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Presidential Documents

Title 3—

The President

Proclamation 10079 of September 18, 2020

National Farm Safety and Health Week, 2020

By the President of the United States of America

A Proclamation

Since our Nation's founding, agriculture has played an integral role in the American way of life. America's farmers and agricultural workers are critical to our economy, and concern for their physical and mental safety must remain a top national priority. Together, we must continue to ensure our farmers, ranchers, and foresters have the ability to work safely and effectively as they provide food, fiber, and fuel for our country. During National Farm Safety and Health Week, we raise awareness of safety and health issues on farms, ranches, and in rural communities, and we commit to improving the well-being of those who live and work in rural settings for generations to come.

The theme of National Farm Safety and Health Week this year, ''Every Farmer Counts,'' reminds us that every American must prioritize the safety and health of those who provide us with essential goods. The fall harvest is one of the busiest and most dangerous seasons of the year for agricultural workers. In preparation, and to propel continued innovation in farm productivity and safety, my Administration is supporting 21st-century artificial intelligence and greater precision in agricultural applications. Additionally, we have made significant investments in rural hospitals, rural broadband, and access to telemedicine. My Administration has also prioritized the expansion of prevention, treatment, and recovery programs for the misuse of opioids in rural America. This week, we rededicate ourselves to these efforts to maximize the safety and health of agricultural producers through best practices, innovative technologies, and production methods that reduce risk and create safer, more productive work environments.

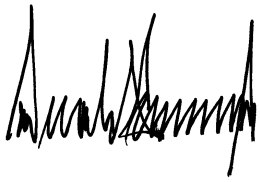
Addressing farm safety and health concerns requires more than just protecting agricultural workers from routine farm injuries. Our efforts also include addressing disease outbreaks and health crises, such as the coronavirus pandemic. This past spring, I instructed our Federal agencies to publish coronavirus safety guidelines addressing the specific needs of agricultural workers and food processing workers, all of which work hard to ensure America's critical food supply remains strong. To aid producers affected by the pandemic, my Administration is providing $34 billion to America's farmers through a variety of programs, including $30 billion in direct payments through the Coronavirus Food Assistance Program and the innovative $4 billion Farmers to Families Food Box Program, which supports American food producers and communities in need.

This National Farm Safety and Health Week, we also commend our first-class medical professionals and brave first responders serving in rural communities throughout the country. When our agricultural workers experience illness, injury, or health crises, our rural emergency medical responders are their heroes. With the support of these committed Americans, and our continued support for programs enhancing farm safety, we will ensure every farmer—and every American life in rural and remote communities—counts.

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 20 through

September 26, 2020, as National Farm Safety and Health Week. Please join me in promoting safe and healthy practices on our farms and ranches as producers enter the harvest season across the United States. I also urge all Americans to express their appreciation and gratitude to our farmers, ranchers, and foresters for their important contributions and tireless service to our Nation. The United States was built on the foundation of agriculture, and agriculture was built on the foundation of family farmers and their enduring values.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth 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.



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Presidential Documents

Proclamation 10080 of September 18, 2020

National Gang Violence Prevention Week, 2020

By the President of the United States of America

A Proclamation

During National Gang Violence Prevention Week, we reaffirm our unwavering commitment to ensuring gang members are removed from our streets and prosecuted for their crimes, so all Americans can live and thrive in a safe and peaceful environment. Our Nation's law enforcement officials are our first line of defense against gang violence, and we continue to express our eternal gratitude for their selfless devotion to upholding the rule of law and keeping us safe.

Street gangs pose grave threats to the safety of communities and the well-being of children, teenagers, and families. Gangs aim to perpetuate the trafficking and smuggling of humans, weapons, and drugs. They destroy public and private property, corrupt America's youth, and ruin businesses. To break the pernicious cycle of gang violence and crime, my Administration has enacted comprehensive solutions focused on prevention, intervention, and suppression. In July, we launched Operation LeGend—a sustained and coordinated law enforcement surge in communities across the Nation. Operation LeGend is named in honor of 4-year-old LeGend Taliferro, who was shot and killed while he peacefully slept early in the morning of June 29 in Kansas City, Missouri. This unfathomable tragedy is one of many examples of the scourge gangs pose to our youth and to our communities. The eponymous operation spans every Federal law enforcement agency and is being executed in conjunction with State and local officials. Our national effort to fight violent crime will protect our Nation's children and bring violent criminals to justice.

Every child in America should enjoy a youth without any risk of falling victim to violence, drugs, or other harmful criminal acts that can destroy their future. And every parent should see their children grow into the people that God intended for them to become. It is the responsibility of all public leaders to do everything in our power to make this possible. As President, my highest obligation is to protect our Nation's citizens, which is why we are relentlessly working to restore law and order throughout our country.

In the past year, the Department of Justice has prosecuted thousands of violent gang members, including hundreds of leaders, members, and associates of transnational criminal organizations such as MS–13 and the 18th Street Gang. The spread of these vicious groups, and the human suffering they bring, is accomplished through a sophisticated and well-organized campaign of violence meant to intimidate neighborhoods and boost illegal money-making activities. In response, my Administration has taken strong actions to secure our borders, shut down smuggling networks, and expedite the removal of illegal immigrants associated with these transnational criminal networks. Additionally, the Attorney General's Joint Task Force Vulcan has taken steps to disrupt, dismantle, and ultimately destroy MS–13, including strategically targeting the highest ranking leaders and bringing terrorism charges against the organization. Through these initiatives, and working with our foreign law enforcement partners in Operation Regional Shield, we have reduced the ability of transnational criminal organizations to commit

murders and other violent crimes, as well as hindered their funding by stopping crimes such as robbery, extortion, drug and gun smuggling, and despicable acts of human trafficking.

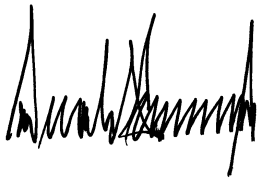
Under my Administration, the Department of Justice has revitalized the Project Safe Neighborhoods program, which provides crucial support to local law enforcement agencies across the country to combat gang violence and prevent violent crime. This community-based initiative targets the most violent criminals in the most dangerous areas of our country and has successfully delivered justice by getting them off the streets and behind bars.

None of these significant strides would be possible without the dedicated law enforcement officials of our great Nation. In light of the growing, radical movement attacking the police, I take this opportunity to once again reemphasize my unending support for our Nation's heroes in blue. We are forever grateful for the incredible men and women of law enforcement who risk their lives every single day to combat crime and mayhem.

As a Nation, we must band together in the fight against criminal gangs that threaten our democracy and terrorize our children, families, and communities. National Gang Violence Prevention Week is a time to reflect on the honorable service of our heroes in law enforcement and dedicate ourselves to doing all that we can to prevent criminal gangs from infiltrating our communities with violence and crime. We will not rest until we have removed the scourge of gangs and transnational criminal organizations from our country.

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 the week of September 20 through September 26, 2020, as ''National Gang Violence Prevention Week.'' I call upon the people of the United States to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth 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.



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Presidential Documents

Proclamation 10081 of September 18, 2020

Death of Ruth Bader Ginsburg

By the President of the United States of America

A Proclamation

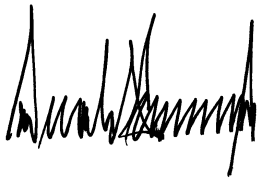
Today, our Nation mourns the loss of a trailblazer, not only in the field of law, but in the history of our country. Ruth Bader Ginsburg served more than 27 years as an Associate Justice of the Supreme Court of the United States. She was a loving wife to her late husband Martin, and a caring mother to her two children Jane and James.

Ruth Bader Ginsburg was an inspiration to all Americans. Having lost her older sister and mother before graduating high school, she entered law school as both a wife and a mother, and one of the few women in her class. After graduating from law school in 1959, she worked tirelessly for more than 34 years as a litigator and jurist and, in 1993, she became just the second woman to sit on the Supreme Court of the United States. Renowned for her powerful dissents at the Supreme Court, Justice Ginsburg epitomized powerful yet respectful argument; that you can disagree with someone without being disagreeable to them. Justice Ginsburg's work helped bring about greater equality for women, secure rights for the disabled, and will continue to influence our Nation for generations to come. In addition to her quick mind, she brought flair to the bench with her stylish jabots and her warm friendships among colleagues, even those with whom she often disagreed, most notably with the late Justice Antonin Scalia.

A fighter to the end, Justice Ginsburg defeated cancer and the odds numerous times—all while continuing to serve on the Court. Her commitment to the law and her fearlessness in the face of death inspired countless ''RBG'' fans, and she continues to serve as a role model to countless women lawyers. Her legacy and contribution to American history will never be forgotten.

As a mark of respect for Ruth Bader Ginsburg, Associate Justice of the United States, I hereby order, by the authority vested in me by the Constitution and laws of the United States of America, including section 7 of title 4, United States Code, that the flag of the United States shall be flown at half-staff at the White House and on all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset, on the day of interment. I also direct that the flag shall be flown at half-staff for the same period at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth 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. 2020–21385
Filed 9–24–20; 8:45 am]
Billing code 3295–F0–P

Presidential Documents

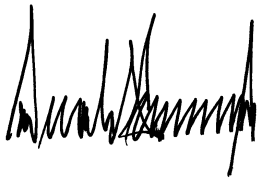
Memorandum of September 2, 2020

Delegation of Authority To Submit to the Congress the Notifications and Explanations Specified in the Resolution of Advice and Consent to Ratification of the Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the Secretary of State the authority to provide to the Congress the notifications and explanations specified in section 1 of the July 2, 1980, Senate's Resolution of Advice and Consent to Ratification of the Agreement between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America, with attached Protocol, signed at Vienna on November 18, 1977.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, September 2, 2020

[FR Doc. 2020–21388
Filed 9–24–20; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Memorandum of September 4, 2020

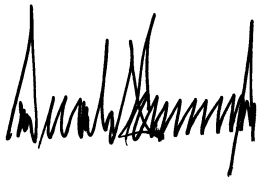
Delegation of Certain Functions and Authorities Under the Global Fragility Act of 2019

Memorandum for the Secretary of State[,] the Secretary of the Treasury[,] the Secretary of Defense[,] the Secretary of Energy[,] the Secretary of Commerce[,] the Director of the Office of Management and Budget[,] the Director of National Intelligence[, and] the Administrator of the United States Agency for International Development

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of Defense, the Secretary of Energy, the Secretary of Commerce, the Director of National Intelligence, the Administrator of the United States Agency for International Development, and the Director of the Office of Management and Budget, the functions and authorities vested in the President by sections 504(a) and (c) of the Global Fragility Act of 2019 (Public Law 116–94).

The delegation in this memorandum shall apply to any provisions of any future public laws that are the same or substantially the same as those provisions referenced in this memorandum.

The Secretary of State is authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,

Washington, September 4, 2020

[FR Doc. 2020–21389

Filed 9–24–20; 8:45 am]

Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2020–11 of September 16, 2020

Presidential Determination on Major Drug Transit or Major Illicit Drug Producing Countries for Fiscal Year 2021

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States, including section 706(1) of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107–228) (FRAA), I hereby identify the following countries as major drug transit or major illicit drug producing countries: Afghanistan, The Bahamas, Belize, Bolivia, Burma, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, India, Jamaica, Laos, Mexico, Nicaragua, Pakistan, Panama, Peru, and Venezuela.

A country's presence on the foregoing list is not necessarily a reflection of its government's counternarcotics efforts or level of cooperation with the United States. Consistent with the statutory definition of a major drug transit or major illicit drug producing country set forth in section 481(e)(2) and (5) of the Foreign Assistance Act of 1961, as amended (Public Law 87–195) (FAA), the reason countries are placed on the list is the combination of geographic, commercial, and economic factors that allow drugs to transit or be produced, even if a government has engaged in robust and diligent narcotics control measures.

Illicit drugs inflict enormous harm on the health and safety of the American people and threaten the national security of the United States. While my Administration has achieved steady progress in stemming the tide of our country's drug epidemic, transnational criminal organizations continually challenge our success by violating our borders and flooding our homeland with these deadly substances.

The United States is taking the fight to these criminal organizations and their enablers on an unprecedented scale. This April, I initiated the most significant counternarcotic operations in decades targeting the illicit drug trade in the Caribbean and Eastern Pacific by deploying U.S. military assets to U.S. Southern Command in cooperation with 22 international allies. These operations led to the seizure of more than 80 metric tons of cocaine and other dangerous drugs, depriving transnational criminal organizations of more than $1.8 billion in profits and putting drug kingpins on notice that they are squarely in the crosshairs of the United States.

The most complicit kingpin in this Hemisphere is the Venezuelan dictator, Nicolas Maduro. This March, a U.S. court indicted Maduro for narcoterrorism and conspiracy to smuggle cocaine into the United States. In response, the U.S. Department of State announced a $15 million reward for information leading to his arrest or conviction. He joined a multitude of other regime cronies who are either under U.S. indictment or were sanctioned for drug crimes by the Department of the Treasury. The United States will continue to support the Venezuelan people, Interim President Juan Guaido, and the democratically elected National Assembly, and will work together with the legitimate Interim Government of Venezuela to stop drug trafficking and root out the criminal elements that have exploited that country. Maduro's illegitimate narco-regime should face justice for its crimes.

While bringing criminals like Maduro to justice remains an urgent priority, the United States also needs other governments in the Western Hemisphere to assume greater responsibility for reducing illegal drug supplies.

In Colombia, President Ivan Duque and his government remain strong partners of the United States, and Colombian police and military forces have shown great bravery and commitment by targeting high-level drug traffickers, interdicting drug shipments, and manually eradicating coca. Nevertheless, coca cultivation and cocaine production remain at unacceptably high levels. To reach our shared 5-year goal to reduce coca cultivation and cocaine production by half by the end of 2023, Colombia must move forward with resuming aerial eradication, which remains an irreplaceable tool in the government's arsenal alongside manual eradication and alternative economic development.

It is also of great concern that coca cultivation and cocaine production remain near historical highs in Peru, another longstanding U.S. ally. Peru is a valued law enforcement partner of the United States and has demonstrated continuing commitment to fighting all aspects of the drug trade. I call on the Peruvian government to resume eradication operations in the country's high yield coca producing regions, including the Valley of the Apurimac, Ene, and Mantaro Rivers.

Since the resignation of former President Evo Morales in November 2019, U.S.-Bolivian cooperation against drug trafficking networks has increased under Bolivia's transitional government. The transitional government made important strides in drug interdiction and resumed processing extradition requests of drug traffickers by the United States. Nevertheless, coca cultivation continues to exceed legal limits under Bolivia's own domestic laws for medicinal and traditional use, and the Bolivian state has taken insufficient measures to safeguard the country's licit coca markets from criminal exploitation. If the Bolivian government, including its Legislative Assembly, takes sufficient steps in the year ahead to remedy these shortcomings and continues the progress made over the past 10 months under the transitional government, I will consider removing Bolivia from next year's list of countries that have failed demonstrably to uphold their drug control responsibilities.

Last year, I warned that I would consider determining Mexico had failed demonstrably to uphold its international drug control commitments if it did not intensify its efforts to increase poppy eradication, interdict illicit drugs before they cross the border into the United States, increase its prosecutions of drug traffickers and seize their assets, and develop a comprehensive drug control strategy. This year, Mexico successfully passed asset forfeiture reforms, increased extraditions of dangerous drug traffickers to the United States, made substantial progress in completing its first poppy yield study in 17 years, and produced a counterdrug strategy. While these are signs of progress, more must be done.

Mexico remains the source of nearly all heroin and methamphetamine seized in the United States, and a transit route for most of the cocaine available in our country. Moreover, Mexican cartels take advantage of uneven precursor chemical controls in Mexico to manufacture deadly drugs, such as fentanyl, inside Mexico and smuggle them into the United States. Mexican drug interdictions remain far too low in the face of these critical drug threats. These cartels present a clear threat to Mexico and the Mexican government's ability to exert effective control over parts of its country.

Mexico must clearly demonstrate its commitment to dismantling the cartels and their criminal enterprises and do more to protect the lives of Mexican and American citizens threatened by these groups. Mexico needs to continue to extradite key criminal actors, step up comprehensive investigations and drug and asset seizures, and implement a robust data-based poppy eradication program tied to sustainable alternative development. The Mexican government should acknowledge the alarming trend of fentanyl production inside its territory. It must prioritize law enforcement action targeting cartel production and trafficking of fentanyl—the leading substance involved in drug

overdose deaths in the United States—and strengthen efforts targeting fentanyl precursor chemicals overwhelmingly trafficked from China, as well as fentanyl smuggling and production. More must also be done to target the cartels' increasing production of methamphetamine.

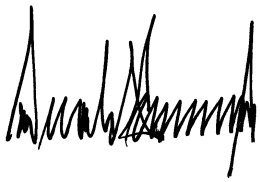
The United States remains ready to deepen its partnership with Mexico to address these shared challenges and welcomes the opportunity to develop joint drug control goals with Mexico and bilateral investigations built on transparent and open sharing of investigative information and evidence leading to successful prosecutions.

Many Mexican military and law enforcement professionals, in cooperation with their U.S. counterparts, are bravely confronting the transnational criminal organizations that threaten both of our countries. Unless the Mexican government demonstrates substantial progress in the coming year backed by verifiable data, Mexico will be at serious risk of being found to have failed demonstrably to uphold its international drug control commitments.

Pursuant to section 706(2)(A) of the FRAA, I hereby designate Bolivia and the illegitimate regime of Nicolas Maduro in Venezuela as having failed demonstrably during the previous 12 months to adhere to their obligations under international counternarcotics agreements and to take the measures required by section 489(a)(1) of the FAA. Included with this determination are justifications for the designations of Bolivia and the Maduro regime, as required by section 706(2)(B) of the FRAA.

I have also determined, in accordance with provisions of section 706(3)(A) of the FRAA, that United States programs that support the legitimate interim government in Venezuela and the Bolivian government are vital to the national interests of the United States.

You are authorized and directed to submit this designation, with the Bolivia and Venezuela memoranda of justification, under section 706 of the FRAA, to the Congress, and to publish it in the *Federal Register*.



THE WHITE HOUSE,
Washington, September 16, 2020

[FR Doc. 2020–21390
Filed 9–24–20; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register

Vol. 85, No. 187

Friday, September 25, 2020

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

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

DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

12 CFR Part 44

[Docket No. OCC–2020–0002]

RIN 1557–AE67

FEDERAL RESERVE SYSTEM

12 CFR Part 248

[Docket No. R–1694]

RIN 7100–AF70

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 351

RIN 3064–AF17

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 75

RIN 3038–AE93

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 255

[Release no. BHCA–9A; File no. S7–02–20]

RIN 3235–AM70

Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds; Correction

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Securities and Exchange Commission (SEC); and Commodity Futures Trading Commission (CFTC).

ACTION: Notification of correction.

SUMMARY: The OCC, Board, FDIC, SEC, and CFTC (together, the agencies) are issuing this correction to make technical corrections to the **Federal Register** rule adopting amendments to the regulations implementing section 13 of the Bank Holding Company Act published on July 31, 2020.

DATES: Effective October 1, 2020.

FOR FURTHER INFORMATION CONTACT:

OCC: Tabitha Edgens, Counsel; Mark O'Horo, Senior Attorney, Chief Counsel's Office, (202) 649–5490; for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Sarah Podrygula, Attorney, (202) 912–4658, or Kirin Walsh, Attorney, (202) 452–3058, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For users of Telecommunication Device for the Deaf (TDD), (202) 263–4869.

FDIC: Michael B. Phillips, Counsel, (202) 898–3581, or Annmarie H. Boyd, Counsel, (202) 898–3714, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

CFTC: Cantrell Dumas, Special Counsel, (202) 418–5043, *cdumas@cftc.gov,* Division of Swap Dealer and Intermediary Oversight; Mark Fajfar, Assistant General Counsel, (202) 418–6636, *mfajfar@cftc.gov,* Office of the General Counsel; Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SEC: William Miller, Senior Counsel, or Jennifer Songer, Branch Chief at (202) 551–6787 or *IArules@sec.gov,* Investment Adviser Regulation Office, Division of Investment Management, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

You may also contact any of the individuals for these agencies named in the final rule published on July 31, 2020, at 85 FR 46422.

SUPPLEMENTARY INFORMATION: The agencies are issuing this correction to make technical corrections to the final rule adopting amendments to the regulations implementing section 13 of the Bank Holding Company Act published on July 31, 2020 (the 2020 amendments).[1] Two of the amendatory instructions of the 2020 amendments did not accurately reflect changes to the agencies' rules as described in the Supplementary Information section of the 2020 amendments. This correction corrects the agencies' **Federal Register** notice consistent with the Supplementary Information section of the 2020 amendments. Specifically, this correction corrects an instruction stating that the agencies were revising paragraph (d)(1) of section __.20 of the 2020 amendments when the agencies intended to revise the *introductory text* to paragraph (d)(1). This correction also corrects instructions concerning 17 CFR 255.10(c)(11) and 75.10(c)(11) to retain the introductory text for those paragraphs. The agencies note that the effective date for the 2020 amendments is unchanged and continues to be October 1, 2020.

Correction

In the **Federal Register** of July 31, 2020, FR Rule Doc. 2020–15525, beginning on page 46422, is corrected as follows:

Title 12

§ 44.20 [Corrected]

■ 1. On page 46502, in the third column, in 12 CFR 44.20, in amendment 7b., add the words ''introductory text'' after the words ''paragraph (d)(1)''.

§ 248.20 [Corrected]

■ 2. On page 46509, in the second column, in 12 CFR 248.20, in amendment 14b., add the words ''introductory text'' after the words ''paragraph (d)(1)''.

§ 351.20 [Corrected]

■ 3. On page 46516, in the first column, in 12 CFR 351.20, in amendment 21b., add the words ''introductory text'' after the words ''paragraph (d)(1)''.

Title 17

§ 75.10 [Corrected]

■ 4. On page 46517, third column, in 17 CFR 75.10, remove ''(11) * * *'' and add in its place ''(11) *SBICs and public welfare investment funds.* An issuer:''

§ 75.20 [Corrected]

■ 5. On page 46522, in the second column, in 17 CFR 75.20, in amendment

[1] 85 FR 46422 (July 31, 2020).

28b., add the words ''introductory text'' after the words ''paragraph (d)(1)''.

§ 255.10 [Corrected]

■ 6. On page 46524, second column, in 17 CFR 255.10, remove ''(11) * * *'' and add in its place ''(11) *SBICs and public welfare investment funds.* An issuer:''

§ 255.20 [Corrected]

■ 7. On page 46529, in the first column, in 17 CFR 255.20, in amendment 35b., add the words ''introductory text'' after the words ''paragraph (d)(1)''.

Jonathan V. Gould,

Senior Deputy Comptroller and Chief Counsel, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on or about September 18, 2020.

James P. Sheesley,

Acting Assistant Executive Secretary.

Commodity Futures Trading Commission.

Dated: September 21, 2020.

Robert Sidman,

Deputy Secretary of the Commission.

By the Securities and Exchange Commission.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–21100 Filed 9–24–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0334; Product Identifier 2017–SW–133–AD; Amendment 39–21262; AD 2020–20–06]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Limited Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Bell Helicopter Textron Canada Limited (BHTC) Model 429 helicopters. This AD requires repetitive inspections of certain cyclic and collective assembly bearings. This AD was prompted by reports that precipitation can lead to reduced effectiveness of the grease in the bearings. The actions of this AD are intended to address an unsafe condition on these products.

DATES: This AD is effective October 30, 2020.

ADDRESSES: For service information identified in this final rule, contact Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone 450–437–2862 or 800–363–8023; fax 450–433–0272; or at *https://www.bellcustomer.com.* You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

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–2018–0334; 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 AD, the Transport Canada AD, any comments received, and other information. The street 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: David Hatfield, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *david.hatfield@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to BHTC Model 429 helicopters with a bellcrank assembly part number (P/N) 429–001–523–101, 429–001–523–103, 429–001–532–101 or 429–001–532–103 installed. The NPRM published in the **Federal Register** on March 20, 2020 (85 FR 16019). The NPRM proposed to require, at specified intervals, disconnecting the forward ends of the collective control tube, longitudinal stability and control augmentation system (SCAS) actuator, and lateral SCAS actuator, and stowing the collective control tube and each SCAS actuator to prevent binding; and then inspecting for any roughness in the flight control system and any binding in any arm end bearing and on the longitudinal bellcrank assembly. If there is any roughness in the flight control system, the NPRM proposed to require replacing the six pivot bearings in the collective/lateral bellcrank assembly and the longitudinal bellcrank assembly. If there is any binding in any arm end bearing or on the longitudinal bellcrank assembly, the NPRM proposed to require replacing each arm end bearing before further flight.

Transport Canada, which is the aviation authority for Canada, has issued Canadian AD CF–2016–11R2, dated October 18, 2017, to correct an unsafe condition for BHTC Model 429 helicopters equipped with a bellcrank assembly P/N 429–001–523–101, 429–001–523–103, 429–001–532–101 or 429–001–532–103. Transport Canada advises that in-service reports show that bearings in the roof-mounted flight control bellcranks are adversely affected by precipitation. Pooling can occur at the forward portion of the roof, providing a source of contamination for bearings in the roof-mounted flight controls. Precipitation may reduce the effectiveness of the grease in the bearings, allowing corrosion to occur. This can result in intermittent restrictions, such as binding and roughness in the flight controls. Transport Canada also advises that an undetected corroded bearing could lead to restrictions in the collective, directional, or pitch control systems, resulting in difficulty controlling the helicopter.

Transport Canada consequently requires within 12 months after the helicopter was manufactured and thereafter at intervals not to exceed 6 months, inspecting the flight controls and replacing any discrepant bearings. If the helicopter's age exceeds 12 months, Transport Canada requires the 12-month inspection within 30 days. Transport Canada also requires, within 30 days, performing a functional check and replacement, if applicable, of the bearings if the most recent functional check of the helicopter was performed with the alternate procedure of using a hydraulic test stand or if the inspection method is unknown.

Comments

After the NPRM was published, the FAA received comments from two commenters. However, the comments addressed neither the proposed actions nor the determination of the cost to the public. Therefore, the FAA has made no changes based on those comments.

FAA's Determination

These helicopters have been approved by the aviation authority of Canada and are approved for operation in the United

States. Pursuant to the FAA's bilateral agreement with Canada, Transport Canada, its technical representative, has notified the FAA of the unsafe condition described in the Transport Canada AD. The FAA is issuing this AD after evaluating all of the information provided by Transport Canada and determining the unsafe condition exists and is likely to exist or develop on other products of the same type design and that air safety and the public interest require adopting the AD requirements as proposed.

Interim Action

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

Differences Between This AD and the Transport Canada AD

Transport Canada provides requirements if the most recent functional procedure was performed using a hydraulic test stand as an alternate procedure. This AD provides no such alternate procedure.

Related Service Information

The FAA reviewed Bell Helicopter Alert Service Bulletin 429–15–21, Revision B, dated May 11, 2017 (ASB), which specifies moving the cyclic stick fore, aft, and laterally, and the collective stick up and down from stop to stop to detect deteriorated pivot bearings. The ASB also specifies inspecting to determine whether the bearings in the collective, lateral, and longitudinal arm assemblies rotate freely. If discrepant arm bearings are found, the ASB specifies contacting BHTC Product Support Engineering to report the findings and replacing the discrepant parts with serviceable parts.

Costs of Compliance

The FAA estimates that this AD affects 64 helicopters 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.

Inspecting the cyclic and the collective for roughness takes about 3 work-hours for an estimated cost of $255 per helicopter, and $16,320 for the U.S. fleet, per inspection cycle.

Replacing six pivot bearings takes about 3 work-hours and parts cost about $624 for an estimated cost of $879 per helicopter.

Replacing three arm end bearings takes about 3 work-hours and parts cost about $135 for an estimated cost of $390 per helicopter.

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 helicopters identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

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):

2020–20–06 Bell Helicopter Textron Canada: Amendment 39–21262; Docket No. FAA–2018–0334; Product Identifier 2017–SW–133–AD.

(a) Applicability

This AD applies to Bell Helicopter Textron Canada Limited Model 429 helicopters with a bellcrank assembly part number (P/N) 429–001–523–101, 429–001–523–103, 429–001–532–101, or 429–001–532–103 installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as precipitation in the forward portion of the roof structure that can lead to pooling at the bellcrank assembly and corrosion of the bearings. This condition could result in restrictions in the collective, directional or pitch control systems, and subsequent loss of helicopter control.

(c) Effective Date

This AD becomes effective October 30, 2020.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

Within 12 months after the helicopter was manufactured or 30 days after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 6 months:

(1) Disconnect the forward ends of the collective control tube, longitudinal stability and control augmentation system (SCAS) actuator, and lateral SCAS actuator. Stow the collective control tube and each SCAS actuator to prevent binding.

(2) Slowly move the cyclic stick fore/aft and laterally, and the collective stick up/down from stop to stop to determine if there is any roughness. If there is any roughness in the flight control system, before further flight, replace all six pivot bearings, P/N MS27646–41, in the collective lateral bellcrank assembly and the longitudinal bellcrank assembly.

(3) Inspect the collective arm assembly P/N 429–001–525–101, the lateral arm assembly P/N 429–001–527–101, and the longitudinal arm assembly P/N 429–001–530–101, by rotating each bearing and ensuring each bearing rotates freely. If there is any binding in any arm end bearing or on the longitudinal bellcrank assembly, before further flight, replace each arm end bearing.

(f) Special Flight Permits

Special flight permits are prohibited.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: David Hatfield, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under

14 CFR part 91, subpart K, the FAA suggests that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(h) Additional Information

(1) Bell Helicopter Alert Service Bulletin 429–15–21, Revision B, dated May 11, 2017, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone 450–437–2862 or 800–363–8023; fax 450–433–0272; or at *https://www.bellcustomer.com.* You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in Transport Canada Civil Aviation (Transport Canada) AD No. CF–2016–11R2, dated October 18, 2017. You may view the Transport Canada AD on the internet at *https://www.regulations.gov* in Docket No. FAA–2018–0334.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 2700, Flight Control System.

Issued on September 21, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–21127 Filed 9–24–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9909]

RIN 1545–BP35

Limitation on Deduction for Dividends Received From Certain Foreign Corporations and Amounts Eligible for Section 954 Look-Through Exception

Correction

In rule document 2020–18543 beginning on page 53068 in the issue of Thursday, August 27, 2020, make the following corrections:

1. (a) On page 53074, in the second column, in the second full paragraph, in the ninth line ''$100 ×'' should read ''$100x''.

(b) On the same page, in the same column, in the same paragraph, in the 13th line ''$100 ×'' should read ''$100x''.

(c) On the same page, in the same column, in the same paragraph, in the 21st line ''$100 ×'' should read ''$100x''.

2. On page 53074, in the second column, in the second full paragraph, in the 15th line ''$1 ×'' should read ''$1x''.

3. On page 53074, in the second column, in the second full paragraph, in the 17th line ''$99 ×'' should read ''$99x''.

4. (a) On page 53075, in the third column, in the first full paragraph, in the 11th line ''$100 ×'' should read ''$100x''.

(b) On the same page, in the same column, in the same paragraph, in the 13th line ''$100 ×'' should read ''$100x''.

(c) On the same page, in the same column, in the same paragraph, in the 15th line ''$100 ×'' should read ''$100x''.

(d) On the same page, in the same column, in the same paragraph, in the 20th line ''$100 ×'' should read ''$100x''.

(e) On the same page, in the same column, in the same paragraph, in the 27th line ''$100 ×'' should read ''$100x''.

(f) On the same page, in the same column, in the same paragraph, in the 37th line ''$100 ×'' should read ''$100x''.

§ 1.245A–5 [Corrected]

5. On page 53086, in § 1.245A–5, in the third column, in the second full paragraph, in the 19th line the heading ''(B) Special rules regarding carryover foreign target stock.'' should start a new paragraph.

[FR Doc. C1–2020–18543 Filed 9–24–20; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2019–0006; T.D. TTB–163; Ref: Notice No. 184]

RIN 1513–AC42

Establishment of the Candy Mountain Viticultural Area and Modification of the Yakima Valley Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the approximately 815-acre ''Candy Mountain'' viticultural area in Benton County, Washington. TTB is also expanding the boundary of the existing 1,093-square mile Yakima Valley viticultural area by approximately 72 acres in order to avoid a partial overlap with the newly established Candy Mountain viticultural area. Both the existing Yakima Valley viticultural area and the newly established Candy Mountain viticultural area are located entirely within the existing Columbia Valley viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: This final rule is effective October 26, 2020.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated the functions and duties in the administration and enforcement of these provisions to the TTB Administrator through Treasury Order 120–01, dated December 10, 2013 (superseding Treasury Order 120–01, dated January 24, 2003).

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission to TTB of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having

distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon;
- If the proposed AVA is to be established within, or overlapping, an existing AVA, an explanation that both identifies the attributes of the proposed AVA that are consistent with the existing AVA and explains how the proposed AVA is sufficiently distinct from the existing AVA and therefore appropriate for separate recognition; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

Candy Mountain Petition

TTB received a petition from Dr. Kevin R. Pogue, a professor of geology at Whitman College, proposing the establishment of the ''Candy Mountain'' AVA in Benton County, Washington. The proposed Candy Mountain AVA lies entirely within the established Columbia Valley AVA (27 CFR 9.74) and partially within the established Yakima Valley AVA (27 CFR 9.69). To avoid the partial overlap, the petition also proposed expanding the Yakima Valley AVA by approximately 72 acres so that the entire proposed Candy Mountain AVA would be within the established AVA. Dr. Pogue submitted the petition on behalf of the following industry members with wine businesses within the proposed AVA: Ramer Holtan, who is developing a commercial wine grape vineyard on Candy Mountain; Premiere Columbia Partners LLC, owners of Candy Mountain Vineyard; and Paul and Vickie Kitzke, owners of Kitzke Cellars.

Within the 815-acre proposed AVA, there are currently two producing commercial vineyards, Candy Mountain Vineyard and Kitzke Cellars, which cover a total of approximately 54 acres. Additionally, Mr. Holtan has secured long-term leases from the Washington Department of Natural Resources to plant 200 additional acres of vineyards within the proposed AVA. A copy of the lease was included in the petition as evidence of Mr. Holtan's intent to grow wine grapes. Currently, Kitzke Cellars is the only winery within the proposed AVA, although the petition notes that other wineries in Washington produce wines from grapes grown within the proposed AVA. According to the petition, the distinguishing features of the proposed Candy Mountain AVA are its soils and topography.

The soils of the proposed Candy Mountain AVA are developed from wind-deposited silt (loess) and fine sand overlying sediment. The sediment is a mixture of gravel and sand that was derived directly from surging ice-age flood waters and also includes silt and fine sand that settled out of suspension when the flood waters pooled behind downstream topographic restrictions. The loess and sediment, in turn, both overlay basalt bedrock. The thickness of the flood-water sediment within the proposed Candy Mountain AVA gradually decreases as one moves up the mountain, and the sediment is not found within the upper 70 feet of the proposed AVA. By contrast, the regions to the north, south, and west of the mountain and the proposed Candy Mountain AVA are at lower elevations and, therefore, have thicker accumulations of flood sediments in their soils.

According to the petition, the soils of the proposed AVA have an effect on viticulture. The soils are fairly loose, which allows for root expansion. The soils also do not have a large water holding capacity, meaning that vineyard owners must monitor soil moisture carefully to ensure the vines have adequate access to water. Finally, the thin soils allow roots to come into contact with the underlying basalt bedrock, which is comprised of calcium-rich feldspars and other minerals that are rich in iron and magnesium, such as pyroxene and olivine. The petition states that these minerals and nutrients are only present in the bedrock, so vines planted in the surrounding regions where the soil is thicker do not have the same access to these elements as vines planted within the proposed AVA.

Topography also distinguishes the proposed Candy Mountain AVA from the surrounding regions. The proposed Candy Mountain AVA is located on the southwest-facing slope of Candy Mountain. Within the proposed AVA, elevations range from 640 feet to 1,320 feet, and slope angles are gentle to moderate and range from 2 to 20 degrees. Gentle slope angles facilitate mechanized vineyard maintenance and harvest. A south-facing slope aspect increases the amount per unit area of solar radiation that reaches the surface and promotes photosynthesis in the grape vines, as well as grape development and maturation.

By contrast, the valley floor surrounding both the entire Candy Mountain and the proposed Candy Mountain AVA is essentially flat, with slope angles of less than 2 degrees, and is susceptible to cold air pooling and the associated frosts and freezes. Additionally, much of the land immediately surrounding the proposed AVA is a valley floor with elevations below 640 feet. The exception is the northeastern side of Candy Mountain, which has similar elevations to the proposed Candy Mountain AVA but was excluded from the proposed AVA due to northeasterly slope aspect and steep slope angles of up to 60 degrees.

Proposed Modification of the Yakima Valley AVA

As previously noted, the petition to establish the proposed Candy Mountain AVA also requested an expansion of the established 1,093-square mile Yakima Valley AVA. The proposed Candy Mountain AVA is located in the northeastern portion of the Yakima Valley AVA. Most of the proposed Candy Mountain AVA would, if established, be located within the current boundary of the Yakima Valley AVA. However, unless the boundary of the Yakima Valley AVA is modified, a small portion of the proposed Candy

Mountain AVA would be outside the Yakima Valley AVA. The proposed modification of the Yakima Valley AVA boundary would increase the size of the established AVA by 72 acres and would result in the entire proposed Candy Mountain AVA being within the Yakima Valley AVA.

The petition states that the vineyards within the proposed expansion area are within the proposed Candy Mountain AVA but lie approximately 600 feet outside of the current boundary of the Yakima Valley AVA. The vineyards did not exist at the time the Yakima Valley AVA was established. However, the petition states that the proposed expansion area is associated with both the feature known as the Yakima Valley and the Yakima Valley AVA. For example, the proposed expansion area is part of the larger Yakima River drainage basin, which is a characteristic of the Yakima Valley AVA. Additionally, the petition states that the owners of Kitzke Cellars, who manage the seven acres of vineyards within the proposed expansion area, have aligned themselves with the Yakima Valley AVA through their membership in Wine Yakima Valley, which is the Yakima Valley AVA's marketing organization.

The petition asserts that the proposed expansion area has similar soils, elevation, slope angles, and slope aspect as the remainder of the proposed Candy Mountain AVA, which is within the Yakima Valley AVA. The petition also describes the general similarities that the entire proposed Candy Mountain AVA shares with the established Yakima Valley AVA, such as similar soil series and geology.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 184 in the **Federal Register** on August 19, 2019 (84 FR 42863), proposing to establish the Candy Mountain AVA and expand the Yakima Valley AVA. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed AVA and the proposed AVA expansion area. The notice also compared the distinguishing features of the proposed AVA and the proposed expansion area to the surrounding areas. For a detailed description of the evidence relating to the name, boundary, and distinguishing features of the proposed AVA and boundary modification, and for a detailed comparison of the distinguishing features of the proposed AVA to the surrounding areas, see Notice No. 184.

In Notice No. 184, TTB solicited comments on the accuracy of the name, boundary, and other required information submitted in support of the petition. In addition, given the proposed Candy Mountain AVA's location within the Yakima Valley and Columbia Valley AVAs, TTB solicited comments on whether the evidence submitted in the petition regarding the distinguishing features of the proposed AVA sufficiently differentiates it from the two established AVAs. TTB also requested comments on whether the geographic features of the proposed AVA are so distinguishable from the two established AVAs that the proposed AVA should no longer be part of the established AVAs. The comment period closed October 18, 2019.

In response to Notice No. 184, TTB received a total of two comments. One of the comments was from a winery owner who sources grapes from both the proposed Candy Mountain AVA and the adjacent Red Mountain AVA (27 CFR 9.167). The commenter supports the proposed Candy Mountain AVA because ''there do appear to be differences due to a sense of place between those two adjacent (proposed) AVAs.'' The second comment was from the petitioner, Dr. Kevin Pogue. In his comment, Dr. Pogue pointed out that the proposed rule incorrectly identified the size of the Yakima Valley AVA as 1,093 acres instead of 1,093 square miles. TTB notes that it has corrected the description of the size of the Yakima Valley AVA in this final rule document. Neither of the comments mentioned the proposed expansion of the established Yakima Valley AVA or the inclusion of the proposed Candy Mountain AVA within the established Yakima Valley or Columbia Valley AVAs.

TTB Determination

After careful review of the petition and the comments received in response to Notice No. 184, TTB finds that the evidence provided by the petitioner supports the establishment of the Candy Mountain AVA and the modification of the Yakima Valley AVA boundary. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and parts 4 and 9 of the TTB regulations, TTB establishes the ''Candy Mountain'' AVA in Benton County, Washington, and modifies the boundary of the Yakima Valley AVA effective 30 days from the publication date of this document.

TTB has also determined that the Candy Mountain AVA will remain part of both the established Columbia Valley AVA and the Yakima Valley AVA. As discussed in Notice No. 184, the Candy Mountain AVA shares some broad characteristics with both established AVAs. For example, the proposed AVA is located within the Yakima River drainage basin, which is a characteristic of the Yakima Valley AVA. The Warden-Shano Association and the Scootenay-Starbuck Association soils are found within both the proposed AVA and the Yakima Valley AVA. Elevations within the proposed AVA are under 2,000 feet, which is a general characteristic of the Columbia Valley AVA. However, the Candy Mountain AVA is located on an isolated mountain, whereas the majority of the Yakima Valley and Columbia Valley AVAs are described as broad, flat valleys. Additionally, the proposed AVA has steeper slope angles than much of the land within the Columbia Valley and Yakima Valley AVAs.

Boundary Description

See the narrative description of the boundary of the Candy Mountain AVA and the Yakima Valley AVA boundary modification in the regulatory text published at the end of this final rule.

Maps

The petitioners provided the required maps, and they are listed below in the regulatory text. The Candy Mountain AVA boundary and the modified Yakima Valley AVA boundary may also be viewed on the AVA Map Explorer on the TTB website, at *https://www.ttb.gov/wine/ava-map-explorer.*

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in § 4.25(e)(3) of the TTB regulations (27 CFR 4.25(e)(3)). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See § 4.39(i)(2) of the TTB regulations (27 CFR 4.39(i)(2)) for details.

With the establishment of the Candy Mountain AVA, its name, ''Candy Mountain,'' will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the regulations clarifies this point. Consequently, wine bottlers using the name ''Candy Mountain'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the AVA name as an appellation of origin.

The establishment of the Candy Mountain AVA will not affect the existing Columbia Valley or Yakima Valley AVAs, and any bottlers using ''Columbia Valley'' or ''Yakima Valley'' as an appellation of origin or in a brand name for wines made from grapes grown within the Columbia Valley or Yakima Valley AVAs will not be affected by the establishment of this new AVA. The establishment of the Candy Mountain AVA will allow vintners to use ''Candy Mountain,'' ''Yakima Valley,'' and ''Columbia Valley'' as appellations of origin for wines made primarily from grapes grown within the Candy Mountain AVA if the wines meet the eligibility requirements for these appellations.

The modification of the Yakima Valley AVA boundary will allow vintners to use ''Yakima Valley,'' ''Columbia Valley,'' and ''Candy Mountain'' as appellations of origin for wines made primarily from grapes grown within the expansion area if the wines meet the eligibility requirements for these appellations.

Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this final rule.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Amend § 9.69 by revising paragraphs (b) and (c)(4), redesignating paragraphs (c)(5) through (c)(10) as paragraphs (c)(11) through (16), and adding new paragraphs (c)(5) through (c)(10) to read as follows:

§ 9.69 Yakima Valley.

* * * * *

(b) *Approved maps.* The United States Geological Survey (USGS) maps used to determine the boundary of the Yakima Valley viticultural area are titled:

(1) Walla Walla, Washington (1:250,000 scale), 1953; limited revision 1963;

(2) Yakima, Washington (1:250,000 scale), 1958; revised 1971;

(3) Benton City, WA (1:24,000 scale), 2013;

(4) Badger Mountain, Washington (1:24,000 scale), 2013; and

(5) Richland, Washington (1:24,000 scale), 2014.

* * * * *

(c) * * *

(4) Then southeast, crossing onto the Benton City map, to the top of Red Mountain;

(5) Then southeast to a point on East Kennedy Road approximately 2,500 feet east of an intermittent stream flowing north into Lost Lake;

(6) Then southeast across the top of Candy Mountain, crossing onto the Badger Mountain map, and continuing to the intersection with the southernmost point of an unnamed road known locally as Arena Road; then

(7) Proceed north for 0.45 mile along Arena Road, crossing onto the Richland map, to the intersection with the 670-foot elevation contour; then

(8) Proceed generally east for 0.4 mile along the elevation contour to the intersection with Dallas Road; then

(9) Proceed south in a straight line for 0.5 mile, crossing onto the Badger Mountain map, to the intersection with Interstate 182; then

(10) Proceed southeast in a straight line, crossing onto the Walla Walla map, to the top of Badger Mountain;

* * * * *

■ 3. Add § 9.272 to read as follows:

§ 9.272 Candy Mountain.

(a) *Name.* The name of the viticultural area described in this section is ''Candy Mountain''. For purposes of part 4 of this chapter, ''Candy Mountain'' is a term of viticultural significance.

(b) *Approved maps.* The three United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Candy Mountain viticultural area are titled:

(1) Badger Mountain, Washington, 2013;

(2) Benton City, Washington, 2013; and

(3) Richland, Washington, 2014.

(c) *Boundary.* The Candy Mountain viticultural area is located in Benton County in Washington. The boundary of the Candy Mountain viticultural area is as described below:

(1) The beginning point is on the Badger Mountain map at the southernmost point of an unnamed road known locally as Arena Road. From the beginning point, proceed northwest in a straight line for approximately 1.85 miles, crossing onto the Benton City map, to the intersection with East Kennedy Road NE; then

(2) Proceed westerly along East Kennedy Road NE for approximately 2,500 feet to the intersection with an intermittent creek approximately 0.8 mile south of Lost Lake; then

(3) Proceed southeasterly along the easternmost fork of the intermittent creek to the intersection with Interstate 82; then

(4) Proceed southeast along Interstate 82 for 2.25 miles, crossing over the Richland map and onto the Badger Mountain map, and continuing along the ramp onto Interstate 182 to a point due south of the intersection of Dallas Road and an unnamed road known locally as East 260 Private Road NE; then

(5) Proceed north in a straight line for 0.5 mile, crossing onto the Richland map, to the intersection of Dallas Road and the 670-foot elevation contour; then

(6) Proceed west along the 670-foot elevation contour for 0.4 mile to the intersection with Arena Road; then

(7) Proceed southerly along Arena Road for approximately 0.45 miles, returning to the beginning point.

Signed: April 14, 2020.

Mary G. Ryan,

Acting Administrator.

Approved: August 12, 2020.

Timothy E. Skud,

Deputy Assistant Secretary, Tax, Trade, and Tariff Policy.

[FR Doc. 2020–18741 Filed 9–24–20; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket Number USCG–2020–0318]

2020 Quarterly Listings; Safety Zones, Security Zones, and Special Local Regulations

AGENCY: Coast Guard, DHS.

ACTION: Notification of expired temporary rules issued.

SUMMARY: This document provides notification of substantive rules issued by the Coast Guard that were made temporarily effective but expired before they could be published in the **Federal Register**. This document lists temporary safety zones, security zones, and special local regulations, all of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This document lists temporary Coast Guard rules that became effective, primarily between July 2019 and March 2020, unless otherwise indicated, and were terminated before they could be published in the **Federal Register**.

ADDRESSES: Temporary rules listed in this document may be viewed online, under their respective docket numbers, using the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this document contact Yeoman First Class Glenn Grayer, Office of Regulations and Administrative Law, telephone (202) 372–3862.

SUPPLEMENTARY INFORMATION: Coast Guard District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety and security needs within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. *Safety zones* may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. *Security zones* limit access to prevent injury or damage to vessels, ports, or waterfront facilities. *Special local regulations* are issued to enhance the safety of participants and spectators at regattas and other marine events.

Timely publication of these rules in the **Federal Register** may be precluded when a rule responds to an emergency, or when an event occurs without sufficient advance notice. The affected public is, however, often informed of these rules through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the rule. Because **Federal Register** publication was not possible before the end of the effective period, mariners were personally notified of the contents of these safety zones, security zones, special local regulations, regulated navigation areas or drawbridge operation regulations by Coast Guard officials on-scene prior to any enforcement action. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To meet this obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary safety zones, security zones, special local regulations, regulated navigation areas and drawbridge operation regulations. Permanent rules are not included in this list because they are published in their entirety in the **Federal Register**. Temporary rules are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated.

The following unpublished rules were placed in effect temporarily during the period between July 2019 and March 2020 unless otherwise indicated. To view copies of these rules, visit *www.regulations.gov* and search by the docket number indicated in the following table.

Docket No.	Type	Location	Effective date
USCG–2019–0623	Safety Zone	Port Buffalo Zone	7/7/2019
USCG–2019–0547	Safety Zone	Cleveland, OH	7/12/2019
USCG–2019–0539	Safety Zone	Port Buffalo Zone	7/12/2019
USCG–2019–0611	Safety Zone	Clayton, NY	7/20/2019
USCG–2019–0396	Safety Zone	Cleveland, OH	7/21/2019
USCG–2019–0583	Safety Zone	Pacific Grove, CA	7/27/2019
USCG–2019–0473	Safety Zone	Kendall, NY	8/3/2019
USCG–2019–0601	Safety Zone	North Tonawanda, NY	8/3/2019
USCG–2019–0680	Safety Zone	Erie, PA	8/27/2019
USCG–2019–0713	Safety Zone	Port Buffalo Zone	9/1/2019
USCG–2019–0723	Safety Zone	Sodus Point, NY	9/2/2019
USCG–2019–0731	Safety Zone	Westfield, NY	9/3/2019
USCG–2019–0708	Safety Zone	Conneaut, OH	9/7/2019
USCG–2019–0668	Safety Zone	Conneaut, OH	9/7/2019
USCG–2019–0711	Safety Zone	Lake Erie, Vermilion, OH	9/14/2019
USCG–2019–0766	Safety Zone	Bratenahl, OH	9/17/2019
USCG–2019–0779	Safety Zone	Verona, NY	9/17/2019
USCG–2019–0791	Safety Zone	Presque Isle Bay, Erie, PA	10/1/2019
USCG–2019–0805	Safety Zone	Cuyahoga River	10/5/2019
USCG–2019–0969	Safety Zone	Alameda, CA	1/5/2020
USCG–2020–0002	Safety Zone	Ft Lauderdale, FL	1/6/2020
USCG–2020–0016	Security Zones (Part 165)	Toledo, OH	1/9/2020
USCG–2020–0018	Safety Zone	Menominee, MI	1/18/2020
USCG–2020–0026	Security Zones (Part 165)	New Orleans, LA	1/18/2020
USCG–2020–0059	Safety Zone	Port New York Zone	1/23/2020
USCG–2020–0020	Special Local Regulations	Tampa, FL	1/25/2020
USCG–2020–0083	Security Zones (Part 165)	Wildwood, NJ	1/28/2020
USCG–2020–0070	Safety Zone	Chicago, IL	1/28/2020

Docket No.	Type	Location	Effective date
USCG–2020–0077	Safety Zone	Naval Station Everett, WA	1/30/2020
USCG–2020–0079	Safety Zone	Smithland, KY	1/30/2020
USCG–2020–0072	Safety Zone	Hamilton Township, NJ	2/1/2020
USCG–2020–0131	Security Zones (Part 165)	Norfolk, VA	2/19/2020
USCG–2020–0104	Safety Zone	New Orleans, LA	2/19/2020
USCG–2020–0164	Safety Zone	Shackleford Banks, NC	3/6/2020
USCG–2020–0193	Safety Zone	Key West, FL	3/19/2020
USCG–2020–0200	Safety Zone	Green Bay, WI	3/24/2020

Dated: September 17, 2020.

M.T. Cunningham,

Chief, Office of Regulations and Administrative Law, United States Coast Guard.

[FR Doc. 2020–20945 Filed 9–24–20; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0388; FRL–10013–77]

Saflufenacil; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of saflufenacil in or on the caneberry subgroup 13–07A, fig, chia seed and chia straw. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective September 25, 2020. Objections and requests for hearings must be received on or before November 24, 2020, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2019–0388, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Marietta Echeverria, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2019–0388 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before November 24, 2020. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2019–0388, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of August 2, 2019 (84 FR 37818) (FRL–9996–78), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9E8763) by IR–4, IR–4 Project Headquarters, Rutgers, The

State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested the establishment of tolerances in 40 CFR 180.613(a) for residues of the herbicide saflufenacil, including its metabolites and degradates, in or on the following raw agricultural commodities: Caneberry subgroup 13–07A at 0.03 parts per million (ppm), Chia, seed at 1 ppm, Chia, straw at 15 ppm, Fig at 0.03 ppm, and Fig, dried at 0.05 ppm. That document referenced a summary of the petition prepared by BASF, the registrant, which is available in the docket, *http://www.regulations.gov.* No comments were received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA is establishing tolerances that vary from what was requested. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.''

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

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

On November 25, 2015, EPA published in the **Federal Register** a final rule establishing tolerances for residues of saflufenacil in or on pomegranate based on the Agency's conclusion that aggregate exposure to saflufenacil is safe for the general population, including infants and children. *See* (80 FR 73663) (FRL–9936–71). EPA is incorporating the following portions of that document by reference here, as they have not changed in the Agency's current assessment of saflufenacil tolerances: The toxicological profile and points of departure, the conclusions about cumulative risk, and the Agency's determination regarding the children's safety factor. EPA's dietary (food and drinking water) exposure assessments have been updated to include the additional exposure from the new uses of saflufenacil on the caneberry subgroup, fig, and chia.

The assessment used the same assumptions concerning percent crop treated and tolerance-level residues and the same estimated drinking water concentrations as the November 25, 2015 final rule.

Acute dietary risks are below the Agency's level of concern of 100% of the acute population adjusted dose (aPAD): They are less than 1% of the aPAD for all infants less than 1 year old, the population subgroup with the highest exposure estimate. Chronic dietary risks are below the Agency's level of concern of 100% of the chronic population adjusted dose (cPAD): They are 20% of the cPAD for all infants less than 1 year old, the population subgroup with the highest exposure estimate. There is no short- or intermediate-term exposure expected since there are no residential uses. Therefore, the acute and chronic aggregate risks consist only of the dietary risks from food and water and, as stated above, are below the Agency's level of concern.

Therefore, based on the risk assessments and information described above, EPA concludes there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to saflufenacil residues. More detailed information about the Agency's analysis can be found at *http://www.regulations.gov* in the document titled ''Saflufenacil. Human Health Risk Assessment in Support of Tolerances for Residues in/on Pomegranate'' dated November 5, 2015 in docket ID EPA–HQ–OPP–2014–0640 and the document titled ''Saflufenacil. Human Health Draft Risk Assessment for a Petition to Establish Tolerances for Residues in/on Caneberry Subgroup 13–07A, Fig, and Chia'' dated August 7, 2020 in docket ID number EPA–HQ–OPP–2019–0388.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (liquid chromatography/mass spectroscopy/mass spectroscopy (LC/MS/MS) Method D0603/02 is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. No Codex MRLs have been established for saflufenacil on fig, chia and caneberry.

C. Revisions to Petitioned-For Tolerances

The tolerance levels being established by EPA for the caneberry subgroup 13–07A and fig differ from those proposed by the petitioner due to differences in calculating the combined limits of quantitation (LOQs) for residues of saflufenacil and its metabolites. The combined LOQs of 0.035 ppm were rounded to 0.04 ppm by EPA versus 0.03 ppm by the petitioner. For chia, EPA is translating from the currently established tolerances for residues on wheat commodities rather than barley commodities, resulting in tolerance levels of 0.6 ppm for Chia, seed and 6 ppm for Chia, straw. Quantifiable residues were found in dried figs; however, when residues are adjusted for the degree of exaggeration, the residue value is below the recommended fresh fig tolerance level (0.04 ppm). A separate tolerance for residues on dried fig is therefore not required.

V. Conclusion

Therefore, tolerances are established for residues of saflufenacil in or on the caneberry subgroup 13–07A at 0.04 ppm; chia, seed at 0.6 ppm; chia, straw at 6 ppm; and fig at 0.04 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: August 25, 2020.

Marietta Echeverria,

Acting Director, Registration Division, Office of Pesticide Programs.

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

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

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

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

■ 2. In § 180.649 amend paragraph (a)(1) by designating the table and adding, alphabetical order, in newly designated Table 1 to paragraph (a)(1) the entries ''Caneberry subgroup 13–07A''; ''Chia, seed''; ''Chia, straw''; and ''Fig'' to read as follows:

§ 180.649 Saflufenacil; tolerances for residues.

(a) * * *

(1) * * *

TABLE 1 TO PARAGRAPH (a)(1)

Commodity	Parts per million
* * * * * * *	
Caneberry subgroup 13–07A	0.04
Chia, seed	0.6
Chia, straw	6
* * * * * * *	
Fig	0.04
* * * * * * *	

* * * * *

[FR Doc. 2020–19762 Filed 9–24–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0324; FRL–10013–33]

Trichoderma asperellum, Strain T34; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of *Trichoderma asperellum,* strain T34 in or on all food commodities when used in accordance with label directions and good agricultural practices. Biocontrol Technologies S.L. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Trichoderma asperellum,* strain T34 under FFDCA when used in accordance with this exemption.

DATES: This regulation is effective September 25, 2020. Objections and requests for hearings must be received on or before November 24, 2020, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2019–0324, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Anne Overstreet, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2019–0324 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before November 24, 2020. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2019–0324, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Background

In the **Federal Register** of August 2, 2019 (84 FR 37818) (FRL–9996–78), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 9F8735) by Biocontrol Technologies, S.L. Avgda. Madrid, 215–217, entresòl A 08014 Barcelona, Spain (c/o Wagner Regulatory Associates, Inc., P.O. Box 640, Hockessin, DE 19707). The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of *Trichoderma asperellum,* strain T34 in or on all food commodities. That document referenced a summary of the petition prepared by the petitioner Biocontrol Technologies, S.L., which is available in the docket via *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Final Rule

A. EPA's Safety Determination

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a

reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Pursuant to FFDCA section 408(c)(2)(B), in making a safety determination to establish an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance exemption and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' Additionally, FFDCA section 408(b)(2)(D) requires that EPA consider ''available information concerning the cumulative effects of [a particular pesticide's] residues and other substances that have a common mechanism of toxicity.''

EPA evaluated the available toxicity and exposure data on *Trichoderma asperellum,* strain T34 and considered its validity, completeness, and reliability, as well as the relationship of this information to human risk. A full explanation of the data upon which EPA relied and its risk assessment based on that data can be found within the document entitled ''Federal Food, Drug, and Cosmetic Act (FFDCA) Safety Determination for *Trichoderma asperellum,* strain T34.'' This document, as well as other relevant information, is available in the docket for this action as described under **ADDRESSES**.

The available data demonstrated that, with regard to humans, *Trichoderma asperellum,* strain T34 is not toxic, pathogenic, or infective via any reasonably foreseeable route of exposure. The submitted acute oral toxicity/pathogenicity and acute pulmonary toxicity/pathogenicity studies demonstrated no signs of toxicity, infectivity, or pathogenicity. Although the first submitted acute injection toxicity/pathogenicity study caused mortality to the test animals, the mortality was attributed to high spore concentration, not due to toxin production, as demonstrated by data and information required by EPA to address the mortality. A second injection toxicity/pathogenicity study was performed at a lower dose and only two of the 24 test animals died. Additional acute injection toxicity/pathogenicity studies were required as a term of registration to address a concern relating to culture filtrates and killed cultures. The studies demonstrated no toxicity to the test animals when injected with either *Trichoderma asperellum,* strain T34 spores or culture filtrate. Furthermore, acute oral, dermal, and inhalation toxicity studies and acute eye and primary dermal irritation studies conducted with a mixture containing *Trichoderma asperellum,* strain T34 demonstrated no toxic or irritant effects. Although there may be dietary and non-occupational exposure to residues of *Trichoderma asperellum,* strain T34 when it is used on food commodities, there is not a concern due to the lack of potential for adverse effects. EPA also determined that retention of the Food Quality Protection Act safety factor was not necessary as part of the qualitative assessment conducted for *Trichoderma asperellum,* strain T34.

Based upon its evaluation, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of *Trichoderma asperellum,* strain T34. Therefore, an exemption from the requirement of a tolerance is established for residues of *Trichoderma asperellum,* strain T34 in or on all food commodities when used in accordance with label directions and good agricultural practices.

B. Analytical Enforcement Methodology

An analytical method for enforcement purposes is not required because EPA has determined that reasonably foreseeable exposure to residues of *Trichoderma asperellum,* strain T34 from use of the pesticide will be safe, due to lack of toxicity, pathogenicity, and infectivity. Under those circumstances, it is unnecessary to have an analytical method to monitor for residues.

IV. Statutory and Executive Order Reviews

This action establishes a tolerance exemption under FFDCA section 408(d) in response to a petition submitted to EPA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes. As a result, this action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, EPA has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, EPA has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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

V. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S.

Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: September 2, 2020.

Edward Messina,

Acting Director, Office of Pesticide Programs.

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

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

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

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

■ 2. Add § 180.1379 to subpart D to read as follows:

§ 180.1379 *Trichoderma asperellum,* strain T34; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of *Trichoderma asperellum,* strain T34 in or on all food commodities when used in accordance with label directions and good agricultural practices.

[FR Doc. 2020–20653 Filed 9–24–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0692; FRL–10014–38]

Aspergillus flavus NRRL 21882; Amendment to an Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends the existing tolerance exemptions for residues of *Aspergillus flavus* NRRL 21882 in or on corn and peanut commodities by clarifying that the exemption covers all food and feed commodities of these crops and by establishing an exemption for all food and feed commodities of almond and pistachio. Syngenta Crop Protection, LLC submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting that EPA amend the existing tolerance exemption for *Aspergillus flavus* NRRL 21882. This regulation eliminates the need to establish a maximum permissible level for residues of *Aspergillus flavus* NRRL 21882 on these crops.

DATES: This regulation is effective September 25, 2020. Objections and requests for hearings must be received on or before November 24, 2020 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2019–0692, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the EPA Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Anne Overstreet, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Publishing Office's e-CFR site at *https://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2019–0692 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before November 24, 2020. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2019–0692, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.

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

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

II. Background

In the **Federal Register** of February 10, 2020 (85 FR 7499) (FRL–10004–54), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance exemption petition (PP 9F8780) by Syngenta Crop Protection, LLC, 410 South Swing Rd., Greensboro, NC 27409. The petition requested that 40 CFR 180.1254 be amended by establishing an exemption from the requirement of a tolerance for residues of the fungicide *Aspergillus flavus* NRRL 21882 in or on almond and pistachio. That document referenced a summary of the petition prepared by the petitioner Syngenta Crop Protection, LLC and is available in the docket via *https://www.regulations.gov.* No comments were received on the notice of filing.

Since the time the original notice of filing was published, the petitioner provided a revised petition requesting a revision to the existing tolerance exemption to include all food and feed commodities of almond; corn, field; corn, pop; corn, sweet; peanut; and pistachio. In order to give the public an opportunity to comment on this new information, EPA published its receipt of this revised petition in the **Federal Register** of June 1, 2020 (85 FR 33059) (FRL–10009–29) and placed a revised petition from Syngenta Crop Protection, LLC into the docket. No comments were received in response to the republished notice of filing.

III. Final Rule

A. EPA's safety determination

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement of a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance or tolerance exemption and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' Additionally, FFDCA section 408(b)(2)(D) requires that EPA consider ''available information concerning the cumulative effects of [a particular pesticide's] . . . residues and other substances that have a common mechanism of toxicity.''

EPA evaluated the available toxicological and exposure data on *Aspergillus flavus* NRRL 21882 and considered their validity, completeness, and reliability, as well as the relationship of this information to human risk. A full explanation of the data upon which EPA relied can be found in the preamble to the 2004 tolerance exemption in the **Federal Register** of June 30, 2004 (69 FR 39341) (FRL–7364–2) and in its risk assessment entitled ''Federal Food, Drug, and Cosmetic Act (FFDCA) Safety Determination for *Aspergillus flavus* NRRL 21882'' (Safety Determination Document). The Safety Determination Document, as well as other relevant information, is available in the docket for this action as described under **ADDRESSES**. Based upon its evaluation in the Safety Determination Document, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of *Aspergillus flavus* NRRL 21882.

B. Analytical Enforcement Methodology

An analytical method is not required for *Aspergillus flavus* NRRL 21882 because EPA is amending an exemption from the requirement of a tolerance without any numerical limitation.

IV. Conclusion

Therefore, the existing tolerance exemption for *Aspergillus flavus* NRRL 21882 is amended by establishing an exemption from the requirement of tolerance for residues of *Aspergillus flavus* NRRL 21882 in or on all food and feed commodities of almond; corn, field; corn, pop; corn, sweet; peanut; and pistachio when used in accordance with label directions and good agricultural practices.

V. Statutory and Executive Order Reviews

This action modifies and establishes tolerance exemptions under FFDCA section 408(d) in response to a petition submitted to EPA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes. As a result, this action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, EPA determined that this action will not have a substantial direct effect on States or Tribal governments, on the relationship between the National Government and the States or Tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, EPA determined that Executive Order 13132, entitled

''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

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

VI. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 17, 2020.

Jean Overstreet,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

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

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

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

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

■ 2. Revise § 180.1254 to read as follows:

§ 180.1254 *Aspergillus flavus* NRRL 21882; exemption from the requirement of a tolerance.

Residues of *Aspergillus flavus* NRRL 21882 are exempt from the requirement of a tolerance in or on all food and feed commodities of almond; corn, field; corn, pop; corn, sweet; peanut; and pistachio when used in accordance with label directions and good agricultural practices.

[FR Doc. 2020–21107 Filed 9–24–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[EPA–R01–OW–2019–0521; FRL–10014–99–Region 1]

Ocean Disposal; Designation of an Ocean Dredged Material Disposal Site for the Southern Maine, New Hampshire, and Northern Massachusetts Coastal Region

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With the publication of this Final Rule, the Environmental Protection Agency (EPA) is designating one ocean dredged material disposal site (ODMDS), the Isles of Shoals North Disposal Site (IOSN), located in the Gulf of Maine off the coast of southern Maine and New Hampshire, pursuant to the Marine Protection, Research, and Sanctuaries Act (MPRSA). This action is necessary to serve the long-term need for an ODMDS for the possible future disposal of suitable dredged material from harbors and navigation channels in southern Maine, New Hampshire, and northern Massachusetts. The basis for this action is described herein and in the Final Environmental Assessment (FEA). The FEA identifies designation of the IOSN as the preferred alternative from the range of options considered. The Site Management and Monitoring Plan (SMMP) is provided as Appendix G of the FEA.

DATES: The Final rule is effective on October 26, 2020.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OW–2019–0521, through the Federal eRulemaking Portal: *https://www.regulations.gov.*

Docket: Publicly available docket materials are available either electronically at *regulations.gov* or on the EPA Region 1 Ocean Dumping web page at *https://www.epa.gov/ocean-dumping/isles-shoals-north-disposal-site.* They are also available in hard copy during normal business hours at the EPA Region 1 Library, 5 Post Office Square, Boston, MA 02109.

The supporting document for this site designation is the *Final Environmental Assessment for Designation of an Ocean Dredged Material Disposal Site for the Southern Maine, New Hampshire, and Northern Massachusetts Coastal Region.*

FOR FURTHER INFORMATION CONTACT: Ms. Regina Lyons, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Mail Code: 06–1, Boston, MA 02109–3912, telephone: (617) 918–1557; fax: (617) 918–0557; email address: *lyons.regina@epa.gov.*

SUPPLEMENTARY INFORMATION: Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. Final Action
II. Background
III. Purpose and Need
IV. Disposal Site Description
V. Potentially Affected Entities
VI. Summary of Public Comments and EPA's Response
VII. Compliance With Statutory and Regulatory Authorities
A. Marine Protection, Research, and Sanctuaries Act
B. National Environmental Policy Act
C. Coastal Zone Management Act
D. Endangered Species Act
E. Magnuson-Stevens Fishery Conservation and Management Act
VIII. Supporting Documents
IX. Statutory and Executive Order Reviews

I. Final Action

EPA is publishing this Final Rule to designate the IOSN for the purpose of providing an ocean disposal option for possible use in managing dredged material from harbors and navigation channels in the southern Maine, New Hampshire, and northern Massachusetts coastal region. The site designation is effective for an indefinite period of time. Without designation of this ODMDS, there will not be an ocean disposal site available to serve this region after December 31, 2021, when the current Congressionally-authorized term of use for the Cape Arundel Disposal Site (CADS) expires. Use of the IOSN is subject to any restrictions and procedures included in the site designation and the approved SMMP. These restrictions are based on a thorough evaluation of the site pursuant to the Ocean Dumping Regulations, potential disposal activity expected at the site, and consideration of public review and comment. Additional restrictions may be placed on any permit or authorization to use the site.

The site designation process has been conducted pursuant to the requirements of the MPRSA, Coastal Zone Management Act (CZMA), and other applicable federal and state statutes and regulations. Compliance with these requirements is described in detail in Section VII (''Compliance with Statutory and Regulatory Requirements''). The basis for this federal action is further

described in the FEA that identifies EPA designation of the IOSN as the preferred alternative. The FEA also is being released in conjunction with the publication of this Final Rule. After full consideration of public comments and extensive interagency coordination, EPA determined that the designation of IOSN will not have significant environmental impacts. Therefore, EPA is issuing a Finding of No Significant Impact (FONSI) with the FEA. The FONSI documents why the agency has concluded that no significant environmental impacts are expected to result from the action.

II. Background

On September 18, 2019, EPA published in the **Federal Register** (84 FR 49075) a proposed rule (the Proposed Rule) to designate the IOSN as an ODMDS off the coast of southern Maine and New Hampshire. In the same **Federal Register** document, EPA announced the availability for public comment of a Draft Environmental Assessment (DEA) and draft FONSI that provided a more detailed explanation of the various studies, interagency coordination, and public participation that supported the proposed action. The DEA included the draft SMMP as Appendix G. These documents were available for public comment for 30 days.

The MPRSA directs EPA to designate ''sites . . . for [permitted] dumping that will mitigate adverse impact on the environment to the greatest extent practicable.'' 33 U.S.C. 1412(c). On October 1, 1986, the Administrator delegated the authority to designate ODMDS to the Regional Administrator of the Region in which the sites are located. The preferred alternative site, IOSN, is located within the area assigned to EPA Region 1. 40 CFR 1.7(b)(1). Therefore, this designation is occurring pursuant to the EPA Region 1 Administrator's delegated authority.

EPA designates ODMDS by regulation. 40 CFR 228.4(e)(1), 228.15. There are currently no EPA-designated dredged material disposal sites off the coast of southern Maine, New Hampshire, or northern Massachusetts. *See* CFR 228.15. Section 103(b) of the MPRSA, 33 U.S.C. 1413(b), provides that any ocean disposal of dredged material should occur at EPA-designated sites to the maximum extent feasible. In cases where use of an EPA-designated ocean disposal site is not feasible, the MPRSA authorizes the U.S. Army Corps of Engineers (USACE) to ''select,'' with concurrence from EPA, an ''alternative site.'' 33 U.S.C. 1413(b). An alternative site may not be used for more than two consecutive five-year terms. *Id.* In the absence of an EPA-designated site off the coast of southern Maine, New Hampshire, or Northern Massachusetts, the USACE previously selected an alternative site in this area: The Cape Arundel Disposal Site (CADS). USACE New England District website, *https://www.nae.usace.army.mil/Missions/Disposal-Area-Monitoring-System-DAMOS/Disposal-Sites/Cape-Arundel/.* However, this alternative site will no longer be available after December 31, 2021, when its Congressionally-authorized term of use expires. *See* Public Law 115–270, Section 1312.

Designation of an ODMDS by EPA does not by itself authorize the disposal at that site of dredged material from any dredging project. Designation of the IOSN would only make that ocean site available for disposal of dredged material from specific projects after they have been permitted or authorized by the USACE pursuant to the MPRSA. Such permit or authorization will only be provided if the applicable MPRSA regulations are satisfied, which means that no other environmentally preferable, practicable alternative for managing that dredged material exists, and that evaluation of the dredged material indicates that it is suitable for ocean disposal under the MPRSA. *See* 40 CFR 227.1(b), 227.2 and 227.3; 40 CFR part 227, Subparts B and C.

The Congressionally-defined purpose of the MPRSA is to ''regulate the dumping of all types of materials into ocean waters and to prevent or strictly limit the dumping into ocean waters of any material which would adversely affect human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities.'' 33 U.S.C. 1301. Therefore, ''no person shall transport from the United States . . . any material for the purpose of dumping it into ocean waters,'' except as authorized by permit and subject to EPA regulations. 33 U.S.C. 1411. EPA sets forth regulations implementing the MPRSA at 40 CFR parts 220–229 (Ocean Dumping Regulations). The relevant regulations are discussed in greater detail below, in the Compliance with Statutory and Regulatory Authorities section.

Under the Ocean Dumping Regulations, EPA is responsible for the management of all ocean disposal sites designated under the MPRSA. *See* 40 CFR 228.3(b). To help prevent the occurrence of unacceptable adverse impacts to public health or the environment, the MPRSA requires EPA, in conjunction with USACE, to develop a site management and monitoring plan (SMMP) for each designated ODMDS. 33 U.S.C. 1412(c)(3). As described above, EPA has developed a SMMP for the IOSN, which is included as Appendix G of the FEA. A draft of this SMMP was available for public comment. EPA is authorized to terminate or limit the use of these sites to further disposal activity if their use causes unacceptable adverse impacts. 40 CFR 228.11. Any such future terminations or limitations ''will be made through promulgation of an amendment to the disposal site designation set forth in . . . [40 CFR Part] 228. . . .'' *Id.*

III. Purpose and Need

Periodic dredging of harbors and channels and, therefore, dredged material management, are essential for ensuring safe navigation and facilitating marine commerce. This is because the natural processes of erosion and siltation result in sediment accumulation in federal navigation channels, harbors, port facilities, marinas, and other important areas of our water bodies. Unsafe navigational conditions not only threaten public safety, but also pose an environmental threat from an increased risk of spills from vessels involved in accidents.

Economic considerations also contribute to the need for dredging (and the environmentally sound management of dredged material). There are many important navigation-dependent businesses and industries in the southern Maine, New Hampshire, and northern Massachusetts coastal region, including shipping (especially the transportation of petroleum fuels and bulk materials), recreational boating-related businesses, marine transportation, commercial and recreational fishing, interstate ferry operations, and U.S. Navy and U.S. Coast Guard facilities. These businesses and industries contribute substantially to the region's economic output, the gross state product of the bordering states, and tax revenue. Continued access to harbors, berths, and mooring areas is vital to ensuring the continued economic health of these industries, and to preserving the ability of the region to import fuels, bulk supplies, and other commodities at competitive prices and to preserve ocean access for the commercial fishing fleet. In addition, preserving navigation channels, marinas, harbors, berthing areas, and other marine resources, improves the quality of life for residents and visitors to the southern Maine, New Hampshire, and northern Massachusetts region by facilitating recreational boating and associated activities, such as fishing and sightseeing.

The purpose of this action is to designate an ocean disposal site that will provide a long-term dredged material disposal option for dredged material from harbors and navigation channels in southern Maine, New Hampshire, and northern Massachusetts. This is necessary to ensure the viability of dredging projects needed to maintain international commerce and navigation through authorized federal navigation projects and to ensure safe vessel passage for public and private entities.

Other factors that EPA considered in determining the need for an ODMDS to serve this region include: (1) Projected dredging needs for the area were calculated to be approximately 1.5 million cubic yards (mcy) of material over the next 20 years, which significantly exceeds the capacity of available practicable alternatives to ocean disposal; (2) the states of Maine and New Hampshire have expressed concern that available, practicable dredged material disposal capacity is insufficient to meet projected long-term dredging needs and asked EPA to designate a new site; (3) the historically used (from 1964–1970, according to USACE records) former Isles of Shoals Disposal Site (IOSH) was examined for potential designation, however, this former site is located in an area that contains a diversity of habitats that are not compatible with the ocean disposal of dredged material; (4) the existing CADS is a USACE short-term selected site under MPRSA section 103(b) that is scheduled to close on December 31, 2021; EPA considered designating an expanded CADS, but studies revealed that suitable areas with the capacity for an ODMDS are limited in and around CADS; and (6) the closest EPA-designated ODMDSs to the southern Maine, New Hampshire, and northern Massachusetts region are the Portland Dredged Material Disposal Site (PDS) and the Massachusetts Bay Disposal Site (MBDS), which are about 85.5 nautical miles (nmi) apart and would result in 30–40 nmi haul distances for several dredging centers in the region, rendering some dredging projects infeasible.

As one of the first steps in the site designation process, EPA, in coordination with other federal and state agencies, delineated a Zone of Siting Feasibility (ZSF). The ZSF is the geographic area from which reasonable and practicable ODMDS alternatives should be selected for evaluation. EPA's 1986 site designation guidance manual describes the factors that should be considered in delineating the ZSF and recommends locating open-water disposal sites within an economically and operationally feasible radius from areas where dredging occurs. EPA, Office of Marine and Estuarine Protection, Ocean Dumping Site Designation Delegation Handbook for Dredged Material (1986). This manual also directs EPA to consider navigational restrictions, political or other jurisdictional boundaries, the distance to the edge of the continental shelf, the feasibility of surveillance and monitoring, and operation and transportation costs. The ZSF described in Section 4 of the FEA includes the coastal waters of the southern Maine, New Hampshire, and northern Massachusetts region between Cape Porpoise, Maine, and Cape Ann, Massachusetts. These boundaries were chosen because the center point between them is roughly equidistant to the PDS to the north off Cape Elizabeth, Maine, and the MBDS to the south off Boston Harbor, Massachusetts. Factors involved in defining the ZSF include dredge cycle time, weather, and distance from harbors and navigation channels that require dredging. Adding a site roughly central to this area of the coast would result in a maximum haul distance of about 21 miles from any harbor to either the PDS, MBDS, or the new centrally located site.

EPA does not consider the PDS and MBDS to be viable options for the southern Maine, New Hampshire, and northern Massachusetts region given their distance from the ZSF, which would significantly increase the transport distance for, and duration of, ocean disposal for dredging projects from that region. This, in turn, would greatly increase the cost of such projects and would likely render many dredging projects too expensive to conduct, thus threatening safe navigation and interfering with marine commerce and recreation. Furthermore, the greater transport distance would also be environmentally detrimental because it would entail greater energy use, increased air emissions, dredging projects of increased duration (with their own, separate, impacts), and increased risk of spills or disposal outside of the designated site (''short dumps'') (FEA, Section 7.0).

Because the CADS is nearing capacity and its authorized use is expiring on December 31, 2021, EPA's ocean disposal site designation studies were designed to determine whether this site or any other sites should be designated for long-term use.

IV. Disposal Site Description

The IOSN is located in the Gulf of Maine, approximately 10.8 nmi east of Portsmouth, New Hampshire, 9.55 nmi southeast of Kittery, Maine, and 6.04 nmi northeast of Eastern Island, the closest of the Isles of Shoals. As described in Section 4 of the SMMP, the site is delineated as an 8,530 ft diameter circle on the seafloor with its center located at 70° 26.995′ W and 43° 1.142′ N. Water depths at the IOSN range from 295 ft on the western edge of the site to 328 ft on the eastern edge as the seafloor gradually slopes from west to east. The surficial sediments at the site are predominately soft, fine-grained silts and clays. The seafloor within the site is generally a smooth, soft-textured surface with topographic highs present outside the western, northern, and southeastern, boundaries of the site.

