broad. It states that ''[w]henever the Director has reason to believe that any arriving carrier . . . is or may be infected or contaminated with a communicable disease, he/she may require detention, disinfection, disinfestation, fumigation, or other related measures respecting the carrier . . . as he/she considers necessary to prevent the *introduction* . . . of communicable diseases.'' (emphasis added).

In the No Sail Order, the Director determined that he had ''reason to believe that cruise ship travel may continue to introduce, transmit, or spread COVID–19.'' That determination rested partly on the Director's observation that numerous structural and operational features of cruise ships increase the risk of COVID–19 transmission onboard.[51] First, passengers and crew intermingle closely in semi-enclosed spaces. Second, cruises host events that bring passengers and crew together in congregate settings, including group and buffet dining, entertainment, and excursions. Third, cruise ship cabins are small, increasing the risk of transmission between cabin mates. Fourth, crew members typically eat and sleep in small, crowded spaces. The infection of crew members may lead to transmission on sequential cruises, as the crew members work and live in close quarters from one cruise to the next.[52]

The Director also observed that cruise ships may spread COVID–19 to ports of call and passengers' home communities. During a cruise, disembarkation of passengers at sequential ports of call may spread COVID–19 to the residents of those ports. Once the cruise ends, passengers or crew who reside in either the United States or a foreign country may travel home by airplane. Any infected passengers or crew may spread COVID–19 to others while traveling home, or upon returning home, with the end result being interstate spread of COVID–19.[53]

Finally, the Director observed that ''[q]uarantine and isolation measures are difficult to implement effectively onboard a cruise ship and tend to occur after an infection has already been identified onboard a cruise. If ships are at capacity, it may not be feasible to separate infected and uninfected persons onboard the ship, particularly among the crew. Crew must keep working to keep a ship safely operating, so effective quarantine for crew is particularly challenging.'' [54]

As part of his analysis, the Director also considered the risks to the healthcare system in the United States, and the limited government resources available for the response to COVID–19. HHS/CDC's recent experience was that the medical needs of persons with severe disease may be significant. Disembarkations of large numbers of passengers and crew with severe disease could increase the strain of COVID–19 on healthcare systems serving port cities, and divert healthcare resources and supplies away from local communities. Additionally, HHS/CDC's recent experience was that repatriating and quarantining or isolating travelers involved complex logistics, imposed financial costs on all levels of government, and diverted agency leadership, staff, and resources away from other aspects of the response to the COVID–19 pandemic.[55]

The No Sail Order has proven to be a more efficient public health measure for cruise ships than quarantine or isolation. It has mitigated COVID–19 transmission onboard cruise ships, prevented cruise ships from introducing COVID–19 into the United States, preserved local health care resources, and enabled HHS/CDC to deploy its

[48] No Sail Order and Suspension of Further Embarkation, 85 FR 16628 (Mar. 24, 2020).

[49] No Sail Order and Suspension of Further Embarkation; Notice of Modification and Extension and Other Measures Related to Operations, 85 FR 21004 (Apr. 15, 2020) (this modification additionally relied on the authority of 42 CFR 71.31(b)).

[50] No Sail Order and Suspension of Further Embarkation; Second Modification and Extension of No Sail Order and Other Measures Related to Operations, 85 FR 44085 (July 21, 2020).

[51] 85 FR at 16629, 16630.

[52] *Id.* at 16629.

[53] *Id.* at 16630.

[54] *Id.*

[55] *Id.*

finite resources towards other aspects of the response to the COVID–19 pandemic. In contrast, the issuance of additional Federal quarantine and isolation orders of cruise ship passengers and crew would not have stopped COVID–19 transmission onboard cruise ships and would not have been scalable to the number of cruise ship passengers and crew that would have otherwise disembarked in U.S. ports.[56]

HHS/CDC's experience underscores why this final rule is vital to public health. In March 2020, a regulation for exercising the authority under section 361 of the PHS Act was readily available to the Director. As a result, HHS/CDC was able to rapidly exercise its section 361 authority and issue the No Sail Order after concluding that quarantine and isolation were inadequate to address the public health risks presented by COVID–19 on cruise ships. Once CDC decided to act, it could do so promptly and was able to more efficiently manage the problem and preserve finite resources. HHS/CDC likewise needs a final rule for exercising its section 362 authority so that it can move with equal dispatch to protect U.S. public health from the introduction of quarantinable communicable diseases into the country in the future. HHS/CDC cannot predict when it will need to exercise the authority in the future, but HHS/CDC needs to be prepared nonetheless. The experience with cruise ships shows that the immediate availability of a procedure is important once a policy decision is made that an action needs to be taken.

d. Travel Restrictions at the Land Ports of Entry Along the United States-Canada and United States-Mexico Borders

On March 20, 2020, the United States temporarily limited travel from Mexico and Canada into the United States along the United States-Mexico and United States-Canada land borders to ''essential travel,'' in order to prevent the further spread of COVID–19. The United States worked collaboratively with its neighbors to take this measure to protect the health and safety of its population, after the Secretary of the Department of Homeland Security determined the risk of continued transmission and spread of COVID–19 between the countries posed a ''specific threat to human life or national interest.'' [57] The restrictions do not apply, however, to U.S. citizens or LPRs returning to the United States, or to those traveling for ''essential travel,'' which includes travel to work, or to educational institutions, travel for emergency response, diplomatic travelers, and travel for public health purposes, among others. The restrictions do not stop legitimate trade between the three countries because it is critical to preserve supply chains that ensure that food, fuel, and medicines reach individuals.[58]

These measures were originally in place for 30 days, subject to reevaluation and further extension in light of the dynamic nature of the COVID–19 pandemic. Since March 2020, the measures have been extended in 30-day increments, and are currently effective through September 21, 2020.[59] All three countries have recognized that, given the sustained human-to-human transmission of the virus, travel between the three nations places the personnel staffing the land ports of entry (POEs) between the United States, Canada and Mexico, as well as the individuals traveling through these POEs, at increased danger of exposure to COVID–19.[60]

Similarly, the Director assesses that travel and migration across U.S. land borders increases the serious danger of introduction of COVID–19 into the United States. The Director further assesses that limiting travel to ''essential travel'' has successfully mitigated the introduction of COVID–19 into the United States for the same basic reason that the section 212(f) proclamations have proven successful. The effectiveness of these travel restrictions at land ports of entry informs this final rule, which creates a permanent procedure for the Director to use when he or she determines that a temporary prohibition on the introduction of persons into the United States across U.S. land borders is necessary to protect U.S. public health.

e. The CDC Order on Covered Aliens

As noted above, HHS issued the IFR to create a temporary procedure for the Director to invoke his or her delegated authority under section 362 and prevent the introduction of persons from a foreign country or place into the United States in order to avert the introduction of a quarantinable communicable disease into the United States.[61] On the same day, the Director issued an order suspending the introduction of certain ''covered aliens'' from Canada and Mexico into Border Patrol stations and POEs at or near U.S. land borders for 30 days.[62] The CDC Order was extended for an additional 30 days on April 20, 2020.[63] On May 19, 2020, the Director amended the CDC Order to cover not only land, but also coastal POEs and Border Patrol stations at or near the U.S. borders with Canada and Mexico. In addition, the Director extended the CDC Order indefinitely, subject to recurring 30-day reviews and eventual termination when the Director determines that continued implementation is no longer necessary to protect public health.[64] The Director has reviewed the CDC Order multiple times and determined each time that continued implementation of the CDC Order was necessary to protect U.S. public health.

The CDC Order suspends the introduction of ''covered aliens'' into the United States. The CDC Amended Order and Extension defines ''covered aliens'' as ''persons traveling from Canada or Mexico (regardless of their country of origin) who would otherwise be introduced into a congregate setting in a land or coastal [POE] or Border Patrol station at or near the United States border with Canada or Mexico, subject to exceptions.'' [65] There are exceptions for ''U.S. citizens, lawful permanent residents [(LPRs)], and their spouses and children; members of the armed forces of the United States, and

[56] Indeed, Federal quarantine and isolation for PortMiami, known as ''the Cruise Capital of the World,'' would have been unworkable standing alone. In 2019, PortMiami disembarked 3,357,590 cruise ship passengers, which equates to approximately 64,569 disembarkations per week. *CY 2019 W. Hemisphere Port Cargo and Passenger Counts,* Am. Ass'n of Port Auth., *https://www.aapa-ports.org/unifying/content.aspx?ItemNumber=21048* (last visited Aug. 11, 2020). When the annual disembarkations at other U.S. ports—including Port Everglades (FL) (1,985,337), the Galveston Wharves (TX) (1,091,341), the Port Authority of New York and New Jersey (841,261), the Port of Long Beach (CA) (695,921), and the Port of New Orleans (603,968)—are added to PortMiami, the impracticability of a Federal quarantine and isolation operation for cruise ships nationwide is obvious.

[57] 85 FR at 16547, 16549.

[58] *Id.* at 16548–49.

[59] 85 FR at 51633–34.

[60] *Id.* at 51633, 51635.

[61] Control of Communicable Diseases; Foreign Quarantine: Suspension of Introduction of Persons into United States from Designated Foreign Countries or Places for Public Health Purposes, (85 FR 16559) (Mar. 24, 2020).

[62] Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists, (85 FR 17060) (Mar. 26, 2020) (effective date Mar. 20, 2020 at 11:59 p.m. EDT) (hereinafter ''Order'').

[63] Extension of Order Under Sections 362 and 365 of the Public Health Service Act, (85 FR 22424) (Apr. 22, 2020) (effective date Apr. 20, 2020) (hereinafter ''Extension'').

[64] Amendment and Extension of Order Under Sections 362 and 365 of the Public Health Service Act, (85 FR 31503) (May 26, 2020) (effective date May 21, 2020 at 12:00 a.m. EDT) (hereinafter ''Amended Order and Extension'').

[65] *Id.* at 31504.

associated personnel, and their spouses and children; persons from foreign countries who hold valid travel documents and arrive at a POE; or persons from foreign countries in the visa waiver program who are not otherwise subject to travel restrictions and arrive at a POE.'' [66] There is also an exception for ''persons whom customs officers determine, with approval from a supervisor, should be excepted based on the totality of the circumstances, including consideration of significant law enforcement, officer and public safety, humanitarian, and public health interests.'' [67]

In the CDC Order, the Director determined that COVID–19 is a quarantinable communicable disease that is present in numerous foreign countries, including Canada and Mexico, and poses a serious danger to public health in the United States. Covered aliens traveling to the United States from Canada and Mexico are typically held for material lengths of time in the congregate areas of Border Patrol stations and POEs while they undergo immigration processing. As a result, the introduction of covered aliens into those CBP facilities increases the serious danger of introducing COVID–19 to others in the facilities—including DHS personnel, U.S. citizens, U.S. nationals, and LPRs, and other aliens—and ultimately spreading COVID–19 into the interior of the United States.

The Director concluded that there are structural and operational impediments to quarantining and isolating covered aliens in CBP facilities that neither HHS/CDC nor CBP can overcome, especially given the large number of covered aliens that move through the congregate areas of the facilities. Border Patrol stations and POEs were designed for short-term holding of individuals in congregate settings. They were not designed and equipped with sufficient interior space or partitions to quarantine potentially infected persons, or isolate infected persons. They also are not equipped to provide on-site care to infected persons who present with severe disease. Some but not all of the facilities offer basic medical services, and all of them are heavily reliant on local health care systems for the provision of more extensive medical services to aliens. Many of the Border Patrol stations and POEs are located in remote areas and do not have ready access to local health care systems (which typically serve small, rural populations and have limited resources).

A Federal quarantine and isolation of covered aliens would have likely required the procurement or construction and equipping of numerous permanent or temporary facilities across the Northern and Southern land borders, in close proximity to the POEs and Border Patrol stations. The facilities would have to accommodate a rotating population of covered aliens—including family units, single adults, and children with varying countries of origin, social customs, and criminal histories—for the duration of each covered alien's quarantine or isolation period. During that period, HHS/CDC and CBP would have to shelter, feed, and provide medical services to each covered alien onsite. The burden of undertaking such a joint public health and safety mission across thousands of miles of territory during a pandemic is impracticable.

As previously discussed, to the knowledge of HHS/CDC, the largest Federal quarantine and isolation operation in modern U.S. history is the one that HHS/CDC and other agencies conducted in early 2020 for the approximately 3,200 persons who disembarked from cruise ships in U.S. ports or were repatriated from Asia. That operation would have been dwarfed by an ongoing quarantine and isolation mission for covered aliens.

CBP has informed HHS/CDC of data in support of the CDC Order. In the 75-day period *before* the issuance of the CDC Order on March 20, 2020, an average of 3,292 of individuals who would be covered aliens under the CDC Order were in custody at POEs and Border Patrol stations each day. Since March 21, 2020, the daily average has been 895 covered aliens, notwithstanding an overall 91% increase in Border Patrol enforcement encounters from 16,201 in April 2020, to 21,687 in May 2020, to 30,936 in June 2020. Between March 21 and June 29, 2020, CBP encountered more than 75,000 subjects between POEs alone, and over 68,000 of those subjects were covered aliens amenable to expulsion from the United States under the CDC Order.

HHS/CDC and CBP could not have quarantined or isolated a cumulative total of more than 68,000 covered aliens between March 21 and June 29, 2020 who were expelled pursuant to the CDC Order.[68] Nor could they have quarantined or isolated a daily average population of 3,292 covered aliens from March 21, 2020 to the present.[69] The relevant agencies simply lack the personnel and resources to operate such a large and complex Federal quarantine and isolation program, spread over thousands of miles of territory, and a period of many months, during a global pandemic. This is especially true when HHS/CDC and CBP must prioritize their finite resources for the benefit of the public health and safety, respectively, of the domestic population.[70]

While the CDC Order succeeded in reducing the average number of covered aliens in CBP custody each day, and dramatically reduced the danger of the introduction of COVID–19 into CBP facilities, the unfortunate reality is that the COVID–19 pandemic has still impacted CBP's ability to perform its public safety mission. CBP informs HHS/CDC that, as of August 7, 2020, it

[66] *Id.*

[67] *Id.*

[68] To put that number in context, the U.S. Census Bureau estimates that the population of Rockville, Maryland (a suburb of Washington, DC) in 2019 was approximately 68,079 people. *City & Town Population Totals: 2010–2019,* U.S. Census Bureau, *https://www.census.gov/data/datasets/time-series/demo/popest/2010s-total-cities-and-towns.html* (last visited Aug. 31, 2020).

[69] If CDC and CBP had undertaken a Federal quarantine and isolation operation for covered aliens, the daily average population of covered aliens in custody and subject to quarantine or isolation may have exceeded 3,292 for at least two reasons. First, CBP's enforcement encounters increased monthly after March 20, 2020. Second, many covered aliens would have spent longer in Federal quarantine and isolation than they would have spent in CBP custody before the COVID–19 pandemic.

[70] HHS/CDC considered whether it could avert the serious danger of the introduction of COVID–19 into CBP facilities through COVID–19 testing. Specifically, HHS/CDC considered the asymptomatic transmission of COVID–19; the lack or limited availability of diagnostic testing for COVID–19; the time required to obtain diagnostic test results; the need to prioritize testing resources for the domestic population; the impracticability of implementing quarantine, isolation, and social distancing in CBP facilities; and resource constraints. HHS/CDC concluded that the better option for public health was to prohibit the introduction of covered aliens into the congregate areas in CBP facilities.

HHS/CDC expects to face similar policy decisions in the future. In any pandemic caused by a novel virus that spreads asymptomatically there will be a period when diagnostic testing is not widely available due to the time necessary to create, manufacture, distribute, administer, and receive the results of diagnostic tests. Even then, it may be appropriate to prioritize diagnostic testing for some populations over others, and diagnostic testing may produce at least some false negatives. Plus, diagnostic testing is a snapshot in time. An uninfected person who undergoes diagnostic testing and enters a congregate setting pending test results may become infected by others. An asymptomatic, infected person who undergoes diagnostic testing and enters a congregate setting may infect others. While surveillance testing can be an effective alternative, it can consume tremendous resources.

As HHS/CDC's experience here shows, a prohibition on the introduction of persons into congregate settings may be a better option for protecting public health than testing, particularly when finite testing resources must be prioritized for the domestic population.

has had 1,806 employees test positive for COVID–19, a 56% increase compared to the 1,158 who tested positive on July 7, 2020. Tragically, ten employees and one CBP contractor have died from COVID–19 as of the same day. CBP does not have the capability to identify the mechanism by which each CBP employee or contractor becomes infected; CBP employees or contractors may become infected through exposures that occurred in their communities through interactions outside of work or in their workplaces, including Border Patrol stations and POEs. In any event, when CBP employees test positive and do not require inpatient care, they must self-isolate at home until they recover and are no longer contagious.

CBP also has a large, rotating group of employees who are self-quarantined based on potential exposure to COVID–19. CBP informs HHS/CDC that over 1,500 CBP employees were quarantined as of the end of June, and the impact was more pronounced at the Southwest border, where 975 U.S. Border Patrol employees, representing approximately 6% of the Southwest border personnel, were quarantined as of July 9, 2020.

Overall, based on information provided by CBP to HHS/CDC, the COVID–19 pandemic has impacted the Laredo Border Patrol Sector and the Laredo Field Office along the Southwest border area the most of any CBP area of responsibility. As of July 16, 2020, Border Patrol had a cumulative total of 91 personnel in the Laredo Sector test positive for COVID–19. Border Patrol also had 134 personnel, representing 7% of its workforce in the Laredo Sector, in self-quarantine. To maintain border security notwithstanding the loss of personnel, the Border Patrol has had to increase the number of shifts for law enforcement officers at Border Patrol checkpoints, reassign other personnel to checkpoints, and suspend certain law enforcement trainings. Similarly, as of July 16, 2020, the Laredo Field Office (which operates the Laredo POE, as well as many other land POEs in the State of Texas) had a cumulative total of 189 employees test positive for COVID–19, and had 151 personnel (representing 5% of its workforce) in quarantine. The Laredo Field Office has mitigated the loss of personnel by shifting law enforcement officers from passenger vehicle and migrant processing (which has decreased in volume) to commercial vehicle processing (which has generally stayed consistent).

The Director assesses that the numbers of CBP employees who test positive for COVID–19 or enter quarantine would probably be larger absent the CDC Order. While it is difficult to quantify the difference, CBP informs HHS/CDC that any further degradation of its workforce in the Laredo Sector would jeopardize CBP's ability to execute its public safety mission.[71] Because the CDC Order has prevented COVID–19 from further degrading the CBP workforce, the IFR and CDC Order have served the purpose of section 362, which is to avert an increase in the serious danger of the introduction into the United States of a quarantinable communicable disease from abroad.

Beyond the CBP workforce, CBP has provided data to HHS/CDC showing that the CDC Order has reduced the strain on the health care systems in U.S. border states at a time when those systems are trying to safeguard their own workforces from COVID–19 and prioritize health care resources for the domestic population. In the 50 days preceding the issuance of the CDC Order, CBP officers made over 1,600 trips to U.S. hospitals to take migrants to receive medical care. In the first 80 days after the issuance of the CDC Order, CBP has made only 400 such trips. This represents a 75% decrease in utilization of U.S. hospitals by migrants, which is material when hospitals in U.S. border states in mid-July were operating at or near their inpatient bed capacity for COVID–19 patients,[72] or taking measures to absorb a surge in COVID–19 cases within the domestic population.[73] The Director assesses that the risks of COVID–19 transmission and insufficient bed capacity in health care systems serving U.S. border states would have been greater absent the Order.

The effectiveness of the CDC Order as a public health measure reinforces why this final rule is vital to public health. HHS/CDC needs a readily available procedure for exercising the section 362 authority so that it may continue to protect public health during the COVID–19 pandemic, and respond to future public health threats with equal efficacy.

3. Other Jurisdictions Have Taken Similar Actions To Slow the Introduction of COVID–19, Which Underscores Why This Final Rule Is in the Interest of U.S. Public Health

Global efforts to slow cross-border COVID–19 transmission have included public health actions substantially similar to those taken by the United States. Nations such as the European Union (EU) Member States and Schengen Area countries,[74] Australia, New Zealand, and Canada have imposed restrictions on international travelers.[75] The actions of other nations to avert the introduction of COVID–19 further corroborate the Director's view that this final rule will help HHS/CDC protect public health now and in the future.

a. The European Union and Schengen Area

EU Member States and Schengen countries have implemented restrictions on international travel similar to those imposed by the United States. Based on a recommendation by the European

[71] CBP, for example, informs HHS/CDC that Border Patrol might have to shift law enforcement officers from patrols of the U.S. land border to migrant custody and transportation functions, which would increase the risk of transnational criminal organizations smuggling narcotics or migrants through the Laredo Sector. The Laredo Field Office might lose its ability to timely process commercial vehicles, which would slow the flow of goods into the United States. And CBP supervisors might have to deny leave requests to maintain staffing levels, which would overtax the CBP workforce.

[72] For example, local news media in Laredo, Texas, reported on July 11, 2020 that two acute care hospitals in the area, Laredo Medical Center and Doctor's Hospital, were in a critical situation. Laredo Medical Center was at 100 percent capacity in its COVID intensive care unit and on its non-ICU COVID patient floors, with four people in the emergency department waiting on beds. The COVID intensive care units at Doctors Hospital were approaching 100 percent capacity, and its non-ICU COVID patient floors were at 100 percent capacity. *Local hospital COVID–19 ICU at capacity,* KGNS (July 11, 2020, 12:13 a.m. EDT), *https://www.kgns.tv/2020/07/11/local-hospital-covid-19-icu-at-capacity/.* Other hospitals in Texas border communities experienced similar surges. Sarah R. Champagne, *Ten out of the 12 hospitals in Texas' Rio Grande Valley are now full,* Tex. Trib. (July 4, 2020, 6:00 p.m.), *https://www.texastribune.org/2020/07/04/texas-coronavirus-rio-grande-valley-hospitals/.*

[73] Allison Steinbach, *Arizona reports 4,273 new COVID–19 cases, sets new records for hospital beds in use,* Ariz. Rep. (July 14, 2020, 12:48 p.m.), *https://www.azcentral.com/story/news/local/arizona-health/2020/07/14/arizona-coronavirus-update-hospital-beds-fill-up-4-273-new-cases/5434525002/;* Soumya Karlamangla, *'We're just overwhelmed': The view from inside hospitals as coronavirus surge hits,* L.A. Times (July 13, 2020, 5:00 a.m.), *https://www.latimes.com/california/story/2020-07-13/overwhelmed-hospitals-coronavirus-surge-california.*

[74] *Migration and Home Affairs: Schengen Area,* Eur. Comm'n (Jan. 1, 2020), *https://ec.europa.eu/home-affairs/what-we-do/policies/order-and-visas/schengen_en* (''Today, the Schengen Area [of the EU] encompasses most EU States, except for Bulgaria, Croatia, Cyprus, Ireland and Romania. However, Bulgaria, Croatia and Romania are currently in the process of joining the Schengen Area. Of non-EU States, Iceland, Norway, Switzerland and Liechtenstein have joined the Schengen Area.''); *Travel to and from the EU during the pandemic: Travel restrictions,* Eur. Comm'n, *https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/travel-and-transportation-during-coronavirus-pandemic/travel-and-eu-during-pandemic_en* (last visited Aug. 31, 2020).