Three reference areas (REF–A, REF–B, and REF–C), to be used for site monitoring purposes, are defined as 820 ft radius circles located at 70° 25.165′ W, 42° 59.282′ N; 70° 28.039′ W, 43° 0.257′ N; and 70° 27.895′ W, 43° 2.280′ N, respectively. The reference areas were selected based on a review of existing data and confirmed through a baseline survey to represent areas of the seafloor with similar bathymetric characteristics as the IOSN (see SMMP, p. 12).

V. Potentially Affected Entities

Because the IOSN is offshore and in deep water, as described in the previous section, it is not expected to affect near-shore entities. Persons potentially affected by this action include those who seek or might seek permits or approval to dispose of dredged material into ocean waters pursuant to the MPRSA, 33 U.S.C. 1401 to 1445. This Final Rule is expected to be primarily of relevance to: (a) Persons, including organizations and government bodies, seeking MPRSA permits from the USACE to authorize the transport of dredged material for disposal into the ocean waters off the coast of southern Maine, New Hampshire, and northern Massachusetts; and (b) to the USACE itself for its own dredged material projects involving ocean disposal.

Potentially affected entities and categories of entities that may seek to use the IOSN and would be subject to the Final Rule include:

Category examples of potentially affected entities
Federal government USACE (Civil Works Projects), U.S. Navy, U.S. Coast Guard, and other federal agencies.
State, local, and tribal governments Governments owning and/or responsible for ports, harbors, and/or berths, government agencies requiring ocean disposal of dredged material associated with public works projects.
Industry and general public Port authorities, shipyards and marine repair facilities, marinas and boatyards, and berth owners.

This table is not intended to be comprehensive, but rather provides a guide for readers regarding the types of entities that could potentially be affected by the Final Rule. EPA notes that nothing in this Final Rule alters the jurisdiction or authority of EPA, the USACE, or the types of person regulated under the MPRSA.

VI. Summary of Public Comments and EPA's Response

On September 18, 2019, EPA published a Proposed Rule in the **Federal Register** (84 FR 49075) to notify the public of EPA's proposal to designate the IOSN as an ODMDS and announcing the availability of the DEA supporting the proposal for a 30-day public comment period under Docket ID EPA–R01–OW–2019–0521. On October 9, 2019, EPA and the USACE held a public meeting in Kittery, Maine, to present the Proposed Rule and DEA, and to receive public comments. That public meeting and another post-comment period public meeting are further described in the National Environmental Policy Act (NEPA) subsection of the Compliance with Statutory and Regulatory Authorities section of this Final Rule. The comment period ended on October 18, 2019.

EPA received fifteen comments on the Proposed Rule and DEA from the Department of Interior (DOI); the states of Maine and Massachusetts; the University of New Hampshire Shoals Marine Laboratory (SML); representatives of the fishing industry, including fin fish and lobster; environmental groups; and private citizens. EPA received comments both in support of, and in disagreement or raising concerns with, its proposed action, with some offering suggested improvements. There was some overlap among the comments received. The most significant comments received by EPA are summarized below:

- Support of designating IOSN (nine commenters)
- Concerns about possible roseate tern impacts (three commenters)
- Concerns about possible impacts to lobsters (four commenters)
- Concerns about possible impacts to whales, particularly the North Atlantic right whale, and their habitat (two commenters)
- Concerns about possible impacts to herring and cod spawning areas (three commenters)
- Request for an economic analysis and concerns about the economic impact to the fishing industry (three commenters)
- Requesting notification of haul routes for input and notification of timing of dredging to the fishing industry (five commenters)
- Requesting notification of haul routes and timing of dredging to the Isle of Shoals communities (one commenter)
- Requesting consultation with the Isle of Shoals communities about the site designation (one commenter)
- Concerns about impacts to the University of New Hampshire Isle of Shoals Marine Lab's reverse osmosis system (one commenter)
- Concern about general environmental assessment and potential impacts (one commenter)
- Request for more in-depth description of site selection process (one commenter)
- Concern over oil spills and request for an oil spill contingency plan for vessels transiting to the site (two commenters)
- Request for additional information about sediment travel and water column impacts (two commenters)
- Request for considerations of the general health of the seafloor (one commenter)
- Request for the site to be moved further offshore (two commenter)
- Concern about vessel transit to and from the site (two commenters)
- Request for a monitoring plan (one commenters)

EPA has prepared a Response to Comments document with individual responses to each group of similar comments which, along with copies of each of the public comments, have been included as Appendix J and Appendix I, respectively, of the FEA, which is available on the website identified in the **ADDRESSES** section of this notice.

In addition to preparing a Response to Comments document, EPA has addressed some of the public comments by (1) adding some new information about, and enhancing some of the descriptions of, marine resources in the vicinity of the IOSN; (2) enhancing the description of the location of the IOSN; and (3) adding a new site management protocol.

As described above, several commenters, including DOI and the SML, noted that the roseate tern, a federally-listed endangered species, was not included in the description of endangered species that may use the area in which the IOSN is located in the DEA, and that therefore its potential presence was not considered in assessing the impact of designating the IOSN. EPA has since consulted with the USFWS on the roseate tern, in addition to other endangered and threatened species potentially using the area and has added information about the roseate tern and its potential use of this area to the FEA. As discussed in the ESA subsection of the Compliance with Statutory and Regulatory Authorities section of this Final Rule, the USFWS concurred with EPA's determination that the designation of the IOSN would not likely adversely impact any of the endangered and threatened species that may use the area of the IOSN.

A couple of commenters, including the SML, stated that the presence of whales, and particularly North Atlantic right whales, in the vicinity of the IOSN was not adequately characterized in the DEA, and that therefore the impact of designating the IOSN on these species was not adequately considered in the DEA or Proposed Rule. EPA has since consulted with NMFS on right whales and other endangered and threatened species potentially using the area and has included additional information and analysis about the right whale and its potential use of this area in the FEA. As discussed in the ESA subsection of the Compliance with Statutory and Regulatory Authorities section of this Final Rule, NMFS concurred with EPA's determination that the designation of the IOSN would not likely adversely impact any of the endangered and threatened species that may use the area of the IOSN.

One commenter noted that the description of the location of the proposed IOSN in the Proposed Rule and DEA did not reflect its proximity to the Isles of Shoals communities, mentioning only its distance from Portsmouth, NH. They also noted that the concerns of these communities should be considered in the decision-making process. EPA has now revised

the description of the IOSN in the Final Rule and FEA to include its distance from Portsmouth, NH, Kittery, ME, and Eastern Island, the closest of the Isles of Shoals. EPA and the USACE also held a public meeting after the public comment period on December 5, 2019, in Portsmouth, NH, specifically targeted to Isles of Shoals businesses and residents, to present general information about dredging and dredged material disposal, and answer clarifying questions.

A number of commenters, including two state fisheries agencies and the Massachusetts Lobstermen's Association, requested notification to the fishing industry of scheduled dredging and dredged material haul routes to avoid conflicts. EPA has included a new Special Management Practice (SMP) in the SMMP that includes timeframes for notifications, submissions of brief descriptions of operations and maps of haul routes, and procedures for the notice of any changes to the haul route.

VII. Compliance With Statutory and Regulatory Authorities

In designating the IOSN for the ocean disposal of suitable dredged material from harbors and navigation channels in southern Maine, New Hampshire, and northern Massachusetts, EPA has complied with the requirements of the MPRSA, CZMA, the Endangered Species Act (ESA), the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), the National Historic Preservation Act (NHPA), and all other applicable legal requirements, as further described below. While it has been determined that EPA disposal site designation evaluations conducted under the MPRSA are ''functionally equivalent'' to NEPA reviews and are not subject to NEPA analysis requirements as a matter of law, EPA voluntarily uses NEPA procedures when evaluating the potential designation of ocean dumping sites. Those procedures also are described below. 63 FR 58045, 58046 (Oct. 29, 1988).

A. Marine Protection, Research, and Sanctuaries Act

The MPRSA authorizes EPA to designate sites for permitted ocean disposal of dredged material ''that will mitigate adverse impact on the environment to the greatest extent practicable.'' 33 U.S.C. 1412(c). EPA regulations prescribe procedures for the designation of these sites. 40 CFR 228.4(e). EPA regulations also prescribe substantive guidelines for EPA's selection and management of disposal sites. *See generally* 40 CFR part 228. The regulations enumerate general and specific criteria for site selection, described in greater detail below. 40 CFR 228.5, 228.6.

EPA promulgates final disposal site designations at 40 CFR 228.15. To finalize a site designation, EPA must develop a site management plan which includes specific details laid out by statute. 33 U.S.C. 1412 (c)(4). Post-designation, EPA must, with USACE, manage and monitor disposal sites. *See* 40 CFR 228.3, 228.9.

EPA's compliance with each of these statutory and regulatory requirements in designating IOSN is described in greater detail below.

1. Procedural Requirements

Site designations for dredged material are to ''be made based on environmental studies of each site, regions adjacent to the site, and on historical knowledge of the impact of dredged material disposal on areas similar to such sites in physical, chemical, and biological characteristics.'' 40 CFR 228.4. Additionally, ''the results of a disposal site evaluation and/or designation study . . . will be presented in support of the site designation promulgation as an environmental assessment of the impact of the use of the site for disposal, and will be used in preparation of environmental impact statement [''EIS''] for each site where such a statement is required by EPA policy.'' 40 CFR 228.6. EPA policy does not, however, require the preparation of an EIS for all MPRSA site designations. As described above, EPA's site designation decisions are exempt from the requirements of NEPA, but pursuant to EPA's Voluntary NEPA Policy, the Agency nevertheless prepares NEPA analyses to support site designation decisions. *See* 63 FR 58045, 58046 (Oct. 29, 1988). EPA's Voluntary NEPA Policy does not mandate EISs for all site designations and rather leaves it to the EPA office in question to decide on a case-by-case basis what level of NEPA analysis—and EIS or an EA/FONSI—is appropriate. *See id.* (''EPA believes that decisions on preparing EISs for proposed ocean disposal sites should be made on a case-by-case basis.'')

EPA has complied with all procedural requirements related to the publication of this Final Rule and associated FEA. EPA, with appropriate consultation with neighboring states and other agencies, completed an environmental assessment of the impact of designating the IOSN. Furthermore, the DEA, including the draft SMMP, and Proposed Rule were made available for public comment on September 18, 2019, through publication in the **Federal Register** and on the EPA Region 1 web page. 84 FR 49075 (Oct. 18, 2019); *https://www.epa.gov/ocean-dumping/isles-shoals-north-disposal-site.* EPA has now prepared a thorough final environmental evaluation of the recommended alternative site to be designated, other alternatives sites, and other courses of action (including the ''no action'' option of not designating open-water disposal sites). This evaluation is presented in the FEA (and related documents) and summarized in this Final Rule. As described in the FEA, EPA has made a Finding of No Significant Impact (FONSI); thus, no environmental impact statement is required for this site designation.

2. Disposal Site Selection Criteria

EPA regulations under the MPRSA identify four general criteria and 11 specific criteria for evaluating locations for the potential designation of dredged material disposal sites. 40 CFR 228.5, 228.6. The evaluation of the IOSN with respect to the four general and 11 specific criteria is discussed in detail in the Section 4 of the FEA and supporting documents and is summarized below.

General Criteria (40 CFR 228.5)

As described in greater detail in the FEA, and summarized below, EPA has determined that the IOSN satisfies the four general criteria specified in 40 CFR 228.5.

i. Sites should be selected to minimize interference with other activities in the marine environment and regions of heavy commercial or recreational navigation, particularly avoiding areas of existing fisheries or shellfisheries (40 CFR 228.5(a)).

EPA's evaluation determined that use of the IOSN would cause minimal interference with the activities identified in the criterion. EPA and the USACE used information from a variety of sources to determine what activities might be interfered with by the disposal of dredged material at the IOSN. EPA considered recreational activities, commercial fishing areas, cultural or historically significant areas, commercial and recreational navigation, and existing scientific research activities. EPA and the USACE used Geographic Information System data to overlay the locations of various uses and natural resources of the marine environment on the disposal site location and surrounding areas (including their bathymetry). Analysis of these data indicated that use of the site would have minimal potential for interfering with other ongoing uses of the marine environment in and around

the IOSN, including lobster harvesting or fishing activities. While the site is located in an area where periodic fishing activity occurs and is within the vast Gulf of Maine spawning areas for cod and herring, it is not considered a unique fishing ground or highly significant fishery harvest area. Finally, the site is not located in shipping lanes or any other region of heavy commercial or recreational navigation. Furthermore, the site is located in an area where any other vessels could easily navigate around any disposal vessels at or near the site, and the significant water depths at the site mean that material disposed there will not interfere with navigation by extending up too high into the water column.

ii. Sites should be situated such that temporary perturbations to water quality or other environmental conditions during initial mixing caused by disposal operations would be reduced to normal ambient levels or to undetectable contaminant concentrations or effects before reaching any beach, shoreline, marine sanctuary, or known geographically limited fishery or shellfishery (40 CFR 228.5(b)).

EPA's analysis concludes that the IOSN satisfies this criterion. First, the site will be used only for the disposal of dredged material determined to be suitable for ocean disposal by application of the MPRSA's ocean dumping criteria. *See generally* 33 U.S.C. 1413; 40 CFR part 227. These criteria include provisions related to water quality and account for initial mixing. *See* 40 CFR 227.4, 227.5(d), 227.6(b) and (c), 227.13(c), 227.27, and 227.29. Data evaluated during development of the FEA show that any temporary perturbations in water quality or other environmental conditions at the site during initial mixing from disposal operations will be limited to the immediate area of the site and will neither cause any significant environmental degradation at the site nor reach any beach, shoreline, marine sanctuary, or other important natural resource area. Second, the site is a significant distance from any beach, shoreline, marine sanctuary, or known geographically limited fishery or shellfishery.

iii. The size of disposal sites should be limited in order to localize for identification and control any immediate adverse impacts, and to permit the implementation of effective monitoring and surveillance to prevent adverse long-range impacts. Size, configuration, and location are to be determined as part of the disposal site evaluation (40 CFR 228.5(d)).

EPA has determined, based on the information presented in the FEA, that the IOSN alternative is sufficiently limited in size to allow for the identification and control of any immediate adverse impacts, and to permit the implementation of effective monitoring and surveillance to prevent adverse long-range impacts. The IOSN covers approximately 2.4 nmi^2 of seafloor, which is approximately 0.006% of the seafloor surface area of the Gulf of Maine. The long history of dredged material disposal site monitoring in New England, and specifically at active and historically used dredged material disposal sites elsewhere in the Gulf of Maine, provides ample evidence that surveillance and monitoring programs are effective at determining physical, chemical, and biological impacts at sites of a similar size to the alternative sites considered in this case.

The IOSN is identified by specific coordinates spelled out in the Disposal Site Description section of this Final Rule and the FEA, and the use of precision navigation equipment in both dredged material disposal operations and monitoring efforts will enable accurate disposal operations and contribute to effective management and monitoring of the sites. Detailed plans for the management and monitoring of the IOSN are described in the SMMP (Appendix G of the FEA). Finally, as discussed herein and in the FEA, EPA has tailored the size of the IOSN based on site characteristics, such as bottom sediment type and bottom features, so that the area and boundaries of the sites are optimized for environmentally sound dredged material disposal operations.

iv. EPA will, wherever feasible, designate ocean dumping sites beyond the edge of the continental shelf and other such sites that have been historically used (40 CFR 228.5(e)).

EPA has determined that designation of the IOSN is consistent with this criterion. EPA evaluated sites beyond the edge of the continental shelf and historical disposal sites in the Gulf of Maine as part of the alternative analysis conducted for the FEA. Potential disposal areas located off the continental shelf would be infeasible due to their very substantial distance offshore, which would render them impracticable for dredging projects from the area under evaluation (*i.e.,* ZSF). The nearest point on the continental shelf/slope boundary to Portsmouth Harbor is more than 230 miles south, about 96 miles southeast of Nantucket. The distance to the slope due east is even greater at about 270 miles. The haul distance to an off-shelf disposal site is therefore much greater than the average operational limit of the southern Maine, New Hampshire, and northern Massachusetts projects, making an off-shelf site infeasible for all projects. Additionally, the cost for evaluation and monitoring and the uncertainty of the environmental effects of off-shelf placement makes that option impracticable and undesirable. Environmental concerns include increased risk of encountering endangered species during transit, increased fuel consumption and air emissions, substantially extending the duration of dredging projects (with their own, separate, impacts), and greater potential for accidents in transit that could lead to dredged material being dumped in unintended areas.

USACE dredging and disposal records do not show evidence of dredged material ever having been placed at the area that encompasses the IOSN. The only sites within the ZSF that have been used historically are the former IOSH which, according to USACE records, was used from 1964 to 1970, and the CADS, a USACE-selected MPRSA section 103 site located off Cape Arundel, Maine. However, neither the IOSH nor the CADS would meet the projected disposal needs because both are limited in their capacity to accept new material and both have seafloor areas that are incompatible with dredged material disposal due to the diversity of habitat and sediment types.

Specific Criteria (40 CFR 228.6)

As described in greater detail in Section 4 of the FEA, and summarized below, EPA has determined that the IOSN satisfies the eleven specific criteria set out in 40 CFR 228.6.

i. Geographical Position, Depth of Water, Bottom Topography and Distance From Coast (40 CFR 228.6(a)(1)).

Based on analyses in the FEA, EPA has concluded that the geographic position (*i.e.,* location), water depth, bottom topography (*i.e.,* bathymetry), and distance from coastlines of the IOSN will facilitate containment of dredged material within site boundaries and reduce the likelihood of material being transported away from the site to adjacent seafloor areas. As described in the preceding Disposal Site Description section and in the above discussion of compliance with general criteria (iii) and (iv) (40 CFR 228.5(c) and (d)), the IOSN is located far enough from shore and in deep enough water to avoid adverse impacts to the coastline.

The IOSN is a depositional area (*i.e.,* an area characterized by low current

velocities so that it will tend to retain materials placed there). Therefore, dredged material disposed at the site is expected to stay in the site and not cause adverse effects to adjacent seafloor areas. The closest points of land to the IOSN are the Isles of Shoals, with Eastern Island and Appledore Islands being approximately 6.04 nmi and 6.79 nmi respectively to the southwest of the IOSN. IOSN also is approximately 9.55 mni southeast of Sisters Point in Kittery, Maine and approximately 10.8 nmi west of Portsmouth, New Hampshire. The site is located in waters ranging from 295 to 328 feet deep. As discussed in the FEA, the IOSN is of a sufficient depth to allow the disposal of the amount of material that is projected over the 20-year planning horizon without exceeding any depth threshold for safe navigation over the site. As a result, any impacts from dredged material disposal will be short-term and localized and, assuming compliance with other regulatory requirements described elsewhere in this document, will not contribute to any significant long-term adverse impacts in and around the IOSN.

ii. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2)).

EPA considered the IOSN in relation to breeding, spawning, nursery, feeding, and passage areas for adult and juvenile phases (*i.e.,* life stages) of living resources in the Gulf of Maine. From this analysis, EPA concluded that, while disposal of suitable dredged material at the IOSN would cause some short-term, localized effects, overall, it would not cause adverse effects to the habitat functions and living resources specified in the above criterion. As previously noted, the IOSN covers approximately 2.4 nmi^2 of seafloor, which is approximately 0.006% of the seafloor surface area of the Gulf of Maine.

Generally, there are three primary ways that the transportation and disposal of dredged material could potentially adversely affect marine resources. First, disposal can cause physical impacts by injuring or burying less-mobile fish, shellfish, and benthic organisms, as well as the eggs and larvae of these less-mobile species. Second, tug and barge traffic transporting the dredged material to a disposal site could possibly collide or otherwise interfere with marine mammals and reptiles. Third, contaminants in the dredged material could potentially bioaccumulate through the food chain. However, EPA, the USACE, and other federal and state agencies that regulate dredging and dredged material disposal administer regulatory requirements designed to prevent these types of impacts from occurring. *See, e.g.,* 40 CFR part 227.

Dredged material disposal will have some localized impacts to fish, shellfish, and benthic organisms, such as clams and worms, that are present at an ocean disposal site (or in the water column directly above the site) during a disposal event. The sediment plume may entrain and smother some fish in the water column, and may bury some fish, shellfish, and other marine organisms on the seafloor. It also may result in a short-term loss of forage habitat in the immediate disposal area, but recolonization of disposal mounds in the IOSN by benthic infauna is expected within one to three years after disposal, based on extensive monitoring at other disposal sites in New England. As discussed in the FEA (Section 7.5.2), over time, disposal mounds recover and develop abundant and diverse biological communities that are healthy and able to support species typically found in the ambient surroundings. Some organisms may burrow deeply into sediments, often up to 20 inches, and are more likely to survive a burial event.

Regarding the potential for tug and barge impacts to endangered species, EPA complied with the ESA by consulting with the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) on EPA's determinations that designation of the IOSN would not likely adversely affect federally-listed species under their respective jurisdictions or any habitat designated as critical for such species. EPA also coordinated with NMFS under the MSFCMA on potential impacts to essential fish habitat (EFH). Further details on these consultations are provided in the FEA and the sections below describing compliance with the ESA and MSFCMA.

To further reduce potential environmental impacts associated with dredged material disposal, the dredged material from each proposed dredging project will be subjected to the MPRSA sediment testing requirements set forth at 40 CFR part 227 to determine its suitability for ocean disposal. Suitability for ocean disposal is determined by testing the proposed dredged material for toxicity and bioaccumulation to assess the potential risk to the marine environment and human health. If it is determined that the sediment is unsuitable for ocean disposal—that is, that it may unreasonably degrade the marine environment or endanger human health via the food chain—it cannot be disposed at disposal sites designated or selected under the MPRSA. *See* 40 CFR 227.6. Therefore, EPA does not anticipate significant effects on marine organisms from the disposal of suitable dredged material at the IOSN.

EPA recognizes that dredged material disposal causes some short-term, localized adverse effects to marine organisms in the immediate vicinity of each disposal event. But because many organisms are likely to recover after any potential burial events, because dredged material disposal would be limited to suitable material, and because tugs and barges transporting dredged material take significant measures to avoid collisions with marine mammals, EPA concludes that designating the IOSN will not cause unacceptable or unreasonable adverse impacts to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.

iii. Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3)).

EPA's analysis concludes that the IOSN satisfies this criterion. The IOSN is located approximately 10.8 nmi east of Portsmouth, New Hampshire, 9.55 nmi southeast of Kittery, Maine and 6.04 nmi northeast of Eastern Island, the closest of the Isles of Shoals. The shoreward edge of the site is approximately 9 nmi from the nearest beaches in Rye, New Hampshire, and is located in waters ranging in depth from 295 to 328 feet. The IOSN is far enough away from beaches, parks, wildlife refuges, and other areas of special concern to prevent adverse impacts to these amenities. Based on information presented in Section 6.3 of the FEA, and past monitoring of disposal at other ODMDS in New England, this distance is beyond any expected movement of dredged material due to tidal motion or currents. As noted above, any temporary perturbations in water quality or other environmental conditions at the site during initial mixing from disposal operations will be limited to the immediate area of the site and will not reach any beaches, parks, wildlife refuges, or other areas of special concern.

Thus, EPA does not anticipate that the use of the IOSN would cause any adverse impacts to beaches or other amenity areas.

iv. Types and Quantities of Wastes Proposed To Be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, if Any (40 CFR228.6(a)(4)).

Only suitable dredged material that meets the Ocean Dumping Criteria in 40 CFR 220–228 and receives a permit or

is otherwise authorized for dumping by the USACE, with which EPA concurs, will be disposed in the IOSN.

Dredged material dumped at the site is anticipated to be transported to the IOSN by either government or private contractor hopper dredges or scows with capacities ranging from 800 to 6,000 cubic yards (cy).

The volume of sediment to be dredged from federal navigation projects and non-federal marinas and boatyards in the southern Maine, New Hampshire, and northern Massachusetts region varies greatly from year to year depending upon need and funding. However, as previously discussed, and based on the dredging history of this region, maintaining and improving these navigational features is projected to generate approximately 1.5 million cy of dredged material over the next 20 years. Some of the sediments will be beneficially used, like sand that can be used for beach nourishment, and some will be unsuitable for ocean disposal and need to be disposed of through alternative means, but the remainder of the material that is suitable for ocean disposal can be disposed of in the IOSN. Most of the dredged material that would be disposed of in the IOSN would originate from the dredging of navigation channels and harbors in the region and would consist primarily of fine-grained marine sediments that have been transported into these areas by tidal currents, riverine deposition, and upland erosion. The fine-grained material undergoes rigorous testing to confirm that it is suitable for unconfined ocean placement. The IOSN has been sized to accommodate the quantity of material expected to be placed there over the 20-year planning horizon. For all these reasons, no significant adverse impacts are expected to be associated with the types and quantities of dredged material that may be disposed at the IOSN.

v. Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5)).

Monitoring for baseline conditions has already been conducted at the IOSN and adjacent areas by the USACE Disposal Area Monitoring System (DAMOS), and it is anticipated that monitoring and other surveillance activities will continue to be feasible at the IOSN in the future. Monitoring of EPA-designated ocean disposal sites is conducted according to the approved SMMP. The current approved SMMP for the IOSN is included as Appendix G of the FEA. EPA must schedule the SMMP for review and revision at least every ten years. 33 U.S.C. 1412. As a depositional site that will retain the dredged material placed there, the IOSN is conducive to the type of monitoring most commonly conducted at dredged material disposal sites, including side-scan sonar, sediment profile imaging, and sediment grab sampling.

vi. Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, if Any (40 CFR 228.6(a)(6)).

The IOSN site meets this criterion. The IOSN is located in open ocean with water depths ranging from approximately 295 to 328 feet. Water circulation in the vicinity of the IOSN is strongly influenced by the counterclockwise flow, or gyre, normally occurring in the Gulf of Maine. The circulation of the Gulf consists of two circular gyres, one counterclockwise within the interior of the Gulf, and the second, clockwise over Georges Bank. Maine coastal waters are included as the western portion of the counterclockwise gyre within the Gulf. Current patterns in the vicinity of the IOSN are typified by coastal-parallel, non-tidal southerly drift currents generated by the overall circulation of the Gulf of Maine.

The fine-grained sediments that dominate the area of the IOSN indicate that the site is in a depositional area. Consequently, any material dispose of at the IOSN would likely remain within the site and not be significantly affected or transported away from the site by currents.

vii. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) (40 CFR 228.6(a)(7)).

USACE dredging and disposal records and site monitoring do not show any evidence of dredged material having been disposed of within the current site boundaries of the IOSN. Dredged material from the southern Maine, New Hampshire, and northern Massachusetts coastal region was historically disposed of at either the CADS or the former, historically used IOSH, which was used from 1964 to 1970.

In general, results from decades of monitoring of current and historically used ODMDS in the New England region indicate that the disposal of dredged material found suitable for ocean disposal does not significantly alter the long-term functions and values of seafloor bottom as potential habitat for biological communities or contribute to long-term changes in water quality or water circulation at the disposal sites. EPA expects this to also be the case for the IOSN.

viii. Interference with Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8)).

In evaluating whether disposal activity at the site could interfere with shipping, fishing, recreation, mineral extraction, desalination, fish or shellfish culture, areas of scientific importance, and other legitimate uses of the ocean, EPA considered both the effects of disposing dredged material within the IOSN, and any effects from vessel traffic associated with transporting the dredged material to the disposal site. From this evaluation, EPA concluded there would be no unacceptable or unreasonable adverse effects on the considerations noted in this criterion. Some of the factors listed in this criterion have already been discussed above due to the overlap of this criterion with aspects of certain other criteria. Nevertheless, EPA will address each point below.

EPA does not anticipate conflicts with commercial navigation at the IOSN. The Portsmouth Pilots and the USACE discussed the IOSN disposal site location and its anticipated use with respect to navigation transit impacts (as discussed in more detail in Section 4.4.1 of the FEA). Vessels transiting to and from Portsmouth Harbor from the south and southeast follow a route inshore of the Isles of Shoals, which will avoid the area of the IOSN. Vessels approaching or departing to and from the east and northeast (toward Maine and Canada) do cross the general area of the IOSN disposal site. The pilots stated that conflicts between dredged material disposal operations and shipping for large and small projects can be avoided, however, by adequate notice to mariners of disposal activities and frequent marine communication between the disposal tugs and the Portsmouth Pilots. Given the open-water conditions around the IOSN and the relative infrequency of dredged material disposal operations, EPA concludes that any conflicts with vessels traveling in the vicinity of the IOSN should be easily managed in a safe, efficient manner.

EPA also carefully evaluated the potential effects of designating the IOSN on commercial and recreational fishing for both finfish and shellfish (including lobster) and concluded that there would be no unreasonable or unacceptable adverse effects. As discussed above in relation to other site evaluation criteria, disposal of dredged material will only have short-term, incidental, and insignificant effects on organisms in the IOSN and no appreciable effects beyond the site. Because dredged material disposal at other ODMDS in New England has not been found to have

significant adverse effects on fishing, the similar projected levels of future disposal activities at the IOSN are not expected to have any significant adverse effects.

The four main reasons that EPA concluded that no unacceptable adverse effects would occur from disposal of dredged material at the proposed site are discussed below. First, EPA has concluded that any contaminants in material permitted for ocean disposal—having satisfied the dredged material criteria in the regulations that restrict any toxicity and bioaccumulation—will not cause any significant adverse effects to fish, shellfish, or other aquatic organisms. Because the IOSN is a depositional site, dredged material disposed within the site is expected to remain there.

Second, the IOSN does not encompass any especially important, sensitive, or limited habitat for the Gulf of Maine's fish and shellfish. While the site is within the greater Gulf of Maine cod and herring spawning habitat, as previously stated, the IOSN only covers approximately 2.4 nmi^2 of seafloor, which is approximately 0.006% of the total seafloor surface area of the Gulf of Maine. Numerous studies and data reviewed by EPA and the USACE indicate that there is low potential for any future incremental risk from the ocean disposal of dredged sediments at the IOSN in either the long- or short-term.

Third, while EPA found that a small number of demersal fish (*e.g.,* winter flounder), shellfish (*e.g.,* clams and lobsters), benthic organisms (*e.g.,* worms), and zooplankton and phytoplankton could be lost due to the physical effects of disposal (*e.g.,* burial of organisms on the seafloor by dredged material and entrainment of plankton in the water column by dredged material upon its release from a disposal barge), EPA also determined that these minor, temporary adverse effects would be neither unreasonable nor unacceptable. This determination was based on EPA's conclusion that the numbers of organisms potentially affected represent only a minuscule percentage of those in the Gulf of Maine, and findings from past monitoring in the region consistently show the rapid recovery of the benthic community in dredged material disposal sites.

Fourth, EPA has determined that vessel traffic associated with dredged material disposal will not have any unreasonable or unacceptable adverse effects on fishing. The USACE has agreed to notify state fisheries management agencies within a prescribed timeframe before the commencement of dredging and disposal activities at the IOSN. An SMP in this regard has been incorporated into the SMMP. The SMP includes timeframes for notifications, submissions of brief descriptions of operations and maps of haul routes, and procedures for the notice of any changes to the haul route. The USACE will include these conditions in individual permits or authorizations on a project-by-project basis.

There currently are no mineral extraction activities or desalinization facilities in the Gulf of Maine region with which disposal activity could potentially interfere. No finfish aquaculture currently takes place in the southeastern Gulf of Maine. Finally, the IOSN is not in an area of special scientific importance. Accordingly, disposing of dredged material at the IOSN will not interfere with any of the activities described in this criterion or other legitimate uses of this part of the Gulf of Maine.

In addition, the designation of the IOSN site has been determined by the EPA to be consistent with the Maine, New Hampshire, and Massachusetts coastal zone management programs, as discussed in the CZMA section below (*see also* Appendix H of the FEA). The Maine, New Hampshire and Massachusetts coastal zone management programs have concurred with EPA's determinations.

ix. The Existing Water Quality and Ecology of the Sites as Determined by Available Data or by Trend Assessment or Baseline Surveys (40 CFR 228.6(a)(9)).

EPA's analysis of existing water quality and ecological conditions at the site, which was based on available data, trend assessments, and baseline surveys, indicates that use of the IOSN will cause no unacceptable or unreasonable adverse environmental effects. Considerations related to water quality and various ecological factors (*e.g.,* sediment quality, benthic organisms, fish and shellfish) have already been discussed above in relation to other site selection criteria and are discussed in detail in the FEA and supporting documents. In considering this criterion, EPA considered existing water quality and sediment quality data collected in the Gulf of Maine, including from the USACE's Disposal Area Monitoring System (DAMOS), as well as water quality data from EPA's coastal nutrient criteria and trend monitoring efforts. As discussed herein, EPA has determined that disposal of suitable dredged material at the IOSN should not cause any significant adverse environmental effects to water quality or to ecological conditions at the site. EPA and the USACE have prepared an SMMP for the IOSN to guide future management and monitoring of the site.

x. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Sites (40 CFR 228.6(a)(10)).

Monitoring at disposal sites elsewhere in the Gulf of Maine over the past 35 years has shown no recruitment of nuisance (invasive, non-native) species and no such adverse effects are expected to occur at the IOSN in the future. EPA and the USACE will continue to monitor EPA-designated sites in the Gulf of Maine under their respective SMMPs, which include a ''management focus'' on ''changes in composition and numbers of pelagic, demersal, or benthic biota at or near the disposal sites'' (SMMP, Appendix G of the FEA).

In addition, source materials from projects in southern Maine, New Hampshire, and northern Massachusetts to be dredged and transported to the disposal site historically have been classified as marine silts and clays, which are similar to the sediments found at the IOSN site. As previously discussed, any material proposed for ocean disposal at the IOSN site would be subject to an evaluation of sediment quality. Therefore, it is highly unlikely that any nuisance species could be established at the proposed disposal site since habitat (*i.e.,* sediment type) or contaminant levels are unlikely to change over the long-term use of the site.

xi. Existence at or in Close Proximity to the Sites of Any Significant Natural or Cultural Feature of Historical Importance (40 CFR 228.6(a)(11)).

There are no natural features of historical importance within the boundaries of the IOSN, and the cultural resources that would have the greatest potential for being impacted in this area would be shipwrecks. As discussed in Section 6.7 of the FEA, side-scan sonar of the IOSN was conducted and no potential shipwrecks or other cultural feature were noted within its boundaries. The cultural resource literature search conducted for the proposed IOSN area did not identify any shipwrecks in the vicinity. While undiscovered shipwrecks could occur in the area, it is unlikely based on the results of the side-scan survey of the area. As discussed in the NHPA section below, EPA consulted with the state historic preservation offices (SHPO) for Maine and New Hampshire and they confirmed these findings. Based on this information, it is unlikely that any significant cultural resources will be affected from the designation and use of the disposal site.

In addition, Jeffery's Ledge, located to the east of the IOSN, is an important feeding ground for humpback whales and North Atlantic right whales in the summer and fall months and serves as a prime recreational whale watching area. No impacts to this area are expected based on disposal of suitable dredged material at the IOSN. However, procedures outlined in the SMMP will be followed to ensure whales are protected.

3. Disposal Site Management and Monitoring (40 CFR 228.3, 228.7, 228.8 and 228.9)

In accordance with Section 102(c)(3) of the MPRSA, EPA, in conjunction with the USACE, has developed a site management and monitoring plan for the IOSN (the ''SMMP'') which includes a baseline assessment of conditions at the site, a monitoring program for the site, special management conditions necessary to protect the environment, consideration of the quantity and quality of material to be disposed at the site, consideration of the long-term plan for the site (including closure), and a schedule for review and revision of the plan. 33 U.S.C. 1412(c). EPA Region 1 is responsible for managing the IOSN pursuant to this plan and works with the USACE New England Division to do so. *See* 40 CFR 228.3.

The monitoring program ''may include baseline or trend assessment surveys by EPA'' or other entities. 40 CFR 228.9. It may also incorporate ''data collected from the use of automatic sampling buoys, satellites or in situ platforms, and from experimental programs.'' *Id.* Further, ''EPA will require the full participation of permittees, and encourage the full participation of other Federal and State and local agencies in the development and implementation of disposal site monitoring programs.'' *Id.* EPA may limit the ''times or rates'' of dumping ''so that the limits for the site as specified in the site designation are not exceeded.'' 40 CFR 228.8. *See also* 33 U.S.C. 1412(c)(1) and (2).

In accordance with these statutory and regulatory requirements, EPA and the USACE have developed an SMMP for the IOSN that includes provisions that will be included in USACE permit and authorizations to ensure site management practices are protective of the marine environment and public health. The SMMP, available at Appendix G to the FEA, describes disposal site management practices that are generally applicable to all EPA-designated ODMDS, as well as site-specific Special Management Practices. It describes the tiered monitoring approach that is used for all ODMDS in New England that assesses whether disposal activities are occurring in compliance with permit and site restrictions; supports evaluation of short- and long-term fate of material based on MPRSA site impact evaluation criteria; and supports assessment of potential significant adverse environmental impacts from dredged material disposal at the site.

B. National Environmental Policy Act

NEPA requires the public analysis of the potential environmental effects of proposed federal agency actions and reasonable alternative courses of action to ensure that these effects, and the differences in effects among the different alternatives, are understood. *See generally* 42 U.S.C. 4321 *et seq.* The goal of this analysis is to ensure high quality, informed, and transparent decision-making, to facilitate avoiding or minimizing any adverse effects of proposed actions, and to help restore and enhance environmental quality. *See generally* 40 CFR 6.100(a), 1500.1(c) and 1500.2(d)–(f). NEPA requires coordination with other federal and state agencies and public involvement throughout the decision-making process. *See* 40 CFR 6.400(a), 1503, 1501.7, and 1506.6.

EPA disposal site designation evaluations conducted under the MPRSA have been determined to be ''functionally equivalent'' to NEPA reviews, so that they are not subject to NEPA analysis requirements as a matter of law. Nevertheless, as a matter of policy, EPA voluntarily uses NEPA procedures when evaluating the potential designation of ocean dumping sites. 63 FR 58045, 58046 (October 29, 1998) (''EPA voluntarily will follow NEPA procedures in ocean disposal site designations under MPRSA and these procedures provide for consultation with the states'' and EPA ''believes that decisions on preparing EISs for proposed ocean disposal sites should be made on a case-by-case basis.'') Furthermore, EPA has clarified that ''[t]he voluntary preparation of [NEPA] documents in no way legally subjects the Agency to NEPA's requirements.'' Id.

Consistent with its voluntary NEPA policy, EPA has undertaken a NEPA analysis to support its decision-making process for the designation of the IOSN. In this case, EPA decided to prepare an Environmental Assessment, which is done for proposed actions when the significance of the environmental impact is not clearly established. Upon completion of the FEA, EPA also made a Finding of No Significant Impact, described below.

1. Final Environmental Assessment and Finding of No Significant Impact

The FEA evaluates whether an ODMDS should be designated to serve the southern Maine, New Hampshire, and southern Maine coastal region. The FEA describes the purpose and need for any such designation, and evaluates several alternatives to this action, including the option of ''no action'' (*i.e.,* no designation). Based on this evaluation, EPA concludes that designation of the IOSN under the MPRSA is the preferred alternative. EPA also is issuing a FONSI with the FEA that presents the reasons why the agency projects that no significant environmental impacts will occur from implementation of the action.

As stated in the Purpose and Need section, the purpose of this designation is to provide a long-term, ODMDS as a potential option for the future disposal of suitable dredged material. The action is necessary because periodic dredging and dredged material disposal is unavoidably necessary to maintain safe navigation and marine commerce in ports and harbors in the southern Maine, New Hampshire, and northern Massachusetts coastal region. As previously noted, dredging in southern Maine, New Hampshire, and northern Massachusetts is projected to generate approximately 1.5 mcy of dredged material over the next 20 years.

EPA evaluated potential alternatives to ocean disposal in the southern Maine, New Hampshire, and northern Massachusetts coastal region but determined that none were sufficient to meet the projected regional dredging needs. In accordance with EPA regulations, use of alternatives to ocean disposal will be required for dredged material management when they provide a practicable, environmentally preferable option for the dredged material from any particular disposal project. 40 CFR 227.16. When no such practicable alternatives exist, however, EPA's designation of the IOSN will provide an ocean disposal site as a potential management option for dredged material regulated under the MPRSA that has been tested and determined to be environmentally suitable for ocean disposal. Sediments found to be unsuitable for ocean disposal will not be authorized for placement at a disposal site designated by EPA under the MPRSA and will have to be managed in other ways.

2. Alternatives Analysis

EPA analyzed alternatives for the management of dredged material from navigation channels and harbors in the southern Maine, New Hampshire, and northern Massachusetts coastal region. This analysis evaluated several different potential alternatives, including ocean disposal sites in the ZSF (described in the Purpose and Need section), upland disposal, beneficial uses, and the no-action alternative. From this analysis, EPA determined that at least one ocean disposal site, the IOSN, was necessary to provide sufficient capacity to meet the long-term dredged material disposal needs of the region in the event that, as expected, practicable alternatives to ocean disposal are not available for all the material.

EPA's initial screening of alternatives, which involved input from other federal and state agencies, led to the determination that the ocean disposal sites were the most environmentally sound, cost-effective, and operationally feasible options for the full quantity of dredged material expected to be found suitable for ocean disposal over the 20-year planning horizon. Regardless of this conclusion, in practice, each individual dredging project will be analyzed on a case-specific basis and ocean disposal of dredged material at a designated site would only be permitted or authorized when there is a need for such disposal (*i.e.,* there are no practicable, environmentally preferable alternatives). *See* 40 CFR 227.2(a)(1), 227.16(b).

3. Public Involvement

EPA released the DEA, titled ''Draft Environmental Assessment and Evaluation Study for Designation of an Ocean Dredged Material Disposal Site to serve the Southern Maine, New Hampshire, and Northern Massachusetts Region,'' on September 18, 2019, for a 30-day public comment period. 84 FR 49075 (Sep. 18, 2019). EPA held one public meeting during the public comment period on October 9, at 6 p.m. in Kittery, Maine, at which EPA and the USACE made a presentation on the Proposed Rule and DEA and received public comments. EPA also received subsequent written comments both in support of and expressing concerns about EPA's proposed action as described in the DEA and Proposed Rule. Many commenters also asked questions or offered suggestions. EPA made clarifying statements during the public meeting but did not substantively respond to public comments at that time.

EPA and the USACE also held a public meeting after the public comment period on December 5, 2019, in Portsmouth, New Hampshire, to present general information about dredging and dredged material disposal and answer clarifying questions, but again did not substantively respond to specific comments about the IOSN. EPA did not receive any new comments on the Proposed Rule and DEA at this meeting. Appendix I of the FEA includes the public comments EPA received on the DEA and Proposed Rule. Appendix J of the FEA provides a summary of those comments and EPA's responses to those comments. EPA also has summarized the more significant comments in Section VI of the preamble to this Final Rule.

4. Interagency Coordination

EPA coordinated with a wide range of federal and state agencies throughout the development of the Final Rule and FEA. EPA worked closely with the USACE because of its knowledge concerning the region's dredging needs, its technical expertise in monitoring dredged material disposal sites and assessing the environmental effects of dredging and dredged material disposal, and its history in the permitting of dredging and dredged material disposal in the Gulf of Maine and elsewhere. To take advantage of additional expertise held by other entities, and to promote strong inter-agency communications, EPA also consulted and/or coordinated with the USFWS; the NOAA NMFS; the New Hampshire Department of Environmental Services (NH DES); the New Hampshire Department of Fish and Game; the Maine Department of Environmental Protection; the Maine Department of Marine Resources (ME DMR); the Maine Geological Service; the Massachusetts Division of Marine Fisheries; and the Massachusetts Office of Coastal Zone Management (MCZM).

EPA communicated with the cooperating federal and state agencies throughout the site designation process to keep them apprised of progress on the project and to solicit input. EPA conducted two IOSN interagency meetings, in May 2016 and December 2018, to solicit data sources and concerns, to review progress, and to receive feedback on the proposed action. The proposed action also was discussed with federal and state agencies at New England Regional Dredging Team meetings in February 2019, June 2019, September 2019, February 2020, and June 2020, and at Federal Mid-Level Managers meetings (EPA, USACE, NOAA, and USFWS) in June 2018, December 2018, November 2019, and May 2020. Lastly, it has consistently been an agenda item at the Maine, New Hampshire and Massachusetts state dredging team meetings since 2016. EPA provided the Proposed Rule and DEA for formal comment by cooperating agencies and EPA has since been in regular contact with representatives of these agencies throughout the development of the Final Rule and FEA.

5. Tribal Consultation

On July 5, 2019, EPA sent letters to all federally-recognized tribes in Maine offering to consult with them on the proposed designation of the IOSN. The Houlton Band of Maliseet Indians responded with a request for government-to-government consultation, which occurred via teleconference on August 13, 2019. EPA also presented the project on an EPA Regional Tribal Operations Committee teleconference, which includes New England Tribal environmental directors, on August 14, 2019. Comments provided during the consultation and RTOC teleconference were incorporated in the Proposed Rule and DEA prior to their release for public comment on September 18, 2020.

C. Coastal Zone Management Act

The CZMA, 16 U.S.C. 1451, *et seq.,* authorizes states to establish coastal zone management programs to develop and enforce policies to protect their coastal resources and promote uses of those resources that are desired by the state. These coastal zone management programs must be approved by the NOAA Office of Coastal Resources Management, which is responsible for administering the CZMA. Federal agencies must provide relevant states with a determination that each federal agency activity, whether taking place within or outside the coastal zone, that affects any land or water use or natural resource of the state's coastal zone, will be carried out in a manner consistent to the maximum extent practicable with the enforceable policies of the state's approved coastal zone management program. 16 U.S.C. 1456. EPA's compliance with the CZMA is described below.

Based on the evaluations presented in the FEA and supporting documents, and a review of the federally approved New Hampshire, Maine, and Massachusetts coastal zone programs and policies, EPA determined that designation of the IOSN for ocean dredged material disposal under the MPRSA is fully consistent or consistent to the maximum extent practicable with the enforceable policies of the coastal zone management

programs of New Hampshire, Maine, and Massachusetts. EPA provided a written determination to that effect to the NH DES Coastal Program, the ME DMR Coastal Program, and MCZM within the statutory and regulatory mandated timeframes. All three state coastal zone management programs concurred with EPA's determination that the designation of the IOSN is consistent with the states' enforceable program policies (Appendix H of the FEA).

In EPA's view, there are several broad reasons why designation of the IOSN is consistent with the applicable, enforceable policies of the states' coastal zone programs. First, the designation is not expected to cause any significant adverse impacts to the marine environment, coastal resources, or uses of the coastal zone. Indeed, EPA expects the designation to benefit uses involving navigation and berthing of vessels by facilitating needed dredging, and to benefit the environment by concentrating any ocean disposal of dredged material at a single, environmentally appropriate site designated by EPA and subject to the previously described SMMP. Second, designation of the site does not actually authorize the disposal of any dredged material at the site, because any proposal to dispose dredged material from a particular project at a designated site will be subject to a case-specific evaluation, including CZMA review, and be allowed only if: (a) The material satisfies the requirements of the MPRSA, Ocean Dumping Regulations, and other legal requirements, such as those under the CZMA; and (b) no practicable alternative method of management with less adverse environmental impact can be identified. Third, the designated disposal site will be managed and monitored pursuant to an SMMP and if adverse impacts are identified, use of the site will be modified to reduce or eliminate those impacts. Such modification could further restrict, or even terminate, use of the site, if appropriate. *See* 40 CFR 228.3, 228.11. In addition, the IOSN is located outside the coastal zone of all three states, so disposal of dredged material at the site will not directly affect the coastal zone of any of the three states. That said, designation of the IOSN could indirectly affect the states' coastal zones because it could facilitate dredging projects within these coastal zones and result in vessel trips through these coastal zones to take dredged material out to the site. Nevertheless, these indirect impacts should not be problematic because dredging projects themselves will have to satisfy federal and state permitting requirements, including CZMA review, and preventing such dredging projects could harm public use of the coastal zone for vessel navigation and berthing. Moreover, as discussed in the record for this decision, vessels taking dredged material to the IOSN should be able to safely navigate to the site. Indeed, without the IOSN, vessels would still have to haul dredged material to other sites, or dredging projects would be cancelled, which would, itself, result in reduced navigational safety and the risk of accidents.

D. Endangered Species Act

Under section 7(a)(2) of the ESA, 16 U.S.C. 1536(a)(2), federal agencies are required to ensure that their actions are ''not likely to jeopardize the continued existence of any endangered species or result in the destruction or adverse modification of habitat of such species, which is determined to be critical.'' Depending on the species involved, a federal agency is required to consult with NMFS and/or USFWS if the agency's action ''may affect'' an endangered or threatened species or its critical habitat. 50 CFR 402.14(a). Thus, the ESA requires consultation with NMFS and/or USFWS to address potential impacts to threatened and endangered species that may occur at the dredged material disposal site from dredged material disposal there.

To comply with the ESA, EPA coordinated and consulted with NMFS and USFWS (Appendix H of the FEA). EPA determined that the designation of the IOSN is not likely to result in adverse impacts to threatened or endangered species, species of concern, or designated critical habitat. In addition, the USACE will, as appropriate, consult with the NMFS and USFWS for individual permitted projects and federal navigation projects to further ensure that they will satisfy the ESA.

Based on its knowledge, expertise and EPA's effects analysis, NMFS concurred with EPA's determination that the site designation is not likely to adversely affect any NMFS ESA-listed species or designated critical habitat and therefore no further consultation pursuant to Section 7 of the ESA is required. USFWS also concurred with EPA's determination that the designation of IOSN is not likely to adversely affect USFWS ESA-listed species, specifically the roseate tern. Its concurrence was based on that fact that: (1) Disposal effects from turbidity, sedimentation and changes in water quality will be of short duration and limited to a negligible portion of the roseate tern's foraging habitat in the vicinity of Seavey Island; (2) disposal events would happen infrequently and the likelihood of disposal operations coinciding with roseate tern presence is discountable; and (3) EPA's designation of IOSN does not authorize any specific disposal events and such specific disposal events, and their associated effects, would be addressed through permitting by the USACE (Appendix H of FEA).

E. Magnuson-Stevens Fishery Conservation and Management Act

The MSFCMA, 16 U.S.C. 1801 *et seq.,* requires the designation of essential fish habitat (EFH) for federally managed species of fish and shellfish. The goal of these provisions is to ensure that EFH is not adversely impacted by fishing or other human activities, including dredged material disposal, and to further the enhancement of these habitats, thereby protecting both ecosystem health and the fisheries industries. Pursuant to section 305(b)(2) of the MSFCMA, federal agencies are required to consult with NMFS regarding any action they authorize, fund, or undertake that may adversely affect EFH. An adverse effect has been defined by the Act as, ''[a]ny impact which reduces the quality and/or quantity of EFH [and] may include direct (*e.g.,* contamination or physical disruption), indirect (*e.g.,* loss of prey, reduction in species' fecundity), site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.'' 50 CFR 600.810(a).

EPA has consulted with NMFS to ensure compliance with the EFH provisions of the MSFCMA and has prepared an essential fish habitat assessment in compliance with the Act. NMFS concurred with EPA's assessment, determined that adverse effects to federally-managed species and EFH will be minimal and therefore had no conservation recommendations to provide (Appendix H of the FEA).

F. National Historic Preservation Act

The NHPA, 54 U.S.C. 300101 et seq (formerly 16 U.S.C. 470 to 470a–2), requires federal agencies to take into account the effect of their actions on districts, sites, buildings, structures, or objects, included in, or eligible for inclusion in, the National Register of Historical Places. EPA submitted a consultation letter to the New Hampshire and Maine State Historic Preservation Offices (SHPO) on July 27, 2020. Both the Maine and New Hampshire SHPOs provided a letter of concurrence with EPA's determination

that no historic properties (architectural or archaeological) will be affected by this site designation (Appendix H of FEA).

VIII. Supporting Documents

1. *EPA Region 1/USACE NAE. 2020. Final Environmental Assessment and Evaluation Study for Designation of an Ocean Dredged Material Disposal Site for the Southern Maine, New Hampshire, and Northern Massachusetts Coastal Region. U.S. Environmental Protection Agency, Region 1, Boston, MA and U.S. Army Corps of Engineers, New England District, Concord, MA. September 2020.*
2. *EPA Region 1/USACE NAE. 2004. Regional Implementation Manual for the Evaluation of Dredged Material Proposed for Disposal in New England Waters. U.S. Environmental Protection Agency, Region 1, Boston, MA, and U.S. Army Corps of Engineers, New England District, Concord, MA. April 2004.*
3. *EPA/USACE. 1991. Evaluation of Dredged Material Proposed for Ocean Disposal-Testing Manual. U.S. Environmental Protection Agency, Washington, DC, and U.S. Army Corps of Engineers, Washington, DC. EPA–503/8–91/001. February 1991.*
4. *EPA/USACE. 1984. General Approach to Designation Studies for Ocean Dredged Material Disposal Sites. U.S. Environmental Protection Agency and U.S. Army Corps of Engineers, Washington, DC. 1984.*
5. *EPA. 1986. Ocean Dumping Site Designation Delegation Handbook for Dredged Material. U.S. Environmental Protection Agency, Office of Marine and Estuarine Protection, Washington, DC. Sept. 30, 1986.*

IX. Statutory and Executive Order Reviews

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

This action is not a significant regulatory action, as defined in the Executive Order, and was therefore not submitted to the Office of Management and Budget (OMB) for review.

2. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because it would not require persons to obtain, maintain, retain, report, or publicly disclose information to or for a federal agency.

3. Regulatory Flexibility Act (RFA)

This action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (RFA). Rather, this action would provide a cost-effective, environmentally acceptable alternative for the disposal of dredged material for many small marina and boat yard operators in the region.

4. Unfunded Mandates Reform Act (UMRA)

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

5. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175 because it will not have substantial direct effects on Indian tribes, on the relationship between the federal government and Indian Tribes, or the distribution of power and responsibilities between the federal government and Indian Tribes. As described in the Tribal Consultation subsection of the Compliance with Statutory and Regulatory Authorities section, EPA consulted with the potentially affected Indian tribes in making this determination.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the environmental health or safety risks addressed by this action do not present a disproportionate risk to children.

8. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

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

9. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have a disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations.

11. Executive Order 13158: Marine Protected Areas

Executive Order 13158 (65 FR 34909, May 31, 2000) requires EPA to ''expeditiously propose new science-based regulations, as necessary, to ensure appropriate levels of protection for the marine environment.'' EPA may take action to enhance or expand protection of existing marine protected areas and to establish or recommend, as appropriate, new marine protected areas. The purpose of the Executive Order is to protect the significant natural and cultural resources within the marine environment, which means, ''those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands thereunder, over which the United States exercises jurisdiction, consistent with international law.''

The EPA expects that this action will have no significant adverse impacts on the ocean and coastal waters off southern Maine, New Hampshire, and northern Massachusetts or the organisms that inhabit them.

12. Executive Order 13840: Regarding the Ocean Policy To Advance the Economic, Security, and Environmental Interests of the United States

The policies in section 2 of Executive Order 13840 (83 FR 29341, June 19, 2019) include, among others, the following: ''It shall be the policy of the United States to: (a) Coordinate the activities of executive departments and agencies (agencies) regarding ocean-related matters to ensure effective management of ocean, coastal, and Great Lakes waters and to provide economic, security, and environmental benefits for present and future generations; [. . . and] (d) facilitate the economic growth of coastal communities and promote ocean industries, which employ millions of Americans, advance ocean science and technology, feed the American people, transport American goods, expand recreational opportunities, and enhance America's energy security. . . .'' EPA, in developing this Final Rule, coordinated extensively with other federal and state

agencies, and potentially affected stakeholders, to ensure effective management of dredging and dredged material by providing a cost-effective, environmentally acceptable alternative for the disposal of such material. The availability of such an ocean disposal site supports the economic growth of coastal communities and ocean industries, which will be able to maintain safe and efficient navigation through the ports and channels in a cost-effective manner.

13. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 3, 1993) and is, therefore, not subject to review under Executive Order 13771. See OMB, ''Guidance Implementing Executive Order 13771, Titled ''Reducing Regulation and Controlling Regulatory Costs'' (M–17–21) (April 5, 2017), p. 3 (''An 'E.O. 13771 Regulatory Action' is: (i) A significant regulatory action as defined in section 3(f) of E.O. 12866 that has been finalized and that imposes total costs greater than zero. . . .'').

14. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. 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). This rule will be effective 30 days after date of publication.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: September 18, 2020.

Dennis Deziel,

Regional Administrator, EPA Region 1.

For the reasons stated in the preamble, title 40, Chapter I, of the Code of Federal Regulations is amended as set forth below.

PART 228—CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING

■ 1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

■ 2. Amend § 228.15 by adding paragraph (b)(7) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(b) * * *

(7) Isles of Shoals North Dredged Material Disposal Site (IOSN).

(i) *Location:* A 8,530-foot (2,600-meter) diameter circle on the seafloor with its center located at 70° 26.995′ W and 43° 1.142′ N.

(ii) *Size:* 1,312 acres (57,150,000 square feet).

(iii) *Depth:* Ranges from 295 to 328 feet (90 to 100 m).

(iv) *Primary use:* Dredged material disposal.

(v) *Period of use:* Continuing use.

(vi) *Restrictions:* Disposal shall be limited to dredged material that meets the requirements of the MPRSA and its implementing regulations at 40 CFR parts 220 through 228.

[FR Doc. 2020–21006 Filed 9–24–20; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–77

[FMR Case 2020–102–1; Docket No. GSA–FMR–2020–0015; Sequence No. 1]

RIN 3090–AK30

Federal Management Regulation (FMR); Art In Architecture

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

ACTION: Final rule.

SUMMARY: GSA is issuing a final rule amending the Federal Management Regulation (FMR) to update the Art in Architecture program provisions. This final rule provides clarification to the policies that support the efforts to collect, manage, fund, and commission fine art in Federal buildings, and fulfills the requirements in the Executive Order issued July 3, 2020, titled ''Building and Rebuilding Monuments to American Heroes.''

DATES: *Effective:* September 25, 2020.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Chris Coneeney, Director, Real Property Policy Division, Office of Government-wide Policy, at 202–208–2956 or *chris.coneeney@gsa.gov.* For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FMR Case 2020–102–1.

SUPPLEMENTARY INFORMATION:

I. Background

GSA is issuing a final rule to amend part 102–77 pursuant to Executive Order (E.O.) 13934: ''Building and Rebuilding Monuments to American Heroes'' (available at *https://www.federalregister.gov/documents/2020/07/08/2020-14872/building-and-rebuilding-monuments-to-american-heroes*), issued July 3, 2020, by President Donald Trump. Subsection 4(d) of E.O. 13934 requires GSA, in consultation with the Interagency Task Force for Building and Rebuilding Monuments to American Heroes (Task Force), to revise its Art in Architecture program regulations ''to prioritize the commission of works of art that portray historically significant Americans or events of American historical significance or illustrate the ideals upon which our Nation was founded. Priority should be given to public-facing monuments to former Presidents of the United States and to individuals and events relating to the discovery of America, the founding of the United States, and the abolition of slavery. Such works of art should be designed to be appreciated by the general public and by those who use and interact with Federal buildings.''

Subsection 4(c) of the order also directed GSA, to the extent appropriate and consistent with applicable law, to prioritize projects that will result in the installation of a publicly accessible statue of historically significant Americans in communities where a statue depicting a historically significant American was removed or destroyed in 2020.

Furthermore, subsection 4(e) of the order requires that, ''When a statue or work of art commissioned pursuant to this section is meant to depict a historically significant American, the statue or work of art shall be a lifelike or realistic representation of that person, not an abstract or modernist representation.''

II. Discussion of Final Rule

This final rule corrects the title of part 102–77 to ''Art in Architecture''. GSA has not used the hyphens for more than 15 years, including in publications,

online and in correspondence. The change reflects this usage.

Section 102–77.21 is added to meet the requirement in subsection 4(d) of E.O. 13934 that GSA revise its Art in Architecture program regulations ''to prioritize the commission of works of art that portray historically significant Americans or events of American historical significance or illustrate the ideals upon which our Nation was founded. Priority should be given to public-facing monuments to former Presidents of the United States and to individuals and events relating to the discovery of America, the founding of the United States, and the abolition of slavery. Such works of art should be designed to be appreciated by the general public and by those who use and interact with Federal buildings.''

Section 102–77.21 also meets the requirement in subsection 4(b) of E.O. 13934 that GSA, to the extent appropriate and consistent with applicable law, shall give priority to the commissioning of statues or monuments involving the commissioning of publicly accessible statues of the Founding Fathers, former Presidents of the United States, leading abolitionists, and individuals involved in the discovery of America.

Section 102–77.21 also incorporates the requirement of subsection 4(c) of E.O. 13934 that GSA ''to the extent appropriate and consistent with applicable law, prioritize projects that will result in the installation of a statue'' of a historically significant American ''in a community where a statue depicting a historically significant American was removed or destroyed'' in 2020.

Section 102–77.22 is added to meet the requirement in subsection 4(e) of E.O. 13934 that, ''When a statue or work of art commissioned pursuant to this section is meant to depict a historically significant American, the statue or work of art shall be a lifelike or realistic representation of that person, not an abstract or modernist representation.''

Section 102–77.23 is added to incorporate the E.O. 13934 definition of a historically significant American.

III. Executive Orders 12866 and 13563

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under subsection 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Executive Order 13771

This final rule is not subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because this rule is not a significant regulatory action under E.O. 12866.

V. Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This final rule is also exempt from the Administrative Procedure Act pursuant to 5 U.S.C. 553(a)(2) because it applies to agency management or personnel or to public property, loans, grants, benefits, or contracts.

VI. Paperwork Reduction Act

This final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 41 CFR Part 102–77

Federal buildings and facilities; Government property management; Rates and fares.

Emily W. Murphy,

Administrator of General Services.

For the reasons set forth in the Preamble, GSA revises 41 CFR part 102–77 to read as follows:

PART 102–77—ART IN ARCHITECTURE

Subpart A—General Provisions

Sec.
102–77.5 What is the scope of this part?
102–77.10 What basic Art in Architecture policy governs Federal agencies?

Subpart B—Art in Architecture

102–77.15 Who funds the Art in Architecture efforts?
102–77.20 With whom should Federal agencies collaborate when commissioning and selecting art for Federal buildings?
102–77.21 Is priority given to certain types of works of art when commissioning and selecting art for Federal buildings?
102–77.22 Are there certain style requirements for statues or works of art that are commissioned to portray historically significant Americans?
102–77.23 Who is considered a historically significant American under this part?
102–77.25 Do Federal agencies have responsibilities to provide national visibility for Art in Architecture?

Authority: 40 U.S.C. 121 and 3306; E.O. 13934.

Subpart A—General Provisions

§ 102–77.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including GSA's Public Buildings Service, operating under, or subject to, the authorities of the Administrator of General Services.

§ 102–77.10 What basic Art in Architecture policy governs Federal agencies?

Federal agencies must incorporate fine arts as an integral part of the total building concept when designing new Federal buildings and when making substantial repairs and alterations to existing Federal buildings, as appropriate. The selected fine arts, including painting, sculpture and artistic work in other media, must reflect the national cultural heritage and emphasize the work of living American artists.

Subpart B—Art in Architecture

§ 102–77.15 Who funds the Art in Architecture efforts?

To the extent not prohibited by law, Federal agencies must fund the Art in Architecture efforts by allocating a portion of the estimated cost of constructing or purchasing new Federal buildings or of completing major repairs and alterations of existing buildings. Funding for qualifying projects, including new construction, building purchases, other building acquisitions, or prospectus-level repair and alteration projects, must be in a range determined by the Administrator of General Services.

§ 102–77.20 With whom should Federal agencies collaborate when commissioning and selecting art for Federal buildings?

To the maximum extent practicable, Federal agencies should seek the support and involvement of local citizens in selecting appropriate artwork. Subject to sections 102–77.21 through 102–77.23 of this part, Federal agencies should collaborate with the artist and community to produce works of art that reflect the cultural, intellectual and historic interests and values of a community. In addition, and subject to sections 102–77.21 through 102–77.23, Federal agencies should work collaboratively with the architect of the building and art professionals

when commissioning and selecting art for Federal buildings.

§ 102–77.21 Is priority given to certain types of works of art when commissioning and selecting art for Federal buildings?

(a) When commissioning works of art, priority must be given to those works that portray historically significant Americans or events of American historical significance, or illustrate the ideals upon which our Nation was founded. Particular priority should be given to public-facing statues of or monuments to former Presidents of the United States and to individuals and events relating to the discovery of America, the founding of the United States and the abolition of slavery or others who contributed positively to America's history.

(b) To the extent appropriate and consistent with applicable law, GSA shall prioritize projects that will result in the installation of a statue in a community where a statue depicting a historically significant American was removed or destroyed in 2020. All works of art commissioned under the Art in Architecture program should be designed to be appreciated by the general public and by those who use and interact with Federal buildings.

§ 102–77.22 Are there certain style requirements for statues or works of art that are commissioned to portray historically significant Americans?

Yes. When a commissioned statue or work of art is meant to depict a historically significant American, the statue or work of art must be a lifelike or realistic representation of that person, not an abstract or modernist representation.

102–77.23 Who is considered a historically significant American under this part?

As used in this part, the term ''historically significant American'' means an individual who was, or became, an American citizen and was a public figure who made substantive contributions to America's public life or otherwise had a substantive effect on America's history. The phrase also includes public figures such as Christopher Columbus, Junipero Serra, and the Marquis de La Fayette, who lived prior to or during the American Revolution and were not American citizens, but who made substantive historical contributions to the discovery, development, or independence of the future United States.

102–77.25 Do Federal agencies have responsibilities to provide national visibility for Art in Architecture?

Yes. Federal agencies should provide Art in Architecture that receives appropriate national and local visibility to facilitate participation by a large and diverse group of artists representing a wide variety of types of artwork.

[FR Doc. 2020–20453 Filed 9–24–20; 8:45 am]

BILLING CODE 6820–14–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–83

[Notice–MA–202012; Docket No. 2020–0002; Sequence No. 33]

Clarifying the Process for Meeting Federal Space Needs.

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

ACTION: Availability of GSA Bulletin FMR B–52, Clarifying the Process For Meeting Federal Space Needs.

SUMMARY: This Federal Management Regulation (FMR) bulletin clarifies certain terms and concepts, Location of Space, to reflect current laws, executive orders and Office of Management and Budget bulletins and management procedure memoranda, thereby bringing federal location policy into compliance with those governing authorities, until such time as a new regulation is issued.

DATES: *Applicability Date:* September 25, 2020.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Chris Coneeney, Director, Real Property Policy Division, GSA, at 202–208–2956, or email *realpropertypolicy@gsa.gov.* Please cite Notice of FMR Bulletin B–52.

SUPPLEMENTARY INFORMATION:

Background: Federal agencies must give great weight to FMR part 102–83 when developing procedures for defining delineated areas and evaluating locations for Federal facilities, as these provisions synthesize numerous laws and executive orders. This part, however, has not undergone revision for well over a decade. The clarifications listed in the bulletin bring part 102–83 into alignment with current terminology and concepts, and aim to provide consistency when applying the existing regulations across Federal agencies and operational regions in advance of issuing new regulations. The bulletin also offers guidance on incorporating Executive Order 13946 into decisions regarding Federal property clarifies several terms and addresses consultation with local officials. This bulletin can be viewed at *www.gsa.gov/reference/gsa-bulletins.*

Jessica Salmoiraghi,

Associate Administrator, Office of Government-wide Policy.

[FR Doc. 2020–20846 Filed 9–24–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 200124–0029]

RTID 0648–XA497

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; 2020 Red Snapper Private Angling Component Accountability Measure in Federal Waters Off Louisiana

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

ACTION: Temporary rule, accountability measure.

SUMMARY: Through this temporary rule, NMFS implements accountability measures (AMs) for the red snapper recreational sector private angling component in the Gulf of Mexico (Gulf) off Louisiana for the 2020 fishing year. Based on information provided by the Louisiana Department of Wildlife and Fisheries (LDWF), NMFS has determined that the 2019 Louisiana regional management area private angling component annual catch limit (ACL) for Gulf red snapper was exceeded. Therefore, NMFS reduces the 2020 private angling component ACL of Gulf red snapper for the Louisiana regional management area. This reduction will remain in effect through the remainder of the current fishing year on December 31, 2020, and is necessary to protect the Gulf red snapper resource.

DATES: This temporary rule is effective from 12:01 a.m., local time, on September 25, 2020, until 12:01 a.m., local time, on January 1, 2021.

FOR FURTHER INFORMATION CONTACT: Kelli O'Donnell, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *kelli.odonnell@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery, which includes red snapper, is managed under the Fishery Management Plan for the Reef Fish

Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) through regulations at 50 CFR part 622. All red snapper weights discussed in this temporary rule are in round weight.

In 2015, Amendment 40 to the FMP established two components within the recreational sector fishing for red snapper: The private angling component, and the Federal charter vessel and headboat (for-hire) component (80 FR 22422, April 22, 2015). In 2020, NMFS implemented Amendments 50 A–F to the FMP, which delegated authority to the Gulf states (Louisiana, Mississippi, Alabama, Florida, and Texas) to establish specific management measures for the harvest of red snapper in Federal waters of the Gulf by the private angling component of the recreational sector (85 FR 6819, February 6, 2020). These amendments allocate a portion of the private angling ACL to each state, and each state is required to constrain landings to its allocation as part of state management.

As described at 50 CFR 622.39(a)(2)(i), the Gulf red snapper recreational sector quota (ACL) is 7.399 million lb (3.356 million kg) and the recreational private angling component quota (ACL) is 4.269 million lb (1.936 million kg). Also, as described at 50 CFR 622.23(a)(1)(ii)(C), the Louisiana regional management area private angling component ACL is 816,233 lb (370,237 kg). Regulations at 50 CFR 622.23(b) require that if a state's red snapper private angling component landings exceed the applicable state's component ACL, then in the following fishing year, that state's private angling ACL will be reduced by the amount of that ACL overage in the prior fishing year.

For the 2019 fishing year, the Louisiana recreational red snapper private component (private vessel and state charter vessels) was managed under an exempted fishing permit with a state ACL of 816,439 lb (370,331 kg). Amendment 50F provided that any overage of the 2019 Louisiana ACL would be applied to Louisiana's portion of the 2020 private angling ACL. NMFS has determined that landings of red snapper off Louisiana for the private angling component, which includes landings for state charter vessels, in 2019 were 848,340 lb (384,801 kg); which is 31,901 lb (14,470 kg) greater than 2019 Louisiana allocation of the private angling component ACL. Accordingly, for the 2020 fishing year, this temporary rule reduces the Louisiana regional management area private angling component ACL for Gulf red snapper by the ACL overage amount of 31,901 lb (14,470 kg) and resulting in a revised private angling ACL for Louisiana of 784,332 lb (355,767 kg).

On August 24, 2020, NMFS published a notice in the **Federal Register** reducing the 2020 recreational ACL and private angling ACL for Gulf red snapper as a result of a private angling ACL overage in 2019 for the Texas regional management area (85 FR 52055). This resulted in an adjusted 2020 recreational ACL for Gulf red snapper of 7,288,474 lb (3,305,996 kg) and an adjusted 2020 recreational private angling component ACL of 4,158,474 lb (1,886,252 kg). Consistent with the reduction in the Louisiana regional management area private angling component ACL, NMFS further reduces the 2020 total recreational ACL to 7,256,573 lb (3,291,526 kg) and the total private angling component ACL to 4,126,573 lb (1,871,782 kg). The recreational private angling component ACLs for other Gulf state regional management areas (Texas, Mississippi, Alabama, and Florida) for 2020 are unaffected by this action. The reduction in the 2020 red snapper private angling component ACL for the Louisiana regional management area is effective at 12:01 a.m., local time, on [*insert date of publication with the Office of the Federal Register*], and will remain in effect through the end of the fishing year on January 1, 2021.

The LDWF is responsible for ensuring that 2020 private angling component landings in the Louisiana regional management area do not exceed the adjusted 2020 Louisiana ACL. NMFS understands that after the LDWF identified that an ACL overage had occurred in 2019, it adjusted the 2020 Louisiana red snapper private angling season to account for the reduction in the Louisiana ACL as required by the regulations at 50 CFR 622.23(b) and implemented through this temporary rule.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required under 50 CFR 622.23(b) which was issued pursuant to section 304(b) of the Magnuson-Stevens Act, and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action is based on the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds that the need to implement this action to reduce the private angling component ACL for the Louisiana regional management area constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule pursuant to the authority set forth in 5 U.S.C. 553(b)(B), because such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule implementing the post-season ACL adjustment authority has already been subject to notice and comment, and all that remains is to notify the public of the ACL overage adjustment. Such procedures are contrary to the public interest because a failure to implement the ACL overage adjustment immediately may result in continued confusion among the public and Gulf state officials about what ACL is in effect for Louisiana for the 2020 fishing year.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of the action under 5 U.S.C. 553(d)(3).

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

Dated: September 22, 2020.

Jennifer M. Wallace,

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

[FR Doc. 2020–21246 Filed 9–24–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket Nos. 090206140–91081–03 and 120405260–4258–02; RTID 0648–XA503]

Revised Reporting Requirements Due to Catastrophic Conditions for Federal Seafood Dealers and Individual Fishing Quota Dealers in Portions of Alabama and Florida

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

ACTION: Temporary rule; determination of catastrophic conditions.

SUMMARY: In accordance with the regulations implementing the individual fishing quota (IFQ) and Federal dealer reporting programs specific to the

commercial reef fish fishery in the Gulf of Mexico (Gulf) and the coastal migratory pelagic (CMP) fisheries in the Gulf, the Regional Administrator (RA), Southeast Region, NMFS has determined that Hurricane Sally has caused catastrophic conditions in the Gulf for certain Alabama and Florida counties. This temporary rule authorizes any dealer in the affected area described in this temporary rule who does not have access to electronic reporting to delay reporting of trip tickets to NMFS and authorizes IFQ dealers within the affected area to use paper-based forms, if necessary, for basic required administrative functions, *e.g.,* landing transactions. This temporary rule is intended to facilitate continuation of IFQ and dealer reporting operations during the period of catastrophic conditions.

DATES: The RA is authorizing Federal dealers and IFQ dealers in the affected area to use revised reporting methods from September 23, 2020, through October 31, 2020.

FOR FURTHER INFORMATION CONTACT: Britni LaVine (727) 551–5766.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf is managed under the Fishery Management Plan (FMP) for Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP), prepared by the Gulf of Mexico Fishery Management Council (Gulf Council). The CMP fishery is managed under the FMP for CMP Resources in the Gulf of Mexico and Atlantic Region, prepared by the Gulf Council and South Atlantic Fishery Management Council. Both FMPs are implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The Generic Dealer Amendment established Federal dealer reporting requirements for federally permitted dealers in the Gulf and South Atlantic (79 FR 19490; April 9, 2014). Amendment 26 to the Reef Fish FMP established an IFQ program for the commercial red snapper component of the Gulf reef fish fishery (71 FR 67447; November 22, 2006). Amendment 29 to the Reef Fish FMP established an IFQ program for the commercial grouper and tilefish components of the Gulf reef fish fishery (74 FR 44732; August 31, 2009). Regulations implementing these IFQ programs (50 CFR 622.21 and 622.22) and the dealer reporting requirements (50 CFR 622.5(c)) require that Federal dealers and IFQ participants have access to a computer and internet and that they conduct administrative functions associated with dealer reporting and the IFQ program, *e.g.,* landing transactions, online. However, these regulations also specify that during catastrophic conditions, as determined by the RA, the RA may waive or modify the reporting time requirements for dealers and authorize IFQ participants to use paper-based forms to complete administrative functions for the duration of the catastrophic conditions. The RA must determine that catastrophic conditions exist, specify the duration of the catastrophic conditions, and specify which participants or geographic areas are deemed affected.

Hurricane Sally made landfall in the U.S. near Gulf Shores, Alabama, in the Gulf as a Category 2 hurricane on September 16, 2020. Strong winds and flooding from this hurricane impacted communities throughout coastal Alabama and parts of the Florida Panhandle, resulting in power outages and damage to homes, businesses, and infrastructure. As a result, the RA has determined that catastrophic conditions exist in the Gulf for the Alabama counties of Mobile and Baldwin; and the Florida counties of Escambia, Santa Rosa, Okaloosa, Walton, Bay, Gulf, Franklin, Wakulla, Leon, Jefferson, and Taylor.

Through this temporary rule, the RA is authorizing Federal dealers in these affected areas to delay reporting of trip tickets to NOAA Fisheries and IFQ dealers in this affected area to use paper-based forms, from September 23, 2020, through October 31, 2020. NMFS will provide additional notification to affected dealers via NOAA Weather Radio, Fishery Bulletins, and other appropriate means. NOAA Fisheries will continue to monitor and re-evaluate the areas and duration of the catastrophic conditions, as necessary.

Dealers may delay electronic reporting of trip tickets to NMFS during catastrophic conditions. Dealers are to report all landings to NMFS as soon as possible. Assistance for Federal dealers in the affected area is available from the Fisheries Monitoring Branch at 1–305–361–4581. NMFS previously provided IFQ dealers with the necessary paper forms and instructions for submission in the event of catastrophic conditions. Paper forms are also available from the RA upon request. The electronic systems for submitting information to NMFS will continue to be available to all dealers, and dealers in the affected area are encouraged to continue using these systems, if accessible.

The administrative program functions available to IFQ dealers in the area affected by catastrophic conditions will be limited under the paper-based system. There will be no mechanism for transfers of IFQ shares or allocation under the paper-based system in effect during catastrophic conditions. Assistance in complying with the requirements of the paper-based system will be available via the Catch Share Support line, 1–866–425–7627 Monday through Friday, between 8 a.m. and 4:30 p.m., Eastern Time.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is consistent with the regulations in 50 CFR 622.5(c)(iii), 622.21(a)(3)(iii), and 622.22(a)(3)(iii) which were issued pursuant to section 304(b) of the Magnuson-Stevens Act, and are exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because this temporary rule is issued without opportunity for prior notice and comment.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule. Such procedures are unnecessary because the final rules implementing the Gulf IFQ programs and the Gulf and Atlantic Federal dealer reporting have already been subject to notice and public comment. These rules authorize the RA to determine when catastrophic conditions exist, and which participants or geographic areas are deemed affected by catastrophic conditions. The final rules also authorize the RA to provide timely notice to affected participants via publication of notification in the **Federal Register**, NOAA Weather Radio, Fishery Bulletins, and other appropriate means. All that remains is to notify the public that catastrophic conditions exist and that paper forms may be utilized by IFQ dealers in the affected area and that Federal dealers may submit delayed reports. Additionally, delaying this temporary rule to provide prior notice and opportunity for public comment would be contrary to the public interest because affected dealers continue to receive these species in the affected area and need a means of completing their landing transactions. With the power outages and damage to infrastructure that have occurred in the affected area due to Hurricane Sally, numerous businesses are unable to complete landings transactions and dealer reports electronically. In order to continue with their businesses, IFQ dealers need to be aware they can still complete landing transactions and dealer reports using the paper forms.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: September 22, 2020.

Jennifer M. Wallace,

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

[FR Doc. 2020–21230 Filed 9–23–20; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 187
Friday, September 25, 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.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 338 and 390

RIN 3064–AF35

Transferred OTS Regulations Regarding Nondiscrimination Requirements

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rule.