[75] *See* Andrea Salcedo, Sanam Yar, & Gina Cherelus, *Coronavirus Travel Restrictions, Across the Globe,* N.Y. Times (July 16, 2020), *https://www.nytimes.com/article/coronavirus-travel-restrictions.html.*

Commission, on March 17, 2020, EU Member States agreed to restrict non-essential travel across the EU's external border for a period that has now been extended several times.[76]

Restrictions on international travel into the EU and Schengen Area were quickly followed by EU Member States and Schengen Area countries closing their national borders. Such internal border controls were initially tailored to the countries hardest hit by the pandemic. For example, Austria and Switzerland closed their land borders with Italy on March 11 and 13, 2020, respectively, to prevent the entry of individuals from Italy, which was an epicenter of the COVID–19 pandemic at that time.[77] Similarly, Portugal closed its land border with Spain as part of sweeping measures to counter COVID–19 transmission.[78] Given the level of economic interdependence and commitment to the unrestricted movement of goods and persons within the EU, the closing of internal borders within the EU and Schengen Area is akin to individual U.S. States closing their borders to interstate travelers. During the height of the COVID–19 pandemic, a large number of EU Member States and Schengen countries had closed their internal borders, often times cancelling international air travel and cross-border train travel.[79]

On June 11, 2020, the European Commission adopted a Communication [80] which set out an approach to progressively lift internal border controls by June 15, and to prolong the restriction on non-essential travel into the EU until June 30, 2020.[81] Each Member State's internal border controls continue to be independently determined by the States themselves. Within the Schengen Area, internal border restrictions and quarantine requirements for intra-Schengen travelers began to relax in late-June 2020 as the rate of COVID–19 transmission slowed in most Schengen Area countries.[82] Nevertheless, several Schengen Area countries with low levels of COVID–19 transmission and few confirmed cases, such as Latvia, Lithuania, and Norway, continued to require citizens from other Schengen Area countries to self-quarantine on arrival, or limit travel to specific purposes.[83] Schengen Area countries have also implemented varying public health interventions, such as bans on public gatherings, compulsory stay-at-home orders, closures of schools and nonessential businesses, and face mask ordinances.

On June 25, 2020, the European Commission adopted a proposal for a Council Recommendation to lift some travel restrictions for countries selected together by EU Member States.[84] Selection was based on a set of principles and objective criteria including the health situation in respective countries, the ability to apply containment measures during travel, and reciprocity considerations, taking into account data from sources such as the European Centre for Disease Prevention and Control and the WHO.[85] Based on the criteria and conditions set out in the Recommendation, and on the updated list published by the Council on August 7, 2020, the European Commission says EU Member States should start lifting travel restrictions at external borders for residents from 11 countries.[86]

The external and internal border controls imposed in the EU and Schengen Area resemble the measures undertaken by the United States to avert the introduction of COVID–19 into the country, including the IFR and CDC Order. EU Member States have based their decisions to close and then reopen borders on the reported severity of the COVID–19 pandemic in the countries that travelers are entering from. The combination of external and internal border controls and public health interventions in the EU and Schengen Area appear to have reduced not only cross-border COVID–19 transmission but also internal community spread of the disease to the point of enabling the relaxation of some restrictions. The experiences of EU Member States and Schengen Area countries reinforce the Director's view that this final rule is an important tool for protecting public health in the United States.

b. Australia and New Zealand

Australia and New Zealand have implemented external border closures as part of their response to the COVID–19 pandemic that are much more stringent than the measures taken by the United States. On March 19, 2020, Australia closed its borders with exemptions only for Australian citizens, permanent residents, and their immediate families, including spouses, legal guardians, and dependents, as well as other certain other limited exceptions.[87] All returning citizens and residents of Australia are subject to a mandatory 14-day quarantine at designated secure facilities, such as a hotel at their port of arrival.[88] In order to manage the return of citizens and residents, Australia has capped international arrivals at 1,875 passengers per week.[89] Most visa

[76] *Travel and transportation during the coronavirus pandemic: Travel restrictions,* Eur. Comm'n, *https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/travel-and-transportation-during-coronavirus-pandemic/travel-and-eu-during-pandemic_en* (last visited Aug. 31, 2020).

[77] *Id.; Member States' notifications of the temporary reintroduction of border control at internal borders pursuant to Article 25 and 28 et seq. of the Schengen Borders Code,* EU, *https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/borders-and-visas/schengen/reintroduction-border-control/docs/ms_notifications_-_reintroduction_of_border_control_en.pdf* (last visited Aug. 31, 2020).

[78] *Id.; Travel and transportation during the coronavirus pandemic: Travel restrictions,* Eur. Comm'n, *https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/travel-and-transportation-during-coronavirus-pandemic/travel-and-eu-during-pandemic_en* (last visited Aug. 31, 2020).

[79] *Id.; Member States' notifications of the temporary reintroduction of border control at internal borders pursuant to Article 25 and 28 et seq. of the Schengen Borders Code,* EU, *https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/borders-and-visas/schengen/reintroduction-border-control/docs/ms_notifications_-_reintroduction_of_border_control_en.pdf* (last visited Aug. 31, 2020).

[80] Press Release IP/20/1035, Coronavirus: European Commission recommends partial and gradual lifting of travel restrictions to the EU after 30 June, based on common coordinated approach (June 11, 2020) (available at: *https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1035*).

[81] *Id.; Travel and transportation during the coronavirus pandemic,* Eur. Comm'n, *https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/travel-and-transportation-during-coronavirus-pandemic/travel-and-eu-during-pandemic_en* (last visited Aug. 31, 2020).

[82] *Id.*

[83] *See e.g., If returning to/entering Latvia,* Lat. Ctr. for Disease Prevention & Control, *https://www.spkc.gov.lv/lv/if-returning-toentering-latvia* (last updated July 22, 2020) (links to list last updated August 28, 2020); *The updated list of countries for mandatory 14-day isolation upon return,* Gov.t of the Rep. of Lith., *https://koronastop.lrv.lt/en/news/the-updated-list-of-countries-for-mandatory-14-day-isolation-upon-return-1* (last updated July 27, 2020); *Travel advice, Health Ministry of Nor., https://helsenorge.no/koronavirus/travel-advice#Travel-quarantine* (last updated Aug. 24, 2020).

[84] *Travel to and from the EU during the pandemic: Travel restrictions,* Eur. Comm'n, *https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/travel-and-transportation-during-coronavirus-pandemic/travel-and-eu-during-pandemic_en* (last visited Aug. 31, 2020).

[85] *Id.*

[86] These countries are: Australia, Canada, Georgia, Japan, New Zealand, Rwanda, South Korea, Thailand, Tunisia, Uruguay, and China (subject to confirmation of reciprocity). *Id.*

[87] Media Statement, Prime Minister of Australia announces Border Restrictions (Mar. 19, 2020) (available at: *https://www.pm.gov.au/media/border-restrictions*).

[88] *Id.; COVID–19 and the border: Travel restrictions,* Cmlth. of Austl, Dep't of Home Aff., *https://covid19.homeaffairs.gov.au/travel-restrictions-0* (last updated Aug. 28, 2020).

[89] Media Statement, National Cabinet meets to discuss Australia's COVID–19 response, the Victoria outbreak, easing restrictions, helping Australians prepare to go back to work, and economic recovery (Aug. 7, 2020) (available at:

Continued

holders, including those providing critical or specialist medical services, including air ambulance and medical evacuations, are not allowed to enter Australia unless they apply for and are granted an exemption and it is approved in advance of travel.[90] International visitors to be granted an exemption and permitted to travel to Australia may be required to pay up to $5,000 (AUD) to defray the cost of their quarantine.[91]

Australia had only 25,322 confirmed cases and 572 deaths from COVID–19 as of August 27, 2020.[92] And as recently as June 26, 2020 Australia was planning a safe return of crowds to stadiums, arenas, and large theaters,[93] and had announced its intention to create a trans-Tasman COVID-safe travel zone with New Zealand.[94] Nevertheless, an outbreak in Melbourne, Victoria in July 2020, believed to be caused by infection control failures at quarantine facilities,[95] led to the imposition of restrictive public health measures in Melbourne, including a compulsory stay-at-home order limiting the reasons people can leave their homes,[96] and a declaration of disaster in the State of Victoria generally.[97] Neighboring States have imposed interstate travel restrictions, including prohibiting persons traveling from Victoria from entering adjoining States.[98] Still, preliminary epidemiological analysis suggests that Australia's travel restrictions were effective in mitigating the introduction of COVID–19 into the country.[99]

New Zealand has taken an even more aggressive approach than Australia. It closed its borders to ''all but critical travel'' in the interests of public health.[100] Only New Zealand citizens, their partners and dependent children, and accredited diplomats may travel to New Zealand without prior approval. New Zealand exempts a small number of categories of travelers from the ban on entering the country, including ''critical humanitarian travel'' granted at the discretion of New Zealand immigration authorities. Any non-citizen or legal resident seeking to enter the country under an exemption must meet a critical purpose and be approved in advance.[101] New Zealand has suspended visa processing for offshore applicants because people who are not New Zealand citizens or residents are unlikely to meet the current entry requirements.[102] New Zealand has suspended its involvement in refugee resettlement programs and stopped accepting its quota of around 1,500 refugees every year.[103]

Any person still permitted to travel to New Zealand, almost exclusively citizens and residents, must submit to a medical examination and testing upon arrival, and is subject to a 14-day quarantine or isolation period at a government-managed facility.[104] Quarantine is required regardless of whether the individual tested negative for COVID–19 on arrival and without respect to whether the person is exhibiting any symptoms of COVID–19.[105] Although New Zealand has not previously charged travelers for quarantine and isolation costs, effective August 10, 2020, the government will charge $3,100 (NZ) for one adult; $950 (NZ) for each additional adult in the same room; and $475 (NZ) for each additional child aged 3–17 in the same room for those kept in quarantine and isolation.[106] New Zealand has also closed its maritime border to all foreign ships, including cruise ships, with limited exceptions.[107]

New Zealand's so-called elimination strategy for COVID–19, consisting of border controls, case detection and surveillance, and contact tracing and

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https://www.pm.gov.au/media/national-cabinet-7aug2020) This cap will be in effect until October 24, 2020. *Id.* A slightly lower cap of 1,475 passengers took effect on Monday July 13, 2020 and was re-evaluated and increased in late July. Media Statement, National Cabinet discusses Australia's current COVID–19 response, easing restrictions, helping Australians prepare to go back to work (July 10, 2020) (available at: *https://www.pm.gov.au/media/national-cabinet*).

[90] *COVID–19 and the border: Travel restrictions,* Cmlth. of Austl., Dep't of Home Aff., *https://covid19.homeaffairs.gov.au/travel-restrictions-0* (last updated Aug. 28, 2020).

[91] For example, from July 17, 2020, anyone arriving in the Northern Territory from a declared COVID–19 hotspot must pay a quarantine fee of $2,500 for an individual, or $5,000 for family groups of two or more people in a shared accommodation for the duration of the 14-day quarantine. *Mandatory supervised quarantine fee Interstate travellers from a COVID–19 Hotspot and International Travellers,* N. Terr. Gov't, *https://coronavirus.nt.gov.au/travel/quarantine/quarantine-fee* (last updated Aug. 24, 2020).

[92] *Coronavirus (COVID–19) at a glance—27 August 2020,* Cmlth of Austl. Dep't of Health (Aug. 27, 2020), *https://www.health.gov.au/resources/publications/coronavirus-covid-19-at-a-glance-27-august-2020.*

[93] *Australian Health Protection Principal Committee (AHPPC) statement on the safe return of crowds to stadiums, arenas and large theatres,* Cmlth. of Austl. Dep't of Health (June 26, 2020), *https://www.health.gov.au/news/australian-health-protection-principal-committee-ahppc-statement-on-the-safe-return-of-crowds-to-stadiums-arenas-and-large-theatres.*

[94] Media Statement, Joint Statement—Prime Ministers Jacinda Ardern and Scott Morrison Announce Plans for Trans-Tasman COVID-SAFE Travel Zone (May 5, 2020) (available at: *https://www.pm.gov.au/media/joint-statement-prime-ministers-jacinda-ardern-and-scott-morrison-announce-plans-trans-tasman*). As of mid-August, the plans for a trans-Tasman travel ''bubble'' had been put on pause. *Trans-Tasman bubble 'on pause' amid new Covid outbreaks across Pacific,* The Guardian (Aug. 13, 2020 13:30 EDT), *https://www.theguardian.com/world/2020/aug/14/trans-tasman-travel-bubble-on-pause-amid-new-covid-outbreaks-across-pacific.*

[95] *See* Media Statement, National Cabinet discusses Australia's current COVID–19 response, easing restrictions, helping Australians prepare to go back to work (July 10, 2020) (available at: *https://www.pm.gov.au/media/national-cabinet*).); Coronavirus: Why has Melbourne's outbreak worsened?, BBC (July 3, 2020), *https://www.bbc.com/news/world-australia-53259356.*

[96] *Updated restrictions—11.59 p.m. Wednesday 22 July 2020,* St. Gov't of Vict., Dep't of Health & Human Serv.'s, *https://www.dhhs.vic.gov.au/updates/coronavirus-covid-19/updated-restrictions-1159pm-wednesday-22-july-2020* (last updated July 22, 2020); *Stage 4 Restrictions,* St. Gov't of Vict., Dep't of Health & Human Serv.'s, *https://www.dhhs.vic.gov.au/stage-4-restrictions-covid-19* (last updated Aug. 21, 2020).

[97] *Premier's statement on changes to regional restrictions,* St. Gov't of Vict., Dep't of Health & Human Serv.'s (Aug. 2, 2020), *https://www.dhhs.vic.gov.au/updates/coronavirus-covid-19/premiers-statement-changes-regional-restrictions.*

[98] *See e.g., Travel Restrictions,* S. Austl. St. Gov't, *https://www.covid-19.sa.gov.au/restrictions-and-responsibilities/travel-restrictions#intosa* (last visited Aug. 28, 2020) (''Travellers from Victoria, other than approved categories of Essential Travellers, are not permitted to travel to South Australia. Checkpoints or road blocks will be set up at all border crossings between South Australia and Victoria.''); *NSW-Victoria border restrictions,* N.S.W. St. Gov't, *https://www.nsw.gov.au/covid-19/what-you-can-and-cant-do-under-rules/border-restrictions#who-can-enter-nsw* (last visited Aug. 28, 2020) (''NSW has temporarily shut its border with Victoria to contain the spread of COVID–19'').

[99] Valentina Costantino et al., *The effectiveness of full and partial travel bans against COVID–19 spread in Australia for travelers from China during and after the epidemic peak in China,* J. Travel Med. (May 22, 2020), *https://academic.oup.com/jtm/article/doi/10.1093/jtm/taaa081/5842100#205346339.*

[100] *Border closures and exceptions,* N.Z. Immigration, *https://www.immigration.govt.nz/about-us/covid-19/border-closures-and-exceptions* (last visited Aug. 25, 2020).

[101] *Id.*

[102] *COVID–19: Key updates,* N.Z. Immigration, *https://www.immigration.govt.nz/about-us/covid-19/coronavirus-update-inz-response* (last visited Aug. 28, 2020).

[103] *Immigration Factsheets: COVID–19 response—Quota Refugees,* N.Z. Immigration (July 6, 2020), *https://www.immigration.govt.nz/documents/media/covid-19-quota-refugees-factsheet.pdf; see generally New Zealand Refugee Quota Programme,* N.Z. Immigration, *https://www.immigration.govt.nz/about-us/what-we-do/our-strategies-and-projects/supporting-refugees-and-asylum-seekers/refugee-and-protection-unit/new-zealand-refugee-quota-programme* (last visited Aug. 28, 2020); *Increasing New Zealand's Refugee Quota,* N.Z. Immigration, *https://www.immigration.govt.nz/about-us/what-we-do/our-strategies-and-projects/refugee-resettlement-strategy/rqip* (last visited Aug. 28, 2020).

[104] *COVID–19: New Zealanders in the UK—Frequently Asked Questions,* N.Z. Foreign Aff. & Trade, *https://www.mfat.govt.nz/en/countries-and-regions/europe/united-kingdom/new-zealand-high-commission/living-in-the-uk/covid-19-coronavirus/* (last visited Aug. 28, 2020).

[105] *See Id.*

[106] *Id.* (There is no charge for children under the age of three).

[107] *COVID–19 Public Health Response (Maritime Border) Order 2020,* Parl. Couns. Off. (June 30, 2020), *http://www.legislation.govt.nz/regulation/public/2020/0134/latest/whole.html#LMS363210.*

quarantine has been widely hailed as a success.[108] Restricting nearly all international travel and immigration, paired with domestic public health interventions, gave New Zealand time to put in place the infrastructure needed to carry out its elimination strategy.[109] On August 28, 2020, New Zealand announced 12 new cases of COVID–19 that are being managed in isolation, bringing the total to 130 active cases.[110]

The experiences of New Zealand and Australia, like the experiences of the EU Member States and Schengen Area countries, reinforce the CDC Director's view that this final rule is an important tool for protecting public health in the United States.

c. Canada

On March 20, 2020, the United States and Canada announced plans to, by mutual consent, temporarily limit non-essential travel along the United States-Canada land border.[111] As noted above, these measures were extended through September 21, 2020.[112]

Like Australia and New Zealand, Canada banned almost all other foreign nationals from entering the country. On June 30, 2020, Canada extended its public health restrictions on international travelers from countries other than the United States, and on immigration to Canada, through at least July 31, 2020.[113] Most foreign nationals cannot travel to Canada unless they are an immediate family member of a Canadian national or permanent resident, or are traveling for one of a limited number of essential purposes and are either traveling directly from the United States or exempt from travel restrictions.[114] All foreign nationals eligible to enter Canada must undergo health assessments, and have plans to self-quarantine for 14 days, that include where they are staying, how they plan to get to where they are staying, and how they will get groceries and access essential services. Failure to have an adequate quarantine plan is grounds to be denied entry.[115] Returning Canadians are also required to quarantine for 14 days, during which individuals are not permitted to leave quarantine except for medical attention and may not have visitors.[116] Failure to adhere to quarantine requirements is punishable by up to six months imprisonment, a fine of up to $750,000 (CAD), a finding of inadmissibility, removal from Canada, and a one-year entry ban.[117]

As of August 27, 2020, Canada reported over 126,000 cases of COVID–19 and over 9,000 confirmed deaths.[118] According to a July 8, 2020 report, repatriated travelers accounted for 13 cases and no deaths. The Canadian government believes community transmission (as opposed to cross-border transmission) accounts for 85% of cases. In response to persistent, low levels of community transmission, authorities in Toronto, Ottawa, and several other Ontario cities have mandated indoor mask use. Quebec has similarly announced that masks will be mandatory in all indoor public places starting July 27, 2020.

While Canada was slower to implement public health restrictions on international travel than the United States, Canada's restrictions are robust. By closing its border to all but essential travel with the United States and returning citizens, Canada has operationalized a self-quarantine process for arriving travelers that has mitigated the spread of COVID–19, particularly from arriving asymptomatic persons who are capable of transmitting the disease. Coupled with public health interventions, Canada's border control measures have led to a considerable reduction in COVID–19 transmission. The Canadian experience is further corroboration that this final rule is good policy and vital to CDC's ability to protection public health in the United States.

C. This Rulemaking Finalizes Procedures Necessary for HHS/CDC's Continued Protection of U.S. Public Health From the COVID–19 Pandemic and Future Threats

HHS/CDC needs this final rule to implement section 362 of the PHS Act because the IFR is not permanent. ''Unless extended after consideration of submitted comments, [the IFR] will cease to be in effect on the earlier of (1) one year from the publication of [the IFR], or (2) when the HHS Secretary determines there is no longer a need for [the IFR].'' [119] Absent such a determination, the IFR lapses by its own terms on March 20, 2021.

There are also legal actions challenging the IFR. For example, in *P.J.E.S.* v. *Wolf,* No. 20–cv–02245–EGS (D.D.C. filed Aug. 14, 2020), the named plaintiff has sued the HHS Secretary, the CDC Director, and others on behalf of a putative class of unaccompanied alien children. In additional to arguing that the CDC Order and the underlying IFR are contrary to statute, the putative class representative alleges that the IFR and CDC Order are arbitrary and capricious for a number of reasons. According to the named plaintiff, ''Defendants have not articulated a reasoned explanation for their decision to apply [the IFR and the CDC Order] to unaccompanied children; failed to consider relevant factors in applying [the IFR and the CDC Order] to them . . .; relied on factors Congress did not intend to be considered; failed to consider reasonable alternatives that were less restrictive; and offered no sufficient explanation for their decision to expel them from the country.'' [120] While the Government is defending all challenges to the IFR and the CDC

[108] *See COVID–19: Elimination strategy for Aotearoa New Zealand,* Ministry of Health, *https://www.health.govt.nz/our-work/diseases-and-conditions/covid-19-novel-coronavirus/covid-19-current-situation/covid-19-elimination-strategy-aotearoa-new-zealand* (last updated May 8, 2020); Anna Jones, *Coronavirus: How New Zealand went 'hard and early' to beat Covid–19,* BBC News (July 10, 2020), *https://www.bbc.com/news/world-asia-53274085;* Jason Douglas, *As Coronavirus Surges in U.S., Some Countries Have Just About Halted It,* The Wall Street J. (July 6, 2020), *https://www.wsj.com/articles/as-coronavirus-surges-in-u-s-some-countries-have-just-about-halted-it-11594037814.*

[109] *See* Michael G. Baker et al., *New Zealand's elimination strategy for the COVID–19 pandemic and what is required to make it work,* 133 N.Z. Med. J. 1512, 10 (2020), (available at: *https://www.nzma.org.nz/journal-articles/new-zealands-elimination-strategy-for-the-covid-19-pandemic-and-what-is-required-to-make-it-work*).

[110] Media Release: NZ Ministry of Health Announces 12 new cases of COVID–19 (Aug. 28, 2020) (available at: *https://www.health.govt.nz/news-media/media-releases/12-new-cases-covid-19*).

[111] *Fact Sheet: DHS Measures on the Border to Limit the Further Spread of Coronavirus,* Dep't of Homeland Sec., *https://www.dhs.gov/news/2020/06/16/fact-sheet-dhs-measures-border-limit-further-spread-coronavirus* (last updated Aug. 14, 2020).

[112] 85 FR 51634 (August 21, 2020).

[113] Press Release, Canada Extends Mandatory Requirements Under the Quarantine Act for Anyone Entering Canada (Jun. 30, 2020) (available at: *https://www.canada.ca/en/public-health/news/2020/06/canada-extends-mandatory-requirements-under-the-quarantine-act-for-anyone-entering-canada.html*), (last updated July 3, 2020).