SUMMARY: In this notice of proposed rulemaking, the Federal Deposit Insurance Corporation (FDIC) proposes to rescind and remove from the Code of Federal Regulations rules entitled ''Nondiscrimination Requirements'' (part 390, subpart G), and to amend FDIC regulation part 338 to make it applicable to State savings associations. Part 390, subpart G was included in the regulations that were transferred to the FDIC from the Office of Thrift Supervision (OTS) on July 21, 2011, in connection with the implementation of applicable provisions of Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The FDIC's part 338 is entitled ''Fair Housing'' and applies to insured State nonmember banks. Several provisions for State savings associations in part 390, subpart G have substantively similar provisions in part 338. The remaining provisions in part 390, subpart G without a direct counterpart are largely duplicative of federal laws (Equal Credit Opportunity Act (ECOA), Fair Housing Act (FHA), Equal Employment Opportunity Act (EEOA) and other laws concerning nondiscrimination in lending, employment, and services) and implementing regulations. After careful review of part 390, subpart G, the FDIC proposes to rescind and remove in its entirety part 390, subpart G to streamline the FDIC's rules and eliminate unnecessary, inconsistent, and duplicative regulations and to modify the scope of part 338 to include State savings associations to reflect the scope of the FDIC's current supervisory responsibilities as the appropriate Federal banking agency for those institutions. The FDIC also proposes to define ''FDIC-supervised institution'' and ''State savings association.'' If the proposal is adopted in final form, insured State nonmember banks and State savings associations will be subject to the same anti-discrimination requirements. Upon removal of part 390, subpart G, nondiscrimination regulations related to lending applicable for all insured depository institutions for which the FDIC has been designated the appropriate Federal banking agency will be found at part 338 and related nondiscrimination federal regulations listed above, as applicable.

DATES: Comments must be received on or before October 26, 2020.

ADDRESSES: You may submit comments, identified by RIN 3064–AF35, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments in the portal.
- *Agency Website: https://www.fdic.gov/regulations/laws/federal/.* Follow the instructions for submitting comments on the website.
- *Email: Comments@fdic.gov.* Include RIN 3064–AF35 in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Instructions: All submissions for this rulemaking must include the agency name and RIN 3064–AF35. Comments received will be posted without change to *https://www.fdic.gov/regulations/laws/federal/,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Navid Choudhury, Counsel, Legal Division, (202) 898–6526, *nchoudhury@fdic.gov;* Jamie Goodson, Senior Policy Analyst, (202) 898–6685, *jagoodson@fdic.gov;* Ernestine Ward, Policy Analyst, (202) 898–3812, *erward@fdic.gov;* and Evelyn Manley, Fair Lending Specialist, (202) 898–3775, *emanley@fdic.gov,* Division of Depositor and Consumer Protection.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Act

Title III of the Dodd-Frank Act [1] provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies. Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act,[2] the powers, duties, and functions formerly performed by the OTS were divided among the FDIC, as to State savings associations, the Office of the Comptroller of the Currency (OCC), as to Federal savings associations, and the Board of Governors of the Federal Reserve System (FRB), as to savings and loan holding companies. Section 316(b) of the Dodd-Frank Act [3] provides the manner of treatment for all orders, resolutions, determinations, regulations, and advisory materials that had been issued, made, prescribed, or allowed to become effective by the OTS. Section 316(b) states that if the materials were in effect on the day before the transfer date, they continue to be in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

Section 316(c) of the Dodd-Frank Act [4] further directed the FDIC and the OCC to consult with one another and to publish a list of the continued OTS regulations which would be enforced by the FDIC and the OCC, respectively. On June 14, 2011, the FDIC's Board of Directors approved a ''List of OTS Regulations to be Enforced by the OCC and the FDIC Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.'' This list was published by the FDIC and the OCC as a Joint Notice in the **Federal Register** on July 6, 2011.[5]

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[2] Codified at 12 U.S.C. 5411.

[3] Codified at 12 U.S.C. 5414(b).

[4] Codified at 12 U.S.C. 5414(c).

[5] 76 FR 39247 (July 6, 2011).

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act [6] granted the OCC rulemaking authority relating to both State and Federal savings associations, nothing in the Dodd-Frank Act affected the FDIC's existing authority to issue regulations under the Federal Deposit Insurance Act (FDI Act) and other laws as the ''appropriate Federal banking agency'' or under similar statutory terminology. Section 312(c) of the Dodd-Frank Act amended the definition of ''appropriate Federal banking agency'' contained in section 3(q) of the FDI Act [7] to add State savings associations to the list of entities for which the FDIC is designated as the ''appropriate Federal banking agency.'' As a result, when the FDIC acts as the designated ''appropriate Federal banking agency'' (or under similar terminology) for State savings associations, as it does here, the FDIC is authorized to issue, modify and rescind regulations involving such associations, insured State nonmember banks, and insured branches of foreign banks.

As noted, on June 14, 2011, operating pursuant to this authority, the FDIC's Board of Directors reissued and redesignated certain transferred OTS regulations. These transferred OTS regulations were published as new FDIC regulations in the **Federal Register** on August 5, 2011.[8] When it republished the transferred OTS regulations as new FDIC regulations, the FDIC specifically noted that its staff would evaluate the transferred OTS regulations and might later recommend incorporating them into other FDIC regulations, amending them, or rescinding them, as appropriate.

One of the OTS rules transferred to the FDIC requires State savings associations to not discriminate with respect to lending, employment, and other services provided. The OTS rule, formerly found at 12 CFR part 528 (part 528), was transferred to the FDIC with only technical changes and is now found in the FDIC's rules at part 390, subpart G, entitled ''Nondiscrimination Requirements.'' Although few provisions of part 390, subpart G have a direct counterpart within the FDIC's regulations, the provisions are largely duplicative of regulations implementing federal laws (ECOA, FHA, EEOA, and other laws concerning nondiscrimination in lending, employment, and services) implemented by other agencies. After careful review of part 390, subpart G, the FDIC proposes to rescind and remove part 390, subpart G, because, as discussed below, it is duplicative, unnecessary, and burdensome to require State savings associations to comply with additional requirements to which insured State nonmember banks are not subject. The FDIC also proposes to makes technical conforming edits to part 338 to encompass State savings associations and update the regulation.

FDIC's Existing 12 CFR Part 338 and Former OTS Part 528 (Transferred to FDIC Part 390, Subpart G)

The Fair Housing Act of 1968 prohibits discrimination concerning the sale, rental and financing of housing based on race, religion, national origin or sex. Section 808 of the FHA directed all executive departments and agencies to administer their programs relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions, *e.g.,* the OTS' predecessor, the Federal Home Loan Bank Board (FHLBB)) in a manner to further the purposes of the FHA. Effective May 1, 1972, the FHLBB amended Chapter V, subchapter B of Title 12, by issuing a new section part 528 which prohibited ''discrimination by member institutions in their lending and employment practices and in their advertising and requiring that such institutions display an Equal Housing Lender Poster.'' [9]

Following this initial issuance of part 528 in 1972, in 1978 the FHLBB finalized major amendments to the regulation to update and strengthen its nondiscrimination in lending regulations to reflect provisions of the FHA, ECOA, and the Community Reinvestment Act (CRA) and to ''strengthen the Bank Board's ability to enforce member institutions' compliance with these and other Federal laws which prohibit discriminatory lending practices.'' [10] Specifically, these amendments to the FHLBB's fair lending regulation: ''(1) [p]rohibit member institutions from automatically refusing to lend because of the age or location of a dwelling; (2) prohibit loan decisions based on discriminatory appraisals; (3) emphasize that there is a right to file a written loan application; (4) require member institutions to have written loan underwriting standards which are available to the public upon request; (5) revise the Equal Housing Lender poster which member institutions display in their lobbies; and (6) establish a new monitoring system for fair lending enforcement and analysis.'' [11]

In 1993, following the President's order for federal agencies to review all Federal regulations and policies to eliminate over-burdensome regulations that discourage economic growth,[12] the OTS (as successor to the FHLBB) [13] updated part 528 to eliminate certain definitions that were deemed unnecessary and amended § 528.6, regarding compliance with Home Mortgage Disclosure Act (HMDA) loan/application registers (LARs). Commenters favored elimination of the nondiscrimination disclosure requirements of § 528.6, arguing it was duplicative of the requirements set forth in 12 CFR part 203, which made HMDA requirements applicable to savings associations. In its proposed rule, the OTS stated that its own ''loan application register'' was ''more comprehensive than required by Regulation C'' and that ''the additional register information is useful to examiners'' but also stated that the additional information was available to examiners through other means.[14] In its final rule, the OTS agreed that part 528.6 was substantially duplicative of HMDA part 203 but disagreed that the OTS' requirement to report ''reason for denial'' is unnecessary. At the time, reporting the reason for denial was optional under Regulation C.[15] The OTS argued that ''[t]he 'reason for denial' provides us with useful information that assists the examination process. We believe that retaining the regulatory requirement assures that this important data field is completed by all OTS-regulated filers, including any majority-owned savings association service corporations or affiliates.'' [16] As a result, the OTS continued to require that savings associations and other OTS regulated filers required to keep HMDA LARs pursuant to part 203 to report the ''reason for denial'' for all loan denials.

Part 528 was among the regulations that were transferred to the FDIC from the OTS on July 21, 2011, pursuant to

[6] Codified at 12 U.S.C. 5412(b)(2)(B)(i)(II).

[7] 12 U.S.C. 1813(q).

[8] 76 FR 47652 (Aug. 5, 2011).

[9] 37 FR 8436 (Apr. 3 1972).

[10] 43 FR 22332 (May 25, 1978).

[11] 43 FR 22332 (May 25, 1978).

[12] In 1996, the Department of Housing and Urban Development (HUD), in accordance with the President's initiative on regulatory reinvention and reform which requires deletion of nonbinding guidance or explanations, entirely eliminated HUD's part 109 (Advertising Guidelines), which provided a variety of nonbinding suggestions and examples of advertising practices that would violate the FHA. 61 FR 14378 (April 1, 1996).

[13] The updates followed the passage of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. Public Law 101–73, 103 Stat. 183 (1989).

[14] 57 FR 40352 (Sept. 3, 1992).

[15] *See* 12 CFR 203.4(c) (1993).

[16] 58 FR 4309 (Jan. 14, 1993).

the Dodd-Frank Act as noted above. OTS' part 528 was adopted as FDIC's part 390 subpart G and was not integrated with the FDIC's rules contained in part 338, entitled ''Fair Housing.'' Both in 2011 when OTS part 528 was transferred and today, the FDIC's part 338, a regulation whose provisions are substantially similar to some provisions in the OTS' former part 528: (1) Prohibits insured State nonmember banks from engaging in discriminatory advertising with regard to residential real estate-related transactions; and (2) requires recordkeeping of certain home loan application data for compliance with the ECOA and HMDA with respect to insured State nonmember banks for which the FDIC has been designated the appropriate Federal banking agency.[17] These provisions have direct counterparts in part 390, subpart G.

Specifically, the FDIC's fair housing recordkeeping provisions (see §§ 338.7 and 338.8) are a counterpart to the former OTS requirement to file a HMDA LAR (§ 390.147). The FDIC rules require supervised institutions to request and retain any monitoring information required by HMDA and its implementing Regulation C when receiving an application for credit for the purchase or refinancing of a dwelling to be occupied as a principal residence. Prior to the passage of the final HMDA rule in 2015 by the Bureau of Consumer Financial Protection (CFPB),[18] reporting of reason for denial was optional for insured State nonmember banks, as mentioned earlier. However, reporting of reason for denial became mandatory following the 2015 HMDA rule for covered institutions. FDIC-supervised institutions, under part 338, are already subject to the HMDA reporting requirement to provide a reason for denial as a result of the change in 2015. Therefore, the FDIC has not found any reasonable basis to add such a specific provision into its part 338, and the FDIC proposes to rescind and remove the former OTS rule as duplicative and unnecessary. Moreover, in 2018, the HMDA rule was further amended by the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA),[19] which provided that insured depository institutions and insured credit unions need not report certain data points for transactions that qualify for a partial exemption, unless otherwise required by their regulator. Reason for denial is one such data point. Rescinding and removing former OTS's § 390.147 would promote regulatory consistency among insured State nonmember banks and State savings associations and enable State savings associations to take advantage of the partial exemption, if eligible.

In addition, FDIC requirements related to nondiscrimination in advertising and displaying a fair housing poster (§§ 338.3 and 338.4) are counterparts to substantially similar former OTS requirements (§§ 390.145 and 390.146). However, the FDIC's part 338 and the former OTS' part 390, subpart G differ with respect to where they require fair housing posters to be displayed and the presence of nonbinding recommendations about displaying Spanish-language posters in certain offices. With respect to poster location, FDIC's § 338.4 requires posting either the FDIC's Equal Housing Lender poster or the U.S. Department of Housing and Urban Development's Equal Housing Opportunity poster at ''a central location within the bank where deposits are received or where such loans are made in a manner clearly visible to the general public entering the area,'' whereas § 390.146 requires posting at each of a State savings association's offices. The FDIC has not identified a reason for State savings associations to post an Equal Housing Opportunity notice at locations where insured State nonmember banks are not required to post. Therefore, the FDIC proposes to rescind and remove § 390.146. As discussed below, the FDIC also proposes to amend § 338.4 to apply to State savings associations, in addition to insured State nonmember banks and to update the address provided for the FDIC's Consumer Response Center (CRC).

With respect to the presence of non-binding guidance, § 390.146 recommends, but does not require, that State savings associations ''post a Spanish language version of the [Equal Housing Lender] poster in offices serving areas with a substantial Spanish-speaking population.'' The FDIC's part 338 does not contain guidance about posting supplemental foreign-language posters. The FDIC does not propose to add this nonbinding recommendation to the existing Equal Housing Lending poster requirements in § 338.4.[20]

Although several former OTS nondiscrimination rules codified in part 390, subpart G do not have direct FDIC counterparts, they are substantially duplicative of nondiscrimination provisions found in other federal laws (*e.g.,* ECOA, FHA, EEOA, and other laws concerning nondiscrimination in lending, employment, and services) and implementing regulations of the CFPB or Department of Labor.[21] Additionally, the interagency Policy Statement on Discrimination in Lending applies to State savings associations.[22] The applicable prohibitions on discrimination addressed by these other laws, regulations, and policy statements apply to State savings associations regardless of specific references in the FDIC's regulation.

In addition, to the extent that any such provision of part 390, subpart G can be interpreted as applying in a case where ECOA, FHA, EEOA and other laws and regulations concerning nondiscrimination in lending, employment or services would not apply, the FDIC's authority to amend these former OTS provisions is not certain.[23] The OTS had authority under the Home Owners' Loan Act (HOLA) to adopt regulations that give primary consideration of the best practices of thrift institutions in the United States and appears to have used such authority in adopting and maintaining their nondiscrimination requirements.[24] However, such HOLA authority does not extend to the FDIC. Moreover, the FDIC has not identified cases where the OTS applied the nondiscrimination requirements of its part 528 to address acts or practices that were not prohibited by ECOA, FHA, or EEOA. The FDIC also has not found cases where a fair lending review of a State savings association identified acts or practices that were deemed appropriate to address under part 390 subpart G but not under ECOA or the FHA. For these reasons, the FDIC finds §§ 390.142 through 390.144 and 390.148 to be unnecessary and duplicative, as a result of the overlapping provisions in ECOA, FHA, or EEOA, and proposes to rescind §§ 390.142 through 390.144 and 390.148 in their entirety rather than revise them

[17] 12 CFR part 338.

[18] 80 FR 66127 (Oct. 28, 2015).

[19] Public Law 117–154 (2018). In recent CFPB rulemakings and other issuances, the requirement to report Reason for Denial in § 390.147 is stated to be independent of the partial exemption from reporting that data field under HMDA.

[20] *https://www.fdic.gov/news/news/press/2018/pr18059a.pdf.*

[21] FDIC part 352 addresses nondiscrimination on the basis of disability to provide equal access to programs and activities conducted by the FDIC.

[22] 59 FR 18267 (April 15, 1994).

[23] *See, e.g.,* OTS, Advance Notice of Proposed Rulemaking, Unfair or Deceptive Acts and Practices, 72 FR 43570, 43573 (Aug. 6, 2007) (stating that OTS' Nondiscrimination Rule, then 12 CFR part 528, ''extends beyond the federal fair lending laws by prohibiting discrimination not covered by those laws'' and providing examples of such broader applicability).

[24] *See id.*

to address acts or practices not addressed by ECOA, FHA, or EEOA.

The FDIC has determined that several provisions of part 390 subpart G have no counterparts in either the FDIC's regulations or other nondiscrimination federal regulations. For these provisions, the FDIC has not identified a reasonable basis for retaining these requirements for State savings associations, given that they do not apply to insured State nonmember banks, and therefore proposes to rescind the following provisions, which—

1. Require each State savings association to have clearly written, nondiscriminatory loan underwriting standards, available to the public upon request, at each of its offices. Require each association to review its standards, and business practices that implement them, at least annually to ensure equal opportunity in lending.[25]

2. Require each State savings association notify each ''inquirer'' of a right to obtain a copy of its loan underwriting standards.[26]

3. Provide supplementary guidelines to aid savings associations in developing and implementing nondiscriminatory lending policies and provide that each State savings association ''should reexamine its underwriting standards at least annually in order to ensure equal opportunity.'' [27]

4. Treat the age or location of a dwelling as a per se prohibited basis for discrimination.[28]

5. Provide certain guidelines relating to nondiscrimination in marketing practices.[29]

In summary, after careful review of part 390, subpart G (formerly part 528), and the former OTS's stated rationale for the rule, the FDIC, as the appropriate Federal banking agency for State savings associations, proposes to rescind and remove part 390, subpart G in its entirety. Rescinding part 390, subpart G also will serve to streamline the FDIC's rules and eliminate unnecessary, inconsistent, and duplicative regulations. If the proposal is adopted in final form, all insured State nonmember banks and State savings associations will be subject to the same anti-discrimination requirements.

II. The Proposal

Regarding the functions of the former OTS that were transferred to the FDIC, section 316(b)(3) of the Dodd-Frank Act [30] provides that the former OTS regulations will be enforceable by the FDIC until they are modified, terminated, set aside, or superseded in accordance with applicable law. After reviewing the Nondiscrimination Requirements rule currently found in part 390, subpart G, the FDIC, as the appropriate Federal banking agency for State savings associations, proposes to rescind and remove part 390, subpart G in its entirety. Further, in part 338, the FDIC proposes to (1) revise § 338.1 to reflect that the advertising provisions of subpart A apply to State savings associations and their subsidiaries, to conform to and reflect the scope of FDIC's current supervisory responsibilities as the appropriate Federal banking agency for State savings associations; (2) in § 338.2, add a defined term ''FDIC-supervised institution,'' defined to mean ''either a bank [defined in § 338.2(a) to mean ''an insured State nonmember bank as defined in section 3 of the Federal Deposit Insurance Act''] or a State savings association''; (3) add a new subsection to define ''State savings association'' as having ''the same meaning as in section 3(b)(3) of the Federal Deposit Insurance Act''; [31] (4) make conforming technical edits throughout, including replacing the term ''FDIC-supervised institution'' or ''institution'' in place of ''bank'' throughout the rule where necessary and revising references to the FRB's part 202 and part 203 throughout part 338 to refer to the CFPB's part 1002 and part 1003, respectively; and (5) amend § 338.4 to update the text required for the Equal Housing Lender poster to the correct address for the FDIC Consumer Response Center.

Part 390, Subpart G

A. Section 390.140—Definitions

Section 390.140 defines the terms ''application,'' ''dwelling,'' and ''State savings association.'' In light of the proposal to rescind subpart G of part 390 in its entirety, these definitions need not be retained. Therefore, the FDIC proposes to rescind § 390.140.

B. Section 390.141—Supplementary Guidelines

Section 390.141 cross-references a policy statement transferred from OTS regulations to § 390.151, HUD's fair housing regulations at 24 CFR part 100 *et seq.,* and Regulation B and Regulation C. The cross-reference to the policy statement would be obsolete if § 390.151 is rescinded as proposed. Moreover, the cross-references to HUD's fair housing regulations and to the regulations that implement ECOA and HMDA are unnecessary. Therefore, the FDIC proposes to rescind § 390.141.

C. Section 390.142—Nondiscrimination in Lending and Other Services

Section 390.142 prohibits discrimination on a prohibited basis by State savings associations in lending and other services. The prohibited bases specified are location and age of a dwelling and race, color, religion, sex, handicap, familial status, marital status, or age of an applicant or a joint applicant, among other parties.[32] In general, § 390.142(a) prohibits denying a loan or other service, discriminating in the purchase of loans or securities, or discriminating in fixing the amount, interest rate, duration, application procedures, collection or enforcement procedures, or other terms or conditions of such loan or service, on a prohibited basis. Section 390.142(b) provides that ''[a] State savings association shall consider without prejudice the combined income of joint applicants for a loan or other service.'' Section 390.142(c) prohibits a State savings association from discriminating against an applicant for a loan or other service on any prohibited basis, as defined in Regulation B or HUD's FHA regulation in 24 CFR part 100.

There is significant overlap between the requirements of § 390.142 and of the requirements of ECOA and Regulation B and the FHA and HUD's FHA regulations (the general federal fair lending laws). For example, under ECOA, it is ''unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction'' on a prohibited basis.[33] Similarly, the FHA provides that it is ''unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction'' because of a prohibited basis.[34] Moreover, the following are prohibited bases under both subpart G of part 390 and the general federal fair lending laws: Race, color, religion, national origin, and sex.[35]

[25] 12 CFR 390.143(b).

[26] 12 CFR 390.144(b).

[27] 12 CFR 390.150(a).

[28] 12 CFR 390.142 through 390.144.

[29] 12 CFR 390.150(d).

[30] 12 U.S.C. 5414(b)(3).

[31] 12 U.S.C. 1813(b)(3).

[32] The other parties specified in § 390.147(a) are a person associated with respect to a loan or service or the purpose thereof, present or prospective owners, lessees, tenants, or occupants of the dwelling(s), or present or prospective owners, lessees, tenant, or occupants of other dwellings in the vicinity of the dwelling(s).

[33] *See* 15 U.S.C. 1691(a).

[34] *See* 42 U.S.C. 3605(a).

[35] Prohibited bases for discrimination under ECOA but not the FHA are age (of an applicant),

However, there are differences between § 390.142 and the general federal fair lending laws. For example, under § 390.142(a), prohibited bases for discrimination explicitly include the location and age of a dwelling, whereas prohibited bases for discrimination under ECOA, FHA, and their implementing regulations do not include such factors.

As discussed earlier, to the extent that a provision of § 390.142 can be interpreted as applying in a case where ECOA, FHA, EEOA and other laws and regulations concerning nondiscrimination in lending, employment or services would not apply, the FDIC's authority to amend these former OTS provisions is not certain. Because the general federal fair lending laws address substantially the same acts and practices as are addressed by § 390.142(a) and it is uncertain whether the FDIC could amend § 390.142(a) in connection with acts or practices not explicitly prohibited by the general federal fair lending laws, FDIC proposes to rescind § 390.142(a).

Similarly, § 390.142(b) addresses acts and practices addressed by the general federal fair lending laws but differs in ways that make FDIC's authority to amend § 390.142(b) uncertain. As mentioned, § 390.142(b) provides that ''[a] State savings association shall consider without prejudice the combined income of joint applicants for a loan or other service.'' By contrast, Regulation B's provisions establishing standards for consideration of an applicant's income in § 1002.6(b)(5) does not require creditors to consider the combined income of joint applicants, and Comment 6(b)(5)–3.ii states that creditors need not consider income at all. In contrast with § 390.142(b), 12 CFR 1002.6(b)(5) in Regulation B prohibits treating joint applicants differently based on the existence, absence or likelihood of a marital relationship. The FDIC believes that the prohibition in § 1002.6(b)(5) addresses substantially the same issue that § 390.142(b) addresses and the latter is duplicative and arguably less clear. Therefore, the FDIC proposes to rescind § 390.142(b).[36]

As mentioned, § 390.142(c) prohibits a State savings association from discriminating against an applicant for a loan or other service on any prohibited basis, as defined in Regulation B or HUD's FHA regulation in 24 CFR part 100. The FDIC believes that § 390.142(c) is duplicative of the general federal fair lending laws and therefore proposes to rescind the provision.

D. Section 390.143—Nondiscriminatory Appraisal and Underwriting

Section 390.143(a) prohibits using or relying upon a dwelling appraisal that a State savings association knows or reasonably should know is ''discriminatory on the basis of the age or location of the dwelling'' or is ''discriminatory per se or in effect'' under the FHA or ECOA. The general federal fair lending laws prohibit appraisal-related discrimination on a prohibited basis.[37] Although the location of a dwelling is not a per se prohibited basis for discrimination under those statutes, ECOA prohibits discrimination because of the race, color, religion, national origin, etc. of residents in the neighborhood where the property offered as collateral.[38] To the extent that § 390.143(a) prohibits considering the age of a dwelling in a way that would not be prohibited under the general federal fair lending laws, the authority of the FDIC to amend the provision is unclear.

As stated, § 390.143(a) also prohibits using or relying upon a dwelling appraisal that is discriminatory per se or in effect under the FHA or ECOA. The FDIC believes that prohibition is duplicative of prohibitions under the general fair lending laws and therefore is unnecessary. For these reasons, the FDIC proposes to rescind § 390.143(a).

Section 390.143(b) requires each State savings association to have clearly written, nondiscriminatory loan underwriting standards available to the public upon request at each of its offices. In addition, § 390.143(b) requires each association to review its standards, and business practices that implement them, at least annually to ensure equal opportunity in lending. No such requirements apply to insured State nonmember banks. The provision is not required by ECOA or the FHA, and the authority of the FDIC to amend former OTS requirements that were adopted pursuant to HOLA authority is unclear. For these reasons, the FDIC proposes to rescind § 390.143(b).

E. Section 390.144—Nondiscrimination in Applications

Section 390.144(a) prohibits discouraging or refusing to allow, receive, or consider any applicant, request or inquiry about a loan or other service on a prohibited basis. Section 390.144(b) requires a State savings association to ''inform each inquirer of his or her right to file a written loan application, and to receive a copy of the association's underwriting standards.''

Section 390.144(a) is substantially similar to, and duplicative of, prohibitions under the general federal fair lending laws.[39] To the extent that § 390.144(a) relies on HOLA authority to prohibit discrimination with respect to a service, or with respect to the age or the location of a dwelling, in cases where the general federal fair lending laws would not apply, the FDIC's authority to amend the provision is unclear. Therefore, the FDIC proposes to rescind § 390.144(a).

As discussed earlier, the FDIC proposes to rescind the requirement in § 390.143(b) for a State savings association to provide a copy of its underwriting standards upon request. Further, the FDIC believes that the requirement to post an Equal Housing Lender poster, discussed below in connection with 12 CFR 338.4, serves a substantially similar purpose as the requirement to ''inform each inquirer of his or her right to file a written loan application'' in 12 CFR 390.144(b). For the foregoing reasons, the FDIC proposes to rescind § 390.144(b).

F. Section 390.145—Nondiscriminatory Advertising

Section 390.145 prohibits directly or indirectly engaging in any form of advertising that implies or suggests a policy of discrimination or exclusion in violation of ECOA, the FHA, or subpart G of part 390. The provision also provides that advertisements for any loan for purchasing, constructing, improving, repairing, or maintaining a dwelling or any loan secured by a dwelling must include the Equal Housing Lender symbol.

The requirement in § 390.145 to include the Equal Housing Lender

marital status, and good faith exercise of a right under the Consumer Credit Protection Act (or any state law upon which the CFPB has granted an exception). Prohibited bases for discrimination under the FHA but not ECOA are handicap and familial status. *Compare* 15 U.S.C. 1691(a) *with* 42 U.S.C. 3604, 3605(a).

[36] Section 1002.6(b)(5) prohibits discounting, or excluding from consideration, the income of an applicant or his or her spouse because of a prohibited basis or because the income is derived from part-time employment or is an annuity, pension, or other retirement benefit. The provision also prohibits treating joint applicants differently based on the existence, absence, or likelihood of a marital relationship.

[37] Regulation B prohibits discrimination ''against an applicant on a prohibited basis regarding any aspect of a credit transaction.'' 12 CFR 1002.4(a). Under HUD's FHA regulations, it is unlawful to use ''an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal improperly takes into consideration'' a prohibited basis. 24 CFR 100.135(d)(1).

[38] *See* 12 CFR 1002.2(z) and Comment 2(z)–1.

[39] *See, e.g.,* 15 U.S.C. 1691(a); 12 CFR 1002.4; 24 CFR 100.120.

symbol in dwelling-related advertising is substantially similar to the requirement in § 338.4(a) that an insured State nonmember bank prominently indicate in advertisements for dwelling-related loans ''that the bank makes such loans without regard to race, color, religion, national origin, sex, handicap, or familial status.'' Section 338.4(a)(1) permits, but does not require, an insured State nonmember bank to comply ''by including in the advertisement a copy of the logotype with the Equal Housing Lender legend contained in the Equal Housing Lender poster prescribed in § 338.4(b) of the FDIC's regulations or a copy of the logotype with the Equal Housing Opportunity legend contained in the Equal Housing Opportunity poster prescribed in'' § 110.25(a) of HUD's FHA regulation. Because § 390.145 is substantially similar to § 338.4, FDIC proposes to rescind § 390.145 and, as discussed below, amend § 338.4 to cover State savings associations in addition to insured State nonmember banks.

G. Section 390.146—Equal Housing Lender Poster

Section 390.146(a) requires each State savings association to post and maintain at least one Equal Housing Lender poster prominently in the lobby of each of its offices, requires the use of specified text, establishes a minimum poster size, and requires that the text be legible. Also, § 390.146(a) states that ''[i]t is recommended that savings associations post a Spanish language version of the poster in offices serving areas with a substantial Spanish-speaking population.'' Section 390.146(b) sets forth the required poster text and the Equal Housing Lender logotype.

The requirements of § 390.146 are substantially similar to the requirements applicable to insured State nonmember banks under § 338.4. As discussed later, although the FDIC's Equal Housing Lender poster provisions do not include the Spanish-language recommendation included in § 390.146, the FDIC makes a Spanish-language poster available to the institutions it supervises. For these reasons, the FDIC proposes to rescind § 390.146 and, as discussed below, amend § 338.4 to also apply to State savings associations.

H. Section 390.147—Loan Application Register

Section 390.147 requires that State savings associations and other lenders required to file HMDA LARs with the FDIC to enter the reason for denial with respect to all loan denials. As discussed earlier in Section I, *Background,* Regulation C now requires a covered financial institution to report ''[t]he principal reason or reasons the financial institution denied the application, if applicable.''[40] The FDIC believes that § 390.147 is duplicative now that reporting reason for denial is required rather than optional under Regulation C. Furthermore, pursuant to the EGRRCPA, Regulation C provides a partial exemption from reporting reason for denial and certain other data points for financial institutions that meet specified conditions. Banks eligible for the partial exemption need not report reason for denial, but State savings associations supervised by the FDIC must report reason for denial pursuant to § 390.147.[41] The FDIC has not identified grounds for State savings associations that are eligible for the partial exemption under HMDA to be treated differently from similarly situated banks. For the foregoing reasons, the FDIC proposes to rescind § 390.147.

I. Section 390.148—Nondiscrimination in Employment

Section 390.148 prohibits discrimination on a prohibited basis by State savings associations in employment. The specified prohibited bases are race, color, religion, sex, and national origin. Section 390.148(a) prohibits discrimination in the hiring, firing, promoting, compensating, or training of an individual or similar discriminatory treatment during employment or with regard to training. Section 390.148(b) prohibits segregation or classification of employees in a way that would adversely affect their status as an employee on a prohibited basis. Section 390.148(c) prohibits State savings associations from retaliating against an employee for opposing an unlawful employment practice. Section 390.148(d) prohibits discrimination by State savings associations in advertisements for employment. Section 390.148(e) states the regulation does not apply in any case in which certain exemptions and exceptions under the EEOA apply. Section 390.148(f) states that any violation of specified laws or regulations, such as the EEOA and the Age Discrimination in Employment Act, shall be deemed a violation of this regulation.

There is significant overlap between the requirements of § 390.148(a) through (d) and the EEOA. Under the EEOA, it is unlawful for an employer to discriminate in hiring, firing, compensating or providing training because of the same prohibited bases as under § 390.148(a).[42] Similarly, the EEOA prohibits employers from segregating or classifying employees that would adversely affect their status as an employee on a prohibited basis.[43] The EEOA also makes it unlawful for an employer to retaliate against an employee for opposing a practice made unlawful under a subchapter of the EEOA.[44] The EEOA makes it generally unlawful for an employer to discriminate in advertisements for employment.[45] The FDIC believes that §§ 390.148(a) through (d) are duplicative of the prohibitions under the EEOA and therefore are unnecessary. For these reasons, the FDIC proposes to rescind these provisions.

Section 390.148(e) cross-references the EEOA. The cross-reference to the statute would be obsolete if § 390.148 is rescinded as proposed. Section 390.148(f) cross-references multiple employment laws, including the EEOA. The FDIC believes such cross-references are unnecessary and therefore proposes to rescind §§ 390.148(e) and (f).

J. Section 390.149—Complaints

Section 390.149 provides that complaints about discrimination in lending by a State savings association ''shall be referred'' to the Secretary of HUD for processing under the FHA and the Director of the Division of Depositor and Consumer Protection at the FDIC for processing under FDIC regulations. In addition, § 390.149 provides that complaints about discrimination in employment by a State savings association ''shall be referred'' to the EEOC (with a copy to the FDIC) if they relate to employment. Similar, although more detailed, discrimination complaint processing provisions can be found in other federal laws, and their implementing regulations.[46] Moreover, as a matter of practice, consistent with the *1991 Memorandum of Understanding Between the U.S. Department of Housing and Urban Development and the Federal Financial Institutions Examination Council (FFIEC) Member Agencies,* the FDIC has long had procedures for referring complaints to HUD regarding lending discrimination by financial institutions. These procedures apply to complaints involving lending by State savings associations. Therefore, the FDIC

[40] *See* § 1003.4(a)(16).

[41] Financial institutions regulated by the OCC are required to report reasons for denial on their HMDA LARs pursuant to 12 CFR 27.3(a)(1)(i) and 128.6.

[42] *See* 42 U.S.C. 2000e–2(a)(1) and (d).

[43] *See* 42 U.S.C. 2000e–2(a)(2).

[44] *See* 42 U.S.C. 2000e–3(a).

[45] *See* 42 U.S.C. 3605(a).

[46] *See* 24 CFR part 103 ((Fair Housing—Complaint Processing) (FHA)) and 29 CFR part 1601 ((Procedural Regulations) (EEOA)).

believes the provisions in § 390.149 regarding routing complaints about discrimination in lending are duplicative and unnecessary.

However, there appears to be no equivalent requirement to the provisions in § 390.149 regarding referring complaints to EEOC regarding employment discrimination by FDIC-supervised institutions. The FDIC believes it would be burdensome and unnecessary to require State savings associations to comply with this additional requirement to which insured State nonmember banks are not subject. For the foregoing reasons, the FDIC proposes to rescind § 390.149 in its entirety.

K. Section 390.150—Guidelines Relating to Nondiscrimination in Lending

Section 390.150 ''provides supplementary guidelines to aid savings associations in developing and implementing nondiscriminatory lending policies.'' In general, § 390.150 states actions that State savings associations ''should'' take or actions that ''can'' or ''may'' constitute illegal discrimination.[47] The requirements in the guidelines generally have analogous requirements in the general federal fair lending laws; for example, with respect to discrimination on the basis of marital status,[48] discounting or excluding spousal income or supplementary income,[49] and inquiring about child bearing or childrearing.[50] Therefore, the FDIC proposes to rescind this section as duplicative or unnecessary.

Part 338—Fair Housing

The FDIC's part 338, Fair Housing, applies to insured State nonmember banks and addresses discrimination in advertising and recordkeeping requirements under ECOA and HMDA. The FDIC proposes to make technical amendments to part 338 to reflect the applicability of its provisions to State savings associations, as discussed below.

A. Section 338.1—Purpose

Section 338.1 states that its purposes are to prohibit insured State nonmember banks from engaging in discriminatory advertising with regard to residential real estate-related transactions and require them to publicly display either the Equal Housing Lender poster set forth in § 338.4(b) of the FDIC's regulations or the Equal Housing Opportunity poster prescribed in 24 CFR part 110 in HUD's regulations. To reflect that § 338.1 applies to all institutions for which the FDIC is the appropriate Federal banking agency, the FDIC proposes to amend § 338.1 to change references to ''insured State nonmember banks'' to refer to ''FDIC-supervised institutions.''

B. Section 338.2—Definitions Applicable to Subpart A of This Part

Section 338.2 defines terms used in subpart A of part 338, including the term ''bank'' defined in § 338.2(a) to mean ''an insured state nonmember bank as defined in section 3 of the Federal Deposit Insurance Act.'' The FDIC proposes to add to § 338.2(c) a new defined term ''FDIC-supervised institution'' meaning a bank or a State savings association and to add § 338.2(f), a new defined term ''State savings association'' having ''the same meaning as in section (3)(b)(3) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)(3)''. Also, the FDIC proposes to make conforming technical edits to other subsections in § 338.2 to reflect the re-ordering of definitions.

C. Section 338.3—Nondiscriminatory Advertising

Section 338.3 provides certain requirements with respect to dwelling-related advertisements to reflect the bank's nondiscrimination lending practice and prohibits such advertisements from including ''words, symbols, models, or other forms of communication which express, imply, or suggest a discriminatory preference or policy of exclusion in violation of the provisions of the FHA or ECOA. To reflect that § 338.3 applies to all institutions for which the FDIC is the appropriate Federal banking agency, the FDIC proposes to amend § 338.3 to change references to ''bank'' to refer to ''FDIC-supervised institution.''

D. Section 338.4—Fair Housing Poster

Section 338.4(a) requires insured State nonmember banks engaged in extending dwelling-related loans to conspicuously display either an Equal Housing Lender poster or an Equal Housing Opportunity poster ''in a central location within the bank where deposits are received or where such loans are made in a manner clearly visible to the general public entering the area, where the poster is displayed.'' This requirement is substantially similar to the requirement in § 390.146 for State savings associations to display an Equal Housing Lender poster, which the FDIC herein proposes to rescind and remove. To reflect that § 338.4(a) applies to all institutions for which the FDIC is the appropriate Federal banking agency, the FDIC proposes to amend § 338.4(a) to change references to ''insured State nonmember banks'' to refer to ''FDIC-supervised institutions.''

Section 338.4(b) sets forth the required text of the FDIC's Equal Housing Lender poster, including the former mailing address of the FDIC's CRC, formatted as a Portable Document Format (PDF) image. Since the CRC mailing address changed in 2011, the FDIC has made available to FDIC-supervised institutions an Equal Housing Lender poster with the correct address of the CRC, both in English and in Spanish.[51] Because the CRC mailing address may change in the future, the FDIC proposes to amend § 338.4(b) to

[47] *See, e.g.,* § 390.150(a) (stating that ''[e]ach State savings association should reexamine its underwriting standards at least annually in order to ensure equal opportunity''); § 390.150(c)(2) (stating that ''[r]equiring fluency in the English language as a prerequisite for obtaining a loan may be a discriminatory practice based on national origin''); § 390.150(c)(6) (stating that ''[r]efusing to lend, or offering less favorable terms (such as interest rate, down payment, or maturity) to applicants because of the income level in an area can discriminate against minority group persons'').

[48] *Compare* § 390.150(c)(1) (''Loan underwriting decisions must be based on an applicant's credit history and present and reasonably foreseeable economic prospects, rather than on the basis of assumptions regarding comparative differences in creditworthiness between married and unmarried individuals, or between men and women.'') *with* 12 CFR 1002.6(b)(8) (stating that, except as otherwise permitted or required by law, a creditor must evaluate married and unmarried applicants by the same standards and must not treat applicants differently based on the existence, absence, or likelihood of a marital relationship between the parties) *and* 12 CFR 1002.7(a) (stating that a creditor must not refuse to grant an individual account to a creditworthy applicant on the basis of sex, marital status, or any other prohibited basis).

[49] *Compare* § 390.150(c)(3) (stating that, when spouses apply jointly for a loan, discounting spousal income violates the FHA and that the determination whether a spouse's income qualifies for credit purposes should depend upon a reasonable evaluation of his or her past, present, and reasonably foreseeable economic circumstances) *and* § 390.150(c)(4) (''Lending standards which consider as effective only the non-overtime income of the primary wage-earner may result in discrimination because they do not take account of variations in employment patterns among individuals and families.'') *with* § 1002.6(b)(5) (prohibiting discounting or excluding income of an applicant or an applicant's spouse because of a prohibited basis or because the income is derived from part-time employment or is an annuity, pension, or other retirement benefit).

[50] *Compare* § 390.150(c)(3) (''Information relating to child-bearing intentions of a couple or an individual may not be requested.'') *with* § 1002.6(b)(3) (stating that a creditor must not make assumptions or use aggregate statistics about the likelihood ''that any category of persons will bear or rear children or will, for that reason, receive diminished or interrupted income in the future'') *and* § 1002.5(d)(3) (providing that a creditor must not ''inquire about birth control practices, intentions regarding the bearing or rearing of children, or capability to bear children'').

[51] The poster is available to both insured State nonmember banks and State savings associations. Moreover, the current CRC mailing address is correctly stated in FDIC regulations applicable to State savings associations. 12 CFR 390.146.

reflect that the mailing address stated on the Equal Housing Lender poster should be the address for the Consumer Response Center stated on the FDIC's website at *www.fdic.gov*.[52] Furthermore, the FDIC proposes to set forth the required text of the Equal Housing Lender poster in § 338.4(b) as a text statement rather than as a PDF image.

To assist FDIC-supervised institutions, the FDIC expects to continue to provide them with access to a poster stating the required text, including the accurate CRC mailing address. If this rule is finalized as proposed, no change to posters would be required of FDIC-supervised institutions that use an Equal Housing Lender poster obtained from the FDIC since the CRC mailing address was updated in 2011. The FDIC believes that few insured State nonmember banks make their own Equal Housing Lender poster based on the text of § 338.4(b). Nonetheless, to facilitate the transition to the updated poster, the FDIC proposes to provide a transition period of one year for FDIC-supervised institutions to change their posters to reflect the current CRC mailing address, if needed. That is, the effective date of § 338.4(b), as amended, would be the date that is one year after a final rule amending the provision is published in the **Federal Register**.

E. Section 338.5—Purpose

Section 338.5 states that its purpose is to notify insured State nonmember banks of their duty both to collect and retain certain information about a home loan applicant's personal characteristics in accordance with Regulation B and to maintain, update and report a register of home loan applications in accordance with Regulation C. To reflect that § 338.5 applies to all institutions for which the FDIC is the appropriate Federal banking agency, the FDIC proposes to amend § 338.5 to change references to ''insured State nonmember banks'' to refer to ''FDIC-supervised institutions.'' The FDIC also proposes to make technical amendments to § 338.5 to reflect that Regulation B and Regulation C have been re-designated as 12 CFR part 1002 and 12 CFR part 1003, respectively, and are implemented by the CFPB.

F. Section 338.6—Definitions Applicable to This Subpart B

Section 338.6 defines terms used in subpart B of part 338, including the term ''bank'' defined in § 338.6(a) to mean ''an insured State nonmember bank as defined in section 3 of the Federal Deposit Insurance Act.'' The FDIC proposes to add as § 338.2(c) a new defined term ''FDIC-supervised institution'' meaning a bank or a State savings association and to add as § 338.6(d) a new defined term ''State savings association'' having ''the same meaning as in section (3)(b)(3) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)(3).''

G. Section 338.7—Recordkeeping Requirements

Section 338.7 requires banks that receive an application for credit primarily for the purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence where the extension of credit will be secured by the dwelling to request and retain the monitoring information required by Regulation B.[53] To reflect that § 338.7 applies to all institutions for which the FDIC is the appropriate Federal banking agency, the FDIC proposes to amend § 338.7 to change references to ''bank'' to refer to ''FDIC-supervised institution.'' The FDIC also proposes to make technical amendments to § 338.7 to reflect that Regulation B has been re-designated as 12 CFR part 1002 and is implemented by the CFPB.

H. Section 338.8—Compilation of Loan Data in Register Format

Section 338.8 requires banks and other lenders required to file a HMDA LAR with the FDIC to maintain, update and report such LAR in accordance with Regulation C. To reflect that § 338.8 applies to all institutions for which the FDIC is the appropriate Federal banking agency, the FDIC proposes to amend § 338.8 to change references to ''bank'' to refer to ''FDIC-supervised institution.'' Additionally, to reflect amendments made to Regulation C regarding the responsibilities of a financial institution with respect to HMDA LAR data, the FDIC proposes to amend § 338.8 require banks and other lenders required to file a HMDA LAR with the FDIC to collect, record, and report such LAR in accordance with Regulation C. The FDIC also proposes to make technical amendments to § 338.8 to reflect that Regulation C has been re-designated as 12 CFR part 1003 and is implemented by the CFPB.

I. Section 338.9—Mortgage Lending of a Controlled Entity

Section 338.9 establishes requirements that apply if a bank refers applicants to a ''controlled entity,'' as defined in § 338.6, and purchases any home purchase loans or home improvement loans (as defined in Regulation C) that are originated by the controlled entity, as a condition to transacting any business with the controlled entity.[54] In such cases, § 338.9 provides that the bank must require the controlled entity to enter into a written agreement with the bank that states that the controlled entity must comply with the requirements of §§ 338.3, 338.4 and 338.7 and, if the controlled entity is subject to Regulation C, § 338.8. Further, the written agreement must provide that the controlled entity must open its books and records to FDIC examination and comply with all FDIC instructions and orders with respect to its home loan practices.

Because this notice of proposed rulemaking is intended to rescind and remove former OTS regulations that are duplicative of regulations under ECOA, FHA, or EEOA, the FDIC does not propose in this rulemaking to impose substantive requirements regarding the business transactions between a State savings association and any entity it controls. That is, the FDIC does not propose to replace the term ''bank'' with the term ''FDIC-supervised institution'' in § 338.9. However, the FDIC proposes to make technical amendments to § 338.9 to reflect that Regulation C has been re-designated as 12 CFR part 1003 and is implemented by the CFPB.

III. Expected Effects

As of March 31, 2020, the FDIC-supervised 3,309 depository institutions,[55] of which 35 are State savings associations.[56]

If the proposed rule were adopted by the FDIC, §§ 390.140 and 390.141 would be rescinded. As discussed previously, these sections include definitions and cross-references to other parts of section 390, so their rescission has no independent significance for institutions or applicants, but rather is

[52] Currently, the mailing address for the Consumer Response Center (1100 Walnut St., Box #11 Kansas City, MO 64106) is provided at *https://www.fdic.gov/consumers/assistance/filecomplaint.html*. Since May 31, 2012, Regulation B has required the use of that address in adverse action notices, as applicable. *See* Board of Governors of the Federal Reserve System, Final Rule, Equal Credit Opportunity, 76 FR 31451 (Jun. 1, 2011).

[53] This requirement relates to the collection of information for monitoring purposes required by 12 CFR 1002.13.

[54] Pursuant to § 338.9, ''controlled entity'' means ''a corporation, partnership, association, or other business entity with respect to which a bank possesses, directly or indirectly, the power to direct or cause the direction of management and policies, whether through the ownership of voting securities, by contract, or otherwise.''

[55] FDIC-supervised institutions are set forth in 12 U.S.C. 1813(q)(2).

[56] FDIC Call Report data, March 31, 2020.

a technical amendment associated with the proposal to rescind subpart G of part 390 in its entirety.

As previously discussed, if the proposed rule were adopted by the FDIC, § 390.142 would be rescinded. This section has substantial overlap with the requirements of ECOA and Regulation B and the FHA and HUD's FHA regulations. Additionally, although some aspects of § 390.142 have no counterpart in existing regulations for insured State nonmember banks, as indicated earlier, the FDIC's authority to amend those elements is uncertain. Therefore, the FDIC believes that these aspects of the proposed rule are unlikely to significantly affect FDIC-supervised institutions or applicants.

If the proposed rule were adopted, the FDIC would rescind § 390.143. As discussed previously, aspects of § 390.143 are either duplicative of prohibitions under the general fair lending laws or the authority of the FDIC to amend them is uncertain. With regard to § 390.143(b), the proposed rule would reduce compliance requirements associated with maintaining and distributing relevant paperwork. The FDIC believes that this is likely to pose a relatively small benefit to the 35 institutions to which it applies. Further, the FDIC believes that it is unlikely that the rescission of the requirement to establish, maintain, and distribute upon request nondiscriminatory loan underwriting standards for these 35 State savings associations would lead to an increase in discriminatory lending behavior because these institutions are still subject to the general fair lending laws. Therefore, the FDIC does not believe that this aspect of the proposed rule, if adopted, is likely to have substantive effects on FDIC-supervised institutions or applicants.

As discussed previously, if the proposed rule were adopted by the FDIC, § 390.144 would be rescinded. Section 390.144(a) is substantially similar to, and duplicative of, prohibitions under the general federal fair lending laws.[57] Additionally, the authority of the FDIC to amend it is unclear. The FDIC also believes that the requirement to post an Equal Housing Lender poster, discussed above in connection with § 338.4, serves a substantially similar purpose as the requirement to ''inform each inquirer of his or her right to file a written loan application'' in § 390.144(b). Therefore, the FDIC believes that the rescission of § 390.144 is unlikely to have any substantive effect on FDIC-supervised institutions or applicants.

As discussed previously, if the proposed rule were adopted by the FDIC, § 390.145 would be rescinded. Section 390.145 is substantially similar to § 338.4 and the proposed rule would amend § 338.4 to cover State savings associations in addition to insured State nonmember banks. Therefore, the FDIC believes that this aspect of the proposed rule is unlikely to have any substantive effect on FDIC-supervised institutions or applicants.

As discussed previously, if the proposed rule were adopted by the FDIC, § 390.146 would be rescinded. The requirements of § 390.146 are substantially similar to the requirements applicable to insured State nonmember banks under § 338.4. Section 338.4, however, unlike § 390.146, does not include a ''recommendation'' that a Spanish-language version of the Equal Housing Lender poster be posted in offices serving areas with a substantial Spanish-speaking population. The FDIC does, however, make a Spanish-language poster available to the institutions it supervises. Given the substantive similarity of much of § 390.146 to § 338.4, the FDIC believes that rescinding it is unlikely to have substantial effects on covered institutions or applicants.

If the proposed rule were adopted, the FDIC would rescind § 390.147. As previously discussed, the FDIC believes that § 390.147 is duplicative now that reporting reason for denial is required rather than optional under Regulation C. Further, since Regulation C provides a partial exemption from reporting reason for denial and certain other data points for financial institutions that meet specified conditions, but no such exemption exists for State savings associations, the proposed rule would establish parity with respect to the reporting requirements for HMDA LARs for State savings associations and other FDIC-supervised institutions. The FDIC believes that this aspect of the proposed rule is unlikely to significantly affect FDIC-supervised institutions or applicants.

As previously discussed, the proposed rule would rescind § 390.148 if it were adopted. The FDIC believes that there is significant overlap between the requirements of § 390.148(a) through (d) and various aspects of the EEOA. Further, § 390.148(e) and (f) references multiple employment laws, including the EEOA, which if the rest of § 390.148 were rescinded as proposed, would be unnecessary. Therefore, the FDIC believes that this aspect of the proposed rule is unlikely to substantively affect FDIC-supervised institutions or applicants.

As previously discussed, the proposed rule would rescind § 390.149 if it were adopted. The FDIC has procedures for referring complaints to HUD regarding lending discrimination by financial institutions and these procedures apply to complaints involving lending by State savings associations. However, there appears to be no equivalent requirement to the provisions in § 390.149 regarding referring complaints to EEOC regarding employment discrimination by FDIC-supervised institutions. This aspect of the proposed rule would thus create parity between insured State nonmember banks and State savings associations with respect to complaints about discriminatory lending. Given that FDIC-supervised institutions are still subject to applicable elements of the EEOA and FDIC regulations and procedures, the FDIC does not believe that this aspect of the proposed rule is likely to have a substantive effect on covered institutions or their employees.

As previously discussed, the proposed rule would rescind § 390.150 if adopted. This section contains guidelines intended to serve as a resource for State savings associations when developing and implementing nondiscriminatory lending policies. State savings associations, like other FDIC-supervised banks, remain subject to federal fair lending laws and regulations and the FDIC does not believe removal of these guidelines will have any meaningful effect on these institutions or their applicants.

Finally, the proposed rule, if adopted, would make some technical changes to FDIC's part 338 in order to make it applicable to State savings associations and provide for Equal Housing Lender posters to state the accurate CRC mailing address. As previously discussed, these proposed changes are unlikely to have significant effects on State savings associations because they are already subject to substantively similar regulations.

Rescinding part 390, subpart G also will serve to streamline the FDIC's rules and eliminate unnecessary, inconsistent, and duplicative regulations. If the proposal is adopted in its final form, insured State nonmember banks and State savings associations will be subject to the same anti-discrimination requirements.

V. Alternatives

Several alternatives to the proposed rulemaking were available to the FDIC. The FDIC could have retained the current regulations in part 390, subpart

[57] *See, e.g.,* 15 U.S.C. 1691(a); 12 CFR 1002.4; 24 CFR 100.120.

G, but chose not to do so since most of the requirements in subpart G are duplicative of or substantively similar to existing requirements under federal law or under the FDIC's current fair housing requirements in part 338. As previously discussed, the FDIC also could have retained certain requirements in subpart G that the OTS issued pursuant to the HOLA, but chose not to do so because the FDIC's legal authority to amend requirements that the OTS issued pursuant to HOLA is not clear.

In the instances where the regulations in part 390, subpart G were more stringent than similar requirements for insured State nonmember banks, the FDIC could have applied those requirements to insured State nonmember banks. However, the FDIC chose not to adopt this alternative because it believes the fair lending laws and regulations that already apply to insured State nonmember banks provide an appropriate and sufficient framework to prohibit discrimination.

The FDIC believes that this proposed rule, which would remove and rescind part 390, subpart G, and make the FDIC's existing nondiscrimination regulations applicable to State savings associations, is less burdensome to State savings associations and the public than the alternatives discussed above since it would promote consistency among the regulatory requirements for all FDIC-supervised institutions and improve the public's understanding and ease of reference. Additionally, the FDIC believes that the proposed rule does not materially change the nondiscrimination requirements to which insured State nonmember banks and State savings associations are required to adhere, relative to the alternatives discussed.

IV. Request for Comments

The FDIC invites comments on all aspects of this proposed rulemaking, and specifically requests comments on the following:

What impacts, positive or negative, can you foresee in the FDIC's proposal to rescind and remove part 390, subpart G?

V. Regulatory Analysis and Procedure

A. The Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA),[58] the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The Proposed Rule would rescind and remove from FDIC regulations part 390, subpart G because it is duplicative and unnecessary. This rule was transferred with only nominal changes to the FDIC from the OTS when the OTS was abolished by title III of the Dodd-Frank Act. Although few provisions of part 390, subpart G have a direct counterpart within the FDIC's existing nondiscrimination requirements for insured State nonmember banks in part 338, it is largely duplicative of federal laws (ECOA, FHA, EEOA, and other laws concerning nondiscrimination in lending, employment, and services) and implementing regulations of the CFPB or the Department of Labor. Where provisions of part 390, subpart G had no such counterparts, the FDIC concluded no reasonable basis exists for applying these requirements to State savings associations but not to insured State nonmember banks or that the requirements are inconsistent with current agency policy.

In addition, the proposed rule would: (1) Amend part 338 to include State savings associations and their subsidiaries within its scope; (2) define the new terms ''FDIC-supervised institution'' and ''State savings association;'' and (3) make conforming technical edits throughout to update the regulation. These revisions would clarify that State savings associations, as well as insured State nonmember banks, are subject to part 338 with the exception of § 338.9.

Therefore, the Proposed Rule does not revise any existing, or create any new information collection pursuant to the PRA. Consequently, no submission will be made to the OMB for review.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis describing the impact of the proposed rule on small entities.[59] However, a regulatory flexibility analysis is not required if the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million that are independently owned and operated or owned by a holding company with less than or equal to $600 million in total assets.[60] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions. For the reasons described below and under section 605(b) of the RFA, the FDIC certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

As of March 31, 2020, the FDIC-supervised 3,309 depository institutions,[61] of which 2,548 were considered small entities for the purposes of RFA.[62] There are 33 State savings associations that are small entities for the purposes of RFA.[63] If the proposed rule were adopted by the FDIC, §§ 390.140 and 390.141 would be rescinded. As discussed previously, these sections include definitions and cross-references to other parts of § 390, so their rescission has no independent significance for institutions or borrowers, but rather is a technical amendment associated with the proposal to rescind subpart G of part 390 in its entirety.

As previously discussed, if the proposed rule were adopted by the FDIC § 390.142 would be rescinded. This section has substantial overlap with the requirements of ECOA and Regulation B and the FHA and HUD's FHA regulations. Additionally, although some aspects of § 390.142 have no counterpart in existing regulations for State nonmember banks, as indicated earlier the FDIC is uncertain if it has the authority to amend those elements. Therefore, the FDIC believes that these aspects of the proposed rule are unlikely to significantly affect small FDIC-supervised institutions or borrowers.

If the proposed rule were adopted, the FDIC would rescind § 390.143. As discussed previously, aspects of 390.143 are either duplicative of prohibitions

[58] 44 U.S.C. 3501–3521.

[59] 5 U.S.C. 601 *et seq.*

[60] The SBA defines a small banking organization as having $600 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See 13 CFR 121.201 (as amended by 84 FR 34261, effective August 19, 2019). In its determination, the ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

[61] FDIC-supervised institutions are set forth in 12 U.S.C. 1813(q)(2).

[62] FDIC Call Report data, March 31, 2020.

[63] Id.

under the general fair lending laws or the authority of the FDIC to amend them is uncertain. With regard to § 390.143(b), the proposed rule would reduce compliance requirements associated with maintaining and distributing relevant paperwork. The FDIC believes that this is likely to pose a relatively small benefit to the 33 small institutions to which it applies. Further, the FDIC believes that it is unlikely that the rescission of the requirement to establish, maintain, and distribute upon request nondiscriminatory loan underwriting standards for these 33 small State savings associations would lead to an increase in discriminatory lending behavior because these institutions are still subject to the general fair lending laws. Therefore, the FDIC does not believe that this aspect of the proposed rule, if adopted, is likely to have substantive effects on small FDIC-supervised institutions or borrowers.

As discussed previously, if the proposed rule were adopted by the FDIC § 390.144 would be rescinded. Section 390.144(a) is substantially similar to, and duplicative of, prohibitions under the general federal fair lending laws.[64] Additionally, the authority of the FDIC to amend them is uncertain. The FDIC also believes that the requirement to post an Equal Housing Lender poster, discussed above in connection with 12 CFR 338.4, serves a substantially similar purpose as the requirement to ''inform each inquirer of his or her right to file a written loan application'' in 12 CFR 390.144(b). Therefore, the FDIC believes that the rescission of § 390.144 is unlikely to have any substantive effect on small FDIC-supervised institutions or borrowers.

As discussed previously, if the proposed rule were adopted by the FDIC § 390.145 would be rescinded. Section 390.145 is substantially similar to § 338.4 and the proposed rule would amend § 338.4 to cover State savings associations in addition to insured State nonmember banks. Therefore, the FDIC believes that this aspect of the proposed rule is unlikely to have any substantive effect on small FDIC-supervised institutions or borrowers.

As discussed previously, if the proposed rule were adopted by the FDIC, § 390.146 would be rescinded. The requirements of § 390.146 are substantially similar to the requirements applicable to insured State nonmember banks under § 338.4. However, § 338.4, unlike § 390.146, does not include a ''recommendation'' that a Spanish-language version of the Equal Housing Lender poster be posted in offices serving areas with a substantial Spanish-speaking population. As indicated earlier, the FDIC is taking the approach of not including non-binding recommendations in the proposed rule. The FDIC does, however, make a Spanish-language poster available to the institutions it supervises. Given the substantive similarity of much of §§ 390.146 to 338.4, the FDIC believes that rescinding it is unlikely to have substantial effects on small covered institutions or borrowers.

If the proposed rule were adopted, the FDIC would rescind § 390.147. As previously discussed, the FDIC believes that § 390.147 is duplicative now that reporting reason for denial is required rather than optional under Regulation C. Further, since Regulation C provides a partial exemption from reporting reason for denial and certain other data points for financial institutions that meet specified conditions, but no such exemption exists for State savings associations, the proposed rule would establish parity with respect to the reporting requirements for HMDA LARs for State savings associations and other FDIC-supervised institutions. The FDIC believes that this aspect of the proposed rule is unlikely to substantively affect small FDIC-supervised institutions or borrowers.

As previously discussed, the proposed rule would rescind § 390.148 if it were adopted. The FDIC believes that there is significant overlap between the requirements of § 390.148(a) through (d) and various aspect of the EEOA. Further, § 390.148(e) and (f) references multiple employment laws, including the EEOA, which if the rest of § 390.148 were rescinded as proposed, would be unnecessary. Therefore, the FDIC believes that this aspect of the proposed rule is unlikely to substantively affect small FDIC-supervised institutions or borrowers.

As previously discussed, the proposed rule would rescind § 390.149 if it were adopted. The FDIC has procedures for referring complaints to HUD regarding lending discrimination by financial institutions and these procedures apply to complaints involving lending by State savings associations. However, there appears to be no equivalent requirement to the provisions in § 390.149 regarding referring complaints to EEOC regarding employment discrimination by FDIC-supervised institutions. This aspect of the proposed rule would thus create parity between State nonmember banks and State savings associations with respect to discriminatory complaints. Given that FDIC-supervised institutions are still subject to applicable elements of the EEOA and FDIC regulations and procedures, the FDIC does not believe that this aspect of the proposed rule is likely to have a substantive effect on covered institutions or their employees.

As previously discussed, the proposed rule would rescind § 390.150 if adopted. This section contains guidelines intended to serve as a resource for State savings associations when developing and implementing nondiscriminatory lending policies. Small State savings associations, like other FDIC-supervised banks, remain subject to federal fair lending laws and regulations and the FDIC does not believe removal of these guidelines will have any meaningful effect on these institutions or their borrowers.

Finally, the proposed rule if adopted would make some technical changes to FDIC's part 338 in order to make it applicable to State savings associations and provide for Equal Housing Lender posters to state the accurate CRC mailing address. As previously discussed, these proposed changes are unlikely to pose significant effects for small State savings associations because they are already subject to substantively similar regulations.

Rescinding part 390, subpart G also will serve to streamline the FDIC's rules and eliminate unnecessary, inconsistent, and duplicative regulations. If the proposal is adopted in its final form, all small insured State nonmember banks and State savings associations—will be subject to the same anti-discrimination requirements.

The FDIC does not have data with which to estimate the costs that State savings associations currently incur to comply with subpart G or how those costs will change if this proposal were adopted in its current form. However, since this proposal would only affect 33 small entities, and since the differences between subpart G and existing regulation and law are modest, the FDIC certifies that this proposal would not have a significant economic effect on a substantial number of small entities.

The FDIC invites comments on all aspects of the supporting information provided in this section, and in particular, whether the proposed rule would have any significant effects on small entities that the FDIC has not identified.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[65] requires each Federal banking agency to use plain language in all of its proposed and final rules published after January 1, 2000. The FDIC has sought to present the Proposed

[65] 12 U.S.C. 4809.

Rule in a simple and straightforward manner. The FDIC invites comments on whether the Proposed Rule is clearly stated and effectively organized, and how the FDIC might make it easier to understand. For example:

- Has the FDIC organized the material to suit your needs? If not, how could it present the rule more clearly?
- Have we clearly stated the requirements of the rule? If not, how could the rule be more clearly stated?
- Does the rule contain technical jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

D. The Economic Growth and Regulatory Paperwork Reduction Act

Under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), the FDIC is required to review all of its regulations, at least once every 10 years, in order to identify any outdated or otherwise unnecessary regulations imposed on insured institutions.[66] The FDIC, along with the other Federal banking agencies, submitted a Joint Report to Congress on March 21, 2017 (EGRPRA Report) discussing how the review was conducted, what has been done to date to address regulatory burden, and further measures the FDIC will take to address issues that were identified.[67] As noted in the EGRPRA Report, the FDIC is continuing to streamline and clarify its regulations through the OTS rule integration process. By removing outdated or unnecessary regulations, such as part 390, subpart G, this Proposed Rule complements other actions that the FDIC has taken, separately and with the other Federal banking agencies, to further the EGRPRA mandate.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[68] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[69] The FDIC invites comments that further will inform its consideration of RCDRIA.

List of Subjects

12 CFR Part 338

Aged, Banks, Banking, Civil rights, Credit, Fair housing, Individuals with disabilities, Marital status discrimination, Mortgages, Religious discrimination, Reporting and recordkeeping requirements, Savings associations, Sex discrimination, Signs and symbols.

12 CFR Part 390

Administrative practice and procedure, Advertising, Aged, Civil rights, Conflict of interests, Credit, Crime, Equal employment opportunity, Fair housing, Government employees, Individuals with disabilities, Nondiscrimination requirements, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons stated in the preamble, the FDIC proposes to amend 12 CFR parts 338 and 390 as follows:

■ 1. Revise part 338 to read as follows:

PART 338—FAIR HOUSING

Subpart A—Advertising

Sec.
§ 338.1 Purpose.
§ 338.2 Definitions applicable to subpart A of this part.
§ 338.3 Nondiscriminatory advertising.
§ 338.4 Fair housing poster.

Subpart B—Recordkeeping

§ 338.5 Purpose.
§ 338.6 Definitions applicable to this subpart B.
§ 338.7 Recordkeeping requirements.
§ 338.8 Compilation of loan data in register format.
§ 338.9 Mortgage lending of a controlled entity.

The authority citation for part 338 is revised to read as follows:

Authority: 12 U.S.C. 1817, 1818, 1819, 1820(b), 2801 *et seq.;* 15 U.S.C. 1691 *et seq.;* 42 U.S.C. 3605, 3608; 12 CFR parts 1002, 1003; 24 CFR part 110.

Subpart A—Advertising

§ 338.1 Purpose.

The purpose of this subpart A is to prohibit FDIC-supervised institutions from engaging in discriminatory advertising with regard to residential real estate-related transactions. This subpart A also requires FDIC-supervised institutions to publicly display either the Equal Housing Lender poster set forth in § 338.4(b) of the FDIC's regulations or the Equal Housing Opportunity poster prescribed by part 110 of the regulations of the United States Department of Housing and Urban Development (24 CFR part 110). This subpart A enforces section 805 of title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–3619 (Fair Housing Act), as amended by the Fair Housing Amendments Act of 1988.

§ 338.2 Definitions applicable to subpart A of this part.

For purposes of subpart A of this part:

(a) *Bank* means an insured state nonmember bank as defined in section 3 of the Federal Deposit Insurance Act.

(b) *Dwelling* means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) *FDIC-supervised institution* means either a bank or a State savings association.

(d) *Handicap* means, with respect to a person:

(1) A physical or mental impairment which substantially limits one or more of such person's major life activities;

(2) A record of having such an impairment; or

(3) Being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

(e) *Familial status* means one or more individuals (who have not attained the age of 18 years) being domiciled with:

(1) A parent or another person having legal custody of such individual or individuals; or

(2) The designee of such parent or other person having such custody, with

[66] Public Law 104–208, 110 Stat. 3009 (1996).

[67] 82 FR 15900 (March 31, 2017).

[68] 12 U.S.C. 4802(a).

[69] *Id.*

the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(f) *State savings association* has the same meaning as in section (3)(b)(3) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)(3).

§ 338.3 Nondiscriminatory advertising.

(a) Any FDIC-supervised institution which directly or through third parties engages in any form of advertising of any loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling or any loan secured by a dwelling shall prominently indicate in such advertisement, in a manner appropriate to the advertising medium and format utilized, that the FDIC-supervised institutions makes such loans without regard to race, color, religion, national origin, sex, handicap, or familial status.

(1) With respect to written and visual advertisements, this requirement may be satisfied by including in the advertisement a copy of the logotype with the Equal Housing Lender legend contained in the Equal Housing Lender poster prescribed in § 338.4(b) of the FDIC's regulations or a copy of the logotype with the Equal Housing Opportunity legend contained in the Equal Housing Opportunity poster prescribed in § 110.25(a) of the United States Department of Housing and Urban Development's regulations (24 CFR 110.25(a)).

(2) With respect to oral advertisements, this requirement may be satisfied by a statement, in the spoken text of the advertisement, that the FDIC-supervised institution is an ''Equal Housing Lender'' or an ''Equal Opportunity Lender.''

(3) When an oral advertisement is used in conjunction with a written or visual advertisement, the use of either of the methods specified in paragraphs (a)(1) and (2) of this section will satisfy the requirements of this paragraph (a).

(b) No advertisement shall contain any words, symbols, models or other forms of communication which express, imply, or suggest a discriminatory preference or policy of exclusion in violation of the provisions of the Fair Housing Act or the Equal Credit Opportunity Act.

§ 338.4 Fair housing poster.

(a) Each FDIC-supervised institution engaged in extending loans for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling or any loan secured by a dwelling shall conspicuously display either the Equal Housing Lender poster set forth in paragraph (b) of this section or the Equal Housing Opportunity poster prescribed by § 110.25(a) of the United States Department of Housing and Urban Development's regulations (24 CFR 110.25(a)), in a central location within the FDIC-supervised institution where deposits are received or where such loans are made, in a manner clearly visible to the general public entering the area, where the poster is displayed.

(b) The Equal Housing Lender Poster shall be at least 11 by 14 inches in size and have the following text:

We Do Business in Accordance with Federal Fair Lending Laws.

UNDER THE FEDERAL FAIR HOUSING ACT, IT IS ILLEGAL, ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, RELIGION, SEX, HANDICAP, OR FAMILIAL STATUS (HAVING CHILDREN UNDER THE AGE OF 18) TO:

- Deny a loan for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling or to deny any loan secured by a dwelling; or
- Discriminate in fixing the amount, interest rate, duration, application procedures, or other terms or conditions of such a loan or in appraising property.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, YOU SHOULD SEND A COMPLAINT TO:

Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, DC 20410.

For processing under the Federal Fair Housing Act

AND TO:

Federal Deposit Insurance Corporation, Consumer Response Center, [Insert address for the Consumer Response Center stated on the FDIC's website at *www.fdic.gov*]

For processing under the FDIC Regulations.

UNDER THE EQUAL CREDIT OPPORTUNITY ACT, IT IS ILLEGAL TO DISCRIMINATE IN ANY CREDIT TRANSACTION:

- On the basis of race, color, national origin, religion, sex, marital status, or age;
- Because income is from public assistance; or
- Because a right has been exercised under the Consumer Credit Protection Act.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, YOU SHOULD SEND A COMPLAINT TO:

Federal Deposit Insurance Corporation, Consumer Response Center, [Insert address for the Consumer Response Center stated on the FDIC's website at *www.fdic.gov*]

(c) The Equal Housing Lender Poster specified in this section was adopted under § 110.25(b) of the United States Department of Housing and Urban Development's rules and regulations as an authorized substitution for the poster required in § 110.25(a) of those rules and regulations.

Subpart B—Recordkeeping

§ 338.5 Purpose.

The purpose of this subpart B is two-fold. First, this subpart B notifies all FDIC-supervised institutions of their duty to collect and retain certain information about a home loan applicant's personal characteristics in accordance with Regulation B of the Bureau of Consumer Financial Protection (12 CFR part 1002) in order to monitor an institution's compliance with the Equal Credit Opportunity Act of 1974 (15 U.S.C. 1691 *et seq.*). Second, this subpart B notifies certain FDIC-supervised institutions of their duty to maintain, update and report a register of home loan applications in accordance with Regulation C of the Bureau of Consumer Financial Protection (12 CFR part 1003), which implements the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*).

§ 338.6 Definitions applicable to this subpart B.

For purposes of this subpart B—

(a) *Bank* means an insured State nonmember bank as defined in section 3 of the Federal Deposit Insurance Act.

(b) *Controlled entity* means a corporation, partnership, association, or other business entity with respect to which a bank possesses, directly or indirectly, the power to direct or cause the direction of management and policies, whether through the ownership of voting securities, by contract, or otherwise.

(c) *FDIC-supervised institution* means either a bank or a State savings association.

(d) *State savings association* has the same meaning as in section 3(b)(3) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)(3).

§ 338.7 Recordkeeping requirements.

All FDIC-supervised institutions that receive an application for credit primarily for the purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence where the extension of credit will be secured by the dwelling

shall request and retain the monitoring information required by Regulation B of the Bureau of Consumer Financial Protection (12 CFR part 1002).

§ 338.8 Compilation of loan data in register format.

FDIC-supervised institutions and other lenders required to file a Home Mortgage Disclosure Act loan application register (LAR) with the Federal Deposit Insurance Corporation shall collect, record and report such LAR in accordance with Regulation C of the Bureau of Consumer Financial Protection (12 CFR part 1003).

§ 338.9 Mortgage lending of a controlled entity.

Any bank which refers any applicants to a controlled entity and which purchases any covered loan as defined in Regulation C of the Bureau of Consumer Financial Protection (12 CFR part 1003) originated by the controlled entity, as a condition to transacting any business with the controlled entity, shall require the controlled entity to enter into a written agreement with the bank. The written agreement shall provide that the entity shall:

(a) Comply with the requirements of §§ 338.3, 338.4, and 338.7, and, if otherwise subject to Regulation C of the Bureau of Consumer Financial Protection (12 CFR part 1003), § 338.8;

(b) Open its books and records to examination by the Federal Deposit Insurance Corporation; and

(c) Comply with all instructions and orders issued by the Federal Deposit Insurance Corporation with respect to its home loan practices.

PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

■ 2. The authority citation for part 390 is revised to read as follows:

Authority: 12 U.S.C. 1819.

Subpart F also issued under 5 U.S.C. 552; 559; 12 U.S.C. 2901 *et seq.*

Subpart O also issued under 12 U.S.C. 1828.

Subpart Q also issued under 12 U.S.C. 1462; 1462a; 1463; 1464.

Subpart W also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78l; 78m; 78n; 78p; 78w.

Subpart Y also issued under 12 U.S.C. 1831o.

Subpart G—[Removed and Reserved]

■ 3. Remove and reserve subpart G, consisting of §§ 390.140 through 390.150.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on August 21, 2020.

James P. Sheesley,

Acting Assistant Executive Secretary.

[FR Doc. 2020–18813 Filed 9–24–20; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

RIN 3064–ZA19

Statement of Policy Regarding Minority Depository Institutions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed revisions to statement of policy; request for comment.

SUMMARY: The FDIC is proposing to revise its Statement of Policy Regarding Minority Depository Institutions. Section 308 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 established several goals related to encouraging, assisting, and preserving minority depository institutions. The FDIC has long recognized the unique role and importance of minority depository institutions and has historically taken steps to preserve and encourage minority-owned and minority-led financial institutions. The revised Statement of Policy updates, strengthens, and clarifies the agency's policies and procedures related to minority depository institutions.

DATES: Written comments must be received on or before November 24, 2020.

ADDRESSES: Interested parties are encouraged to submit written comments. Commenters are encouraged to use the title ''Statement of Policy Regarding Minority Depository Institutions'' to facilitate the organization and distribution of comments. You may submit comments, identified by RIN 3064–ZA19, by any of the following methods:

- *Agency Website: https://www.fdic.gov/regulations/laws/federal/.* Follow the instructions for submitting comments on the FDIC's website.
- *Email: comments@fdic.gov.* Include RIN 3064–ZA19 in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

Instructions: Comments submitted must include ''FDIC'' and ''RIN 3064–ZA19.'' Comments received will be posted without change to *https://www.fdic.gov/regulations/laws/federal/,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Misty Mobley, Senior Review Examiner, Division of Risk Management and Supervision, (202) 898–3771, *mimobley@fdic.gov;* Lauren Whitaker, Senior Attorney, Legal Division, (202) 898–3872, *lwhitaker@fdic.gov;* or Gregory Feder, Counsel, Legal Division, (202) 898–8724, *gfeder@fdic.gov,* Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. For the hearing impaired only, TDD users may contact (202) 925–4618.

SUPPLEMENTARY INFORMATION:

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I. Background
II. Revisions to the Proposed Statement of Policy
III. Proposed Statement of Policy Regarding Minority Depository Institutions
IV. Administrative Matters

I. Background

Section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) [1] established several goals related to minority depository institutions (MDIs): (1) Preserving the number of MDIs; (2) preserving the minority character in cases of merger or acquisition; (3) providing technical assistance to prevent insolvency of institutions not now insolvent; (4) promoting and encouraging creation of new MDIs; and (5) providing for training, technical assistance, and education programs.

On April 3, 1990, the Board of Directors of the Federal Deposit Insurance Corporation (FDIC Board and FDIC, respectively) adopted the Policy Statement on Encouragement and Preservation of Minority Ownership of Financial Institutions (1990 Policy Statement). The framework for the 1990 Policy Statement resulted from key provisions contained in Section 308 of FIRREA. The 1990 Policy Statement provided information to the public and minority banking industry regarding the agency's efforts in achieving the goals of Section 308.

During the 1990s, many MDIs continued to underperform industry averages for profitability and experience failure rates that were significantly higher than those of the industry overall. In order to discuss the challenges that MDIs faced, and identify

[1] Public Law 101–73, title III, § 308, Aug. 9, 1989, 103 Stat. 353, as amended by Public Law 111–203, title III, § 367(4), July 21, 2010, 124 Stat. 1556, *codified at* 12 U.S.C. 1463 note.

best practices and possible ways the regulatory agencies could promote and preserve MDIs, the FDIC and other banking regulatory agencies—with assistance from several minority bank trade associations—invited officers from 156 MDIs to participate in a ''Bankers and Supervisors Regulatory Forum'' held in March of 2001. Approximately 70 bankers attended.

The FDIC also formed an Interdivisional Working Group to consider measures to modernize the policies and procedures related to MDIs. The working group incorporated many suggestions from the March 2001 forum into a revised Policy Statement Regarding Minority Depository Institutions, issued by the FDIC, after notice and comment, in April of 2002 (2002 Policy Statement).[2] The FDIC issued the 2002 Policy Statement to provide additional information regarding the FDIC's initiatives related to Section 308. The 2002 Policy Statement provided a more structured framework that set forth initiatives of the FDIC to promote the preservation of, as well as to provide technical assistance, training, and educational programs for, MDIs by working with those institutions, their trade associations, and the other federal financial regulatory agencies.

Over the years, the FDIC has continued to modify and enhance its MDI Program to better carry out the FDIC's efforts to meet the goals in Section 308 of FIRREA. The revisions in the proposed Statement of Policy are intended, in part, to strengthen and improve the various aspects of the MDI Program and how each component of the MDI Program is carried out by various responsible entities that are part of the MDI Program. The proposed revisions to the 2002 Policy Statement reflected in the proposed Statement of Policy describe the FDIC's enduring and strengthened commitment to, and engagement with, MDIs in furtherance of its goal of preserving and promoting MDIs.

In 2019, the FDIC established a new MDI Subcommittee of the Advisory Committee on Community Banking (CBAC). The MDI Subcommittee held its inaugural meeting in December 2019. There are nine executives serving as members of the MDI Subcommittee, representing African American, Native American, Hispanic American, and Asian American MDIs across the country. The MDI Subcommittee provides recommendations regarding the FDIC's MDI Program to the CBAC for consideration. The MDI Subcommittee serves as a source of feedback with regard to the FDIC's efforts to fulfill its statutory goals to preserve and promote MDIs; provides a platform for MDIs to promote collaboration, partnerships, and best practices; and identifies ways to highlight the work of MDIs in their communities.