[114] *Id.; see also Coronavirus disease (COVID–19): Who can travel to Canada—Citizens, permanent residents, foreign nationals and refugees,* Gov't of Can., *https://www.canada.ca/en/immigration-refugees-citizenship/services/coronavirus-covid19/travel-restrictions-exemptions.html* (last updated Aug. 13, 2020).

[115] *Id.*

[116] *For travellers without symptoms of COVID–19 returning to Canada,* Gov't of Can., *https://www.canada.ca/en/public-health/services/publications/diseases-conditions/2019-novel-coronavirus-information-sheet.html* (last updated Aug. 7, 2020).

[117] *Coronavirus disease (COVID–19): Who can travel to Canada—Citizens, permanent residents, foreign nationals and refugees,* Gov't of Can., *https://www.canada.ca/en/immigration-refugees-citizenship/services/coronavirus-covid19/travel-restrictions-exemptions.html* (last updated Aug. 13, 2020).

[118] Statement from the Chief Public Health Officer of Canada On August 27, 2020, Gov't of Can., *https://www.canada.ca/en/public-health/news/2020/08/statement-from-the-chief-public-health-officer-of-canada-on-august-27-2020.html* (last updated August 27, 2020).

[119] 85 FR 16559 (March 24, 2020).

[120] *P.J.E.S.* v. *Wolf,* No. 20–cv–02245–EGS, at *27–28 (D.D.C. Aug. 14, 2020), ECF No. 1.

Order, it is nonetheless possible that a district court could vacate or enjoin the IFR before the IFR lapses by its own terms on March 20, 2021.

The procedures finalized here ensure that HHS/CDC can mitigate the danger of the introduction of COVID–19 into the United States regardless of whether the IFR is vacated or enjoined, or lapses by its own terms. The procedures also ensure that HHS/CDC can act quickly to mitigate the danger of the introduction of other quarantinable communicable diseases into the United States in the future. As previously discussed, HHS/CDC cannot predict when it will need to exercise the Section 362 authority in the future; the immediate availability of procedures for exercising the authority is important once HHS/CDC decides to take action.

The public health situation in the U.S.-Mexico border region highlights the need for the procedures. The COVID–19 pandemic still presents significant challenges for the States in the region, and Mexico itself. If the procedures established by the IFR ceased to be effective, then the CDC Order on covered aliens would likewise cease to be effective, and the danger of the introduction of COVID–19 into the States in the U.S.-Mexico border region would increase. The CBP workforce and the civilian population in the U.S.-Mexico border region would face an increased risk of infection with COVID–19. The community transmission of COVID–19, the number of new COVID–19 cases, and the attendant strain on the healthcare system in the U.S.-Mexico border region would likely increase as well. The Director assesses that HHS/CDC can mitigate those consequences so long as the procedures established by the IFR remain in place.

The Director's assessment takes into account the effectiveness of the IFR and CDC Order as public health measures, recent trends in COVID–19 case counts and deaths, the experiences of the States, and the States' current reopening plans. As previously discussed, the Director assesses that the IFR and CDC Order have reduced the danger of the introduction of COVID–19 into the United States, and reduced the strain on the healthcare system in the U.S.-Mexico border region by decreasing the utilization of the healthcare system by covered aliens. The Director further assesses that the IFR and CDC Order have helped slow community transmission of COVID–19 and the number of new COVID–19 cases in the States in the U.S.-Mexico border region. While these positive impacts are difficult to quantify, it is undisputed that Mexico has experienced community transmission for many months, the IFR and CDC Order enabled DHS to expel tens of thousands of covered aliens from Mexico who would have otherwise spent material amounts of time in congregate settings, and large numbers of those covered aliens would have otherwise been released into the States in the U.S.-Mexico border region. Given the sheer volume of covered aliens subject to the CDC Order, the Director assesses that the positive impacts of the IFR and CDC Order on community transmission and case counts in the U.S.-Mexico border region were not insubstantial.

The benefits of the IFR and CDC Order are compelling when the recent trends in COVID–19 case counts and deaths, and the recent experiences of the States in the U.S.-Mexico border region, are considered. Nationally, the numbers of COVID–19 cases have continued to decrease since mid-July, and as of August 22, 2020, six out of ten HHS surveillance regions reported decreasing or stable levels of the disease.[121] Two regions reported an increase in the percentage of people testing positive for COVID–19, and two regions reported increases in influenza-like illness visits over the previous week.[122] Deaths involving COVID–19, pneumonia, and influenza have declined, from a high of 16,957 deaths during the week ending on April 18, 2020, to 400 deaths during the week ending on August 22, 2020.[123] Weekly hospitalizations associated with confirmed COVID–19 cases are also down, from a high of 10.10 per 100,000 Americans in April, to a low of 2.8 per 100,000 Americans during the week ending on August 22, 2020.[124]

While hospitalizations and deaths have declined overall, the number of new COVID–19 cases in certain areas of the country has surged in recent months. Those areas include the States in the U.S.-Mexico border region. Indeed, as of August 30, 2020, California and Texas lead the country with the highest 7-day case count, and Arizona has the third highest number of cases per 100,000 people over that same period.[125]

The surge in California was dramatic. In early July 2020, the statewide data in California demonstrated a significant increase in the community transmission of COVID–19, which prompted State officials to implement sweeping measures to protect the health of the public.[126] The State Public Health Officer and Director observed that ''[i]n addition to the impact on the general population, community spread increases the likelihood of expanded transmission of COVID–19 in congregate settings such as nursing homes, homeless shelters, jails and prisons. Infection of these vulnerable populations in these settings can be catastrophic[ ].'' [127] The number of patients hospitalized in California due to COVID–19 increased between 50–100% in all regions in the State, with an average increase of 77% compared to mid-June.[128]

During the California surge, CBP continued to apprehend covered aliens who had crossed the border from Mexico into California. Absent the IFR and CDC Order, covered aliens moving through congregate areas in Border Patrol stations and POEs in California could have been capable of transmitting the virus that causes COVID–19, thereby increasing the already serious danger of the introduction of COVID–19 into California and, by extension,

[121] *COVID View: A Weekly Summary of U.S. COVID–19 Activity (August 22, 2020),* Ctrs. for Disease Control & Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/index.html* (last updated Aug. 28, 2020).

[122] *Id.*

[123] *Weekly Updates by Select Demographic and Geographic Characteristics: Provisional Death Counts for Coronavirus Disease 2019 (COVID–19),* Ctrs. for Disease Control & Prevention, *https://www.cdc.gov/nchs/nvss/vsrr/covid_weekly/index.htm* (last updated Aug. 26, 2020).

[124] *Laboratory-Confirmed COVID–19-Associated Hospitalizations: Preliminary weekly rates as of Aug. 1, 2020,* Ctr. for Disease Control & Prevention, *https://gis.cdc.gov/grasp/COVIDNet/COVID19_3.html* (last visited Aug. 31, 2020).

[125] *United States COVID–19 Cases and Deaths by State: Cases in Last 7 Days,* Ctrs. for Disease Control & Prevention, *https://www.cdc.gov/covid-data-tracker/#cases* (last updated Aug. 30, 2020) (California reported 36,947 cases and Texas reported 33,391 cases, followed by Florida with 20,923 cases; Arizona had the third highest case rate per 100,000 people in the United States with 2,807 cases, surpassed only by Louisiana and Florida).

[126] On July 13, 2020, the California State Public Health Officer and Director announced mandatory statewide closures of indoor operations for certain sectors, and both indoor and outdoor operations for bars and similar establishments *Guidance on Closure of Sectors in Response to COVID–19 (July 13, 2020),* Cal. Dep't of Pub. Health, *https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Guidance-of-Closure-of-Sectors-in-Response-to-COVID-19.aspx* (last updated July 17, 2020). In her order, she observed that ''[t]he data is clear that community spread of infection is of increasing concern across the state, and continues to grow in those counties on the County Monitoring List[,]'' and ''[w]hile these counties [with high numbers of COVID–19 hospitalizations] are primarily located in the south and central valley, there are now counties on the monitoring list from all regions of California.'' *See also Blueprint for a Safer Economy,* Cal. All, *https://covid19.ca.gov/safer-economy/#top* (last visited Aug. 31, 2020).

[127] *Guidance on Closure of Sectors in Response to COVID–19 (July 13, 2020),* Cal. Dep't of Pub. Health, *https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Guidance-of-Closure-of-Sectors-in-Response-to-COVID-19.aspx* (last updated July 17, 2020).

[128] *Id.*

community transmission in California. The consequences for the healthcare system in California could have been severe; a surge of infected covered aliens coming from Mexico could have further reduced the available inpatient hospital bed capacity in California, while increasing the exposure of California healthcare workers and the CBP workforce to COVID–19. Increased community transmission from covered aliens would have been contrary to the interest of U.S. public health, and would have frustrated the efforts of Californians to slow community transmission.

There are still high rates of community spread within California, though the situation has improved some since the peak of the surge in July 2020.[129] California's revised reopening guidelines explain that as of August 31, 2020, certain businesses will be able to open ''with modifications, including all retail, shopping centers at maximum 25% capacity, and hair salons and barbershops indoors,'' even in counties where community transmission is classified as ''widespread.'' [130] As counties step down from ''widespread'' to the ''substantial,'' ''moderate,'' or ''minimal'' tiers based on case and positivity rates, restrictions are progressively loosened, permitting the reopening of additional indoor businesses and in-person instruction in schools.[131] Higher rates of community transmission reverse such progress: ''[i]f a county's metrics worsen for two consecutive weeks, it will be assigned a more restrictive tier.'' [132]

While California is making progress, it is not in the clear yet. As of August 30, 2020, the California Department of Health reported 699,909 confirmed cases of COVID–19, and 12,905 deaths. It recognized that ''[a]s case numbers continue to rise in California, the total number of individuals who have serious outcomes will also increase.'' [133]

The Director assesses that increased community transmission in California would likely result in increased numbers of cases, as well as increased case and positivity rates, and ultimately increased numbers of individuals who have serious outcomes. Increases in case and positivity rates would, in turn, frustrate efforts by California counties to step down to lower tiers in the reopening guidelines and begin in-person schooling and the reopening of businesses. The Director further assesses that the introduction of covered aliens into California through congregate settings in CBP facilities would likely have a negative impact on case and positivity rates in California, which would not be in the interest of U.S. public health.

Similar to California, Arizona saw significant increases in the number of confirmed COVID–19 infections beginning in mid-May, leading the Governor of Arizona to suspend the State's phased re-opening plans and delay the phased reopening of schools until August 17, 2020.[134] The Federal government committed to constructing surge testing sites in Arizona to help meet the increased demand for diagnostic testing.[135] During mid-June, Arizona was averaging approximately 1,300 new COVID–19 infections a day; [136] and by mid-July, Arizona had one of the highest positivity rates in the nation, at nearly 27%.[137] By July 27, 2020, 10 out of the 14 counties in Arizona were in the ''red zone,'' meaning there were more than 100 new cases for every 100,000 people, and more than 10% of the people tested for COVID–19 test positive.[138]

As a result of the surge in new COVID–19 cases, Arizona's healthcare system approached capacity in terms of the number of available hospital beds and critical staff.[139] On July 1, 2020, Arizona requested 500 additional medical personnel from FEMA, in addition to the 62 Federal medical personnel already deployed to assist with Arizona's COVID–19 response.[140] On July 1, in response to a petition from medical providers, the Arizona Department of Health Services activated the State's Crisis Standards of Care Plan, which establishes guidelines for the allocation of scarce healthcare resources among patients based on factors such as likelihood of survival.[141] As of August 30, 2020, Arizona's inpatient hospital bed occupancy rate was still approximately 81%, with approximately 10% occupied by COVID–19 patients; and its ICU bed occupancy rate was approximately 77%, with approximately 15% occupied by COVID–19 patients.[142]

Arizona has instituted county-specific public health benchmarks that must be achieved in order to begin the phased reopening of businesses, including bars, indoor gyms/fitness centers, indoor movie theaters, and water parks/tubing operations.[143] Under the benchmark system, businesses in counties designated as experiencing minimal or moderate transmission, as indicated by certain metrics for at least two weeks, may reopen subject to occupancy limits and other mitigation requirements.[144] As of August 27, 2020, only one county is experiencing minimal transmission, eight counties are experiencing moderate transmission, and six counties

[129] *California Coronavirus Map and Case Count,* N.Y. Times, *https://www.nytimes.com/interactive/2020/us/california-coronavirus-cases.html* (last visited Aug. 31, 2020).

[130] *Blueprint for a Safer Economy,* Cal. All, *https://covid19.ca.gov/safer-economy/#top* (last visited Aug. 31, 2020).

[131] *Id.*

[132] *See id.*

[133] *State Officials Anounce Latest COVID–19 Facts,* Cal. Dep't. of Pub. Health, *https://www.cdph.ca.gov/Programs/OPA/Pages/NR20-213.aspx* (last updated Aug. 30, 2020).

[134] Press Release, Governor of Arizona Announces Further Action to Reverse COVID–19 Spread in the State (June 29, 2020) (available at: *https://azgovernor.gov/governor/news/2020/06/further-action-reverse-covid-19-spread-arizona).*

[135] Jessica Boehm, Ariz. Cent., *Feds downplay Phoenix mayor's COVID–19 testing concerns, but commit to new mass test site in west Phoenix* (July 8, 2020), *https://www.azcentral.com/story/news/local/phoenix/2020/07/08/feds-discount-gallego-concerns-but-commit-covid-19-testing-site/5400030002/.*

[136] Will Stone, *Health Experts Link Rise in Arizona Coronavirus Cases to End of Stay-At-Home Order,* Nat'l Pub. Radio (June 14, 2020), *https://www.npr.org/2020/06/14/876786952/health-experts-link-rise-in-arizona-coronavirus-cases-to-end-of-stay-at-home-ord.*

[137] *Arizona's surge in coronavirus cases has been ''the worst in the entire country,'' health experts say,* CBS News (July 13, 2020), *https://www.cbsnews.com/news/arizona-coronavirus-cases-worst-in-united-states.*

[138] *State Reports,* White House Coronavirus Task Force, *17–23 (July 26, 2020) (on file with HHS).

[139] *Id. See* Data Dashboard, Ariz. Dep't of Health Serv.'s, *https://www.azdhs.gov/preparedness/epidemiology-disease-control/infectious-disease-epidemiology/covid-19/dashboards/index.php* (last visited Aug. 31, 2020) (see ''Hospital Bed Usage & Availability'' tab).

[140] *See Vice President Pence Holds News Conference with Arizona Governor,* C-SPAN (July 1, 2020), *https://www.c-span.org/video/?473590-1/vice-president-urges-wearing-masks-amid-coronavirus-spike-arizona* (statements regarding FEMA medical personnel occur at 03:52–04:20); *see also* Brett Samuels, *Arizona asks for 500 additional medical personnel amid spike in virus cases,* The Hill (July 1, 2020), *https://thehill.com/homenews/state-watch/505517-arizona-asks-for-500-additional-medical-personnel-amid-spike-in-virus.*

[141] *See generally* COVID–19 Implementing Crisis Standards of Care at Short-Term Inpatient Acute Care Facilities Guidance Approved by State Disaster Medical Advisory Committee (SDMAC)—4/1/2020, Ariz. Dep't of Health Serv.'s, (available at: *https://www.azdhs.gov/documents/preparedness/epidemiology-disease-control/infectious-disease-epidemiology/novel-coronavirus/sdmac/sdmac-guidance-crisis-standards-care-healthcare-facilities.pdf*); Arizona Crisis Standards of Care Plan, 3d ed. (2020), Ariz. Dep't of Health Serv.'s, (available at: *https://www.azdhs.gov/documents/preparedness/emergency-preparedness/response-plans/azcsc-plan.pdf*).

[142] Data Dashboard, Ariz. Dep't of Health Serv.'s, *https://www.azdhs.gov/preparedness/epidemiology-disease-control/infectious-disease-epidemiology/covid-19/dashboards/index.php* (last visited Aug. 13, 2020) (see ''Hospital Bed Usage & Availability'' tab, subtabs for ''ICU Bed Usage and Availability'' and ''Inpatient Bed Usage and Availability'').

[143] *See* Benchmarks for Businesses by County, Ariz. Dep't of Health Serv.'s, (available at *https://www.azdhs.gov/documents/preparedness/epidemiology-disease-control/infectious-disease-epidemiology/novel-coronavirus/business-benchmarks.pdf*) (last updated Aug. 27, 2020).

[144] *Id.*

are experiencing substantial transmission, during which all businesses must remained closed.[145]

The Director assesses that the IFR and CDC Order have helped protect the overtaxed Arizona healthcare system from additional strain and conserve health care resources for the domestic population. The Director further assesses that absent the IFR and CDC Order, covered aliens moving through congregate settings in CBP facilities in Arizona could have been capable of transmitting the virus that causes COVID–19, thereby increasing the already serious danger of the introduction of COVID–19 into Arizona and, by extension, community transmission in Arizona. The additional strain on the system would have been problematic because the situation in Arizona has been serious, with hospital occupancy rates nearing limits, critical staff shortages, and the activation of State plans for allocating health care.

As with California, the Director assesses that increased community transmission in Arizona would likely result in increased numbers of cases, as well as increased case and positivity rates, and ultimately increased numbers of individuals who have serious outcomes. Increases in case and positivity rates would, in turn, frustrate efforts by Arizona counties to meet benchmarks for the reopening of businesses. The Director assesses that the introduction of covered aliens into Arizona through congregate settings in CBP facilities would likely have a negative impact on case and positivity rates in Arizona, which would not be in the interest of U.S. public health.

The Director's concerns are driven partly by the public health situation in Mexico. As of August 31, 2020, Mexico has 591,712 confirmed cases, and 63,819 reported deaths.[146] Some observers believe the actual COVID infections and deaths are multiples (likely between 10 to 20 times) of what is reported, as Mexico has the lowest diagnostic testing per capita of any country in the Organization for Economic Co-operation and Development (OECD).[147]

While the data on Mexico is limited, there are signs that the epicenter of the COVID–19 pandemic in Mexico is shifting from Mexico City to the Mexican border states as the overall public health situation improves somewhat. As of August 28, 2020, under SALUD's ''stoplight'' designation system, only one of Mexico's 32 states, Colima, is red, 21 are orange, and 10 are yellow. Five states advanced to orange from red. According to SALUD, Mexico City's cases are stabilizing and hospital occupancy in the city decreased to 47 percent, from a high of approximately 80 percent in mid-June. Although hospital occupancy rates have improved in recent weeks—the national hospital occupancy rate is 36 percent—hospital occupancy rates remain elevated in Mexican border states such as Nuevo Leon (61 percent) and Coahuila (48 percent). As of August 26, 2020, several Mexican border states report relatively high numbers of active COVID–19 infections: Tamaulipas (3,566 active cases), Nuevo Leon (6,028 actives cases) and Baja California (1,440 active cases). On August 2, 2020, the health minister of the Mexican border State of Chihuahua died from COVID–19 after nearly two weeks of inpatient hospitalization.[148]

A shift in the epicenter of the COVID–19 pandemic in Mexico to the U.S.-Mexico border region would present increased concerns for U.S. public health because all covered aliens crossing the U.S.-Mexico border necessarily travel through that region. If community transmission in the Mexican border region increases, then the numbers of COVID–19 cases in that region are likely to increase, as are the numbers of infected covered aliens who seek to introduce themselves into the United States. The introduction of more infected covered aliens would probably have a negative impact on community transmission in the United States, and ultimately U.S. public health.

III. Statutory Authority

The primary legal authority supporting this rulemaking is section 362 of the PHS Act, which is codified at 42 U.S.C. 265. Congress enacted section 362 in 1944, and modeled it on Section 7 of the Quarantine Act of 1893, which was informed by U.S. public health laws from the early days of the Republic. The history of the U.S. public health laws is a helpful backdrop when analyzing the congressional intent behind section 362. Below we discuss the history of such laws, followed by a discussion of section 362 and other relevant statutory authorities.

A. History of the U.S. Public Health Laws

Congress has long recognized the danger posed by communicable disease and granted broad powers to the Executive Branch to address the danger during times of emergency. In 1796, Congress passed an Act Relative to Quarantine, which authorized the President to direct U.S. officers to ''aid in the execution of quarantine, and also in the execution of the health laws of the states, respectively, in such manner as may to him appear necessary.'' [149]

After a yellow fever outbreak in New York in 1798, Congress enacted ''An Act Respecting Quarantine and Health Laws.'' [150] This statute replaced the Act of May 1796 and created a more robust Federal public health regime. It authorized and required certain officers to aid in the execution of State quarantine and health laws, including those with respect to vessels arriving in or bound to any U.S. port. It also authorized the Secretary of the Treasury to vary or dispense with regulations concerning the entry of vessels and cargoes when required for consistency with quarantine and other health laws. Just as the Director has recognized the threat that the introduction of COVID–19 presents to CBP personnel, the Act recognized that the ''prevalence of any contagious or epidemical disease'' at a port could present a danger to Federal officials. Therefore, it authorized measures to protect Federal officials during an outbreak. Specifically, it authorized the Secretary of the Treasury and the President to order the relocation of revenue officers and public offices, respectively, from a dangerous port to a safe location.[151] Almost 100 years later, the U.S. experienced a severe cholera outbreak caused by persons arriving from Europe.[152] In response, Congress passed the Quarantine Act of 1893, ch. 114, 27 Stat. 449. Several provisions of that Act addressed the Federal authority to quarantine persons arriving in the United States. Section 7 of the Act of 1893, which used terms nearly identical to the current section 362, expanded Federal authority beyond the authority to quarantine persons. Specifically, it authorized the President to ''prohibit'' the ''introduction'' of persons into the United States if ''the quarantine defense'' was insufficient to address a

[145] *Id.*

[146] *WHO Coronavirus Disease (COVID–19) Dashboard,* WHO, *https://covid19.who.int/table* (last visited Aug. 31, 2020).

[147] Azam Ahmed, *Hidden Toll: Mexico Ignores Wave of Coronavirus Death in Capital,* The N.Y. Times (May 8, 2020, updated May 28, 2020), *https://www.nytimes.com/2020/05/08/world/americas/mexico-coronavirus-count.html.*

[148] Laura Gottesdieer, *Mexican State health minister dies after being hospitalized for COVID–19,* Reuters (July 26, 2020, 11:57 a.m.), *https://www.reuters.com/article/us-health-coronavirus-mexico-idUSKCN24R0K5.*

[149] An Act relative to Quarantine, ch. 31, 1 Stat. 474 (May 27, 1796).

[150] An Act respecting Quarantine and Health Laws, ch 12, 1 Stat. 619 (Feb. 25, 1799).

[151] *Id.*

[152] *History of Quarantine,* Ctrs. for Disease Control & Prevention, *https://www.cdc.gov/quarantine/historyquarantine.html* (last updated July 20, 2020).