The FDIC published, also in 2019, an MDI research study, which explores changes in MDIs, their role in the financial services industry, and their impact on the communities they serve.[3] The study period covered 2001 to 2018 and looked at the demographics, structural change, geography, financial performance, and social impact of MDIs.

Additionally, to discuss the challenges that MDIs face, provide information on best practices, and collaborate on possible ways the regulatory agencies can promote and preserve MDIs, in June of 2019, the FDIC hosted the Interagency MDI and Community Development Financial Institution (CDFI) Bank Conference, *Focus on the Future: Prospering in a Changing Industry,* in collaboration with the Office of the Comptroller of Currency and the Board of Governors of the Federal Reserve System. More than 80 MDI and CDFI bankers, representing 61 banks, attended the two-day conference.[4]

All of these various efforts by the FDIC to enhance its MDI Program have informed the proposed revisions to the Statement of Policy. The FDIC has received suggestions from bankers at outreach and trade association meetings as well as feedback from the June 2019 conference. The MDI Subcommittee has also provided feedback to the CBAC for consideration and recommendation to the FDIC. Many of these suggestions and feedback have been incorporated into the revised Statement of Policy. The following section summarizes the significant changes from the 2002 Policy Statement.

II. Revisions to the Policy Statement

The FDIC is proposing to revise its MDI Policy Statement in the following areas:

Technical assistance and other engagement. The proposed Statement of Policy clarifies that technical assistance is not a supervisory activity and is not intended to present additional regulatory burden. Further, the proposed Statement of Policy states that examination teams will not view requests for, or acceptance of, technical assistance negatively when evaluating institution performance or assigning ratings.

FDIC outreach. The proposed Statement of Policy was updated to provide additional outreach opportunities, including with the Chairman's office and the National Director for Minority and Community Development Banking.

MDI Subcommittee. The proposed Statement of Policy describes the newly established FDIC MDI Subcommittee of the CBAC, which serves as source of feedback on FDIC strategies to fulfill statutory goals to preserve and promote MDIs. The MDI Subcommittee may also make recommendations or offer ideas to the CBAC for consideration and presentation to the FDIC. The MDI Subcommittee provides a platform for MDIs to promote collaboration, partnerships, and best practices. The MDI Subcommittee also identifies ways to highlight the work of MDIs in their communities.

1. The FDIC requests comment on other methods to identify and provide engagement opportunities that would be beneficial to MDIs.

Definitions. The proposed Statement of Policy adds definitions for terms used in the MDI Program: Technical assistance, training and education, and outreach. Technical assistance is defined as individual assistance that a regulator will provide to a MDI in response to an institution's request for assistance in addressing specific areas of concern. The proposed Statement of Policy also notes that technical assistance is a tool to provide on-going support to institutions in an effort to facilitate timely implementation of recommendations, full understanding of regulatory requirements, and in some instances, the viability of the institution. Training and education programs consist of instruction designed to impart proficiency or skills related to a particular job, process, or regulatory policy. This training and education can be provided in person, through webinars or conference calls, or in a conference setting. Outreach consists of FDIC representatives meeting with financial institutions with a primary focus of building relationships and open communication and providing information and resources. Outreach is generally offered by the FDIC and can include meetings between financial institution management and senior FDIC management.

[2] 67 FR 18618 (Apr. 16, 2002).

[3] *See* FDIC MDI research study, published June 2019, *Minority Depository Institutions: Structure, Performance, and Social Impact, https://www.fdic.gov/regulations/resources/minority/2019-mdi-study/full.pdf.*

[4] *See* Chairman Jelena McWilliams Keynote Remarks, MDI and Community Development Financial Institution bank conference, *Focus on the Future: Prospering in a Changing Industry, https://www.youtube.com/watch?v=o0H6Ko00qTk&feature=youtu.be.*

2. The FDIC invites comment on the definitions assigned to technical assistance, training and education, and outreach.

Reporting. The proposed Statement of Policy updates the reporting requirements of the FDIC's MDI Program, including the Annual Report to Congress on the Preservation and Promotion of Minority Depository Institutions pursuant to Section 367 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and Section 308 of FIRREA. The Section 367 requirements were enacted since the Statement of Policy was last updated in 2002.

3. The FDIC invites the public to comment on the types of information that would be helpful and beneficial to include in annual reports or the MDI Program website regarding the MDI Program.

Measurement of effectiveness. The proposed Statement of Policy also establishes new requirements to measure the effectiveness of the MDI Program. The National Director and the regional office staff will routinely solicit feedback from MDIs to assess the effectiveness of the FDIC's technical assistance, training and education, and outreach efforts and the MDI Program in general. The FDIC will track instances of technical assistance, training and education, and outreach and solicit feedback on the effectiveness of these activities by administering periodic surveys and holding discussions with bank management.

4. The FDIC invites the public to comment on other methods to identify and provide technical assistance, outreach, and training and education resources that would be beneficial to MDIs.

Examinations. The proposed Statement of Policy adds a description of how the FDIC applies rating systems at examinations of MDIs. Specifically, the proposed Statement of Policy describes how the Uniform Financial Rating System (UFIRS) and the Uniform Interagency Consumer Compliance Rating System (UICCR) are designed to reflect an assessment of the individual institution, including its size and sophistication, the nature and complexity of its business activities, and its risk profile rather than a comparison to peer institutions

5. The FDIC invites comment on whether this approach to incorporate specific considerations when examining MDIs is clear and understandable.

III. Proposed Statement of Policy Regarding Minority Depository Institutions

The text of the proposed Statement of Policy follows:

The FDIC has long recognized the importance of minority depository institutions in the financial system and their unique role in promoting the economic viability of minority and under-served communities. The FDIC historically has implemented programs to preserve and promote these financial institutions. This Statement of Policy describes the framework the FDIC has put into place and the initiatives the FDIC will undertake to fulfill its statutory goals with respect to minority depository institutions (MDI Program).

Statutory Framework

In August 1989, Congress enacted the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). Section 308 of FIRREA established the following goals:

- Preserve the number of minority depository institutions;
- Preserve the minority character in cases of merger or acquisition;
- Provide technical assistance to prevent insolvency of institutions not now insolvent;
- Promote and encourage creation of new minority depository institutions; and
- Provide for training, technical assistance, and educational programs.

Definitions

Section 308 of FIRREA defines ''minority depository institution'' as any Federally insured depository institution where 51 percent or more of the voting stock is owned by one or more ''socially and economically disadvantaged individuals.'' ''Minority,'' as defined by Section 308 of FIRREA, means any ''Black American, Native American, Hispanic American, or Asian American.'' Therefore, for the purposes of this Statement of Policy, ''minority depository institution'' is defined as any Federally insured depository institution where 51 percent or more of the voting stock is owned by minority individuals. This includes institutions collectively owned by a group of minority individuals, such as a Native American Tribe. Ownership must be by U.S. citizens or permanent legal U.S. residents to be counted in determining minority ownership. In addition to the institutions that meet the ownership test, for the purposes of this Statement of Policy, institutions will be considered minority depository institutions if a majority of the Board of Directors is minority and the community that the institution serves is predominantly minority.

Identification of Minority Depository Institutions

To ensure that all minority depository institutions are able to participate in the MDI Program, the FDIC will maintain a list of Federally insured minority depository institutions. Institutions that are not already identified as minority depository institutions can request to be designated as such by certifying that they meet the above definition. For institutions supervised directly by the FDIC, examiners will review the appropriateness of their inclusion on the list during the examination process. In addition, case managers in regional offices will note changes to the list while processing deposit insurance applications, merger applications, change of control notices, or failures of minority depository institutions. The FDIC will work closely with the other Federal banking regulators to ensure that institutions not directly supervised by the FDIC are accurately captured on the list. In addition, the FDIC will periodically provide the list to relevant trade associations and seek input regarding the accuracy of the list. Inclusion in the FDIC's MDI Program is voluntary. Any minority depository institution not wishing to participate in the MDI Program will be removed from the official list upon request.

Organizational Structure

The FDIC has designated a national director for the FDIC's MDI Program in the Washington Office and a regional coordinator in each Regional Office. The national director will consult with officials from the following FDIC Divisions to ensure appropriate personnel are involved and resources are made available with regard to MDI Program initiatives: Division of Risk Management Supervision, Division of Depositor and Consumer Protection, Division of Resolutions and Receiverships, Division of Insurance and Research, Legal Division, and the Office of Minority and Women Inclusion. The national director will also consult with other organizations within the FDIC as appropriate.

As the primary Federal regulator for State nonmember banks and State savings associations, the FDIC will focus its efforts on minority depository institutions with those charters. However, the national director will meet periodically with the other Federal banking regulators to discuss each agency's outreach efforts, to share ideas, and to identify opportunities where the

agencies can work together to assist minority depository institutions. Representatives of other divisions and offices may participate in these meetings.

Engagement With Minority Depository Institutions

The FDIC's MDI Program will provide for continual engagement with minority depository institutions through ongoing interaction with the Washington, Regional, and Field Office staff. This interaction includes providing technical assistance to share information and expertise on supervisory topics, outreach initiatives to provide opportunities for open dialogue with senior FDIC staff, and training initiatives to offer opportunities to gain additional knowledge about specific regulatory requirements.

Further, trade associations affiliated with minority depository institutions serve as a significant resource in identifying specific interests or concerns for those institutions. The national director will regularly contact minority depository institution trade associations to seek feedback on the FDIC's efforts under the MDI Program, discuss possible training initiatives, and explore options for promoting and preserving minority depository institutions. The national director and the regional coordinators also will solicit information from trade associations and other organizations about groups that may be interested in establishing new minority depository institutions. FDIC representatives will be available to address such groups to discuss the application process, the requirements of becoming FDIC insured, and the various programs supporting minority depository institutions. The regional coordinators will contact all new minority state nonmember banks and state savings associations identified through insurance applications, merger applications, or change in control notices to familiarize the institutions with the resources available through the MDI Program.

Technical Assistance

Technical assistance, as defined by the FDIC's MDI Program, is individual assistance that a regulator will provide to a minority depository institution in response to an institution's request for assistance in understanding supervisory topics or findings. At any time, the FDIC will share information and expertise with bank management on various topics including, but not limited to, understanding bank regulations, FDIC policies, examination procedures, accounting practices, supervisory recommendations, risk management procedures, and compliance management procedures. In providing technical assistance, FDIC staff will not actually perform tasks expected of an institution's management or employees. For example, FDIC staff may explain Call Report instructions as they relate to specific accounts, but will not assist in preparing an institution's Call Report. FDIC staff may provide information on community reinvestment opportunities, but will not recommend a specific transaction.

An institution can contact its field office representatives, case manager, or review examiner to request technical assistance. In addition, the regional coordinators and the institution's assigned case manager and review examiner are knowledgeable about minority bank issues and are available to answer questions or to direct inquiries to the appropriate FDIC office or staff member with expertise on the subject for response. Case managers can explain the application process and the type of analysis and information required for different applications. Field office representatives also serve as a significant resource to minority depository institutions by readily answering examination related questions and explaining regulatory requirements. Other staff members within the FDIC with expertise in various regulatory topics will also be available to share knowledge to assist minority depository institutions in complying with regulations or implementing supervisory recommendations.

During examinations, the FDIC expects examiners to fully explain supervisory recommendations and offer to help management understand satisfactory methods to address such recommendations. At the conclusion of each examination of a minority depository institution directly supervised by the FDIC, the FDIC will be available to return to the institution to provide technical assistance by reviewing areas of concern or topics of interest to the institution. The purpose of return visits is to assist management in understanding and implementing examination recommendations, not to identify new problems.

Technical assistance is a tool to provide on-going support to institutions in an effort to ensure timely implementation of recommendations, full understanding of regulatory requirements, and in some instances, the viability of the institution. Technical assistance is not a supervisory activity and is not intended to present additional regulatory burden. Further, examination teams will not view requests for, or acceptance of, technical assistance negatively when evaluating institution performance or assigning ratings.

Outreach

Outreach, as defined by the FDIC's MDI Program, consists of FDIC representatives meeting with financial institutions with a primary focus of building relationships and open communication and providing information and resources. Outreach is generally offered by the FDIC and can include meetings between financial institution management and senior FDIC management.

The FDIC maintains an MDI Subcommittee of its Advisory Committee on Community Banking (CBAC) comprised of executives of minority depository institutions. The MDI Subcommittee serves as a source of feedback on FDIC strategies to fulfill statutory goals to preserve and promote minority depository institutions. The MDI Subcommittee may also make recommendations or offer ideas to the CBAC for consideration and presentation to the FDIC. The MDI Subcommittee provides a platform for minority depository institutions to promote collaboration, partnerships, and best practices. The Subcommittee will also identify ways to highlight the work of minority depository institutions in their communities.

Executives and staff in the FDIC's regional offices will communicate regularly with each minority depository institution to outline the FDIC's efforts to promote and preserve minority depository institutions; will offer annually to have a member of regional management meet with the institution's board of directors to discuss issues of interest, including through roundtable discussions and training sessions; and will seek input regarding any training or other technical assistance the institution may desire.

The FDIC will explore opportunities to facilitate collaboration and partnering initiatives among minority depository institutions or between minority depository institutions and non-minority depository institutions. The FDIC recognizes that by facilitating these collaborative relationships, institutions can have opportunities to better meet the needs of their communities.

Training and Educational Programs

Training and educational programs, as defined by the FDIC's MDI program, consist of instruction designed to impart proficiency or skills related to a

particular job, process, or regulatory policy. The FDIC will work with other banking regulatory agencies and trade associations representing minority depository institutions to periodically assess the need for, and provide for, training and educational opportunities. The FDIC will partner with other Federal banking agencies and trade associations to offer training programs. This training and education can be provided in person, through webinars or conference calls, or in a conference setting.

Reporting

The regional coordinators will report regional office activities related to the MDI Program to the national director quarterly. The national director will develop a comprehensive report on all MDI Program activities and submit the report quarterly to the Chairman. The FDIC's efforts to preserve and promote minority depository institutions will also be highlighted in the FDIC's Annual Report and the Annual Report to Congress on the Preservation and Promotion of Minority Depository Institutions pursuant to Section 367 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and Section 308 of FIRREA.

Measuring Program Effectiveness

The national director and the regional office staff will routinely solicit feedback from minority depository institutions to assess the effectiveness of the FDIC's technical assistance, outreach, and training/education efforts and the MDI Program in general. The FDIC will track instances of technical assistance, outreach, and training and education and solicit feedback on the effectiveness of these activities by administering periodic surveys and holding discussions with bank management.

Examinations

All insured institutions must be operated in a safe and sound manner, in accordance with FDIC's regulations. Likewise, all examinations must be conducted within the parameters of FDIC exam policies and should consistently measure the risk an institution poses to the FDIC's deposit insurance fund. Notwithstanding, and consistent with the Uniform Financial Institutions Rating System (UFIRS) and the Uniform Interagency Consumer Compliance Rating System (UICCR), examiners are expected to recognize the distinctive characteristics and differences in core objectives of each financial institution and to consider those unique factors when evaluating an institution's financial condition and risk management practices.

Under the UFIRS and UICCR, each financial institution is assigned a composite rating based on an evaluation of specific components, which are also rated. For UFIRS, these component ratings reflect an institution's capital adequacy, asset quality, management capabilities, earnings sufficiency, liquidity position, and sensitivity to market risk (commonly referred to as the CAMELS ratings). Likewise, the UICCR is organized under broad components that assess the institution's board and management oversight, compliance program, and violations of law and consumer harm. The uniform rating systems and evaluation and rating criteria are specific to the examination types performed. Further, the assignment of the rating is based solely on the subject institution's individual performance under the specific components.

Management practices, particularly as they relate to risk management, vary considerably among financial institutions depending on size and sophistication, the nature and complexity of business activities, and risk profile. Each institution must properly manage risks and have appropriate policies, processes, or practices in place that management follows and uses. Activities undertaken in a less complex institution engaging in less sophisticated risk-taking activities may only need basic management and control systems compared to the detailed and formalized systems and controls used for the broader and more complex range of activities undertaken at a larger and more complex institution.

Peer comparison data are not included in the rating systems. The principal reason is to avoid over reliance on statistical comparisons to justify the component rating being assigned. This is very important when evaluating minority depository institutions due to their unique characteristics. For example, many minority depository institutions were established to serve an otherwise under-served market. High profitability may not be as essential to the organizers and shareholders of the institution. Instead, community development, improving consumer services, and promoting banking services to the unbanked or under-banked segment of its community may drive many of the organization's decisions. The UFIRS allows for consideration of the characteristics by considering not only the level of an institution's earnings, but also the trend and stability of earnings, the ability to provide for adequate capital, the quality and sources of earnings, and the adequacy of budgeting systems.

Examiners are instructed to consider all relevant factors when assigning a component rating. The rating systems are designed to reflect an assessment of the individual institution, including its size and sophistication, the nature and complexity of its business activities, and risk profile.

Failing Institutions

The FDIC will attempt to preserve the minority character of failing institutions during the resolution process. In the event of a potential failure of a minority depository institution, the Division of Resolutions and Receiverships will contact all minority depository institutions nationwide that qualify to bid on failing institutions. The Division of Resolutions and Receiverships will solicit qualified minority depository institutions' interest in the failing institution, discuss the bidding process, and offer to provide technical assistance regarding completion of the bid forms. In addition, the Division of Resolutions and Receiverships, with assistance from the Office of Minority and Women Inclusion, will maintain a list of minority individuals and nonbank entities that have expressed an interest in acquiring failing minority depository institutions and have been pre-approved by the Division of Risk Management Supervision and the chartering authority for access to the FDIC's virtual data room for online due diligence.

Internet Site

The FDIC will maintain a website to promote the MDI Program. Among other things, the website will describe the tools and resources available under the program. The website will include the name, phone number, and email address of the national director, each regional coordinator, and additional staff. The website will also contain links to the list of minority depository institutions, pertinent trade associations, and other Federal agency programs. The FDIC will also explore the feasibility and usefulness of posting other items to the page, such as statistical information and comparative data for minority depository institutions. Visitors will have the opportunity to provide feedback regarding the FDIC's program and the usefulness of the website.

IV. Administrative Law Matters

The Paperwork Reduction Act of 1995 (PRA) [5] states that no agency may conduct or sponsor, nor is the

[5] 44 U.S.C. 3501, *et seq.*

respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The proposed Statement of Policy Regarding Minority Depository Institutions does not create any new or revise any existing information collections pursuant to the PRA. Rather, any reporting, recordkeeping, or disclosure activities mentioned in the proposed Statement of Policy Regarding Minority Depository Institutions are usual and customary and should occur in the normal course of business as defined in the PRA.[6] Consequently, no submissions will be made to the OMB for review.

6. *The agencies request comment on its conclusion that this aspect of the proposed Statement of Policy Regarding Minority Depository Institutions does not create any new or revise any existing information collections.*

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on August 21, 2020.

James P. Sheesley,

Acting Assistant Executive Secretary.

[FR Doc. 2020–18816 Filed 9–24–20; 8:45 am]

BILLING CODE 6714–01–P

[6] 5 CFR 1320.3(b)(2).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2020–0434; FRL–10014–56–Region 6]

Approval of Texas Air Quality Plans; Clean Data Determination for the 2010 1-Hour Primary Sulfur Dioxide National Ambient Air Quality Standard; Anderson and Freestone Counties and Titus County Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the Anderson and Freestone Counties and the Titus County nonattainment areas, in Texas, have attained the 2010 1-hour primary Sulfur Dioxide (SO_2) National Ambient Air Quality Standard (NAAQS) per the EPA's Clean Data Policy. The primary sources of SO_2 emissions in these counties have permanently shut down and as a result air quality in these areas is now meeting the NAAQS for SO_2. This proposed determination is supported by monitoring data from within or near to the nonattainment areas, emissions data and an evaluation of previous modeling.

DATES: Comments must be received on or before October 26, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2020–0434, to *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment.

The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact Robert Imhoff, (214) 665–7262, *Imhoff.Robert@epa.gov.* For, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

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

FOR FURTHER INFORMATION CONTACT: Robert Imhoff, EPA Region 6 Office, SO_2 and Regional Haze Branch, (214) 665–7262, or by email at *Imhoff.Robert@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID–19. We encourage the public to submit comments via *https://www.regulations.gov,* as there will be a delay in processing mail and no courier or hand deliveries will be accepted. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

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

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I. What action is the EPA proposing?

The EPA is proposing to determine that portions of Anderson and Freestone Counties and Titus County (hereby referred to as ''the nonattainment areas''), in Texas, have attained the 2010 1-hour primary SO_2 NAAQS.[1] This proposed determination of attainment is in response to a June 30, 2020 request from the state [2] that the EPA consider information—including quality assured and certified ambient air monitoring data [3] from the 2017–2019 monitoring period and the permanent and enforceable shutdown of the primary sources of SO_2 emissions in these areas, Big Brown Power Plant (Big Brown) and Monticello Steam Electric Station (Monticello), that were the key contributors to the violations of the standard—which both support our proposed finding that the nonattainment areas have attained the 2010 1-hour primary SO_2 NAAQS. The primary basis for the state's request is that the primary sources of SO_2 emissions in these nonattainment areas have permanently shut down. These sources were located in rural areas with few other sources. EPA has reviewed the Texas Commission on Environmental Quality

[1] In accordance with Appendix T to 40 CFR part 50, the 1-hour primary SO_2 NAAQS is met at an ambient air quality monitoring site when the valid 1-hour primary standard design value is less than or equal to 75 parts per billion (ppb). 40 CFR 50.17(b).

[2] June 30, 2020 Letter from Toby Baker, Executive Director of TCEQ to Ken McQueen, Regional Administrator of EPA Region 6, subject: ''Sulfur Dioxide Clean Data Determination Request for Portions of Freestone, Anderson, and Titus Counties in Texas'' included in the docket for this action.

[3] Monitoring data must be reported, quality assured, and certified in accordance with the requirements set forth in 40 CFR part 58.

(TCEQ) submission, available monitoring data and past modeling to base our proposed finding that air quality in these nonattainment areas is now meeting the NAAQS for SO_2. The EPA has made the monitoring data, permit information submitted by the state, and additional information developed by EPA to support this proposed action available in the docket to this rulemaking through *www.regulations.gov* (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

II. What is the background of this action?

A. Nonattainment Designation

On June 22, 2010 (75 FR 35520), the EPA published a health-based 1-hour primary SO_2 NAAQS at 75 parts per billion (ppb). Following promulgation of a new or revised NAAQS, section 107(d) of the Clean Air Act (CAA) requires the EPA to designate any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the NAAQS as nonattainment.

The process for designating areas following promulgation of a new or revised NAAQS is contained in CAA section 107(d) (42 U.S.C. 7407(d)). After promulgation of a new or revised NAAQS, each governor or tribal leader has an opportunity to recommend air quality designations, including the appropriate boundaries for nonattainment areas, to the EPA (42 U.S.C. 7407(d)(1)(A)). The EPA considers these recommendations when fulfilling its duty to promulgate the formal area designations and boundaries for the new or revised NAAQS. By no later than 120 days prior to promulgating designations, the EPA is required to notify states, territories, and tribes, as appropriate, of any intended modifications to an area designation or boundary recommendation that the EPA deems necessary (42 U.S.C. 7407(d)(1)(B)).

After invoking a 1-year extension of the deadlines to designate areas, as provided for in section 107(d)(1)(B) of the Act, the EPA published an initial round of SO_2 designations for certain areas of the country on August 5, 2013 (referred to as ''Round 1'') (78 FR 47191). Following the Round 1 designations, several groups filed lawsuits against the EPA alleging the agency had failed to perform a nondiscretionary duty under the CAA to designate all portions of the country by the June 2, 2013, statutory deadline. As a result of the lawsuits, the EPA entered into a March 2, 2015, Consent Decree [4] which required the EPA to complete the remaining area designations by three specific deadlines known as Rounds 2, 3, and 4 according to the court-ordered schedule. To meet the Round 2 court-ordered deadline for the SO_2 designations, the court order required the EPA to designate areas containing sources meeting certain criteria no later than July 2, 2016.[5]

For SO_2 NAAQS designations, air agencies have the flexibility to characterize air quality using either appropriately sited ambient air quality monitors or using modeling of actual or allowable source emissions. The EPA issued the non-binding draft Monitoring Technical Assistance Document (TAD) and Modeling TAD [6] recommending how air agencies should conduct such monitoring or modeling. The 1-hour primary SO_2 standard is violated at an ambient air quality monitoring site (or in the case of dispersion modeling, at an ambient air quality receptor location) when the 3-year average of the annual 99th percentile of the daily maximum 1-hour average concentrations exceeds 75 ppb, as determined in accordance with appendix T of 40 CFR part 50. To determine model-based violations, the EPA believes that dispersion modeling is the appropriate tool, as discussed in the Modeling TAD. The TAD provides recommendations on how an air agency might appropriately and sufficiently model ambient air in proximity to an SO_2 emission source to establish air quality data for comparison to the 2010 primary SO_2 NAAQS for the purposes of designations.

In September 2015, Texas submitted updated recommendations for areas of the state where there were no monitors, including the above counties.[7] Texas recommended ''unclassifiable/attainment'' designations for those areas and stated its position that ambient air monitoring data were the appropriate information for use in attainment and nonattainment designations.

On June 30, 2016, the EPA signed the final action designating 61 additional areas for Round 2 (81 FR 45039, July 12, 2016). On November 29, 2016, EPA supplemented its Round 2 designations by signing a supplemental final action that included nonattainment designations for portions of Freestone and Anderson Counties and Titus County (''Round 2 Supplement'') (81 FR 89870, December 13, 2016). This action established an attainment date five years after the effective date for the areas designated as nonattainment for the 2010 SO_2 NAAQS (*i.e.,* by January 12, 2022). The state is required to submit a State Implementation Plan (SIP) for the nonattainment areas to the EPA that meets the requirements of CAA sections 110 and 172(c), and 191–192 within 18 months following the January 12, 2017 effective date of designation (*i.e.,* by July 12, 2018). The State of Texas has not yet submitted the Nonattainment Area Plan for the 2010 1-Hour Sulfur Dioxide National Ambient Air Quality Standard for these areas. Therefore, on August 10, 2020, EPA published a Finding of Failure to Submit (FFS) for Texas for these two nonattainment areas and one additional area. As a consequence of the FFS, Texas must submit a complete SIP for each area addressing the outstanding SIP requirements by February 10, 2022 (18 months from the effective date of the finding) or be subject to mandatory sanctions under the Clean Air Act. Additionally, Texas must submit and obtain EPA approval of its SIP by August 10, 2022 or EPA must promulgate a Federal Implementation Plan addressing any outstanding SIP requirements. As discussed in more detail below, if this proposed Clean Data Determination is finalized, certain nonattainment area SIP requirements for these two nonattainment areas are suspended as long as air quality continues to meet the standard.

For the SO_2 designations in the two Texas areas addressed in this action, the EPA considered the data available at the time of designations, including modeling submitted by Vistra Energy and the Sierra Club in March 2016. EPA found that the technical analysis provided by the Sierra Club demonstrated that in the Freestone and Anderson Counties area, Big Brown Steam Electric Station (''Big Brown'') and in the Titus County area, Monticello Steam Electric Station (''Monticello'') plants were the primary sources of SO_2 emissions and the key contributors to the modeled 2010 SO_2 NAAQS

[4] Mar. 02, 2015 Consent Decree; *Sierra Club and Natural Resources Defense Council* v. *EPA,* Case No. 3:13–cv–3953–SI (N.D. Cal.).

[5] Areas with three years of monitoring data showing violations of the NAAQS and areas containing stationary sources that had not been announced for retirement and that according to the EPA's Air Markets Database emitted in 2012 either (i) more than 16,000 tons of SO_2 or (ii) more than 2,600 tons of SO_2 with an annual average emission rate of 0.45 pounds of SO_2 per one million British thermal units (lbs SO_2/mmBTU) or higher. Mar. 02, 2015 Consent Decree; *Sierra Club and Natural Resources Defense Council, et al.* v. *EPA,* Case No. 3:13–cv–03953–SI (N.D. Cal.).

[6] Technical Assistance Documents for Implementing the 2010 Sulfur Dioxide Standard, August 2016 and February 2016, *https://www.epa.gov/so2-pollution/technical-assistance-documents-implementing-2010-sulfur-dioxide-standard.*

[7] *https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2014-0464-0080&contentType=pdf.*

violations. A nonattainment area encompasses the area shown to be in violation of the standard and the principal source or sources that contributes to the violation. The analysis of the maximum impacts around Big Brown and around Monticello showed that Big Brown and Monticello were responsible for almost 100% of the impacts on the maximum modeled concentrations in each area, and therefore only these sources were included within the boundaries of the nonattainment areas. A complete description of the State recommendations and data considered in proposing and finalizing those designations are included in the Texas Intended TSD [8] and Texas Final TSD [9] from Round 2 that are also included in the docket to this proposed rulemaking.

B. Clean Data Policy

The EPA issued its ''Clean Data'' policy memoranda for SO_2 and other NAAQS describing reduced attainment planning requirements for nonattainment areas that attain the NAAQS but have not yet been redesignated as attainment.[10] [11] When EPA considers a clean data determination for a designated SO_2 NAAQS nonattainment area, the EPA determines whether an area has attained the NAAQS based on air quality monitoring data (when available) and air quality dispersion modeling information for the affected area as necessary.

Additionally, the EPA has issued national rulemakings that have codified this policy for ozone and fine particulate matter ($PM_{2.5}$) NAAQS.[12] Under our Clean Data policy, the EPA has consistently interpreted the requirements of the CAA that are specifically designed to help an area achieve attainment, such as attainment demonstrations and implementation of reasonably available control measures (including reasonably available control technology), reasonable further progress (RFP) demonstrations, and contingency measures, to be suspended as long as air quality continues to meet the standard because requirements designed to achieve or plan for attainment are no longer necessary when an area is already meeting the standard. The nonattainment new source review and emissions inventory requirements are not suspended under a Clean Data Determination and must still be addressed for the nonattainment areas.

In the memorandum of April 23, 2014, from Steve Page, Director, EPA Office of Air Quality Planning and Standards to the EPA Air Division Directors ''Guidance for 1-hr SO_2 Nonattainment Area SIP Submissions'' (2014 SO_2 Nonattainment Area Guidance), the EPA explained its intention to extend the Clean Data Policy to 1-hour SO_2 nonattainment areas that show attainment of the SO_2 standard. As noted therein, the legal bases set forth in the various guidance documents and regulations establishing the Clean Data Policy for other pollutants are equally pertinent to all NAAQS.[13] This proposed determination is also consistent with prior actions of the EPA applying the Clean Data Policy to other nonattainment areas under the 2010 SO_2 NAAQS.[14]

A clean data determination is not a redesignation to attainment. For the EPA to redesignate a nonattainment area to attainment, the area must satisfy all of the statutory criteria for redesignation to attainment which, in addition to determining the area is in attainment, include a demonstration that the improvement in the area's air quality is due to permanent and enforceable emission reductions; have a fully approved SIP that meets all of the applicable requirements under CAA section 110 and CAA part D; and have a fully approved maintenance plan.[15]

C. How does a nonattainment area achieve ''clean data'' for the 2010 1-hour primary SO_2 NAAQS?

Generally, the EPA relies on ambient air quality monitoring data alone in order to make determinations of attainment for areas designated nonattainment for a particular NAAQS. However, given the Agency's historical approach toward SO_2, the source-specific nature of SO_2 emissions, and the localized effect of those emissions the EPA has emphasized the use of additional sources of air quality information to determine attainment of the SO_2 NAAQS. In the preamble to the 2010 1-hour primary SO_2 NAAQS rulemaking, the EPA stated that it did not expect to rely solely on monitored air quality data in all areas when determining if an area has attained the 2010 1-hour primary SO_2 NAAQS (75 FR 35551).

The 2014 SO_2 Nonattainment Area Guidance states that in order for a nonattainment area that was designated based on modeling data to be determined as attaining the NAAQS, additional dispersion modeling may be required. The SO_2 Modeling TAD states that for the purposes of modeling to characterize air quality for use in SO_2 designations the EPA recommends using a minimum of the most recent three years of actual emissions data and concurrent meteorological data to allow the modeling to simulate what a monitor would observe. Additionally, the SO_2 Modeling TAD indicates that it is acceptable to use allowable emission rates instead of actual emission rates. Although past actual emissions could have been higher than those under the most recent allowable rate, the SO_2 Modeling TAD reflects the EPA's belief that it is reasonable to account for any lower allowable limits currently in place when determining if an area is attaining the NAAQS. In addition, the SO_2 Modeling TAD indicates that, where an allowable emissions limit has been lowered during the relevant three-year period (such as through the implementation of emissions controls), the air agency may rely on the new limit in demonstrating that the modeled limit assures attainment. The EPA believes this kind of analysis is appropriate for both designations and clean data determinations, both of which use the analysis to determine whether the area is currently meeting the NAAQS.

For areas designated based on air quality modeling alone and where the source determined to be the primary cause of the violation has been permanently shut down, a more streamlined analysis may be

[8] *https://www.epa.gov/sites/production/files/2016-03/documents/tx-epa-tsd-r2.pdf.*

[9] *https://www.epa.gov/sites/production/files/201611/documents/texas_4_deferred_luminant_tsd_final_docket.pdf.*

[10] Memorandum of December 14, 2004, from Steve Page, Director, EPA Office of Air Quality Planning and Standards to the EPA Air Division Directors, ''Clean Data Policy for the Fine Particle National Ambient Air Quality Standards.'' This document is available at: *http://www.epa.gov/pmdesignations/guidance.htm.*

[11] The memorandum of April 23, 2014, from Steve Page, Director, EPA Office of Air Quality Planning and Standards to the EPA Air Division Directors ''Guidance for 1-hr SO_2 Nonattainment Area SIP Submissions'' provides guidance for the application of the clean data policy to the 2010 1-hour primary SO_2 NAAQS. This document is available at *https://www.epa.gov/sites/production/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf* .

[12] *See, e.g.,* 81 FR 58010, 81 FR 58127–58129 (August 24, 2016) (promulgating 40 CFR 51.1015); 80 FR 12264, 80 FR 12296 (promulgating 51.1118). *See also* 70 FR 1612, 70 FR 71664–46 (November 29, 2005); 72 FR 20585, 72 FR 20603–20605 (April 25, 2007).

[13] See court cases upholding the legal basis for the EPA's Clean Data Determination Policy, *NRDC* v. *EPA,* 571 F.3d at 1258–61 (D.C. Cir. 2009); *Sierra Club* v. *EPA,* 99 F.3d 551 (10th Cir. 1996); *Latino Issues Forum* v. *EPA,* 315 Fed. App. 651, 652 (9th Cir. 2009).

[14] For example, see 82 FR 13227 (March 10, 2016) and 81 FR 28718 (May 10, 2016).

[15] Clean Air Act Section 107(d)(3)(E).

appropriate. In this case, the relevant allowable emissions limit has been lowered to zero. The EPA believes that the permanent cessation of SO_2 emissions from primary sources may be sufficient to determine that the area is attaining the NAAQS, if available monitoring, emissions and modeling data for the area also support the finding of attainment. As discussed elsewhere in this document, the Anderson and Freestone Counties and the Titus County nonattainment areas in Texas were designated based on available modeling data that characterized the area around the Big Brown and Monticello facilities using 2013–2015 emissions; these facilities have since been permanently shut down.

D. What information did Texas provide that demonstrates that the area attained the NAAQS?

TCEQ provided information related to primary sources of SO_2, primary source shutdowns, and recent monitoring data. As noted by Texas, the Vistra Energy Power Plants Big Brown and Monticello were the only significant SO_2 emission sources in the nonattainment areas. Texas also noted the resulting decrease of ambient SO_2 concentrations after the shutdowns.

i. Primary Source Shutdowns

As discussed above, for the SO_2 designations in the two Texas areas addressed in this action, the EPA relied on modeling that demonstrated that the Big Brown and Monticello plants were the key contributors to the modeled 2010 SO_2 NAAQS violations. Thus, the key factor in our proposed determination that the two areas are attaining the 2010 SO_2 standard is the retirement of the two Vistra Energy facilities.

Regarding the Anderson and Freestone Counties area, Vistra Energy permanently retired the Big Brown coal-fired steam electric generating Units 1 and 2 on February 12, 2018. Vistra Energy filed to void the Big Brown Title V permit, FOP 065, on May 24, 2018 and it was voided by TCEQ on August 29, 2018. A letter was submitted by Vistra Energy to TCEQ to void Big Brown's individual NSR permits (17891, 18744, 45420, 53205, 54810, 56445, 56447, 83646, 83647, 85296, 94619, 95214, 96276, 99047, 99050, 106862, 108990, 112207, and 148918). On March 29, 2018, TCEQ cancelled all new source review authorizations for Big Brown Units 1 and 2 and certain other facilities, as requested by Vistra Energy.[16] The remaining permits (17891, 18744, 56447, 106862, and 112207) are material handling permits maintained while closure activities are completed, such as coal piles, silos, and conveyors.

Regarding the Titus County area, Vistra Energy permanently retired the Monticello coal-fired steam electric generating Units 1, 2, and 3 on December 31, 2017. Vistra Energy filed to void the Monticello Title V permit, FOP 64, on May 23, 2018 and it was voided by TCEQ on August 3, 2018. A letter was submitted by Vistra Energy to TCEQ to void individual NSR permits (2401, 26740, 45432, 54808, 56384, 71238, 85294, 95215, 104897, 105738, 146220, 83645, and 83640) on February 9, 2018. On February 14, 2018, TCEQ cancelled all new source review authorizations for Monticello Units 1, 2, and 3 and certain other facilities, as requested by Vistra Energy.[17] [18] The remaining permits (146278, 2399, 140265, 137864, 56387, 54408, and 104210) are material handling permits maintained while closure activities are completed, such as coal piles, silos, and conveyors.

ii. Monitoring Data

Texas provided recent monitoring data from the Fairfield FM 2570 Ward Ranch monitor, located approximately three miles southwest of the Big Brown plant, and from the Cookville FM 4855 monitor, located approximately 12 miles to the east of the Monticello plant and source-oriented to the still-operational Welsh power plant. The air quality data from these two monitors demonstrate a decrease in ambient SO_2 concentrations (which Texas stated in their request is a result of the shutdowns of the Big Brown and Monticello plants) supporting EPA's proposed determination that these areas will continue to attain the SO_2 NAAQS.

In its 2017 annual monitoring network plan, Texas proposed SO_2 monitoring sites in the Freestone/Anderson Counties and Titus County areas to assess air quality in the new SO_2 nonattainment areas involving Vistra Energy sources. Texas referred to the 2016 Sierra Club modeling analysis, among other information, to inform their proposed siting of the new monitors.[19] The EPA approved the two monitoring sites.[20]

Freestone/Anderson Counties Monitor Data

Texas sited and began operating a monitor in the area of the Big Brown power plant (within the Freestone/Anderson Counties nonattainment area) on October 30, 2017. Though the Big Brown power plant shut down in February 2018, Texas continues to operate the monitor. EPA requires three calendar years of complete, quality assured, certified monitoring data to determine a design value, the measure of an area's air quality defined statistically by the form of the standard. For the 2010 one-hour SO_2 standard, the design value is the three-year average of the 4th-high annual daily maximum 1-hour average concentrations, representing the 99th percentile of annual daily maximum hourly average concentrations. A three-year period is used to smooth out variability in concentrations from year to year due to changes in source emission rates or to meteorological effects on dispersion. Texas stated that the monitor has a preliminary design value of 41 ppb based on the 99th percentile concentrations for 2017–2019, compared to the standard of 75 ppb. We note that while this calculated design value is invalid due to insufficient information for 2017, the data can be used as part of a weight of evidence analysis to support a determination of clean data. See the section below for EPA's analysis of the available monitor data.

Titus County Monitor Data

For the Titus County nonattainment area, Texas did not install a monitor planned near the Monticello power plant once the retirement of the facility was announced for 2017. However, the TCEQ provided monitoring data from the Welsh monitor, (the Cookville FM 4855 monitor) also located in Titus county, approximately 16 km to the east of the nonattainment area surrounding the Monticello Power Plant. Unlike the Big Brown Monitor, the Welsh Monitor has 3 years of complete, certified monitoring data from the period of

[16] See docket item number EPA–HQ–OAR–2014–0464–0455 for a list of Big Brown's voided NSR permits. Big Brown's voided operating permit is also located in Docket EPA–HQ–OAR–2014–0464.

[17] For Monticello, see docket item number EPA–HQ–OAR–2014–0464–0456 for a list of voided NSR permits, and docket item number EPA–HQ–OAR–2014–0464–0457 for the voided operating permit.

[18] Any remaining NSR or material handling permits for Big Brown and Monticello will only be maintained while the facilities complete closure activities related to coal piles, silos, conveyors, and other shutdown tasks.

[19] 2017 ANP, available in the docket for the action and at: *https://www.tceq.texas.gov/assets/public/compliance/monops/air/annual_review/historical/2017-AMNP.pdf.*

[20] EPA's approval of 2017 ANP, available in the docket for the action and at: *https://www.tceq.texas.gov/assets/public/compliance/monops/air/annual_review/historical/EPA2017AMNP.pdf.*

2017–2019, as it began operating in January 2017. The Welsh monitor was sited by Texas to characterize the SO_2 concentrations from the Welsh Power Plant.

The monitor at Welsh began reporting data to the EPA's Air Quality System (AQS) on January 1, 2017. The 2017–2019 design value for the most recent three years of complete, quality assured, and certified ambient air monitoring data is 28 ppb, 37% of the standard. This represents an upper limit for the estimated design value for the Titus County nonattainment area since the Welsh monitor includes the impacts from the nearby Welsh Power Plant. Concentrations in the nonattainment area, further from the Welsh plant, would be expected to be lower since there are no other large sources nearby. See the section below for EPA's analysis of the Welsh Monitor data as an indicator of air quality in the Titus nonattainment area.

E. What is the EPA's rationale for proposing this action?

The EPA is proposing to issue a clean data determination for the Anderson and Freestone Counties and the Titus County nonattainment areas based on the shutdown of the sources in the nonattainment areas, and as supported by monitoring data from within or near to the nonattainment areas and an evaluation of previous modeling. A detailed analysis of the monitoring data is presented below. In addition, we consider below available modeling data and more recent emission inventory data for the areas as further support for our proposed determination, consistent with our Clean Data Policy, that the nonattainment areas are attaining the 2010 SO_2 NAAQS.

III. What is the EPA's analysis?

A. Modeling Data and Supplemental 2016–2019 Emissions Information Evaluation

In 2016, Sierra Club and Vistra Energy submitted modeling data for the then most recent three years (2013–2015). This modeling provided the basis for the two nonattainment designations as discussed earlier.

In the 2016 designation action, EPA found that the Sierra Club's modeled source inventory was created in accordance with the 2014 SO_2 Nonattainment Area Guidance and the 2016 SO_2 Modeling TAD. Our analysis of the maximum impacts around Big Brown and around Monticello found that Big Brown and Monticello were responsible for almost 100% of the impacts on the maximum ambient concentration, and thus, it was appropriate for these sources to be the only sources explicitly modeled. EPA's boundaries for the nonattainment area encompassed the area shown to be in violation of the standard and the only sources within the boundaries of the nonattainment areas were the principal sources that contributed to the violation in each area, *i.e.,* Big Brown and Monticello.

We have evaluated this modeling to determine if there is any possibility the area would still be in nonattainment after the plant shutdowns. EPA also reviewed 2016–2019 emissions data from the Clean Air Markets Database (CAMD) and compared those emissions to the assumptions made in the 2013–2015 modeling demonstration. As shown in Table 1, beginning in the second quarter of 2018 both plants' emissions are omitted in CAMD, indicating no SO_2 emissions due to the facility shutdowns. Overall, during the modeled period 2013–2015 Big Brown emitted 169,791 tons and Monticello emitted 63,230 tons of SO_2. In the most recent three-year period, 2017–2019, they emitted 54,291 and 29,410 tons respectively, less than ½ the average emission rates modeled. More importantly, both facilities no longer emit any SO_2.

TABLE 1—QUARTERLY EMISSIONS FROM BIG BROWN AND MONTICELLO FOR 2013–2019

Quarter	Big Brown SO_2 emissions (tons)	Monticello SO_2 emissions (tons)
2013 Q1	16,179	2,131
2013 Q2	14,603	7,358
2013 Q3	16,817	12,130
2013 Q4	14,895	2,778
2014 Q1	12,792	5,607
2014 Q2	13,119	3,683
2014 Q3	19,477	11,147
2014 Q4	12,072	2
2015 Q1	12,430	0
2015 Q2	11,677	4,205
2015 Q3	12,994	8,760
2015 Q4	12,737	5,430
2016 Q1	9,632	2,622
2016 Q2	7,369	3,853
2016 Q3	14,556	11,191
2016 Q4	10,913	7,293
2017 Q1	9,904	3,463
2017 Q2	10,244	8,558
2017 Q3	13,203	8,358
2017 Q4	14,282	9,030
2018 Q1	6,659	0
2018 Q2	0	0
2018 Q3	0	0
2018 Q4	0	0
2019 Q1	0	0
2019 Q2	0	0
2019 Q3	0	0
2019 Q4	0	0

The only emissions explicitly modeled were those from Big Brown and Monticello. The contributions from all other sources were represented in the model by an estimate of the background concentration. This is a technique in modeling to address smaller or more distant source contributions by examining monitoring data thought to be representative. These contributions were estimated to be small, 2 ppb for both areas. Review of 2017 National Emission Inventory data shows one additional SO_2 emission source, Freestone Energy Center, within the Freestone/Anderson nonattainment area with total annual SO_2 emissions of only 11.7 tons. There are no other SO_2 emission sources in the Titus County nonattainment area.[21]

The overall modeled concentrations at a receptor were computed by Equation 1.

Equation 1. Equation representing the determination of total modeled total concentration at a receptor location.

Total Concentration = Concentration from Vistra Energy Source + Concentration from All Other Sources (background estimate 2 ppb)

Because the Sierra Club sufficiently considered all significant sources of SO_2 emissions for inclusion in the modeling demonstration, and these sources now have zero emissions, we do not believe that new modeling is required to determine attainment of the standard. Based on Equation 1, because the emissions from the Vistra Energy Sources are zero and their modeled concentrations would also be zero, the total concentration within the nonattainment area would be modeled as equal to the contribution from all other sources, or background. The modeled design value, in the absence of emissions from the Vistra Energy sources, if remodeled would then be equal to the concentrations from all other sources as represented by the background concentration of 2 ppb.

B. Ambient Air Quality Monitoring Data Evaluation

According to the 2014 SO_2 Nonattainment Area Guidance, to support a clean data determination based on monitoring data alone, the state needs to demonstrate that the area is meeting the standard based on three consecutive calendar years of complete and quality-assured air quality monitoring data (consistent with 40 CFR part 58 requirements). Neither nonattainment area contains a monitor with three complete years of monitoring data, but we believe that the available

monitoring data from the Big Brown and Welsh monitors do provide corroborating evidence that the source shutdowns have resulted in attainment. To further support our proposed determination, the EPA performed a detailed analysis of the SO_2 concentrations monitored before and after the shutdowns.

Data from the Big Brown monitor demonstrates a marked improvement in air quality in the nonattainment area due to the permanent retirement of the source as shown in Table 2. During the initial 107-day period from the start of monitoring on October 31, 2017 to the shutdown of Big Brown on February 14, 2018, the 99th percentile concentration (the 1st high value for this shorter-than-one-year period) was 77.5 ppb, slightly above the standard. Post-shutdown, 321 days were measured during 2018; during this period the 99th percentile concentration (the 3rd high value) was 14 ppb, 19% of the standard. The 99th percentile concentration for 2019 (the 4th high value) is 5.8 ppb, 8% of the standard. Preliminary monitoring data for the first quarter of 2020 gives a 99th percentile (the first-high value) of 7.6 ppb. The extremely low 99th percentile concentrations post-shutdown indicate that the monitored 99th percentile concentrations in the Freestone and Anderson County nonattainment area are now, and will continue to be, well below the NAAQS.

As discussed previously, the Welsh Monitor provides a conservative estimate of possible concentrations in the Titus nonattainment area. Its design value is 28.0 ppb, in attainment of the standard, and supports the EPA's proposed determination that concentrations in the Titus County nonattainment area would also be in attainment. The shutdown of Monticello also reduced concentrations at the Welsh monitor when winds blew from the direction of Monticello (231°–321°). In 2017, prior to the shutdown, the maximum concentration from the direction of Monticello was 112.7 ppb. After the shutdown the maximum concentrations from that direction in 2018 and 2019 were 6.8 ppb and 6 ppb respectively.

Based on our analysis, the monitoring data from the Big Brown and Welsh DRR Monitors, before and after the major source shutdowns, support our proposed determination that both areas are now in attainment.

TABLE 2—99TH PERCENTILE 1-HOUR AVERAGE IN PARTS PER BILLION (PPB) AT THE WELSH AND BIG BROWN MONITORS

[2017–2019]

Monitor	Site name	2017	2018	2019	Average
48–449–1078	Welsh	33.4	20.2	30.5	[1] 28
48–161–1084	Big Brown	[2] 77.5	39.4	5.8	[3] 21.6

[1] The 3-year average of the yearly 4th high of the complete and certified data from the Welsh monitor represents the design value for the monitor.
[2] Includes only data beginning 10/30/2017.
[3] Average is weighted by number of days included for each year.

C. EPA's Proposed Clean Data Determination

The EPA acknowledges the permanent shut down of the Vistra Energy Big Brown and Monticello power plants and recognizes the corresponding relationship between the decrease in concentrations of SO_2 in the nonattainment areas and the cessation of emissions from the Vistra Power Plants. We have examined available monitoring and modeling data and propose to find that air quality in the nonattainment areas are now attaining the 1-hour SO_2 standard.

IV. What would be the effects of this action, if promulgated?

If this proposed determination is made final, the requirements for the state to submit an attainment demonstration, a reasonable further progress plan, contingency measures, and other planning SIP revisions related to attainment of the 2010 1-hour primary SO_2 NAAQS such as reasonably available control measures and reasonably available control technology would be suspended until such time, if any, that the EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that either area has violated the 2010 1-hour primary SO_2 NAAQS. If this were to occur, the basis for the suspension of the specific SIP requirements would no longer exist, and the state would thereafter have to address the pertinent requirements. If finalized, a determination of attainment would not shield the area from other required actions, such as provisions to address pollution transport, which could require emission reductions at sources or other types of emission activities contributing significantly to nonattainment in other areas or states, or interfering with maintenance in those areas. The EPA has the authority to require emissions reductions as necessary and appropriate to deal with transported air pollution situations. See CAA sections 110(a)(2)(D), 110(a)(2)(A), and 126.

If, after considering any comments received on this proposal, the EPA finalizes a clean data determination for these areas, the state would still be subject to nonattainment area requirements, including nonattainment new source review and emission inventory requirements, until the area is redesignated to attainment.

This proposed clean data determination is limited to a determination that the areas are attaining the 2010 1-hour primary SO_2 NAAQS as evidenced by the state's monitoring data and the Sierra Club's modeling analysis; this proposed action, if finalized, would not constitute a redesignation to attainment under section 107(d)(3) of the CAA. The designation status of the nonattainment areas will remain nonattainment for the 2010 1-hour primary SO_2 NAAQS until such time as the state submits approvable redesignation requests and maintenance plans, and the EPA takes final rulemaking action to determine that such submissions meet the CAA requirements for redesignation to attainment.

V. Statutory and Executive Order Reviews

This action proposes to make a determination based on air quality monitoring data and modeling and would, if finalized, result in the suspension of certain Federal requirements and would not impose any additional requirements. 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 this action is not

significant 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 those requirements would be inconsistent with the CAA; 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 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 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, Sulfur dioxide, Attainment determination.

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

Dated: September 17, 2020.

Kenley McQueen,

Regional Administrator, Region 6.

[FR Doc. 2020–20958 Filed 9–24–20; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2019–0700; FRL–10013–26–Region 5]

Air Plan Approval; Wisconsin; VOC RACT Requirements for Lithographic Printing Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the Wisconsin Department of Natural Resources (WDNR or Wisconsin) on December 13, 2019. Wisconsin requests that EPA approve rules related to control of volatile organic compound (VOC) emissions from offset lithographic printing operations into the Wisconsin's SIP. These revisions include amendments to the Wisconsin Administrative Code (WAC), Chapter NR 422.

DATES: Comments must be received on or before October 26, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2019–0700 at *http://www.regulations.gov,* or via email to *aburano.douglas@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, 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. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For 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.*

FOR FURTHER INFORMATION CONTACT: Kathleen Mullen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–3490, *Mullen.Kathleen@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID 19.

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

I. What is EPA proposing?

EPA is proposing to approve revisions to the Wisconsin Administrative Code Chapter NR 422, into the Wisconsin SIP. These revisions amend the control of VOC emissions from offset lithographic printing operations.

II. What is the background for these actions?

There are two state rules (NR 422.142 and NR 422.143, Wis. Adm. Code) regulating VOC emissions from lithographic printing operations in Wisconsin.

Section NR 422.142, Wis. Adm. Code (Lithographic printing—Part 1) contains requirements that were established as RACT requirements for the 1979 1-hour ozone National Ambient Air Quality Standard (NAAQS) for nine counties in southeast Wisconsin (Kenosha, Kewaunee, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Washington, and Waukesha Counties), and became effective on July 1, 1995. Section NR 422.143, Wis. Adm. Code (Lithographic printing—Part 2) was established as RACT requirements for the 1997 8-hour ozone NAAQS for seven counties located in southeast Wisconsin (Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington, and Waukesha), and became effective on August 1, 2009. The requirements in Part 2 are based on the limits established in the latest Control Techniques Guidelines (CTG) for Offset Lithographic Printing and Letterpress Printing, published by EPA in 2006. NR 422.142 and NR 422.143 were previously approved into Wisconsin's SIP on August 7, 2012 (77 FR 46961).

The two-part organizational structure of these rules creates potential confusion in the application of the rules. Revisions to these rules (NR 422.142 and NR 422.143, Wis. Adm. Code) will clarify and streamline the VOC RACT requirements for lithographic printing facilities. The

revised Wisconsin Administrative Code Chapter NR 422 became effective July 1, 2019.

III. What is EPA's analysis of Wisconsin's SIP revision?

EPA has reviewed Wisconsin's revised VOC rules for lithographic printing facilities, which include: Adding new definitions in NR 422.02, Wis. Adm. Code., changing the rule applicability of NR 422.142 and 422.143, Wis. Adm. Code, replacing the term ''blanket or roller wash'' with ''cleaning solution'' in NR 422.142 and 422.143, Wis. Adm. Code, revising the VOC emission limits for blanket or roller wash, clarifying the associated monitoring and recordkeeping requirements, eliminating the periodic stack testing requirements for small sources, and including the calculation methods for composite partial vapor pressure calculations in NR 422.143.

The proposed revisions are consistent with the latest CTG published by EPA in 2006, clarify the existing state rule requirements for lithographic printing operations in the southeastern part of Wisconsin, and streamline the implementation of these state rules. A brief discussion of these revisions follows.

NR 422—Control of Organic Compound Emissions From Surface Coating, Printing, and Asphalt Surfacing Operations

NR 422.02(7c)—Definition

A new definition to ''Automatic blanket and roller wash'' has been added to Wisconsin's lithographic printing regulations. This definition is approvable because it is a necessary update to the definition section and accurately describes that ''Automatic blanket and roller wash'' refers to all the printing press-related cleaning activities consistent with the CTG.

NR 422.02(14m)—Definition

A new definition to ''Cleaning solution'' has been added to Wisconsin's lithographic printing regulations. This definition is approvable because it is a necessary update to the definition section and accurately describes cleaning solutions consistent with the CTG.

NR 422.02(45e)—Definition

A new definition to ''Janitorial supplies'' has been added to Wisconsin's lithographic printing regulation. This definition is approvable because it is a necessary update to the definition section and accurately describes janitorial supplies consistent with the CTG.

NR 422.142—Lithographic Printing—Part 1

This rule has been amended to narrow its applicability to cover only existing facilities located in Kewaunee and Manitowoc counties. Specifically, seven counties (Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington, and Waukesha) from the list of the affected facilities under NR 422.142 were removed, because they are covered under the requirements of NR 422.143, which is more stringent and consistent with the latest CTG published in 2006. This revision is approvable because it is consistent with the subject CTG.

NR 422.142 and NR 422.143

The printing industry refers to ''blanket or roller wash'' as the solvents used for blanket wash and roller wash only. ''Cleaning solution'' refers to all the printing press-related cleaning activities. In order to clarify how the term is used by the printing industry, these rules have been revised to replace the term ''blanket or roller wash'' with ''cleaning solution.'' These revisions are approvable since they are consistent with the terms used in EPA's 2006 CTG.

NR 422.142(2)(c) and 422.143(3)(c)

The VOC content limits for the cleaning solutions have been revised to be less than 70% by weight. This change is approvable since it is consistent with the VOC content limits in the 2006 CTG.

NR 422.142(2)(c)

The formula used to calculate the VOC vapor pressure limits for the cleaning solutions was revised from ''vapor pressure for each VOC component'' to ''VOC composite partial vapor pressure.'' This revision is approvable since it is consistent with VOC vapor pressure limits used in NR 422.143 and the latest 2006 CTG.

NR 422.142(3), NR 422.142(4), NR 422.143(5), and NR 422.143(6)

The monitoring and recordkeeping requirements were revised to clarify the temperature monitoring and maintenance requirements for control devices. These revisions are approvable since they clarify the rule requirements regarding monitoring and record keeping for lithographic printing operations.

NR 422.142(5)(b)2 and 422.143(7)(b)2

The stack test requirements for small sources were revised to remove periodic stack testing that requires retesting the control device every 48 months. These revisions apply only to sources with allowable VOC emissions that are less than 100 tons per year from lithographic printing facilities. The tested control efficiencies for these existing lithographic printing sources exceed 98%, and control efficiency does not go down as the control device ages. Therefore, it was determined that initial stack testing, periodic monitoring and recording of control device operating temperature, and maintenance of the control device are sufficient to demonstrate compliance with the control efficiency requirements for the control devices installed with the lithographic printing presses, and the periodic stack testing requirement for small sources could be removed. These revisions are approvable since they clarify the rule requirements regarding stack test testing for small lithographic printing sources and do not compromise the effectiveness of the rule.

NR 422.142(5)(b)1 and 422.143(7)(b)1

For the lithographic printing sources with allowable VOC emissions that are greater than 100 tons per year, the periodic testing requirement (every 24 months) will remain in the rule. The testing exception scenarios specified in NR 439.075(4), Wis. Adm. Code, still apply to these larger sources that could reduce the frequency of periodic testing for these sources. The language in NR 422.142(5)(b)1. and 422.143(7)(b)1., Wis. Adm. Code, was revised to clarify that the testing exceptions in NR 439.075(4), Wis. Adm. Code, apply to larger sources. These revisions are approvable since they clarify the rule requirements regarding stack testing for large lithographic printing sources.

NR 422.143(7)(d) and NR 422.142(5)(d)

Section NR 422.143(7)(d) was added to include the equation used to calculate composite partial vapor pressure for cleaning solutions. This revision clarifies how affected sources are to demonstrate compliance with the applicable limitations. Section NR 422.142(5)(d) was revised to incorporate this calculation method. These revisions are approvable since they clarify the rule requirements regarding composite partial vapor pressure calculations for lithographic printing operations.

NR 422.143—Lithographic Printing—Part 2

The applicable areas in this section were revised to cover new and modified lithographic printing facilities in Kewaunee and Manitowoc Counties. New control devices in these counties must meet the higher control efficiency requirements for add-on control devices specified in this section. Revisions in this section are approvable because they

are consistent with the most recent CTG and clarify the existing state rule requirements for lithographic printing operations.

IV. What action is EPA taking?

EPA is proposing to approve the Wisconsin SIP revisions to its rules relating to the control of VOC emissions from offset lithographic printing operations (WI Admin Code NR 422.02, 422.142, 422.143) submitted on December 13, 2019. EPA is soliciting public comment on the issues discussed in this document. These comments will be considered before taking final action.

V. Incorporation by Reference

In this proposed rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Wisconsin Administrative Code provisions NR 422.02, NR 422.142, and NR 422.143, published in the Wisconsin Register June 2019 No. 762b and became effective July 1, 2019. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 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 those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed 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, Intergovernmental relations, Ozone, Volatile organic compounds.

Dated: September 10, 2020.

Cheryl Newton,

Deputy Regional Administrator, Region 5.

[FR Doc. 2020–20517 Filed 9–24–20; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 85, No. 187

Friday, September 25, 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 AGRICULTURE

Submission for OMB Review; Comment Request

September 21, 2020.

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

Comments regarding this information collection received by October 26, 2020 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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

Foreign Agricultural Service

Title: Dairy Tariff-Rate Import Quota Licensing Program.

OMB Control Number: 0551–0001.

Summary of Collection: The Dairy Tariff-Rate Import Quota regulation (the Regulation) (7 CFR part 6.20–6.37) which governs the administration of the import licensing system applicable to most dairy products subject to tariff-rate quotas (TRQs). The importation of most cheese made from cow's milk and certain non-cheese dairy articles (butter, dried milks, and butter substitutes) are subject to TRQs and must be accompanied by an import license issued by the Department to enter at the lower tariff. Importers without licenses may enter these dairy articles but are required to pay the higher tariff. The Foreign Agricultural Service (FAS) will collect information using several forms.

Need and Use of the Information: FAS will use the collected information in the administration of the tariff-rate import quota licensing system for certain dairy products and the issuance of licenses in accordance with the Regulation. If the information were collected less frequently, FSA would be unable to issue licenses on an annual basis in compliance with the Import Regulation.

Description of Respondents: Business or other-for-profit.

Number of Respondents: 700.

Frequency of Responses: Record keeping, Reporting: Annually.

Total Burden Hours: 479.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–21149 Filed 9–24–20; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 22, 2020.

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

Comments regarding this information collection received by October 26, 2020 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function

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

Food Safety and Inspection Service

Title: In-Home Food Safety Behaviors and Consumer Education: Web Survey.

OMB Control Number: 0583–0178.

Summary of Collection: The U.S. Department of Agriculture's (USDA) Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary of Agriculture (7 CFR 2.18, 2.53) as specified in the Federal Meat Inspection Act and the Poultry Products Inspection Act (21 U.S.C. 453, *et seq.,* 601 et. seq.) FSIS protects the public by verifying that meat, poultry, and processed egg products are wholesome; not adulterated; and properly marked, labeled, and packaged. USDA FSIS' Office of Public Affairs and Consumer Education (OPACE) ensures that all segments of the farm-to-table chain receive valuable food safety information. The consumer education

programs developed by OPACE's inform the public on how to safely handle, prepare, and store meat, poultry, and processed egg products to minimize incidence or foodborne illness. FSIS will contact web-based surveys of consumers.

Need and Use of the Information: Finding from the web surveys will provide information on how FSIS communication programs and materials affect consumer understanding of recommended safe food handling practices and insight into how to effectively inform consumers of recommended practices. The results of this exploratory research will be used to enhance communication programs and materials to improve consumers' food safety behaviors and help prevent foodborne illness.

Description of Respondents: Individuals or households.

Number of Respondents: 9,092.

Frequency of Responses: Reporting: One time.

Total Burden Hours: 1,956.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–21223 Filed 9–24–20; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Federal Excess Personal Property and Firefighter Property Program Administration

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the revised information collection, Federal Excess Personal Property (FEPP) and Firefighter Property (FFP) Program Administration.

DATES: Comments must be received in writing on or before November 24, 2020 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to: USDA, Forest Service, Attention Clint Cross, USDA Forest Service, Washington Office Fire and Aviation Management (FAM), 1400 Independence Avenue Southwest, Mailstop 1107, Washington, DC 20250. Comments may also be submitted via email to: *clint.cross@usda.gov.*

The public may inspect comments received at USDA Forest Service, Washington Office during normal business hours. Visitors are encouraged to call ahead to 202–205–0995 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Clint Cross, Fire and Aviation Management by phone at 202–205–0995.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title: Federal Excess Personal Property (FEPP) and Firefighter Property (FFP) Program Administration.

OMB Number: 0596–0223.

Type of Request: Extension without Revision.

Abstract: Federal Excess Personal Property (FEPP) and Firefighter Property (FFP) Program Cooperative Agreements are available to State forestry agencies. The program administration provides participating State agencies with surplus Department of Defense and other Federal agencies equipment and supplies to be used in firefighting and emergency services. The FEPP program loans property to the State who in turn sub-loans the equipment and supplies to fire departments. The FFP program transfers ownership of many types of property to either the State agency or the individual fire department.

A cooperative agreement collects information from the participating State agencies and outlines the requirements and rules for the cooperation. Each State forestry agency shall provide an Accountable Officer who will be responsible for the integrity of the program within their respective State. For this reason, FEPP and FFP collects the state forestry agency contact information, the information of the Accountable Officer, and the requirements of participation in the FEPP and FFP programs.

A cooperative agreement is prepared by each State forestry agency that desires to participate in one, or both programs. Participating State agencies must submit separate agreements if they desire to be participants in both programs. Agreements will be processed and maintained at the United States Department of Agriculture, Forest Service, Fire and Aviation Management, Landscapes and Partnerships Assistant Director area and in each Forest Service Regional Office.

Since the FEPP property belongs to the Forest Service, the agency inventory system facilitates reporting by state agencies to the Forest Service on the status and location of the property. State agencies use the electronic database (Federal Excess Property Management Information System or FEPMIS) to submit information regarding the property make, model, serial number, acquisition value, location, and acquisition date when an item is acquired or no longer needed. Forest Service property management technicians will collect the information from FEPMIS and enter it into the National Finance Center database (CPAIS–PP), as required by Federal Property Management Regulations. Forest Service property management officers will analyze the data collected to ensure that the property accountability is accurate, and no misuse of property is occurring.

The authority to loan surplus supplies to state agencies comes from the Federal Property and Administration Services Act of 1949, 40 U.S.C. and grants the authority for the FEPP program. Authority to donate excess supplies comes from 10 U.S.C., Subtitle A, Part IV, Chapter 153, 2576b which grants the authority for the FFP program.

Estimate of Annual Burden: 1 hour and 2 minutes.

Type of Respondents: State Foresters and State Agency FEPP property managers.

Estimated Annual Number of Respondents: 65.

Estimated Annual Number of Responses per Respondent: 302.

Estimated Total Annual Burden on Respondents: 570 hours.

Comment is Invited:

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) 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) 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 the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the

submission request toward Office of Management and Budget approval.

Jaelith Hall-Rivera,

Associate Deputy Chief, State & Private Forestry.

[FR Doc. 2020–21219 Filed 9–24–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Longitudinal Employer-Household Dynamics (LEHD)

AGENCY: Census Bureau, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment on the proposed extension of the Longitudinal Employer-Household Dynamics data collection, prior to the submission of the information collection request (ICR) to OMB for approval.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before November 24, 2020.

ADDRESSES: Interested persons are invited to submit written comments by mail to *PRAcomments@doc.gov.* Please reference OMB Control Number 0607–1001 in the subject line of your comments. You may also submit comments, identified by Docket Number USBC–2020–0006, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Keith Bailey, Assistant Center Chief, (301) 763–2923, *keith.a.bailey@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

A 21st century statistical system must provide information about the dynamic economy quickly, using data assets efficiently while minimizing the burden of collecting and providing data and fully preserving confidentiality. The Census Bureau's Longitudinal Employer-Household Dynamics (LEHD) data infrastructure has demonstrated the power and usefulness of linking multiple business and employee data sets with state-of-the-art confidentiality protections to build a longitudinal national frame of jobs.

LEHD supports the Department of Commerce plan to improve American competitiveness and measures of innovation. It provides federal, state, and local policymakers and planners, businesses, private sector decision makers, and Congress with comprehensive and timely national, state, and local information on the dynamic nature of employers and employees.

LEHD significantly reduces the overall effort for the generation of its quarterly data product by:

- Leveraging existing federal administrative and state data.
- Avoiding costs required to expand existing surveys to collect the information directly.
- Reducing respondent burden by limiting the number of required resources to just the owners of the required data.

LEHD is a result of the Local Employment Dynamics (LED) Partnership. The LED Partnership is a partnership between the US Census Bureau and the Labor Market Information (LMI) agencies from 50 states, the District of Columbia, and the territories of Puerto Rico, Guam and the U.S. Virgin Islands. This partnership supports the development, promotion, and distribution of the following public-use data products:

- Quarterly Workforce Indicators (QWI)—LEHD's flagship data product is the Quarterly Workforce Indicators (QWI) which provides 32 statistical indicators on employment, job creation and destruction, accessions (hires and recalls), and separations (*e.g.*, exits and layoffs). These statistics are released for the following by-groups for all quarters for which data are available for each partner state:
  - County, metropolitan, and workforce development area.
  - Age, sex, race, and ethnicity categories.
  - Business characteristics (*i.e.,* detailed industry ownership type, firm age, firm size).
- LEHD Origin Destination Employment Statistics (LODES)—LODES data provide detailed spatial distributions of workers' employment and residential locations and the relation between the two at the Census Block level. LODES also provides characteristic detail on age, earnings, industry distributions, and other worker/business characteristics.
- Job-to-Job Flows (J2J)—Job-to-Job Flows (J2J) is a set of statistics on job mobility in the United States constructed by the LEHD program. J2J include statistics on: (1) The job-to-job transition rate, (2) hires and separations to and from employment, (3) earnings changes due to job change, and (4) characteristics of origin and destination jobs for job-to-job transitions. These statistics are available at the national, state, and metropolitan area levels and by worker and firm characteristics.
- Post-Secondary Employment Outcomes (PSEO)—Post-Secondary Employment Outcomes (PSEO) is an experimental set of statistics on the earnings and employment outcomes of graduates of select post-secondary institutions in the United States, and is constructed using data from LEHD. Earnings Outcomes reports earnings by institution, degree field, degree level and graduation cohort for 1, 5 and 10 years after graduation. Employment Flows tabulations provide the destination industry and geography of employment for graduates of an institution by degree level, degree field, and graduation cohort, for one, five, and 10 years after graduation. A limited number of institutions are available as part of the pilot release, but future updates will include additional post-secondary institutions.

These data products highlight state and local labor market dynamics that cannot be learned from other statistical sources and are therefore used in many different arenas. For example, the QWI can be used as local-labor-market controls in regression analysis; to identify long-term trends; to provide local context in performance evaluations; and for a host of other applications.

II. Method of Collection

The collection of data occurs in accordance with the rules established by interagency agreements with the participating state partners or data sharing agreements that have been established within the Census Bureau. For state partners, their data is submitted directly to the Census secure servers where Personally Identifiable Information (PII) goes through a process to replace it with Protected Identification Keys (PIK). This PVS (Person Identification Validation System) process also applies to all other administrative data that are used in the LEHD infrastructure. For all other required administration data, they are transferred or referenced by the LEHD production system. Data collection and processing also includes activities such as validation of data quality.

LEHD's data products are not generated by a traditional survey. Rather, all input data required is collected electronically as follows:

- State Unemployment Insurance (UI) and Quarterly Census of Employment and Wages (QCEW) are provided via encrypted File Transfer Protocol (FTP) through which each state LMI agency sends these data directly to the Census Bureau. This transfer of data is governed by Memorandum of Understandings (MOUs) with each state partner.
- Federal and Census Administrative data are acquired from other directorates or divisions within the Census Bureau with which an internal agreement has been established for the use of the data.
- Public Use data sets are acquired from publicly available websites or public File Transfer Protocol (FTP) servers.

III. Data

OMB Control Number: 0607–1001.

Form Number(s): None.

Type of Review: Regular submission, Request for an Extension, without Change, of a Currently Approved Collection.

Affected Public: State government, specifically labor market information bureaus and unemployment insurance administrators.

Estimated Number of Respondents: As defined in Table III–1.

Estimated Time per Response: No more than 8 hours required to identify and send/post required data sets.

Estimated Total Annual Burden Hours: 1728 hours.

Estimated Total Annual Cost to Public: $0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Voluntary.

Legal Authority: The authority to develop LEHD is 13 U.S.C. Section 6. Of course, confidentiality is assured by 13 U.S.C. Section 9.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–21233 Filed 9–24–20; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Small Business Innovation Research (SBIR) Program Application Cover Sheet

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before November 24, 2020.

ADDRESSES: Interested persons are invited to submit written comments by mail to Maureen O'Reilly, Management Analyst, NIST at *PRAcomments@doc.gov.* Please reference OMB Control Number 0693–0072 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Mary Clague, NIST SBIR Program Office, 301–975–4188, *mary.clague@nist.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The SBIR program was originally established in 1982 by the Small Business Innovation Development Act (Pub. L. 97–219), codified at 15 U.S.C. 638. It was then expanded and extended by the Small Business Research and Development (R&D) Enhancement Act of 1992 (Pub. L. 102–564) and received subsequent reauthorization and extensions that include Public Law 112–81, extending SBIR through September 30, 2022. The US Small Business Administration (SBA) serves as the coordinating agency for the SBIR program. It directs the agency implementation of SBIR, reviews progress, and reports annually to Congress on its operation.

The NIST SBIR Cover Sheet is the first page of each application that responds to the annual NIST SBIR Federal Funding Opportunity (FFO). The information collected in the Cover Sheet provides identifying information and demographic data for use in NIST's annual report to the SBA on the program.

II. Method of Collection

The information will be collected as part of the application process and will be submitted through grants.gov.

III. Data

OMB Control Number: 0693–0072.

Form Number(s): None.

Type of Review: Revision and extension of a current information collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 50 hours.

Estimated Total Annual Cost to Public: $0.

Respondent's Obligation: Mandatory.

Legal Authority:

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–21179 Filed 9–24–20; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Reopening of Comment Period for Section 232 National Security Investigation of Imports of Vanadium

AGENCY: Bureau of Industry and Security, Office of Technology Evaluation, U.S. Department of Commerce.

ACTION: Notice on reopening of comment period for previously published notice of request for public comments.

SUMMARY: On June 3, 2020, the Bureau of Industry and Security (BIS) published the *Notice of Request for Public Comments on Section 232 National Security Investigation of Imports of Vanadium.* The June 3 notice specified that the Secretary of Commerce initiated an investigation to determine the effects on the national security of imports of vanadium. This investigation was initiated under section 232 of the Trade Expansion Act of 1962, as amended. The June 3 notice invited interested parties to submit written comments, data, analyses, or other information pertinent to the investigation to the Department of Commerce's Bureau of Industry and Security. The deadline for written comments was July 20, 2020, and the rebuttal comment deadline was August 17, 2020. Today's notice reopens the public comment period with a deadline of October 9, 2020. BIS has posted the initial application for a section 232 investigation into imports of vanadium, titled ''Petition for Relief Under Section 232,'' (dated November 19, 2019) and supplemental information (dated April 2, 2020), as submitted by the applicant, on *http://www.regulations.gov* in the interests of transparency and to allow additional public comment. Public versions of the exhibits are available online (*see* the **ADDRESSES** section).

DATES: The due date for filing comments is October 9, 2020.

ADDRESSES: *Submissions:* All written comments on the notice must be addressed to Section 232 Vanadium Investigation and filed through the Federal eRulemaking Portal: *http://www.regulations.gov.* To submit comments via *http://www.regulations.gov,* enter docket number BIS–2020–0002 on the home page and click ''search.'' The site will provide a search results page listing all documents associated with this docket. Find a reference to this notice and click on the link entitled ''Comment Now!'' (For further information on using *http://www.regulations.gov,* please consult the resources provided on the website by clicking on ''How to Use This Site.'')

Application for investigation: The public versions of the application for a section 232 investigation, the later-submitted supplemental information, and the exhibits, are available online at *http://www.regulations.gov* under the docket number BIS–2020–0002.

FOR FURTHER INFORMATION CONTACT: Industrial Studies Division, Bureau of Industry and Security, U.S. Department of Commerce, (202) 482–5481, *Vanadium232@bis.doc.gov.* Unless otherwise protected by law, any information received from the public during the course of this investigation may be made publicly available. For more information about the section 232 program, including the regulations and the text of previous investigations, please see *www.bis.doc.gov/232.*

SUPPLEMENTARY INFORMATION:

Background

On June 3, 2020, (85 FR 34179), the Bureau of Industry and Security (BIS) published the *Notice of Request for Public Comments on Section 232 National Security Investigation of Imports of Vanadium.* The June 3 notice specified that on May 28, 2020, the Secretary of Commerce had initiated an investigation to determine the effects on the national security of imports of vanadium. This investigation was initiated under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862). (*See* the June 3 notice for additional details on the investigation and the request for public comments.)

Reopening of Public Comment Period

The June 3 notice included a comment period deadline of July 20, 2020 and a rebuttal comment period deadline of August 17, 2020. The Department of Commerce has determined that it is warranted to reopen the comment period for fourteen days. While comments may be submitted at any time, today's notice specifies that comments must be received by October 9, 2020 to be considered in the drafting of the final report. Today's notice reopens the comment period for fourteen days to allow for additional time for the public to submit comments on the investigation of imports of vanadium pursuant to BIS posting the November 19, 2019 application for an investigation by U.S. Vanadium LLC and AMG Vanadium LLC and the April 2, 2020 supplemental information on *http://www.regulations.gov.*

Posting of Application for Section 232 Investigation

BIS has posted the application for an investigation into imports of vanadium under section 232, titled ''Petition for Relief Under Section 232'', which was submitted by U.S. Vanadium LLC and AMG Vanadium LLC on November 19, 2019, on *http://www.regulations.gov.* BIS has also posted the supplemental information to the application, titled ''Supplement to Section 232 Petition'', which was submitted by U.S. Vanadium LLC and AMG Vanadium LLC on April 2, 2020, on *http://www.regulations.gov.* BIS has posted this application for an investigation and supplemental information in the interests of transparency and is allowing for additional public comments related to the application and supplemental information. The public versions of the exhibits are available online, except for those exhibits, which are noted with the bracketed text [CBI] (*see* the **ADDRESSES** section), containing confidential business information, which were not susceptible to public summarization.

BIS has confirmed with U.S. Vanadium LLC and AMG Vanadium LLC that all confidential information, including business proprietary information, has been properly redacted (as indicated by the presence of bracketing) from the public versions of the application and supplemental information posted on *http://www.regulations.gov.* Where text has been omitted from what has been posted the presence of confidential information is indicated by bracketing, with the confidential text omitted.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2020–21243 Filed 9–24–20; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–839]

Polyester Staple Fiber From the Republic of Korea; Rescission of Antidumping Duty Administrative Review; 2019–2020

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 polyester staple fiber from the Republic of Korea (Korea) for the period of review (POR) May 1, 2019, through April 30, 2020, based on the timely withdrawal of the requests for review.

DATES: Applicable May 1, 2020.

FOR FURTHER INFORMATION CONTACT: Jason Willoughby, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202–482–5509.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2020, Commerce published a notice of opportunity to request an administrative review of the AD order on polyester staple fiber from Korea for the POR of May 1, 2019, through April 30, 2020.[1] On May 29, 2019, Commerce received timely-filed requests from DAK Americas LLC and Auriga Polymers, Inc. (the petitioners)[2] for administrative reviews of Huvis Corporation (Huvis) and Toray Chemical Korea, Inc. (Toray) and from Huvis[3] for administrative review of itself, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b). Commerce received no other requests for administrative review.