''serious danger of the introduction of the [disease] into the United States'', and a ''suspension of the right to introduce'' persons or property was demanded in the interest of public health: [W]henever it shall be shown to the satisfaction of the President that by reason of the existence of cholera or other infectious or contagious diseases in a foreign country there is serious danger of the introduction of the same into the United States, and that notwithstanding the quarantine defense this danger is so increased by the introduction of persons or property from such country that a suspension of the right to introduce the same is demanded in the interest of the public health, the President shall have power to prohibit, in whole or in part, the introduction of persons and property from such countries or places as he shall designate and for such period of time as he may deem necessary. 27 Stat. 449, 452 (Feb. 15, 1893).

Section 7 was broader than some of the other sections of the Act of 1893 because it applied to the act of introducing a person into the United States, and not simply to ships or vessels carrying passengers.[153] Section 7 prevented individuals traveling aboard vessels from circumventing vessel-specific prohibitions that focused solely on disembarkations in American harbors. By allowing the President to broadly prohibit the ''introduction'' of persons, it ensured that travelers could not evade the prohibition by swimming or walking to shore.[154] Congress also sought to give the Executive Branch the power to prevent asymptomatic persons infected with a communicable disease from moving into the country before the asymptomatic persons and the customs or public health officials could detect the disease. Such persons, if allowed into the country, would ''disseminate the poison that has been slumbering in their midst and imperil the lives of any community in which they happen to locate.'' H.R. 9757, 52nd Cong., 2d Sess., Report No. 2210 at 4 (Jan. 9, 1893). The risk of asymptomatic transmission arose from persons moving into the United States by vessel, by foot, or by any other any means, and increased once the person was on U.S. soil and poised to move further into the country.

Section 7 also was noteworthy because it granted the authority to ''suspend'' the ''right to introduce'' persons or property. In 1893, as now, ''suspend'' was a term of art for temporarily ceasing the operation or effect of laws. *See, e.g.,* U.S. Const. art. I, sec. 9, cl. 2 (''The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.''); *see also Universal English Dictionary* 815 (John Craig ed. 1869) (defining ''suspend,'' in part, as ''to cause to cease for a time from operation or effect, as, to *suspend* the habeas corpus act'') (emphasis in original). Unlike the other sections of the Act of 1893, section 7 used the phrase ''*suspension* of the right to introduce,'' which by its plain meaning demonstrates that Congress intended for section 7 to authorize the President to cease temporarily the effect of any laws conferring a right to introduce persons.[155]

Furthermore, the Congressional record reflects a clear and consistent theme that section 7 is intended to give the President the authority to suspend any right to introduce persons that any immigration laws confer on the Executive Branch. As one Senator explained:

> [I]f section 7 be adopted, then I think it will be quite clear that . . . the power to suspend immigration altogether, either temporarily or permanently as a health device, is intended to be lodged solely in the President of the United States, where it certainly should be lodged. In other words, if it be true that the quarantine power involves in it the power of total suspension of immigration, if we leave the bill without the proposed section 7, every petty quarantine officer, or certainly the Secretary of the Treasury, will have it, to which I do not agree. I think it is quite clear that this section should be added, declaring in terms whenever the health or protection of the country from infection requires the total suspension of immigration, that power is to belong to the President[.]

24 Cong. Rec. 393 (Jan. 7, 1893) (statement of Sen. Hoar); *see also id.* at 393–94 (statement of Sen. Chandler) (recognizing that section 7 would give the President the power to suspend immigration in his discretion, whenever there is danger of infection); 24 Cong. Rec. 470 (Jan. 10, 1893) (statement of Sen. Gray) (stating that the exigency posed by ''apprehension of the invasion of contagious disease [ ] is sufficient . . . to justify this extraordinary power of the entire suspension of immigration'').[156] The exigency of the cholera outbreak taught that it was necessary to convey a broad power to the Executive Branch to use in rare times of emergency to protect public health. As one Senator put it, ''I believe that our duty is to provide, *as far as our constitutional authority can possibly go,* for the prevention of the introduction of these epidemics. It is a peculiarly binding and obligatory duty at this time.'' 2 Cong. Rec. 472 (Jan. 10, 1893) (statement of Sen. Morgan) (emphasis added).

Congress enacted the Act of 1893 two years after enacting the Immigration Act of 1891 (''Immigration Act''), which authorized the Treasury Department to regulate immigration, and excluded from admission into the United States aliens ''suffering from a loathsome or a dangerous contagious disease.'' Act of Mar. 3, 1891, ch. 551, section 1, 26 Stat. 1084. Section 8 of the Immigration Act authorized inspection officers from the Treasury Department to board any arriving vessel, inspect the aliens on the vessel, and have surgeons conduct medical examinations of the aliens. Section 9 imposed a penalty on any person or transportation company bringing to the United States any alien ''suffering from a loathsome or dangerous contagious disease.''

When Congress enacted section 7 of the Act of 1893, Congress was fully

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[153] Congress repeatedly used ''ship'' or ''vessel'' in other sections of the 1893 Act, but conspicuously referred more broadly to ''persons or property'' in section 7. *Compare* The Quarantine Act of 1893, ch. 114, 27 Stat. 449 section 7 *with* section 1 (unlawful for ships to enter U.S. ports from abroad except in accordance with public health regulations); section 2 (requiring ships abroad to obtain a bill of health); section 3 (authorizing, *inter alia,* regulation of ''vessels sail[ing] from any foreign port or place''); section 5 (issuance of regulations for, *inter alia,* ''vessels in foreign ports,'' and prohibition on vessels arriving without a bill of health); and section 6 (providing for ''an infected vessel'' to be ''remand[ed]'' to quarantine station). The fact that Congress did not mention ''ship'' or ''vessel'' in section 7, as it does in the other sections of the Act, indicates that Congress did not intend to limit section 7's application to ships.

[154] Consistent with contemporaneous dictionaries and the ordinary meaning and usage of ''introduce,'' a person could ''introduce'' him or herself. Introduction of a person was an action that could be taken by individuals as well as third parties. *See Universal English Dictionary* 1067 (John Craig ed. 1861) (defining ''introduction'' to include, *inter alia,* ''the act of bringing into a country'' and ''the ushering of a person into presence''); *American Dictionary of the English Language* 113 (Noah Webster ed., 1828) (similar definitions); *cf. Ashley* v. *Bd. of Sup'rs of Presque Isle Cty.,* 83 F. 534, 540 (6th Cir. 1897) (referring to a ''party [who] *introduces himself* as a witness in his own behalf'') (emphasis added); *Olds Wagon Works* v. *Benedict,* 67 F. 1, 4 (8th Cir. 1895) (discussing an ''intervener who *introduces himself* into a pending action in a state court'') (emphasis added).

[155] *See Universal English Dictionary* 815 (John Craig ed. 1869) (defining ''suspension,'' in part, as ''[t]he act of suspending; the state of being suspended; in special senses, a keeping in doubt; postponement of legal execution'').

[156] The Act of 1893 passed overwhelmingly with broad bipartisan support, but even those opposed to the law recognized it granted the President the authority to suspend immigration. *See, e.g.,* 24 Cong. Rec. 370–71 (Jan. 6, 1893) (statement of Sen. Mills) (''I shall vote very cheerfully against placing in the hands of the President of the United States, whether he be a Republican or a Democrat, any such extraordinary power as that, to suspend immigration to this country at his pleasure.'').

aware of the Immigration Act that it had enacted just two years earlier. The Act of 1893 was not a redundant immigration law. It was a broad public health statute that gave the President a sweeping but temporary power to combat larger, global threats to public health. Congress intended for the power to prohibit the introduction of persons to be a categorical one that operates separately and independently of the immigration power that applies against individual aliens suffering from a contagious disease. Congress recognized that this separate public health authority was needed to address, among other things, situations where an infected but asymptomatic person was seeking introduction into the United States, or government resources were overtaxed.

In June 1929, President Herbert Hoover issued an Executive Order invoking section 7 of the Act of 1893 to restrict the ''Transportation of Passengers'' from China and the Philippines because of a meningitis outbreak.[157] Since November 1928, 17 trans-Pacific passenger-carrying vessels with epidemic cerebrospinal meningitis infections on board had arrived at U.S. Pacific coast ports. The continued arrival of passengers with cerebrospinal meningitis infection had ''overtaxed'' Federal and state quarantine facilities, and ''notwithstanding the quarantine defense, there exist[ed] danger of introducing this disease into the United States[.]'' [158] Therefore, ''in order to prevent the further introduction'' of cerebrospinal meningitis into the United States, the Executive Order provided that no persons may be introduced directly or indirectly by transshipment or otherwise into the United States or any of its possessions or dependencies from any port in China (including Hong Kong) or the Philippine Islands for such period of time as may be deemed necessary, except under such conditions as may be prescribed by the Secretary of the Treasury.[159]

Although the Executive Order focused on vessels, it was not limited to them; it clearly stated that ''no persons may be introduced directly *or indirectly* by transshipment *or otherwise* into the United States,'' except as permitted by the Treasury Secretary (emphasis added). The regulations accompanying the Executive Order did not purport to narrow the Executive Order or foreclose the Executive Branch from enforcing section 7 of the Act of 1893 against symptomatic or asymptomatic persons from China or the Philippines who introduced themselves into the United States by swimming or walking ashore.[160] The Executive Order tailored the Federal response to a discrete problem: The arrival at Pacific Coast ports of trans-pacific passenger-carrying vessels with epidemic cerebrospinal meningitis infection existing on board. Neither the Executive Order nor the accompanying regulations purported to set forth a comprehensive or final interpretation or framework for the implementation of section 7 of the Act of 1893. President Hoover's Executive Order was consistent with the statutory text, which communicates clearly that the authority to prohibit the introduction of persons is not limited to any one communicable disease, setting, mode of introduction, or geographic location.

In 1944, Congress enacted section 362 of the PHS Act. 42 U.S.C. 265. Section 362 is nearly identical to section 7 of the 1893 Act.

Whenever the Surgeon General determines that by reason of the existence of any communicable disease in a foreign country there is serious danger of the introduction of such disease into the United States, and that this danger is so increased by the introduction of persons or property from such country that a suspension of the right to introduce such persons and property is required in the interest of the public health, the Surgeon General, in accordance with regulations approved by the President, shall have the power to prohibit, in whole or in part, the introduction of persons and property from such countries or places as he shall designate in order to avert such danger, and for such period of time as he may deem necessary for such purpose.

The legislative history of section 362 indicates that it was largely intended to reenact section 7 of the 1893 Act. As explained in a house report, ''Section 362 would reenact a provision of present law (42 U.S.C. 111) authorizing the suspension of travel of persons and shipment of goods from any foreign country where a communicable disease exists, if there is found to be serious danger of introduction of the disease into the United States. Consistently with the general administrative pattern in the bill, the authority now lodged in the President would be placed in the Surgeon General, to be exercised under Presidential regulations.'' H.R. Rep. No. 78–1364, at 25 (1944).

The differences between section 7 and section 362 are few. First, section 362 grants authority to the Surgeon General (not the President). Second, it applies to any ''communicable disease'' (not ''cholera or other infectious or contagious diseases''). Third, it omits the phrase ''notwithstanding the quarantine defense.'' Fourth, it authorizes the Surgeon General to suspend the right to introduce when it is ''required'' (not ''demanded'') in the interest of public health.

Congress's omission of the phrase ''notwithstanding the quarantine defense'' reinforced Congress's intent that the Executive Branch have the flexibility to prohibit the introduction of persons in situations both where quarantine is available as a public health measure, and where it is not. Originally, section 7 of the Act of 1893 linked the authority to prohibit the introduction of persons to the inadequacy of quarantine as a national defense against disease transmission. By decoupling the prohibition of the introduction of persons from the inadequacy of quarantine, Congress gave the Surgeon General even greater flexibility to prohibit the introduction of persons into the United States in the interest of public health, by allowing that power to be exercised regardless of whether the government is exercising its quarantine powers, and regardless of the adequacy of any quarantine measures. This statutory change followed the meningitis outbreak of 1929, during which President Hoover prohibited the introduction of persons arriving from Asia when Federal and local quarantine facilities were operational but overtaxed.[161]

The current statutory text therefore expressly gives the Director the authority to ''prohibit, in whole or in part, the introduction of persons'' from foreign countries whenever he determines there is a serious danger of the introduction of a communicable disease into the United States and that this danger is so increased by the introduction of persons from those countries that a ''suspension of the right to introduce persons'' is required in the interest of public health. The statute is not limited to any particular communicable disease, setting, mode of introduction, or geographic location.

[157] Exec. Order No. 5143 (June 21, 1929).

[158] *Id.*

[159] *Id.*

[160] *See* Regulations Governing Embarkation of Passengers and Crew at Ports in China and the Philippine Islands and Their Transportation to the United States Ports Prescribed in Accordance with Executive Order Approved June 21, 1929 (July 11, 1929), included in Conn. Dep't of Health, Connecticut Health Bulletin, vol. 43. No. 9, 324–326 (Sep. 1929).

[161] Exec. Order No. 5143 (June 21, 1929).

B. Other Statutory Authorities Relevant to This Rulemaking

In addition to section 362, other sections of the PHS Act are relevant to this rulemaking, including section 311, 42 U.S.C. 243; section 361, 42 U.S.C. 264; section 365, 42 U.S.C. 268; section 367, 42 U.S.C. 270, and section 368, 42 U.S.C. 271.

Section 311 authorizes the Secretary to accept State and local assistance in the enforcement of quarantine rules and regulations and to assist the States and their political subdivisions in the control of communicable diseases. 42 U.S.C. 243(a).

As previously discussed, section 361 authorizes the Secretary to make and enforce such regulations that in the Secretary's judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the United States. 42 U.S.C. 264(a). It also permits the apprehension, detention, or conditional release of individuals in order to prevent the introduction, transmission, or spread of such communicable diseases as may be specified from time to time in Executive Orders of the President upon the recommendation of the Secretary, in consultation with the Surgeon General. 42 U.S.C. 264(b).

Section 365 provides that it shall be the duty of customs officers and of Coast Guard officers to aid in the enforcement of quarantine rules and regulations.[162] 42 U.S.C. 268(b). Under Section 365, Coast Guard officers have aided in the apprehension and detention of individuals for purposes of quarantine and isolation, particularly at U.S. ports of entry. They have also enforced CDC's No Sail Order with respect to certain cruise ships.[163] Additionally, the customs officers from DHS have assisted CDC in implementing the CDC Order on covered aliens.

The vesting in DHS of a duty to aid HHS/CDC in the enforcement of rules and regulations promulgated under section 362 is critical to the functioning of the PHS Act because DHS has personnel and resources at the operational level that HHS/CDC may require to execute a prohibition on the introduction of persons into the United States. HHS/CDC, for example, does not have officers at POEs who can avert dangers to public health by taking into Federal custody and expelling persons who seek to introduce themselves into the United States in violation of a CDC Order. Nor does HHS/CDC have the operational capability to avert dangers to public health by interdicting vessels that seek to introduce persons into the United States or people who attempt to enter into the United States between ports of entry in violation of a CDC Order. HHS/CDC, like its predecessor agencies and public health agencies at the state level, depends partly on law enforcement agencies with operational capabilities to avert dangers to public health by enforcing HHS/CDC's public health orders against those who seek to violate them.

Section 368 provides that any person who violates regulations implementing sections 361 or 362 will be subjected to a fine or imprisonment for not more than one year, or both. Pursuant to 18 U.S.C. 3559 and 3571, an individual may face a fine of up to $100,000 for a violation not resulting in death, and up to $250,000 for a violation resulting in death. Under section 368, HHS/CDC may refer violators to the U.S. Department of Justice for criminal prosecution. HHS/CDC does not have independent authority under section 368 to impose criminal fines or imprison violators.

IV. Provisions of New Section 71.40 and Changes From Interim Final Rule

This final rule will interpret and implement section 362 and other applicable provisions of the PHS Act to enable the Director to prohibit the introduction of persons into the United States consistent with the statute and applicable law.

There are a few notable changes between this final rule and the IFR. First, this final rule has a slightly different name from the IFR, which was titled ''*Control of Communicable Diseases; Foreign Quarantine: Suspension of Introduction of Persons Into the United States From Designated Foreign Countries or Places for Public Health Purposes*.'' HHS/CDC decided to change the name of the final rule to ''*Control of Communicable Diseases; Foreign Quarantine: Suspension of the Right to Introduce and Prohibition of Introduction of Persons into United States from Designated Foreign Countries or Places for Public Health Purposes*'' to better align with the text of section 362, which uses the phrase ''suspension of the right to introduce'' and states that the Director shall have ''the power to prohibit . . . the introduction of persons.''

Second, the final rule uses the term ''quarantinable communicable disease'' instead of ''communicable disease.'' The purpose of this change is to clarify that these procedures do not apply to all communicable diseases. Instead, these procedures are limited to preventing the introduction of *quarantinable* communicable diseases, which are included in the ''Revised List of Quarantinable Communicable Diseases'' found in Executive Order 13295, as amended by Executive Order 13375 and Executive Order 13674.[164] The current list of diseases includes cholera, diphtheria, infectious tuberculosis, plague, smallpox, yellow fever, viral hemorrhagic fevers (including Lassa, Marburg, Ebola, Crimean-Congo, South American, and others not yet isolated or named), severe acute respiratory syndromes (including Middle East Respiratory Syndrome and COVID–19), and influenza caused by novel or reemergent influenza viruses that are causing, or have the potential to cause a pandemic.

Third, the final rule adds in section 71.40(c) the requirement that the Director include in his or her Order a statement of ''the serious danger posed by the introduction of the quarantinable communicable disease in the foreign country or countries (or one or more designated political subdivisions or regions thereof) or places from which the introduction of persons is being prohibited.'' After considering comments (*infra* section V.), HHS/CDC decided to add this requirement because HHS/CDC agrees that the Director ought to provide the public with a short and concise factual statement on the serious danger of the introduction of the quarantinable communicable disease that justifies the exercise of those powers. For similar reasons, this final rule also adds that any order issued pursuant to it shall state the means by which the prohibition on introduction shall be implemented.

[162] The terms ''officer of the customs'' and ''customs officer'' are defined by statute to mean, ''any officer of the United States Customs Service of the Treasury Department (also hereinafter referred to as the ''Customs Service'') or any commissioned, warrant, or petty officer of the Coast Guard, or any agent or other person, including foreign law enforcement officers, authorized by law or designated by the Secretary of the Treasury to perform any duties of an officer of the Customs Service.'' 19 U.S.C. Sec. 1401(i). Although this provision refers to the Secretary of the Treasury, the Homeland Security Act transferred to the Secretary of Homeland Security all ''the functions, personnel, assets, and liabilities of . . . the United States Customs Service of the Department of the Treasury, including the functions of the Secretary of the Treasury relating thereto . . . [,]'' 6 U.S.C. Sec. 203(1), such that reference to the Secretary of the Treasury should be read to reference the Secretary of Homeland Security.

[163] *See* No Sail Order and Suspension of Further Embarkation, 85 FR 16628, 16631 (Mar. 24, 2020); No Sail Order and Suspension of Further Embarkation; Notice of Modification and Extension and Other Measures Related to Operations, 85 FR 21004, 21007 (Apr. 15, 2020).

[164] Exec. Order 13295 (Apr. 4, 2003), as amended by Exec. Order 13375 (Apr. 1, 2005) and Exec. Order 13674 (July 31, 2014).

Finally, HHS/CDC is changing the use of the word ''vector'' in the definition of ''suspension of the right to introduce.'' While the term ''vector'' may technically include humans in some definitions, it is generally accepted in the scientific community that vectors are living organisms that can transmit infectious diseases between humans or to humans from animals, such as mosquitoes, ticks, flies, and fleas, among others. There is not an equivalent term that applies specifically to humans.

A. Section 71.40(a)

As discussed previously, Section 362 of the PHS Act requires that the Director first ''determine [] that by reason of the existence of any communicable disease in a foreign country there is a serious danger of the introduction of such disease into the United States, and that this danger is so increased by the introduction of such persons . . . from such country that a suspension of the right to introduce such persons . . . is required in the interest of the public health . . . .'' Only then ''shall [the Director] have the power to prohibit, in whole or in part, the introduction of persons . . . from such countries or places as he shall designate in order to avert such danger, and for such period of time as he may deem necessary for such purpose.''

Section 71.40(a) interprets and implements the requirements in section 362 that the Director must fulfill in order to prohibit the introduction of persons into the United States. Specifically, section 71.40(a) establishes that the Director may prohibit, in whole or in part, the introduction into the United States of persons from designated foreign countries (or one or more political subdivisions or regions thereof) or places, only for such period of time that the Director deems necessary to avert the serious danger of the introduction of a quarantinable communicable disease by issuing an order in which the Director determines that:

(1) By reason of the existence of any quarantinable communicable disease in a foreign country (or one or more political subdivisions or regions thereof) or place there is serious danger of the introduction of such quarantinable communicable disease into the United States, and

(2) This danger is so increased by the introduction of persons from such country (or one or more political subdivisions or regions thereof) or place that a suspension of the right to introduce such persons into the United States is required in the interest of public health.

In this final rule, HHS/CDC adds to section 71.40(a) that the prohibition on the introduction into the United States of persons from designated foreign countries (or one or more political subdivisions or regions thereof) or places may be done ''in whole or in part.'' The phrase ''in whole or in part'' appears in section 362, so HHS/CDC believes it is appropriate to include it in the final rule. The authority to prohibit the introduction of persons into the United States is a broad one, and HHS/CDC will tailor its use of the authority to what is required in the interest of public health. If HHS/CDC concludes that public health requires only a prohibition on the introduction of certain persons from foreign countries (or one or more political subdivisions or regions thereof) or places, then HHS/CDC will not prohibit the introduction of all persons from such countries or places.

HHS/CDC may, in its discretion, consider a wide array of facts and circumstances when determining what is required in the interest of public health in a particular situation. Those facts and circumstances may include the same ones that HHS/CDC considers when issuing travel health notices: The overall number of cases of disease; any large increase in the number of cases over a short period of time; the geographic distribution of cases; any sustained (generational) transmission; the method of disease transmission; morbidity and mortality associated with the disease; the effectiveness of contact tracing; the adequacy of state and local health care systems; and the effectiveness of state and local public health systems and control measures.

Additionally, this final rule states that the Director may prohibit the introduction of persons into the United States for such period of time as he or she ''deems necessary to avert the serious danger of the introduction of a quarantinable communicable disease.'' The IFR stated that the Director may prohibit the introduction into the United States of persons for such period of time that he or she ''deems necessary for the public health.'' HHS/CDC makes this change so that the final rule more closely tracks the statutory text.

Finally, in section 71.40(a)(2), HHS/CDC includes the phrase ''suspension of the right to introduce,'' instead of ''suspension of the introduction'' of persons. The final rule language tracks the statute verbatim. HHS/CDC interprets the statutory phrase ''suspension of the right to introduce'' in section 71.40(b)(5). As discussed more fully below, HHS/CDC clarifies that the ''suspension of the right to introduce'' means to cause the temporary cessation of the effect of any law, rule, decree, or order pursuant to which a person might otherwise have the right to be introduced or seek introduction into the United States.

B. Section 71.40(b)

Section 71.40(b) of this final rule defines some of the statutory language that HHS/CDC has incorporated into section 71.40(a) of this final rule.

1. 71.40(b)(1): ''Introduction into the United States''

As explained above, section 71.40(a) of this final rule tracks the language of section 362 of the PHS Act, stating that the Director ''may prohibit, in whole or in part, the introduction into the United States of persons . . . .'' Section 71.40(b)(1) of this final rule defines ''introduction into the United States'' as the movement of a person from a foreign country (or one or more political subdivisions or regions thereof) or place, or series of foreign countries or places, into the United States so as to bring the person into contact with persons or property in the United States, in a manner that the Director determines to present a risk of transmission of a quarantinable communicable disease to persons, or a risk of contamination of property with a quarantinable communicable disease, even if the quarantinable communicable disease has already been introduced, transmitted, or is spreading within the United States.

This definition is consistent with dictionary definitions of ''introduction,'' Congress' and courts' use of the phrase, and the interest of public health.

The word ''introduction'' is the noun form of ''introduce,'' which ''is a flexible and broad term.'' *U.S.* v. *Trek Leather, Inc.,* 767 F.3d 1288, 1298 (Fed. Cir. 2014). Dictionaries from around the eras when both the Act of 1893 and section 362 were enacted contain similarly broad definitions of ''introduction.'' [165] The definitions support HHS/CDC's view that the

[165] *See Universal English Dictionary* 1067 (John Craig ed. 1861) (defining ''introduction'' to include, *inter alia,* ''the act of bringing into a country'' as well as ''the ushering of a person into presence''); *American Dictionary of the English Language* 113 (Noah Webster ed., 1st ed. 1828) (similar definitions); *Funk and Wagnall's New Standard Dictionary of the English Language* (1946) (defining ''introduce'' as to ''bring, lead, or put in; conduct inward; usher in; insert'' and ''introduction'' as the ''act of introducing, in any sense, as of inserting, bringing into notice or use, making acquainted; as, the *introduction* of a key into a door, or of one person to another'').

''introduction'' of a person into the United States can include a person's bringing of himself or herself into the United States, or a third party's bringing of the person into the United States.

Congress has used the words ''introduce'' and ''introduction'' elsewhere in Title 42 of the U.S. Code when referring to the movement into commerce of goods that cause pollution. 42 U.S.C. 7545(c) (''The Administrator may . . . control or prohibit the . . . introduction into commerce . . . of any fuel or fuel additive . . .''), 7522(a)(1) (prohibiting ''the introduction, or delivery for introduction, into commerce,'' of certain motor vehicles). Courts have explained that ''introduction into commerce *commences* upon the arrival of imported goods upon United States soil, but introduction does not necessarily end there.'' *United States* v. *Steinfels,* 753 F.2d 373, 377 (5th Cir. 1985). Once goods are on U.S. soil and clear customs, the seller of the goods may continually introduce them into commerce through his or her conduct. *Id.* at 378. Thus, ''introduction'' may be a continuing process, as opposed to a single event that occurs at a fixed point in time.

The dictionaries, other statutes within Title 42, and case law are all helpful to the interpretation of the phrase ''introduction into the United States.'' None of those authorities, however, squarely address how closely a person must interact with the United States and for how long to constitute an ''introduction'' in the context of transmitting disease. The interpretation of ''introduction'' is within CDC's delegated statutory authority. *City of Arlington, Tex.* v. *F.C.C.,* 569 U.S. 290, 296 (2013) (''Congress knows to speak . . . in capacious terms when,'' as here, ''it wishes to enlarge[ ] agency discretion''). It is also squarely within the expertise of HHS/CDC: It involves scientific and technical knowledge and experience regarding communicable diseases generally, and the application of such knowledge and experience to the unique facts and circumstances of the specific quarantinable communicable disease that threatens public health.[166]

HHS/CDC's regulatory definition in section 71.40(b)(1) resolves the ambiguity by making clear that the introduction of a person into the United States can occur, for example, when a person on U.S. soil moves further into the United States, and comes into contact with new persons or property in ways that increase the risk of spreading the quarantinable communicable disease. ''Introduction'' does not necessarily conclude the instant that the person first steps onto U.S. soil. If the person has been on U.S. soil, and HHS/CDC (through CBP) stops the person's movement before he or she comes into contact with new persons or property in a way that risks spreading a quarantinable communicable disease, then HHS/CDC has prevented the introduction of the person under section 362. For example, if a person walked from Canada to Vermont, walked 15 miles into the United States, and was intercepted by DHS before coming into contact with new persons or property, and returned to Canada without entering a congregate setting, then HHS/CDC would have prevented the ''introduction'' of the person into the U.S.

A person who has been in the United States for longer than the incubation period of the quarantinable communicable disease, and has not yet exhibited symptoms or tested positive for the quarantinable communicable disease, may have finished introducing himself or herself into the United States. That determination, however, will be based on HHS/CDC's application of its scientific and technical expertise to the specific facts and circumstances.

2. 71.40(b)(2): ''Prohibit, in whole or in part, the introduction into the United States of persons''

In section 362, Congress gave the Secretary ''the power to prohibit, in whole or in part, the introduction [into the United States] of persons . . . from such countries or places as he shall designate in order to avert'' an increase in the ''serious danger of the introduction of [any communicable disease in a foreign country] into the United States.'' Congress' grant of authority is general in scope. When Congress enacted section 362, the power to ''prohibit'' meant the power ''to forbid; to interdict by authority; to hinder; to debar; to prevent; [or] to preclude.'' [167] Congress did not specify how the Secretary should go about debarring, preventing, or precluding the introduction of persons ''in order to avert'' the increased danger to public health. Nor did Congress specify how prohibitions of persons ''in whole'' differ from prohibitions of persons ''in part.''

It has long been recognized that ''where a general power is conferred or duty enjoined, every particular power necessary for the exercise of the one, or the performance of the other, is also conferred.'' [168] Here, HHS/CDC identifies particular powers that it may exercise under section 362 by defining the phrase to ''[p]rohibit, in whole or in part, the introduction into the United States of persons'' to mean ''to prevent the introduction of persons into the United States by suspending any right to introduce into the United States, physically stopping or restricting movement into the United States, or physically expelling from the United States some or all of the persons.'' The definition clarifies that prohibitions on introduction could include not only CDC orders suspending rights to introduce persons, but also actions by HHS/CDC or its Federal or state partners to physically expel persons from, or stop or restrict the movement of persons into, the United States. The definition further explains that the Director may apply different prohibitions against some or all of the persons from the foreign country who seek introduction into the United States. The Director may, for example, suspend all rights to introduce all persons from the foreign country, request that DHS physically expel the cohort of persons from the foreign country who are already on U.S. soil, and further request that DHS stop the movement into the United States of any other persons from the foreign country who are not on U.S. soil.

These particular powers are necessary because the introduction into the United States of persons from a foreign country may continue after they have crossed a U.S. land border and moved onto U.S. soil. If such persons are coming into

[166] The courts frequently defer to the CDC's judgment on such issues. *In re Approval of Judicial Emergency Declared in Eastern District of California,* 956 F.3d 1175, 1181 (9th Cir. 2020) (determining that it would not be safe to resume normal court operations until ''the CDC lifts its guidance regarding travel-associated risks and congregate settings and physical distancing''); *Valentine* v. *Collier,* 956 F.3d 797, 801 (5th Cir. 2020) (staying preliminary injunction that required prison officials to immediately implement measures in excess of those suggested by CDC guidelines); *Elim Romanian Pentecostal Church* v. *Pritzker,* 962 F.3d 341 (7th Cir. 2020) (upholding against constitutional challenge an executive order that was grounded in CDC guidelines); *Hickox* v. *Christie,* 205 F.Supp.3d 579, 598–99 (D.N.J. 2016) (relying on CDC recommendations to determine the appropriate way to assess the risk from Ebola).

[167] Prohibit, *Universal English Dictionary* 458 (John Craig ed. 1869); *see also* Prohibit, *Funk and Wagnall's New Standard Dictionary of the English Language* 1980 (1946) (''to forbid, especially by authority or legal enactment . . .''); Prohibit, *Oxford English Dictionary* 1441 (1933) (''to forbid (an action or thing) by or as by a command or statute; to interdict'').

[168] *Luis* v. *United States,* 136 S. Ct. 1083, 1097 (2016) (Thomas, J., concurring) (quoting Thomas Cooley, *Constitutional Limitations* 63 (1868)); *see also* 1 J. Kent, *Commentaries on American Law* 464 (13th ed. 1884) (''whenever a power is given by a statute, everything necessary to the making of it effectual or requisite to attain the end is implied'').

contact with others in the United States in a manner that the Director determines to present a risk of transmission of a quarantinable communicable disease, or a risk of contamination of property, then the Director must have the power to stop the further movement of these persons into the United States or else the Director's power to prohibit the introduction of persons would be rendered meaningless. Specifically, the Director must have the power to prevent the further movement of such persons into the United States through quarantine, isolation, or expulsion. As discussed previously, quarantine and isolation may be unworkable under certain circumstances or for certain populations. In such instances, expulsion may be the only means by which the Director can fulfill the purpose of the statute.

To the extent section 362 is silent or ambiguous as to the particular powers available to HHS/CDC, the resolution of that interpretive issue is within HHS/CDC's delegated statutory rulemaking authority. *City of Arlington, Tex.,* 569 U.S. at 296. It is also within the expertise of HHS/CDC. HHS/CDC has scientific and technical knowledge and experience with public health tools for slowing the introduction into the United States of quarantinable communicable diseases from abroad. HHS/CDC knows what public health tools HHS/CDC must have readily available in order to avert the increased danger to public health presented by a communicable disease from abroad. Here, HHS/CDC interprets section 362 as conferring the power to expel persons from the United States because HHS/CDC cannot otherwise fulfill the purpose of section 362.

3. 71.40(b)(3): ''Serious danger of the introduction of such quarantinable communicable disease into the United States''

As discussed above, section 362 of the PHS Act requires that the Director determine that the existence of a communicable disease in a foreign country presents ''a serious danger of the introduction of such disease into the United States'' before he or she prohibits the introduction of persons from the foreign country into the United States. At the time Congress enacted section 362, ''serious'' meant ''[g]rave in manner or disposition; solemn; not light or volatile,'' [169] ''[g]rave and earnest in quality, manner, feeling or disposition; not inclined to joke or trifle,'' or ''[o]f great or relating to a matter of importance, or having important or dangerous possible consequences.'' [170] Congress, however, did not explain when the danger of the introduction of a communicable disease becomes ''grave in manner'' or ''of great weight and importance.'' In the public health context, the term ''serious danger'' is ambiguous.

The resolution of the ambiguity is within HHS's delegated statutory rulemaking authority. *City of Arlington, Tex.,* 569 U.S. at 296. It is also within HHS/CDC's scientific and technical expertise. HHS/CDC is best equipped to make judgments about the dangers presented by quarantinable communicable diseases abroad and the measures that should be taken to mitigate those dangers.

To resolve the ambiguity, HHS defines ''serious danger of the introduction of such quarantinable communicable disease into the United States'' in 71.40(b)(3) as ''the probable introduction of one or more persons capable of transmitting the quarantinable communicable disease into the United States, even if persons or property in the United States are already infected or contaminated with the quarantinable communicable disease.'' This regulatory definition clarifies that, even if persons or property in the United States are already infected or contaminated with a quarantinable communicable disease, the introduction of one or more additional persons capable of disease transmission in the same or different localities can nevertheless present a serious danger of the introduction of the disease into the United States. Additionally, this regulatory definition clarifies that the danger of introduction becomes serious when one or more additional persons capable of disease transmission would more likely than not be introduced into the United States. To be clear, this regulatory definition does not require the Director to make a numerical finding or a quantitative or empirical showing of probability in order to prohibit the introduction of persons. The Director may make a qualitative determination, based on the known facts and circumstances, that the introduction of one or more persons capable of transmitting the quarantinable communicable disease is probable.

HHS/CDC's experience during the COVID–19 pandemic informs its interpretation of the statutory language. The initial epicenters of the disease in the United States included two large urban areas: Seattle and New York City. At that time, the danger of the introduction of COVID–19 into other border states from Canada and Mexico, without regard to the outbreaks in Seattle and New York City, was manifest. The issuance of the CDC Order prohibiting the introduction of covered aliens into the United States was in the interest of public health because it mitigated the serious danger of cross-border introduction of COVID–19 in the other border states.

4. 71.40(b)(4): ''Place''

HHS/CDC defines the term ''place'' to include any location specified by the Director, including any carrier, whatever the carrier's flag, registry, or country of origin. This clarifies that when HHS/CDC refers to ''place'' in this final rule, it refers not just to territory within or outside of a country, but also to carriers, as that term is defined in 42 CFR 71.1,[171] regardless of the carrier's flag, registry, or country of origin.

5. 71.40(b)(5): ''Suspension of the right to introduce''

In section 71.40(b)(5), this final rule defines ''suspension of the right to introduce,'' a phrase used in section 362, to mean ''to cause the temporary cessation of the effect of any law, rule, decree, or order, pursuant to which a person might otherwise have the right to be introduced or seek introduction into the United States.''

The regulatory definition tracks the definition of the word ''suspend'' from the late 19th century. *Universal English Dictionary* 815 (John Craig ed. 1869) (defining ''suspend'' in part as ''to cause to cease for a time from operation or effect, as, to *suspend* the habeas corpus act'') (emphasis in original). The definition of ''suspend'' in the early 20th century was substantially the same. *See Funk and Wagnall's New Standard Dictionary of the English Language* 2432 (1946) (defining ''suspend'' as ''to cause to cease for a time; hold back temporarily from operation; interrupt; intermit; stay; as, to *suspend* the rules; to *suspend* business; *suspend* sentence''); *Oxford English Dictionary* 255 (1933) (defining ''suspend'' as to ''cause (of a law or the like) to be for the time no longer in force; to abrogate or make inoperative temporarily'').

The regulatory definition is also consistent with the long-standing use of the word ''suspend'' to describe the

[169] *Serious, Universal English Dictionary* 661 (John Craig ed. 1869).

[170] *Serious, Funk and Wagnall's New Standard Dictionary of the English Language* 2233 (1946). A contemporary dictionary defines ''serious'' as ''excessive or impressive in quality, quantity, extent, or degree.'' *Serious,* Merriam-Webster Dictionary, *https://www.merriam-webster.com/dictionary/serious* (last visited Aug. 28, 2020).

[171] 42 CFR Sec. 71.1 defines ''carrier'' to mean ''a ship, aircraft, train, road vehicle, or other means of transport, including military.''

temporary cessation of the effect of other U.S. laws. The Suspension Clause of the Constitution, which authorizes the temporary suspension of the privilege of the writ of habeas corpus in times of rebellion or invasion, is a prime example. U.S. Const. art. I, sec. 9, cl. 2. Additional examples of such suspensions are found in the U.S. Code.[172]

Finally, the regulatory definition is consistent with the legislative history of section 362, as reflected in the debates concerning its immediate (and substantially similar) statutory predecessor, section 7 of the Act of 1893. The debates surrounding that provision show that members of Congress understood they were granting the President the authority to suspend immigration. *See* 24 Cong. Rec. 393 (1893) (statement of Sen. Hoar) (the statute would grant the ''power to suspend immigration altogether, either temporarily or permanently as a health device''); *see also id.* at 393–94 (statement of Sen. Chandler) (recognizing that section 7 would give the President the power to suspend immigration in his discretion, whenever there is danger of infection); 24 Cong. Rec. 470 (Jan. 10, 1893) (statement of Sen. Gray) (stating that the exigency posed by ''invasion of contagious disease is sufficient . . . to justify this extraordinary power of the entire suspension of immigration.''). It is reasonable to conclude that Congress in 1944 had the same understanding, because it re-enacted the same phrase and there is no legislative history to the contrary.

A ''right to introduce'' persons may conceivably arise under the Federal laws, rules, decrees, or orders governing aviation, shipping, trade, immigration, law enforcement, or correctional facilities, among others. The Director is not obligated to identify each specific ''right to introduce'' an individual person that the Director suspends when issuing an order under section 362 and this final rule. An order under section 362 suspends the effect of ''any law, rule, decree, or order'' under which an individual person would ''otherwise have the right to be introduced or seek introduction into the United States.''

C. Section 71.40(c)

HHS/CDC may suspend the introduction of persons into the United States from certain places, and for certain periods, through an administrative order executed by the Director. In section 71.40(c), HHS/CDC describes the required contents of such order. Any order issued by the Director under section 71.40 shall include a statement of the following:

(1) The foreign countries (or one or more political subdivisions or regions thereof) or places from which the introduction of persons is being prohibited.

(2) The period of time or circumstances under which the introduction of any persons or class of persons into the United States is being prohibited.

(3) The conditions under which that prohibition on introduction will be effective in whole or in part, including any exceptions that the Director determines are appropriate.

(4) The means by which the prohibition will be implemented.

(5) The serious danger posed by the introduction of the quarantinable communicable disease in the foreign country or countries (or one or more political subdivisions or regions thereof) or places from which the introduction of persons is being prohibited.

This last requirement was not included in the IFR. However, after considering comments, HHS/CDC decided to add it. The agency has broad powers under section 362, and the exercise of those powers pursuant to this final rule could have significant consequences. HHS/CDC agrees that the Director ought to provide the public with a short and concise factual statement on the serious danger of the introduction of the quarantinable communicable disease that justifies the exercise of those powers. For similar reasons, this final rule also adds that any order issued pursuant to it shall state the means by which the prohibition on introduction shall be implemented.

Any ''class of persons'' identified by the Director pursuant to the second requirement would be defined based on public health criteria, which may include the epidemiology of the quarantinable communicable disease, as well as the geographic area and specific locations of the persons. Implementation of any order would also take into account any international obligations of the United States. Accordingly, the Director may make exceptions for certain persons in an order, including: Aliens whose travel falls within the scope of section 11 of the United Nations Headquarters Agreement or who would otherwise be allowed entry into the United States pursuant to United States obligations under applicable international agreements; diplomatic travelers; U.S. government employees; and those travelling for humanitarian purposes.

D. Section 71.40(d)

This final rule adds a requirement in Section 71.40(d) that the Director shall, when issuing any order under this section, and as practicable under the circumstances, consult with all Federal departments or agencies that would be impacted by the order. The Director shall, as practicable, provide the Federal departments or agencies with a copy of the order before issuing it. The purpose of this requirement is to ensure that HHS/CDC accounts for the interests of the other departments or agencies in the order, includes appropriate exceptions in the order, and promotes a coordinated and transparent Federal response to the quarantinable communicable disease. It may sometimes be impracticable to engage in such consultation before taking action to protect the public health. In those circumstances, the Director shall consult with Federal departments and agencies as soon as practicable after issuing his or her order, and may then modify the order as appropriate.

HHS/CDC might at times rely on (1) state and local authorities who agree to help implement orders issued pursuant to section 71.40, or (2) other Federal agencies to implement and execute the orders issued under this section. If the order will be implemented in whole or in part by state and local authorities under 42 U.S.C. 243(a), the Director's order shall explain the procedures and standards by which those state or local authorities are expected to aid in the order's enforcement. Similarly, if the order will be implemented in whole or in part by designated customs officers or the United States Coast Guard under 42 U.S.C. 268(b), or another Federal department or agency, then the Director, in coordination with the Secretary of Homeland Security or the head of the other applicable department or agency, shall explain in the order the procedures and standards by which any authorities, officers, or agents are expected to aid in the enforcement of

[172] *See, e.g.,* 10 U.S.C. Sec. 123(a) (''In time of war, or of national emergency . . . the President may suspend the operation of any provision of law relating to the promotion, involuntary retirement, or separation of commissioned officers . . . .''); 22 U.S.C. Sec. 289 (stating that congressional authorization to accept membership in the International Refugee Organization does not constitute action ''which will have the effect of . . . suspending . . . any of the immigration laws or other laws of the United States''); 22 U.S.C. Sec. 5722(a) (authorizing the President to issue an order suspending the application of United States law to Hong Kong ''whenever the President determines that Hong Kong is not sufficiently autonomous''); 46 U.S.C. Sec. 3101 (''When the President decides that the needs of foreign commerce require, the President may suspend a provision of this part for a foreign-built vessel registered as a vessel of the United States on conditions the President may specify'').

the order, to the extent that they are permitted to do so under their existing legal authorities.

E. Section 71.40(e)

Section 71.40(e)(1) provides that this final rule does not apply to members of the armed forces of the United States and associated personnel for whom the Secretary of Defense provides assurance to the Director that the Secretary of Defense has taken or will take measures such as quarantine or isolation, or other measures maintaining control over such individuals, to prevent the risk of transmission of the quarantinable communicable disease into the United States. HHS/CDC includes this exception because the Secretary of Defense has the authority and means to prevent the introduction of a quarantinable communicable disease into the United States from his or her personnel returning from foreign countries. Therefore, this final rule need not apply to Department of Defense personnel.

In addition, section 71.40(e)(2) provides that this final rule does not apply to United States government employees, contractors, or assets on orders abroad, or their accompanying family members who are on their orders or are members of their household if the Director receives assurances from the relevant head of agency and determines that the head of the agency or department has taken or will take, measures such as quarantine or isolation to prevent the risk of transmission of a quarantinable communicable disease into the United States.

F. Section 71.40(f)

Section 71.40(f) of the IFR provided that the IFR did not apply to U.S. citizens or LPRs. The IFR stated that determining the appropriate protections for U.S. citizens and LPRs would benefit from additional consideration and public comments.[173] HHS/CDC received comments on the potential application of section 362 of the PHS Act to U.S. citizens and LPRs. Given the complex and important legal and policy questions presented by the potential application of section 362 to U.S. citizens, U.S. nationals, and LPRs, HHS/CDC has determined that it would be in the public interest to provide notice of, and accept comments on, any regulatory text that HHS/CDC would propose to apply to U.S. citizens, U.S. nationals, and LPRs. Further notice and comment would enable HHS/CDC to provide the public with a more fulsome explanation of the potential public health threats and policy rationales that support the regulatory text and seek further input from the public. For now, HHS/CDC finalizes 71.40(f) to state: ''This section shall not apply to U.S. citizens, U.S. nationals, and lawful permanent residents.''

G. Section 71.40(g)

In section 71.40(g), HHS/CDC adds a severability clause. HHS/CDC believes this final rule complies with all applicable law, and that the invalidation of this final rule in its entirety would ultimately harm U.S. public health. In the event that any provision of this final rule should be held invalid or unenforceable, either facially or as applied, the remaining provisions shall remain valid with the maximum effect as permitted by law.