On July 10, 2020, pursuant to these requests, and in accordance with 19 CFR 351.221(c)(1)(i), Commerce initiated an administrative review of the AD order on polyester staple fiber from Korea.[4] On July 20, 2020, the petitioners withdrew their request for an administrative review of Toray.[5] On August 3, 2020, the petitioners withdrew their request for an administrative review of Huvis.[6] On August 3, 2020, Huvis withdrew its request for an administrative review of itself.[7]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the publication date of the notice of initiation of the requested review. The petitioners and Huvis withdrew their requests within 90 days of the publication date of the notice of initiation. No other parties requested an administrative review of the order. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding the administrative review of the AD order on polyester staple fiber from Korea covering May 1, 2019, through April 30, 2020, in its entirety.

Assessment

Commerce intends to instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of polyester staple fiber from Korea during the POR at rates equal to the cash deposit of 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**.

Notification to Importers

This notice 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 doubled antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to all parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information. 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 terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 85 FR 25394 (May 1, 2020).

[2] *See* Petitioners' Letter, ''Polyester Staple Fiber—Review Request,'' dated May 29, 2020.

[3] *See* Huvis's Letter, ''Certain Polyester Staple fiber from Korea; Request for Administrative Review for 2019–2020 Period,'' dated June 1, 2020.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 41540 (July 10, 2020).

[5] *See* Petitioners' Letter, ''Polyester Staple Fiber from Korea—Withdrawal of Review Request for Toray Chemical Korea,'' dated July 20, 2020.

[6] *See* Petitioners' Letter, ''Polyester Staple Fiber from Korea—Withdrawal of Review Request for Huvis Corporation,'' dated August 3, 2020.

[7] *See* Huvis's Letter, ''Certain Polyester Staple Fiber from Korea; Withdrawal of Request for Administrative Review for 2019–2020 Period,'' dated August 2, 2019.

Dated: September 18, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–21194 Filed 9–24–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Security Mission for Economic Prosperity in Central America; Correction

AGENCY: Department of Commerce.

ACTION: Notice; correction.

SUMMARY: The United States Department of Commerce, International Trade Administration, published a document in the **Federal Register** of April 10, 2020, concerning the Security Mission for Economic Prosperity in El Salvador, Guatemala, and Honduras, scheduled from October 25–30, 2020. The document contained an incorrect deadline for submitting applications and incorrect dates for the event.

FOR FURTHER INFORMATION CONTACT: April Redmon, U.S. Commercial Service, U.S. Department of Commerce, Tel: 703–235–0103, Email: *April.redmon@trade.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of April 10, 2020, in FR Doc. 2020–07544, on page 20243, in the third column, correct the ''Background'' caption to read:

Due to recent developments in the region, it has been determined that to allow for optimal execution of recruitment and event scheduling for the mission, the dates of the mission are modified from October 25–30, 2020 to March 7–12, 2021. As a result of the shift of the event dates the date of the application deadline is also revised from August 14, 2020 to January 8, 2021 (and after that date if space remains and scheduling constraints permit). Interested U.S. companies and trade associations/organizations that have not already applied are encouraged to do so. The U.S. Department of Commerce will review applications and make selection decisions on a rolling basis in accordance with the original Notice published at 85 FR 12259 (March 2, 2020). The applicants selected will be notified as soon as possible. The proposed schedule is updated as follows *:

Proposed Timetable

Sunday, March 7

Arrive in San Salvador, El Salvador

Ice breaker reception for companies and core team members

Monday, March 8

Regional SCO will kick off *Regional Security Strategies for Economic Prosperity* conference to which the mission participants will attend and learn about regional priorities, policy and regulatory changes, and projects throughout the region.

Reception in the evening at the Chief of Mission's residence for companies, government officials, and local private sector guests.

Tuesday, March 9

One-on-one business matchmaking appointments in El Salvador

Wednesday, March 10

Arrival in Guatemala *or* Honduras for matchmaking and other networking

Friday, March 12

End of Mission

* *Note:* The final schedule of meetings, events, and site visits will depend on the availability of host government and business officials, specific goals of mission participants, flight availability and ground transportation options.

Dated: September 18, 2020.

Gemal Brangman,

Senior Advisor, Trade Missions, ITA Events Management Task Force.

[FR Doc. 2020–21239 Filed 9–24–20; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–520–804]

Certain Steel Nails From the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2018–2019

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

SUMMARY: On July 2, 2020, the Department of Commerce (Commerce) published the preliminary results of the administrative review of the antidumping duty order on certain steel nails (steel nails) from the United Arab Emirates (UAE). The period of review (POR) is May 1, 2018 through April 30, 2019. For the final results of this review, we continue to find that Middle East Manufacturing Steel LLC (MEM) made sales of subject merchandise at less than normal value during the POR.

DATES: Applicable September 25, 2020.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2312.

SUPPLEMENTARY INFORMATION:

Background

On July 2, 2020, Commerce published the *Preliminary Results* of the administrative review of the antidumping duty order on steel nails from the UAE.[1] The administrative review covers one producer/exporter of the subject merchandise, MEM. We gave interested parties an opportunity to comment on the *Preliminary Results.* We received no comments. Hence, these final results are unchanged from the *Preliminary Results.*[2]

Scope of the Order

The merchandise covered by this order includes certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails that are cut. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hot-dipping one or more times), phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw-threaded nails subject to this order are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Certain steel nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire.

Certain steel nails subject to this order are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.55, 7317.00.65, and 7317.00.75.

[1] *See Certain Steel Nails from the United Arab Emirates: Preliminary Results of Antidumping Duty Administrative Review; 2018–2019,* 85 FR 39884 (July 2, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] On July 21, 2020, Commerce tolled all deadlines in administrative reviews by 60 days. The deadline for the final results of this review is now December 29, 2020. *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020.

Excluded from the scope of this order are steel nails specifically enumerated and identified in ASTM Standard F 1667 (2011 revision) as Type I, Style 20 nails, whether collated or in bulk, and whether or not galvanized.

Also excluded from the scope of this order are the following products:

- Non-collated (*i.e.,* hand-drive or bulk), two-piece steel nails having plastic or steel washers (caps) already assembled to the nail, having a bright or galvanized finish, a ring, fluted or spiral shank, an actual length of 0.500″ to 8″ inclusive; an actual shank diameter of 0.1015″ to 0.166″, inclusive; and an actual washer or cap diameter of 0.900″ to 1.10″, inclusive;
- non-collated (*i.e.,* hand-drive or bulk), steel nails having a bright or galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500″ to 4″, inclusive; an actual shank diameter of 0.1015″ to 0.166″, inclusive; and an actual head diameter of 0.3375″ to 0.50″, inclusive;
- wire collated steel nails, in coils, having a galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500″ to 1.75″, inclusive; an actual shank diameter of 0.116″ to 0.166″, inclusive; and an actual head diameter of 0.3375″ to 0.500″, inclusive;
- non-collated (*i.e.,* hand-drive or bulk), steel nails having a convex head (commonly known as an umbrella head), a smooth or spiral shank, a galvanized finish, an actual length of 1.75″ to 3″, inclusive; an actual shank diameter of 0.131″ to 0.152″, inclusive; and an actual head diameter of 0.450″ to 0.813″, inclusive;
- corrugated nails. A corrugated nail is made of a small strip of corrugated steel with sharp points on one side;
- thumb tacks, which are currently classified under HTSUS 7317.00.10.00;
- fasteners suitable for use in powder-actuated hand tools, not threaded and threaded, which are currently classified under HTSUS 7317.00.20 and 7317.00.30;
- certain steel nails that are equal to or less than 0.0720 inches in shank diameter, round or rectangular in cross section, between 0.375 inches and 2.5 inches in length, and that are collated with adhesive or polyester film tape backed with a heat seal adhesive; and
- fasteners having a case hardness greater than or equal to 50 HRC, a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Final Results of the Administrative Review

As a result of this administrative review, we determine that the following weighted-average dumping margin exists for the POR:

Producer/exporter	Weighted-average dumping margin (percent)
Middle East Manufacturing Steel LLC	27.28

Assessment

Pursuant to section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.212(b), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For MEM, because its weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent), Commerce has calculated importer-specific antidumping duty assessment rates. We calculated importer- (or customer-) specific *ad valorem* antidumping duty assessment rates by dividing the total amount of dumping calculated for the importer's examined sales by the total entered value of the same sales for that importer, in accordance with 19 CFR 351.212(b)(1). However, for the reasons described in our preliminary results, we intend to issue assessment instructions to CBP on a per-unit basis.[3]

For entries of subject merchandise during the POR produced by MEM for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company involved in the transaction. We intend to issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

Cash Deposit Requirements

The following cash deposit requirements for estimated antidumping duties will be effective upon publication of the notice of final results of this review for all shipments of steel nails from the UAE entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act of these final results: (1) The cash deposit rate for MEM will be 27.28 percent, the weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by companies not covered in this review but covered in a prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 4.30 percent, the all-others rate established in the investigation, adjusted for the export-subsidy rate in the companion countervailing duty investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice 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 POR. 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 Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

[3] *See Preliminary Results* PDM at 11; *see also* Memorandum, ''Antidumping Duty Administrative Review of Certain Steel Nails from the United Arab Emirates: Preliminary Results Analysis Memorandum for Middle East Manufacturing Steel LLC,'' dated June 25, 2020 at 4–5, unchanged in these final results.

Notification to Interested Parties

Commerce is issuing and publishing these results in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(5).

Dated: September 21, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–21195 Filed 9–24–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA396]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys Off of Massachusetts, Rhode Island, Connecticut, New York and New Jersey

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Equinor Wind, LLC (Equinor) to incidentally harass, by Level B harassment only, marine mammals during site characterization surveys off the coast in the Atlantic Ocean in the area of the Commercial Leases of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0520 and OCS–A 0512) and along potential submarine cable routes to a landfall location in Massachusetts, Rhode Island, Connecticut, New York or New Jersey.

DATES: This authorization is effective for one year from September 20, 2020 to September 19, 2021.

FOR FURTHER INFORMATION CONTACT: Rob Pauline, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

Summary of Request

On January 30, 2020, NMFS received a request from Equinor for an IHA to take marine mammals incidental to marine site characterization surveys in the Atlantic Ocean in the area of the Commercial Leases of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0520 and OCS–A 0512) and along potential submarine cable routes to a landfall location in Massachusetts, Rhode Island, Connecticut, New York or New Jersey. A revised application was received on March 31, 2020. NMFS deemed that request to be adequate and complete. On May 22, 2020 Equinor notified NMFS of a revision to their planned activities and submitted a revised IHA application reflecting the change. Equinor's request is for the take of 17 marine mammal stocks by Level B harassment only. Neither Equinor nor NMFS expects serious injury or mortality to result from this activity and the activity is expected to last no more than one year, therefore, an IHA is appropriate.

Description of Activity

Equinor plans to conduct marine site characterization surveys, including high-resolution geophysical (HRG) and geotechnical surveys, in the area of Commercial Leases of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf OCS–A 0520 and OCS–A 0512 (Lease Areas) and along potential submarine cable routes offshore Massachusetts, Rhode Island, Connecticut, New York and New Jersey.

The purpose of the planned surveys is to support the preliminary site characterization, siting, and engineering design of offshore wind project facilities and submarine cables within the Lease Areas and in export cable route areas (ECRAs). As many as two survey vessels may operate concurrently as part of the planned surveys. Underwater sound resulting from Equinor's planned surveys has the potential to result in the incidental take of marine mammals in the form of behavioral harassment.

The HRG survey activities planned by Equinor are described in detail in the notice of proposed IHA (85 FR 37848; June 24, 2020). The HRG equipment planned for use is shown in Table 1.

TABLE 1—SUMMARY OF VESSEL-BASED HRG SURVEY EQUIPMENT PLANNED FOR USE BY EQUINOR WITH THE POTENTIAL TO RESULT IN THE TAKE OF MARINE MAMMALS

HRG equipment type	Equipment	Operating frequency	SL rms (dB re 1 μPa m)	SL pk (dB re 1 μPa m)	Pulse duration (milli-second)	Repetition rate (Hz)	Beam width (degrees)
Medium Sub-bottom Profiler [2].	Geo-Source 400 Tip Sparker Source (800 J).	0.25 to 3.25	203	213	2	4	Omni-directional.

[1] Sound source characteristics from manufacturer specifications.

[2] SLs as reported for the ELC820 sparker in Crocker and Fratantonio (2016) which represents the most applicable proxy to the Geo-Source 800–J sparker expected for use during Equinor's planned surveys.

As described above, a detailed description of the planned HRG surveys is provided in the **Federal Register** notice for the proposed IHA (85 FR 37848; June 24, 2020). Since that time, no changes have been made to the planned HRG survey activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specified activity. Mitigation, monitoring, and reporting measures are described in detail later in this document (please see Mitigation and Monitoring and Reporting below).

Comments and Responses

A notice of NMFS's proposal to issue an IHA to Equinor was published in the **Federal Register** on June 24, 2020 (85 FR 37848). That notice described, in detail, Equinor's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received comment letters from the Marine Mammal Commission (Commission) and a group of environmental non-governmental organizations (ENGOs). The letter was submitted jointly by the Natural Resources Defense Council, National Wildlife Federation, Conservation Law Foundation, Mass Audubon, Wildlife Conservation Society, NY4WHALES, Defenders of Wildlife, Surfrider Foundation, Connecticut Audubon Society, WDC Whale and Dolphin Conservation, International Marine Mammal Project of Earth Island Institute, Inland Ocean Coalition, Gotham Whale, International Fund for Animal Welfare, Marine Mammal Alliance Nantucket, Oceanic Preservation Society, and Sanctuary Education Advisory Specialists. NMFS has posted the comments online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* A summary of the public comments received from the Commission and ENGOs as well as NMFS' responses to those comments are below. Please see the comment letters, available online, for full details of the comments and rationale.

Comment 1: The Commission recommended that NMFS use consistent source levels for the same equipment that operates under the same parameters amongst the various action proponents. The Commission noted that NMFS used inconsistent source levels for the GeoMarine Dual 400 sparker 800J in the proposed notice and another recently proposed IHA. In the recently proposed IHA (85 FR 36537; June 17, 2020) the applicant (Dominion Energy) used a source level of 200 dB re 1 μPa root-mean-square (rms) and 210 dB re 1 μPa peak based on manufacturers data. Equinor and NMFS proposed to use a source level of 203 dB re 1 μPa rms and 213 dB re 1 μPa peak for this IHA based on source levels for the ELC820 sparker as listed in Crocker and Fratantonio (2016).

Response: NMFS encourages applicants to use data from Crocker and Fratantonio (2016), as we believe it to be the best available data regarding source levels. If information for specific equipment is not available in that document, the applicant should use manufacturer data. In this instance, Equinor felt that the manufacturer's data did not accurately reflect how the device was going to be utilized and, therefore, an appropriate proxy source from Crocker and Fratantonio (2016) was used. Note that the specifications used by Equinor results in a Level B harassment isopleth (141 m) that is more conservative than is found in the proposed IHA for Dominion (100 m). No revisions to Equinor's final IHA are required. While NMFS appreciates the Commission's call for consistency in the application of available data across applicants, it would not be appropriate to assume that all surveys will use a particular source in the same way and, therefore, it may be appropriate (as is the case here) to use different data sources or values to address these differences.

Comment 3: The Commission observed that neither Equinor nor NMFS specified in a separate table in the proposed IHA what input parameters and thresholds were used to estimate the Level A harassment zones, which is inconsistent with other recently proposed authorizations that used NMFS's user spreadsheet. The Commission noted that Equinor, and in turn NMFS, underestimated the Level A harassment zones. According to the Commission, the Level A harassment zones should have been based on the information provided in Table 2, an average vessel speed of 4 knots (85 FR 37848; June 24, 2020), and the impulsive thresholds and would have resulted in a Level A harassment zone of 1.2 m rather than <1 m for low frequency (LF) cetaceans and 8.4 m rather than <1 m for high frequency (HF) cetaceans for the cumulative sound exposure level thresholds. The Commission recommended that NMFS specify the input parameters and thresholds used to validate Level A harassment zones provided by the action proponent using NMFS's user spreadsheet.

Response: NMFS has provided User Spreadsheet inputs for the GeoMarine Dual 400 sparker 800J as shown in Table 4. Inputs were not provided for the USBL since impacts to such devices are considered to be de minimis based on small zone sizes. This information requested by the commenter is contained in Equinor's application.

Comment 4: The Commission recommended that NMFS use its revised user spreadsheet, in-beam source levels, the actual beamwidth, and the maximum water depth in the Survey Area to estimate the Level B harassment zones for all future proposed authorizations involving HRG sources.

Response: NMFS concurs with the Commission's recommendation. NMFS' interim guidance for determining Level B harassment zones from HRG sources includes all of the parameters listed above. We recommend that applicants employ these tools, as we believe they are generally the best methodologies that are currently available.

Comment 5: The Commission recommended that NMFS consult with its acoustic experts to determine how to estimate Level A harassment zones accurately, what Level A harassment zones are actually expected, and whether it is necessary to estimate Level A harassment zones for HRG surveys in general.

Response: NMFS concurs with the Commission's recommendation and works with our acoustic experts to evaluate the appropriate methods for determining the potential for Level A harassment from HRG surveys.

Comment 6: To ensure that in-situ data are collected and analyzed appropriately, the Commission recommended that NMFS and (Bureau of Ocean Energy Management (BOEM) expedite efforts to develop and finalize methodological and signal processing standards for HRG sources.

Response: NMFS concurs with the Commission that methodological and signal processing standards for HRG sources is warranted and is working on developing such standards. However, the effort is resource-dependent and NMFS cannot ensure such standards will be developed within the Commission's preferred time frame.

Comment 7: The Commission recommended that Level B harassment takes should be discounted for Equinor, consistent with the approach NMFS has taken for Dominion and considering that the revised Level B harassment zone is the same size or smaller than the shut-down zones. For the same reason, the Commission also recommended that NMFS follow a consistent approach across authorizations regarding the discounting of takes by Level B harassment.

Response: NMFS generally concurs with the Commission's position regarding discounting Level B harassment takes for species in which the shut-down zones are equal to or greater than the Level B harassment zones. We agree that this tenet applies during daylight. However, during night operations it is possible that some unseen number of marine mammals could enter into the Level B harassment zone. Additionally, since shutdown is waived for certain dolphin genera, take of these species could occur during both day and night operations. Note that in Equinor's case the Level B harassment zone (141 m) was not revised for reasons stated in response to Comment 1 and is larger than the shutdown zone (100 m). Therefore, discount of takes by Level B harassment by Equinor and Dominion are not directly comparable.

Comment 9: The Commission recommended that NMFS evaluate the impacts of sound sources consistently across all applications and provide notice in its guidance to applicants and to the public regarding those sources that it has determined to be *de minimis.*

Response: NMFS concurs with the Commission's recommendation and is currently working together with BOEM to develop a tool to assist applicants and NMFS in more quickly and efficiently identifying activities and mitigation approaches that are unlikely to result in take of marine mammals.

Comment 10: The Commission recommended that NMFS consider whether, in situations involving HRG surveys, incidental harassment authorizations are necessary given the small size of the Level B harassment zones, the various required shutdown requirements, and BOEM's lease-stipulated requirements. The Commission recommended that NMFS should evaluate whether take needs to be authorized for those sources that are not considered *de minimis,* including sparkers, and for which implementation of the various mitigation measures should be sufficient to avoid Level B harassment takes.

Response: NMFS concurs with the Commission's recommendation. However, NMFS has evaluated whether taking needs to be authorized for those sources that are not considered *de minimis,* including sparkers and boomers, factoring into consideration the effectiveness of mitigation and monitoring measures, and we have determined that implementation of mitigation and monitoring measures cannot ensure that all take can be avoided during all HRG survey activities under all circumstances at this time. If and when we are able to reach such a conclusion, we will re-evaluate our determination that incidental take authorization is warranted for these activities.

Comment 11: The Commission recommended that NMFS require Equinor to report as soon as possible and cease project activities immediately in the event of an unauthorized injury or mortality of a marine mammal, including from a vessel strike, until NMFS's Office of Protected Resources and the New England/Mid-Atlantic Regional Stranding Coordinator determine whether additional measures are necessary to minimize the potential for additional unauthorized takes.

Response: NMFS has imposed a suite of measures in this IHA to reduce the risk of vessel strikes and does not anticipate, and has not authorized, any takes associated with vessel strikes. Further, in the event of a ship strike Equinor is required both to collect and report an extensive suite of information that NMFS has identified in order to evaluate the ship strike, and to notify OPR and the New England/Mid-Atlantic Regional Stranding Coordinator as soon as feasible. At that point, as the Commission suggests, NMFS would work with the applicant to determine whether there are additional mitigation measures or modifications that could further reduce the likelihood of vessel strike for the activities. However, given the existing requirements and the very low likelihood of a vessel strike occurring, the protective value of ceasing operations while NMFS and Equinor discuss potential additional mitigations in order to avoid a second highly unlikely event during that limited period is unclear.

NMFS does not expect that the proposed activities, including HRG surveys, cable-lay activities and offshore pile driving activities, have the potential to result in injury or mortality to marine mammals and therefore does not agree that a blanket requirement for project activities to cease would be warranted. While injury or mortality to marine mammals is possible due to vessel strike, NMFS does not agree that a requirement for a vessel that is operating on the open water to suddenly stop operating is practicable, and it is unclear what mitigation benefit would result from such a requirement in relation to vessel strike. The Commission does not suggest what measures other than those prescribed in this IHA would potentially prove more effective in reducing the risk of strike. Therefore, we have not included this requirement in the authorization. NMFS retains authority to modify the IHA and cease all activities immediately based on a vessel strike and will exercise that authority if warranted.

Comment 12: The Commission considers the renewal process to be inconsistent with the statutory requirements under section 101(a)(5)(D) of the MMPA and recommend that NMFS refrain from issuing renewals for any authorization.

Response: In prior responses to comments about IHA Renewals (*e.g.,* 84 FR 52464; October 02, 2019), NMFS has explained how the Renewal process, as implemented, is consistent with the statutory requirements contained in section 101(a)(5)(D) of the MMPA and, therefore, we plan to continue to issue qualifying Renewals when the requirements outlined on our website are met. Thus, NMFS agrees with the Commission's recommendation that we should not issue a Renewal for any authorization unless it is consistent with the procedural requirements specified in section 101(a)(5)(D)(iii) of the MMPA.

Additionally, regarding the recommendation to use abbreviated notices, we agree that they are a useful tool by which to increase efficiency in conjunction with the use of Renewals, but we disagree that their use alone would equally fulfill NMFS' goal to maximize efficiency and provide regulatory certainty for applicants, with no reduction in protections for marine mammals. The Renewal process, with its narrowly described qualifying actions, specific issuance criteria, and additional 15-day comment period, allows for NMFS to broadly commit to a 60-day processing time. This commitment, which would not be possible in the absence of this narrow definition and the 15-day additional comment period, provides both a meaningfully shortened processing time and regulatory certainty for planning purposes. Increasing the comment period for Renewals to 30 days would increase processing time by 25% and is unnecessary, given the legal sufficiency of the process as it stands, as described above, and no additional protections for marine mammals that would result. NMFS uses abbreviated notices when

proposed actions do not qualify for Renewals, but still allow for reliance upon previous documentation and analyses. These abbreviated notice projects, which deviate from the narrow qualifications of a Renewal, require some additional time for the analyst to appropriately review the small changes from the initial IHA and further necessitate the 30-day public review required for a new IHA. NMFS has evaluated the use of both the Renewal and abbreviated notice processes, as well as the associated workload for each, and determined that using both of these processes provides maximum efficiency for the agency and applicants, regulatory certainty, and appropriate protections for marine mammals consistent with the statutory standards. Using the abbreviated notice process, however, is unnecessary and unwarranted for projects that meet the narrow qualifications for a Renewal IHA.

As previously noted, we have found that the Renewal process is consistent with the statutory requirements of the MMPA and, further, promotes NMFS' goals of improving conservation of marine mammals and increasing efficiency in the MMPA compliance process. Therefore, we intend to continue implementing the Renewal process.

Comment 13. The NGOs objected to NMFS' process to consider extending any one-year IHA with a truncated 15-day comment period as contrary to the MMPA.

Response: NMFS' IHA Renewal process meets all statutory requirements. All IHAs issued, whether an initial IHA or a Renewal IHA, are valid for a period of not more than one year. And the public has at least 30 days to comment on all proposed IHAs, with a cumulative total of 45 days for IHA Renewals. As noted above, the *Request for Public Comments* section made clear that the agency was seeking comment on both the initial proposed IHA and the potential issuance of a Renewal for this project. Because any Renewal (as explained in the *Request for Public Comments* section) is limited to another year of identical or nearly identical activities in the same location (as described in the *Description of Proposed Activity* section) or the same activities that were not completed within the one-year period of the initial IHA, reviewers have the information needed to effectively comment on both the immediate proposed IHA and a possible one-year Renewal, should the IHA holder choose to request one in the coming months.

While there will be additional documents submitted with a Renewal request, for a qualifying Renewal these will be limited to documentation that NMFS will make available and use to verify that the activities are identical to those in the initial IHA, are nearly identical such that the changes would have either no effect on impacts to marine mammals or decrease those impacts, or are a subset of activities already analyzed and authorized but not completed under the initial IHA. NMFS will also confirm, among other things, that the activities will occur in the same location; involve the same species and stocks; provide for continuation of the same mitigation, monitoring, and reporting requirements; and that no new information has been received that would alter the prior analysis. The Renewal request will also contain a preliminary monitoring report, but that is to verify that effects from the activities do not indicate impacts of a scale or nature not previously analyzed. The additional 15-day public comment period provides the public an opportunity to review these few documents, provide any additional pertinent information and comment on whether they think the criteria for a Renewal have been met. Between the initial 30-day comment period on these same activities and the additional 15 days, the total comment period for a Renewal is 45 days.

Comment 14: The ENGOs recommended NMFS establish seasonal restrictions on site assessment and characterization activities in the Project Area with the potential to injure or harass the North Atlantic right whale between November 1, 2020 and April 30, 2021. This recommendation is in addition to the existing seasonal restrictions detailed in the Proposed IHA (*i.e.,* Off Race Point Seasonal Management Area (''SMA'') and Cape Cod Bay SMA from January through May and in the Great South Channel SMA from April through July 3).

Response: NMFS appreciates the value of seasonal restrictions under certain circumstances. As part of the 2008 NOAA Ship Strike Rule (73 FR 60173; October 10, 2008) NMFS has designated SMAs along the eastern seaboard based on known North Atlantic right whale movement, distribution, and aggregation patterns. Additionally, temporary dynamic management areas (DMAs) are established whenever an aggregation of three or more whales are sighted within 2–3 miles of each other outside of active SMAs. Note that SELC proposes to prohibit all HRG activities across an expansive area. Halting all HRG surveys for six months each year in an area with active offshore wind energy projects under development is simply not practicable. We also determined that seasonal restrictions are not warranted since impacts to North Atlantic right whales from HRG surveys would be limited to behavioral harassment (*i.e.,* Level B harassment) in the form of temporary avoidance of the area. Such responses that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Ellison *et al.,* 2012).

NMFS has required applicants to observe seasonal restrictions when such actions are both warranted and practicable. NMFS issued an IHA to Vineyard Winds (85 FR 26940; May 6, 2020) for marine site characterization surveys off the southern New England coast. NMFS reviewed the best available North Atlantic right whale abundance data for the planned survey area (Roberts *et al.* 2017; Kraus *et al.* 2016) and determined that North Atlantic right whale abundance is significantly higher in the period starting in late winter and extending to late spring in specific sections of the survey area. Based on this information NMFS defined seasonal restriction areas that Vineyard Wind must follow when conducting HRG surveys. Survey activities may only occur in the Cape Cod Bay SMA and off of the Race Point SMA during the months of August and September to ensure sufficient buffer between the SMA restrictions (January to May 15) and known seasonal occurrence of North Atlantic right whales north and northeast of Cape Cod (fall, winter, and spring).

Vineyard Wind planned to operate up to nine survey vessels concurrently but they must limit to three the number of survey vessels that will operate concurrently from March through June within the lease areas (OCS–A 0501 and 0487) and OECC areas north of the lease areas up to, but not including, coastal and bay waters. An additional seasonal restriction area was defined south of Nantucket and is effect from December to February in the area. The seasonal restrictions described above will help to reduce both the number and intensity of North Atlantic right whale takes. NMFS was concerned that operating more than three vessels concurrently within a relatively small area could negatively impact North Atlantic right whales. Given the elevated concentrations of North Atlantic right whales in the delineated areas, NMFS determined that seasonal restrictions were warranted. NMFS also worked with Vineyard Wind to ensure that the measures were practicable.

Comment 15: The ENGOs recommended that NMFS should require developers to operate sub-bottom profilers at power settings that achieve the lowest practicable source level for the objective.

Response: Equinor has selected the equipment necessary to achieve their objectives. We have evaluated the effects expected as a result of use of this equipment, made the necessary findings, and imposed mitigation requirements sufficient to achieve the least practicable adverse impact on the affected species and stocks of marine mammals. It is not within NMFS' purview to make judgments regarding what constitutes the ''lowest practicable source level'' for an operator's survey objectives.

Comment 16: The ENGOs recommended that surveys should not be done at night or during times of poor visibility to maximize the probability that the North Atlantic right whale and other endangered and protected large whale species are detected and confirmed clear of the exclusion zone.

Response: We acknowledge the limitations inherent in detection of marine mammals at night. However, no injury is expected to result even in the absence of mitigation, given the very small estimated Level A harassment zones. Any potential impacts to marine mammals authorized for take would be limited to short-term behavioral responses. Restricting surveys in the manner suggested by the commenters may reduce marine mammal exposures by some degree in the short term, but would not result in any significant reduction in either intensity or duration of noise exposure. Vessels would also potentially be on the water for an extended time introducing noise into the marine environment. The restrictions recommended by the ENGOs could result in the surveys spending increased time on the water, which may result in greater overall exposure to sound for marine mammals and increase the risk of a vessel strike; thus the commenters have not demonstrated that such a requirement would result in a net benefit. Additionally, restricting the applicant to daylight operations would have the potential to result in lengthy shutdowns of the survey equipment, which could result in the applicant failing to collect the data they have determined is necessary and, subsequently, the need to conduct additional surveys the following year. This would result in significantly increased costs incurred by the applicant. Thus, the restriction suggested by the commenters would not be practicable for the applicant to implement. In consideration of potential effectiveness of the recommended measure and its practicability for the applicant, NMFS has determined that restricting survey operations to daylight hours when visibility is unimpeded is not warranted or practicable in this case.

Comment 17: The ENGOs recommended that developers should be required to monitor an exclusion zone (EZ) for the North Atlantic right whale of 1,000 m and 500 m for other endangered and protected large whale species.

Response: Regarding the recommendation for 500-m EZ for endangered and protected marine mammals and 1,000-m EZ specifically for North Atlantic right whales, NMFS has determined that the 500-m EZ, as required in the IHA, is sufficiently protective. We note that the 500-m EZ for North Atlantic right whales exceeds the modeled distance to the largest Level B harassment isopleth distance (141 m) by a factor of more than three. Thus, we are not requiring shutdown if a North Atlantic right whale is sighted beyond 500-m or other marine mammal is observed beyond 100 m.

Comment 18: The ENGO's recommended that monitoring should consist of a combination of visual monitoring by PSOs and passive acoustic monitoring at all times that survey work is underway.

Response: There are several reasons why we do not agree that use of PAM is warranted for 24-hour HRG surveys. While NMFS agrees that PAM can be an important tool for augmenting detection capabilities in certain circumstances, its utility in further reducing impact for Equinor's proposed HRG survey activities is limited. First, for this activity, the area expected to be ensonified above the Level B harassment threshold is relatively small (a maximum of 141 m as described in the Estimated Take section)—this reflects the fact that, to start with, the source level is comparatively low and the intensity of any resulting impacts would be lower level and, further, it means that inasmuch as PAM will only detect a portion of any animals exposed within a zone, the overall probability of PAM detecting an animal in the harassment zone is low—together these factors support the limited value of PAM for use in reducing take with smaller zones. PAM is only capable of detecting animals that are actively vocalizing, while many marine mammal species vocalize infrequently or during certain activities, which means that only a subset of the animals within the range of the PAM would be detected (and potentially have reduced impacts). Additionally, localization and range detection can be challenging under certain scenarios. For example, odontocetes are fast moving and often travel in large or dispersed groups which makes localization difficult. In addition, the ability of PAM to detect baleen whale vocalizations is further limited due to being deployed from the stern of a vessel, which puts the PAM hydrophones in proximity to propeller noise and low frequency engine noise which can mask the low frequency sounds emitted by baleen whales, including North Atlantic right whales. We also note that the effects to North Atlantic right whales, and all marine mammals, from the types of surveys authorized in this IHA are expected to be limited to low level behavioral harassment even in the absence of mitigation; no injury is expected or authorized.

Additionally, since Equinor's PSOs will be on duty only during daylight operations night vision equipment is not required. This is standard practice during HRG surveys and is discussed in greater detail below.

Comment 19: The ENGOs recommended that four PSOs should be required to implement a two-on/two-off shift schedule so no single PSO is responsible for monitoring more than 180°.

Response: NMFS does not agree with the commenters that a minimum of four PSOs should be required, following a two-on/two-off rotation, to meet the MMPA requirement that mitigation must effect the least practicable adverse impact upon the affected species or stocks and their habitat. NMFS typically requires that a single PSO must be stationed at the highest vantage point and engaged in general 360-degree scanning during daylight hours. The monitoring reports submitted to NMFS have demonstrated that PSOs active only during daylight operations are able to detect marine mammals and implement appropriate mitigation measures.

Comment 20: The ENGOs suggested that it should be NMFS' top priority to consider any initial data from state monitoring efforts, passive acoustic monitoring data, opportunistic marine mammal sightings data, satellite telemetry, and other data sources, because the models used by NMFS do not adequately capture increased use of the survey areas by North Atlantic right whales. Further, these commenters state that the density models NMFS uses result in an underestimate of take, and do not fully reflect the abundance,

distribution, and density of marine mammals for the U.S. East Coast.

Response: NMFS will review any recommended data sources and will continue to use the best available information. We welcome future input from interested parties on data sources that may be of use in analyzing the potential presence and movement patterns of marine mammals, including North Atlantic right whales, in New England waters. NMFS will review any recommended data sources and will continue to use the best available information. NMFS used the best scientific information available at the time the analyses for the proposed IHA were conducted—in this case the marine mammal density models developed by the Duke Marine Geospatial Ecology Lab (MGEL) (Roberts *et al.* 2016, 2017, 2018)—to inform our determinations in the proposed IHA. The ENGOs are correct in their statement that North Atlantic right whale distribution has shifted in recent years. In fact, a new North Atlantic right whale density model was recently released by Roberts et al (2020). The model shows approximately double the density of North Atlantic right whales in the activity area as was considered in the proposed IHA. We have adjusted the take estimates accordingly in the final IHA.

Comment 21: The ENGOs advised NMFS to develop a dataset that accurately reflects marine mammal presence for future IHAs.

Response: NMFS has relied on the best available science in issuing this IHA, but we generally agree with the ENGOs and welcome the opportunity to participate in fora where implications of such data and development of a dataset would be discussed.

Comment 22: The ENGOs recommended that NMFS should carefully analyze the cumulative impacts on the North Atlantic right whale and other protected species from the proposed survey activities and other survey activities contemplated in other lease areas.

Response: The MMPA grants exceptions to its broad take prohibition for a ''specified activity.'' 16 U.S.C. 1371(a)(5)(A)(i). Cumulative impacts (also referred to as cumulative effects) is a term that appears in the context of the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA), but it is defined differently in those contexts. Neither the MMPA nor NMFS' codified implementing regulations address consideration of other unrelated activities and their impacts on populations. However, the preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989) states in response to comments that the impacts from other past and ongoing anthropogenic activities are to be incorporated into the negligible impact analysis via their impacts on the baseline. Accordingly, NMFS here has factored into its negligible impact analysis the impacts of other past and ongoing anthropogenic activities via their impacts on the baseline (*e.g.,* as reflected in the density/distribution and status of the species, population size and growth rate, and other relevant stressors).

Comment 23: The ENGOs recommended that NMFS make available information regarding source levels and the reflection of sound from Surveyor Remotely Operated Vehicle (SROVs) to allow a full evaluation of the effectiveness of SROVs in entirely avoiding harassment of marine mammals.

Response: SROVs contain the same types of HRG equipment that are commonly found on full-size survey vessels. Therefore, the source levels and directionality of specific equipment located on SROVs should be the same as when it is operating from a survey vessel. The operating parameters and specifications associated with HRG equipment is generally available from device manufacturers or can be found in studies that quantified characteristics of sounds radiated by commercial marine geophysical survey systems (*e.g.,* Crocker and Fratantonio 2016). As the ENGOs noted, SROV sound sources are generally downward facing and located at a depth of no more than 6 m above the seabed while actively surveying. Given the beam direction and shallow operational depths, it is highly unlikely a marine mammal would swim directly under an SROV and be exposed to sound at levels that could result in injury or behavioral modification.

Comment 24: The ENGOs noted that Equinor committed to a number of mitigation measures in the IHA application (*e.g.,* passive acoustic monitoring, infrared equipment) that are not required by the Proposed IHA. The ENGOs recommended that NMFS incorporate these measures into the Final IHA.

Response: NMFS does not necessarily include mitigation measures in IHAs that are mandated by other regulatory entities or which an applicant plans to voluntarily employ. We generally do not require mitigation measures that we do not believe are effective or practicable. We explained why we believe PAM is not warranted in response to another comment. As far as visual monitoring at night, we have not required night monitoring because it was presumed to be ineffective. However, as night vision technology continues to improve it may be considered effective at some point. If an applicant voluntarily proposes to employ PSOs at night, we include the measure as part of the IHA. Similarly, if pre-clearance and ramp-up operations are to be monitored at night, then PSOs should be provided with night vision equipment.

Comment 25: The ENGOs recommended that NMFS develop, and subsequently require, a robust and effective real-time monitoring and mitigation system for North Atlantic right whales and other endangered and protected species (*e.g.,* fin whales, sei whales, humpback whales).

Response: NMFS is generally supportive of this concept. A network of near real-time baleen whale monitoring devices are active or have been tested in portions of New England and Canadian waters. These systems employ various digital acoustic monitoring instruments which have been placed on autonomous platforms including slocum gliders, wave gliders, profiling floats and moored buoys. Systems that have proven to be successful will likely see increased use as operational tools for many whale monitoring and mitigation applications.

NOAA Fisheries recently published ''Technical Memorandum NMFS-OPR-64: North Atlantic Right Whale Monitoring and Surveillance: Report and Recommendations of the National Marine Fisheries Service's Expert Working Group'' which is available at: *https://www.fisheries.noaa.gov/resource/document/north-atlantic-right-whale-monitoring-and-surveillance-report-and-recommendations.* This report summarizes a workshop NOAA Fisheries convened to address objectives related to monitoring North Atlantic right whales and presents the Expert Working Group's recommendations for a comprehensive monitoring strategy to guide future analyses and data collection. Among the numerous recommendations found in the report, the Expert Working Group encouraged the widespread deployment of auto-buoys to provide near real-time detections of NARW calls that visual survey teams can then respond to for collection of identification photographs or biological samples. Equinor must consult NMFS' North Atlantic right whale reporting systems for the presence of North Atlantic right whales throughout survey operations for the establishment of a Dynamic Management Area (DMA) and is immediately report a sighting of a North

Atlantic right whale to the NMFS North Atlantic Right Whale Sighting Advisory System.

Comment 26: The ENGOs asserted that the agency's assumptions regarding mitigation effectiveness are unfounded and cannot be used to justify any reduction in the number of takes authorized as was done for North Atlantic right whales. The reasons cited include: (i) the agency's reliance on a 160 dB threshold for behavioral harassment that is not supported by the best available scientific information; (ii) the agency relies on the assumption that marine mammals will take measures to avoid the sound even though studies have not found avoidance behavior to be generalizable among species and contexts and even though avoidance may itself constitute take under the MMPA; and (iii) the mitigation and monitoring protocols prescribed by the agency are inadequate at protecting marine mammals and do not comply with the MMPA.

Response: The three comments provided by the ENGOs are addressed individually below.

(i) NMFS acknowledges that the 160-dB rms step-function approach is simplistic, and that an approach reflecting a more complex probabilistic function may more effectively represent the known variation in responses at different levels due to differences in the receivers, the context of the exposure, and other factors. The commenters suggested that our use of the 160-dB threshold implies that we do not recognize the science indicating that animals may react in ways constituting behavioral harassment when exposed to lower received levels. However, we do recognize the potential for Level B harassment at exposures to received levels below 160 dB rms, in addition to the potential that animals exposed to received levels above 160 dB rms will not respond in ways constituting behavioral harassment (*e.g.,* Malme et al., 1983, 1984, 1985, 1988; McCauley et al., 1998, 2000a, 2000b; Barkaszi et al., 2012; Stone, 2015a; Gailey et al., 2016; Barkaszi and Kelly, 2018). These comments appear to evidence a misconception regarding the concept of the 160-dB threshold. While it is correct that in practice it works as a step-function, *i.e.,* animals exposed to received levels above the threshold are considered to be ''taken'' and those exposed to levels below the threshold are not, it is in fact intended as a sort of mid-point of likely behavioral responses (which are extremely complex depending on many factors including species, noise source, individual experience, and behavioral context). What this means is that, conceptually, the function recognizes that some animals exposed to levels below the threshold will in fact react in ways that are appropriately considered take, while others that are exposed to levels above the threshold will not. Use of the 160-dB threshold allows for a simplistic quantitative estimate of take, while we can qualitatively address the variation in responses across different received levels in our discussion and analysis.

As behavioral responses to sound depend on the context in which an animal receives the sound, including the animal's behavioral mode when it hears sounds, prior experience, additional biological factors, and other contextual factors, defining sound levels that disrupt behavioral patterns is extremely difficult. Even experts have not previously been able to suggest specific new criteria due to these difficulties (*e.g.,* Southall et al. 2007; Gomez et al., 2016).

(ii) The ENGOS disagreed with NMFS' assumption that marine mammals move away from sound sources. The ENGOS claimed that studies have not found avoidance behavior to be generalizable among species and contexts, and even though avoidance may itself constitute take under the MMPA. Importantly, the commenters mistakenly seem to believe that the NMFS' does not consider avoidance as a take, and that the concept of avoidance is used as a mechanism to reduce overall take—this is not the case. Avoidance of loud sounds is a well-documented behavioral response, and NMFS often accordingly accounts for this avoidance by reducing the number of injurious exposures, which would occur in very close proximity to the source and necessitate a longer duration of exposure. However, when Level A harassment takes are reduced in this manner, they are changed to Level B harassment takes, in recognition of the fact that this avoidance or other behavioral responses occurring as a result of these exposures are still take, NMFS does not reduce the overall amount of take as a result of avoidance.

(iii) The ENGOs questioned the effectiveness of the mitigation and monitoring measures proposed to be authorized. They specifically recommended that seasonal restrictions should be established and consideration should be given to species for which an unusual mortality event (UME) has been declared. Note that NMFS is requiring Equinor to comply with restrictions associated with identified seasonal management areas (SMA) and they must comply with dynamic management area restrictions (DMAs), if any DMAs are established near the Project Area. Furthermore, we have established a 500-m shutdown zone for North Atlantic right whales which is three times as large as the greatest Level B harassment isopleth calculated for the specified activities for this IHA (141 m). Additionally, similar mitigation and monitoring measures have previously been required in numerous HRG survey IHAs and have been successfully implemented.

Comment 27: The ENGOs recommended that HRG surveys should commence, with ramp-up, during daylight hours only, to maximize the probability that North Atlantic right whales detected and confirmed clear of the exclusion zone.

Response: We acknowledge the limitations inherent in detection of marine mammals at night. However, no injury is expected to result even in the absence of mitigation, given the very small estimated Level A harassment zones. Any potential impacts to marine mammals authorized for take would be limited to short-term behavioral responses. Restricting surveys in the manner suggested by the commenters may reduce marine mammal exposures by some degree in the short term, but would not result in any significant reduction in either intensity or duration of noise exposure. Vessels would also potentially be on the water for an extended time introducing noise into the marine environment. The restrictions recommended by the commenters could result in the surveys spending increased time on the water, which may result in greater overall exposure to sound for marine mammals and increase the risk of a vessel strike; thus the commenters have not demonstrated that such a requirement would result in a net benefit. Furthermore, restricting the applicant to ramp-up only during daylight hours would have the potential to result in lengthy shutdowns of the survey equipment, which could result in the applicant failing to collect the data they have determined is necessary and, subsequently, the need to conduct additional surveys the following year. This would result in significantly increased costs incurred by the applicant. Thus, the restriction suggested by the commenters would not be practicable for the applicant to implement. In consideration of potential effectiveness of the recommended measure and its practicability for the applicant, NMFS has determined that restricting survey start-ups to daylight hours when visibility is unimpeded is

not warranted or practicable in this case.

Comment 28: The ENGOs recommended that all project vessels operating within or transiting to/from the Project Area, regardless of size, observe a mandatory 10 knot speed restriction during the entire survey period.

Response: NMFS does not concur with these measures. NMFS has analyzed the potential for ship strike resulting from Equinor's activity and has determined that the mitigation measures specific to ship strike avoidance are sufficient to avoid the potential for ship strike. These include: A requirement that all vessel operators comply with 10 knot (18.5 km/hour) or less speed restrictions in any established DMA or SMA; a requirement that all vessel operators reduce vessel speed to 10 knots (18.5 km/hour) or less when any large whale, any mother/calf pairs, pods, or large assemblages of non-delphinoid cetaceans are observed within 100 m of an underway vessel; a requirement that all survey vessels maintain a separation distance of 500-m or greater from any sighted North Atlantic right whale; a requirement that, if underway, vessels must steer a course away from any sighted North Atlantic right whale at 10 knots or less until the 500-m minimum separation distance has been established; and a requirement that, if a North Atlantic right whale is sighted in a vessel's path, or within 500 m of an underway vessel, the underway vessel must reduce speed and shift the engine to neutral. We have determined that the ship strike avoidance measures are sufficient to ensure the least practicable adverse impact on species or stocks and their habitat. Furthermore, no documented vessel strikes have occurred for any HRG surveys which were issued IHAs from NMFS.

Changes From the Proposed IHA to Final IHA

NMFS has included User Spreadsheet inputs in Table 4 that were used to determine Level A harassment isopleths. Table 5 was revised to illustrate Level A harassment isopleths based on inputs from Table 4. NMFS has added language to the Mitigation section exempting harbor and gray seals from shutdown if they approach the survey vessel or towed survey equipment. This language is identical to that found in another recent HRG IHA issued in July, 2020 to Mayflower Wind Energy, LLC. (85 FR 45578; July 29, 2020). The **Federal Register** notice announcing our issuance of the IHA to Mayflower Wind Energy, LLC outlines the basis for these exceptions. NMFS increased the authorized number of takes of North Atlantic right whale by Level B harassment based on a new density model that was released after the publication of the proposed IHA in the **Federal Register**.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website. (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species or stocks for which take is expected and authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2020). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Atlantic SARs. All values presented in Table 2 are the most recent available at the time of publication and are available in the 2019 Atlantic and Gulf of Mexico Marine Mammal Stock Assessments (Hayes *et al.,* 2020), available online at:

www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.

TABLE 2—MARINE MAMMALS KNOWN TO OCCUR IN THE SURVEY AREA THAT MAY BE AFFECTED BY EQUINOR'S PLANNED ACTIVITY

Common name (scientific name)	Stock	MMPA and ESA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	Predicted abundance (CV) [3]	PBR [4]	Annual M/SI [4]	Occurrence in project area
Toothed whales (Odontoceti)							
Sperm whale (*Physeter macrocephalus*).	North Atlantic	E; Y	4,349 (0.28; 3,451; n/a)	5,353 (0.12)	6.9	0.0	Rare.
Atlantic white-sided dolphin (*Lagenorhynchus acutus*).	W North Atlantic	-; N	93,233 (0.71; 54,443; n/a)	37,180 (0.07)	544	26	Common.
Atlantic spotted dolphin (*Stenella frontalis*).	W North Atlantic	-; N	39,921 (0.27; 32,032; 2012)	55,436 (0.32)	320	0	Common.
Common dolphin (*Delphinus delphis*).	W North Atlantic	-; N	172,825 (0.21; 145,216; 2011).	86,098 (0.12)	1,452	419	Common.
Bottlenose dolphin (*Tursiops truncatus*).	W North Atlantic, Offshore	-; N	62,851 (0.23; 51,914; 2011)	97,476 (0.06) [5]	519	28	Common offshore.
	W North Atlantic, Northern Coastal Migratory.	-; N	6,639 (0.41; 4,759; 2015)		48	6.1–13.2	Common near-shore.
Long-finned pilot whale (*Globicephala melas*).	W North Atlantic	-; N	39,215 (0.3; 30,627; n/a)	18,977 (0.11) [5]	306	21	Rare.

TABLE 2—MARINE MAMMALS KNOWN TO OCCUR IN THE SURVEY AREA THAT MAY BE AFFECTED BY EQUINOR'S PLANNED ACTIVITY—Continued

Common name (scientific name)	Stock	MMPA and ESA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	Predicted abundance (CV) [3]	PBR [4]	Annual M/SI [4]	Occurrence in project area
Risso's dolphin (*Grampus griseus*).	W North Atlantic	-; N	35,493 (0.19; 30,289; 2011)	7,732 (0.09)	303	54.3	Rare.
Harbor porpoise (*Phocoena phocoena*).	Gulf of Maine/Bay of Fundy	-; N	95,543 (0.31; 74,034; 2011)	45,089 (0.12) *	851	217	Common.
Baleen whales (Mysticeti)							
Fin whale (*Balaenoptera physalus*).	W North Atlantic	E; Y	7,418 (0.25; 6,025; n/a)	4,633 (0.08)	12	2.35	Year round in continental shelf and slope waters.
Sei whale (*Balaenoptera borealis*).	Nova Scotia	E; Y	6,292 (1.015; 3,098; n/a)	717 (0.30) *	6.2	1.0	Year round in continental shelf and slope waters.
Minke whale (*Balaenoptera acutorostrata*).	Canadian East Coast	-; N	24,202 (0.3; 18,902; n/a)	2,112 (0.05) *	8.0	7.0	Year round in continental shelf and slope waters.
Humpback whale (*Megaptera novaeangliae*).	Gulf of Maine	-; N	1,396 (0; 1,380; n/a)	1,637 (0.07) *	22	12.15	Common year round.
North Atlantic right whale (*Eubalaena glacialis*).	W North Atlantic	E; Y	428 (0; 418; n/a)	535 (0.45) *	0.8	6.85	Occur seasonally.
Earless seals (Phocidae)							
Gray seal [6] (*Halichoerus grypus*).	W North Atlantic	-; N	27,131 (0.19; 23,158; n/a)	n/a	1,389	5,410	Common.
Harbor seal (*Phoca vitulina*)	W North Atlantic	-; N	75,834 (0.15; 66,884; 2012)	n/a	2,006	350	Common.
Harp seal [7] (Pagophilus groenlandicus).	W North Atlantic	-; N	Unknown (n/a; n/a; n/a)	n/a	unk.	232,422	Rare.

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR (see footnote 3) or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] Stock abundance as reported in NMFS marine mammal stock assessment reports (SAR) except where otherwise noted. SARs available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable. For certain stocks, abundance estimates are actual counts of animals and there is no associated CV. The most recent abundance survey that is reflected in the abundance estimate is presented; there may be more recent surveys that have not yet been incorporated into the estimate. All values presented here are from the 2019 Atlantic SARs (Hayes *et al.,* 2019).

[3] This information represents species- or guild-specific abundance predicted by recent habitat-based cetacean density models (Roberts *et al.,* 2016, 2017, 2018). These models provide the best available scientific information regarding predicted density patterns of cetaceans in the U.S. Atlantic Ocean, and we provide the corresponding abundance predictions as a point of reference. Total abundance estimates were produced by computing the mean density of all pixels in the modeled area and multiplying by its area. For those species marked with an asterisk, the available information supported development of either two or four seasonal models; each model has an associated abundance prediction. Here, we report the maximum predicted abundance.

[4] Potential biological removal, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population size (OSP). Annual M/SI, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, subsistence hunting, ship strike). Annual M/SI values often cannot be determined precisely and is in some cases presented as a minimum value. All M/SI values are as presented in the 2019 SARs (Hayes *et al.,* 2020).

[5] Abundance estimates are in some cases reported for a guild or group of species when those species are difficult to differentiate at sea. Similarly, the habitat-based cetacean density models produced by Roberts *et al.* (2016, 2017, 2018) are based in part on available observational data which, in some cases, is limited to genus or guild in terms of taxonomic definition. Roberts *et al.* (2016, 2017, 2018) produced density models to genus level for *Globicephala* spp. and produced a density model for bottlenose dolphins that does not differentiate between offshore and coastal stocks.

[6] NMFS stock abundance estimate applies to U.S. population only, actual stock abundance is approximately 505,000.

[7] Stock abundance estimate is not available in NMFS SARs and predicted abundance estimate is not provided in Roberts *et al.* (2016, 2017, 2018).

A detailed description of the species for which take has been authorized, including brief introductions to the relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (85 FR 37848; June 24, 2020); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from Equinor's survey activities have the potential to result in take of marine mammals by harassment in the vicinity of the survey area. The **Federal Register** notice for the proposed IHA (85 FR 37848; June 24, 2020) included a discussion of the effects of anthropogenic noise on marine mammals and their habitat. That information and analysis is incorporated by reference into this final IHA determination and is not repeated here; please refer to the notice of proposed IHA (85 FR 37848; June 24, 2020).

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance,

which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to HRG sources. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* exclusion zones and shutdown measures), discussed in detail below in the Mitigation section, Level A harassment is neither anticipated nor authorized.

As described previously, no injury or mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the authorized take estimate.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Equinor's planned activity includes the use of intermittent sources (geophysical survey equipment) and therefore use of the 160 dB re 1 μPa (rms) threshold is applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The components of Equinor's planned activity that may result in the take of marine mammals include the use of impulsive and non-impulsive intermittent sources.

These thresholds are provided in Table 3 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The planned survey would entail the use of HRG equipment. The distance to the isopleth corresponding to the threshold for Level B harassment was calculated for all HRG equipment with the potential to result in harassment of

marine mammals. NMFS has developed an interim methodology for determining the rms sound pressure level (SPL_{rms}) at the 160-dB isopleth for the purposes of estimating take by Level B harassment resulting from exposure to HRG survey equipment (NMFS, 2019). This methodology incorporates frequency and some directionality to refine estimated ensonified zones and is described below:

If only peak source sound pressure level (SPL_{pk}) is given, the SPL_{rms} can be roughly approximated by:

(1) $SPL_{rms} = SPL_{pk} + 10 \log_{10} \tau$

Where τ is the pulse duration in second. If the pulse duration varies, the longest duration should be used, unless there is certainty regarding the portion of time a shorter duration will be used, in which case the result can be calculated/parsed appropriately.

In order to account for the greater absorption of higher frequency sources, we recommend applying 20 log(r) with an absorption term $\alpha \cdot r/1000$ to calculate transmission loss (TL), as described in Eq.s (2) and (3) below:

(2) $TL = 20 \log_{10}(r) + \alpha \cdot r/1000$ (dB)

Where r is the distance in meters, and α is absorption coefficient in dB/km.

While the calculation of absorption coefficient varies with frequency, temperature, salinity, and pH, the largest factor driving the absorption coefficient is frequency. A simple formula to approximate the absorption coefficient (neglecting temperature, salinity, and pH) is provided by Richardson *et al.* (1995):

(3) $\alpha \approx 0.036 f^{1.5}$ (dB/km)

Where f is frequency in kHz. When a range of frequencies, is being used, the lower bound of the range should be used for this calculation, unless there is certainty regarding the portion of time a higher frequency will be used, in which case the result can be calculated/parsed appropriately.

Further, if the beamwidth is less than 180° and the angle of beam axis in respect to sea surface is known, the horizontal impact distance R should be calculated using

$$(4) \qquad R = r \cos\left(\varphi - \frac{\theta}{2}\right) \text{ (m)}$$

where SL is the SPL_{rms} at the source (1 m), θ is the beamwidth (in radian), and ϕ is the angle of beam axis in respect to sea surface (in radian).

Finally, if the beam is pointed at a normal downward direction, Eq. (4) can be simplified as:

$$(5) \qquad R = r \cos\left(\frac{\pi}{2} - \frac{\theta}{2}\right) = r \sin\frac{\theta}{2} \text{ (m)}$$

The interim methodology described above was used to estimate isopleth distances to the Level B harassment threshold for the planned HRG survey. NMFS considers the data provided by Crocker and Fratantonio (2016) to represent the best available information on source levels associated with HRG equipment and therefore recommends that source levels provided by Crocker and Fratantonio (2016) be incorporated in the method described above to estimate isopleth distances to the Level B harassment threshold. In cases when the source level for a specific type of HRG equipment is not provided in Crocker and Fratantonio (2016), NMFS recommends that either the source levels provided by the manufacturer be used, or, in instances where source levels provided by the manufacturer are unavailable or unreliable, a proxy from Crocker and Fratantonio (2016) be used instead. Table 1 shows the HRG equipment types that may be used during the planned vessel-based surveys that may result in take of marine mammals, and the sound levels associated with those HRG equipment types.

Results of modeling using the methodology described above indicated that, of the HRG survey equipment planned for use by Equinor that has the potential to result in harassment of marine mammals, sound produced by the GeoSource 800 J sparker would propagate furthest to the Level B harassment threshold (Table 4); therefore, for the purposes of the exposure analysis, it was assumed the GeoSource 800 J would be active during the entirety of the survey. Thus, the distance to the isopleth corresponding to the threshold for Level B harassment for the GeoSource 800 J (estimated at 141 m; Table 5) was used as the basis of the take calculation for all marine mammals. We note that this is a conservative assumption as there may be times during the planned surveys when the GeoSource 800 J is not operated (Table 5).

Predicted distances to Level A harassment isopleths, which vary based on marine mammal functional hearing groups (Table 5), were also calculated, though it is important to note that NMFS does not believe that occurrence of Level A harassment is a realistic outcome of use of these sources. The updated acoustic thresholds for impulsive sounds (such as are produced by sparkers) contained in the Technical Guidance (NMFS, 2018) were presented as dual metric acoustic thresholds using both cumulative sound exposure level (SEL_{cum}) and peak sound pressure level metrics. As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.,* the metric resulting in the largest isopleth). The SEL_{cum} metric considers both level and duration of exposure, as well as auditory weighting functions by marine mammal hearing group. Inputs to the User Spreadsheet are shown in Table 4.

TABLE 4—USER SPREADSHEET INPUTS

HRG system	Medium sub-bottom profiler
HRG Equipment	Geo-Source 400 Tip Sparker Source (800 J).
User Spreadsheet Tab	F. Mobile Source: impulsive, Intermittent.
Source Level	203 RMS/213 PK.
Weighting Factor Adjustment (kHz)	3.25.
Source Velocity (m/sec)	2.06.
Pulse Duration (seconds)	0.002.
1/repetition rate^ (seconds	0.25.
Propagation (xLogR)	20.

TABLE 5—MODELED RADIAL DISTANCES FROM HRG SURVEY EQUIPMENT TO ISOPLETHS CORRESPONDING TO LEVEL A HARASSMENT AND LEVEL B HARASSMENT THRESHOLDS

Sound source	Radial distance to level A harassment threshold (m)				Radial distance to level B harassment threshold (m)
	Low frequency cetaceans (peak SPL/SEL_{cum})	Mid frequency cetaceans (peak SPL/SEL_{cum})	High frequency cetaceans (peak SPL/SEL_{cum})	Phocid pinnipeds (underwater) (peak SPL/SEL_{cum})	All marine mammals
Geo-Source 400 Tip Sparker (800 J)	−/1.2	−/0	−/8.4	−/<1	141

Modeled distances to isopleths corresponding to the Level A harassment thresholds are very small (<8.4 m) for all marine mammal species and stocks that may be impacted by the planned activities (Table 5). Based on the very small Level A harassment zones for all marine mammal species and stocks that may be impacted by the planned activities, the potential for any marine mammals to be taken by Level A harassment is considered so low as to be discountable. As NMFS has determined that the likelihood of take in the form of Level A harassment of any marine mammals as a result of the planned surveys is so low as to be discountable, we therefore do not propose to authorize the take by Level A harassment of any marine mammals.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

The habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory (MGEL) (Roberts *et al.,* 2016, 2017, 2018) represent the best available information regarding marine mammal densities in the planned survey area. The density data presented by the Duke University MGEL incorporates aerial and shipboard line-transect survey data from NMFS and other organizations and incorporates data from 8 physiographic and 16 dynamic oceanographic and biological covariates, and controls for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting. These density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.,* 2016). In subsequent years, certain models have been updated on the basis of additional data as well as certain methodological improvements. The updated models incorporate additional sighting data, including sightings from the NOAA Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys from 2010–2014 (NEFSC & SEFSC, 2011, 2012, 2014a, 2014b, 2015, 2016), and include updated density data for North Atlantic right whales, including in Cape Cod Bay (Roberts *et al.,* 2018). Our evaluation of the changes leads to a conclusion that these represent the best scientific evidence available. More information is available online at *seamap.env.duke.edu/models/Duke-EC-GOM-2015/.* Marine mammal density estimates in the project area (animals/km²) were obtained using these model results (Roberts *et al.,* 2016, 2017, 2018).

For the exposure analysis, density data from the Duke University MGEL (Roberts *et al.* (2016, 2017, 2018)) were mapped using a geographic information system (GIS). The density coverages that included any portion of the planned project area were selected for all potential survey months. For each of the survey areas (*i.e.,* ECRA–1, ECRA–2, ECRA–3 and ECRA–4), the densities of each species as reported by the Duke University MGEL (Roberts *et al.* (2016, 2017, 2018)) were averaged by season; thus, a density was calculated for each species for spring, summer, fall and winter. To be conservative, the greatest seasonal density calculated for each species be carried forward in the exposure analysis. Estimated seasonal densities (animals per km²) of all marine mammal species that may be taken by the surveys, for all seasons and all survey areas, are shown in Tables 6–2, 6–3, 6–4, 6–5 and 6–6 of the IHA application. The maximum seasonal density values used to estimate marine mammal exposure numbers are shown in Table 6 below. Note that Duke University MGEL density models do not differentiate by bottlenose dolphin stocks and instead provide estimates at the species level (Roberts *et al.* (2016, 2017, 2018)); the Western North Atlantic northern migratory coastal stock and the Western North Atlantic offshore stock of bottlenose dolphins may occur in the planned survey areas (Hayes *et al.* 2018). Similarly, the Duke University MGEL produced density models for all seals and did not differentiate by seal species (Roberts *et al.* (2018)); harbor, gray and harp seals may occur in the planned survey areas (Hayes *et al.* 2018).

TABLE 6—SEASONAL MARINE MAMMAL DENSITIES (NUMBER OF ANIMALS PER 100 km²) IN ALL SURVEY AREAS USED IN EXPOSURE ESTIMATES

Species	ECRA–1	ECRA–2	ECRA–3	ECRA–4
North Atlantic right whale [1]	0.006803	0.008907	0.0000913	0.007247667
Humpback whale	0.0054269	0.00147951	0.0003133	0.0007076
Fin whale	0.0048318	0.00392609	0.000154	0.0029756
Sei whale	0.0003972	0.00028884	0.00002179	0.000146
Minke whale	0.0044061	0.0020292	0.00006959	0.0015375
Sperm Whale	0.0001033	0.00029419	0.00004323	0.0003508
Pilot whales	0.0014728	0.00011263	0.00002895	0.0058357
Bottlenose dolphins	0.0847306	0.02955662	0.0684936	0.0527685
Common dolphin	0.0224355	0.2121851	0.0043119	0.1539656
Atlantic white-sided dolphin	0.057509	0.05269613	0.0015548	0.0305044
Atlantic spotted dolphin	0.00005057	0.00212995	0.00008059	0.0020008
Risso's dolphin	0.00007374	0.00294218	0.00000215	0.000818
Harbor porpoise	0.05438	0.07252193	0.1348293	0.0671625
Seals (all species)	0.3330293	0.0717368	0.0506316	0.0539549

Note: All density values, with the exeption North Atlantic right whales, were derived from Roberts *et al.* (2016, 2017, 2018). Densities shown represent the maximum seasonal density values calculated, except pilot whales for which seasonal densities were not available.

[1] Densities for North Atlantic right whales derived from Roberts et al. 2020, which was published after the Notice of Proposed IHA had published in the **Federal Register**.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in harassment, radial distances to predicted isopleths corresponding to harassment thresholds are calculated, as described above. Those distances are then used to calculate the area(s) around the HRG survey equipment predicted to be ensonified to sound levels that exceed harassment thresholds. The area estimated to be ensonified to relevant thresholds in a single day is then calculated, based on areas predicted to be ensonified around the HRG survey equipment and the estimated trackline distance traveled per day by the survey vessel.

Equinor estimates that planned surveys will achieve a maximum daily track line distance of 177.6 km (110.3 mi) per day during planned HRG surveys. We note that this is a conservative estimate as it accounts for the vessel traveling at approximately 4 knots and accounts for non-active survey periods (*i.e.,* it assumes HRG equipment would be active 24 hours per day during all survey days when in fact there are likely to be periods when the equipment is not active). Based on the maximum estimated distance to the Level B harassment threshold of 141 m (Table 5) and the maximum estimated daily track line distance of 177.6 km (110.3 mi), an area of 50.08 km² would be ensonified to the Level B harassment threshold per day during Equinor's planned surveys. As stated above, this is a conservative assumption as there may be times during the planned surveys when the GeoSource 800 J is not operated; if this were the case, the ensonified area would be much smaller, based on the modeled Level B harassment threshold associated with the USBL.

The number of marine mammals expected to be incidentally taken per day is then calculated by estimating the number of each species predicted to occur within the daily ensonified area (animals/km²), incorporating the estimated marine mammal densities as described above. Estimated numbers of each species taken per day are then multiplied by the total number of survey days. The product is then rounded, to generate an estimate of the total number of instances of harassment expected for each species over the duration of the survey. A summary of this method is illustrated in the following formula:

$$\text{Estimated Take} = D \times ZOI \times \#\text{ of days}$$

Where:

D = average species density (per km²) and ZOI = maximum daily ensonified area to relevant thresholds.

In this case, the methodology described above was used to estimate marine mammal exposures separately in the four ECRAs. Thus, exposures were calculated separately for each of the four individual ECRAs based on estimated survey duration in each ECRA and using the maximum seasonal density estimates for each respective ECRA (Table 7).

Note that after the Notice of Proposed IHA was published (June 24, 2020; 85 FR 36537) a new North Atlantic right whale density model became available to the public (Roberts *et al.* 2020) which NMFS considers to be the best available information. The model integrated data from a number of aerial and vessel-based surveys between 2003 and 2018. Equinor revised the North Atlantic right whale take calculations contained in the application and published in the Notice of Proposed IHA in response to the new Roberts *et al.* 2020 model data. Equinor revised the estimated duration of survey days in each export cable route area (ECRA) resulting in a total of 113 survey days reduced from 218 days. Since Equinor is working under an existing LoC allowing daylight only operations, they have been able to reduce the remaining number of anticipated survey days. Additionally, Equinor used an overly conservative assumption of the daily survey trackline distance in their application, which NMFS then used in the proposed IHA, and which now appropriately has been reduced from 177.6 km/day to 110 km/day. Although likely still conservative it is more aligned with trackline distances presented in other recent HRG survey IHAs. Takes by Level B harassment of North Atlantic right whales were calculated based on the modeling approach described above and are shown in Table 7. In the Notice of Proposed IHA, Equinor determined that take of the species could be avoided due to mitigation and therefore did not request take authorization for the North Atlantic right whale. However, given the size of modeled Level B harassment zone, the duration of the planned surveys, and the fact that surveys will occur 24 hours per day, NMFS is not confident that all takes of North Atlantic right whales could be avoided due to mitigation, and we therefore proposed to authorize 50 percent of the total number of exposures above the Level B harassment threshold that were modeled. We expect the required

mitigation measures, including a 500-m exclusion zone for North Atlantic right whales (which exceeds the Level B harassment zone by over 350-m), will be effective in reducing the potential for takes by Level B harassment, but there is still a risk that North Atlantic right whales may not be detected within the Level B harassment zone during periods of diminished visibility, particularly at night. For the reasons listed above, we are confident that the mitigation will avoid at least 50% of the take. Therefore, we have authorized 14 North Atlantic right whale takes by Level B harassment based on a total of 28 calculated takes. No take by Level A harassment was proposed or has been authorized.

TABLE 7— REVISED NORTH ATLANTIC RIGHT WHALE TAKE ESTIMATE BASED ON ROBERTS ET AL. 2020

ECRA	Total days [d]	km/day	ZOI (km^2)	Maximum seasonal density (indiv/km^2) [D]	Estimated exposure or take = D × ZOI × (d)
1	5	110	31.12	0.006803	1
2	65	110	31.12	0.008907333	18
3	3	110	31.12	0.0000913	0
4	40	110	31.12	0.007247667	9
Total					28

Exposure estimates for the four survey areas as shown in Table 6 and Table 7 were combined for a total estimated number of exposures (Table 8).

TABLE 8—NUMBERS OF POTENTIAL INCIDENTAL TAKE OF MARINE MAMMALS AUTHORIZED AND AUTHORIZED TAKES AS A PERCENTAGE OF POPULATION

Species	Estimated takes by level B harassment ECRA–1	Estimated takes by level B harassment ECRA–2	Estimated takes by level B harassment ECRA–3	Estimated takes by level B harassment ECRA–4	Total takes by level B harassment authorized	Total authorized instances of take as a percentage of population [1]
North Atlantic right whale	1	18	0	9	[2] 14	3.1
Humpback whale	3	5	1	4	13	0.8
Fin whale	3	14	0	19	36	0.8
Sei whale	1	1	0	1	3	0.4
Minke whale	3	7	0	10	20	0.9
Sperm Whale	0	1	0	2	3	0.1
Long-finned Pilot Whale	1	1	0	37	39	0.2
Bottlenose dolphin [3]	48	104	39	331	522	7.9
Common dolphin	13	747	2	966	1,728	2.0
Atlantic white-sided dolphin	33	185	1	191	410	1.1
Atlantic spotted dolphin	0	8	0	13	21	0.0
Risso's dolphin	0	10	0	5	15	0.2
Harbor porpoise	31	255	76	421	783	1.7
Seals [4]	188	253	29	338	808	1.1

[1] Calculations of percentage of stock taken are based on the best available abundance estimate as shown in Table 2. In most cases the best available abundance estimate is provided by Roberts *et al.* (2016, 2017, 2018), when available, to maintain consistency with density estimates derived from Roberts *et al.* (2016, 2017, 2018). For North Atlantic right whales the best available abundance estimate is derived from the North Atlantic Right Whale Consortium 2019 Annual Report Card (Pettis *et al.,* 2019). For bottlenose dolphins and seals, Roberts *et al.* (2016, 2017, 2018) provides only a single abundance estimate and does not provide abundance estimates at the stock or species level (respectively), so abundance estimates used to estimate percentage of stock taken for bottlenose dolphins, gray, harbor and harp seals are derived from NMFS SARs (Hayes *et al.,* 2019).

[2] New Roberts *et al.* (2020) density estimates shows 28 North Atlantic right whale Level B harassment expsoures in the activity area as was considered in the proposed IHA. We have confidence in the effectiveness of mitigation and its ability to minimize right whale exposure and, therefore, in the Proposed IHA, we project that the mitigation will avoid at least 50% of the take. Therefore we are authorizing 14 North Atlantic Right Whale Takes by Level B harassment.

[3] Either the Western North Atlantic coastal migratory stock or the Western North Atlantic offshore stock may be taken. Total authorized instances of take as a percentage of population shown for Western North Atlantic coastal migratory stock (based on all 522 authorized takes accruing to that stock). The total authorized instances of take as a percentage of population for the Western North Atlantic offshore stock is 0.8 (based on all 522 authorized takes accruing to that stock).

[4] Harbor, gray or harp seals may be taken. Total authorized instances of take as a percentage of population shown for harbor seals (based on all 808 authorized takes accruing to that species). The total authorized instances of take as a percentage of population for gray seals and harp seals is 0.2 and 0.0, respectively (based on all 808 authorized takes accruing to each species).

As described above, the Duke University MGEL produced density models that did not differentiate by seal species. The underlying data in the Duke University MGEL seal models came almost entirely from AMAPPS aerial surveys which were unable to differentiate by seal species, with the majority of seal sightings reported as ''unidentified seal'' (Roberts *et al.,* 2018). Given the fact that the in-water habitats of harbor seals and gray seals are not well described but likely overlap, and based on the few species identifications that were available, the Duke University MGEL did not attempt to classify the ambiguous ''unidentified seal'' sightings by species (Roberts *et al.,* 2018) and instead produced models for seals as a guild. The take calculation methodology described above resulted in an estimate of 808 total seal takes. Based on this estimate, Equinor requested 808 takes each of harbor, gray and harp seals, based on an assumption that the modeled takes could accrue to any of the respective species. We instead propose to authorize 808 total takes of seals by Level B harassment. Based on the occurrence of harbor, gray and harp seals in the survey areas, we expect the authorized takes would accrue roughly equally to gray and harbor seals, with only a handful of takes of harp seals at most.

The density models produced by the Duke University MGEL also did not differentiate by bottlenose dolphin stocks (Roberts *et al.* (2016, 2017, 2018). The Western North Atlantic northern migratory coastal stock and the Western North Atlantic offshore stock occur in the planned survey areas. The northern migratory coastal stock occurs in coastal waters from the shoreline to approximately the 20-m isobath while the offshore stock occurs at depths of 20-m and greater (Hayes *et al.* 2019). The take calculation methodology described above resulted in an estimate of 522 total bottlenose dolphin takes. Depths across the planned survey areas range from very shallow waters near landfall locations to approximately 75-m in offshore survey locations. As planned surveys would occur in areas where either the northern migratory coastal stock or the offshore stock may occur, we expect the authorized takes would accrue roughly equally to both stocks.

Equinor requested 39 total takes of pilot whales (either long-finned or short-finned). However, the range of short-finned pilot whales does not extend north of Delaware (Hayes *et al.,* 2019) and therefore short-finned pilot whales are not expected to occur in the planned survey areas. As such, we propose to authorize takes of long-finned pilot whales only.

As described above, NMFS has determined that the likelihood of take of any marine mammals in the form of Level A harassment occurring as a result of the planned surveys is so low as to be discountable; therefore, we do not propose to authorize take of any marine mammals by Level A harassment.

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as proposed), the likelihood of effective implementation (probability implemented as proposed), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Mitigation Measures

NMFS proposes the following mitigation measures be implemented during Equinor's planned marine site characterization surveys.

Marine Mammal Exclusion Zones, Buffer Zone and Monitoring Zone

Marine mammal EZs would be established around the HRG survey equipment and monitored by PSOs during HRG surveys as follows:

- A 500-m EZ is required for North Atlantic right whales; and
- A 100-m EZ is required for all other marine mammal species.

If a marine mammal is detected approaching or entering the EZs during the planned survey, the vessel operator must adhere to the shutdown procedures described below. In addition to the EZs described above, PSOs must visually monitor a 200 m Buffer Zone. During use of acoustic sources with the potential to result in marine mammal harassment (*i.e.,* anytime the acoustic source is active, including ramp-up), occurrences of marine mammals within the Buffer Zone (but outside the EZs) must be communicated to the vessel operator to prepare for potential shutdown of the acoustic source. The Buffer Zone is not applicable when the EZ is greater than 100 meters. PSOs must also be required to observe a 500-m Monitoring Zone and record the presence of all marine mammals within this zone. The zones described above must be based upon the radial distance from the active equipment (rather than being based on distance from the vessel itself).

Visual Monitoring

A minimum of one NMFS-approved PSO must be on duty and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset). Visual monitoring must begin no less than 30 minutes prior to ramp-up of HRG equipment and must continue until 30 minutes after use of the acoustic source ceases or until 30 minutes past sunset. PSOs must establish and monitor the applicable EZs, Buffer Zone and Monitoring Zone as described above. Visual PSOs must coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts, and must conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs must estimate distances to observed marine mammals. It is the responsibility of the Lead PSO on duty to communicate the presence of marine mammals as well as to communicate action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate. Position data must be recorded using hand-held or vessel global positioning system (GPS) units for each confirmed marine mammal sighting.

Pre-Clearance of the Exclusion Zones

Prior to initiating HRG survey activities, Equinor must implement a 30-minute pre-clearance period. During pre-clearance monitoring (*i.e.,* before ramp-up of HRG equipment begins), the Buffer Zone must also act as an extension of the 100-m EZ in that observations of marine mammals within the 200-m Buffer Zone must also preclude HRG operations from beginning. During this period, PSOs must ensure that no marine mammals are observed within 200-m of the survey equipment (500-m in the case of North Atlantic right whales). HRG equipment must not start up until this 200-m zone (or, 500-m zone in the case of North Atlantic right whales) is clear of marine mammals for at least 30 minutes. The vessel operator must notify a designated PSO of the planned start of HRG survey equipment as agreed upon with the lead PSO; the notification time should not be less than 30 minutes prior to the planned initiation of HRG equipment order to allow the PSOs time to monitor the EZs and Buffer Zone for the 30 minutes of pre-clearance. A PSO

conducting pre-clearance observations must be notified again immediately prior to initiating active HRG sources.

If a marine mammal were observed within the relevant EZs or Buffer Zone during the pre-clearance period, initiation of HRG survey equipment must not begin until the animal(s) has been observed exiting the respective EZ or Buffer Zone, or, until an additional time period has elapsed with no further sighting (*i.e.,* minimum 15 minutes for small odontocetes and seals, and 30 minutes for all other species). The pre-clearance requirement must include small delphinoids that approach the vessel (*e.g.,* bow ride). PSOs must also continue to monitor the zone for 30 minutes after survey equipment is shut down or survey activity has concluded. These requirements must be in effect only when the GeoSource 800 J sparker is being operated.

Ramp-Up of Survey Equipment

When technically feasible, a ramp-up procedure must be used for geophysical survey equipment capable of adjusting energy levels at the start or re-start of survey activities. The ramp-up procedure must be used at the beginning of HRG survey activities in order to provide additional protection to marine mammals near the survey area by allowing them to detect the presence of the survey and vacate the area prior to the commencement of survey equipment operation at full power. Ramp-up of the survey equipment must not begin until the relevant EZs and Buffer Zone has been cleared by the PSOs, as described above. HRG equipment must be initiated at their lowest power output and must be incrementally increased to full power. If any marine mammals are detected within the EZs or Buffer Zone prior to or during ramp-up, the HRG equipment must be shut down (as described below).

Shutdown Procedures

The shutdown procedures described below are only in effect when the GeoSource 800 J sparker is being operated. If an HRG source is active and a marine mammal is observed within or entering a relevant EZ (as described above) an immediate shutdown of the HRG survey equipment is required. When shutdown is called for by a PSO, the acoustic source must be immediately deactivated and any dispute resolved only following deactivation. Any PSO on duty must have the authority to delay the start of survey operations or to call for shutdown of the acoustic source if a marine mammal is detected within the applicable EZ. The vessel operator must establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the HRG source(s) to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch. Subsequent restart of the HRG equipment must only occur after the marine mammal has either been observed exiting the relevant EZ, or, until an additional time period has elapsed with no further sighting of the animal within the relevant EZ (*i.e.,* 15 minutes for small odontocetes, pilot whales and seals, and 30 minutes for large whales).