V. Responses to Public Comments

The Department provided a 30-day comment period, which closed on April 24, 2020. The Department received 218 public comments to the IFR, and every comment was read and considered. HHS/CDC's responses to public comments in this section of this final rule respond directly to comments regarding the procedures established by the IFR and finalized in this final rule. In the interest of public transparency, HHS/CDC also responds to some comments about the CDC Order on covered aliens (as opposed to the procedures established by the IFR and finalized in this final rule). In some instances, the prior sections of this final rule address the issues raised by commenters. Additionally, HHS/CDC does not respond to comments that are directed at other departments or agencies or that are otherwise beyond the scope of this final rule. Commenters included professional organizations, industry representatives, religious organizations, and the general public. After considering the comments, the Department finalizes the IFR with the changes described in Section III.

General Comments

Comment: Some commenters stated 30 days was not sufficient time to comment on the proposed rule and asked the Department to extend the comment period.

Response: HHS/CDC respectfully disagrees that the 30-day comment period was insufficient. HHS/CDC notes that the Administrative Procedure Act (APA) does not have a minimum time period for comments. Further, E.O. 13563 recommends a 60-day comment period, when feasible. Considering the current public health emergency, HHS/CDC determined that a 30-day comment period was sufficient for this rulemaking. The comment period closed 30 days after publication of the IFR in the **Federal Register** on March 24, 2020.

Comment: Other commenters stated that the rule should have been issued pursuant to the agency rulemaking process governed by section 553(b) of the APA, 5 U.S.C. 553. These commenters noted that although the agency's justification for applying the ''good cause'' emergency exception in section 553(b)(3)(B) is understandable in the context of the COVID–19 pandemic, the rule is intended to last beyond the current public health crisis, so the ''good cause'' exception should not apply.

Response: HHS/CDC respectfully disagrees. Section 553(b)(3)(B) of the APA authorizes a department or agency to dispense with the prior notice and opportunity for public comment requirement when the agency, for ''good cause,'' finds that notice and public comment are ''impracticable, unnecessary, or contrary to the public interest.'' Allowing for prior notice and opportunity for public comment on the interim final rule was impracticable and contrary to the public interest because it would have prevented HHS from establishing procedures to allow it to quickly address the COVID–19 pandemic through the issuance of orders such as the one suspending the introduction of covered aliens into the United States. COVID–19 has spread rapidly, and taking prompt measures to slow the spread of the disease was necessary to protect public health.

Comment: Commenters stated that the IFR grants new public health powers to the Executive Branch that did not already exist, or shifts political accountability for the exercise of public health powers from the President (who is elected) to the CDC Director (who is a principal officer appointed by the President and confirmed by the U.S. Senate).

Response: Since 1944, section 362 of the PHS Act has provided that whenever the Surgeon General (now the CDC Director, by delegation from the HHS Secretary) determines that by reason of the existence of any communicable disease in a foreign country there is serious danger of the introduction of such disease into the United States, and that this danger is so increased by the introduction of persons or property from such country that a suspension of the right to introduce such persons and property is required in the interest of the public health, the Surgeon General (now the CDC Director), in accordance with regulations approved by the President,

[173] 85 FR 16559, 16564 (Mar. 24, 2020).

shall have the power to prohibit, in whole or in part, the introduction of persons and property from such countries or places as he shall designate in order to avert such danger, and for such period of time as he may deem necessary for such purpose. A predecessor statute dating back to 1893 granted the President similar authority. The IFR and this final rule implement the long-standing statutory authority of the Executive Branch, consistent with the design of Congress in 1944.

Comment: A number of commenters provided comments about the CDC Order on covered aliens, not the IFR or this final rule. These included comments about the particular facts underlying the CDC Order, particular language used in the Order, such as the meaning of ''covered aliens,'' and the public health analysis in the CDC Order. Other commenters seemed to misunderstand the differences between the CDC Order and the IFR and this final rule, or disagreed with the Director's determination to apply the CDC Order only to CBP facilities at land borders.

Response: We believe these comments confuse the IFR, the final rule, and the CDC Order on covered aliens. The CDC Order relates exclusively to the COVID–19 pandemic, defines ''covered aliens,'' and prohibits the introduction of ''covered aliens'' into the United States through congregate settings in CBP facilities at land borders. This final rule does not define ''covered aliens.'' Nor does this final rule prohibit the introduction of any persons into the United States without an administrative order issued by the Director. Rather, this final rule finalizes the procedures for the Director to use when he or she determines that a temporary prohibition on the introduction of persons from a foreign country into the United States is necessary in the interest of U.S. public health. The procedures in this final rule are general in nature; they are not limited to a specific quarantinable communicable disease or person or category of persons.

Comment: A number of commenters stated that the period of preventing introduction of COVID–19 to U.S. populations has now passed and that our highest priority as a nation must be to reduce community spread through the current tools we have available such as self-isolation.

Response: HHS/CDC disagrees with the proposition that HHS/CDC should limit its response to the COVID–19 pandemic to the use of conditional release orders or recommendations to self-quarantine or self-isolate or similar public health tools. HHS/CDC and its state and local partners are using public health tools such as quarantine, isolation, and conditional release to mitigate the spread of COVID–19. But the use of those public health tools does not and should not foreclose the appropriate use of other public health tools—including the statutory authority to prohibit the introduction of persons—to combat the disease. HHS/CDC needs the flexibility to deploy the full array of available public health tools in response to the COVID–19 pandemic, which continues to evolve within the United States and abroad.

Even now, the introduction into the United States of persons from foreign countries with COVID–19 would increase the serious danger of further introduction of COVID–19 into different areas of the United States. The section 362 authority and this final rule remain critical to mitigating the further introduction of COVID–19 into those areas.

Moreover, this final rule seeks to implement a permanent procedure which the Director may use to issue an order suspending the right to introduce persons into the United States when there is a serious danger of the introduction of a quarantinable communicable disease into the United States. This final rule is needed to address not only the COVID–19 pandemic, but also future public health threats.

Comments: A commenter stated that the IFR is arbitrary and capricious because the agency has failed to consider important factors, such as the impact that the CDC Order on covered aliens will have on individuals who seek to enter the United States and on those in the United States who are awaiting their arrival; reliance interests; and alternatives to suspending migration, such as quarantine or isolation of persons.

Response: This final rule explains why the benefits to U.S. public health that flow from mitigating the introduction of quarantinable communicable diseases into the United States may outweigh any impact on family well-being that may result from deferred visitation of family members in the United States. The same reasoning applies to non-family members who await the arrival of persons in the U.S. This final rule also discusses reasonable alternatives that were considered, and why prohibitions on the introduction of persons may sometimes be more appropriate public health measures than quarantine and isolation.

Comment: Some commenters stated that the final rule would have a negative effect on the economy because immigrants from Mexico or Canada would be unable to come to the United States to participate in the labor market.

Response: This final rule provides that when issuing any Order, the Director shall, as practicable under the circumstances, consult with all Federal departments or agencies whose interests would be impacted by the Order, which may include the U.S. Departments of Agriculture, Commerce, and the Treasury. Any potential economic consequences of an Order would be considered by the Director as part of the consultation process.

Comment: A number of commenters opined that expulsions of aliens to Central America and Mexico may exacerbate public health challenges during the COVID–19 pandemic.

Response: These comments appear to be directed at the CDC Order on covered aliens issued pursuant to the IFR, and not this final rule. This final rule provides a mechanism for the CDC Director to prohibit the introduction of persons when he or she determines that by reason of the existence of any communicable disease in a foreign country, there is serious danger of the introduction of such disease into the United States, and that this danger is so increased by the introduction of persons from such country that a suspension of the right to introduce such persons is required in the interest of public health. If the CDC Director determines, in the exercise of his or her scientific and technical expertise, that these conditions are met and expulsion is in the interest of the public health, he or she may issue an administrative order pursuant to this final rule that requires expulsion. This final rule, standing alone, does not require expulsion.

Comments: Some commenters stated that there could be particular vulnerability or hardship to ''LGBTIQ'' persons, women, or children.

Response: HHS/CDC works to protect the United States from health, safety and security threats, both foreign and in the United States. Whether diseases start at home or abroad, are chronic or acute, curable or preventable, human error or deliberate attack, HHS/CDC fights disease and supports communities and citizens to do the same. HHS/CDC believes this final rule will help HHS/CDC accomplish its mission. Under this final rule, the Director would consult with other Federal departments and agencies whose interests would be impacted by any Order, including the U.S. Department of Homeland Security, and would have the discretion to include exceptions for persons in the Order when appropriate.

Comments: A number of commenters stated that expelling an alien under section 362 of the PHS Act violates the United States' obligations under the 1967 Protocol relating to the Status of Refugees (1967 Refugee Protocol) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and violates statutory protections, including the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), the CAT regulations implemented pursuant to the Foreign Affairs Reform and Restructuring Act of 1998 (FARRA) (8 U.S.C. 1231 note), the asylum and withholding provisions at 8 U.S.C. 1158 and 1231(b)(3), and the American Declaration on the Rights and Duties of Man. Some commenters said the IFR fails to provide legal process to individuals subject to the rule, including asylum-seekers, even though U.S. law guarantees aliens an opportunity to request protection at POEs after crossing into the United States. Commenters also stated that expelling an alien who is a minor violates the Stipulated Settlement Agreement in *Flores* v. *Barr,* 934 F.3d 910 (C.D.Cal. 2019) (the ''Flores Settlement Agreement,'' or the ''FSA'').

Responses: These comments are directed to the CDC Order on covered aliens issued pursuant to the IFR, and not this final rule. To the extent these comments are directed to both the CDC Order and this final rule, HHS/CDC respectfully disagrees with them. In section 362 of the PHS Act, Congress authorized the suspension of the introduction of persons into the United States when a suspension of the right to introduce persons is required in the interest of U.S. public health. Congress did not exempt from the scope of section 362 any category of persons or any rights of introduction under specific laws, including any found in Title 8 of the U.S. Code.

The TVPRA and the FSA

The requirements of the TVPRA and FSA do not generally apply to situations where the Director has determined that a suspension of the right to introduce persons is required in the interest of public health. The *Flores* settlement agreement and the statutory provisions providing that unaccompanied alien children (UACs) [174] are to be transferred to the care and custody of HHS's Office of Refugee Resettlement (ORR) are directed towards the continuing custody and the conditions of confinement in which minors are held in custody within the United States. *See, e.g.,* 6 U.S.C. 279 (defining ''UAC'' in subsection 279(g) and referring to ''the care of unaccompanied alien children'' in subsection 279(a)); *Flores* Settlement Agreement at 7 (defining the relevant class as ''[a]ll minors who are detained in the legal custody of the INS'').

The TVPRA provides specific processes governing the custody and removal of UACs under Title 8. But the CDC has prohibited the introduction of aliens under section 362 of the PHS Act for public health reasons without regard to the age of the alien (or the persons accompanying him), and actions to enforce the CDC prohibition necessarily involve the prohibition on entering or return of an alien outside of Title 8's procedures.

Therefore, suspension of introduction, and the derivative expulsion authority under section 362 of the PHS Act generally operates independently from Title 8 with respect to minors and other persons. The custody requirement under 8 U.S.C. 1232(b)(3) within the TVPRA is not a rule governing the procedures by which an alien is removed or expelled. Rather, it is a statutory obligation that applies to all departments and agencies in the U.S. government, whether or not the government is removing UACs pursuant to Title 8 (or expelling minors under Title 42). This subsection requires only that UACs in the custody of a Federal department or agency be transferred to the custody of HHS within 72 hours unless ''exceptional circumstances'' apply. 8 U.S.C. 1232(b)(3). The current public health emergency plainly would qualify as an ''exceptional circumstance[ ]'' permitting an exception from the 72-hour transfer requirement.

The FSA governs the conditions under which minors may be held in government custody in connection with their arrest or detention under immigration laws. FSA ¶ 10 (defining the class as ''All minors who are detained in the legal custody of the INS.''), ¶ 12, ¶ 14 (''Where the INS determines that the detention of the minor is not required either to secure his or her timely appearance before the INS or the immigration court, or to ensure the minor's safety or that of others, the INS shall release a minor from its custody without unnecessary delay . . . .''). Minors who are subject to a prohibition on introduction under section 362 of the PHS Act would not be arrested or detained under the immigration laws and they are expelled from the United States as expeditiously as possible. Minors who comply with a public health order under section 362 would not be arrested for violating the PHS Act or the order either. The FSA therefore does not apply to minors who are quarantined, isolated, or expelled under a public health order.

Indeed, ''the [FSA] is a binding contract and a consent decree. . . . It is a creature of the parties' own contractual agreements and is analyzed as a contract for purposes of enforcement.'' *Flores* v. *Barr,* 407 F. Supp. 3d 909, 931 (C.D. Cal. 2019); *see also City of Las Vegas* v. *Clark Cty.,* 755 F.2d 697, 702 (9th Cir. 1985) (''A consent decree, which has attributes of a contract and a judicial act, is construed with reference to ordinary contract principles.''). The FSA applies only to those minors in the ''legal custody'' of the former Immigration and Naturalization Service (INS) as the term was intended by the parties when the Agreement was signed in 1997. FSA ¶¶ 4, 10. That means it applies to minors who are in immigration custody under Title 8. The Agreement does not encompass, was not intended to encompass, and did not anticipate custody incident to a public health order issued pursuant to the PHS Act. If a minor were expelled under section 362, that minor would not be in the ''legal custody'' of any legal successor to any party to the FSA. Although the FSA does not explicitly define ''legal custody,'' it recognizes a critical distinction between *legal custody* and *physical custody.* The FSA provides for the INS in some instances to place a minor in the *physical custody* of a licensed program, but the FSA specifies that the minor remains in the *legal custody* of the INS. FSA ¶ 19; *see also Gao* v. *Jenifer,* 185 F.3d 548, 551 (6th Cir. 1999) (explaining that the INS's contracts with these third-party programs explicitly state that the INS retains legal custody while the programs have physical custody). While a minor is in the physical custody of a licensed program, the INS retains the sole authority to transfer and release the minor (except that the licensed program can transfer *physical* custody in emergencies). FSA ¶ 19. Thus, paragraph 19 makes clear that under the Agreement, the ''legal custody of the INS'' means custody at the direction of the INS under relevant immigration

[174] ''[T]he term 'unaccompanied alien child' [UAC] means a child who—(A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom—(i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and custody.'' 6 U.S.C. 279(g). The Director of the Office of Refugee Resettlement (ORR) of HHS is responsible, among other things, for ''coordinating and implementing the care and placement of [UAC] who are in Federal custody by reason of their immigration status.'' 6 U.S.C. Sec. 279(b)(1)(A).

laws, which grant the INS authority over the detention or release of the minor. *Id.*

The original class certified in the *Flores* litigation included only individuals under the age of eighteen who ''are, or will be arrested and detained pursuant to 8 U.S.C. 1252.'' In 1986, when the class was certified, 8 U.S.C. 1252 governed discretionary detention during deportation proceedings. At the time the FSA was signed in 1997, the INS's legal authority to detain minors remained within Title 8 of the U.S. Code. 8 U.S.C. 1225(b), 1252(a); *see also Reno* v. *Flores,* 507 U.S. 292, 294–95 n.1 (1993). Such detention was incident to immigration removal proceedings, the authority for which was also detailed in Title 8. 8 U.S.C. 1225(a), 1226, 1231, 1252(b). The authority for immigration proceedings, as well as the authority to hold minors in immigration custody, is still found in Title 8 today. *See* 8 U.S.C. 1225, 1226, 1231, and 1232. The successors of the INS who carry out these immigration functions today are CBP, ICE, and U.S. Citizenship and Immigration Services, all of which are part of DHS, as well as the ORR in HHS with respect to UACs. *See* Homeland Security Act of 2002, 402, 462, 1512, Public Law 107–296, 116 Stat. 2135 (November 25, 2002) (codified at 6 U.S.C. 202, 279, 552); TVPRA, 8 U.S.C. 1232.

CDC, though part of HHS along with ORR, is not a successor to the INS with respect to the detention addressed in the FSA. Custody incident to the government's implementation of order issued by the Director under its section 362 authority is different from the Title 8 immigration custody that the Agreement covers.[175] Section 362 provides the Director with ''the power to prohibit, in whole or in part, the introduction of persons and property from such countries or places as he shall designate in order to avert such danger, and for such period of time as he may deem necessary for such purpose.'' Custody incident to implementation of this provision is not pursuant to immigration laws. The Director, not DHS, has the legal authority for these processes.[176] Individuals processed under Title 42 are not processed for immigration enforcement actions.

At the time the FSA was signed in 1997, the parties could not have anticipated the COVID–19 pandemic in 2020, and that some of the legal-successor agencies to the INS would be charged with implementing emergency procedures on behalf of the Director under section 362. The ''basic goal of contract interpretation'' is to give effect to the parties' mutual intent ''at the time of contracting.'' *Founding Members of the Newport Beach Country Club* v. *Newport Beach Country Club, Inc.,* 109 Cal. App. 4th 944, 955 (Cal. Ct. App. 2003) (citing Cal. Civ. Code § 1636). The sections of Title 42 being implemented in this final rule are not immigration statutes or even custody statutes, and their purview is not limited to aliens. Rather, they provide broad authority to CDC to respond to public health threats. Further, the FSA makes clear that the parties were addressing and settling specific issues related to custody by the INS incident to immigration proceedings, under the applicable law governing that custody. *See, e.g.,* FSA ¶¶ 9, 11, 12.A, 14, 24.A (providing for bond hearings before an immigration judge). Nothing in the FSA suggests that the parties intended it to govern—or anticipated that it would govern—any emergency procedures implemented by the HHS/CDC under section 362 of the PHS Act.

The CAT and the 1967 Refugee Protocol

The final rule implements authority under section 362 of the PHS Act, which authorizes a prohibition on the introduction of persons in the interest of public health. Although HHS/CDC believes that the final rule is entirely consistent with the international obligations of the United States under the CAT and the 1967 Refugee Protocol, those international treaties are non-self-executing. *See Khan* v. *Holder,* 584 F.3d 773, 783 (9th Cir. 2009) (''[T]he [Refugee] Protocol is not self-executing.''); *Auguste* v. *Ridge,* 395 F.3d 123, 132 (3d Cir. 2005) (the CAT ''was not self-executing''); *Trinidad y Garcia* v. *Thomas,* 683 F.3d 952, 955 (9th Cir. 2012) (en banc) (per curiam) (''The CAT is a treaty signed and ratified by the United States, but is non-self-executing. 136 Cong. Rec. 36, 198 (1990).''). Therefore, the domestic statutes that implement these obligations and their corresponding regulations would control as a matter of domestic law in the event of any potential conflict. *See Medellin* v. *Texas,* 552 U.S. 491, 504 n.2 (2008) (''A 'non-self-executing' treaty does not by itself give rise to domestically enforceable federal law. Whether such a treaty has domestic effect depends upon implementing legislation passed by Congress.'').

Congress implemented certain aspects of CAT into domestic law by statute as part of the Foreign Affairs Reform and Restructuring Act of 1998 (FARRA). 8 U.S.C. 1231 note. That statute declares it to be ''the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture'' and to prescribe regulations to implement U.S. obligations under Article 3 of the Conventions. *See* Public Law 105–277, div. G, subdiv. B, title XXII, § 2242(a)–(b) (1998), codified at 8 U.S.C. 1231 note. In its ratification statement accompanying the treaty, the U.S. Senate observed that the ''substantial grounds'' requirement would be interpreted as requiring an alien to establish that it would be ''more likely than not that he would be tortured'' in the prospective country of removal. Resolution of Ratification, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Senate Consideration of Treaty Document 100–20, II.(2), 136 Cong. Rec. S17904 (Oct. 27, 1990).

Under 42 U.S.C. 268, customs officers have an obligation to aid in enforcement of HHS/CDC's administrative Orders issued under section 362 of the PHS Act. HHS/CDC therefore expects that DHS will take the lead role in enforcing any CDC Order prohibiting the introduction of persons into the United States. In connection with existing enforcement of the current CDC Order on covered aliens, HHS/CDC understands that DHS provides aliens with the opportunity to express a fear that they will suffer torture in the country to which they are being returned. So long as border officials apply a process for assessing non-refoulement concerns, as appropriate, the government satisfies its treaty obligations, as reflected in the FARRA. *See Trinidad y Garcia,* 683 F.3d at 956–57 (concluding, in a challenge to extradition on non-refoulement grounds, that if the agency found it ''more likely than not'' that an extradited person would not face torture abroad, then ''the court's inquiry shall have reached its end'').

In addition to implementing its CAT obligations through the FARRA, the

[175] *See, e.g.,* Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists, 85 FR 17060 (Mar. 26, 2020).

[176] The INS could not have implemented CDC's section 362 orders. The role of DHS in public health enforcement is pursuant to section 365 of the PHS Act, which provides, ''It shall be the duty of the customs officers and of Coast Guard officers to aid in the enforcement of quarantine rules and regulations . . . .'' Neither the Coast Guard, nor any customs officers, were part of the INS. The customs officer authorities now within DHS were transferred from the Department of the Treasury to DHS with the Homeland Security Act. 6 U.S.C. Sec. 203. DHS's role in enforcing the HHS/CDC Order arises from the PHS Act, not any immigration statute. The Agreement did not cover the Treasury Department.

United States has implemented the non-refoulement obligation under the 1967 Protocol by enacting the withholding-of-removal provisions in section 241(b)(3) of the INA (8 U.S.C. 1231(b)(3)). These statutory provisions prohibit the removal of an individual to a country where he or she would face persecution or torture, subject to several statutory exceptions. One such exception excludes any alien from statutory withholding-of-removal protection where ''there are reasonable grounds to believe that the alien is a danger to the security of the United States.'' *Id.* 1231(b)(3)(B)(iv). This statutory exception is derived from Article 33 of the 1967 Protocol, which contains an exception for a refugee for ''whom there are reasonable grounds for regarding as a danger to the security of the country in which he is.'' *See* 1967 Protocol, Article 33.2.

In *Matter of A–H-,* 23 I&N Dec. 774 (2005), the Attorney General interpreted the phrase ''danger to the security of the United States'' in an analogous provision of the INA (the former section 243(h)(2)(D) of the INA) to mean ''a risk to the Nation's defense, foreign relations, or economic interests.'' *In re Matter of A–H-,* 23 I&N Dec. 774, 788 (AG 2005); *see also Yusupov* v. *Attorney General of U.S.,* 518 F.3d 185, 204 (3d Cir. 2008) (upholding in relevant part the Attorney General's interpretation in *Matter of A–H-*); *cf.* 8 U.S.C. 1189(d)(2) (defining ''national security'' in a separate provision of the INA as encompassing ''the national defense, foreign relations, or economic interests of the United States''). Because enforcement of a CDC Order would occur pursuant to section 362 of the PHS Act, this provision of the INA does not directly apply to orders issued under the final rule. Nonetheless, where the Director has determined that there is a reasonable ground to believe that the introduction of an alien, or class of aliens, would pose a danger of introducing a quarantinable communicable disease into the United States, then there would be a reasonable ground for regarding those aliens to be as ''a danger to the security of the United States'' as construed by *Matter of A–H. See* Notice of Proposed Rulemaking, *Security Bars and Processing,* 85 FR 41,201, 41,208–41,210 (July 9, 2020). As the ongoing COVID–19 pandemic has shown, the entry and spread of communicable disease from abroad can threaten the lives of the U.S. population and inflict grievous harm on the national economy.