Upon implementation of shutdown, the HRG source may be reactivated after the marine mammal that triggered the shutdown has been observed exiting the applicable EZ (*i.e.,* the animal is not required to fully exit the Buffer Zone where applicable), or, following a clearance period of 15 minutes for small odontocetes and seals and 30 minutes for all other species with no further observation of the marine mammal(s) within the relevant EZ. If the HRG equipment shuts down for brief periods (*i.e.,* less than 30 minutes) for reasons other than mitigation (*e.g.,* mechanical or electronic failure) the equipment may be re-activated as soon as is practicable at full operational level, without 30 minutes of pre-clearance, only if PSOs have maintained constant visual observation during the shutdown and no visual detections of marine mammals occurred within the applicable EZs and Buffer Zone during that time. For a shutdown of 30 minutes or longer, or if visual observation was not continued diligently during the pause, pre-clearance observation is required, as described above.

The shutdown requirement is waived for certain genera of small delphinids (*i.e., Delphinus, Lagenorhynchus, Stenella, and Tursiops)* and pinnipeds (gray and harbor seals) under certain circumstances. If a delphinid(s) from these genera or seal(s) is visually detected approaching the vessel (*i.e.,* to bow ride) or towed survey equipment, shutdown is not required. If there is uncertainty regarding identification of a marine mammal species (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived), PSOs must use best professional judgment in making the decision to call for a shutdown.

If a species for which authorization has not been granted, or, a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the area encompassing the Level B harassment isopleth while the sparker is operating (141 m), shutdown must occur.

Seasonal Restrictions

To minimize the potential for impacts to North Atlantic right whales, vessel-based HRG survey activities would be prohibited in the Off Race Point SMA and Cape Cod Bay SMA from January through May and in the Great South Channel SMA from April through July.

Vessel Strike Avoidance

- Vessel strike avoidance measures would include, but would not be limited to, the following: Vessel operators and crews must maintain a vigilant watch for all protected species and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any protected species. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel (distances stated below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.,* PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to (1) distinguish protected species from other phenomena and (2) broadly to identify a marine mammal as a North Atlantic right whale, other whale (defined in this context as sperm whales or baleen whales other than North Atlantic right whales), or other marine mammal.
- All survey vessels, regardless of size, must observe a 10-knot speed restriction in specific areas designated by NMFS for the protection of North Atlantic right whales from vessel strikes: Any Dynamic Management Areas (DMAs) when in effect, and the Off Race Point SMA (in effect from January 1 through May 15), Cape Cod Bay SMA (in effect from March 1 through April 30), Great South Channel SMA (in effect from April 1 through July 31), Block Island Sound SMA (in effect from November 1 through April 30); and New York/New Jersey SMA (in effect from November 1 through April 30). See *www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-ship-strikes-north-atlantic-right-whales* for specific detail regarding these areas.
- Vessel speeds must also be reduced to 10 knots or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel.
- All vessels must maintain a minimum separation distance of 500 m from North Atlantic right whales. If a whale is observed but cannot be confirmed as a species other than a

North Atlantic right whale, the vessel operator must assume that it is a North Atlantic right whale and take appropriate action.

- All vessels must maintain a minimum separation distance of 100 m from sperm whales and all other baleen whales.
- All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other protected species, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel).
- When protected species are sighted while a vessel is underway, the vessel must take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area). If protected species are sighted within the relevant separation distance, the vessel must reduce speed and shift the engine to neutral, not engaging the engines until animals are clear of the area. This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

These requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

Seasonal Operating Requirements

As described above, the planned survey area partially overlaps with a portion of five North Atlantic right whale SMAs: Off Race Point SMA (in effect from January 1 through May 15); Cape Cod Bay SMA (in effect from March 1 through April 30); Great South Channel SMA (in effect from April 1 through July 31); Block Island Sound SMA (in effect from November 1 through April 30); and New York/New Jersey SMA (in effect from November 1 through April 30). All Equinor survey vessels, regardless of length, are required to adhere to vessel speed restrictions (<10 knots) when operating within the SMAs during times when the SMAs are in effect. In addition, between watch shifts, members of the monitoring team must consult NMFS's North Atlantic right whale reporting systems for the presence of North Atlantic right whales throughout survey operations. Members of the monitoring team must also monitor the NMFS North Atlantic right whale reporting systems for the establishment of DMA. If NMFS should establish a DMA in the survey area while surveys are underway, Equinor is required to contact NMFS within 24 hours of the establishment of the DMA to determine whether alteration or restriction of survey activities was warranted within the DMA to minimize impacts to North Atlantic right whales.

Also as described above, portions of the planned survey areas overlap spatially with designated critical habitat for North Atlantic right whales, which was established due to the area's significance for North Atlantic right whale foraging (81 FR 4837, January 27, 2016). To minimize potential impacts to North Atlantic right whales during the seasons when they occur in high numbers in the Gulf of Maine/Georges Bank critical habitat, vessel-based HRG survey activities are prohibited in the Off Race Point SMA and Cape Cod Bay SMA from January through May and in the Great South Channel SMA from April through July.

The required mitigation measures are designed to avoid the already low potential for injury in addition to some instances of Level B harassment, and to minimize the potential for vessel strikes. Further, we believe the required mitigation measures are practicable for the applicant to implement.

There are no known marine mammal rookeries or mating or calving grounds in the survey area that would otherwise potentially warrant increased mitigation measures for marine mammals or their habitat (or both). The planned survey areas will overlap spatially with an area that has been identified as a biologically important area for migration for North Atlantic right whales. However, while the potential survey areas across the ECRAs are relatively large, the actual areas that will ultimately be surveyed are relatively small compared to the substantially larger spatial extent of the North Atlantic right whale migratory area. We have required mitigation measures, including seasonal restrictions and vessel speed restrictions as described above, to minimize potential impacts to North Atlantic right whale migration. Thus, the survey is not expected to appreciably reduce migratory habitat nor to negatively impact the migration of North Atlantic right whales. As described above, some portions of the planned survey areas will overlap spatially with areas that are recognized as important for North Atlantic right whale foraging, including portions of areas that have been designated as critical habitat due to the significance of the area for North Atlantic right whale foraging. We have required mitigation measures, including seasonal restrictions and vessel speed restrictions as described above, to minimize potential impacts to North Atlantic right whale foraging. Thus, the survey is not expected to appreciably reduce foraging habitat nor to negatively impact North Atlantic right whales foraging.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has determined that the required mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the planned action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.

• Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).

• Mitigation and monitoring effectiveness.

Monitoring Measures

As described above, visual monitoring must be performed by qualified and NMFS-approved PSOs. Equinor must use independent, dedicated, trained PSOs, meaning that the PSOs must be employed by a third-party observer provider (with limited exceptions made only for inshore vessels), must have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements (including brief alerts regarding maritime hazards), and must have successfully completed an approved PSO training course appropriate for their designated task. Equinor must provide resumes of all proposed PSOs (including alternates) to NMFS for review and approval prior to the start of survey operations.

During survey operations (*e.g.,* any day on which use of an HRG source is planned to occur), a minimum of one PSO must be on duty and conducting visual observations at all times on all active survey vessels during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset). Visual monitoring must begin no less than 30 minutes prior to initiation of HRG survey equipment and must continue until one hour after use of the acoustic source ceases or until 30 minutes past sunset. PSOs must coordinate to ensure 360 degree visual coverage around the vessel from the most appropriate observation posts, and must conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least two hours between watches and may conduct a maximum of 12 hours of observation per 24-hour period. In cases where multiple vessels are surveying concurrently, any observations of marine mammals must be communicated to PSOs on all survey vessels.

PSOs must be equipped with binoculars and have the ability to estimate distances to observed marine mammals. Reticulated binoculars will be available to PSOs for use as appropriate based on conditions and visibility to support the monitoring of marine mammals. Position data must be recorded using hand-held or vessel GPS units for each sighting. Observations must take place from the highest available vantage point on the survey vessel. General 360-degree scanning must occur during the monitoring periods, and target scanning by the PSO must occur when alerted of a marine mammal presence.

During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), to the maximum extent practicable, PSOs must conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the acoustic source and between acquisition periods. Any observations of marine mammals by crew members aboard any vessel associated with the survey must be relayed to the PSO team.

Data on all PSO observations must be recorded based on standard PSO collection requirements. This include dates, times, and locations of survey operations; dates and times of observations, location and weather; details of marine mammal sightings (*e.g.,* species, numbers, behavior); and details of any observed marine mammal take that occurs (*e.g.,* noted behavioral disturbances).

Reporting Measures

Within 90 days after completion of survey activities, a final technical report will be provided to NMFS that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, summarizes the number of marine mammals estimated to have been taken during survey activities (by species, when known), (*i.e.,* observations of marine mammals within the Level B harassment zone must be reported as potential takes by Level B harassment) summarizes the mitigation actions taken during surveys (including what type of mitigation and the species and number of animals that prompted the mitigation action, when known), and provides an interpretation of the results and effectiveness of all mitigation and monitoring. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS.

In addition to the final technical report, Equinor will provide the reports described below as necessary during survey activities. In the event that personnel involved in the survey activities covered by the authorization discover an injured or dead marine mammal, Equinor must report the incident to the NOAA Fisheries OPR (301–427–8401), and to the NOAA Fisheries New England/Mid-Atlantic Regional Stranding Coordinator (978–282–8478) as soon as feasible. The report must include the following information:

• Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

• Species identification (if known) or description of the animal(s) involved;

• Condition of the animal(s) (including carcass condition if the animal is dead);

• Observed behaviors of the animal(s), if alive;

• If available, photographs or video footage of the animal(s); and

• General circumstances under which the animal was discovered.

In the event of a vessel strike of a marine mammal by any vessel involved in the activities covered by the authorization, the Equinor must report the incident to NOAA Fisheries OPR (301–427–8401) and to the NOAA Fisheries New England/Mid-Atlantic Regional Stranding Coordinator (978–282–8478) as soon as feasible. The report must include the following information:

• Time, date, and location (latitude/longitude) of the incident;

• Species identification (if known) or description of the animal(s) involved;

• Vessel's speed during and leading up to the incident;

• Vessel's course/heading and what operations were being conducted (if applicable);

• Status of all sound sources in use;

• Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;

• Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;

• Estimated size and length of animal that was struck;

• Description of the behavior of the marine mammal immediately preceding and following the strike;

• If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;

• Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and

• To the extent practicable, photographs or video footage of the animal(s).

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all the species listed in Table 7, given that NMFS expects the anticipated effects of the planned survey to be similar in nature. To be conservative, our analyses assume that a total of 808 exposures above the Level B harassment threshold could accrue to all of the potentially impacted seal species (*i.e.,* harbor, gray and harp seals), and that a total of 522 exposures above the Level B harassment threshold could accrue to both bottlenose dolphin stocks that may be present (*i.e.,* the Western North Atlantic offshore stock and the Western North Atlantic northern coastal migratory stock).

NMFS does not anticipate that serious injury or mortality would occur as a result of Equinor's planned survey, even in the absence of mitigation, thus the authorization does not authorize any serious injury or mortality. As discussed in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section, non-auditory physical effects and vessel strike are not expected to occur. Additionally and as discussed previously, given the nature of activity and sounds sources used and especially in consideration of the required mitigation, Level A harassment is neither anticipated nor authorized. We expect that all potential takes would be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area, reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007).

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring). Most likely, individuals will simply move away from the sound source and temporarily avoid the area where the survey is occurring. We expect that any avoidance of the survey area by marine mammals would be temporary in nature and that any marine mammals that avoid the survey area during the survey activities would not be permanently displaced. Even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. Instances of more severe behavioral harassment are expected to be minimized by required mitigation and monitoring measures.

In addition to being temporary and short in overall duration, the acoustic footprint of the planned survey is small relative to the overall distribution of the animals in the area and their use of the area. Feeding behavior is not likely to be significantly impacted. Prey species are mobile and are broadly distributed throughout the project area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

There are no rookeries, mating or calving grounds known to be biologically important to marine mammals within the planned survey area. As described above, the planned survey areas overlap spatially with a biologically important migratory area for North Atlantic right whales (effective March-April and November-December) that extends from Massachusetts to Florida (LaBrecque, *et al.,* 2015). Off the coasts of Massachusetts, Rhode Island, Connecticut, New York and New Jersey, this biologically important migratory area extends from the coast to beyond the shelf break. Due to the fact that that the planned survey is temporary and the spatial extent of sound produced by the survey would be very small relative to the spatial extent of the available migratory habitat in the area, and due to required mitigation measures including seasonal restrictions, North Atlantic right whale migration is not expected to be impacted by the planned survey. As described above, some portions of the planned survey areas overlap spatially with areas that are recognized as important for North Atlantic right whale foraging, including portions of areas that have been designated as ESA critical habitat due to the significance of the area for North Atlantic right whale feeding. Due to the fact that that the planned survey is temporary and the spatial extent of sound produced by the survey would very small relative to the spatial extent of the available foraging habitat in the area, as well as required mitigation measures including seasonal restrictions in areas and seasons when North Atlantic right whale foraging is predicted to occur, North Atlantic right whale foraging is not expected to be impacted by the planned surveys.

As described above, North Atlantic right, humpback, and minke whales, and gray, harbor and harp seals are experiencing ongoing UMEs. For North Atlantic right whales, as described above, no injury as a result of the planned project is expected or authorization, and Level B harassment takes of North Atlantic right whales are expected to be in the form of avoidance of the immediate area of the planned survey. In addition, the number of takes authorized above the Level B harassment threshold are relatively low (*i.e.,* 8), and the take numbers authorized do not account for the required mitigation measures, which would require shutdown of all survey equipment upon observation of a North Atlantic right whale prior to their entering the zone that would be ensonified above the Level B harassment threshold. As no injury or mortality is expected or authorized, and Level B harassment of North Atlantic right whales will be reduced to the level

of least practicable adverse impact through use of required mitigation measures, the authorized takes of North Atlantic right whales would not exacerbate or compound the ongoing UME in any way.

Similarly, no injury or mortality is expected or authorized for any of the other species with UMEs, Level B harassment will be reduced to the level of least practicable adverse impact through use of required mitigation measures, and the authorized takes would not exacerbate or compound the ongoing UMEs. For minke whales, although the ongoing UME is under investigation (as occurs for all UMEs), this event does not provide cause for concern regarding population level impacts, as the likely population abundance is greater than 20,000 whales and annual M/SI does not exceed the calculated PBR value for minke whales. With regard to humpback whales, the UME does not yet provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or DPS) remains healthy. The West Indies DPS, which consists of the whales whose breeding range includes the Atlantic margin of the Antilles from Cuba to northern Venezuela, and whose feeding range primarily includes the Gulf of Maine, eastern Canada, and western Greenland is not listed under the ESA. The status review identified harmful algal blooms, vessel collisions, and fishing gear entanglements as relevant threats for this DPS, but noted that all other threats are considered likely to have no or minor impact on population size or the growth rate of this DPS (Bettridge *et al.,* 2015). As described in Bettridge *et al.* (2015), the West Indies DPS has a substantial population size (*i.e.,* approximately 10,000; Stevick *et al.,* 2003; Smith *et al.,* 1999; Bettridge *et al.,* 2015), and appears to be experiencing consistent growth. With regard to gray, harbor and harp seals, although the ongoing UME is under investigation, the UME does not yet provide cause for concern regarding population-level impacts to any of these stocks. For harbor seals, the population abundance is over 75,000 and annual M/SI (345) is well below PBR (2,006) (Hayes *et al.,* 2019). For gray seals, the population abundance in the United States is over 27,000, with an estimated abundance including seals in Canada of approximately 505,000, and abundance is likely increasing in the U.S. Atlantic EEZ as well as in Canada (Hayes *et al.,* 2019). For harp seals, while PBR is unknown, the minimum population estimate is 6.9 million and the population appears to be stable (Hayes *et al.,* 2019).

The required mitigation measures are expected to reduce the number and/or severity of takes by (1) giving animals the opportunity to move away from the sound source before HRG survey equipment reaches full energy; (2) preventing animals from being exposed to sound levels that may otherwise result in injury or more severe behavioral responses. Additional vessel strike avoidance requirements will further mitigate potential impacts to marine mammals during vessel transit to and within the survey area.

NMFS concludes that exposures to marine mammal species and stocks due to Equinor's planned survey would result in only short-term (temporary and short in duration) effects to individuals exposed. Marine mammals may temporarily avoid the immediate area, but are not expected to permanently abandon the area. Major shifts in habitat use, distribution, or foraging success are not expected. NMFS does not anticipate the authorized take estimates to impact annual rates of recruitment or survival.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality, serious injury, or Level A harassment is anticipated or authorized;
- The anticipated impacts of the planned activity on marine mammals would primarily be in the form of temporary behavioral changes due to avoidance of the area around the survey vessel;
- The availability of alternate areas of similar habitat value (for foraging and migration) for marine mammals that may temporarily vacate the survey areas during the planned surveys to avoid exposure to sounds from the activity;
- The planned project area does not contain known areas of significance for mating or calving;
- Effects on species that serve as prey species for marine mammals from the planned survey would be minor and temporary and would not be expected to reduce the availability of prey or to affect marine mammal feeding;
- The required mitigation measures, including visual monitoring, exclusion zones, and shutdown measures, are expected to minimize potential impacts to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the required monitoring and mitigation measures, NMFS finds that the total marine mammal take from the planned activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

We propose to authorize incidental take of 17 marine mammal stocks. The total amount of taking authorized is less than one third for all stocks (Table 7), which we find are small numbers of marine mammals relative to the estimated overall population abundances for those stocks. To be conservative, our small numbers analysis assumes a total of 808 exposures above the Level B harassment threshold could accrue to any of the potentially impacted seal species (*i.e.,* harbor, gray or harp seals) and a total of 522 exposures above the Level B harassment threshold could accrue to both bottlenose dolphin stocks that may be present (*i.e.,* the Western North Atlantic offshore stock and the Western North Atlantic northern coastal migratory stock). Based on the analysis contained herein of the planned activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of all affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or

stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the Greater Atlantic Regional Field Office (GARFO).

We requested initiation of consultation under section 7 of the ESA with NMFS GARFO for the issuance of this IHA. On July 30, 2020, NMFS GARFO determined our issuance of the IHA to Equinor was not likely to adversely affect the North Atlantic right, fin, sei, and sperm whale or the critical habitat of any ESA-listed species or result in take under the ESA.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our planned action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Authorization

NMFS has issued an IHA to Equinor for the potential harassment of small numbers of 17 marine mammal stocks incidental to the conducting marine site characterization surveys off the coast of Massachusetts, Rhode Island, Connecticut, New York or New Jersey in the area of the Commercial Leases of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0520 and OCS–A 0512) and along potential submarine cable routes to a landfall locations.

Dated: September 21, 2020.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–21137 Filed 9–24–20; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Information and Regulatory Affairs (OIRA), of the Office of Management and Budget (OMB), for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before October 26, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice's publication to OIRA, at *https://www.reginfo.gov/public/do/PRAMain.* Please find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the website's search function. Comments can be entered electronically by clicking on the ''comment'' button next to the information collection on the ''OIRA Information Collections Under Review'' page, or the ''View ICR—Agency Submission'' page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *https://www.reginfo.gov/public/do/PRAMain.*

In addition to the submission of comments to *https://Reginfo.gov* as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') by clicking on the ''Submit Comment'' box next to the descriptive entry for OMB Control No. 3038–0091, at *https://comments.cftc.gov/FederalRegister/PublicInfo.aspx.*

Or by either of the following methods:

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Mark Bretscher, Special Counsel, Division of Swap Dealers and Intermediary Oversight, Commodity Futures Trading Commission, (312) 596–0529; email: *mbretscher@cftc.gov,* and refer to OMB Control No. 3038–0091.

SUPPLEMENTARY INFORMATION:

Title: Disclosure and Retention of Certain Information Relating to Cleared Swaps Customer Collateral (OMB Control No. 3038–0091). This is a request for extension and revision of a currently approved information collection.

Abstract: Section 724(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–023, 124 stat. 1376, amended the Commodity Exchange Act (''CEA''), 7 U.S.C. 1 *et seq.,* to add, as section 4d(f) thereof, provisions concerning the protection of collateral provided by a Cleared Swaps Customer to margin, guaranty, or secure a swap cleared by or through a

[1] 17 CFR 145.9.

derivatives clearing organization (''DCO''). Broadly speaking, in cleared swaps transactions customers provide collateral to futures commission merchants (''FCMs'') through whom they clear their transactions. FCMs, in turn, may provide customer collateral to DCOs, through which FCMs clear transactions for their customers. 17 CFR part 22 is intended to implement CEA section 4d(f). Several of the sections of Part 22 require collections of information.

Section 22.2(g) requires each FCM with Cleared Swaps Customer Accounts to compute daily the amount of Cleared Swaps Customer Collateral on deposit in Cleared Swaps Customer Accounts, the amount of such collateral required to be on deposit in such accounts and the amount of the FCM's residual financial interest in such accounts. The purpose of this collection of information is to help ensure that FCMs' Cleared Swaps Customer Accounts are in compliance at all times with statutory and regulatory requirements for such accounts.

Section 22.5(a) requires an FCM or DCO to obtain, from each depository with which it deposits cleared swaps customer funds, a letter acknowledging that such funds belong to the Cleared Swaps Customers of the FCM, and not the FCM itself or any other person. The purpose of this collection of information is to confirm that the depository understands its responsibilities with respect to protection of cleared swaps customer funds.

Section 22.11 requires each FCM that intermediates cleared swaps for customers on or subject to the rules of a DCO, whether directly as a clearing member or indirectly through a Collecting FCM, to provide the DCO with information sufficient to identify each customer of the FCM whose swaps are cleared by the FCM. Section 22.11 also requires the FCM, at least once daily, to provide the DCO with information sufficient to identify each customer's portfolio of rights and obligations arising out of cleared swaps intermediated by the FCM. The purpose of this collection of information is to facilitate risk management by DCOs in the event of default by the FCM, to enable DCOs to perform their duty, pursuant to section 22.15, to treat the collateral attributed to each customer of the FCM on an individual basis.

Section 22.12 requires that each DCO and FCM, on a daily basis, calculate, based on information received pursuant to section 22.11 and on information generated and used in the ordinary course of business by the DCO or FCM, and record certain information about the amount of collateral required for each Cleared Swaps Customer and the sum of these amounts. As with section 22.11, the purpose of this collection of information is to facilitate risk management by DCOs and in the event of default by the FCM, to enable DCOs to perform their duty, pursuant to section 22.15, to treat the collateral attributed to each customer of the FCM on an individual basis.

Section 22.16 requires that each FCM who has Cleared Swaps Customers disclose to each of such customers the governing provisions, as established by DCO rules or customer agreements between collecting and depositing FCMs, relating to use of customer collateral, transfer, neutralization of the risks, or liquidation of cleared swaps in the event of a default by a Depositing FCM relating to a Cleared Swaps Customer Account. The purpose of this collection of information is to ensure that Cleared Swaps Customers are informed of the procedures to which accounts containing their swaps collateral may be subject in the event of a default by their FCM.

Section 22.17 requires that each FCM produce a written notice of the reasons and the details concerning withdrawals from a Cleared Swaps Customers Account not for the benefit of Cleared Swap Customers if such withdrawal will exceed 25% of the FCMs residual interest in such account.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. On July 17, 2020, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 85 FR 43547 (''60-Day Notice'') The Commission did not receive any comments on the 60-Day Notice.

Burden Statement: The Commission is revising its estimate of the burden for this collection for 78 respondents (63 FCMs and 15 DCOs). The respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 78.

Estimated Average Burden Hours per Respondent: 331.

Estimated Total Annual Burden Hours: 25,890.

Frequency of Collection: Section 22.2(g)—Daily.

Section 22.5(a)—Once.

Section 22.11—Daily.

Section 22.12—Daily.

Section 22.16—Once.

Section 22.17—On occasion.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: September 22, 2020.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2020–21224 Filed 9–24–20; 8:45 am]

BILLING CODE 6351–01–P

INTERNATIONAL DEVELOPMENT FINANCE CORPORATION

[DFC–016]

Submission for OMB Review

AGENCY: U.S. International Development Finance Corporation (DFC).

ACTION: Notice of Information Collection; Emergency Clearance.

SUMMARY: The U.S. International Development Finance Corporation (DFC) is submitting a request to the Office of Management and Budget (OMB) for emergency review and clearance of a new information collection request under the Paperwork Reduction Act of 1995.

DATES: DFC intends to begin use of this collection immediately.

ADDRESSES: Requests for copies of the subject information collection may be sent by any of the following methods:

- *Mail:* Joanna Reynolds, Agency Submitting Officer, U.S. International Development Finance Corporation, 1100 New York Avenue NW, Washington, DC 20527.
- *Email: fedreg@opic.gov*

Instructions: All submissions received must include the agency name and agency form number or OMB form number for this information collection. Electronic submissions must include the agency form number in the subject line to ensure proper routing. Please note that all written comments received in response to this notice will be considered public records.

FOR FURTHER INFORMATION CONTACT: Agency Submitting Officer: Joanna Reynolds, (202) 357–3979.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act (PRA), the U.S. International Development Finance Corporation (DFC) is seeking emergency clearance from OMB on a new information collection titled DFC–016, DFC-Serbia—Kosovo Screening Tool.

Summary Form Under Review

Title of Collection: DFC-Serbia—Kosovo Screening Tool

Type of Review: New information collection.

Agency Form Number: DFC–016.

OMB Form Number: Not assigned, new information collection.

Frequency: Once per user per project.

Affected Public: Business or other for-profit; not-for-profit institutions; individuals.

Total Estimated Number of Annual Number of Respondents: 100.

Estimated Time Per Respondent: 1.5 hours.

Total Estimated Number of Annual Burden Hours: 150 hours.

Abstract: The DFC Serbia-Kosovo Investment Portal will be the principal document used by DFC to screen the viability of potential of projects for DFC financing as part of the implementation of the Serbia-Kosovo Economic Normalization Agreement.

Nichole Skoyles,

Administrative Counsel, Office of the General Counsel.

[FR Doc. 2020–21157 Filed 9–24–20; 8:45 am]

BILLING CODE 3210–02–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare an Environmental Impact Statement for the Ground Based Strategic Deterrent Deployment and Minuteman III Decommissioning and Disposal

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Notice of intent.

SUMMARY: The United States Air Force (Air Force) is issuing this Notice of Intent (NOI) to advise the public of its intent to prepare an Environmental Impact Statement (EIS) to evaluate potential impacts on the human and natural environments of deploying the Ground Based Strategic Deterrent (GBSD) intercontinental ballistic missile (ICBM) system and decommissioning and disposing of the Minuteman III ICBM system. The Air Force invites public participation in the scoping process to determine the scope and significant issues to be analyzed in depth in the EIS and eliminate issues which are not significant.

DATES: A public scoping period of 45-days will take place starting from the date of this NOI publication in the **Federal Register**. Comments will be accepted at any time during the environmental impact analysis process; however, to ensure the Air Force has sufficient time to consider public scoping comments during preparation of the Draft EIS, please submit comments within the 45-days scoping period. Major milestone dates for the GBSD EIS are as follows:

- Draft EIS and Notice of Availability (NOA) Publication, Spring 2022
- Draft EIS Public Comment Period and Hearing, Spring 2022
- Final EIS and NOA Publication, Spring 2023
- Final ROD signature, Spring 2023

Given the complexity and the scope of this proposal, the Air Force anticipates the environmental analysis to extend past two years for completion and has received senior agency official approval.

ADDRESSES: For GBSD deployment EIS inquiries or requests for printed or digital copies of the scoping materials, please contact Capt Christina Camp, phone: (318) 456–6519, or request materials by email: *AFGSC.GBSD.ImpactStudy@us.af.mil.* The public and interested parties can submit their comments through the project website at *www.gbsdeis.com;* or mail comments to AFCEC/CZN, Attn: GBSD Project EIS, 2261 Hughes Avenue, Suite 155, JBSA Lackland TX 78236–9853; FedEx and UPS deliveries to AFCEC/CZN, Attn: GBSD Project EIS; 3515 S General McMullen, San Antonio, TX 78226–9853.

SUPPLEMENTARY INFORMATION: The purpose of the proposed action is to replace all ground based Minuteman III weapons systems within the continental United States with the GBSD system. The proposed action is needed to meet national security requirements and to comply with the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232 § 1663, 132 Stat. 2153), which directs the Air Force to develop and implement a strategy ''to accelerate the development, procurement, and fielding of the ground-based strategic deterrent program.'' The scope of the deployment activities would include replacing all ground based Minuteman III ICBMs in the United States, including motors, interstages, and missile guidance sets, with the GBSD weapon system, a technologically advanced ICBM system. All launch facilities, communication systems, infrastructure, and technologies would be modernized and replaced as necessary to support the GBSD system.

The Secretary of the Air Force announced that the GBSD deployment will take place at three sequenced Operational Locations 1–3 (''Ops 1–3''), with the scope of each Ops location occurring both on-base and in the associated missile fields. The Ops locations are the alternatives being consider in the EIS. Each location is the preferred alternative for its respective sequenced order, and includes Francis E. Warren Air Force Base (AFB) WY (Ops-1); Malmstrom AFB, MT (Ops-2); and Minot AFB, ND (Ops-3). The additional maintenance, training, storage, testing, support, decommissioning, and disposal actions would occur at Hill AFB, UT; the Utah Test and Training Range (UTTR), UT; Camp Guernsey, WY; and Camp Navajo, AZ.

The EIS may consider alternatives that include deploying the GBSD system in phases. The Proposed Action would not include generating or disposing of nuclear material, and the number of ground based nuclear missiles would remain unchanged. Deployment of the GBSD system would begin in the mid-2020s, extending the capabilities of the ground-based leg of the U.S. nuclear triad through at least 2075.

The EIS will analyze facility construction, modification, and operations at and around Francis E. Warren AFB and Camp Guernsey, Malmstrom AFB, Minot AFB, Hill AFB and UTTR, and Camp Navajo. During the transition from Minuteman III to GBSD, the two weapon systems would be partially operated and maintained concurrently for several years; therefore, the EIS also will analyze the overlapping actions and resulting impacts of conducting aspects of the programs in parallel. The EIS will also analyze the No Action Alternative which will also be fully considered. It serves as the baseline against which to compare the Proposed Action. Under the No Action Alternative, the Air Force would continue to maintain and operate the Minuteman III weapon system in its current configuration and the GBSD system would not be deployed. Expected environmental impacts are assumed to result from ground disturbing activities associated with construction of the GBSD system. It is anticipated that these environmental impacts, will be mitigated to the extent practical or avoided where possible. Further, the Air Force will pursue all required Federal and State permits, licenses, and other authorizations during the course of this EIS process, including but not limited to consultations under the National Historic Preservation Act of 1966 (54 U.S.C. 300101 *et seq.*) and the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as well as permits under the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq).

The scoping process allows and invites early and meaningful participation by the public and is used to define the full range of issues and concerns to be evaluated in the EIS. As such, the Air Force is soliciting scoping comments and/or identification of

potential alternatives, information, and analysis relevant to the proposed action from interested local, state, and federal agencies and organizations; Native American Tribes; and members of the public. Concurrently, public scoping notices will be announced locally within the proposed actions region of influence. Due to public health concerns related to COVID–19, the Air Force will not hold face-to-face public scoping meetings. Public scoping will be accomplished remotely via the project website that includes materials on the project website at *www.gbsdeis.com.* The website provides posters, slides, other meeting materials, and a capability to provide public scoping comments. To make alternative arrangements to receive printed or digital copies of the scoping materials, please contact Capt Christina Camp at (318) 456–6519, or by email: *AFGSC.GBSD.ImpactStudy@us.af.mil.*

Adriane Paris,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2020–21220 Filed 9–24–20; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2020–SCC–0072]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Recipient's Funding Certification and Agreement CARES Act

AGENCY: Office of General Counsel, Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before October 26, 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 Jack Cox, 202–453–6314.

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: Recipient's Funding Certification and Agreement CARES Act.

OMB Control Number: 1801–0005.

Type of Review: An extension without change of a currently approved collection.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 34,230.

Total Estimated Number of Annual Burden Hours: 17,115.

Abstract: The Department of Education (the Department) is requesting clearance to allow for immediate outreach to institutions of higher educations (IHEs) to meet the requirements of the CARES Act. Section 18004(a)(1) of the CARES Act, Public Law 116–136 (March 27, 2020), authorizes the Secretary of Education (''Secretary'') to allocate formula grant funds to participating institutions of higher educations (IHEs). Section 18004(c) of the CARES Act requires the IHEs to use no less than fifty percent of the funds received to provide emergency financial aid grants to students for expenses related to the disruption of campus operations due to coronavirus (including eligible expenses under a student's cost of attendance such as food, housing, course materials, technology, health care, and child care).

Dated: September 22, 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. 2020–21187 Filed 9–24–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0082]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request

AGENCY: Office of Postsecondary Education, Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before October 26, 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 Gaby Watts, 202–453–7195.

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: CARES Act, Recipient's Funding Certification and Agreement (SIP, MSI, FIPSE).

OMB Control Number: 1840–0843.

Type of Review: An extension without change of a currently approved collection.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 2,620.

Total Estimated Number of Annual Burden Hours: 2,620.

Abstract: Section 18004(a)(2) of the CARES Act, Public Law 116–136 (March 27, 2020), authorizes the Secretary to make awards under parts A and B of title III, parts A and B of title V, and subpart 4 of part A of title VII of the Higher Education Act of 1965, as amended (''HEA''), to address needs directly related to the coronavirus. These awards are in addition to awards made in Section 18004(a)(1) of the CARES Act. Section 18004(a)(3) of the CARES Act, Pub. authorizes the Secretary to allocate funds for part B of Title VII of the HEA, for institutions of higher education (IHEs) that the Secretary determines have the greatest unmet needs related to coronavirus.

This information collection request (ICR) includes the certifications, and in some cases additional data, that IHEs must submit to request funds allocated under Sections 18004(a)(2) and 18004(a)(3) of the CARES Act. This ICR was previously approved as an emergency clearance in order to comply with the requirements of the CARES Act and expedite the release of funds to IHEs and students with pressing financial needs due to the pandemic.

Dated: September 22, 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. 2020–21215 Filed 9–24–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0073]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; CARES Act, Recipient's Funding Certification and Agreement (Institutional Aid)

AGENCY: Office of Postsecondary Education, Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before October 26, 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 Gaby Watts, 202–453–7195.

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: CARES Act, Recipient's Funding Certification and Agreement (Institutional Aid).

OMB Control Number: 1840–0842.

Type of Review: An extension without change of a currently approved collection.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 5,705.

Total Estimated Number of Annual Burden Hours: 2,853.

Abstract: Section 18004(a)(1) of the CARES Act, Public Law 116–136 (March 27, 2020), authorizes the Secretary of Education to allocate formula grant funds to participating institutions of higher educations (IHEs). Section 18004(c) of the CARES Act allows the IHEs to use up to one-half of the total funds received to cover any costs associated with the significant changes to the delivery of instruction due to the coronavirus (with specific exceptions). This information collection request includes the certification and agreement that must be submitted by an IHE in order to request institutional aid funds allocated under the CARES Act.

This information collection request was previously approved as an emergency clearance in order to comply with the requirements of the CARES Act and expedite the release of funds to IHEs and students with pressing financial needs due to the pandemic. The Department of Education is now requesting an extension of that emergency clearance under normal clearance procedures.

Dated: September 22, 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. 2020–21212 Filed 9–24–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0077]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and approval; Comment Request; Certification and Agreement for the ESSER Fund Application

AGENCY: Office of Elementary and Secondary Education, Department of Education (ED).

ACTION: Notice

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before October 26, 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 Christopher Tate, 202–453–6047.

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: Certification and Agreement for the ESSER Fund Application.

OMB Control Number: 1810–0743.

Type of Review: A revision of a currently approved collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 1,952.

Total Estimated Number of Annual Burden Hours: 76,653.

Abstract: Under the Elementary and Secondary School Emergency Relief Fund (ESSER Fund), the Department awards grants to State educational agencies (SEAs) for the purpose of providing local educational agencies (LEAs), including charter schools that are LEAs, with emergency relief funds to address the impact that Novel Coronavirus Disease 2019 (COVID–19) has had, and continues to have, on elementary and secondary schools across the nation. LEAs must provide equitable services to students and teachers in non-public schools as required under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

Dated: September 22, 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. 2020–21205 Filed 9–24–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection Regarding Coordination of Federal Authorizations for Electric Transmission Facilities

AGENCY: Office of Electricity, Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed extension of a collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995.

DATES: Comments regarding this proposed information collection extension must be received on or before November 24, 2020. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Comments may be sent to Christopher A. Lawrence, Transmission Permitting and Technical Assistance, Office of Electricity, U.S. Department of Energy, Washington, DC, *Christopher.lawrence@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Christopher A. Lawrence, at *Christopher.Lawrence@hq.doe.gov* or 202–586–5260.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.:* 1910–5185; (2) *Information Collection Request Title:* Coordination of Federal Authorizations for Electric Transmission Facilities; (3) *Type of Request:* Extension; (4) *Purpose:* To meet requirements found in Section 216(h)(4)(c) of the Federal Power Act directing DOE to establish a pre-application process for qualifying electric transmission projects requiring multiple Federal authorizations. Section 216(h)(3) also allows an applicant to seek assistance for non-qualifying projects. Data supplied will be used to support an Initiation Request necessary to begin DOE's coordination assistance and must include, based on best available information, a Summary of Qualifying Project, Affected Environmental Resources and Impacts Summary, associated Maps, Geospatial Information, and Studies (provided in electronic format), and a Summary of Early Identification of Project Issues. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. This data will also be used to conduct audits and for enforcement purposes. There has been no collection under this authority since its inception. (5) *Annual Estimated Number of Respondents:* 5, as this collection is addressed to portion of the electric utility industry; (6) *Annual Estimated Number of Burden Hours:* 55 minutes

per response; (7) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $5,075.84.

Statutory Authority: Federal Power Act, Sections 216(h)(3) and 216(h)(4)(c).

Signing Authority

This document of the Department of Energy was signed on September 18, 2020, by Bruce J. Walker, Assistant Secretary, Office of Electricity, 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 22, 2020.

Treena V. Garrett,

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

[FR Doc. 2020–21170 Filed 9–24–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–370–B]

Application to Export Electric Energy; Vitol Inc.

AGENCY: Office of Electricity, Department of Energy.

ACTION: Notice of application.

SUMMARY: Vitol Inc. (Applicant or Vitol) has applied for authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before October 26, 2020.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to (202) 586–8008.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) regulates exports of electricity from the United States to a foreign country, pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b) and 42 U.S.C. 7172(f)). Such exports require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On August 25, 2020, Vitol filed an application with DOE (Application or App.) to transmit electric energy from the United States to Canada for a term of five years. Vitol states that it ''is a Delaware corporation with its principal place of business in Houston, Texas'' and that it ''is a wholly-owned, direct subsidiary of Vitol US Holding Co.'' App. at 2. Vitol adds that it ''does not own any electric generation or transmission facilities, nor does it hold a franchise or service territory for the transmission, distribution, or sale of electric power.'' *Id.* at 4.

Vitol further states that it ''has purchased, or will purchase, the power that may be exported to Canada from wholesale generators, electric utilities, and federal power marketing agencies.'' App. at 4. Vitol contends that any power it purchases for export would be ''surplus to the needs of the selling entities'' and that ''the proposed exports will not impair or tend to impede the sufficiency of electric power supplies in the United States or the regional coordination of electric utility planning or operations.'' *Id.* at 5.

Vitol also ''agrees to abide by the export limits . . . of any [approved] transmission facilities over which Vitol exports electric power to Canada,'' and states that ''[t]he controls that are inherent in any transaction that complies with all [reliability] requirements and the export limits imposed by the Department on the international transmission facilities are sufficient to ensure that exports by Vitol would not impede or tend to impede the coordinated use of transmission facilities'' under the Federal Power Act. App. at 6.

The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning Vitol's application to export electric energy to Canada should be clearly marked with OE Docket No. EA–370–B. Additional copies are to be provided directly to Robert Viola, 2925 Richmond Avenue, 11th Floor, Houston, TX 77098; *rfv@vitol.com;* Daniel E. Frank, 700 Sixth St. NW, Suite 700, Washington, DC 20001; *danielfrank@eversheds-sutherland.com;* Martha M. Hopkins, 700 Sixth St. NW, Suite 700, Washington, DC 20001; *martyhopkins@eversheds-sutherland.com.*

A final decision will be made on the Application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE determines that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of the Application will be made available, upon request, by accessing the program website at *http://energy.gov/node/11845,* or by emailing Matthew Aronoff at *matthew.aronoff@hq.doe.gov.*

Signed in Washington, DC, on September 21, 2020.

Christopher Lawrence,

Management and Program Analyst, Transmission Permitting and Technical Assistance, Office of Electricity.

[FR Doc. 2020–21192 Filed 9–24–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for OMB review and comment.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its Semi-Annual Davis-Bacon Enforcement Report. All Federal agencies administering programs subject to Davis-Bacon wage provisions are required by to submit a report of all new covered contracts/projects and all compliance and enforcement activities every six months to the Department of Labor (DOL). In order for DOE to comply with this reporting requirement, it must collect contract and enforcement information from the Recovery Act funded Loan Borrowers, Loan Guarantee Borrowers, DOE direct contractors, and

other prime contractors that administer DOE programs subject to Davis-Bacon requirements. DOE will require that such entities complete and submit a Semi-Annual Enforcement Report every six months, by the 21st of April and the 21st of October each year.

DATES: Comments regarding this collection must be received on or before November 24, 2020. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments should be sent to:

DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW, Washington, DC 20503

And to:

John M. Sullivan, GC–63, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, Or by fax at (202) 586–0971; or by email *to john.m.sullivan@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to:

John M. Sullivan, Attorney-Advisor (Labor), GC–63, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, or by fax at (202) 586–0971 or by email to *john.m.sullivan@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.:* 1910–5165; (2) *Information Collection Request Title:* Davis-Bacon Semi-Annual Enforcement Report; (3) *Type of Request:* Renewal; (4) *Purpose:* This information collection ensures Departmental compliance with 29 CFR 5.7(b). The respondents are Department of Energy M&O, Facilities Management Contractors, and recipients of financial assistance whose work is subject to the Davis-Bacon Act and Davis-Bacon Related Acts; (5) *Annual Estimated Number of Respondents:* 75; (6) *Annual Estimated Number of Total Responses:* 150; (7) *Annual Estimated Number of Burden Hours:* 2 per respondent annually, for a total of 300 per year; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $103.00 per respondent.

Statutory Authority: 29 CFR 5.7(b).

Signing Authority

This document of the Department of Energy was signed on September 21, 2020, by John T. Lucas, Deputy General Counsel for Transactions, Technology and Contractor Human Resources, 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 22, 2020.

Treena V. Garrett,

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

[FR Doc. 2020–21171 Filed 9–24–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Agency Information Collection Extension

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1995, the Department of Energy (DOE) intends to extend for three years, an information collection request with the Office of Management and Budget (OMB).

DATES: Comments regarding this proposed information collection must be received on or before November 24, 2020. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments to Jessica Norles, Foreign Affairs Specialist, by mail at Office of Nonproliferation and Arms Control, National Nuclear Security Administration, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585, or by fax at (202) 586–1348 or by email at *jessica.norles@nnsa.doe.gov.* Due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, DOE encourages responders to submit comments electronically to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: For other questions, contact Jessica Norles, Foreign Affairs Specialist, Office of Nonproliferation and Arms Control, National Nuclear Security Administration, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585, *jessica.norles@nnsa.doe.gov,* (202) 586–2271.

SUPPLEMENTARY INFORMATION: DOE published in the **Federal Register** a Notice of Availability for the American Assured Fuel Supply (AAFS). 76 FR 51357 (Aug. 18, 2011), and an application to standardize the information that must be provided in a request to access the material in the AAFS. 78 FR 72071 (Dec. 2, 2013). DOE previously submitted an information collection extension request to the OMB for an extension under the Paperwork Reduction Act of 1995 in 2017. 82 FR 17650 (April 12, 2017).

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

This information collection request contains: (1) *OMB No.:* 1910–5173; (2) *Information Collection Request Title:* The American Assured Fuel Supply Program; (3) *Type of Review:* Extension; (4) *Purpose:* DOE created the AAFS, a reserve of low enriched uranium (LEU) to serve as a backup fuel supply for foreign recipients to be supplied through U.S. persons, or for domestic recipients, in the event of fuel supply disruption. This effort supports the United States Government's nuclear nonproliferation objectives by supporting civilian nuclear energy development while minimizing proliferation risks. This collection of information in the event of supply disruption is necessary for DOE to identify if applicants meet basic requirements to access the AAFS and implement this important nonproliferation initiative; (5) *Annual Estimated Number of Respondents:* 10; (6) *Annual Estimated Number of Total Responses:* 10; (7) *Annual Estimated Number of Burden Hours:* 8 per respondent for a total of 80 per year; (8) *Annual Estimated Reporting and*

Recordkeeping Cost Burden: $960.13 per respondent for a total of $9,601.28 per year.

Signing Authority

This document of the Department of Energy was signed on September 22, 2020, by Brent K. Park, Deputy Administrator for Defense Nuclear Nonproliferation, National Nuclear Security Administration, 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 22, 2020.

Treena V. Garrett,

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

[FR Doc. 2020–21222 Filed 9–24–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2926–000]

Altamont Winds, LLC; Supplemental Notice that Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Altamont Winds, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 12, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: September 21, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–21202 Filed 9–24–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP20–1197–000.

Applicants: Portland Natural Gas Transmission System.

Description: § 4(d) Rate Filing: PXP Phase III Agreement Filing to be effective 11/1/2020.

Filed Date: 9/18/20.

Accession Number: 20200918–5020.

Comments Due: 5 p.m. ET 9/30/20.

Docket Numbers: RP20–1198–000.

Applicants: Northwest Pipeline LLC.

Description: § 4(d) Rate Filing: 2020 Housekeeping Filing to be effective 10/3/2020.

Filed Date: 9/18/20.

Accession Number: 20200918–5039.

Comments Due: 5 p.m. ET 9/30/20.

Docket Numbers: RP20–1199–000.

Applicants: ANR Storage Company.

Description: § 4(d) Rate Filing: Creditworthiness to be effective 10/18/2020.

Filed Date: 9/18/20.

Accession Number: 20200918–5054.

Comments Due: 5 p.m. ET 9/30/20.

Docket Numbers: RP20–1200–000.

Applicants: Gulf South Pipeline Company, LLC.

Description: Compliance filing Compliance Filing in Docket No. CP17–476–002 to be effective 9/18/2020.

Filed Date: 9/18/20.

Accession Number: 20200918–5064.

Comments Due: 5 p.m. ET 9/30/20.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 21, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–21200 Filed 9–24–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC20–103–000.
Applicants: New Athens Generating Company, LLC, Millennium Power Partners, L.P.
Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of New Athens Generating Company, LLC.
Filed Date: 9/18/20.
Accession Number: 20200918–5171.
Comments Due: 5 p.m. ET 10/9/20.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–246–000.
Applicants: Altamont Winds LLC.
Description: Self-Certification of Exempt Wholesale Generator Status of Altamont Winds LLC.
Filed Date: 9/18/20.
Accession Number: 20200918–5153.
Comments Due: 5 p.m. ET 10/9/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–2187–001.
Applicants: Chief Conemaugh Power, LLC.
Description: Compliance filing: Informational Filing Pursuant to Schedule 2 of the PJM OATT & Request for Waiver to be effective N/A.
Filed Date: 9/21/20.
Accession Number: 20200921–5148.
Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: ER15–2188–001.
Applicants: Chief Keystone Power, LLC.
Description: Compliance filing: Informational Filing Pursuant to Schedule 2 of the PJM OATT & Request for Waiver to be effective N/A.
Filed Date: 9/21/20.
Accession Number: 20200921–5161.
Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: ER20–2158–001.
Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.
Description: Tariff Amendment: 2020–09–21_SA 3527 Deficiency Response Ameren Illinois-Hoopeston Wind (H094) FSA to be effective 8/25/2020.
Filed Date: 9/21/20.
Accession Number: 20200921–5134.
Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: ER20–2671–000.
Applicants: Water Strider Solar, LLC.
Description: Report Filing: Water Strider Solar MBR Informational Supplement to be effective N/A.
Filed Date: 9/16/20.
Accession Number: 20200916–5074.
Comments Due: 5 p.m. ET 10/7/20.

Docket Numbers: ER20–2922–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2020–09–18 Settlement Rules Amdt—Post-Day-Ahead Exceptional Dispatch Schedules to be effective 11/18/2020.
Filed Date: 9/18/20.
Accession Number: 20200918–5135.
Comments Due: 5 p.m. ET 10/9/20.

Docket Numbers: ER20–2923–000.
Applicants: Duke Energy Florida, LLC.
Description: § 205(d) Rate Filing: DEF-Southern Companies Concurrence Filing to be effective 8/4/2020.
Filed Date: 9/18/20.
Accession Number: 20200918–5137.
Comments Due: 5 p.m. ET 10/9/20.

Docket Numbers: ER20–2924–000.
Applicants: Idaho Power Company.
Description: § 205(d) Rate Filing: Revised SA 324 and 342 to be effective 7/1/2021.
Filed Date: 9/18/20.
Accession Number: 20200918–5139.
Comments Due: 5 p.m. ET 10/9/20.

Docket Numbers: ER20–2925–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation of ISA, SA No. 4758; Queue No. AA2–177 to be effective 10/12/2017.
Filed Date: 9/18/20.
Accession Number: 20200918–5141.
Comments Due: 5 p.m. ET 10/9/20.

Docket Numbers: ER20–2926–000.
Applicants: Altamont Winds LLC.
Description: Baseline eTariff Filing: Altamont Winds LLC MBR Tariff to be effective 11/1/2020.
Filed Date: 9/18/20.
Accession Number: 20200918–5143.
Comments Due: 5 p.m. ET 10/9/20.

Docket Numbers: ER20–2927–000.
Applicants: The Connecticut Light and Power Company.
Description: § 205(d) Rate Filing: Preliminary Engineering and Design Agreement with The University of Connecticut to be effective 9/21/2020.
Filed Date: 9/21/20.
Accession Number: 20200921–5030.
Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: ER20–2928–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 5756; Queue Nos. AC1–109/AC1–111 to be effective 8/24/2020.
Filed Date: 9/21/20.
Accession Number: 20200921–5031.
Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: ER20–2929–000.
Applicants: Tri-State Generation and Transmission Association.
Description: Tariff Cancellation: Notice of Cancellation of Rate Schedule FERC No. 206 to be effective 9/22/2020.
Filed Date: 9/21/20.
Accession Number: 20200921–5041.
Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: ER20–2930–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Letter Agreement 326FW 8ME LLC Arida Solar Farm SA No. 253 to be effective 9/22/2020.
Filed Date: 9/21/20.
Accession Number: 20200921–5075.
Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: ER20–2931–000.
Applicants: PPL Electric Utilities Corporation, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: PPL submits ECSA No. 5770 to be effective 9/22/2020.
Filed Date: 9/21/20.
Accession Number: 20200921–5086.
Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: ER20–2932–000.
Applicants: Big Sky North, LLC.
Description: § 205(d) Rate Filing: First Amended and Restated Master Interconnection Services Agreement to be effective 9/22/2020.
Filed Date: 9/21/20.
Accession Number: 20200921–5087.
Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: ER20–2933–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation of ISA, SA No. 4762; Queue No. AC1–018 to be effective 11/16/2020.
Filed Date: 9/21/20.
Accession Number: 20200921–5088.
Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: ER20–2934–000.
Applicants: PPL Electric Utilities Corporation, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: PPL submits ECSA No. 5771 to be effective 9/22/2020.
Filed Date: 9/21/20.
Accession Number: 20200921–5091.
Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: ER20–2935–000.
Applicants: Summer Solar LLC.
Description: § 205(d) Rate Filing: Fourth Amended and Restated Shared

Facilities Agreement to be effective 9/22/2020.

Filed Date: 9/21/20.

Accession Number: 20200921–5108.

Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: ER20–2936–000.

Applicants: Alabama Power Company.

Description: § 205(d) Rate Filing: Amended and Restated GA Solar 5 (Hickory Solar) LGIA Filing to be effective 9/4/2020.

Filed Date: 9/21/20.

Accession Number: 20200921–5129.

Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: ER20–2937–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to WMPA, Service Agreement No. 4760; Queue No. AC1–147 re: CAAA to be effective 7/24/2017.

Filed Date: 9/21/20.

Accession Number: 20200921–5140.

Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: ER20–2938–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to AD2–180 IISA No. 5627 to be effective 3/17/2020.

Filed Date: 9/21/20.

Accession Number: 20200921–5143.

Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: ER20–2939–000.

Applicants: Chief Conemaugh Power, LLC.

Description: Compliance filing: Informational Filing Pursuant to Schedule 2 of the PJM OATT and eTariff Baseline to be effective 9/22/2020.

Filed Date: 9/21/20.

Accession Number: 20200921–5156.

Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: ER20–2940–000.

Applicants: Chief Keystone Power, LLC.

Description: Compliance filing: Informational Filing Pursuant to Schedule 2 of the PJM OATT and eTariff Baseline to be effective 9/22/2020.

Filed Date: 9/21/20.

Accession Number: 20200921–5162.

Comments Due: 5 p.m. ET 10/13/20.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 21, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–21204 Filed 9–24–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–521–000]

Notice of Request Under Blanket Authorization; Northwest Pipeline LLC

Take notice that on September 10, 2020, Northwest Pipeline LLC (Northwest), 2800 Post Oak Blvd., Houston, Texas 77056, filed in the above referenced docket, a prior notice request pursuant to sections 157.205 and 157.208 of the Commission's regulations under the Natural Gas Act and its blanket certificate issued in Docket No. CP82–433–000 for authorization to increase the maximum allowable operating pressure (MAOP) of the Othello Lateral on Northwest's system located in Adams County, Washington. Specifically, this project will increase the MAOP of the Othello Lateral from 765 psig to 811 psig to have a consistent MAOP with the Othello Loop. Northwest avers that there will be no increase, reduction, or termination in firm service to any existing customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this prior notice request should be directed to Liz Hughes, Regulatory Analyst, Northwest Pipeline LLC, P.O. Box 1396, Houston, Texas 77251 or email *liz.hughes@williams.com.*

Any person or the Commission's staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene, or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of

filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFile link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: September 21, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–21201 Filed 9–24–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0720; FRL–10015–05]

Pesticide Registration Review; Draft Human Health and/or Ecological Risk Assessments for Chlorpyrifos; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's revised draft human health risk assessment and ecological risk assessment for the registration review of chlorpyrifos.

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information contact: The contact information for the pesticide of interest identified in the Table in Unit IV.

For general questions on the registration review program, contact: Melanie Biscoe, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 305–7106; email address: *biscoe.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the contact identified in the Table in Unit IV.

II. Background

Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed comprehensive draft human health and ecological risk assessments for chlorpyrifos as listed in the Table in Unit IV. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

III. Authority

EPA is conducting its registration review of the chemicals listed in the Table in Unit IV pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment, that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food that is inconsistent with the safety standard of section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA).

IV. What action is the Agency taking?

Pursuant to 40 CFR 155.53, EPA has evaluated available data and conducted new human health and ecological risk assessments for chlorpyrifos. This notice announces the availability of EPA's revised human health risk assessment and ecological risk assessment for the pesticides shown in the following table.

TABLE—DRAFT RISK ASSESSMENTS BEING MADE AVAILABLE FOR PUBLIC COMMENT

Registration review case name and No.	Docket ID No.	Contact information
Chlorpyrifos	EPA–HQ–OPP–2008–0850	*OPPChlorpyrifosInquiries@epa.gov.* (703) 347–0206.

EPA will provide an opportunity for interested parties to provide comments and input concerning the Agency's draft human health and/or ecological risk assessments for the pesticides listed in the Table in Unit IV concurrently with the issuance of Proposed Interim Decision. The Agency will consider all comments received during the public comment period and make changes, as appropriate, to a draft human health and/or ecological risk assessment. EPA may then issue a revised risk assessment, explain any changes to the draft risk assessment, and respond to comments.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 16, 2020.

Mary Reaves,

Acting Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2020–21196 Filed 9–24–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10015–06–OA]

Notice of Meeting of the EPA Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held virtually October 22, 2020. The CHPAC advises the Environmental Protection Agency (EPA) on science, regulations and other issues relating to children's environmental health.

DATES: October 22, 2020 from 2 p.m. to 5 p.m.

ADDRESSES: The meeting will take place virtually. If you want to listen to the meeting or provide comments, please email *louie.nica@epa.gov* for further details.

FOR FURTHER INFORMATION CONTACT: Nica Louie, Office of Children's Health Protection, U.S. EPA, MC 1107T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 564–7633 or *louie.nica@epa.gov.*

SUPPLEMENTARY INFORMATION: The meetings of the CHPAC are open to the public. An agenda will be posted to *https://www.epa.gov/children/childrens-health-protection-advisory-committee-chpac.*

Access and Accommodations: For information on access or services for individuals with disabilities, please contact Nica Louie at 202–564–7633 or *louie.nica@epa.gov.*

Dated: September 16, 2019.

Nica Mostaghim,

Environmental Health Scientist.

[FR Doc. 2020–21143 Filed 9–24–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2019–0237; FRL–10014–87]

Cyclic Aliphatic Bromide Cluster (HBCD); Final Toxic Substances Control Act (TSCA) Risk Evaluation; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of the final Toxic Substances Control Act (TSCA) risk evaluation of Cyclic Aliphatic Bromide Cluster (HBCD). The purpose of conducting risk evaluations under TSCA is to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment under the conditions of use, including an unreasonable risk to a relevant potentially exposed or susceptible subpopulation, without consideration of costs or other nonrisk factors. EPA has determined that specific conditions of use of HBCD present an unreasonable risk of injury to health or the environment. For those conditions of use for which EPA has found an unreasonable risk, EPA must take regulatory action to address that unreasonable risk through risk management measures enumerated in TSCA. EPA has also determined that specific conditions of use do not present unreasonable risk of injury to health or the environment. For those conditions of use for which EPA has found no unreasonable risk to health or the environment, the Agency's determination is a final Agency action and is issued via order in the risk evaluation.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2019–0237, is available online at *http://www.regulations.gov* or in-person at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Public Reading Room is closed to visitors with limited exceptions. The EPA/DC staff continue to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Dr. Stan Barone, Office of Pollution Prevention and Toxics (7403M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–1169; email address: *barone.stan@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may be of interest to persons who are or may be interested in risk evaluations of chemical substances under TSCA, 15 U.S.C. 2601 *et seq.* Since other entities may also be interested in this final risk evaluation, the EPA has not attempted to describe all the specific entities that may be affected by this action.

B. What is EPA's authority for taking this action?

TSCA section 6, 15 U.S.C. 2605, requires EPA to conduct risk evaluations to ''determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the risk evaluation by the Administrator, under the conditions of use.'' 15 U.S.C. 2605(b)(4)(A). TSCA sections 6(b)(4)(A) through (H) enumerate the deadlines and minimum requirements applicable to this process, including provisions that provide instruction on chemical substances that must undergo evaluation, the minimum components of a TSCA risk evaluation, and the timelines for public comment and completion of the risk evaluation. TSCA also requires that EPA operate in a manner that is consistent with the best available science, make decisions based on the weight of the scientific evidence and consider reasonably available information. 15 U.S.C. 2625(h), (i), and (k). TSCA section 6(i) directs that a determination of ''no unreasonable risk'' shall be issued by order and considered to be a final Agency action, while a determination of ''unreasonable risk'' is not considered to be a final Agency action. 15 U.S.C. 2605(i).

The statute identifies the minimum components for all chemical substance risk evaluations. For each risk evaluation, EPA must publish a document that outlines the scope of the risk evaluation to be conducted, which includes the hazards, exposures, conditions of use, and the potentially

exposed or susceptible subpopulations that EPA expects to consider. 15 U.S.C. 2605(b)(4)(D). The statute further provides that each risk evaluation must also: (1) Integrate and assess available information on hazards and exposures for the conditions of use of the chemical substance, including information that is relevant to specific risks of injury to health or the environment and information on relevant potentially exposed or susceptible subpopulations; (2) describe whether aggregate or sentinel exposures were considered and the basis for that consideration; (3) take into account, where relevant, the likely duration, intensity, frequency, and number of exposures under the conditions of use; and (4) describe the weight of the scientific evidence for the identified hazards and exposures. 15 U.S.C. 2605(b)(4)(F)(i)–(ii) and (iv)–(v). Each risk evaluation must not consider costs or other nonrisk factors. 15 U.S.C. 2605(b)(4)(F)(iii).

The statute requires that the risk evaluation process be completed within a specified timeframe and provide an opportunity for public comment on a draft risk evaluation prior to publishing a final risk evaluation. 15 U.S.C. 2605(b)(4).

Subsection 5.4.1 of the final risk evaluation for HBCD constitutes the order required under TSCA section 6(i)(1), and the ''no unreasonable risk'' determinations in that subsection are considered to be a final Agency action effective on the date of issuance of the order. In conducting risk evaluations, ''EPA will determine whether the chemical substance presents an unreasonable risk of injury to health or the environment under each condition of use within the scope of the risk evaluation. . .'' 40 CFR 702.47. Under EPA's implementing regulations, ''[a] determination by EPA that the chemical substance, under one or more of the conditions of use within the scope of the risk evaluation, does not present an unreasonable risk of injury to health or the environment will be issued by order and considered to be a final Agency action, effective on the date of issuance of the order.'' 40 CFR 702.49(d). For purposes of TSCA section 19(a)(1)(A), the date of issuance of the section 6(i)(1) order for HBCD shall be at 1:00 p.m. Eastern time (standard or daylight, as appropriate) on the date that is two weeks after the date when this notice is published in the **Federal Register**, which is in accordance with 40 CFR 23.5.

C. What action is EPA taking?

EPA is announcing the availability of the risk evaluation of the chemical substance identified in Unit II. In this risk evaluation EPA has made unreasonable risk determinations on some of the conditions of use within the scope of the risk evaluation for this chemical. For those conditions of use for which EPA has found an unreasonable risk of injury to health or the environment, EPA must take regulatory action to address those risks through risk management measures enumerated in 15 U.S.C. 2605(a).

EPA also is announcing the availability of the information required to be provided publicly with each risk evaluation, which is available online at *http://www.regulations.gov* in the dockets identified. 40 CFR 702.51. Specifically, EPA has provided:

- The scope document and problem formulation (in Docket ID No. EPA–HQ–OPPT–2016–0735);
- Draft risk evaluation, and final risk evaluation (in Docket ID No. EPA–HQ–OPPT–2019–0237);
- All notices, determinations, findings, consent agreements, and orders (in Docket ID No. EPA–HQ–OPPT–2019–0237);
- Any information required to be provided to the Agency under 15 U.S.C. 2603 (in Docket ID No. EPA–HQ–OPPT–2016–0735 and Docket ID No. EPA–HQ–OPPT–2019–0237);
- A nontechnical summary of the risk evaluation (in Docket ID No. EPA–HQ–OPPT–2019–0237);
- A list of the studies, with the results of the studies, considered in carrying out each risk evaluation (Risk Evaluation for Cyclic Aliphatic Bromide Cluster (HBCD Cluster) in Docket ID No. EPA–HQ–OPPT–2019–0237);
- The final peer review report, including the response to peer review and public comments received during peer review (in Docket ID No. EPA–HQ–OPPT–2019–0237); and
- Response to public comments received on the draft scope and the draft risk evaluation (in Docket ID No. EPA–HQ–OPPT–2019–0237).

II. TSCA Risk Evaluation

A. What is EPA's risk evaluation process for existing chemicals under TSCA?

The risk evaluation process is the second step in EPA's existing chemical review process under TSCA, following prioritization and before risk management. As this chemical is one of the first ten chemical substances undergoing risk evaluation, the chemical substance was not required to go through prioritization (81 FR 91927, December 19, 2016) (FRL–9956–47). The purpose of conducting risk evaluations is to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment under the conditions of use, including an unreasonable risk to a relevant potentially exposed or susceptible subpopulation. As part of this process, EPA must evaluate both hazard and exposure, not consider costs or other nonrisk factors, use reasonably available information and approaches in a manner that is consistent with the requirements in TSCA for the use of the best available science, and ensure decisions are based on the weight of scientific evidence.

The specific risk evaluation process that EPA has established by rule to implement the statutory process is set out in 40 CFR part 702 and summarized on EPA's website at *http://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-evaluations-existing-chemicals-under-tsca.* As explained in the preamble to EPA's final rule on procedures for risk evaluation (82 FR 33726, July 20, 2017) (FRL–9964–38), the specific regulatory process set out in 40 CFR part 702, subpart B is being followed for the first ten chemical substances undergoing risk evaluation to the maximum extent practicable.

Prior to the publication of this final risk evaluation, a draft risk evaluation was subject to peer review and public comment. EPA reviewed the report from the peer review committee and public comments and has amended the risk evaluation in response to these comments as appropriate. The public comments, peer review report, and EPA's response to comments is in Docket ID No. EPA–HQ–OPPT–2019–0237. Prior to the publication of the draft risk evaluation, EPA made available the scope and problem formulation, and solicited public input on uses and exposure. EPA's documents and the public comments are in Docket ID No. EPA–HQ–OPPT–2016–0735. Additionally, information about the scope, problem formulation, and draft risk evaluation phases of the TSCA risk evaluation for this chemical is at *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-evaluation-cyclic-aliphatic-bromide-cluster-hbcd.*

B. What is Cyclic Aliphatic Bromide Cluster (HBCD Cluster)?

The cyclic aliphatic bromide cluster chemicals, including hexabromocyclododecane (HBCD), are flame retardants. Other uses include use as a component of solder and use in automobile replacement parts. EPA has not identified reasonably available information to suggest that HBCD is currently domestically manufactured in

any quantity. Companies have the ability to import the chemical in low volumes below the CDR reporting threshold.

Authority: 15 U.S.C. 2601 *et seq.*

Andrew Wheeler,

Administrator.

[FR Doc. 2020–21133 Filed 9–24–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9053–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed September 14, 2020 10 a.m. EST Through September 21, 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. 20200188, Draft Supplement, USFS, WV, Mountain Valley Pipeline and Equitrans Expansion Project Draft Supplemental Environmental Impact Statement, Comment Period Ends: 11/09/2020, Contact: Ken Arney 888–603–0261.

EIS No. 20200189, Draft, USAF, GA, Moody Air Force Base Comprehensive Airspace Initiative, Comment Period Ends: 11/24/2020, Contact: Lorence Busker 229–257–2396.

EIS No. 20200190, Draft, USAF, TX, B–21 Main Operating Base (MOB 1) Beddown at Dyess AFB, Texas or Ellsworth AFB South Dakota, Comment Period Ends: 11/09/2020, Contact: Julianne Turko 210–925–3777.

EIS No. 20200191, Final, USFS, AK, Rulemaking for Alaska Roadless Areas, Review Period Ends: 10/26/2020, Contact: Ken Tu 303–275–5156.

EIS No. 20200192, Final Supplement, FDOT, FHWA, FL, Tampa Interstate Study, Contact: Luis D. Lopez Rivera 407–867–6420. Pursuant to U.S.C. 139(n)(2), FHWA has issued a single document that consists of a final supplemental environmental impact statement and record of decision. Therefore, the 30-day wait/review period under NEPA does not apply to this action.

EIS No. 20200193, Final, BR, CA, Truckee Canal Extraordinary Maintenance, Review Period Ends: 10/26/2020, Contact: Laurie Nicholas 775–884–8360.

EIS No. 20200194, Final, NNSA, SC, Plutonium Pit Production at the Savannah River Site in South Carolina, Review Period Ends: 10/26/2020, Contact: Ms. Jennifer Nelson 803–557–6372.

Amended Notice

EIS No. 20200168, Draft, FAA, CA, Bob Hope Hollywood Burbank Airport Replacement Passenger Terminal Project, Comment Period Ends: 10/27/2020, Contact: Edvige B. Mbakoup 424–405–7283. Revision to FR Notice Published 8/21/2020; Extending the Comment Period from 10/5/2020 to 10/27/2020.

EIS No. 20200182, Final, USFS, AZ, WITHDRAWN—Fossil Creek Wild and Scenic River Comprehensive River Management Plan, Contact: Mike Dechter 928–527–3416. Revision to FR Notice Published 09/18/2020; Officially Withdrawn per request of the submitting agency.

Dated: September 21, 2020.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2020–21174 Filed 9–24–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2020–0390; FRL–10014–21]

Ortho-Phthalaldehyde; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the National Aeronautics and Space Administration (NASA) to use the pesticide ortho-phthalaldehyde (OPA, CAS No. 643–79–8) to treat the coolant fluid of the internal active thermal control system of the International Space Station to control aerobic/microaerophilic bacteria in the aqueous coolant. The applicant proposes the use of a new chemical which has not been registered by EPA. Therefore, in accordance with the Code of Federal Regulations (CFR), EPA is soliciting public comment before making the decision whether to grant the exemption.

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

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2020–0390, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Marietta Echeverria, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the regulations at 40 CFR 166.24(a)(1), EPA is soliciting public comment before making the decision whether to grant the exemption.

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are a pesticide manufacturer (North American Industrial Classification System (NAICS) (Code 32532) or involved with the International Space Station. This listing is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Other types of entities not listed could also be affected.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI

information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

II. What action is the agency taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the EPA Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the EPA Administrator determines that emergency conditions exist which require the exemption. NASA has requested the EPA Administrator to issue a specific exemption for the use of ortho-phthalaldehyde (OPA) in the coolant of the internal active thermal control system (IATCS) of the International Space Station (ISS) to control aerobic/microaerophilic bacteria in the aqueous coolant. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the applicant stated that it has considered the registered biocide alternatives and has concluded that OPA is the most effective biocide which meets the requisite criteria including: The need for safe, non-intrusive implementation and operation in a functioning system; the ability to control existing planktonic and biofilm-residing micro-organisms; a negligible impact on system-wetted materials of construction; and a negligible reactivity with existing coolant additives. The ISS would not have an adequate long-term solution for controlling the micro-organisms in the IATCS coolant without the use of OPA. The OPA is incorporated into a porous resin material contained in a stainless-steel canister. The canister containing the OPA-incorporated resin is inserted into a coolant system loop, using flexible hose and quick disconnects, and is placed in-line for 8 hours to deliver the OPA into the fluid. As the coolant fluid flows through the canister, the OPA elutes from the resin material into the coolant fluid. The total volume of the circulatory loops of the IATCS is 829 liters. The maximum concentration would be 500 milligrams (mg) of OPA per liter of coolant fluid. A total of 414,500 mg of OPA would be needed for the entire system. The OPA is incorporated into the resin at 210 mg OPA per cm^3 resin, resulting in a potential total use of 1,974 cm^3 of the OPA-containing resin. The level of OPA in the coolant is monitored periodically, and because OPA degrades over time, the concentration decreases to a level that is no longer effective in about 1 to 2 years. At this point, replenishment with new OPA-containing canisters is required. EPA has authorized similar emergency exemptions for this use since 2011. With the decision to extend the mission of the ISS to 2024, the need for this use is expected to continue for the duration.

This notice does not constitute a decision by EPA on the application itself. The regulations governing FIFRA section 18 require publication of a notice of receipt of an application for a specific exemption proposing the use of a new chemical (*i.e,* an active ingredient), which has not been registered by EPA. The notice provides an opportunity for public comment on the application.

The Agency will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by NASA.

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 11, 2020.

Marietta Echeverria,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2020–21185 Filed 9–24–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2020–0077; FRL–10014–64]

Certain New Chemicals; Receipt and Status Information for August 2020

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is required under the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to make information publicly available and to publish information in the **Federal Register** pertaining to submissions under TSCA Section 5, including notice of receipt of a Premanufacture notice (PMN), Significant New Use Notice (SNUN) or Microbial Commercial Activity Notice (MCAN), including an amended notice or test information; an exemption application (Biotech exemption); an application for a test marketing exemption (TME), both pending and/or concluded; a notice of commencement (NOC) of manufacture (including import) for new chemical substances; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review. This document covers the period from 08/01/2020 to 08/31/2020.

DATES: Comments identified by the specific case number provided in this document must be received on or before October 26, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2020–0077, and the specific case number for the chemical substance related to your comment, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Due to the public health concerns related to COVID–19, the EPA Docket

Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Jim Rahai, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8593; email address: *rahai.jim@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. What action is the Agency taking?

This document provides the receipt and status reports for the period from 08/01/2020 to 08/31/2020. The Agency is providing notice of receipt of PMNs, SNUNs and MCANs (including amended notices and test information); an exemption application under 40 CFR part 725 (Biotech exemption); TMEs, both pending and/or concluded; NOCs to manufacture a new chemical substance; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review.

EPA is also providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

B. What is the Agency's authority for taking this action?

Under TSCA, 15 U.S.C. 2601 *et seq.,* a chemical substance may be either an ''existing'' chemical substance or a ''new'' chemical substance. Any chemical substance that is not on EPA's TSCA Inventory of Chemical Substances (TSCA Inventory) is classified as a ''new chemical substance,'' while a chemical substance that is listed on the TSCA Inventory is classified as an ''existing chemical substance.'' (See TSCA section 3(11).) For more information about the TSCA Inventory please go to: *https://www.epa.gov/tsca-inventory.*

Any person who intends to manufacture (including import) a new chemical substance for a non-exempt commercial purpose, or to manufacture or process a chemical substance in a non-exempt manner for a use that EPA has determined is a significant new use, is required by TSCA section 5 to provide EPA with a PMN, MCAN or SNUN, as appropriate, before initiating the activity. EPA will review the notice, make a risk determination on the chemical substance or significant new use, and take appropriate action as described in TSCA section 5(a)(3).

TSCA section 5(h)(1) authorizes EPA to allow persons, upon application and under appropriate restrictions, to manufacture or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a)(2), for ''test marketing'' purposes, upon a showing that the manufacture, processing, distribution in commerce, use, and disposal of the chemical will not present an unreasonable risk of injury to health or the environment. This is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://www.epa.gov/oppt/newchems.*

Under TSCA sections 5 and 8 and EPA regulations, EPA is required to publish in the **Federal Register** certain information, including notice of receipt of a PMN/SNUN/MCAN (including amended notices and test information); an exemption application under 40 CFR part 725 (biotech exemption); an application for a TME, both pending and concluded; NOCs to manufacture a new chemical substance; and a periodic status report on the new chemical substances that are currently under EPA review or have recently concluded review.

C. Does this action apply to me?

This action provides information that is directed to the public in general.

D. Does this action have any incremental economic impacts or paperwork burdens?

No.

E. What should I consider as I prepare my comments for EPA?

1. *Submitting confidential business information (CBI).* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Status Reports

In the past, EPA has published individual notices reflecting the status of TSCA section 5 filings received, pending or concluded. In 1995, the Agency modified its approach and streamlined the information published in the **Federal Register** after providing notice of such changes to the public and an opportunity to comment (See the **Federal Register** of May 12, 1995, (60 FR 25798) (FRL–4942–7). Since the passage of the Lautenberg amendments to TSCA in 2016, public interest in information on the status of section 5 cases under EPA review and, in particular, the final determination of such cases, has increased. In an effort to be responsive to the regulated community, the users of this information, and the general public, to comply with the requirements of TSCA, to conserve EPA resources and to streamline the process and make it more timely, EPA is providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

III. Receipt Reports

For the PMN/SNUN/MCANs that have passed an initial screening by EPA during this period, Table I provides the following information (to the extent that such information is not subject to a CBI claim) on the notices screened by EPA during this period: The EPA case

number assigned to the notice that indicates whether the submission is an initial submission, or an amendment, a notation of which version was received, the date the notice was received by EPA, the submitting manufacturer (*i.e.,* domestic producer or importer), the potential uses identified by the manufacturer in the notice, and the chemical substance identity.

As used in each of the tables in this unit, (S) indicates that the information in the table is the specific information provided by the submitter, and (G) indicates that this information in the table is generic information because the specific information provided by the submitter was claimed as CBI. Submissions which are initial submissions will not have a letter following the case number. Submissions which are amendments to previous submissions will have a case number followed by the letter ''A'' (*e.g.,* P–18–1234A). The version column designates submissions in sequence as ''1'', ''2'', ''3'', etc. Note that in some cases, an initial submission is not numbered as version 1; this is because earlier version(s) were rejected as incomplete or invalid submissions. Note also that future versions of the following tables may adjust slightly as the Agency works to automate population of the data in the tables.