In addition, this final rule would allow for the Director to address any additional humanitarian concerns, if appropriate, in connection with implementing the Order. As explained in this final rule, the Director may provide that certain persons are excepted in an Order, and that could include exceptions for persons traveling for humanitarian purposes. The Director expects to consult with relevant federal departments and agencies when issuing any order under section 71.40(d). For the same reasons, the American Declaration on the Rights and Duties of Man does not bar this final rule.

Comments: One commenter stated that the IFR applies only to land borders, even though, as the IFR itself notes, transportation hubs, like airports and cruise ship terminals, are congregate settings ''conducive to disease transmission.'' The IFR does not bar travel by tourists arriving by plane or ship, even though these modes of transportation are explicitly listed as congregate settings with a risk of disease transmission.

Response: These comments appear to be directed to the CDC Order on covered aliens issued pursuant to the IFR, and not the IFR or this final rule. The CDC Director may use the procedures in the IFR and this final rule to issue an administrative order that applies to persons who seek to introduce themselves into the United States through airports or cruise ship terminals. There are, however, additional tools available to address public health risks in transportation hubs. Such tools include proclamations under section 212(f) of the INA and No Sail Orders.

Section 71.40(a), Statutory Requirements for the CDC Director To Suspend the Introduction of Persons Into the United States

Comments: Several commenters stated that, taken together, the IFR and CDC Order on covered aliens incorrectly assume that persons from a foreign country cannot self-quarantine or self-isolate in the United States as an alternative to expulsion. These commenters noted that many persons trying to cross the U.S.-Mexico border know people in the United States who could presumably provide a place to self-quarantine or self-isolate. Some commenters also suggested that DHS could parole asylum-seekers into the United States to await their asylum proceedings in U.S. immigration courts.

Response: To the extent the commenters maintain that HHS/CDC can never lawfully prohibit the introduction of persons into the United States through the expulsion of persons, HHS/CDC respectfully disagrees with the comments. As previously discussed, the specific power to expel persons is a corollary to the general power to prohibit the introduction of persons. HHS/CDC cannot effectuate the authority granted by section 362 unless HHS/CDC can expel persons, particularly in cases where quarantine and isolation are inadequate due to epidemiological factors, resource limitations, geography, location, or other considerations.

In the case of the CDC Order issued pursuant to the IFR, it is not reasonable to assume that all covered aliens subject to the Order can or will comply with conditional release orders or safely self-quarantine or self-isolate after introduction into the country. That has not been HHS/CDC's experience with foreign nationals arriving in the United States on commercial flights, which require valid travel documents and clearance of customs. Even some foreign nationals who produce valid travel documents, fly internationally, and clear customs do not comply with self-quarantine or self-isolation protocols, or provide contact information to HHS/CDC for use in public health monitoring and contract tracing investigations.

Covered aliens under the CDC Order seek to introduce themselves into the United States under circumstances and in ways that suggest to HHS/CDC that they are less likely to adhere to a conditional release order or self-quarantine or self-isolation protocol. For starters, all covered aliens lack valid travel documents, which suggests that they are not coming prepared to comply with U.S. legal processes. Many walk into the United States from Mexico or Canada, which suggests that they do not have access to transportation. DHS informs HHS/CDC that under normal circumstances—when the introduction of persons is not suspended—many covered aliens would be asylum-seekers, who by definition lack permanent U.S. residences. DHS and DOJ also inform HHS/CDC that under normal circumstances, many would be removed from the United States *in absentia* for failure to appear for immigration proceedings.[177] Persons who are unprepared to comply with U.S. legal processes and lack transportation and a permanent U.S. residence would likely encounter difficulties complying with conditional release orders or self-quarantine or self-isolation protocols. For such orders or

[177] In fiscal year 2019, out of 181,876 initial case completions for aliens who are not UACs, 82,753 aliens (45%) were ordered removed *in absentia.* In the first two quarters of fiscal year 2020, out of 154,744 initial case completions for aliens who are not UACs, 81,330 aliens (53%) were ordered removed *in absentia.*

protocols to be effective, persons who HHS/CDC temporarily apprehends and then conditionally releases with orders—or, alternatively, persons to whom HHS/CDC recommends self-quarantine or self-isolation—must be able to travel to suitable quarantine or isolation locations, and then quarantine or isolate for the time period prescribed or recommended by HHS/CDC. Many covered aliens subject to the CDC Order on covered aliens would have to overcome significant hurdles to meet those basic requirements.

Moreover, implementation of conditional release orders for covered aliens would divert substantial HHS/CDC resources away from existing public health operations during the COVID–19 pandemic. HHS/CDC presently operates quarantine stations at 20 ports of entry and land-border crossings, only four of which are at a border with Canada or Mexico.[178] To implement conditional release orders for covered aliens, HHS/CDC would have to open and operate new quarantine stations at numerous Border Patrol stations and POEs, surge technical support to CBP at the same locations, or do some combination of both. HHS/CDC would also have to monitor the health of tens of thousands of covered aliens introduced into the United States, and alert public health departments about any health issues that need follow-up.[179] HHS/CDC does not have resources and personnel available to execute those additional functions; HHS/CDC would have to reallocate personnel from existing quarantine operations, which would jeopardize the effectiveness of those operations, endanger public health, and impose additional costs on U.S. taxpayers.

Several commenters asserted that HHS/CDC should nevertheless allow covered aliens to self-quarantine or self-isolate because the U.S. Immigration Policy Center (USIPC) interviewed 607 asylum seekers in 2019, and 91.9% of them reported having family or close friends living in the United States. Tom K. Wong, Seeking Asylum: Part 2 (Oct. 29, 2019). USIPC, however, is not a public health agency,[180] and its study predated the COVID–19 pandemic. The study focused on the condition of aliens subject to ''the Migrant Protection Protocols (MPP), also known as the 'Remain in Mexico' policy.'' *Id.* at 3. USIPC did not look at whether the family or close friends had personal residences and, if so, whether they would make them available as self-quarantine or self-isolation locations. Nor did USIPC look at whether residences were suitable for self-quarantine or self-isolation in compliance with HHS/CDC guidelines.[181]

Even if HHS/CDC were to assume that many covered aliens have family or close friends in the United States, that fact alone would not control HHS/CDC's public health analysis. HHS/CDC has weighed many considerations—including the epidemiology of COVID–19, the structural and operational limitations of CBP facilities, the available HHS/CDC and CBP resources, the requirements of other public health operations during the COVID–19 pandemic, and the needs of the domestic population—when issuing and continuing its Order on covered aliens pursuant to the IFR. HHS/CDC maintains that its implementation of a self-quarantine or self-isolation protocol for covered aliens would consume undue HHS/CDC and CBP resources without averting the serious danger of the introduction of COVID–19 into CBP facilities. Expulsion is a more effective public health measure for CBP facilities that preserves finite HHS/CDC resources for other public health operations.

Section 71.40(b), Definitions Used in This Section

Comment: Some commenters stated that section 362 of the PHS Act authorizes the Secretary to stop the risk of introduction of a disease into the United States, and the IFR unlawfully extends the Secretary's authority to situations where a disease is already in the United States.

Response: HHS/CDC respectfully disagrees for the reasons stated in Section IV.B of this final rule.

Comment: Some commenters stated that HHS/CDC's inclusion of aircraft in its definition of ''place'' exceeds the CDC's limited statutory authority and would allow the Director to suspend the introduction of persons, not because of the serious danger of the introduction of a quarantinable communicable disease from a foreign country into the United States, but because of the existence of a quarantinable communicable disease onboard an aircraft.

Response: HHS/CDC respectfully disagrees with this comment. To prevent the introduction of a quarantinable communicable disease, the Director must have the authority to prohibit the introduction of persons from a foreign country or place, as well as any carriers carrying those persons.

Comment: A number of commenters expressed the view that the IFR fails to give meaning to the phrase ''serious danger'' from section 362 of the PHS Act, as the IFR defines ''serious danger of the introduction of such communicable disease into the United States'' to mean ''the potential for introduction of vectors of the communicable disease into the United States.''

Response: The final rule defines ''serious danger of the introduction of such quarantinable communicable disease into the United States'' to mean the *probable* introduction of one or more persons capable of transmitting the quarantinable communicable disease into the United States, even if persons or property in the United States

[178] *Quarantine and Isolation: U.S. Quarantine Stations,* Ctrs. for Disease Control & Prevention, *https://www.cdc.gov/quarantine/quarantine-stations-us.html* (last updated July 24, 2020) (Those quarantine stations are in Detroit, MI; El Paso, TX; San Diego, CA; and Seattle, WA).

[179] *Id.*

[180] USIPC is a part of the University of California San Diego (UC San Diego) that ''brings together leading academics, policy analysts, immigrant-rights leaders, and policymakers across all levels of government to conceptualize, debate, and design a new U.S. immigration policy agenda . . . .'' *U.S. Immigration Policy Ctr.,* UC San Diego, *https://usipc.ucsd.edu/* (last visited Sep.1, 2020). The USIPC website encourages readers to ''[v]isit UC San Diego's Coronavirus portal for the latest information on the campus community.'' *Id.* On the portal, UC San Diego informs students, faculty, and staff that for Fall 2020, in-person class size ''is limited to fewer than 50 students per class, or 25% of classroom capacity, whichever is smaller.'' *Return to Learn: Fall 2020 Plan,* UC San Diego, *https://returntolearn.ucsd.edu/return-to-campus/fall-2020-lan/index.html* (last visited Sep. 1, 2020). UC San Diego further states that ''[i]f a student is coming to campus from an international location, *CDC guidelines recommend a 14-day quarantine period.* Students with a housing contract can complete the quarantine period in specially designated on-campus housing . . . .'' *Id.* (emphasis added). The USIPC website suggests that USIPC defers to UC San Diego on public health issues, and that UC San Diego generally follows CDC guidance when addressing such issues.

[181] Persons who self-isolate should stay home except to get medical care. When at home, they should stay in a separate room from other household members, if possible; use a separate bathroom, if possible; avoid contact with other members of the household and pets; and avoid sharing personal household items, like cups, towels and utensils. *Coronavirus Disease 2019 (COVID–19), What to Do If You Are Sick,* Ctrs. for Disease Control & Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html* (last updated May 8, 2020). Persons who self-quarantine should stay at home for 14 days after their last contact with a person who has COVID–19, watch for symptoms of COVID–19, and, if possible, stay away from others, especially people who are at higher risk for getting very sick from COVID–19. *Coronavirus Disease 2019 (COVID–19), When to Quarantine,* Ctrs. for Disease Control & Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/quarantine.html* (last updated Aug. 16, 2020). When at home, persons in self-quarantine should stay at least 6 feet from other people, and clean and disinfect frequently touched objects and surfaces, among other things. *Coronavirus Disease 2019 (COVID–19), Household Checklist,* Ctrs. for Disease Control & Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/checklist-household-ready.html* (last updated June 13, 2020).

are already infected or contaminated with the quarantinable communicable disease. This regulatory definition clarifies that, even if persons or property in the United States are already infected or contaminated with a quarantinable communicable disease, the introduction of one or more additional persons capable of disease transmission in the same or different localities can nevertheless present a serious danger of the introduction of the disease into the United States. Additionally, this regulatory definition clarifies that the danger of introduction becomes serious when one or more additional persons capable of disease transmission would more likely than not be introduced into the United States. Section IV.B.3 further explains why this definition comports with the statute.

Section 71.40(c), Director's Terms of the Suspension

Comment: A number of commenters recommended that the CDC self-impose a required expiration for each order, or alternatively a short-interval and recurrent review of the Director's determinations and orders under the IFR, with such objective review conducted by an agency inspector general or Federal third-party agency.

Response: HHS/CDC agrees that recurrent HHS/CDC review of CDC Orders is good policy. The CDC Order on covered aliens issued and continued pursuant to the IFR have undergone recurrent review. Section 71.40(c) of this final rule provides that any order issued pursuant to this final rule shall designate the ''period of time or circumstances under which the introduction of any persons or class of persons into the United States shall be suspended.'' It would be unwise to state a specific time period in this final rule because the epidemiology of quarantinable communicable diseases varies.

HHS/CDC respectfully disagrees with the comment calling for ''objective review conducted by an agency inspector general or Federal third-party agency.'' The Secretary delegated his or her statutory authority under section 362 to the CDC Director, which was proper. HHS/CDC is best positioned to review the necessity of its own orders. Moreover, HHS/CDC's core mission is to develop and apply disease prevention and control strategies to improve the health of all Americans while it also works to ensure domestic preparedness, eliminate disease, and end epidemics.[182] HHS/CDC has the scientific and technical expertise required to determine whether the existence of a quarantinable communicable disease in a foreign country or place poses a serious danger to the United States, whether that serious danger is increased by the introduction of persons from such country, and whether a prohibition on the introduction of such persons should be imposed or continued.

By contrast, the mission of the HHS Office of the Inspector General (OIG) ''is to provide objective oversight to promote the economy, efficiency, effectiveness, and integrity of HHS programs, as well as the health and welfare of the people they serve.'' [183] OIG conducts and supervises audits and investigations relating to certain programs and operations and provides a means for keeping the Secretary and Congress informed of problems and deficiencies relating to the administration of HHS programs. *See* 5 U.S.C. 2, 4. OIG does not have the statutory authority or scientific or technical expertise required to make public health judgments about the imposing or continuing of prohibitions on the introduction of persons.

Additionally, the Director may not subdelegate statutory authority under section 362 to another Federal department. Federal officials may subdelegate their authority to subordinates absent evidence of contrary Congressional intent, but they may not subdelegate to other departments absent express statutory authority to do so. *See U.S. Telecom Ass'n* v. *FCC,* 359 F.3d 554, 566 (D.C. Cir. 2004); *Gentiva Healthcare Corp.* v. *Sebelius,* 857 F. Supp. 2d 1, 7 (D.D.C. 2012). The Director does not have express statutory authority to subdelegate statutory authority under section 362 to another Federal department.

Comment: A number of commenters recommended that the Department add a fourth requirement to the components of a CDC Order: A statement of the evidence of the quarantinable communicable disease threat in the foreign countries (or one or more designated political subdivisions or regions thereof) or places from which the introduction of persons is being suspended, on which the CDC Director relies in issuing such order.

Response: HHS/CDC has considered this comment and decided, for the reasons explained in the section of this final rule entitled ''Provisions of New Section 71.40,'' to incorporate a modified version of this requirement in the final rule. Accordingly, section 71.40(c) of the final rule requires that, in any order issued pursuant to this final rule, the Director shall include a statement describing the danger posed by the quarantinable communicable disease in the foreign country or countries (or one or more designated political subdivisions or regions thereof) or places from which the introduction of persons is being suspended. Also, this final rule applies to quarantinable communicable diseases broadly, not just to COVID–19. So section 71.40(c) requires that the statement describe the danger posed by the quarantinable communicable disease that led the Director to invoke the section 362 authority.

Section 71.40(d), Persons To Whom This Section Applies

Comment: A number of commenters stated that previous efforts to prevent the introduction of persons with active contagious diseases from entering the U.S. have been based on an examination of the person, not on the person's membership in a particular group.

Response: These comments are directed to the CDC Order on covered aliens issued pursuant to the IFR, and not to the IFR or this final rule. No action can or will be taken under this final rule absent an order issued by the Director. To the extent these comments are directed to this final rule, HHS/CDC respectfully disagrees with them. Like the IFR, this final rule sets forth facially neutral procedures for the exercise of the 362 authority by the Director. The procedures do not turn on whether a person is a member of a particular group.

Moreover, the CDC Order on covered aliens issued pursuant to the IFR prohibits introduction of covered aliens traveling from Canada or Mexico, regardless of their national origin, who would otherwise be introduced into the United States. Covered aliens are those who lack valid travel documents and would otherwise spend material amounts of time in congregate areas. The CDC Order on covered aliens does not prohibit the introduction of persons into the United States based on factors such as race, color, religion, national origin, sex, age, or disability. Also, the CDC Order on covered aliens, as implemented by DHS, provides for discretionary, individualized exceptions from the prohibition on introduction.

Comment: Some commenters stated that HHS/CDC should clarify that the

[182] *Mission Statement,* Ctrs. for Disease Control & Prevention, *https://www.cdc.gov/about/organization/cio-orgcharts/pdfs/CDCfs-508.pdf* (last visited Sep. 1, 2020).

[183] *About OIG,* U.S. Dep't. of Health & Human Serv.'s Off. of the Inspector Gen., *https://oig.hhs.gov/about-oig/about-us/index.asp* (last visited Sep. 1, 2020).

rule applies to persons, regardless of nationality, if they have travelled from designated countries.

Response: HHS/CDC believes that the final rule's language that it applies to those ''from designated foreign countries'' states in plain language that the prohibition of introduction of persons is based on the country a person is travelling *from,* and not their nationality.

Section 71.40(f), Exception for U.S. Citizens, U.S. Nationals, and Lawful Permanent Residents

Comment: Some commenters indicated that this final rule should also apply to U.S. citizens and LPRs who may be introduced into the United States during the COVID–19 pandemic. Some commenters further asserted that the issuance of a rule that applies to some aliens, but not all persons, may be unconstitutional.

Response: The Director has no present intention to apply the section 362 authority to U.S. citizens, U.S. nationals, or LPRs in connection with the COVID–19 pandemic (indeed, the Director has never intended to do so). This is partly because U.S. citizens, U.S. nationals, and LPRs generally present to POEs with valid travel documents, and do not spend material amounts of time in congregate settings in such facilities. Because U.S. citizens, U.S. nationals, and LPRs spend less time in congregate settings than covered aliens subject to the CDC Order on covered aliens issued pursuant to the IFR, they present lower public health risks in those settings.

Given the complex and important legal and policy questions presented by the potential application of section 362 to U.S. citizens, U.S. nationals, and LPRs, HHS/CDC has determined that it would be in the public interest to provide notice of, and accept comments on, any regulatory text that HHS/CDC would propose to apply to U.S. citizens, U.S. nationals, and LPRs in other contexts. Further notice and comment would enable HHS/CDC to provide the public with a more fulsome explanation of the potential public health threats and policy rationales that support the regulatory text without jeopardizing the ability of HHS/CDC to protect U.S. public health from COVID–19 in the immediate future.

HHS/CDC maintains that its approach in this final rule is rational and constitutional.

Comment: Some commenters stated that mariners and airline crews should be excluded from this rule because prohibiting them from being introduced into the U.S. could cause serious logistical and safety issues.

Response: HHS/CDC has considered this comment and appreciates the concerns raised. Nevertheless, HHS/CDC does not believe it is necessary to create express regulatory exclusions for mariners and airline crews. Any order issued pursuant to this final rule would be tailored by the Director to what public health requires and, to the greatest extent possible, adhere to U.S. federal policy of facilitating the critical work of mariners and aircrew. If public health measures such as quarantine, isolation, conditional release, or social distancing are adequate to protect public health, then HHS/CDC would take those measures and not suspend the introduction of such persons.

VI. Alternatives Considered

HHS/CDC has considered a number of alternatives to the final rule. One alternative that HHS/CDC has considered is rescinding the IFR and the CDC Order on covered aliens issued pursuant to the IFR, and foregoing the issuance of this final rule. HHS/CDC has ruled out that alternative because there is still a serious danger of introduction of COVID–19 into the United States from Canada and Mexico, and the public health situation in Mexico remains tenuous. As noted above, quarantine, isolation, and conditional release are still not workable options on the scale that would be needed for protecting U.S. public health from the introduction of COVID–19; Federal quarantine and isolation of covered aliens would be impracticable, and covered aliens as a population are not a good fit for public health measures such as conditional release and recommendations to self-quarantine or self-isolate. The rescission of the IFR would result in tens of thousands of covered aliens entering congregate settings each month, which would put the health of the DHS workforce and the domestic U.S. population at greater risk, likely increase community transmission of COVID–19 and new COVID–19 cases in the States in the U.S.-Mexico border region, and strain the capacity of U.S. health-care systems. There are good reasons to issue this final rule, especially when the efforts of the domestic population to avoid congregate settings are considered. The rescission of the IFR and CDC Order would undercut those efforts, which the domestic population has undertaken at great personal sacrifice.

HHS/CDC also considered and declined to include procedures in this final rule that apply to U.S. citizens, U.S. nationals, and LPRs. Such procedures present complex and important legal and policy issues, and the Director has no present intention of prohibiting the introduction of U.S. citizens, U.S. nationals or LPRs into the United States as part of the response to the COVID–19 pandemic. Further notice and comment rulemaking on any proposed regulatory text that would apply outside the COVID–19 context would be in the public interest.

VII. Regulatory Impact Analysis

A. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) (2 U.S.C. 1532) requires that covered agencies prepare a budgetary impact statement before promulgating a rule that includes 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 million in 1995 dollars, updated annually for inflation. Currently, that threshold is approximately $154 million. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires covered agencies to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. HHS/CDC has determined that this final rule is not expected to result in expenditures by state, local, and tribal governments, or by the private sector, of $154 million or more in any one year because it only establishes a regulatory mechanism for the exercise of the PHS Act section 362 suspension authority, which applies primarily against persons and not state, local, or tribal governments. Accordingly, HHS/CDC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

B. National Environmental Policy Act (NEPA)

HHS has determined that the amendments to 42 CFR part 71 will not have a significant impact on the environment.

C. Executive Order 12988: Civil Justice Reform

HHS has reviewed this rule under Executive Order 12988 on Civil Justice Reform and has determined that this final rule meets the standard in the Executive Order.

D. Executive Order 13132: Federalism

This final rule has been reviewed under Executive Order 13132, Federalism. Under 42 U.S.C. 264(e), Federal public health regulations do not preempt State or local public health regulations, except in the event of a conflict with the exercise of Federal

authority. Other than to restate this statutory provision, this rulemaking does not alter the relationship between the Federal government and State/local governments as set forth in 42 U.S.C. 264. The longstanding provision on preemption in the event of a conflict with Federal authority (42 CFR 70.2) is left unchanged by this rulemaking. Furthermore, there are no provisions in this regulation that impose direct compliance costs on State and local governments. Therefore, HHS/CDC believes that the final rule does not warrant additional analysis under Executive Order 13132.

E. Plain Language Act of 2010

Under the Plain Language Act of 2010 (Pub. L. 111–274, October 13, 2010, 124 Stat. 2861), executive departments and agencies are required to use plain language in documents that explain to the public how to comply with a requirement the Federal government administers or enforces. HHS/CDC has attempted to use plain language in promulgating this final rule, consistent with the Federal Plain Writing Act guidelines.

F. Congressional Review Act and Administrative Procedure Act

The Congressional Review Act (CRA) defines a ''major rule'' as ''any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget finds has resulted in or is likely to result in—(A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.'' 5 U.S.C. 804(2).