TABLE I—PMN/SNUN/MCANs APPROVED * FROM 08/01/2020 TO 08/31/2020

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–16–0345A	6	08/09/2020	CBI	(G) Processing aid	(G) Acrylamide, polymer with methacrylic acid derivatives.
P–16–0420A	3	07/31/2020	CBI	(S) The notified substance will be used as a fragrance ingredient, being blended (mixed) with other fragrance ingredients to make fragrance oils that will be sold to industrial and commercial customers for their incorporation into soaps, detergents, cleaners and other similar household and consumer products.	(G) Dimethyl cyclohexenyl propanol.
P–17–0115A	5	08/25/2020	CBI	(S) An adhesion promoter for coating formulations.	(G) Aminoalkyl alkoxysilane.
P–17–0281A	7	08/05/2020	CBI	(G) Water reducible resin	(G) Polysiloxane-polyester polyol carboxylate.
P–18–0065A	2	08/17/2020	Evonik Corporation	(S) Absorption agent and lab reagent	(S) 1,3-Propanediamine, N1,N1-dimethyl-N3-(2,2,6,6-tetramethyl-4-piperidinyl)-.
P–18–0202A	7	08/06/2020	Hexion, Inc	(G) Rubber additive and Tackifier additives.	(G) Trialkyl alkanal, polymer with phenol.
P–18–0203A	7	08/06/2020	Hexion, Inc	(G) Rubber additive and Tackifier additives.	(G) Trialkyl alkanal, polymer with alkylalkanal and phenol.
P–18–0204A	7	08/06/2020	Hexion, Inc	(G) Rubber additive and Tackifier additive	(G) Alkyl alkanal, polymer with phenol.
P–18–0205A	7	08/06/2020	Hexion, Inc	(G) Tackifier additive	(G) Alkyl alkanal, polymer with formaldehyde and phenol.
P–18–0206A	7	08/06/2020	Hexion, Inc	(G) Rubber additive and Tackifier additive	(G) Alkanal, polymer with phenol.
P–18–0241A	5	07/31/2020	CBI	(G) Additive for automotive coating	(G) 2-Propenoic acid, 2-methyl-, methyl ester, polymer with ethenylbenzene, ethyl 2-propenoate, 2-oxiranylmethyl 2-methyl-2-propenoate and 1,2-propanediol mono(2-methyl-2-propenoate), reaction products with diethanolamine, polymers with substituted-alkyl acrylate, formates (salts).
P–18–0244A	5	07/31/2020	CBI	(G) Additive for automotive coating	(G) 2-Propenoic acid, 2-methyl, methyl ester, polymer with ethenylbenzene, ethyl 2-propenoate, 2-oxiranylmethyl 2-methyl-2-propenoate and 1,2-propanediol mono(2-methyl-2-propenoate), reaction products with diethanolamine, polymers with substituted-alkyl methacrylate, formates (salts).
P–18–0245A	5	07/31/2020	CBI	(G) Additive for automotive coating	(G) 2-Propenoic acid, 2-methyl-, methyl ester, polymer with ethenylbenzene, ethyl 2-propenoate, 2-oxiranylmethyl 2-methyl-2-propenoate, and 1,2-propanediol mono(2-methyl-2-propenoate), reaction products with diethanolamine, polymers with alkylene glycol monoacrylate, formates (salts).
P–18–0256A	6	08/18/2020	CBI	(G) Chemical intermediate	(S) Undecanol, branched.
P–18–0273A	6	08/14/2020	CBI	(G) Used in polymer manufacturing	(S) 1,4-Cyclohexanedicarboxylic acid, 1,4-bis(2-ethylhexyl) ester.
P–18–0351A	3	08/19/2020	CBI	(G) UV curable inks	(G) Acrylic acid, tricyclo alkyl ester.
P–18–0355A	4	08/03/2020	CBI	(G) Paint	(G) Alkanediol, Substituted alkyl, polymer with carbomonocyle, alkanedioate substituted carbomonocycle, ester with substituted alkanoate.
P–18–0359A	4	08/18/2020	CBI	(G) Molded or extruded items	(G) Methoxy Vinyl Ether- Vinylidene Fluoride polymer.
P–18–0396A	5	08/17/2020	CBI	(G) Paint	(G) Alkenoic acid, alkyl, polymer with carbomonocyle alkyl propenoate and substituted alkyl alkenoate, ester with substituted alkyl alkanoate, tert-butyl substituted peroxoate-initiated.
P–18–0398A	6	07/31/2020	EVONIK Corporation	(S) Intermediate	(G) Polyalkylpolyalkylenepolyamine.
P–18–0399A	8	08/14/2020	CBI	(G) (c) open, non-dispersive use additive for industrial use only.	(G) Rosin adduct ester, polymer with polyols, compd. with ethanolamine.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 08/01/2020 TO 08/31/2020—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–18–0407A	4	08/14/2020	CBI	(S) Polyurethane catalyst	(S) 1,2-Ethanediamine, N,N-dimethyl-N-(1-methylethyl)-N-[2-[methyl(1-methylethyl)amino]ethyl]-.
P–19–0084A	4	07/30/2020	CBI	(S) Flame retardant	(S) Diphosphoric acid, compd. with 1,3,5-triazine-2,4,6-triamine (1:2).
P–19–0141A	7	08/24/2020	CBI	(S) For use in metal treatment coatings for lubrication and corrosion protection..	(S) Phosphoric Acid, manganese(2+) salt (2:3).
P–19–0147A	5	08/17/2020	CRODA, INC.	(G) cleaning additive	(G) alkoxylated butyl alkyl ester.
P–20–0010A	9	08/26/2020	CBI	(G) Polymerization auxiliary	(G) Carboxylic acid, reaction products with metal hydroxide, inorganic dioxide and metal.
P–20–0025A	4	08/05/2020	Biosynthetic Technologies	(S) Motor oil lubricant, formulation #1 (prepared at a processor which is controlled by others) and Motor oil lubricant, formulation #2 (prepared at a processor which is controlled by others).	(S) Octadecanoic acid, 12-(acetoxy)-, 2-ethylhexyl ester.
P–20–0046A	4	08/19/2020	CBI	(G) Catalyst	(G) Reaction products of alkyl-terminated alkylalumuminoxanes and {[(pentaalkylphenyl-(pentaalkylphenyl)amino) alkyl]alkanediaminato}bis(aralkyl) transition metal coordination compound.
P–20–0048A	4	08/20/2020	CBI	(G) Catalyst	(G) Reaction products of alkyl-terminated alkylaluminoxanes and dihalogeno-(alkylcyclopentadienyl)(tetraalkylcyclopentadienyl)transition metal coordination compound.
P–20–0049A	4	08/20/2020	CBI	(G) Catalyst	(G) Reaction products of alkyl-aluminoxanes and bis-(alkylcyclodialkylene)dihalogenozirconium.
P–20–0076A	3	08/06/2020	CYTEC Industries, Inc	(G) Mining chemical	(S) Glycine, reaction products with sodium O-iso-Pr carbonodithioate, sodium salts.
P–20–0097A	3	08/24/2020	Nelson Brothers, LLC	(S) The PMN substance will be used as an emulsifier for applications in explosives.	(G) Butanedioic acid, monopolyisobutylene derivs., mixed dihydroxyalkyl and hydroxyalkoxyalkyl diesters.
P–20–0100A	3	08/19/2020	Evonik Corporation	(S) Manual Dish Detergent, Hard Surface Cleaner, and Laundry Detergent.	(S) Glycolipids, rhamnose-contg., Pseudomanas putida-fermented, from D-glucose, potassium salts.
P–20–0105A	2	07/30/2020	Sound Agriculture Company.	(S) Maltol lactone is a compound that promotes microbial activity in the soil, resulting in increased availability of phosphorus for crops. This substance will be used on commercial farming operations.	(S) 4H-Pyran-4-one, 3-[(2,5-dihydro-4-methyl-5-oxo-2-furanyl)oxy]-2-methyl-.
P–20–0109	2	08/05/2020	Huntsman Corporation	(S) Exhaust dyeing of cotton and cotton blends.	(G) Acetamide, N-[3-[alkyl(carbomonocyclic) substituted]carbomonocycle]-, coupled with diazotized 2- substituted-3-halo-5-nitrobenzonitrile.
P–20–0133A	5	08/03/2020	Huntsman International, LLC.	(G) component of foam	(G) Fatty acid oil polymer with aliphatic polyols and aromatic diacid.
P–20–0133A	6	08/05/2020	Huntsman International, LLC.	(G) component of foam	(G) Fatty acid oil polymer with aliphatic polyols and aromatic diacid.
P–20–0134A	5	08/03/2020	Huntsman International, LLC.	(G) component of foam	(G) Aromatic acid, polymer with aliphatic diol and aromatic diacid.
P–20–0134A	6	08/05/2020	Huntsman International, LLC.	(G) component of foam	(G) Aromatic acid, polymer with aliphatic diol and aromatic diacid.
P–20–0135A	5	08/03/2020	Huntsman International, LLC.	(G) component in foam insulation	(G) Fatty acid polymer with polyols, aliphatic alcohol and aromatic diacid.
P–20–0135A	6	08/05/2020	Huntsman International, LLC.	(G) component in foam insulation	(G) Fatty acid polymer with polyols, aliphatic alcohol and aromatic diacid.
P–20–0143A	2	08/05/2020	CBI	(S) Binder for Thermoplastic Coatings, and Binder or Ink/Adhesive.	(S) Cyclohexanemethanamine, 5-amino-1,3,3-trimethyl-, polymer with a-hydro-w-hydroxypoly(oxy-1,4-butanediyl), 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane and 1,1-methylenebis[4-isocyanatobenzene].
P–20–0146	1	07/30/2020	CBI	(G) Insulating material for electrical parts	(G) Alkanoic acid, alkyl, carbopolycyclic alkyl ester
P–20–0152.	2	08/03/2020	SHIN–ETSU MICROSI	(G) Contained use for microlithography for electronic device manufacturing.	(G) Sulfonium, triphenyl-, salt with 2,2-dihalo-2-sulfoethyl-2-oxo substituted -heterotricycloalkane-heteropolycyclo-carboxylate (1:1)
P–20–0153.	2	08/04/2020	CBI	(G) lubricant additive—dispersant	(G) Polyamines, reaction products with succinic anhydride polyalkenyl derivs., borates.
P–20–0154	2	08/04/2020	CBI	(G) lubricant additive—dispersant	(G) Polyamines, reaction products with succinic anhydride polyalkenyl derivs., borates.
P–20–0155	4	08/13/2020	SHIN–ETSU MICROSI	(G) Contained use for microlithography for electronic device manufacturing.	(G) Sulfonium, triphenyl-, salt with 5-alkyl- 2-alkyl- 4-(2,4,6-substituted tri-carbomonocycle, hetero-acid)benzenesulfonate (1:1).
P–20–0155A	5	08/20/2020	SHIN–ETSU MICROSI	(G) Contained use for microlithography for electronic device manufacturing.	(G) Sulfonium, triphenyl-, salt with 5-alkyl- 2-alkyl- 4-(2,4,6-substituted tri-carbomonocycle, hetero-acid)benzenesulfonate (1:1).

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 08/01/2020 TO 08/31/2020—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–20–0156	1	08/03/2020	CBI	(G) Photolithography	(G) Substituted, triaryl-, tricycloalkane alkyl disubstituted.
P–20–0157	1	08/05/2020	CBI	(G) The notified substance will be used as a fragrance ingredient.	(G) bis(cycloalkyl-alkyl)ether.
P–20–0158	1	08/06/2020	AkzoNobel	(S) External coating for food and beverage cans.	(G) Carbomonocyclic diacid, polymer with 2,2-dimethyl-1,3-propanediol, alkanetriol, hexanedioic acid and 1,3-isobenzofurandione, compd. with 2-(dimethylamino)ethanol.
P–20–0159	2	08/11/2020	SHIN–ETSU MICROSI	(G) Contained use for microlithography for electronic device manufacturing.	(G) Phenoxathiinium, 10-phenyl, 5-alkyl-2-alkyl-4-(2,4,6-substituted tri-carbomonocycle, hetero-acid)benzenesulfonate (1:1).
P–20–0159A	3	08/20/2020	SHIN–ETSU MICROSI	(G) Contained use for microlithography for electronic device manufacturing.	(G) Phenoxathiinium, 10-phenyl, 5-alkyl-2-alkyl-4-(2,4,6-substituted tri-carbomonocycle, hetero-acid)benzenesulfonate (1:1).
P–20–0160	2	08/11/2020	Designer Molecules, Inc.	(G) Dielectric film forming material for use in microelectronic assembly applications.	(S) Amines, C–36-alkylenedi-, polymers with bicyclo[2.2.1]heptanedimethanamine, [5,5′-biisobenzofuran]-1,1′,3,3′-tetrone and 3a,4,4a,7a, 8,8a-hexahydro-4, 8-etheno-1H,3H-benzo[1,2-c:4, 5-c′]difuran-1,3,5, 7-tetrone, maleated.
P–20–0161	1	08/18/2020	Sirrus, Inc	(S) Film former or crosslinker additive used in coatings and adhesives, and Crosslinker additive used in waterborne emulsions.	(S) Propanedioic acid, 2-methylene-, 1,3-diethyl ester, polymer with 1,4-butanediol.
P–20–0163	1	08/21/2020	Innovative Chemical Technologies, Inc.	(G) Contained chemical processing	(S) Butanedioic acid, 2-methylene-, 4-octadecyl ester.
P–20–0164	1	08/21/2020	Innovative Chemical Technologies, Inc.	(G) Contained chemical processing	(S) Butanedioic acid, 2-methylene-, 4-docosyl ester.
P–20–0165	1	08/21/2020	Innovative Chemical Technologies, Inc.	(G) Contained chemical processing	(S) Butanedioic acid, 2-methylene-, 4–C16–18-alkyl esters.

* The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission prior to the start of the 90 day review period, and in no way reflects the final status of a complete submission review.

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs that have passed an initial screening by EPA during this period: The EPA case number assigned to the NOC including whether the submission was an initial or amended submission, the date the NOC was received by EPA, the date of commencement provided by the submitter in the NOC, a notation of the type of amendment (*e.g.,* amendment to generic name, specific name, technical contact information, etc.) and chemical substance identity.

TABLE II—NOCS APPROVED * FROM 08/01/2020 TO 08/31/2020

Case No.	Received date	Commencement date	If amendment, type of amendment	Chemical substance
P–12–0299	08/19/2020	06/18/2020	N	(S) Propanedioic acid, 2-methylene-, 1,3-diethyl ester.
P–16–0232	08/10/2020	08/07/2020	N	(G) Zinc, bis[2-(hydroxyl-kO)benzoato-kO]-,(T–4)-, ar, ar'-bis(alkyl) derivs.
P–16–0419	08/04/2020	07/07/2020	N	(G) N-alkyl-dialkylpiperidine.
P–16–0423	08/04/2020	07/14/2020	N	(G) Tetraalkylpiperidinium halide.
P–17–0086	08/10/2020	07/31/2020	N	(S) Cyclohexane, 1,4-bis(ethoxymethyl)-, trans-.
P–17–0086	08/10/2020	07/31/2020	N	(S) Cyclohexane, 1,4-bis(ethoxymethyl)-, cis-.
P–17–0086	08/10/2020	07/31/2020	N	(S) Cyclohexane, 1,4-bis(ethoxymethyl)-.
P–17–0206	07/30/2020	07/30/2020	N	(G) Imino alkane amine phosphate.
P–18–0031	07/31/2020	07/22/2020	N	(S) 1, 3-benzenedicarboxylic acid, polymer with 1,3-butanediol, 2,2-dimethyl-1,3-propanediol and 2-ethyl-2-(hydroxymethyl)-1,3-propanediol.
P–18–0151	08/26/2020	04/01/2018	N	(S) Formaldehyde, reaction product with 1,3-benzenedimethanamine and p-tert-butylphenol.
P–18–0199	08/10/2020	07/21/2020	N	(G) Rare earth oxide.
P–18–0263	08/04/2020	07/28/2020	N	(G) Mixed alkyl esters-, polymer with n1-(2-aminoethyl)- l,2-ethanediamine, aziridine, n-acetyl derivs., acetates (salts),.
P–18–0381	07/30/2020	07/29/2020	N	(S) Indium manganese yttrium oxide.
P–19–0153	08/06/2020	08/06/2020	N	(G) Dibromoalkyl ether tetrabromobisphenol a.
P–19–0174	08/12/2020	08/10/2020	N	(S) Octadecanoic acid, (alkylphosphinyl), polyol ester.
P–20–0057	08/24/2020	08/11/2020	N	(G) Arene, trimethoxysilyl-, hydrolyzed.
P–20–0086	08/21/2020	07/31/2020	N	(G) 2-oxepanone, homopolymer, ester with hydroxyalkyl trioxo heteromonocyclic (3:1).

* The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission.

In Table III of this unit, EPA provides the following information (to the extent such information is not subject to a CBI claim) on the test information that has been received during this time period: The EPA case number assigned to the test information; the date the test information was received by EPA, the type of test information submitted, and chemical substance identity.

TABLE III—TEST INFORMATION RECEIVED FROM 08/01/2020 TO 08/31/2020

Case No.	Received date	Type of test information	Chemical substance
L–20–0140 ...	08/11/2020	Particle Size Distribution Report, Dust Explosivity Test	(G) Arylfurandione, [bis(trihaloalkyl)alkylidene]bis-, polymer with alkanediamine.
P–16–0463 ..	08/27/2020	Metals Analysis Report	(G) Silane-treated aluminosilicate.
P–16–0543 ..	08/24/2020	Exposure Monitoring Report	(G) Halogenophosphoric acid metal salt.
P–19–0098 ..	08/27/2020	Ready Biodegradability Modified Sturm Test (OECD Test Guideline 301).	(G) Phosphoric acid, polymer with (hydroxyalkyl)-alkanediol and alkanediol.
P–20–0066 ..	08/07/2020	Toxicity Study by Oral Administration to Han Wistar Rats for 4 Weeks Followed by a 2 Week Recovery Period.	(G) 2-propenoic acid, 2-hydroxyethyl ester, reaction products with dialkyl hydrogen heterosubstituted phosphate and dimethyl phosphonate.

If you are interested in information that is not included in these tables, you may contact EPA's technical information contact or general information contact as described under **FOR FURTHER INFORMATION CONTACT** to access additional non-CBI information that may be available.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: September 16, 2020.

Pamela Myrick,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2020–21198 Filed 9–24–20; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Sunshine Act Meetings

Notice of Open Meeting of the Advisory Committee of the Export-Import Bank of the United States (EXIM).

TIME AND DATE: Tuesday, September 29, 2020 from 1:00–4:00 p.m. EDT.

PLACE: The meeting will be held via teleconference and audio-only webinar.

STATUS: Public Participation: The meeting will be open to public participation and time will be allotted for questions or comments submitted online. Members of the public may also file written statements before or after the meeting to *external@exim.gov.* Interested parties may register for the meeting at *https://register.gotowebinar.com/register/4591529081381306894.*

MATTERS TO BE CONSIDERED: Discussion of EXIM policies and programs to provide competitive financing to expand United States exports.

CONTACT PERSON FOR MORE INFORMATION: For further information, contact Brittany J. Walker, Deputy to the Senior Vice President for External Engagement 202–565–3216.

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2020–21182 Filed 9–23–20; 11:15 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1250; FRS 17095]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before November 24, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1250.

Title: Sections 15.37(k), 74.851(k), and 74.851(l), Consumer Disclosure and Labeling.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, Business or other for-profit, and Not-for-profit institutions.

Number of Respondents and Responses: 100 respondents; 2,250 responses.

Estimated Time per Response: 0.25 hours.

Frequency of Response: Third party disclosure requirement (disclosure and labeling requirement).

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in 47 U.S.C. 151, 154(i), 154(j), 301, 302a, 303(f), 303(g), and 303(r).

Total Annual Burden: 625 hours.

Total Annual Cost: $62,500.

Privacy Act Impact Assessment: While this collection of information collection may impact individuals and households, it does not involve the collection of personally identifiable information and therefore does not implicate the Privacy Act.

Nature and Extent of Confidentiality: No information is requested that would require assurance of confidentiality.

Needs and Uses: The Commission will submit this information collection as a revision to the Office of Management and Budget (OMB) after this 60-day comment period to obtain the full three-year clearance from them.

The labeling requirement is applicable to persons who manufacture, sell, lease, or offer for sale or lease, wireless microphone or video assist devices *to the extent that these devices are capable of operating on the specific frequencies associated with the 600 MHz service band (617–652 MHz/663–698 MHz).* This revision recognizes that a requirement for consumer disclosure at the point of sale or lease that was previously part of this information collection no longer affects any party since wireless microphone users must have ceased any wireless microphone operations in the 600 MHz service band no later than July 13, 2020.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–21177 Filed 9–24–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1202; FRS 17096]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before October 26, 2020.

ADDRESSES: Comments should be sent 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. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–1202.

Title: Improving 9–1–1 Reliability; Reliability and Continuity of Communications Networks, Including Broadband Technologies.

Form Number: Not Applicable (annual on-line certification).

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit; not-for-profit institutions.

Number of Respondents and Responses: 200 respondents; 200 responses.

Estimated Time per Response: 834 hours (average). Varies by respondent.

Total Annual Burden: 166,350 hours.

Frequency of Response: Annual reporting requirement and recordkeeping requirement.

Obligation to Respond: Mandatory. The statutory authority for this collection of information is contained in sections 1, 4(i), 4(j), 4(o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(r), 307, 309(a), 316, 332, 403, 615a–1, and 615c of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j) & (o), 201(b), 214(d), 218, 251(e)(3),301, 303(b), 303(g), 303(r), 307, 309(a), 316, 332, 403, 615a–1, and 615c.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission does not consider the fact of filing a certification to be confidential or the responses provided on the face of the certification. The Commission will treat as presumptively confidential and exempt from routine public disclosure under the federal Freedom of Information Act: (1) Descriptions and documentation of alternative measures to mitigate the risks of nonconformance with certification standards; (2) information detailing specific corrective actions

taken; and (3) supplemental information requested by the Commission or Bureau with respect to a certification.

Needs and Uses: This is a renewal of an information collection necessary to ensure that all Americans have access to reliable and resilient 911 communications, particularly in times of emergency, by requiring certain 911 service providers to certify implementation of key best practices or reasonable alternative measures. The information will be collected in the form of an electronically-filed, annual certification from each covered 911 service provider, as defined in the Commission's 2013 *Report and Order,* in which the provider will indicate whether it has implemented certain industry-backed best practices. Providers that are able to respond in the affirmative to all elements of the certification will be deemed to satisfy the ''reasonable measures'' requirement in Section 9.19(b) of the Commission's rules. If a provider does not certify in the affirmative with respect to one or more elements of the certification, it must provide a brief explanation of what alternative measures it has taken, in light of the provider's particular facts and circumstances, to ensure reliable 911 service with respect to that element(s). Similarly, a service provider may also respond by demonstrating that a particular certification element is not applicable to its networks and must include a brief explanation of why the element(s) does not apply.

The information will be collected by the Public Safety and Homeland Security Bureau, FCC, for review and analysis, to verify that covered 911 service providers are taking reasonable measures to maintain reliable 911 service. In certain cases, based on the information included in the certifications and subsequent coordination with the provider, the Commission may require remedial action to correct vulnerabilities in a service provider's 911 network if it determines that (a) the service provider has not, in fact, adhered to the best practices incorporated in the FCC's rules, or (b) in the case of providers employing alternative measures, that those measures were not reasonably sufficient to mitigate the associated risks of failure in these key areas. The Commission delegated authority to the Bureau to review certification information and follow up with service providers as appropriate to address deficiencies revealed by the certification process.

The purpose of the collection of this information is to verify that covered 911 service providers are taking reasonable measures such that their networks comply with accepted best practices, and that, in the event they are not able to certify adherence to specific best practices, that they are taking reasonable alternative measures. The Commission adopted these rules in light of widespread 911 outages during the June 2012 derecho storm in the Midwest and Mid-Atlantic states, which revealed that multiple service providers did not take adequate precautions to maintain reliable service.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–21176 Filed 9–24–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0092; and 0198]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Agency Information Collection Activities: Submission for OMB Review; comment request.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collections described below. The FDIC published notices in the **Federal Register** requesting comment for 60 days on a proposal to renew these information collections. No comments were received. The FDIC hereby gives notice of its plan to submit to OMB a request to approve the renewal of these information collections, and again invites comment on the renewal.

DATES: Comments must be submitted on or before October 26, 2020.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *https://www.FDIC.gov/regulations/laws/federal.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza, Regulatory Counsel, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, Regulatory Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Currently Approved Collections of Information

1. *Title:* Community Reinvestment Act.

OMB Number: 3064–0092.

Form Number: None.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

Source and type of burden	Description	Estimated number of respondents	Average estimated time per response	Total estimated annual burden (hours)
345.25(b) *Reporting*	*Request for designation as a wholesale or limited purpose bank*—Banks requesting this designation shall file a request in writing with the FDIC at least 3 months prior to the proposed effective date of the designation.	1	4	4

SUMMARY OF ANNUAL BURDEN—Continued

Source and type of burden	Description	Estimated number of respondents	Average estimated time per response	Total estimated annual burden (hours)
345.27 *Reporting*	*Strategic plan*—Applies to banks electing to submit strategic plans to the FDIC for approval.	10	400	4,000
345.42(b)(1) *Reporting*	*Small business/small farm loan data*—Large banks shall and Small banks may report annually in machine readable form the aggregate number and amount of certain loans.	277	8	2,216
345.42(b)(2) *Reporting*	*Community development loan data*—Large banks shall and Small banks may report annually, in machine readable form, the aggregate number and aggregate amount of community development loans originated or purchased.	277	13	3,601
345.42(b)(3) *Reporting*	*Home mortgage loans*—Large banks, if subject to reporting under part 203 (Home Mortgage Disclosure (HMDA)), shall, and Small banks may report the location of each home mortgage loan application, origination, or purchase outside the MSA in which the bank has a home/branch office.	357	253	90,321
345.42(d) *Reporting*	*Data on affiliate lending*—Banks that elect to have the FDIC consider loans by an affiliate, for purposes of the lending or community development test or an approved strategic plan, shall collect, maintain and report the data that the bank would have collected, maintained, and reported pursuant to §345.42(a), (b), and (c) had the loans been originated or purchased by the bank. For home mortgage loans, the bank shall also be prepared to identify the home mortgage loans reported under HMDA.	311	38	11,818
345.42(e) *Reporting*	*Data on lending by a consortium or a third party*—Banks that elect to have the FDIC consider community development loans by a consortium or a third party, for purposes of the lending or community development tests or an approved strategic plan, shall report for those loans the data that the bank would have reported under §345.42(b)(2) had the loans been originated or purchased by the bank.	103	17	1,751
345.42(g) *Reporting*	*Assessment area data*—Large banks shall and Small banks may collect and report to the FDIC a list for each assessment area showing the geographies within the area.	380	2	760
Total Reporting				114,471
345.42(a) *Recordkeeping*	*Small business/small farm loan register*—Large banks shall and Small banks may collect and maintain certain data in machine-readable form.	380	219	83,220
345.42(c) *Recordkeeping*	*Optional consumer loan data*—All banks may collect and maintain in machine readable form certain data for consumer loans originated or purchased by a bank for consideration under the lending test.	10	26	3,260
345.42(c)(2) *Recordkeeping*	*Other loan data* –All banks optionally may provide other information concerning their lending performance, including additional loan distribution data.	103	25	2,575
Total Recordkeeping				89,055
345.41(a) 345.43(a); (a)(1); (a)(2); (a)(3); (a)(4); (a)(5); (a)(6); (a)(7); (b)(1); (b)(2); (b)(3); (b)(4); (b)(5); (c); (d) *Disclosure*.	*Content and availability of public file*—All banks shall maintain a public file that contains certain required information.	3,309	10	33,090
Total Disclosure				33,090
Total Estimated Annual Burden				236,616

General Description of Collection: The Community Reinvestment Act regulation requires the FDIC to assess the record of banks and thrifts in helping meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, consistent with safe and sound operations; and to take this record into account in evaluating applications for mergers, branches, and certain other corporate activities.

There is no change in the method or substance of the collection. The overall decrease in burden hours is a result of the decrease in the estimated number of respondents.

2. *Title:* Generic Information Collection for Qualitative Research.

OMB Number: 3064–0198.

Affected Public: General public including FDIC insured depository institutions.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

Information collection description	Type of burden	Obligation to respond	Estimated number of respondents	Estimated frequency of responses	Estimated time per response (minutes)	Estimated annual burden (hours)
Occasional Qualitative Surveys	Reporting	Voluntary	500	20	60	10,000

Total Estimated Annual Burden: 10,000 hours.

General Description of Collection: The FDIC is requesting renewal of this approved collection to use occasional qualitative surveys to gather information from the public to inform qualitative research. While the subject and nature of the surveys to be deployed under this information collection are yet to be determined, based on prior experience it is expected that the number or respondents will range from a few to, at times, several thousands, but, in general, these surveys are expected to involve an average of 500 respondents. Likewise, the time to respond to the surveys can range from a few minutes to several hours, but, it is expected that the average time to respond to a survey is approximately one hour. These surveys are completely voluntary in nature. FDIC estimates that approximately 20 such surveys will be conducted in any given year.

Currently, the FDIC has a variety of methods to collect quantitative information from consumers and institutions (*e.g.,* Call Reports, FDIC National Survey of Unbanked and Underbanked Households, etc.). Qualitative data would provide complementary information on insights, opinions, and perceptions that will inform how the FDIC approaches its mission to safeguard financial stability of the banking system and promote consumer protection and economic inclusion. This clearance would allow the FDIC to engage with consumers and other relevant stakeholders through qualitative research methods such as focus groups, in-depth interviews, cognitive testing, and/or qualitative virtual methods.

The purpose of the surveys is, in general terms, to obtain anecdotal information about regulatory burden, problems or successes in the bank supervisory process (including both safety-and-soundness and consumer-related exams), the perceived need for regulatory or statutory change, and similar concerns. The information in these surveys is anecdotal in nature, that is, samples are not necessarily random, the results are not necessarily representative of a larger class of potential respondents, and the goal is not to produce a statistically valid and reliable database. Rather, the surveys are expected to yield anecdotal information about the particular experiences and opinions of members of the public, primarily staff at respondent banks or bank customers. The collection is non-controversial and does not raise issues of concern to other Federal agencies; with the exception of information needed to provide remuneration for participants of focus groups and cognitive laboratory studies, personally identifiable information (PII) is collected only to the extent necessary and is not retained.

Participation in this information collection will be voluntary and conducted in-person, by phone, or using other methods, such as virtual technology. The types of collections that this generic clearance covers include, but are not limited to: small discussion groups; focus groups of consumers, financial industry professionals, or other stakeholders; cognitive laboratory studies, such as those used to refine questions or assess usability of a website; qualitative customer satisfaction surveys (*e.g.,* post-transaction surveys; opt-out web surveys); and in-person observation testing (*e.g.,* website or software usability tests).

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on September 21, 2020.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2020–21136 Filed 9–24–20; 8:45 am]

BILLING CODE 6714–01–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 26, 2020.

A. Federal Reserve Bank of Minneapolis (Chris P. Wangen, Assistant Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Bank Forward Employee Stock Ownership Plan and Trust, Fargo, North Dakota*; to acquire additional voting

shares of Security State Bank Holding Company, Fargo, North Dakota, and thereby indirectly acquire additional voting shares of Bank Forward, Hannaford, North Dakota.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Bern Bancshares, Inc., Bern, Kansas*; to acquire up to 7 percent of the voting shares of UBT Bancshares, Inc., and thereby indirectly acquire voting shares of United Bank & Trust, both of Marysville, Kansas.

Board of Governors of the Federal Reserve System, September 22, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–21213 Filed 9–24–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–153]

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 26, 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:* Revision of a currently approved collection; *Title of Information Collection:* Medicaid Drug Use Review (DUR) Program; *Use:* States must provide for a review of drug therapy before each prescription is filled or delivered to a Medicaid patient. This review includes screening for potential drug therapy problems due to therapeutic duplication, drug-disease contraindications, drug-drug interactions, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse/misuse. Pharmacists must make a reasonable effort to obtain, record, and maintain Medicaid patient profiles. These profiles must reflect at least the patient's name, address, telephone number, date of birth/age, gender, history, *e.g.,* allergies, drug reactions, list of medications, and pharmacist's comments relevant to the individual's drug therapy.

The States must conduct RetroDUR which provides for the ongoing periodic examination of claims data and other records in order to identify patterns of fraud, abuse, inappropriate or medically unnecessary care. Patterns or trends of drug therapy problems are identified and reviewed to determine the need for intervention activity with pharmacists and/or physicians. States may conduct interventions via telephone, correspondence, or face-to-face contact.

Annual reports are submitted to CMS for the purposes of monitoring compliance and evaluating the progress of States' DUR programs. The information submitted by States is reviewed and results are compiled by CMS in a format intended to provide information, comparisons, and trends related to States' experiences with DUR. States benefit from the information and may enhance their programs each year based on State reported innovative practices that are compiled by CMS from the DUR annual reports. *Form Number:* CMS–R–153 (OMB control number: 0938–0659); *Frequency:* Yearly, quarterly, and occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 51; *Total Annual Responses:* 663; *Total Annual Hours:* 41,004. (For policy questions regarding this collection contact Mike Forman at 410–786–2666.)

Dated: September 22, 2020.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2020–21181 Filed 9–24–20; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3393–FN]

Medicare Program; Approval of Application by the Community Health Accreditation Partner for Initial CMS-Approval of Its Home Infusion Therapy Accreditation Program

AGENCY: Centers for Medicare and Medicaid Services, HHS.

ACTION: Final notice.

SUMMARY: This final notice announces our decision to approve the Community Health Accreditation Partner (CHAP) for initial recognition as a national accrediting organization for home infusion therapy suppliers that wish to participate in the Medicare program. A home infusion therapy supplier that participates must meet the Medicare conditions for coverage.

DATES: The approval announced in this final notice is effective September 25, 2020 through September 25, 2024.

FOR FURTHER INFORMATION CONTACT:
Christina Mister-Ward, (410) 786–2441.
Shannon Freeland, (410) 786–4348.
Lillian Williams, (410) 786–8636.

SUPPLEMENTARY INFORMATION:

I. Background

Home Infusion therapy (HIT) is a treatment option for Medicare beneficiaries with a wide range of acute and chronic conditions. Section 5012 of the 21st Century Cures Act (Pub. L. 114–255, enacted on December 13, 2016) added sections 1861(iii) and 1834(u) to the Social Security Act (the Act), establishing a new Medicare benefit for HIT services. Section 1861(iii)(1) of the Act defines HIT as professional services, including nursing services; training and education not otherwise covered under the Durable Medical Equipment (DME) benefit; remote monitoring; and other monitoring services. Home infusion therapy must be furnished by a qualified HIT supplier and furnished in the individual's home. The individual must:

- Be under the care of an applicable provider (that is, physician, nurse practitioner, or physician assistant); and
- Have a plan of care established and periodically reviewed by a physician in coordination with the furnishing of home infusion drugs under Part B, that prescribes the type, amount, and duration of infusion therapy services that are to be furnished.

Section 1861(iii)(3)(D)(i)(III) of the Act requires that a qualified HIT supplier be accredited by an accrediting organization (AO) designated by the Secretary in accordance with section 1834(u)(5) of the Act. Section 1834(u)(5)(A) of the Act identifies factors for designating AOs and in reviewing and modifying the list of designated AOs. These statutory factors are as follows:

- The ability of the organization to conduct timely reviews of accreditation applications.
- The ability of the organization take into account the capacities of suppliers located in a rural area (as defined in section 1886(d)(2)(D) of the Act).
- Whether the organization has established reasonable fees to be charged to suppliers applying for accreditation.
- Such other factors as the Secretary determines appropriate.

Section 1834(u)(5)(B) of the Act requires the Secretary to designate AOs to accredit HIT suppliers furnishing HIT not later than January 1, 2021. Section 1861(iii)(3)(D) of the Act defines ''qualified home infusion therapy suppliers'' as being accredited by a CMS-approved AO.

In the March 1, 2019 **Federal Register**, we published a solicitation notice entitled, ''Medicare Program; Solicitation of Independent Accrediting Organizations To Participate in the Home Infusion Therapy Supplier Accreditation Program'' (84 FR 7057). This notice informed national AOs that accredit HIT suppliers of an opportunity to submit applications to participate in the HIT supplier accreditation program. Complete applications will be considered for the January 1, 2021 designation deadline if received by February 1, 2020.

Regulations for the approval and oversight of AOs for HIT organizations are located at 42 CFR part 488, subpart L. The requirements for HIT suppliers are located at 42 CFR part 486, subpart I.

II. Approval of Accreditation Organizations

Section 1834(u)(5) of the Act and the regulations at § 488.1010 require that our findings concerning review and approval of a national AO's requirements consider, among other factors, the applying AO's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide CMS with the necessary data.

Section 488.1020(a) requires that we publish, after receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. In accordance with § 488.1010(d), we have 210 days from the receipt of a complete application to approve or deny the application.

III. Provisions of the Proposed Notice

In the April 27, 2020 **Federal Register** (85 FR 23364), we published a proposed notice announcing the Community Health Accreditation Partner's (CHAP's) request for initial approval of its Medicare HIT accreditation program. In that proposed notice, we detailed our evaluation criteria. Under section 1834(u)(5) the Act and in our regulations at § 488.1010, we conducted a review of CHAP's Medicare HIT accreditation application in accordance with the criteria specified by our regulations, which included, but are not limited to the following:

- An administrative review of CHAP's: (1) Corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its home infusion therapy surveyors; (4) ability to investigate and respond appropriately to complaints against accredited home infusion therapies; and (5) survey review and decision-making process for accreditation.
- The ability for CHAP to conduct timely review of accreditation applications.
- The ability of CHAP to take into account the capacities of suppliers located in a rural area.
- The comparison of CHAP's Medicare HIT accreditation program standards to our current Medicare home infusion therapy conditions for coverage (CfCs).
- CHAP's survey process to determine the following:

++ The composition of the survey team, surveyor qualifications, and CHAP's ability to provide continuing surveyor training.

++ CHAP's processes, including periodic resurvey and the ability to investigate and respond appropriately to complaints against accredited home infusion therapies.

++ Evaluate CHAP's procedures for monitoring home infusion therapies it has found to be out of compliance with CHAP's program requirements.

++ Assess CHAP's ability to report deficiencies to the surveyed home infusion therapy and respond to the home infusion therapy's plan of correction in a timely manner.

++ Establish CHAP's ability to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

++ Determine the adequacy of CHAP's staff and other resources.

++ Confirm CHAP's ability to provide adequate funding for performing required surveys.

++ Confirm CHAP's policies with respect to surveys being unannounced.

++ Review CHAP's policies and procedures to avoid conflicts of interest, including the appearance of conflicts of interest, involving individuals who conduct surveys or participate in accreditation decisions.

++ Obtain CHAP's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

The April 27, 2020 proposed notice also solicited public comments regarding whether CHAP's requirements met or exceeded the Medicare CfCs for home infusion therapy. No comments were received in response to our proposed notice.

IV. Provisions of the Final Notice

A. Differences Between CHAP's Standards and Requirements for Accreditation and Medicare Conditions and Survey Requirements

We compared CHAP's HIT accreditation requirements and survey process with the Medicare CfCs of part 486, subpart I and the survey and certification process requirements of part 488, subpart L. Our review and evaluation of CHAP's HIT application, which was conducted as described in section III. of this final notice, yielded the following areas where, as of the date of this notice, CHAP has completed revising its standards and certification processes in order to meet the condition at:

- Section 486.520(b), to address the requirement of the plan of care must be established by a physician prescribing the type, amount and duration for home infusion therapy.
- Section 486.525(a), to include the required language ''plan of care''.
- Section 488.1010(a)(6)(iv), to revise CHAP's procedures for survey reviews.

B. Term of Approval

As authorized under § 488.1040(a), we reserve the right to conduct onsite observations of accrediting organization operations at any time as part of the ongoing review and continuing oversight of an accrediting organization's performance. Based on the review and observations described in section III. of this final notice, we have determined that CHAP's requirements for HIT meet or exceed our requirements. Therefore, we approve CHAP as a national accreditation organization for HITs that request participation in the Medicare program, effective September 25, 2020 through September 25, 2024.

V. Collection of Information Requirements

This document does not impose information collection and requirements, that is, reporting, recordkeeping or third party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Seema Verma, having reviewed and approved this document, authorizes Lynette Wilson, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: September 21, 2020.

Lynette Wilson,

Federal Register Liaison, Centers for Medicare & Medicaid.

[FR Doc. 2020–21147 Filed 9–24–20; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–3805]

The Accreditation Scheme for Conformity Assessment Pilot Program; Guidances for Industry, Accreditation Bodies, Testing Laboratories, and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of three final guidance documents for the Accreditation Scheme for Conformity Assessment Pilot Program—specifically, ''The Accreditation Scheme for Conformity Assessment (ASCA) Pilot Program; Guidance for Industry, Accreditation Bodies, Testing Laboratories, and FDA Staff''; ''Basic Safety and Essential Performance of Medical Electrical Equipment, Medical Electrical Systems, and Laboratory Medical Equipment—Standards Specific Information for the Accreditation Scheme for Conformity Assessment (ASCA) Pilot Program: Guidance for Industry, Accreditation Bodies, Testing Laboratories, and FDA Staff''; and ''Biocompatibility Testing of Medical Devices—Standards Specific Information for the Accreditation Scheme for Conformity Assessment (ASCA) Pilot Program: Guidance for Industry, Accreditation Bodies, Testing Laboratories, and FDA Staff.'' These guidances describe the goals, scope, procedures, and framework for the voluntary ASCA Pilot program, and provide information about two groups of consensus standards within the scope of the pilot program.

DATES: The announcement of these guidances is published in the **Federal Register** on September 25, 2020.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- Mail/Hand Delivery/Courier (for written/paper submissions): Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–D–3805 for ''The Accreditation Scheme for Conformity Assessment

(ASCA) Pilot Program; Guidances for Industry, Accreditation Bodies, Testing Laboratories, and FDA Staff''; ''Basic Safety and Essential Performance of Medical Electrical Equipment, Medical Electrical Systems, and Laboratory Medical Equipment—Standards Specific Information for the Accreditation Scheme for Conformity Assessment (ASCA) Pilot Program: Guidance for Industry, Accreditation Bodies, Testing Laboratories, and FDA Staff''; and ''Biocompatibility Testing of Medical Devices—Standards Specific Information for the Accreditation Scheme for Conformity Assessment (ASCA) Pilot Program: Guidance for Industry, Accreditation Bodies, Testing Laboratories, and FDA Staff.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Electronic copies of these three guidance documents are available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidances. Submit written requests for single hard copies of the guidance documents entitled ''The Accreditation Scheme for Conformity Assessment (ASCA) Pilot Program; Guidance for Industry, Accreditation Bodies, Testing Laboratories, and FDA Staff''; ''Basic Safety and Essential Performance of Medical Electrical Equipment, Medical Electrical Systems, and Laboratory Medical Equipment—Standards Specific Information for the Accreditation Scheme for Conformity Assessment (ASCA) Pilot Program: Guidance for Industry, Accreditation Bodies, Testing Laboratories, and FDA Staff''; or, ''Biocompatibility Testing of Medical Devices—Standards Specific Information for the Accreditation Scheme for Conformity Assessment (ASCA) Pilot Program: Guidance for Industry, Accreditation Bodies, Testing Laboratories, and FDA Staff'' to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002 or the Center for Biologics Evaluation and Research, Office of Communication, Outreach, and Development, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20903. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Erin Cutts, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5554, Silver Spring, MD 20993–0002, 301–796–6307; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

The FDA Reauthorization Act of 2017 (FDARA) amended section 514 of the FD&C Act (21 U.S.C. 360d) by adding a new paragraph (d) with the title ''Pilot Accreditation Scheme for Conformity Assessment'' (see Pub. L. 115–52, section 205). The new paragraph 514(d) requires FDA to establish a pilot program under which testing laboratories may be accredited by accreditation bodies meeting criteria specified by FDA to assess the conformance of a device within certain FDA-recognized standards. Determinations by testing laboratories so accredited that a device conforms with an eligible standard included as part of the pilot program shall be accepted by FDA for the purposes of demonstrating such conformity unless FDA finds that a particular such determination shall not be so accepted.

The statute provides that FDA may review determinations by accredited testing laboratories, including by conducting periodic audits of such determinations or processes of accreditation bodies or testing laboratories. Following such a review, or if FDA becomes aware of information materially bearing on safety or effectiveness of a device assessed by an accredited testing laboratory, FDA may take additional measures as determined appropriate, including suspension or withdrawal of accreditation of a testing laboratory or a request for additional information regarding a specific device.

Under the ASCA Pilot's conformity assessment scheme, ASCA-recognized accreditation bodies accredit testing laboratories using ASCA program specifications associated with each eligible standard and ISO/IEC 17025:2017: General requirements for the competence of testing and calibration laboratories. ASCA-accredited testing laboratories may conduct testing to provide data used to determine conformance of a device with at least one of the standards eligible for inclusion in the ASCA Pilot. When an ASCA-accredited testing laboratory conducts testing under the ASCA Pilot, it provides to the device manufacturer all information listed in the ASCA program specifications, which includes an ASCA summary test report. A device manufacturer that uses an ASCA-accredited testing laboratory to perform testing in accordance with the provisions of the ASCA Pilot can then include a declaration of conformity with any necessary supplemental documentation (*e.g.,* ASCA summary test report) as part of a premarket submission to FDA.

FDA held a public workshop entitled ''Accreditation Scheme for Conformity Assessment of Medical Devices to Food and Drug Administration—Recognized Standards'' on May 22–23, 2018, to obtain input and recommendations from stakeholders about the ASCA Pilot, including its goals and scope as well as

a suitable framework and procedures to facilitate implementation.

FDA considered comments received on the draft guidance ''The Accreditation Scheme for Conformity Assessment (ASCA) Pilot Program'' that appeared in the **Federal Register** of September 23, 2019 (*https://www.govinfo.gov/content/pkg/FR-2019-09-23/pdf/2019-20543.pdf*). FDA revised the guidance as appropriate in response to the comments. In particular, FDA added clarifications and details regarding the ASCA Pilot and its implementation, including changing terminology to describe whether a testing laboratory or accreditation body is participating in the program; providing additional information on how and when FDA will conduct audits under the ASCA Pilot; and clarifying who is responsible for developing test methods and completing the ASCA summary test report. In addition, FDA added several appendices, including an example declaration of conformity for each set of standards in the program, as well as additional example ASCA summary test reports for biocompatibility testing of medical devices. For ease of reading and organizational purposes, FDA separated the document, issued in draft, into three separate guidance documents for final publication.

- ''The Accreditation Scheme for Conformity Assessment (ASCA) Pilot Program; Guidance for Industry, Accreditation Bodies, Testing Laboratories, and FDA Staff'' describes how the ASCA Pilot was designed and how accreditation bodies, testing laboratories, device manufacturers, and FDA staff participate in the program.
- ''Basic Safety and Essential Performance of Medical Electrical Equipment, Medical Electrical Systems, and Laboratory Medical Equipment—Standards Specific Information for the Accreditation Scheme for Conformity Assessment (ASCA) Pilot Program: Guidance for Industry, Accreditation Bodies, Testing Laboratories, and FDA Staff'' provides information specific to the basic safety and essential performance standards in the ASCA Pilot, including which standards are eligible for inclusion in the program, ASCA program specifications for those standards, and recommended premarket submission contents specific to those standards when testing is conducted by an ASCA-accredited testing laboratory.
- ''Biocompatibility Testing of Medical Devices—Standards Specific Information for the Accreditation Scheme for Conformity Assessment (ASCA) Pilot Program: Guidance for Industry, Accreditation Bodies, Testing Laboratories, and FDA Staff'' provides information specific to the biological evaluation of medical device standards and test methods in the ASCA Pilot, including which standards and test methods are eligible for inclusion in the program, ASCA program specifications for those standards and test methods, and recommended premarket submission contents specific to those standards and test methods when testing is conducted by an ASCA-accredited testing laboratory.

These guidances are being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). These guidances represents the current thinking of FDA on the ''Accreditation Scheme for Conformity Assessment (ASCA) Pilot Program''; ''Basic Safety and Essential Performance of Medical Electrical Equipment, Medical Electrical Systems, and Laboratory Medical Equipment—Standards Specific Information for the Accreditation Scheme for Conformity Assessment (ASCA) Pilot Program''; and ''Biocompatibility Testing of Medical Devices—Standards Specific Information for the Accreditation Scheme for Conformity Assessment (ASCA) Pilot Program.'' They do not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons interested in obtaining a copy of these guidances may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* These guidance documents are also available at *https://www.regulations.gov* or *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances.* Persons unable to download an electronic copy of ''The Accreditation Scheme for Conformity Assessment (ASCA) Pilot Program; Guidance for Industry, Accreditation Bodies, Testing Laboratories, and FDA Staff;'' ''Basic Safety and Essential Performance of Medical Electrical Equipment, Medical Electrical Systems, and Laboratory Medical Equipment—Standards Specific Information for the Accreditation Scheme for Conformity Assessment (ASCA) Pilot Program: Guidance for Industry, Accreditation Bodies, Testing Laboratories, and FDA Staff;'' or ''Biocompatibility Testing of Medical Devices—Standards Specific Information for the Accreditation Scheme for Conformity Assessment (ASCA) Pilot Program: Guidance for Industry, Accreditation Bodies, Testing Laboratories, and FDA Staff'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the following document numbers to identify the guidance you are requesting.

- Document number 17037 for ''The Accreditation Scheme for Conformity Assessment (ASCA) Pilot Program; Guidance for Industry, Accreditation Bodies, Testing Laboratories, and FDA Staff''.
- Document number 20011 for ''Basic Safety and Essential Performance of Medical Electrical Equipment, Medical Electrical Systems, and Laboratory Medical Equipment—Standards Specific Information for the Accreditation Scheme for Conformity Assessment (ASCA) Pilot Program: Guidance for Industry, Accreditation Bodies, Testing Laboratories, and FDA Staff''.
- Document number 20012 for ''Biocompatibility Testing of Medical Devices—Standards Specific Information for the Accreditation Scheme for Conformity Assessment (ASCA) Pilot Program: Guidance for Industry, Accreditation Bodies, Testing Laboratories, and FDA Staff''.

III. Paperwork Reduction Act of 1995

In the **Federal Register** of September 5, 2019 (84 FR 46737), FDA requested public comment on the collections of information associated with the ASCA Pilot. The information collection and our burden estimate is substantially the same, and is meant to encompass, the information collections proposed in the guidances (OMB control number 0910–0889).

These guidances refer to previously approved collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in the following FDA regulations and guidance have been approved by OMB as listed in the following table:

21 CFR part or guidance	Topic	OMB Control No.
807, subpart E	Premarket notification	0910–0120
814, subparts A through E	Premarket approval	0910–0231
814, subpart H	Humanitarian Device Exemption	0910–0332
812	Investigational Device Exemption	0910–0078
820	Quality System Regulation	0910–0073
803	Medical Device Reporting	0910–0437
''De Novo Classification Process (Evaluation of Automatic Class III Designation)''.	De Novo classification process	0910–0844
''Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program''.	Q-submissions	0910–0756
58	Good Laboratory Practices	0910–0119
312	Investigational New Drug Application	0910–0014
601	Biologics License Application	0910–0338

Dated: September 22, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2020–21234 Filed 9–24–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1816]

Lavipharm Laboratories, Inc., et al.; Proposal To Withdraw Approval of Five Abbreviated New Drug Applications; Opportunity for a Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration's (FDA or Agency) Center for Drug Evaluation and Research (CDER) is proposing to withdraw approval of five abbreviated new drug applications (ANDAs) and is announcing an opportunity for the ANDA holders to request a hearing on this proposal. The basis for the proposal is that the ANDA holders have repeatedly failed to file required annual reports for those ANDAs and have failed to satisfy the requirement to have an approved risk evaluation and mitigation strategy (REMS).

DATES: The ANDA holders may submit a request for a hearing by October 26, 2020. Submit all data, information, and analyses upon which the request for a hearing relies November 24, 2020. Submit electronic or written comments by November 24, 2020.

ADDRESSES: The request for a hearing may be submitted by the ANDA holders by either of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments to submit your request for a hearing. Comments submitted electronically to *https://www.regulations.gov,* including any attachments to the request for a hearing, will be posted to the docket unchanged.

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.
- Because your request for a hearing will be made public, you are solely responsible for ensuring that your request 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. The request for a hearing must include the Docket No. FDA–2020–N–1816 ''Lavipharm Laboratories, Inc., et al.; Proposal To Withdraw Approval of Five Abbreviated New Drug Applications; Opportunity for a Hearing.'' The request for a hearing will be placed in the docket and 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.

The ANDA holders may submit all data and analyses upon which the request for a hearing relies in the same manner as the request for a hearing except as follows:

- Confidential Submissions—To submit any data analyses with confidential information that you do not wish to be made publicly available, submit your data and analyses only as a written/paper submission. You should submit two copies total of all data and analyses. 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 any decisions on this matter. 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* or available at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500. Submit both copies to the Dockets Management Staff. Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law.

Comments Submitted by Other Interested Parties: For all comments submitted by other interested parties, submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–N–1816 for ''Lavipharm Laboratories, Inc., et al.; Proposal To Withdraw Approval of Five Abbreviated New Drug Applications; Opportunity for a Hearing.'' 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 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: Kimberly Lehrfeld, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6226, Silver Spring, MD 20993–0002, 301–796–3137.

SUPPLEMENTARY INFORMATION: The holder of an approved ANDA to market a new drug for human use is required to submit annual reports to FDA concerning its approved ANDA under §§ 314.81 and 314.98 (21 CFR 314.81 and 314.98). The holders of the approved ANDAs listed in table 1 have repeatedly failed to submit the required annual reports and have not responded to the Agency's request for submission of the reports.

Additionally, in accordance with section 505–1 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355–1), the Agency determined that a REMS is necessary for all the applicable listed drugs that the ANDAs in table 1 reference to ensure the benefits of the listed drugs outweigh the risks. In accordance with section 505–1(i) of the FD&C Act, an ANDA is required to have a REMS if the applicable listed drug has an approved REMS. We notified the holders of approved ANDAs in table 1 of the REMS requirement on September 28, 2017. The holders of the approved ANDAs listed in table 1 have failed to receive approval of a REMS for their products.

TABLE 1—APPROVED ANDAS FOR WHICH REQUIRED REPORTS HAVE NOT BEEN SUBMITTED AND A REMS HAS NOT BEEN APPROVED

Application No.	Drug	Applicant
ANDA 077051	Fentanyl transdermal system film, extended-release, 25 micrograms (mcg)/hour (hr), 50 mcg/hr, 75 mcg/hr, and 100 mcg/hr.	Lavipharm Laboratories, Inc., 69 Princeton-Hightstown Rd., East Windsor, NJ 08520.
ANDA 085217	Acetaminophen and Codeine Phosphate Tablet, 325 milligrams (mg)/30 mg.	Everylife, 2021 15th Avenue West, Seattle, WA 98119.
ANDA 085638	Acetaminophen, Aspirin, and Codeine Phosphate Capsule, 150 mg/180 mg/60 mg.	Scherer Laboratories, Inc., 2301 Ohio Dr., Suite 234, Plano, TX 75093.
ANDA 085639	Acetaminophen, Aspirin, and Codeine Phosphate Capsule, 150 mg/180 mg/30 mg.	Do.
ANDA 085640	Acetaminophen, Aspirin, and Codeine Phosphate Capsule, 150 mg/180 mg/15 mg.	Do.

Therefore, notice is given to the holders of the approved ANDAs listed in table 1 and to all other interested persons that the Director of CDER proposes to issue an order, under section 505(e)(2) of the FD&C Act (21 U.S.C. 355(e)(2)), withdrawing approval of the ANDAs and all amendments and supplements thereto on the grounds that the ANDA holders have failed to submit reports required under §§ 314.81 and 314.98 and section 505(k) of the FD&C Act, and have failed to receive approval of a REMS for their products in accordance with section 505–1 of the FD&C Act.

In accordance with section 505(e) of the FD&C Act and 21 CFR 314.150(a) and (b)(1) and 21 CFR 314.200, the ANDA holders are hereby provided an opportunity for a hearing to show why the approval of the ANDAs identified above should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of the drug products covered by these ANDAs.

An ANDA holder who decides to seek a hearing must file the following: (1) a written notice of participation and request for a hearing (see **DATES** and **ADDRESSES**) and (2) the data, information, and analyses relied on to demonstrate that there is a genuine and substantial issue of fact that requires a hearing (see **DATES** and **ADDRESSES**). Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for a hearing, notice of participation and request for a hearing, the information and analyses to justify a hearing, other comments, and a grant or denial of a hearing are contained in § 314.200 (21 CFR 314.200) and in 21 CFR part 12.

The failure of an ANDA holder to file a timely written notice of participation and request for a hearing, as required by § 314.200, constitutes an election by that ANDA holder not to avail itself of the opportunity for a hearing concerning CDER's proposal to withdraw approval of the ANDAs and constitutes a waiver of any contentions concerning the legal status of the drug products. FDA will then withdraw approval of the ANDAs, and the drug products may not thereafter be lawfully marketed or delivered for introduction into interstate commerce. Any new drug product introduced or delivered for introduction into interstate commerce without an approved ANDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing (§ 314.200(g)). If a request for a hearing is not complete or is not supported, the Commissioner of Food and Drugs will enter summary judgment against the person who requests the hearing, making findings and conclusions, and denying a hearing (§ 314.200(g)(1)).

All submissions under this notice of opportunity for a hearing must be filed in two copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen at the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *https://www.regulations.gov.*

This notice is issued under section 505(e)(2) of the FD&C Act and under authority delegated to the Director of CDER by the Commissioner of Food and Drugs.

Dated: September 16, 2020.

Patrizia Cavazzoni,

Acting Director, Center for Drug Evaluation and Research.

[FR Doc. 2020–21186 Filed 9–24–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Secretary's Advisory Committee on Human Research Protections

AGENCY: Office of the Secretary, Office of the Assistant Secretary for Health, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the Secretary's Advisory Committee on Human Research Protections (SACHRP) will hold a meeting that will be open to the public. Information about SACHRP, the full meeting agenda, and instructions for linking to public access will be posted on the SACHRP website at *http://www.dhhs.gov/ohrp/sachrp-committee/meetings/index.html.*

DATES: The meeting will be held on Tuesday, October 20th, 2020, from 11:00 a.m. until 4:30 p.m., and Wednesday, October 21, 2020, from 11:00 a.m. until 4:30 p.m. (times are tentative and subject to change). The confirmed times and agenda will be posted at on the SACHRP website when this information becomes available.

ADDRESSES: This meeting will be held via webcast. Members of the public may also attend the meeting via webcast. Instructions for attending via webcast will be posted one week prior to the meeting at *https://www.hhs.gov/ohrp/sachrp-committee/meetings/index.html.*

FOR FURTHER INFORMATION CONTACT: Julia Gorey, J.D., Executive Director, SACHRP; U.S. Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, Maryland 20852; telephone: 240–453–8141; fax: 240–453–6909; email address: *SACHRP@hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, SACHRP was established to provide expert advice and recommendations to the Secretary of Health and Human Services, through the Assistant Secretary for Health, on issues and topics pertaining to or associated with the protection of human research subjects.

The Subpart A Subcommittee (SAS) was established by SACHRP in October 2006 and is charged with developing recommendations for consideration by SACHRP regarding the application of subpart A of 45 CFR part 46 in the current research environment.

The Subcommittee on Harmonization (SOH) was established by SACHRP at its July 2009 meeting and charged with identifying and prioritizing areas in which regulations and/or guidelines for human subjects research adopted by various agencies or offices within HHS would benefit from harmonization, consistency, clarity, simplification and/or coordination.

The SACHRP meeting will open to the public at 11:00 a.m., on Tuesday, October 20, 2020, followed by opening remarks from Dr. Jerry Menikoff, Director of OHRP and Dr. Stephen Rosenfeld, SACHRP Chair. The meeting will begin with presentation of recommendations on the interpretation of the public health surveillance exclusion, 45 CFR 46.102(l)(2) and 46.102(k). This will be followed by a panel review of ethical considerations regarding ''justice'' within 45 CFR 46, and how this concept may affect the actions of IRBs. The following day continues with a discussion of recommendations on risks to bystanders posed by the research setting. Other topics may be added; for the full and updated meeting agenda, see *http://www.dhhs.gov/ohrp/sachrp-committee/meetings/index.html.*

The public will have an opportunity to comment to the SACHRP during the meeting's public comment session or by submitting written public comment. Persons who wish to provide public comment should review instructions at *https://www.hhs.gov/ohrp/sachrp-committee/meetings/index.html* and respond by midnight Wednesday, October 14, 2020, ET. Individuals submitting written statements as public comment should submit their comments to SACHRP at *SACHRP@hhs.gov.* Verbal comments will be limited to three minutes each.

Time will be allotted for public comment on both days. Note that public comment must be relevant to topics currently being addressed by the SACHRP.

Dated: September 18, 2020.

Julia G. Gorey,

Executive Director, SACHRP, Office for Human Research Protections.

[FR Doc. 2020–21232 Filed 9–24–20; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center For Complementary & Integrative Health; 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 Center for Complementary and Integrative Health Special Emphasis Panel; Center of Excellence for Research on Complementary and Integrative Health (P01) (CERCIH).

Date: October 30, 2020.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NCCIH, Dem II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jessica Marie McKlveen, Ph.D., Scientific Review Officer, Office of Scientifc Review, Division of Extramural Activities, NCCIH, NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892––547 *jessica.mcklveen@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: September 22, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–21240 Filed 9–24–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; 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 Center for Complementary and Integrative Health Special Emphasis Panel; Exploratory Clinical Trials of Mind and Body Interventions (MB).

Date: October 27–28, 2020.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NCCIH, Dem II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Pamela Jeter, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH, NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892—547, 301–435–2591, *pamela.jeter@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: September 22, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–21241 Filed 9–24–20; 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; 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/or contract proposals 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 Child Health and Human Development Initial Review Group Reproduction, Andrology, and Gynecology Subcommittee.

Date: October 13, 2020.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Child Health and Human Development, 6710B Rockledge Drive, Bethesda, MD 20892 (Video Assisted Meeting).

Contact Person: Derek J. Mclean, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6710B Rockledge Drive, Rm. 2125B, Bethesda, MD 20892–7002, (301) 443–5082, *derek.mclean@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.865, Research for Mothers and Children, National Institutes of Health, HHS)

Dated: September 21, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–21163 Filed 9–24–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICE

National Institutes of Health

National Institute on Aging; 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 Aging Special Emphasis Panel; Research Education Resources.

Date: October 14, 2020.

Time: 1:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Video Meeting).

Contact Person: Kimberly Firth, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Suite 2W200, Bethesda, MD 20892, (301) 402–7702, *firthkm@mail.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; AD Translational Training Programs.

Date: October 22, 2020.
Time: 12:00 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Video Meeting).
Contact Person: Kimberly Firth, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Suite 2W200, Bethesda, MD 20892, (301) 402–7702, *firthkm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 22, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–21237 Filed 9–24–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences Notice of Closed 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 General Medical Sciences Special Emphasis Panel; Review of NIGMS SCORE applications.
Date: November 5, 2020.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Video Meeting).
Contact Person: Nina Sidorova, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institutes of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20814, (301) 402–2783 *sidorova@mail.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of R25 Training Modules to Enhance the Rigor, Reproducibility and Responsible Conduct of Biomedical Data Science Research applications.
Date: November 12, 2020.
Time: 9:00 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Video Meeting).
Contact Person: Rebecca H. Johnson, Ph.D., Scientific Review, Officer Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18C, 45 Center Drive, Bethesda, MD 20892, (301) 594–2771, *johnsonrh@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: September 22, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–21235 Filed 9–24–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed 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 General Medical Sciences Special Emphasis Panel; Review of NIGMS SCORE Applications.
Date: October 29–30, 2020.
Time: 9:30 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Video Meeting).
Contact Person: John J. Laffan, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18J, Bethesda, MD 20892, (301) 594–2773, *laffanjo@mail.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of NIGMS COBRE 111 and INBRE applications.
Date: November 13, 2020.
Time: 1:00 p.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Video Meeting).
Contact Person: Saraswathy Seetharam, Ph.D., Scientific Review Officer, Office Scientific Review, National Institute of General Medical Sciences, National Institutes Health, 45 Center Drive, Room 3AN12C, Bethesda, MD 20892, (301) 594–2763, *seetharams@nigms.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of NIGMS National and Regional Resource (R24) Applications.
Date: November 16, 2020.
Time: 9:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Video Meeting).
Contact Person: Manas Chattopadhyay, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Building 45, Room 3AN12N, 45 Center Drive, Bethesda, md 20892, (301) 827–5320, *manasc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: September 22, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–21236 Filed 9–24–20; 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.

Reviewers Orientation: *http://grants.nih.gov/grants/peer/reviewer_guidelines.htm*

Videos for Reviewers: *https://www.youtube.com/user/nihgrants*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group Digestive Diseases and Nutrition C Subcommittee DDK–C Subcommittee.

Date: October 21–23, 2020.

Time: 5:00 p.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, Room 7017, 6707 Democracy Boulevard, Bethesda, MD 20892 (Video Meeting).

Contact Person: Maria E. Davila-Bloom, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7017, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, NIH iPhone: (301) 795–5944, *davila-bloomm@extra.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 22, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–21238 Filed 9–24–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Modification of Test Program Regarding Electronic Foreign Trade Zone Admission Applications

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

ACTION: General notice.

SUMMARY: This document announces modifications to U.S. Customs and Border Protection's (CBP's) test program for submitting electronic Foreign Trade Zone (FTZ) admission applications. Specifically, this notice announces that the zone identification number is being expanded from seven to nine digits and that test participants will now have the ability to submit ''replace'' requests to modify parts of an admission while retaining the original filing date, submit post-admission correction requests, and cancel permit to transfer transactions. Further, for ease of reference, this notice also reproduces the current test requirements in full.

DATES: As of September 26, 2020, the modifications to the test announced in this notice, with the exception of the expanded nine-digit zone identification number, will become operational. The expanded zone identification number will be implemented as of January 25, 2021. This test will continue until concluded by way of announcement in the **Federal Register**.

ADDRESSES: Comments concerning this notice and any aspect of this test may be submitted at any time during the test via email to Cargo & Conveyance Security, Office of Field Operations, U.S. Customs and Border Protection, at *FTZe214Test@cbp.dhs.gov,* with a subject line identifier reading ''Comment on Electronic FTZ Admission Application FRN.''

FOR FURTHER INFORMATION CONTACT: For operational questions, contact Lydia Jackson, Cargo & Conveyance Security, Office of Field Operations, U.S. Customs and Border Protection, at 202–344–3055 or *FTZe214Test@cbp.dhs.gov.* For technical questions, contact Arnold Buratty, Cargo Systems Program Directorate, Office of Information and Technology, U.S. Customs and Border Protection, at 571–468–5309 or *Arnold.Buratty@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. National Customs Automation Program Test

The National Customs Automation Program (NCAP) was established by Subtitle B of Title VI—Customs Modernization in the North American Free Trade Agreement (NAFTA) Implementation Act (Customs Modernization Act) (Pub. L. 103–182, 107 Stat. 2057, 2170, December 8, 1993) (19 U.S.C. 1411). Through NCAP, the thrust of customs modernization was on trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor to the Automated Commercial System (ACS), as the electronic data interchange (EDI) system authorized by U.S. Customs and Border Protection (CBP). ACE is an automated and electronic system for commercial trade processing, which is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for CBP and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP's business functions and the information technology that supports those functions.

CBP's modernization efforts are accomplished through phased releases of ACE component functionality designed to replace specific legacy ACS functions and add new functionality. Section 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)) provides for the testing of NCAP components. *See* T.D. 95–21, 60 FR 14211 (March 16, 1995).

B. Electronic Foreign Trade Zone (FTZ) Admission Application Test

On August 19, 2005, CBP published a notice in the **Federal Register** (70 FR 48774) announcing an NCAP test concerning the electronic submission of FTZ admission data. The test notice provided that participants would electronically submit data contained in the ''Application for Foreign-Trade Zone Admission and/or Status Designation'' (CBP Form 214; the electronic version of the form is referred to as e214). The notice described the test program in detail, identified the regulatory provisions suspended for the test, and set forth the test commencement date as no earlier than September 30, 2005, with a test period of approximately 6 months. The test notice also set forth the prototype procedures and listed the required data elements that must be provided to CBP when filing an electronic FTZ admission application. Participants were required to participate in an evaluation of this test to take place at the end of the 6-month period.

Due to low participation in the test program and insufficient data collected, CBP announced that the test would be run again, in the **Federal Register** (72 FR 14128) on March 26, 2007. The newly announced test program was intended to encourage greater participation by the trade and thereby provide more meaningful data to CBP to assess the feasibility of implementing the test program on a permanent basis. CBP made certain clarifications regarding required data elements and announced that ACE would be the only

CBP-approved EDI for the test, in a **Federal Register** notice published on August 16, 2017 (82 FR 38923). Initially, in that notice, CBP provided an effective date of September 17, 2017. However, the effective date was later shifted to December 9, 2017. *See* 82 FR 43395 (Sept. 15, 2017). The test remains in progress and will continue until concluded by way of announcement in the **Federal Register**.

II. New Test Modifications for Electronic Foreign Trade Zone Admission Applications

This notice announces changes to the test program for submitting the electronic FTZ admission applications (hereinafter Electronic FTZ test). The zone identification number is being expanded from seven to nine digits and test participants will now have the ability to submit ''replace'' requests to modify parts of an admission while retaining the original filing date, submit post-admission correction requests, and cancel a permit to transfer transaction. The changes are discussed separately below, and further information is contained in the ACE Foreign Trade Zone (e214) chapter of the CBP and Trade Automated Interface Requirements (CATAIR), available at: *https://www.cbp.gov/trade/ace/catair.* Filers not participating in the test will continue to submit FTZ admission applications on CBP Form 214 (Application for Foreign-Trade Zone Admission and/or Status Designation). For ease of reference, the complete test requirements (including the new modifications) are provided further at the end of this notice.

A. Expansion of the Zone Identification Number

CBP assigns unique identifiers for all FTZ site locations. The length of the alpha-numeric zone identification number (Zone ID number) will be expanded from seven to nine digits to accommodate additional Subzones and sets of General Purpose (GP) Zone Acreage, as well as additional FTZ site locations associated with a Subzone or a set of GP Zone Acreage. The expanded nine-digit Zone ID number will consist of the following, in the listed order:

- 3 numeric digits representing the FTZ designation;
- 3 alpha-numeric characters representing, as appropriate, *either:*
  —the Subzone designation; *or,*
  —the GP Zone Acreage designation; and
- 3 alpha-numeric characters representing, as appropriate, *either:*
  —the Subzone Site designation; *or,*
  —the GP Site designation.

As noted in the **DATES** section above, the transition to the expanded Zone ID number will be completed 120 days from the date of publication of this notice.

CBP will coordinate internally prior to and throughout the 120-day period following publication of this notice to transition to the expanded nine-digit system by aiding the local port offices with issuing the expanded Zone ID numbers to the FTZ operators. The FTZ operators are responsible for ensuring the type 04 FTZ bond associated with each FTZ site profile in ACE is up to date and active. As needed, CBP Client Representatives will assist software vendors and trade filers as the primary point of contact during this time. At the conclusion of the 120-day transition period, all existing Zone ID numbers will have been replaced with system-generated expanded Zone ID numbers and all Zone ID numbers issued in the future will consist of nine digits.

B. Replace Requests To Modify a Previously Submitted Admission While Retaining the Original Date of Filing

Currently, for modifications to FTZ admission data, an admission must first be deleted and then a complete replacement of the admission must be filed. This process causes a break in custody by generating a new admission date. Retaining the original admission date is necessary to ensure that privileged foreign status duty rates are correctly applied, and that is critical to maintain the integrity of the FTZ operator's foreign status inventory. Without maintaining the original admission date, inventory could be subject to higher duty rates that become effective subsequent to the original admission date. Accordingly, in order to ensure the integrity of the zone inventory, CBP has added new functionality to the Electronic FTZ test to allow for ''replace'' requests to modify an admission while retaining the original admission date.

To make a ''replace'' request for a modification, filers of the e214 must submit one of the mandatory reason codes and provide a contact name and contact phone number. Reason codes for modifications can be found in the CATAIR and are as follows: 01 Change/Add Conveyance(s); 02 Delete Conveyance(s); 03 Change/Add Bill of Lading(s); 04 Delete Bill of Lading(s); 05 Change/Add HTSUS Line(s); 06 Delete HTSUS Line(s); 07 Change Admitted Quantity; and 08 Other. CBP will consider replace requests for modifications on a transactional basis and, upon CBP review, the filer will receive a message with a disposition code indicating whether the request was approved or denied.

C. Submission of Post-Admission Correction Requests

Changes to an admission that has been fully accepted into the zone (via a process known as concurrence) are not permitted in the Electronic FTZ test. The process of replacing an entire admission creates a cumbersome process that affects other transactions associated with the bills of lading on the initial admission, which could lead to delays in cargo movement. Therefore, CBP has added the ability to request a post-admission correction to the Electronic FTZ test that will allow for modification after the admission has been concurred and fully accepted into the zone operator's inventory and recordkeeping system. The post-admission correction process described here does not affect the bond liability that would otherwise exist absent the correction.

To request a modification for an admission that has been fully accepted into the zone, which will be considered by CBP on a transactional basis, filers must submit one of the mandatory reason codes and must also submit a contact name and contact phone number.

Reason codes for post-admission correction requests can be found in the CATAIR and are as follows: 01 Clerical error; 02 Admission replaced by CBP Form 7512 (Replacement in-bond number required; must be authorized by CBP); 03 Merchandise cleared under another admission (Replacement admission number already on file required); 04 Admission replaced by a formal entry (Replacement entry number already on file required); 05 Merchandise cleared under informal entry (Replacement entry number already on file required); 06 Merchandise seized; 07 Merchandise destroyed; 08 Non-arrival; 09 Shipment refused by importer/zone operator; 10 Shipment not authorized for import (refused by PGA); and 11 System error. Moreover, there is a 15-day time limit from the date of arrival in the port in which to request a post-admission correction; for any correction requests outside of the 15-day time limit, please contact your local port. Upon CBP review, the filer will receive a message with a disposition code indicating whether the post-admission correction request was approved or denied.

D. Cancellation of Permit To Transfer (PTT) Transactions

Currently, PTT transactions are not permitted to be cancelled. A PTT is a

permit to transfer cargo from one bonded location in a CBP Port of Entry to another bonded location within the same CBP Port of Entry. In the case of the e214 processes, the bonded movement is only to an FTZ site, which is represented by its CBP-assigned Facilities Information and Resources Management Systems (FIRMS) code. This limitation makes it difficult to facilitate instances where the diversions of cargo to other designated locations is required for purposes such as inspections or to effectuate a withhold release order. In order to alleviate this issue, CBP has added new functionality to the Electronic FTZ test that will allow for PTT Cancel transactions by the filer or by CBP.

For each electronic PTT, filers receive a response with a CBP-generated PTT unique identifier (PID). This PID is required to request the cancellation of the associated PTT. Upon CBP review, the filer will receive a message with a disposition code indicating whether the PTT Cancel transaction request was approved or denied, as there can be errors encountered during processing.

III. Complete Requirements for Test Program Regarding Electronic Foreign Trade Zone Admission Applications

The Electronic FTZ test has been running continuously since March 26, 2007. CBP will inform the public of CBP's decision to conclude the test program by way of announcement in the **Federal Register**. For ease of reference, the complete test requirements (including the new modifications) are provided below.

A. Regulatory Provisions Suspended

Subpart C to part 146 of the CFR prescribes the conditions applicable to admission of merchandise into a foreign trade zone. To the extent that certain provisions within subpart C to part 146 may be incompatible with the terms of this test program, the affected regulatory provisions will be suspended for the duration of the test.

B. Participant Eligibility

Eligible participants in the Electronic FTZ Admissions Application test program include: FTZ operators; FTZ Admission Applicants; Agents of FTZ Operators; and Agents of FTZ Admission Applicants. Participation in the test is voluntary and there are no application procedures.

C. Prototype Procedures

1. Submission of Electronic CBP Form 214 and Related Data

Test participants must request permission to admit merchandise into an FTZ by electronically transmitting the CBP Form 214 data elements to CBP. The data transmission may cover a single shipment of merchandise or be a consolidated transmission that covers multiple shipments to a single zone. CBP must receive the CBP Form 214 before the merchandise can be authorized for admission into the FTZ. An exception to this requirement exists for test participants who are authorized to use the FTZ direct delivery procedures, as discussed below.

2. Prior Notice Reporting Requirements

Test participants, including those approved to participate under direct delivery procedures, must comply with the prior notice reporting requirements stipulated in the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (''the Bioterrorism Act''), Public Law 107–188. Title III of the Bioterrorism Act contains provisions relating to providing the Department of Health and Human Services with prior notice regarding certain information about foods that are imported or offered for import into the United States.

3. Direct Delivery Procedures

As a general rule, a test participant who is also authorized to use the direct delivery procedures prescribed in 19 CFR 146.39 to admit merchandise into an FTZ may transmit the required data to CBP on an electronic CBP Form 214 no later than the close of business on the business day following receipt of the merchandise into the FTZ inventory control and recordkeeping system. With regard to the applicability of direct delivery procedures in the context of the test program, two exceptions to the above rule are noted. First, as stated above, direct delivery participants are subject to any applicable prior notice reporting requirements set forth in the Bioterrorism Act. Second, in the absence of a CBP Form 7512, or its electronic equivalent, authorizing an in-bond movement, a test participant may electronically transmit a permit to transfer request for the intra-port bonded movement of the merchandise to the FTZ site.

4. FTZ Operators as Test Participants

Under the test program, an FTZ operator will be able to transmit the following transactions via the Automated Broker Interface (ABI): Submit a permit to transfer request for merchandise coming to its FTZ Site; submit requests to cancel a specific existing permit to transfer request; submit application for admission on behalf of the applicant for imported zone status merchandise, zone status merchandise transferred from another zone, and domestic status merchandise; agree to, or refuse to, accept custodial responsibility for an admission submitted by an entity other than itself as the Operator; report arrival of merchandise to the FTZ; assume custodial responsibility for the admission authorized merchandise; submit a request on behalf of the applicant for a change of zone status on specific merchandise; and submit request for post-admission correction.

5. Transmittal of Statistical Data to the Bureau of Census

After the FTZ Operator has concurred the admission CBP will transmit statistical data to the Bureau of the Census through an automated link.

D. Required Data Elements

Participants in the test must provide CBP with the following data elements, which consist of the previously required data elements and the newly announced data elements:

- A code representing the action to be taken (*e.g.,* add, delete, replace).
- The line item number.
- The Zone ID number. This zone identification number is comprised of the FTZ number designation, any Subzone or General Purpose Zone designation and a physical FTZ Site designation. Currently Zone IDs are seven characters in length. The transaction will now accommodate the expanded nine-character CBP-assigned Zone ID when its use becomes mandatory.
- The port code where the FTZ is located as shown in Schedule D, Harmonized Tariff Schedule of the United States (HTSUS).
- An indicator specifying whether the merchandise is being admitted into the FTZ under direct delivery procedures.
- The Automated Broker Interface (ABI) filer code.
- The ABI routing code and optional office extension for one additional ABI participant who will receive a copy of the electronic CBP Form 214 and subsequent electronic notifications.
- The Importer of Record Number applicant.
- An indicator specifying the admission type.
- The mode of transportation code. Valid codes are listed in Appendix B of the Customs and Trade Automated Interface Requirements (CATAIR), Pub # 0875–0419.
- The name of the conveyance (if not a vessel, the name of the transportation company).
- The vessel voyage, truck or rail trip, or aircraft flight number.

- The country of export.
- The export date. For merchandise arriving in the United States by vessel: The month, day and year on which the vessel departed the last port of the country of exportation. For merchandise exported by air: The month, day and year on which the aircraft departed the last airport of the country of exportation. For merchandise exported by truck or rail: The month, day and year in which the carrier crossed the border of the country of exportation.
- The import date. For merchandise arriving in the United States by vessel: The month, day and year on which the vessel transporting the merchandise from the foreign country arrived within the limits of the U.S. port at which the merchandise was unladen. For merchandise arriving in the United States other than by vessel: The month, day and year in which the merchandise arrived within U.S. customs territory.
- The zone admission number (which is made up of the Zone ID (described above in more detail), the two-digit calendar year (of the current year), and the control number (the unique admission designation assigned by the Applicant or Operator).
- The U.S. port of unlading (the port at which the merchandise was unladen). Valid codes are listed in Schedule D, HTSUS.
- The foreign port of lading.
- The bill of lading or airway bill number.
- The house bill number.
- The Standard Carrier Alpha Code (SCAC) identifier of the importing carrier.
- The immediate transportation (IT) number assigned to in-bond shipments and the date the CBP Form 7512 was prepared.
- The number of packages. An indication of the quantity and unit of measure (cartons, cases, bundles, etc.) in the shipment as stated in the Customs Automated Manifest Interface Requirements (CAMIR). For containerized merchandise, an indication of the number of packages within the container(s) and the container number(s). For bulk shipments, show ''1 Bulk.''
- Country of origin code, provided in Annex B, ISO code, HTSUS, which represents the country of origin in which the product was manufactured, mined, or grown. Labor work or material added to an article in another country must affect a substantial transformation in order for such other country to become the actual ''country of origin.'' If the merchandise is from more than one country of origin, the country of origin will be indicated separately against each HTSUS subheading or group of subheadings.
- A detailed description of the merchandise at the line item level.
- The Manufacturer Identification (MID) number (as required for type 01 entries).
- The applicable HTSUS number(s).
- The statistical reporting quantity of the merchandise for each HTSUS number.
- The quota category (if applicable).
- The gross weight in kilograms of the merchandise. Supply separate gross weight information for each HTSUS subheading.
- The separate value and aggregate charges: For each HTSUS, enter the purchase price (in U.S. dollars) or, if the merchandise was not acquired by purchase, the equivalent of such price. Also, report the aggregate cost (in U.S. dollars) of freight, insurance, and all other costs, charges and expenses incurred in bringing the merchandise from alongside the carrier at the foreign port of exportation in the country of exportation in addition to unlading the merchandise at the first U.S. port of entry.
- The indicator designating a special program and country affecting duty payments (if applicable).
- If applicable, a qualifier code and reference identifier associated with the shipment. Valid qualifiers are listed in the CATAIR.
- The Harbor Maintenance Fee (if applicable).
- The zone status designation of the merchandise.
- The container number if a permit to transfer is requested.
- Concurrence data relating to the admission application.
- The Importer of Record number of the bonded carrier nominated for a permit to transfer request to move merchandise to an FTZ site.
- The Facilities Information and Resources Management Systems (FIRMS) code identifying the location where the merchandise (moving on a permit to transfer transaction) is being delivered.
- An indicator if the merchandise is subject to Bioterrorism Act of 2002 requirements.
- Under 19 CFR 12.145 and 360.101(c), the steel import license number needs to be provided on CBP Form 214 at the time of filing under 19 CFR part 146, in the case of merchandise admitted into an FTZ.
- The unique identifying number of Kimberley Process Certificate (if applicable). The Kimberley Process Certificate must be presented in connection with an importation of rough diamonds into an FTZ and exportation out of an FTZ if demanded by a CBP official pursuant to 31 CFR 592.404 and 592.301.
- For replace requests to modify a previously submitted admission while retaining the original filing date, filers must include the reason code and the contact name and contact phone number.
- To submit post-admission correction requests after an admission has been concurred (fully accepted into a zone), filers must include the reason code and the contact name and contact phone number.
- For requests to cancel a permit to transfer (PTT) transaction, filers must include a permit to transfer transaction unique identifier (PID).
- The Importer of Record Number of the Zone Operator.
- The Facilities Information and Resources Management Systems (FIRMS) code identifying the FTZ Site location where the merchandise is to be admitted.