OIRA has determined that this final rule is not a ''major rule'' for purposes of the CRA. The actual experience of HHS/CDC with the IFR and the CDC Order on covered aliens informs the CRA analysis. The IFR, like this final rule, establishes procedures by which the Director can issue an administrative order implementing section 362 of the PHS Act. Neither the IFR nor this final rule can have any economic effect absent an administrative order.

So far, the only administrative order that the Director has determined is necessary in the interest of public health is the CDC Order on covered aliens. That Order is unlikely to have an annualized effect on the economy of $100,000,000 or more for two reasons. First, the CDC Order on covered aliens has no direct economic effect. It applies only to individual persons, and not to commercial entities such as carriers; restrictions on commercial and passenger carriers have been imposed by DHS and HHS/CDC under different authorities. Second, any indirect economic effect is unlikely to equal or exceed $100,000,000 annualized. The only potential indirect economic effect identified by HHS/CDC is a reduction in the utilization of the U.S. health care system by covered aliens. While that reduction helps protect U.S. public health by lessening the strain on the U.S. health care system, and preserving finite health care resources for the domestic population, HHS/CDC's analysis has determined that the dollar value of the reduced utilization of the U.S. health care system is unlikely to equal or exceed $100,000,000 annualized.

This year should serve as a benchmark for any future years in which the Director might find it necessary in the interest of public health to prohibit the introduction of persons from foreign countries into the United States. The COVID–19 pandemic is a once-in-a-generation public health emergency and, as discussed previously, the Federal government has mitigated the serious danger of the introduction of COVID–19 into the United States through a wide array of measures. The Director's exercise of his authority under section 362 of the PHS Act through issuance of the CDC Order on covered aliens is just one of those measures. Others include the INA section 212(f) proclamations; quarantine, isolation, and conditional release; the CDC No Sail Order for cruise ships; and travel restrictions at land POEs along the U.S.-Canada and U.S.-Mexico borders. If the Director's exercise of his authority under section 362 of the PHS Act is unlikely to have an annual economic effect of $100,000,000 during the COVID–19 pandemic, then it follows that any future exercise of the section 362 authority pursuant to this final rule is unlikely to have an annual effect on the economy of $100,000,000 or more.

The other tests for a ''major rule'' are not met. This final rule is procedural in nature. It does not impose any cost or price increases, or have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Because this final rule is not a ''major rule'' under the CRA, only the APA governs the effective date of this final rule. The APA provides that the publication of a substantive rule shall be made not less than 30 days before its effective date, except ''as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). This final rule shall become effective 30 days from its publication in the **Federal Register** unless the IFR ceases to be in effect (for example, if it is vacated or enjoined by a court) before that time, in which case this final rule shall become effective immediately for good cause. There would be good cause because, as discussed in earlier sections of this final rule, the procedures established by the IFR and this final rule are critical to HHS/CDC's ability to mitigate the serious danger of the introduction of COVID–19 into the United States, and thereby protect U.S. public health.

As discussed previously in this final rule, the Director assesses that the CDC Order on covered aliens is benefitting U.S. public health in several ways. The Director assesses that the CDC Order is: Reducing the danger of the introduction of COVID–19 into CBP facilities, which protects both the DHS workforce and migrants from COVID–19; reducing the strain on the health-care system in the U.S.-Mexico border region by decreasing utilization by covered aliens, which conserves health-care resources for the domestic population; and helping to slow the community transmission of COVID–19 and the number of new COVID–19 cases in the States in the U.S.-Mexico border region, which helps protect the domestic population from COVID–19. These benefits to U.S. public health would be lost immediately if the IFR and, by extension, the CDC Order on covered aliens ceased to be effective.

Of course, there would probably be secondary effects on U.S. public health and safety. As previously discussed in this final rule, the Director has assessed that the numbers of CBP employees who test positive for COVID–19 or enter quarantine would probably be larger absent the CDC Order, and CBP has informed HHS/CDC that further degradation of its workforce in the Laredo Sector due to COVID–19 would jeopardize CBP's ability to execute its public safety mission. Thus, one likely secondary effect would be further degradation of the CBP workforce due to COVID–19 and, according to CBP, a corresponding reduction in public safety in the Laredo Sector. Similar effects would be possible in other sectors.

States in the U.S-Mexico border region would probably also experience secondary effects. As previously discussed in this final rule, the Director has assessed that increased community transmission in California and Arizona would likely result in increased numbers of cases, as well as increased case and positivity rates, and ultimately increased numbers of individuals who have serious outcomes. Increases in case and positivity rates would, in turn, frustrate efforts in those States to step down to lower tiers in the reopening guidelines. The Director has further assessed that the introduction of covered aliens into California and Arizona through congregate settings in CBP facilities would likely have a negative impact on case and positivity rates in California and Arizona, which would not be in the interest of U.S. public health. Similar secondary effects would be possible in other States in the U.S.-Mexico border region such as Texas.

It is also foreseeable that the Federal government might have to address secondary effects in ICE facilities or ORR shelters for migrants. If, for example, the numbers of migrants entering those facilities were to increase, then the Federal government would have to attempt to manage the intake of the new migrants consistent with HHS/CDC infection control guidelines in order to help protect the health of the migrants, the facility workforces, and the U.S. domestic population. DHS and ORR report that the operationalizing of such guidelines is more complex than their ordinary operations. It is possible that facility censuses could reach or exceed levels that are workable under HHS/CDC infection control guidelines, in which case HHC/CDC may be left with no workable options for protecting U.S. public health.

HHS/CDC does not reasonably anticipate factual changes in the next 30 days that would materially affect HHS/CDC's good cause analysis.[184] While HHS/CDC modeling predicts that the total new deaths from COVID–19 will continue to decrease in September 2020, HHS/CDC reasonably anticipates that community transmission and the rates of new COVID–19 cases will remain serious concerns with respect to DHS, ORR, and the States in the U.S.-Mexico border region. For the next 30 days, any temporary loss of the procedures established by the IFR would jeopardize HHS/CDC's ability to protect U.S. public health from COVID–19 and other quarantinable communicable diseases. As a result, there would be good cause for this final rule to become effective immediately in the event that the IFR ceases to be in effect.

There would be no prejudice to the public if the final rule became effective immediately. The final rule, like the IFR, permits the Director to prohibit the introduction into the United States of persons from designated foreign countries (or one or more political subdivisions or regions thereof) or places, only for such period of time that the Director deems necessary to avert the serious danger of the introduction of a communicable disease, by issuing an order in which the Director determines that:

(1) By reason of the existence of any quarantinable communicable disease in a foreign country (or one or more political subdivisions or regions thereof) or place there is serious danger of the introduction of such quarantinable communicable disease into the United States; and

(2) This danger is so increased by the introduction of persons from such country (or one or more political subdivisions or regions thereof) or place that a suspension of the right to introduce such persons into the United States is required in the interest of public health.

While the final rule mirrors the IFR at its core, the final rule is narrower than the IFR, clarifies aspects of the regulatory procedures, and enhances public transparency. Notably, the final rule applies only to quarantinable communicable diseases, which are a subset of communicable diseases specified by the President in Executive Orders. The final rule also: aligns the regulatory text with section 362 of the PHS Act; defines additional terms; and requires the Director, when issuing an administrative order, to state both the means by which the prohibition on introduction shall be implemented, and the serious danger posed by the introduction of the quarantinable communicable disease. These changes would be beneficial, not prejudicial, to the public.

G. Executive Orders 12866 and 13563 and Regulatory Flexibility Act

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, and public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a regulation (1) having an annual effect on the economy of $100 million or more in any one year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. This final rule is not economically significant for the purposes of Executive Orders 12866 and 13563 for the same reasons that it is not a major rule for purposes of the CRA. The Office of Management and Budget (OMB) has reviewed this rule.

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the APA or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. Such analysis must address the consideration of regulatory options that would lessen the economic effect of the rule on small entities. The RFA defines a ''small entity'' as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a nonprofit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. 5 U.S.C. 601(3)–(6). Except for such small government jurisdictions, neither State nor local governments are ''small entities.'' Similarly, for purposes of the RFA, persons are not small entities. The requirement to conduct a regulatory impact analysis does not apply if the head of the agency ''certifies that the rule will not, if promulgated,

[184] *COVID–19 Forecasts: Deaths,* Ctrs. for Disease Control & Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/covid-data/forecasting-us.html* (last updated Sep. 2, 2020).

have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). The agency must, however, publish the certification in the **Federal Register** at the time of publication of the rule, ''along with a statement providing the factual basis for such certification.'' *Id.* If the agency head has not waived the requirements for a regulatory flexibility analysis in accordance with the RFA's waiver provision, and no other RFA exception applies, the agency must prepare the regulatory flexibility analysis and publish it in the **Federal Register** at the time of promulgation or, if the rule is promulgated in response to an emergency that makes timely compliance impracticable, within 180 days of publication of the final rule. 5 U.S.C. 604(a), 608(b).

HHS/CDC certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule establishes a regulatory procedure by which the Director may exercise the section 362 authority through issuance of an administrative order. Without an administrative order, this final rule can have no economic impact.

HHS/CDC may use the procedures created by this final rule to issue administrative orders against individual persons. In addition, HHS/CDC may use the procedures created by this final rule to issue administrative orders against carriers of persons, such as cruise ships or airlines. HHS/CDC, however, does not reasonably contemplate issuing administrative orders against carriers of persons that are small entities for two reasons. First, small entities are by their nature less likely than large entities to transport large numbers of persons in congregate settings. Second, based on experience, HHS/CDC reasonably contemplates mitigating the public health risks presented by carriers that are small entities through less sweeping public health measures, such as quarantine, isolation, and conditional release, or no-sail orders issued under other procedures, or no-fly lists of passengers. HHS/CDC reasonably contemplates that any administrative orders against carriers would be rare, and would be limited to large entities transporting large numbers of persons in congregate settings. Accordingly, HHS/CDC certifies that this final rule will not have a significant economic impact on a substantial number of small entities when considered together with any administrative order that HHS/CDC could conceivably issue in the future.

H. Assessment of Federal Regulation and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999, Public Law 105–277, sec. 654, 112 Stat. 2681 (1998) requires Federal departments and agencies to determine whether a policy or regulation could affect family well-being. HHS/CDC conducts such an analysis below and certifies the same.

Section 601 (note) required agencies to assess whether a regulatory action (1) impacted the stability or safety of the family, particularly in terms of marital commitment; (2) impacted the authority of parents in the education, nurturing, and supervision of their children; (3) helped the family perform its functions; (4) affected disposable income or poverty of families and children; (5) was justified if it financially impacted families; (6) was carried out by State or local government or by the family; and (7) established a policy concerning the relationship between the behavior and personal responsibility of youth and the norms of society.

This final rule establishes the process by which the Director may issue administrative orders suspending the introduction of persons. Standing alone, without an administrative order from the Director, it has no direct impact on family well-being based on any of the factors listed above. If the family well-being determination requirement were still in force, an assessment of the impact of this final rule on family well-being would not be required.

The current CDC Order on covered aliens does not implicate factors (2) through (7) listed above. HHS/CDC, however, recognizes that the current CDC Order on covered aliens, and future orders by the Director, could potentially impact family stability under factor (1). This is because such orders temporarily prevent persons from introducing themselves into the United States and, as a consequence, may prevent the persons from seeing family members in the United States. Any such impact on family well-being would last for the duration of the order.

In the judgment of HHS/CDC, the benefits to U.S. public health that flow from preventing the introduction of quarantinable communicable diseases into the United States far outweigh any impact on family well-being that might result from deferred visitation of family members in the United States. Families benefit greatly when family members—particularly seniors and other members of vulnerable populations—are healthy and safe from quarantinable communicable diseases. The suffering and loss of family members due to disease is tragic, and the burden of caring for family members with serious disease may be emotionally and financially significant. The better approach overall for protecting family well-being is to reduce the danger of quarantinable communicable diseases, notwithstanding any temporary deferral of visitation.

I. Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), HHS has reviewed this final rule and has determined that there are no new collections of information contained therein.

J. Regulatory Reform Analysis Under Executive Order 13771

Executive Order 13771, titled ''Reducing Regulation and Controlling Regulatory Costs,'' was issued on January 30, 2017, and requires that the costs associated with significant new regulations ''shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.'' OMB's *Guidance Implementing Executive Order 13771, Titled ''Reducing Regulation and Controlling Regulatory Costs,''* issued on April 5, 2017, (*https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-21-OMB.pdf*), explains that ''E.O. 13771 deregulatory actions are not limited to those defined as significant under E.O. 12866 or OMB's Final Bulletin on Good Guidance Practices.'' It has been determined that this proposed rule imposes no more than de minimis costs, and therefore is not considered a regulatory action under Executive Order 13771.

List of Subjects in 42 CFR Part 71

Apprehension, Communicable diseases, Conditional release, CDC, Ill person, Isolation, Non-invasive, Public health emergency, Public health prevention measures, Qualifying stage, Quarantine, Quarantinable communicable disease.

For the reasons set forth in the preamble, 42 CFR part 71 is amended as follows:

PART 71—FOREIGN QUARANTINE

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

Authority: Secs. 215 and 311 of the Public Health Service (PHS) Act, as amended (42 U.S.C. 216, 243); secs. 361–369, PHS Act, as amended (42 U.S.C. 264–272).

■ 2. Revise § 71.40 to read as follows

§ 71.40 Suspension of the right to introduce and prohibition of the introduction of persons into the United States from designated foreign countries or places for public health purposes.

(a) The Director may prohibit, in whole or in part, the introduction into the United States of persons from designated foreign countries (or one or more political subdivisions or regions thereof) or places, only for such period of time that the Director deems necessary to avert the serious danger of the introduction of a quarantinable communicable disease, by issuing an order in which the Director determines that:

(1) By reason of the existence of any quarantinable communicable disease in a foreign country (or one or more political subdivisions or regions thereof) or place there is serious danger of the introduction of such quarantinable communicable disease into the United States; and

(2) This danger is so increased by the introduction of persons from such country (or one or more political subdivisions or regions thereof) or place that a suspension of the right to introduce such persons into the United States is required in the interest of public health.

(b) For purposes of this section:

(1) *Introduction into the United States* means the movement of a person from a foreign country (or one or more political subdivisions or regions thereof) or place, or series of foreign countries or places, into the United States so as to bring the person into contact with persons or property in the United States, in a manner that the Director determines to present a risk of transmission of a quarantinable communicable disease to persons, or a risk of contamination of property with a quarantinable communicable disease, even if the quarantinable communicable disease has already been introduced, transmitted, or is spreading within the United States;

(2) *Prohibit, in whole or in part, the introduction into the United States of persons* means to prevent the introduction of persons into the United States by suspending any right to introduce into the United States, physically stopping or restricting movement into the United States, or physically expelling from the United States some or all of the persons;

(3) *Serious danger of the introduction of such quarantinable communicable disease into the United States* means the probable introduction of one or more persons capable of transmitting the quarantinable communicable disease into the United States, even if persons or property in the United States are already infected or contaminated with the quarantinable communicable disease;

(4) The term *Place* includes any location specified by the Director, including any carrier, as that term is defined in 42 CFR 71.1, whatever the carrier's flag, registry, or country of origin; and

(5) *Suspension of the right to introduce* means to cause the temporary cessation of the effect of any law, rule, decree, or order pursuant to which a person might otherwise have the right to be introduced or seek introduction into the United States.

(c) Any order issued by the Director under this section shall include a statement of the following:

(1) The foreign countries (or one or more political subdivisions or regions thereof) or places from which the introduction of persons shall be prohibited;

(2) The period of time or circumstances under which the introduction of any persons or class of persons into the United States shall be prohibited;

(3) The conditions under which that prohibition on introduction shall be effective in whole or in part, including any relevant exceptions that the Director determines are appropriate;

(4) The means by which the prohibition shall be implemented; and

(5) The serious danger posed by the introduction of the quarantinable communicable disease in the foreign country or countries (or one or more political subdivisions or regions thereof) or places from which the introduction of persons is being prohibited.

(d) When issuing any order under this section, the Director shall, as practicable under the circumstances, consult with all Federal departments or agencies whose interests would be impacted by the order. The Director shall, as practicable under the circumstances, provide the Federal departments or agencies with a copy of the order before issuing it. In circumstances when it is impracticable to engage in such consultation before taking action to protect the public health, the Director shall consult with the Federal departments or agencies as soon as practicable after issuing his or her order, and may then modify the order as he or she determines appropriate. In addition, the Director may, as practicable under the circumstances, consult with any State or local authorities that he or she deems appropriate in his or her discretion.

(1) If the order will be implemented in whole or in part by State and local authorities who have agreed to do so under 42 U.S.C. 243(a), then the Director shall explain in the order the procedures and standards by which those authorities are expected to aid in the enforcement of the order.

(2) If the order will be implemented in whole or in part by designated customs officers (including any individual designated by the Department of Homeland Security to perform the duties of a customs officer) or Coast Guard officers under 42 U.S.C. 268(b), or another Federal department or agency, then the Director shall, in coordination with the Secretary of Homeland Security or other applicable Federal department or agency head, explain in the order the procedures and standards by which any authorities or officers or agents are expected to aid in the enforcement of the order, to the extent that they are permitted to do so under their existing legal authorities.

(e) This section does not apply to:

(1) Members of the armed forces of the United States and associated personnel if the Secretary of Defense provides assurance to the Director that the Secretary of Defense has taken or will take measures such as quarantine or isolation, or other measures maintaining control over such individuals, to prevent the risk of transmission of the quarantinable communicable disease into the United States; or

(2) Other United States government employees or contractors on orders abroad, or their accompanying family members who are on their orders or are members of their household, if the Director receives assurances from the relevant head of agency and determines that the head of the agency or department has taken or will take, measures such as quarantine or isolation, to prevent the risk of transmission of a quarantinable communicable disease into the United States.

(f) This section shall not apply to U.S. citizens, U.S. nationals, and lawful permanent residents.

(g) Any provision of this section held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event the provision shall be severable from this section and shall not affect the remainder thereof or the application of the provision to persons not similarly situated or to dissimilar circumstances.

Dated: September 4, 2020.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

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Part V

The President

Proclamation 10069—Labor Day, 2020

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Presidential Documents

Title 3—

The President

Proclamation 10069 of September 4, 2020

Labor Day, 2020

By the President of the United States of America

A Proclamation

On Labor Day, we recognize and celebrate the workers of our great Nation. The American workforce is the best in the world and, since day one of my Administration, I have been standing up for the American worker. As recent global challenges have tested our mettle, the dedication of our workforce has once again proven that Americans' resolve will never be overcome. Today, we celebrate all workers, across every sector of our economy, whose efforts have never been more appreciated than in recent months.

Since the founding of our Nation, American workers have deployed their talents to build beautiful cities, develop new technologies, and shape the global economy. Now, our country depends on these hardworking patriots as we continue to aggressively fight the coronavirus pandemic. In particular, we celebrate every American who has worked tirelessly to ensure we maintain our way of life in this unprecedented time. These vital workers include medical professionals, grocery store and pharmacy clerks, farmers, meatpackers, truckers, factory workers, and the many employees who are important to the supply chain that makes essential goods and medications accessible to all Americans. Essential workers and volunteers like these and others have enabled my Administration to respond swiftly to the coronavirus pandemic and have safeguarded the prospects of countless American businesses and the lives and personal health of millions of people.

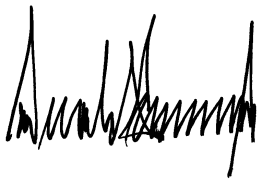
From my first day in office, my Administration has acted to foster an environment for growth, jobs, and prosperity. Having built the greatest economy the world has ever seen, my Administration will do it again. We will not rest until American workers are safely back at work. In March, I signed the Coronavirus Aid, Relief, and Economic Security Act, which established the Paycheck Protection Program that gave small businesses the resources to keep their employees on payroll during the pandemic. I also issued an Executive Order continuing the work of the National Council for the American Worker, which coordinates resources across our Federal Government to ensure our Nation's workers have the skills necessary for the jobs of the future. In addition, my Administration's Fiscal Year 2021 Budget includes $200 million for apprenticeship programs—up $25 million from current funding levels and more than double from when I first took office—to further support and expand a highly skilled workforce that is essential for global competitiveness. Even in the face of tremendous adversity, we have set record numbers in job growth along with record low unemployment—a trend that will continue with the help of millions of hardworking Americans across our country.

On this Labor Day, we express our deep gratitude to workers of every generation who helped create the greatest economy in the world and the workers whose tireless efforts will ensure our country and workforce bounce back with full force as we defeat the virus. Together, we will continue the great American comeback.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 7, 2020,

as Labor Day. I call upon all public officials and people of the United States to observe this day with appropriate programs, ceremonies, and activities that honor the contributions and resilience of working Americans.

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



[FR Doc. 2020–20281
Filed 9–10–20; 11:15 am]
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FEDERAL REGISTER

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Part VI

The President

Federal Register
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Presidential Documents

Title 3—

The President

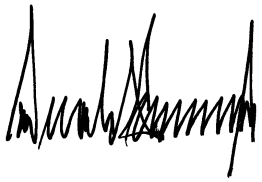
Notice of September 10, 2020

Continuation of the National Emergency With Respect to Certain Terrorist Attacks

Consistent with section 202(d) of the National Emergencies Act, 50 U.S.C. 1622(d), I am continuing for 1 year the national emergency previously declared on September 14, 2001, in Proclamation 7463, with respect to the terrorist attacks of September 11, 2001, and the continuing and immediate threat of further attacks on the United States.

Because the terrorist threat continues, the national emergency declared on September 14, 2001, and the powers and authorities adopted to deal with that emergency must continue in effect beyond September 14, 2020. Therefore, I am continuing in effect for an additional year the national emergency declared on September 14, 2001, in response to certain terrorist attacks.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
September 10, 2020.

[FR Doc. 2020–20312
Filed 9–10–20; 11:15 am]
Billing code 3295–F0–P

Presidential Documents

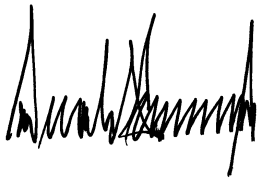
Notice of September 10, 2020

Continuation of the National Emergency With Respect to Foreign Interference in or Undermining Public Confidence in the United States Elections

On September 12, 2018, by Executive Order 13848, I declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the threat of foreign interference in or undermining public confidence in United States elections.

Although there has been no evidence of a foreign power altering the outcomes or vote tabulation in any United States election, foreign powers have historically sought to exploit America's free and open political system. In recent years, the proliferation of digital devices and internet-based communications has created significant vulnerabilities and magnified the scope and intensity of the threat of foreign interference. The ability of persons located, in whole or in substantial part, outside the United States to interfere in or undermine public confidence in United States elections, including through the unauthorized accessing of election and campaign infrastructure or the covert distribution of propaganda and disinformation, continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on September 12, 2018, must continue in effect beyond September 12, 2020. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13848 with respect to the threat of foreign interference in or undermining public confidence in United States elections.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
September 10, 2020.

[FR Doc. 2020–20315
Filed 9–10–20; 11:15 am]
Billing code 3295–F0–P

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