Test participants are responsible for the accuracy and completeness of all data transmitted under the prototype.

E. Processing of Electronic FTZ Admission Applications

Upon approval of an electronic FTZ admission application, CBP will transmit electronic notice to the test filer authorizing admission of the merchandise into the FTZ. As noted above, this approval process does not apply to merchandise admitted to an FTZ under direct delivery procedures.

Upon approval of an electronic request for a permit to transfer, CBP will electronically transmit approval/denial to transfer the merchandise into the FTZ electronically to the test filer, and to the carrier of the merchandise. CBP will also provide electronic notice to these parties as to whether the merchandise is subject to CBP examination. In addition, test program participants and carriers will be able to receive electronic notification concerning the status of an admission request.

A test participant whose FTZ admission application is rejected by CBP will be provided with an opportunity to correct the reported error. A complete re-transmission of the entire admission application is required by CBP.

F. Misconduct Under the Test

A test participant may be subject to civil and criminal penalties, administrative sanctions, liquidated damages, and/or suspension from this test for any of the following:

• Failure to abide by the terms and conditions of this test, and any applicable laws and regulations.

• Failure to exercise reasonable care in the execution of participant obligations.

• Misuse of the automated CBP Form 214 (*i.e.,* engaging in unauthorized disclosure or any activity which interferes with the successful evaluation of the new technology).

The Director, Cargo Security and Control Division, will administer suspensions for misconduct. A written notice proposing suspension will be provided to the participant. Such notice will apprise the participant of the alleged facts or conduct warranting suspension and will inform the participant of the date that the suspension will begin. Any decision proposing suspension of a participant may be appealed in writing to the Executive Assistant Commissioner, Office of Field Operations, 1300 Pennsylvania Ave. NW, Washington, DC 20229, within 15 calendar days of the notification date. An appeal must address the alleged facts or conduct charges contained in the notice and state how compliance has been or will be achieved. In cases of non-payment, late payment, willful misconduct or where public health interests or safety are concerned, the suspension may be effective immediately. The same appeal procedures apply in cases of immediate suspension.

G. Test Evaluation Criteria

To ensure adequate feedback, participants are required to participate in an evaluation of this test. CBP also invites all interested parties to comment on the design, conduct and implementation of the test at any time during the test period. CBP will publish the final results in the **Federal Register** and the *Customs Bulletin* as required by section 101.9(b) of Title 19 of the CFR.

The following evaluation methods and criteria have been suggested:

1. Baseline measurements to be established through data analysis;
2. Questionnaires from both trade participants and CBP addressing such issues as:
   - Workload impact (workload shifts/volume, cycle times, etc.)
   - Cost savings
   - Policy and procedure accommodation
   - Trade compliance impact
   - Problem resolution
   - System efficiency
   - Operational efficiency
   - Other issues identified by the participant group

Dated: September 21, 2020.

William A. Ferrara,

Executive Assistant Commissioner, Office of Field Operations.

[FR Doc. 2020–21151 Filed 9–24–20; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2020–0010]

SAFECOM Membership Questionnaire

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: 60-Day Notice and request for comments; New collection (Request for a new OMB Control Number, 1670–NEW.

SUMMARY: DHS CISA Emergency Communications Division (ECD) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted until November 24, 2020.

ADDRESSES: You may submit comments, identified by docket number CISA–2020–0010, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.

• *Email: SAFECOMGovernance@hq.dhs.gov.* Please include docket number CISA–2020–0010 in the subject line of the message.

• *Mail:* Written comments and questions about this Information Collection Request should be forwarded to DHS/CISA/ECD, ATTN: 1670–NEW, 245 Murray Lane SW, Mailstop 0613, Washington, DC 20598–0613.

• *Faxed:* CISA ECD—ATTN: Robert Rhoads c/o Ralph Barnett III at (703) 705–6130.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Comments submitted in response to this notice may be made available to the public through relevant websites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, 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. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Ralph Barnett III at *SAFECOMGovernance@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: On November 16, 2018, Congress passed Public Law 115–278, to amend the Homeland Security Act of 2002 (6 U.S.C. 101 *et seq.*), enacted and authorized the Cybersecurity and Infrastructure Security Agency (CISA) of the Department of Homeland Security (DHS). Statue 4173 § (f)(3) under title XVIII mandated CISA to construct the Emergency Communications Division as one of three components. Furthermore, Statue 4173 § (f)(3) calls for the Emergency Communications Division to be headed by the Assistant Director. Statue 4175 § (c)(1)(2) (6 U.S.C. 571 note.) re-designated the Office of Emergency Communications to become the Emergency Communications Division, headed by the Assistant Director. In accordance with Statue 4179 § 1801 (6 U.S.C. 571)(b) title XVIII, the Assistant Director for the Emergency Communications Division is required to report to the Director of CISA. Section 2202 (6 U.S.C. 652)(b)(1) specifies for the head of CISA to be re-designated as the Director, who is required to report to the Secretary of the Department of Homeland Security.

CISA enhances public safety interoperable communications at all levels of government to help partners across the country develop their emergency communications capabilities. Working with stakeholders across the country, CISA conducts extensive, nationwide outreach to support and promote the ability of emergency response providers and relevant government officials to continue to communicate in the event of a natural disaster, act of terrorism, or other man-made disaster. Public Law 109–296, Title VI, § 671(b), Title XVIII, § 1801(c)(2) mandates DHS through CISA to administrate and manage SAFECOM, a state, local, tribal, and territorial stakeholder-driven public

safety communications program. In an effort to resolve major communications issues identified during the September 11, 2001, terrorist attacks, SAFECOM was created as a Presidential E-Government Initiative to improve interoperability, allowing emergency responders to communicate more effectively before, during, and after emergencies and disasters.

Through collaboration with emergency responders and elected officials across all levels of government, SAFECOM works to improve emergency response providers' inter-jurisdictional and interdisciplinary emergency communications interoperability across local, regional, tribal, State, territorial, international borders, and with Federal government entities. SAFECOM works with existing Federal communications programs and key emergency response stakeholders to address the need to develop better technologies and processes for the coordination of existing communications systems and future networks.

The SAFECOM Membership Questionnaire is an internal SAFECOM document disseminated only to active SAFECOM Members. SAFECOM uses the Questionnaire to identify membership gaps, obtain updated information on SAFECOM's membership body (*e.g.,* public safety communications experience, accolades, acquired skills/certifications, etc.), update SAFECOM marketing materials, and to assist SAFECOM when responding General Accounting Office (GAO) inquiries.

The DHS/CISA/ECD will disseminate the SAFECOM Membership Questionnaire to active SAFECOM Members as a fillable PDF document. SAFECOM intends to use the Questionnaire to examine its Membership body, identify membership gaps obtain updated information on SAFECOM's membership body (*e.g.,* public safety communications experience, accolades, acquired skills/certifications, etc.), update SAFECOM marketing materials, and to assist SAFECOM when responding General Accounting Office (GAO) inquiries.

The Questionnaire will encompass eight interdependent sections of questions. The SAFECOM Internal Membership section requests each Member to provide their name, state of residence, and the number of hours per month he/she contributes SAFECOM led initiatives (*e.g.,* conference calls and deliverable development). SAFECOM consists of public safety association representatives and at-large members. The Association Representative Information section pertains to public safety associations represented in SAFECOM. Association Representatives serving in SAFECOM are asked to provide the name of their Association, approximate Association size, Association contact, and addition Association point-of-contact (POC) information. At-large members are instructed to skip to the next section. Public Safety Service section will focus on questions related to each Member's public safety and first responder career. Members are asked to designate their current public safety status (*i.e.,* active, retired, other), to identify their public safety discipline(s), to provide level of government for current employment (*e.g.,* state, local, tribal, territorial, federal), to provide years of service, to list current agency and agency's contact information, to provide a brief description on their current role and responsibilities, to select the population range that best describes the population of your current organization's jurisdiction serviced, to indicate the number of public safety personnel employed at your current organization, to indicate the number of responses your current organization responds to each year, and if current position entails collaborating with Tribal Nations. The Volunteer Experience section asks Members to provide details on their volunteer experience. The Public Safety Experience section asks Members to identify the public safety events he/she responded to throughout their career, and to identify the communications technology he/she has used. The Education section focuses on the education (*e.g.,* which is an optional question), proficiencies, and professional certifications. External Conference Attendance section focuses on Member's experience at public safety conferences as well as their interest in representing SAFECOM in the future at a conference. The final section focuses on Members public safety usage.

This is a NEW collection of information.

OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Title of Collection: SAFECOM Membership Questionnaire.

OMB Control Number: 1670–NEW.

Frequency: Annually.

Affected Public: State, Local, Tribal, and Territorial Governments.

Number of Annualized Respondents: 50.

Estimated Time per Respondent: 0.25 hours.

Total Annualized Burden Hours: 12.5 hours.

Total Annualized Respondent Opportunity Cost: $0.

Total Annualized Respondent Out-of-Pocket: $0.

Total Annualized Government Cost: $984.96.

Richard S. Libby,

Deputy Chief Information Officer, Department of Homeland Security, Cybersecurity and Infrastructure Security Agency.

[FR Doc. 2020–21188 Filed 9–24–20; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV952000 L12100000.PH0000.241A; MO #4500148094 TAS: 18X]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

DATES: Filing is applicable at 10:00 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: Michael O. Harmening, Chief Cadastral Surveyor for Nevada, Bureau of Land Management, Nevada State Office, 1340 Financial Blvd., Reno, NV 89502–7147, phone: 775–861–6490. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS 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:

1. The Plat of Survey of the following described lands was officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada, on September 15, 2020.

The plat, in one sheet, representing the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines and a portion of Homestead Entry Survey No. 68, and the subdivision of sections 13 and 24, and a metes-and-bounds survey of a portion of the easterly right-of-way line of Nevada State Route No. 225, Township 45 North, Range 53 East, Mount Diablo Meridian, Nevada, under Group No. 982, was accepted September 10, 2020. This survey was executed to meet certain administrative needs of the Bureau of Land Management, the United States Forest Service, and the Bureau of Indian Affairs.

2. The Plat of Survey of the following described lands was officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada, on September 17, 2020.

The plat, in one sheet, representing the dependent resurvey of portions of the subdivision-of-section lines of section 7 and a portion of the metes-and-bounds survey in section 7, and the further subdivision of section 7, and metes-and-bounds surveys in section 7, Township 15 South, Range 66 East, Mount Diablo Meridian, Nevada, under Group No. 977, was accepted September 15, 2020. This survey was executed to meet certain administrative needs of the Bureau of Land Management.

3. The Plat of Survey of the following described lands will be officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada, on the first business day after thirty (30) days from the publication of this notice.

The plat, in three sheets, representing the dependent resurvey of portions of the south and east boundaries and a portion of the subdivisional lines, and a metes-and-bounds survey of the easterly right-of-way line of U.S. Highway No. 95, through sections 23, 25, 26, and 36, Township 17 South, Range 58 East, Mount Diablo Meridian, Nevada, under Group No. 945, was accepted August 10, 2020. This survey was executed to meet certain administrative needs of the Bureau of Land Management and the National Park Service.

4. The Plat of Survey of the following described lands will be officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada, on the first business day after thirty (30) days from the publication of this notice.

The plat, in one sheet, representing the dependent resurvey of a portion of the south boundary and a portion of the subdivisional lines, and a metes-and-bounds survey of the easterly right-of-way line of U.S. Highway No. 95, through section 31, Township 17 South, Range 59 East, Mount Diablo Meridian, Nevada, under Group No. 945, was accepted August 10, 2020. This survey was executed to meet certain administrative needs of the Bureau of Land Management and the National Park Service.

5. The Plat of Survey of the following described lands will be officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada, on the first business day after thirty (30) days from the publication of this notice.

The plat, in twelve (12) sheets, representing the dependent resurvey of a portion of the west boundary and a portion of the subdivisional lines, and the subdivision of certain sections, a metes-and-bounds survey of the easterly right-of-way line of U.S. Highway No. 95, through sections 6 and 7, and a portion of section 8, and a metes-and-bounds survey of the Red Rock Canyon National Conservation Area boundary through a portion of section 7 and through sections 8, 16, 17, and 21, Township 18 South, Range 59 East, Mount Diablo Meridian, Nevada, under Group No. 945, was accepted August 10, 2020. This survey was executed to meet certain administrative needs of the Bureau of Land Management and the National Park Service.

6. The Plat of Survey of the following described lands will be officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada, on the first business day after thirty (30) days from the publication of this notice.

The plat, in two sheets, representing the dependent resurvey of a portion of Homestead Entry Survey No. 167, and the survey of a portion of the south boundary and a portion of the subdivisional lines, and the subdivision of sections 18 and 19, Township 45 North, Range 54 East, Mount Diablo Meridian, Nevada, under Group No. 984, was accepted September 10, 2020. This survey was executed to meet certain administrative needs of the Bureau of Land Management, the United States Forest Service, and the Bureau of Indian Affairs.

7. The Plat of Survey of the following described lands will be officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada, on the first business day after thirty (30) days from the publication of this notice.

The plat, in one sheet, representing the dependent resurvey of a portion of the south boundary, a portion of the subdivisional lines and portions of the subdivision-of-section lines of section 32, and the further subdivision of section 32, Township 18 South, Range 60 East, Mount Diablo Meridian, Nevada, under Group No. 994, was accepted September 15, 2020. This survey was executed to meet certain administrative needs of the Bureau of Land Management.

The surveys, listed above, are now the basic record for describing the lands for all authorized purposes. These records have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information.

Authority: 43 U.S.C. Chapter 3.

Dated: September 17, 2020.

Michael O. Harmening,

Chief Cadastral Surveyor for Nevada.

[FR Doc. 2020–21140 Filed 9–24–20; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY921000.L144000000.ET0000.20X, WYW–188618]

Notice of Realty Action: Recreation and Public Purposes (R&PP) Act Classification and Conveyance, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification to convey 227.5 acres of public land to Park County under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended. As a political subdivision of the State of Wyoming, Park County is a qualified applicant under the R&PP Act. Park County has not applied for more than 6,400-acres for recreation uses in a year, nor for more than 640 acres for each of the programs involving public resources other than recreation, as required by the R&PP Act.

DATES: Submit written comments regarding this proposed classification and conveyance on or before November 9, 2020. The BLM will not consider comments received by telephone or email.

ADDRESSES: Mail written comments to the Field Manager, BLM Cody Field Office, 1002 Blackburn Street, Cody, Wyoming, 82414. Comments may be mailed or hand delivered to the Cody Field Office. Information including, but not limited to, a proposed development

and management plan and documentation relating to compliance with applicable environmental and cultural resource laws is available for review during business hours, 8:00 a.m. to 4:30 p.m. Mountain Standard Time, Monday through Friday, except during Federal holidays, at the BLM Cody Field Office at the address above.

FOR FURTHER INFORMATION CONTACT: Cara Blank, Realty Specialist, by telephone at 307–578–5912. Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to leave a message or question for the above individual. The FRS is available 24 hours a day, 7 days a week. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Park County has submitted a statement in compliance with the regulations at 43 CFR 2741.4(b). Park County proposes to use the land for operating and maintaining an expansion of an existing public shooting range facility.

Park County has filed an application for patent of the following described lands. The lands examined and identified as suitable for conveyance under the R&PP Act are described as:

Sixth Meridian, Wyoming

T. 53 N., R. 102 W.,
Sec. 14, SW¼SW¼NW¼SE¼, NW¼SW¼SE¼, SW¼SW¼SE¼, and W½SE¼SW¼SE¼;
Sec. 23, SW¼NW¼NE¼NE¼, SW¼NE¼NE¼, NW¼NE¼, NE¼SW¼NE¼, NW¼SW¼NE¼, SW¼SW¼NE¼, NW¼SE¼SW¼NE¼, NW¼NW¼SE¼NE¼, NE¼SW¼, NW¼SW¼, NE¼SW¼SW¼, NE¼SE¼SW¼, NW¼SE¼SW¼, and NW¼NW¼NW¼SE¼.

The area described contains 227.5 acres.

These lands are currently withdrawn for use by the Bureau of Reclamation. Consent to convey these lands was received from the Bureau of Reclamation on April 10, 2019. The lands are not needed for any Federal purposes.

Conveyance of the lands for recreational or public purposes use is in conformance with the BLM Cody Field Office Resource Management Plan dated September 2015 and is in the public interest. The BLM conducted a Phase I environmental site assessment in July 2019. No evidence of recognized environmental conditions was identified on the parcel.

All interested parties will receive a copy of this notice once it is published in the **Federal Register**. A notice with information about this proposed realty action will be published in the newspaper of local circulation once each week for three consecutive weeks. The regulations at 43 CFR 2741 addressing requirements and procedures for conveyances under the R&PP Act do not require a public meeting.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including locations under the mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws.

The conveyance documents, when issued, will require the lands to be conveyed to remain subject to valid existing rights. The conveyance documents will contain the terms, conditions and reservations listed below, as well as any additional terms or conditions required by law, including any required by 43 CFR 2741.5. The conveyance will reserve to the United States:

1. Rights-of-way thereon for ditches and canals constructed by the authority of the United States Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.

3. All mineral deposits, including saleable sand and gravel, in the land so patented, shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe, including all necessary access and exit rights.

4. Except as provided in provision 7 below, title shall revert to the United States upon a finding, after notice and opportunity for a hearing, that, without the approval of the Secretary of the Interior or his delegate, the patentee or its approved successor attempts to transfer title to or control over the lands to another, the lands have been devoted to a use other than that for which the lands were conveyed, the lands have not been used for the purpose for which the lands were conveyed for a 5-year period, or the patentee has failed to follow the approved development plan or management plan.

5. An appropriate indemnification clause protecting the United States from claims arising out of the patentee's use, occupancy, or occupation on the leased/patented lands.

6. If, at any time, the patentee transfers to another party ownership of any portion of the land not used for the purpose(s) specified in the application and approved plan of development, the patentee shall pay the BLM the fair market value, as determined by the authorized officer, of the transferred portion as of the date of transfer, including the value of any improvements thereon.

7. No portion of the land shall under any circumstances revert to the United States if any such portion has been used for a shooting range or any other purpose which may result in the disposal, placement or release of any hazardous substance.

Classification Comments: Interested persons may submit comments involving the suitability of the land for development and use as a shooting range. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with state and Federal programs.

Application Comments: Interested persons may submit comments regarding the specific use proposed in the application and plan of development and management, and whether the BLM followed proper administrative procedures in reaching the decision to convey under the R&PP Act.

Any adverse comments will be reviewed by the BLM Wyoming State Director or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective on November 24, 2020. The lands will not be offered for conveyance until after the classification becomes effective.

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

Authority: 43 CFR 2741.5.

Duane Spencer,

Acting State Director, Wyoming.

[FR Doc. 2020–21145 Filed 9–24–20; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–CR–NPS0028678; PPWOCRADI0, PCU00RP14.R50000 (200); OMB Control Number 1024–0037]

Agency Information Collection Activities; Archeology Permit Applications and Reports

AGENCY: National Park Service, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before November 24, 2020.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Phadrea Ponds, NPS Information Collection Clearance Officer,1201 Oakridge Drive Fort Collins, CO 80525; or by email at *phadrea_ponds@nps.gov.* Please reference Office of Management and Budget (OMB) Control Number 1024–0037 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Karen Mudar, Archeologist, Washington Support Office Archeology Program by email at *karen_mudar@nps.gov;* or by telephone at 202–354–2103. Please reference OMB Control Number 1024–0037 in the subject line of your comment. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Is Whether or not the collection of information is necessary for the proper performance of the functions of the NPS, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the NPS minimize the burden of this collection on the respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Section 4 of the Archeological Resources Protection Act (ARPA) of 1979 (16 U.S.C 470cc), and Section 3 of the Antiquities Act (AA) of 1906 (54 U.S.C. 320302), authorize any individual or institution to apply to Federal land managing agencies to scientifically excavate or remove archeological resources from public or Indian lands. A permit is required for any archeological investigation by non-NPS personnel occurring on parklands, regardless of whether or not these investigations are linked to regulatory compliance. Archeological investigations that require permits include excavation, shovel-testing, coring, pedestrian survey (with and without removal of artifacts), underwater archeology, photogrammetry, and rock art documentation. Individuals, academic and scientific institutions, museums, and businesses that propose to conduct archeological field investigations on parklands must first obtain a permit before the project may begin. To apply for a permit, applicants submit Form DI–1926 ''Application for Permit for Archeological Investigations.'' Applicants are required to submit the following information:

- Statement of Work
- Statement of Applicant's Capabilities
- Statement of Applicant's Past Performance
- Curriculum vitae for Principal Investigator(s) and Project Director(s)
- Written consent by State or tribal authorities to undertake the activity on State or tribal lands that are managed by the NPS, if required by the State or tribe
- Curation Authorization
- Detailed Schedule of All Project Activities

Persons receiving a permit must also submit (1) Preliminary Reports (2) Annual Reports (3) Final Reports.

Title of Collection: Archeology Permit Applications and Reports

OMB Control Number: 1024–0037.

Form Number: Form DI–1926.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals or organizations wishing to excavate or remove archeological resources from public or Indian lands.

Total Estimated Number of Annual Respondents: 100.

Total Estimated Number of Annual Responses: 100.

Estimated Completion Time per Response: Varies from 1 hour to 2.5 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 176.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2020–21206 Filed 9–24–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–CR–NPS0030550; PPWOCRADI0, PCU00RP14.R50000 (200); OMB Control Number 1024–0038]

Agency Information Collection Activities; Procedures for State, Tribal, and Local Government Historic Preservation Programs

AGENCY: National Park Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before November 24, 2020.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Phadrea Ponds, NPS Information Collection Clearance Officer, National Park Service, 1201 Oakridge Drive Fort Collins, CO 80525; or by email to *phadrea_ponds@nps.gov.* Please reference OMB Control Number 1024–0038 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Seth Tinkham, Grants Management Specialist, State, Tribal, Local, Plans & Grants Division or by email at *stlpg@nps.gov;* or by telephone at 202–354–2020. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.)* and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: This collection is authorized by Section 101(b) of the National Historic Preservation Act, as amended, (54 U.S.C. 302301), which specifies the role of States, Tribes, and local governments in the NHPP Program. This information collection has an impact on State, Tribal, and local governments that wish to participate formally with the National Park Service in the National Historic Preservation Partnership (NHPP). Information is also requested to meet grant management and monitoring of responsibilities for States, Tribes, local government, and other eligible grant recipients under 54 U.S.C. 300101 *et seq.* and 2 CFR 200.

Each year Congress directs the NPS to use part of the annual appropriation from the Historic Preservation Fund (HPF) for the State grant program and the Tribal grant programs to assist States and Tribes in carrying out their statutory role in the National Historic Preservation Program. Through competitive grant programs, Congress also directs NPS to provide financial assistance to a variety of eligible grant recipients to support the broad cultural resource mandates of the National Historic Preservation Act and for other purposes.

The information from this collection is required to evaluate whether or not State, Tribal, and local governments meet minimum standards and requirements for participation in the National Historic Preservation Program; and to meet program specific requirements as well as government-wide requirements for Federal grant programs.

The NPS uses the information collected to ensure compliance with the National Historic Preservation Act, as well as government-wide grant requirements issued and implemented through 43 CFR part 12 and 2 CFR 200.

Title of Collection: Procedures for State, Tribal, and Local Government Historic Preservation Programs; 36 CFR 61.

OMB Control Number: 1024–0038.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State, Tribal, local governments, and grant applicants or recipients who wish to participate formally in the National Historic Preservation Program and/or who wish to apply for Historic Preservation Fund grant assistance.

Total Estimated Number of Annual Respondents: 2,229.

Total Estimated Number of Annual Responses: 43,108.

Estimated Completion Time per Response: Varies from .25 hours to 166 hours depending on activity.

Total Estimated Number of Annual Burden Hours: 40,761.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion, depending on the grant program.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2020–21208 Filed 9–24–20; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1145]

Certain Botulinum Toxin Products, Processes for Manufacturing or Relating to Same and Certain Products Containing Same Commission Decision To Review in Part a Final Initial Determination Finding a Violation of Section 337; Schedule for Filing Written Submissions

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part a final initial determination (''FID'') of the presiding administrative law judge (''ALJ'') finding a violation of section 337 of the Tariff Act of 1930, as amended. The Commission also requests written submissions, under the schedule set forth below, on remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–4716. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On March 6, 2019, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based on a complaint filed by Medytox Inc. of Seoul, South Korea; Allergan plc of Dublin, Ireland; and Allergan, Inc. of Irvine, California (collectively, ''Complainants''). *See* 84 FR 8112–13 (Mar. 6, 2019). The complaint, as supplemented, alleges a violation of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain botulinum toxin products, processes for manufacturing or relating to same and certain products containing same by reason of misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure a domestic industry in the United States. *See id.* The notice of investigation names as respondents Daewoong Pharmaceuticals Co., Ltd. (''Daewoong'') of Seoul, South Korea and Evolus, Inc. (''Evolus'') of Irvine, California (collectively, ''Respondents''). *See id.* The Office of Unfair Import Investigations (''OUII'') is also a party to the investigation. *See id.*

On July 6, 2020, the ALJ issued the FID finding a violation of section 337 based on the importation into the United States, the sale for importation, or the sale within the United States after importation of certain botulinum neurotoxin products by reason of the misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States. *See* FID at 273.

The FID also includes a recommended determination (''RD'') recommending that, if a violation is found, the Commission issue: (1) A limited exclusion order barring entry of certain botulinum toxin products that are imported, sold for importation, and/or sold after importation by respondents Daewoong and Evolus; and (2) a cease and desist order against Evolus. The RD also recommends that the Commission impose a bond based on price differential during the period of Presidential review.

On July 20, 2020, Respondents filed a petition for Commission review of the FID. On July 28, 2020, Complainants and OUII filed responses to Respondents' petition. On September 18, 2020, Respondents filed a motion for leave to file a notice of new factual development. The Commission has determined to accept Respondents' filing.

The Commission has determined to review the FID in part. Specifically, the Commission has determined to review the FID's findings with respect to subject matter jurisdiction, standing, trade secret existence and misappropriation, and domestic industry, including the existence of such domestic industry as well as any actual or threatened injury thereto. The Commission has determined not to review the remainder of the FID. The Commission has also determined to allow Complainants to respond to Respondents' notice of new factual development in their written submissions to the Commission pursuant to the present notice.

In connection with its review, the Commission requests that the parties brief their positions with reference to the applicable law and the evidentiary record regarding the following questions:

1. Describe the differences between the Medytox strain and other Hall A-hyper strains and explain the relevance of those differences to Complainants' trade secrets misappropriation claim.

2. Discuss the availability in the marketplace of Hall A-hyper strains since Dr. Hall's discovery in the 1920s and the U.S. Army's development in the 1940s (*i.e.,* not just during the 2009–2010 timeframe and thereafter).

3. For the alleged domestic industry costs regarding activities related to regulatory approvals and compliance (including costs for activities such as relevant research and development or testing): (A) Which of those regulatory activities are of a nature that can only be performed in the United States (for either legal or practical reasons), and which could have been carried out in another country; and (B) does the record permit allocation of costs between those two categories?

4. What is the federal legal standard for determining what constitutes a misappropriation of trade secrets sufficient to establish an ''unfair method of competition'' under Section 337?

5. Is injury to the complainant an element of a federal trade secret misappropriation cause of action that is necessary to establish an ''unfair method of competition'' under Section 337(a)(1)(A) (distinct from the ''threat or effect'' requirements of Section 337(a)(1)(A)(i)–(iii))?

6. Please explain whether, consistent with the federal common law, the injury requirement discussed in the FID (*see* FID at 45 (''(4) that the respondent has used or disclosed the trade secret *causing injury to the complainant.*'') (emphasis added)) refers to injury within the meaning of section 337(a)(1)(A)(i)–(iii) (*i.e.,* ''threat or effect'' subsections) and not a separate ''injury'' requirement for establishing trade secret misappropriation.

In seeking briefing on these issues, the Commission has not determined to excuse any party's noncompliance with Commission rules and the ALJ's procedural requirements, including requirements to present issues in submissions to the ALJ and in petitions for Commission review. The Commission may, for example, decline to disturb certain findings in the FID upon finding that issue was not presented in a timely manner to the ALJ or to the Commission.

In addition, in connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (Dec. 1994) (Comm'n Op.).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the questions identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should also address the recommended determination by the ALJ on remedy and bonding. Complainants and the Commission Investigative Attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are further requested to provide the HTSUS numbers under which the accused products are imported, and to supply the names of known importers of the products at issue in this investigation.

Written submissions and proposed remedial orders must be filed no later than close of business on October 9, 2020. Reply submissions must be filed no later than the close of business on October 16, 2020. Initial written submissions may not exceed 60 pages in length, exclusive of any exhibits, while reply submissions may not exceed 30 pages in length, exclusive of any exhibits. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1145'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[1] solely for cybersecurity purposes. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The Commission's vote on this determination took place on September 21, 2020.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: September 21, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–21158 Filed 9–24–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0080]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change of a Currently Approved Collection; Notification of Change of Mailing or Premise Address

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection (IC) is also being published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until November 24, 2020.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact:

[1] All contract personnel will sign appropriate nondisclosure agreements.

Shawn Stevens, Federal Explosives Licensing Center, either by mail at 244 Needy Road, Martinsburg, WV 25405, by email at *Shawn.Stevens@atf.gov,* or by telephone at 304–616–4400.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

– Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
– Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
– Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
– Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection (check justification or form 83):* Extension without change of a currently approved collection.

2. *The Title of the Form/Collection:* Notification of Change of Mailing or Premise Address.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): None.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other (if applicable): Individuals or households.

Abstract: Per 27 CFR 555.54, licensees and permittees whose mailing address will change, must notify the Chief, Federal Explosives Licensing Center, at least 10 days before the change. ATF personnel will use this information collection to identify the correct location of both explosives licensees/permittees, and the address where their explosive materials are being stored, for purposes of inspection. The collected information will also be used to notify permittee/licensees about any changes in regulation or law that may affect their business activities.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 1,000 respondents will utilize this information collection annually, and it will take each respondent approximately 10 minutes to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 170 hours, which is equal to 1,000 (# of respondents) * 0.17 (10 minutes).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: September 22, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–21216 Filed 9–24–20; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree under the Resource Conservation and Recovery Act and Comprehensive Environmental Response, Compensation and Liability Act

On September 22, 2020, the Department of Justice lodged a proposed Consent Decree and Settlement Agreement Regarding the Non-Performing Properties (''Settlement Agreement'') with the United States Bankruptcy Court for the District of Delaware in the matter entitled *In re Exide Holdings, Inc., et al.,* Case No. 20–11157(CSS).

The United States, on behalf of the Environmental Protection Agency, lodged this Settlement Agreement with Exide Holdings, Inc. and its Debtor Affiliates (collectively the ''Debtors''), the Florida Department of Environmental Protection, the Georgia Environmental Protection Division of the Department of Natural Resources, the Illinois Environmental Protection Agency, the State of Indiana on Behalf of Indiana Department of Environmental Management, the Louisiana Department of Environmental Quality, the Mississippi Department of Environmental Quality, the Commonwealth of Pennsylvania Department of Environmental Protection, the South Carolina Department of Health & Environmental Control, the Tennessee Department of Environment and Conservation, and the Texas Commission on Environmental Quality, Westchester Fire Insurance Company, the Environmental Trustee, the Consenting Creditors, the Transferred Entities, the Europe/ROW Purchaser, and the Trustees, each of which are defined in the Settlement Agreement.

The Settlement Agreement relates to the Debtors' Non-Performing Properties and will be incorporated into Debtors' proposed Chapter 11 Plan. The Settlement Agreement contains covenants not to sue and reservations under the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.,* the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.,* certain other actions, and under similar state laws.

The Settlement Agreement requires, among other provisions, the Debtors to transfer certain properties to an environmental response trust or trusts which will be created pursuant to the agreement; certain secured creditors to make, or cause to be made, up to $10,000,000 in payments to the environmental response trusts; and Westchester Fire Insurance Company to pay the full penal sum of certain surety bonds it issued of up to approximately $34.7 million for environmental liabilities for certain of the Non-Performing Properties.

The publication of this notice opens a period for public comment on the Settlement Agreement. Comments should be addressed to the Section Chief, Environmental Enforcement Section, and should refer to *In re Exide Holdings, Inc., et al.,* Case No. 20–11157(CSS), D.J. Ref. No. 90–11–2–07802/8. All comments must be submitted so as to be received by no later than October 6, 2020. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Section Chief, U.S. DOJ—ENRD—EES, P.O. Box 7611, Washington, DC 20044–7611.

Under section 7003(d) of RCRA, a commenter may request an opportunity for a public meeting in the affected area.

During the public comment period, the Settlement Agreement 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 Settlement Agreement 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 $80.50 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $21.00.

Susan M. Akers,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2020–21256 Filed 9–24–20; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0103]

Agency Information Collection Activities; Proposed eCollection eComments Requested Submission for Review: Electronic Submission Form for Requests for Corrective Action, Whistleblower Protection for Federal Bureau of Investigation Employees

AGENCY: Office of Attorney Recruitment and Management, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Justice Management Division, Office of Attorney Recruitment and Management (OARM), will be submitting this information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection is a Request for Corrective Action Form, available on OARM's public website, for current and former employees of, or applicants for employment with, the Federal Bureau of Investigation (FBI) who wish to file a claim of whistleblower reprisal.

DATES: Comments are encouraged and will be accepted for 30 days until October 26, 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.

SUPPLEMENTARY INFORMATION: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of information collection: Extension.

(2) Title of Form/Collection: Request for Corrective Action Form

(3) The agency form number, if any/the applicable component of the department sponsoring the collection: No form number/Office of Attorney Recruitment and Management, Justice Management Division, U.S. Department of Justice.

(4) Affected Public who will be asked or required to respond, as well as a brief abstract: Individuals. The application form is submitted voluntarily by individuals who are current or former employees of, or applicants for employment with, the FBI who allege reprisal for their whistleblowing activities.

(5) An estimate of the total number of respondents and the amount of time estimated to respond/reply: An average of 15 respondents per year, and an average of three hours to complete the form.

(6) An estimate of the total public burden (in hours) associated with the collection: About 45 hours.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: September 22, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–21253 Filed 9–24–20; 8:45 am]

BILLING CODE 4410–PB–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0051]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a currently approved collection; Final Disposition Report (R–84), with supplemental questions R–84(a), R–84(b), R–84(c), R–84(d), R–84(e), R–84(f), R–84(g), R–84(h), R–84(i), and R–84(j)

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 60-day notice.

SUMMARY: Department of Justice (DOJ), Federal Bureau of Investigation, Criminal Justice Information Services Division will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until November 24, 2020.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gerry Lynn Brovey, Supervisory Information Liaison Specialist, FBI, CJIS, Resources Management Section, Administrative Unit, Module C–2, 1000 Custer Hollow Road, Clarksburg, West Virginia, 26306 (telephone: 304–625–5093) or email *glbrovey@fbi.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection o information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Final Disposition Report.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Agency form number: R–84, with supplemental questions R–84(a), R–84(b), R–84(c), R–84(d), R–84(e), R–84(f), R–84(g), R–84(h), R–84(i), and R–84(j).

Sponsoring component: Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals or households. Primary: City, county, state, federal and tribal law enforcement agencies. This collection is needed to report completion of an arrest event. Acceptable data is stored as part of the Next Generation Identification (NGI) system of the FBI.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 75,605 respondents will complete each form within approximately 5 minutes.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 81,074.75 total annual hours associated with this collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: September 22, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–21225 Filed 9–24–20; 8:45 am]

BILLING CODE 4410–02–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (20–076)]

Centennial Challenges Watts on the Moon Challenge Phase 1

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Centennial Challenges Watts on the Moon Challenge Phase 1.

SUMMARY: The Watts on the Moon Challenge is open and teams that wish to compete may now register. Centennial Challenges is a program of prize competitions to stimulate innovation in technologies of interest and value to NASA and the nation. The Watts on the Moon Challenge is a prize competition with up to a $5,000,000 USD total prize purse to incentivize advances in lunar power distribution, energy storage, and/or power management. At this time, NASA is opening Phase 1 of the competition, which has a $500,000 USD prize purse. In this phase of competition, teams will develop concept proposals for technologies to address one or more ''mission activities'' in a hypothetical mission scenario based on anticipated mission operations and environmental features of human and robotic exploration of the lunar surface. NASA is funding the prize purse and administration of the challenge competition.

DATES: Phase 1 registration opens September 25, 2020 and will remain open until March 25, 2021. No further requests for registration will be accepted after this date.

Other important dates:

September 25, 2020—Phase 1 registration opens
March 25, 2021—Deadline for registration
May 20, 2021—Phase 1 winners announced

ADDRESSES: The Watts on the Moon Challenge Phase 1 will be conducted virtually. The Challenge competitors will develop and submit their concept proposals from their own location.

FOR FURTHER INFORMATION CONTACT: To register for or get additional information regarding the Watts on the Moon Challenge, please visit: *www.nasa.gov/wattson.*

For general information on the NASA Centennial Challenges Program please visit: *http://www.nasa.gov/challenges.* General questions and comments regarding the program should be addressed to Monsi Roman, Centennial Challenges Program, NASA Marshall Space Flight Center, Huntsville, AL 35812 at 256–544–4071. Email address: *hq-stmd-centennialchallenges@mail.nasa.gov.*

SUPPLEMENTARY INFORMATION:

Summary

In the first phase of competition, teams will develop concept proposals for technologies to address one or more ''mission activities'' in a hypothetical mission scenario based on anticipated mission operations and environmental features of human and robotic exploration of the lunar surface. The Mission Scenario and the three associated Mission Activities are based on anticipated mission operations and environmental features of human and robotic exploration of the lunar surface. The characteristics of the Mission Scenario are purposefully intended to incentivize a wide variety of innovative technology solutions to the overall challenge of high capacity, adaptable, and reliable lunar power distribution and management systems that will be critical to the well-being and productivity of human crew and fledgling lunar surface industries.

The three Mission Activities present different combinations of power or energy capacity, distance between energy sources and the site of activity operations, mobility features, system mass limitations, and operational duty cycles that must be accommodated by teams. The activities each specify distinct operational consumption of electrical and/or thermal energy but are open to solutions that involve conversion between one and the other. The activities are intended to be essentially independent of the nature of the energy source employed, but competitive solutions will involve identifying and incorporating assumptions about an energy source into their concept.

I. Prize Amounts

The Watts on the Moon Challenge total prize purse is up to $5,000,000 USD (five million dollars) to be awarded across two (2) phases of competition.

Prize purse for Phase 1 will total up to $500,000. Up to three (3) winning teams, as determined by the Judging Panel, will be awarded $100,000 each. Up to four (4) runner-up teams will receive up to $50,000 each.

The Prize Purse for Phase 2, should there be promising submissions in Phase 1 that demonstrate a viable approach, will be worth up to $4,500,000.

II. Eligibility

Eligibility To Participate and Win Prize Money

To be eligible to win a prize:

- Individuals must be U.S. citizens or permanent residents of the United States and be 18 years of age or older.
- Organizations must be an entity incorporated in and maintaining a primary place of business in the United States.
- Teams must be comprised of otherwise eligible individuals or organizations and led by an otherwise eligible individual or organization.

The eligibility requirements can be found on the official challenge site: *www.nasa.gov/wattson.*

III. Rules

The complete rules for the Watts on the Moon Challenge, can be found at: *https://www.herox.com/WattsOnTheMoon/Guidelines.*

Cheryl Parker,

NASA Federal Register Liaison Officer.

[FR Doc. 2020–21138 Filed 9–24–20; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; 2021 National Survey of College Graduates

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register**, and two comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAmain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Copies of the submission may be obtained by calling 703–292–7556.

SUPPLEMENTARY INFORMATION: NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of infor Title of Collection: Graduate Research Fellowship Program.

OMB Control Number: 3145–0141.

Summary of Collection: The National Survey of College Graduates (NSCG) has been conducted biennially since the 1970s. The 2021 NSCG sample will be selected from the 2019 American Community Survey (ACS) and the 2019 NSCG, providing coverage of the college graduate population residing in the United States. The purpose of this repeated cross-sectional survey is to collect data that will be used to provide national estimates on the science and engineering workforce and changes in their employment, education, and demographic characteristics.

The National Science Foundation Act of 1950, as subsequently amended, includes a statutory charge to ''. . . provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources, and to provide a source of information for policy formulation by other agencies of the Federal Government.'' The NSCG is designed to comply with these mandates by providing information on the supply and utilization of the nation's scientists and engineers.

The U.S. Census Bureau, as in the past, will conduct the NSCG for NSF. The survey data collection will begin in February 2021 using web and mail questionnaires. Nonrespondents to the web or mail questionnaire will be followed up by computer-assisted telephone interviewing. The individual's response to the survey is voluntary. The survey will be conducted in conformance with Census Bureau statistical quality standards and, as such, the NSCG data will be afforded protection under the applicable Census Bureau confidentiality statutes.

Use of the Information: NSF uses the information from the NSCG to prepare congressionally mandated reports such as *Women, Minorities and Persons with Disabilities in Science and Engineering* and *Science and Engineering Indicators.* A public release file of collected data, designed to protect respondent confidentiality, will be made available to researchers on the internet.

Expected Respondents: A statistical sample of approximately 169,000 persons will be contacted in 2021. This 169,000 sample is a 5,000 case increase over the sample size listed in the first notice for public comment in the **Federal Register** at 85 FR 23537. The larger sample size enables the inclusion of a non-production bridge panel as part of the 2021 NSCG to quantify the potential impact of question wording modifications on key survey estimates. NSF estimates the 2021 NSCG response rate to be 65 to 75 percent.

Estimate of Burden: The amount of time to complete the questionnaire may vary depending on an individual's circumstances; however, on average it will take approximately 25 minutes to complete the survey. NSF estimates that the average annual burden for the 2021 NSCG over the course of the three-year OMB clearance period will be no more than 17,604 hours [(169,000 sample persons × 75% response × 25 minutes)/3 years].

Comments: As required by 5 CFR 1320.8(d), comments on the information collection activities as part of this study were solicited through the publication of a 60-Day Notice in the **Federal Register** on 28 April 2020, at 85 FR 23537. We received two comments. The nature of each comment and our responses are summarized below.

Comment: On 28 April 2020, Dr. Andrew Reamer of George Washington University sent an email to NSF on behalf of the American Economic Association's Committee on Economic Statistics. He requested the draft information collection request (ICR) materials for the 2021 NSCG and asked whether any changes were proposed for the 2021 NSCG compared to the 2019 NSCG.

Response: NSF responded to Dr. Reamer on 7 May 2020, explaining that the 2021 NSCG ICR materials were in the process of being prepared and that there were no substantive changes planned. He was directed to the 2019 NSCG questionnaires on the NSF website, which would be updated to reflect the survey year. After NSF

decided to consider revisions to NSCG questionnaire items to gauge the effects of the coronavirus pandemic on workforce issues, a follow-up email was sent to Dr. Reamer on 8 July 2020, informing him that revised items were being developed for testing and any proposed revisions would be included in the ICR submitted to OMB.

Comment: On 28 June 2020, Dr. Jon Freeman of New York University sent an email to NSF on behalf of the American Association for the Advancement of Science (AAAS) and the American Educational Research Association (AERA). He requested that measures of sexual orientation and gender identity (SOGI) be included in the 2021 NSCG and other future surveys of the National Center for Science and Engineering Statistics (NCSES).

Response: NSF responded to Dr. Freeman on 21 September 2020, informing him that NCSES intends to pursue research into the feasibility of collecting consistent and reliable SOGI data from individuals. However, due to time and resource constraints, no SOGI measures would be ready for inclusion in the 2021 NSCG.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: September 21, 2020.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2020–21156 Filed 9–24–20; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2017–0068]

Knowledge and Abilities Catalog for Nuclear Power Plant Operators: Pressurized Water Reactors; Knowledge and Abilities Catalog for Nuclear Power Plant Operators: Boiling Water Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: NUREG; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing NUREG–1122, Revision 3, ''Knowledge and Abilities Catalog for Nuclear Power Plant Operators: Pressurized Water Reactors,'' and NUREG–1123, Revision 3, ''Knowledge and Abilities Catalog for Nuclear Power Plant Operators: Boiling Water Reactors.''

DATES: NUREG–1122, Revision 3 and NUREG–1223, Revision 3 take effect on September 25, 2020.

ADDRESSES: Please refer to Docket ID NRC–2017–0068 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–2017–0068. Address questions about 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.
- *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.* NUREG–1122, Revision 3, ''Knowledge and Abilities Catalog for Nuclear Power Plant Operators: Pressurized Water Reactors,'' is available in ADAMS under Accession No. ML20260H083 and NUREG–1123, Revision 3, ''Knowledge and Abilities Catalog for Nuclear Power Plant Operators: Boiling Water Reactors,'' is available in ADAMS under Accession No. ML20260H086.

FOR FURTHER INFORMATION CONTACT: Brian Tindell, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–2026, email: *Brian.Tindell@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC published a notice of the availability of the drafts of NUREG–1122 and NUREG–1123 in the **Federal Register** on April 14, 2017 (82 FR 18018) for a 30-day public comment period. The public comment period closed on May 15, 2017. The NRC received eight public comments on the drafts of NUREG–1122 and NUREG–1123 and the comments can be found on *Regulations.gov* under Docket ID NRC–2017–0068.

NUREG–1122, Rev. 3 and NUREG–1123, Rev. 3 provide the basis for the development of content-valid examinations used for the licensing of operators at nuclear power plants under the NRC's regulations contained in title 10 of the *Code of Federal Regulations* (10 CFR) part 55, ''Operators' Licenses.'' The examinations developed using NUREG–1122 and NUREG–1123, along with NUREG–1021, ''Operator Licensing Examination Standards for Power Reactors,'' will sample the topics listed in 10 CFR part 55.

Dated: September 22, 2020.

For the Nuclear Regulatory Commission.

Christian B. Cowdrey,

Chief, Operator Licensing and Human Factors Branch, Division of Reactor Oversight, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–21197 Filed 9–24–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

679th Meeting of the Advisory Committee on Reactor Safeguards (ACRS)

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold meetings on October 8–10, 2020. As part of the coordinated government response to combat the COVID–19 public health emergency, the Committee will conduct virtual meetings. The public will be able to participate in any open sessions via 1–866–822–3032, pass code 8272423#.

Thursday, October 8, 2020

9:30 a.m.–9:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

9:35 a.m.–11:15 a.m.: Framatome Topical Report ANP–10323P, Revision 1, ''GALILEO Fuel Rod Thermal Mechanical Methodology for Pressurized Water Reactors'' (Open/Closed)—The Committee will have presentations and discussion with representatives from Framatome and NRC staff regarding the subject topic. [*Note:* Pursuant to 5 U.S.C 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

11:30 a.m.–1:00 p.m.: NuScale Topical Report, ''Improvements in Frequency Domain Soil-Structure-Fluid Interaction Analysis,'' TR–0118–58005 (Open/Closed)—The Committee will have presentations and discussion with NuScale and the NRC staff regarding the subject topic. [*Note:* Pursuant to 5 U.S.C 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

2:00 p.m.–3:30 p.m.: Kairos Reactor Topical Report, ''KP–FHR Risk-Informed Performance-Based Licensing Basis Development Methodology'' (Open)—The Committee will have presentations and discussion with Kairos and the NRC staff regarding the subject topic.

3:45 p.m.–5:15 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [*Note:* Pursuant to 5 U.S.C 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

Friday, October 9, 2020

9:30 a.m.–11:30 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee and Reconciliation of ACRS Comments and Recommendations/Preparation of Reports (Open/Closed)—The Committee will hear discussion of the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS meetings, and/or proceed to preparation of reports as determined by the Chairman. [*Note:* Pursuant to 5 U.S.C. 552b(c)(2) and (6), a portion of this meeting may be closed to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.] [*Note:* Pursuant to 5 U.S.C 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

11:30 a.m.–1:30 p.m.: Information Session on the External Hazards Center or Expertise (Open)—The Committee will have presentations and discussion with the NRC staff regarding the subject topic.

2:30 p.m.–6:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [*Note:* Pursuant to 5 U.S.C 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

Saturday, October 10, 2020

9:30 a.m.—2:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [*Note:* Pursuant to 5 U.S.C 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.] [*Note:* Pursuant to 5 U.S.C. 552b(c)(2) and (6), portions of this meeting may be closed to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on June 13, 2019 (84 FR 27662). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff and the Designated Federal Official (Telephone: 301–415–5844, Email: *Quynh.Nguyen@nrc.gov*), 5 days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

An electronic copy of each presentation should be emailed to the Cognizant ACRS Staff at least one day before meeting.

In accordance with Subsection 10(d) of Public Law 92–463 and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agendas, meeting transcripts, and letter reports are available through the NRC Public Document Room (PDR) at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System component of NRC's Agencywide Documents Access and Management System (ADAMS) which is accessible from the NRC website at *https://www.nrc.gov/reading-rm/adams.html* or *https://www.nrc.gov/reading-rm/doc-collections/#ACRS/.*

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service should contact Thomas Dashiell, ACRS Audio Visual Technician (301–415–7907), between 7:30 a.m. and 3:45 p.m. (Eastern Time), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Note: This notice is late due to the COVID–19 public health emergency and current health precautions which required the Committee to prepare for the meeting to be held remotely.

Dated: September 22, 2020.

Russell E. Chazell,

Federal Advisory Committee Management Officer, Office of the Secretary.

[FR Doc. 2020–21231 Filed 9–24–20; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–252 and CP2020–282; Order No. 5690]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is acknowledging a recent Postal Service filing concerning the addition of a new product, International Competitive Multi-Service Commercial Contracts 1, to the competitive product list within the Mail Classification Schedule (MCS). This document informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 5, 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:

Table of Contents

I. Introduction
II. Contents of Filing
III. Commission Action
IV. Ordering Paragraphs

I. Introduction

On September 18, 2020, the Postal Service filed a request to add a new product, International Competitive Multi-Service Commercial Contracts 1, to the competitive product list within the Mail Classification Schedule (MCS), pursuant to 39 U.S.C. 3642 and 39 CFR 3040.130–135.[1] As part of the Request, the Postal Service proposes a revised filing process for adding outbound international negotiated service agreement (NSA) contracts to the competitive product list. Request at 1.

Under this process, the Postal Service proposes to file almost all future customized outbound international NSAs within the International Competitive Multi-Service Commercial Contracts 1 product. *Id.* at 4. These contracts would be approved without any further action from the Commission, unless the Commission determines that further review is necessary. *Id.* at 13. As a result, the Postal Service contends that the administrative burden associated with these agreements would be lessened.[2] The Postal Service suggests that the review process could be conducted in five business days and then, through progressive experience, eventually in three business days. *Id.* at 15.

The Postal Service asserts that the Commission is capable of achieving this objective. *Id.* The Postal Service also claims that its customers ''would benefit from the enhanced predictability and increased speed to market'' resulting from the proposed streamlined review process. *Id.* at 23.

II. Contents of Filing

To support its Request, the Postal Service filed a redacted version of Governors' Decision No. 19–1,[3] proposed revisions to the MCS, a document that sets forth the current procedures for filing an outbound international NSA and the proposed process for filing these agreements within the International Competitive Multi-Service Commercial Contracts 1 product, an unsigned template for the certified statement that would be included in filings of outbound international NSAs within the International Competitive Multi-Service Commercial Contracts 1 product, and a statement of supporting justification. Notice at 5–6; *see id.* Attachments 2–6. Additionally, the Postal Service filed an unredacted copy of Governors' Decision No. 19–1 under seal and an application for non-public treatment of materials filed under seal. Notice n.12; *id.* Attachment 1.

III. Commission Action

The Commission establishes Docket Nos. MC2020–252 and CP2020–282 for consideration of matters raised by the Notice and appoints Katalin K. Clendenin to serve as Public Representative in this docket.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3642 and 39 CFR 3040.130–135. Comments are due no later than October 5, 2020. The public portions of the filing can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s) can be accessed through compliance with the requirements of 39 CFR 3011.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2020–252 and CP2020–282 for consideration of the matters raised by the Postal Service's Request.

2. Pursuant to 39 U.S.C. 505, Katalin K. Clendenin is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than October 5, 2020.

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

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2020–21172 Filed 9–24–20; 8:45 am]

BILLING CODE 7710–FW–P

[1] Request of the United States Postal Service to Add International Competitive Multi-Service Commercial Contracts 1 to the Competitive Products List and Application for Non-Public Treatment of Materials Filed Under Seal, September 18, 2020 (Request).

[2] Specifically, the Postal Service would no longer file the applicable decision from its Board of Governors, revisions to the MCS, statements of supporting justification, or applications for non-public treatment. *Id.* at 8. The Commission would not issue initial scheduling notices and final orders for each agreement. *Id.* at 15. Additionally, routine Public Representative comments could be eliminated as well. *Id.*

[3] Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates (Governors' Decision No. 19–1), February 7, 2019.

POSTAL SERVICE

International Product Change—International Competitive Multi-Service Commercial Contracts 1: Postal Service™

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add International Competitive Multi-Service Commercial Contracts 1 to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

DATES: *Date of notice:* September 25, 2020.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642, on September 18, 2020, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add International Competitive Multi-Service Commercial Contracts 1 to the Competitive Products List.* The request proposes the creation of the International Competitive Multi-Service Commercial Contracts 1 product, along with the establishment of filing conventions and practices to eliminate unnecessary and repetitive workload, which would expedite the processing of customized outbound international negotiated service agreements. If the request is favorably reviewed, the United States Postal Service® would file almost all customized outbound international negotiated service agreements under the CP docket number assigned to the request. Documents are available at *www.prc.gov,* Docket Nos. MC2020–252 and CP2020–282.

Joshua J. Hofer,

Attorney, Federal Compliance.

[FR Doc. 2020–21173 Filed 9–24–20; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89927; File No. SR–EMERALD–2020–07]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

September 21, 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 September 8, 2020, MIAX Emerald, LLC (''MIAX Emerald'' 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 Emerald Fee Schedule (the ''Fee Schedule'').

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section 1)a)i) of the Fee Schedule to lower the Simple Maker (as defined below) rebates in Tier 4 for options transactions in Penny classes and non-Penny classes (as defined below) for executed Priority Customers[3] orders when the contra is an Affiliated[4] Market Maker.[5]

The proposed change is scheduled to become operative September 8, 2020.

Background

The Exchange currently assesses transaction rebates and fees to all market participants which are based upon a threshold tier structure (''Tier'') that is applicable to transaction fees. Tiers are determined on a monthly basis and are based on three alternative calculation methods, as defined in Section 1)a)ii) of the Fee Schedule. The calculation method that results in the highest Tier achieved by the Member shall apply to all Origin types by the Member. The monthly volume thresholds for each method, associated with each Tier, are calculated as the total monthly volume executed by the Member in all options classes on MIAX Emerald in the relevant Origins and/or applicable liquidity, not including Excluded Contracts,[6] (as the numerator) expressed as a percentage of (divided by) Customer Total Consolidated Volume (''CTCV'') (as the denominator). CTCV means Customer Total Consolidated Volume calculated as the total national volume cleared at The Options Clearing Corporation (''OCC'') in the Customer range in those classes listed on MIAX Emerald for the month for which fees apply, excluding volume cleared at the OCC in the Customer range executed during the period of time in which the Exchange experiences an ''Exchange System Disruption''[7] (solely in the option classes of the affected Matching Engine).[8] In addition, the per contract transaction rebates and fees shall be applied retroactively to all eligible volume once the Tier has been reached by the Member. Members that place resting liquidity, *i.e.,* orders on the MIAX Emerald System, will be assessed the specified ''maker'' rebate or fee (each a ''Maker'') and Members that execute against resting liquidity will be assessed the specified ''taker'' fee or rebate (each a ''Taker'').[9] Members are also assessed lower transaction fees and smaller rebates for order executions in standard option classes in the Penny Interval Program[10] (''Penny classes'') than for order executions in standard option classes which are not in the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Exchange Rule 100, including Interpretation and Policy .01.

[4] ''Affiliate'' means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An ''Appointed Market Maker'' is a MIAX Emerald Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an ''Appointed EEM'' is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX Emerald Market Maker) that has been appointed by a MIAX Emerald Market Maker, pursuant to the following process. A MIAX Emerald Market Maker appoints an EEM and an EEM appoints a MIAX Emerald Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to *membership@miaxoptions.com* no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange's acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. *See* the Definitions Section of the Fee Schedule.

[5] ''Market Maker'' refers to ''Lead Market Maker'' (''LMM''), ''Primary Lead Market Maker'' (''PLMM'') and ''Registered Market Maker'' (''RMM''), collectively. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[6] ''Excluded Contracts'' means any contracts routed to an away market for execution. *See* the Definitions Section of the Fee Schedule.

[7] The term ''Exchange System Disruption'' means an outage of a Matching Engine or collective Matching Engines for a period of two consecutive hour or more, during trading hours. *See* the Definitions Section of the Fee Schedule.

[8] A ''Matching Engine'' is a part of the MIAX Emerald electronic system that processes options orders and trades on a symbol-by-symbol basis. Some Matching Engines will process option classes with multiple root symbols, and other Matching Engines may be dedicated to one single option root symbol (for example, options on SPY may be processed by one single Matching Engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated Matching Engine. A particular root symbol may not be assigned to multiple Matching Engines. *See* the Definitions Section of the Fee Schedule.

[9] For a Priority Customer complex order taking liquidity in both a Penny class and non-Penny class against Origins other than Priority Customer, the Priority Customer order will receive a rebate based on the Tier achieved.

[10] *See* Securities Exchange Act Release No. 88993 (June 2, 2020), 85 FR 35145 (June 8, 2020) (SR–EMERALD–2020–05) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 510, Minimum Price Variations and Minimum Trading Increments, To Conform the Rule to Section 3.1 of the Plan for the Purpose of Developing and Implementing Procedures Designed To Facilitate the Listing and Trading of Standardized Options).

Penny Interval Program (''non-Penny classes''), for which Members will be assessed a higher transaction fees and larger rebates.

Currently, transaction rebates and fees for Penny and non-Penny classes are assessed according to the following tables:

MEMBERS AND THEIR AFFILIATES IN PENNY CLASSES SIMPLE/COMPLEX/PRIME/cPRIME

Origin	Tier	Simple		Complex #		PRIME/cPRIME ◊			
		Maker	Taker ^	Maker (contra origins ex priority customer)	Maker (contra priority customer origin)	Taker	Agency	Contra	Responder
Market Maker	1	($0.35)	$0.50	$0.10	$0.47	$0.50	$0.05	$0.05	$0.05
	2	(0.35)	0.50	0.10	0.47	0.50	0.05	0.05	0.05
	3	(0.35)	0.50	0.10	0.47	0.50	0.05	0.05	0.05
	4	(0.45)	0.50	0.10	0.47	0.50	0.05	0.05	0.05
Non-MIAX Emerald Market Maker	1	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	2	(0.25)	.50	0.20	0.50	0.50	0.05	0.05	0.05
	3	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	4	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
Firm Proprietary/Broker-Dealer	1	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	2	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	3	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	4	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
Non-Priority Customer	1	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	2	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	3	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	4	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
Priority Customer *	1	▽ (0.43)	0.50	(0.25)	(0.25)	(0.25)	0.00	0.05	0.05
	2	▽ (0.43)	0.50	(0.40)	(0.40)	(0.40)	0.00	0.05	0.05
	3	▽ (0.43)	0.50	(0.45)	(0.45)	(0.45)	0.00	0.05	0.05
	4	(0.53)	0.50	(0.50)	(0.50)	(0.50)	0.00	0.05	0.05

MEMBERS AND THEIR AFFILIATES IN NON-PENNY CLASSES SIMPLE/COMPLEX/PRIME/cPRIME

Origin	Tier	Simple		Complex #		PRIME/cPRIME ◊			
		Maker	Taker ^	Maker (contra origins ex priority customer)	Maker (contra priority customer origin)	Taker ~	Agency	Contra	Responder
Market Maker	1	($0.45)	$1.05	$0.20	$0.86	$0.88	$0.05	$0.05	$0.05
	2	(0.45)	1.05	0.20	0.86	0.88	0.05	0.05	0.05
	3	(0.45)	1.05	0.20	0.86	0.86	0.05	0.05	0.05
	4	(0.75)	1.05	0.20	0.86	0.86	0.05	0.05	0.05
Non-MIAX Emerald Market Maker	1	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	2	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	3	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	4	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
Firm Proprietary/Broker-Dealer	1	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	2	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	3	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	4	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
Non-Priority Customer	1	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	2	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	3	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	4	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
Priority Customer *	1	(0.85)	0.85	(0.40)	(0.40)	(0.40)	0.00	0.05	0.05
	2	(0.85)	0.85	(0.60)	(0.60)	(0.60)	0.00	0.05	0.05
	3	(0.85)	0.85	(0.70)	(0.70)	(0.75)	0.00	0.05	0.05
	4	(1.05)	0.85	(0.87)	(0.87)	(0.85)	0.00	0.05	0.05

^ Contra to Priority Customer Simple Orders, Origins ex Priority Customer Simple Orders will be charged $0.50 and Priority Customer Simple Orders will be charged $0.50 in Penny classes, and Origins ex Priority Customer Simple Orders will be charged $1.10 and Priority Customer Simple Orders will be charged $0.85 in Non-Penny classes.

* Priority Customer Complex Orders contra to Priority Customer Complex Orders are neither charged nor rebated. Priority Customer Complex Orders that leg into the Simple book are neither charged nor rebated.

~ A $0.05 Complex surcharge for Origins ex Priority Customer for Complex Orders that take liquidity from the Complex Order Book in Non-Penny classes.

For orders in a Complex Auction, Priority Customer Complex Orders will receive the Complex Taker rebate based on the tier achieved when contra to an Origin that is not a Priority Customer. Origins that are not a Priority Customer will be charged the applicable Maker fee depending on the contra, based on the tier achieved.

◊ For PRIME and cPRIME, the per contract rebate or fee for the preexisting contra-side interest that trades with the Agency side will be waived. PRIME/cPRIME Responder side interest that trades with unrelated Agency side interest trades as Taker will be subject to Simple or Complex rates, as applicable.

▽ Simple Maker rebate in SPY, QQQ and IWM is ($0.45) for Priority Customer Origin in Tiers 1, 2 and 3.

Notes Accompanying Tables Above

During the Opening Rotation and the ABBO uncrossing, the per contract rebate or fee will be waived for all Origins.

Proposed Changes

The Exchange now proposes to lower the Simple Maker rebates in Tier 4 for options transactions in Penny classes and non-Penny classes for executed Priority Customers orders when the contra is an Affiliated Market Maker. Specifically, the Exchange proposes to lower the Simple Maker rebate for executed Priority Customer orders in options in Penny classes in Tier 4 from ($0.53) to ($0.49) when the contra is an Affiliated Market Maker. The Exchange also proposes to lower the Simple Maker rebate for executed Priority Customer orders in options in non-Penny classes in Tier 4 from ($1.05) to ($0.95) when the contra is an Affiliated Market Maker.

In order to differentiate between the proposed lower Tier 4 Simple Maker rebate in Penny and non-Penny classes when the contra is an Affiliated Market Maker, the Exchange proposes to insert two new symbols after the symbol ''▽'' [11] immediately following the table of rebates and fees in Section 1)a)i of the Fee Schedule. In particular, the Exchange proposes to adopt new symbol ''□,'' for the Penny classes table and the following explanatory sentences: ''This Maker rebate is for executed Priority Customer Simple Orders when the contra is not an Affiliated Market Maker. When the contra is an Affiliated Market Maker, this Maker rebate for executed Priority Customer Simple Orders will be ($0.49).'' The Exchange also proposes to adopt new symbol ''■,'' for the non-Penny classes table and the following explanatory sentences: ''This Maker rebate is for executed Priority Customer Simple Orders when the contra is not an Affiliated Market Maker. When the contra is an Affiliated Market Maker, this Maker rebate for executed Priority Customer Simple Orders will be ($0.95).'' Accordingly, the Exchange proposes to insert the new symbols ''□'' and ''■'' as footnotes for the current Simple Maker rebates for Priority Customer orders in options in Penny and non-Penny classes in Tier 4 of ($0.53) and ($1.05), respectively.

The purpose of adjusting the specified Simple Maker rebates is for business and competitive reasons. In order to attract order flow, the Exchange initially set its Maker rebates and Taker fees so that they were meaningfully higher/lower than other options exchanges that operate comparable maker/taker pricing models.[12] The Exchange now believes that it is appropriate to further adjust these specified Maker rebates so that they are more in line with other exchanges, but will still remain highly competitive such that they should enable the Exchange to continue to attract order flow and maintain market share.[13]

With the proposed changes, Section 1)a)i) of the Fee Schedule will be as follows:

MEMBERS AND THEIR AFFILIATES IN PENNY CLASSES SIMPLE/COMPLEX/PRIME/CPRIME

Origin	Tier	Simple		Complex #		PRIME/cPRIME ◊			
		Maker	Taker ^	Maker (contra origins ex priority customer)	Maker (contra priority customer origin)	Taker	Agency	Contra	Responder
Market Maker	1	($0.35)	$0.50	$0.10	$0.47	$0.50	$0.05	$0.05	$0.05
	2	(0.35)	0.50	0.10	0.47	0.50	0.05	0.05	0.05
	3	(0.35)	0.50	0.10	0.47	0.50	0.05	0.05	0.05
	4	(0.45)	0.50	0.10	0.47	0.50	0.05	0.05	0.05
Non-MIAX Emerald Market Maker	1	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	2	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	3	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	4	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
Firm Proprietary/Broker-Dealer	1	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	2	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	3	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	4	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
Non-Priority Customer	1	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	2	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	4	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
Priority Customer *	1	▽ (0.43)	0.50	(0.25)	(0.25)	(0.25)	0.00	0.05	0.05
	2	▽ (0.43)	0.50	(0.40)	(0.40)	(0.40)	0.00	0.05	0.05
	3	▽ (0.43)	0.50	(0.45)	(0.45)	(0.45)	0.00	0.05	0.05
	4	□ (0.53)	0.50	(0.50)	(0.50)	(0.50)	0.00	0.05	0.05

[11] *See* Fee Schedule, Section 1)a)i.

[12] *See* Securities Exchange Act Release No. 85393 (March 21, 2019), 84 FR 11599 (March 27, 2019) (SR–EMERALD–2019–15).

[13] *See* Cboe BZX Options Exchange Fee Schedule, under ''Transaction Fees.''

MEMBERS AND THEIR AFFILIATES IN NON-PENNY CLASSES SIMPLE/COMPLEX/PRIME/cPRIME

Origin	Tier	Simple		Complex #		PRIME/cPRIME ◊			
		Maker	Taker ^	Maker (contra origins ex priority customer)	Maker (contra priority customer origin)	Taker ~	Agency	Contra	Responder
Market Maker	1	($0.45)	$1.05	$0.20	$0.86	$0.88	$0.05	$0.05	$0.05
	2	(0.45)	1.05	0.20	0.86	0.88	0.05	0.05	0.05
	3	(0.45)	1.05	0.20	0.86	0.86	0.05	0.05	0.05
	4	(0.75)	1.05	0.20	0.86	0.86	0.05	0.05	0.05
Non-MIAX Emerald Market Maker	1	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	2	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	3	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	4	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
Firm Proprietary/Broker-Dealer	1	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	2	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	3	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	4	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
Non-Priority Customer	1	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	2	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	3	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	4	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
Priority Customer *	1	(0.85)	0.85	(0.40)	(0.40)	(0.40)	0.00	0.05	0.05
	2	(0.85)	0.85	(0.60)	(0.60)	(0.60)	0.00	0.05	0.05
	3	(0.85)	0.85	(0.70)	(0.70)	(0.75)	0.00	0.05	0.05
	4	■ (1.05)	0.85	(0.87)	(0.87)	(0.85)	0.00	0.05	0.05

^ Contra to Priority Customer Simple Orders, Origins ex Priority Customer Simple Orders will be charged $0.50 and Priority Customer Simple Orders will be charged $0.50 in Penny classes, and Origins ex Priority Customer Simple Orders will be charged $1.10 and Priority Customer Simple Orders will be charged $0.85 in Non-Penny classes.

* Priority Customer Complex Orders contra to Priority Customer Complex Orders are neither charged nor rebated. Priority Customer Complex Orders that leg into the Simple book are neither charged nor rebated.

~ A $0.05 Complex surcharge for Origins ex Priority Customer for Complex Orders that take liquidity from the Complex Order Book in Non-Penny classes.

For orders in a Complex Auction, Priority Customer Complex Orders will receive the Complex Taker rebate based on the tier achieved when contra to an Origin that is not a Priority Customer. Origins that are not a Priority Customer will be charged the applicable Maker fee depending on the contra, based on the tier achieved.

◊ For PRIME and cPRIME, the per contract rebate or fee for the preexisting contra-side interest that trades with the Agency side will be waived. PRIME/cPRIME Responder side interest that trades with unrelated Agency side interest trades as Taker will be subject to Simple or Complex rates, as applicable.

▽ Simple Maker rebate in SPY, QQQ and IWM is ($0.45) for Priority Customer Origin in Tiers 1, 2 and 3.

□ This Maker rebate is for executed Priority Customer Simple Orders when contra is not an Affiliated Market Maker. When the contra is an Affiliated Market Maker, this Maker rebate for executed Priority Customer Simple Orders will be ($0.49).

■ This Maker rebate is for executed Priority Customer Simple Orders when the contra is not an Affiliated Market Maker. When the contra is an Affiliated Market Maker, this Maker rebate for executed Priority Customer Simple Orders will be ($0.95).

Notes Accompanying Tables Above

During the Opening Rotation and the ABBO uncrossing, the per contract rebate or fee will be waived for all Origins.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [14]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 16% market share.[15] Therefore, no exchange possesses significant pricing power. More specifically, for the month of August, the Exchange had a market share of approximately 3.24% of executed volume of multiply-listed equity options.[16]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products and services, terminate an existing membership or determine to not become a new member, and/or shift order flow, in response to transaction fee changes. For example, on February 28, 2019, the Exchange's affiliate, MIAX PEARL, LLC (''MIAX PEARL'') filed with the Commission a proposal to increase Taker fees in certain Tiers for options transactions in certain Penny classes for Priority Customers and decrease Maker rebates in certain Tiers for options transactions in Penny classes for Priority Customers (which fee was to be effective March 1, 2019).[17] MIAX PEARL experienced a decrease in total market share for the month of March 2019, after the proposal went into effect. Accordingly, the Exchange believes that the MIAX PEARL March 1, 2019 fee change, to increase certain transaction fees and

[14] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[15] The Options Clearing Corporation (''OCC'') publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/market-data/volume/default.jsp*.

[16] *See id*.

[17] *See* Securities Exchange Act Release No. 85304 (March 13, 2019), 84 FR 10144 (March 19, 2019) (SR–PEARL–2019–07).

decrease certain transaction rebates, may have contributed to the decrease in MIAX PEARL's market share and, as such, the Exchange believes competitive forces constrain the Exchange's, and other options exchanges, ability to set transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges. The Exchange also notes that at least one other competing exchange similarly provides for different pricing dependent upon whether the executing buyer and seller are the same market participant or have some form of common ownership.[18]

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[19] in general, and furthers the objectives of Section 6(b)(4) of the Act,[20] in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using its facilities, and 6(b)(5) of the Act,[21] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes its proposal to decrease its Simple Maker rebates in Tier 4 for options transactions in Penny and non-Penny classes for Priority Customers orders when trading contra to an Affiliated Market Maker provides for the equitable allocation of reasonable dues and fees and is not unfairly discriminatory for the following reasons. The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.''[22]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 16% of the market share of executed volume of multiply-listed equity and ETF options trades based on the reported trade volumes for the month of August.[23] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, for the month of August, the Exchange had a market share of approximately 3.24% of executed volume of multiply-listed equity options.[24] The Exchange cannot predict with certainty the number of market participants that would qualify for the lower Simple Maker rebates as Members[25] may continually shift among the different Tiers from month to month.

The Exchange believes that the ever-shifting market shares among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to transaction and/or non-transaction fee changes. For example, on February 28, 2019, the Exchange's affiliate, MIAX PEARL, filed with the Commission a proposal to increase Taker fees in certain Tiers for options transactions in certain Penny classes for Priority Customers and decrease Maker rebates in certain Tiers for options transactions in Penny classes for Priority Customers (which fee was to be effective March 1, 2019).[26] MIAX PEARL experienced a decrease in total market share for the month of March 2019, after the proposal went into effect. Accordingly, the Exchange believes that the MIAX PEARL March 1, 2019 fee change, to increase certain transaction fees and decrease certain transaction rebates, may have contributed to the decrease in MIAX PEARL's market share and, as such, the Exchange believes competitive forces constrain the Exchange's, and other options exchanges, ability to set transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

The Exchange believes its proposal to decrease the Simple Maker rebates in Tier 4 for options transactions in Penny and non-Penny classes for Priority Customers is reasonable, equitable and not unfairly discriminatory because all similarly situated market participants in the same Origin type are subject to the same tiered Maker rebates and Taker fees and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange believes it is equitable and not unfairly discriminatory to reduce the Simple Maker rebates to Priority Customer orders in Penny and non-Penny classes for competitive and business reasons because the Exchange initially set its Simple Maker rebates for such orders higher than certain other options exchanges that operate comparable maker/taker pricing models.[27] The Exchange now believes that it is appropriate to further decrease the specified Simple Maker rebates so that they are more in line with other exchanges, and will still remain highly competitive such that they should enable the Exchange to continue to attract order flow and maintain market share.[28]

Furthermore, the proposed decrease to the Simple Maker rebates for Priority Customers promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in facilitating transactions in securities,

[18] *See* Nasdaq Options Pricing Schedule, Options 7, Section 2(1), note 2 (Participants that add 1.30% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of total industry customer equity and ETF option ADV contracts per day in a month will be subject to the following pricing applicable to executions: A $0.48 per contract Penny Pilot Options Fee for Removing Liquidity when the Participant is (i) both the buyer and the seller or (ii) the Participant removes liquidity from another Participant under Common Ownership. Participants that add 1.50% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of total industry customer equity and ETF option ADV contracts per day in a month and meet or exceed the cap for The Nasdaq Stock Market Opening Cross during the month will be subject to the following pricing applicable to executions less than 10,000 contracts: A $0.32 per contract Penny Pilot Options Fee for Removing Liquidity when the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership. Participants that add 1.75% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of total industry customer equity and ETF option ADV contracts per day in a month will be subject to the following pricing applicable to executions less than 10,000 contracts: A $0.32 per contract Penny Pilot Options Fee for Removing Liquidity when the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership.).

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(4).

[21] 15 U.S.C. 78f(b)(1) and (b)(5).

[22] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[23] *See supra* note 15.

[24] *See id.*

[25] ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[26] *See supra* note 17.

[27] *See supra* note 12.

[28] *See supra* note 13.

and protects investors and the public interest, because even with the decrease, the Exchange's proposed Simple Maker rebates for such orders still remain highly competitive with certain other options exchanges offering comparable pricing models, and should enable the Exchange to continue to attract order flow and maintain market share.[29] The Exchange believes that the amount of such fees, as proposed to be decreased, will continue to encourage those market participants to send orders to the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed changes in the specified Simple Maker rebates for the applicable market participants should continue to encourage the provision of liquidity that enhances the quality of the Exchange's market and increases the number of trading opportunities on the Exchange for all participants who will be able to compete for such opportunities. The proposed rule changes should enable the Exchange to continue to attract and compete for order flow with other exchanges. However, this competition does not create an undue burden on competition but rather offers all market participants the opportunity to receive the benefit of competitive pricing.

The proposed decreases for certain Simple Maker rebates are intended to keep the Exchange's fees highly competitive with those of other exchanges, and to encourage liquidity and should enable the Exchange to continue to attract and compete for order flow with other exchanges. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its rebates and fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposed rule changes reflect this competitive environment because they modify the Exchange's fees in a manner that encourages market participants to continue to provide liquidity and to send order flow to the Exchange.

[29] *See id.*

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,[30] and Rule 19b–4(f)(2) [31] 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–EMERALD–2020–07 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–EMERALD–2020–07. 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–EMERALD–2020–07 and should be submitted on or before October 16, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–21141 Filed 9–24–20; 8:45 am]

BILLING CODE 8011–01–P

[30] 15 U.S.C. 78s(b)(3)(A)(ii).

[31] 17 CFR 240.19b–4(f)(2).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–485, OMB Control No. 3235–0547]

Submission for OMB Review; Comment Request

Extension:
''Investor Form''

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request to approve the collection of information discussed below.

Each year the Commission receives several thousand contacts from investors who have complaints or questions on a wide range of investment-related issues. To make it easier for the public to contact the agency electronically, the Commission's Office of Investor Education and Advocacy (''OIEA'') created an electronic form (the Investor Form) that provides drop down options to choose from in order to categorize the investor's complaint or question, and may also

provide the investor with automated information about their issue. The Investor Form asks investors to provide information concerning, among other things, their names, how they can be reached, the names of the individuals or entities involved, the nature of their complaint or tip, what documents they can provide, and what, if any, actions they have taken. Use of the Investor Form is voluntary. Absent the forms, the public still has several ways to contact the agency, including telephone, facsimile, letters, and email. Investors can access the Investor Form through the consolidated Investor Complaint and Question web page.

The dual purpose of the Investor Form is to make it easier for the public to contact the agency with complaints, questions, tips, or other feedback and to streamline the workflow of Commission staff that record, process, and respond to investor contacts. Investors who submit complaints, ask questions, or provide tips do so voluntarily. Although the Investor Form provides a structured format for incoming investor correspondence, the Commission does not require that investors use any particular form or format when contacting the agency. Investors who choose not to use the Investor Form will receive the same level of service as those who do.

OIEA receives approximately 20,000 contacts each year through the Investor Form. Investors who choose not to use the Investor Form receive the same level of service as those who do. The Commission uses the information that investors supply on the Investor Form to review and process the contact (which may, in turn, involve responding to questions, processing complaints, or, as appropriate, initiating enforcement investigations), to maintain a record of contacts, to track the volume of investor complaints, and to analyze trends.

The staff of the Commission estimates that the total reporting burden for using the Investor Form is 5,000 hours. The calculation of this estimate depends on the number of investors who use the forms each year and the estimated time it takes to complete the forms: 20,000 respondents × 15 minutes = 5,000 burden hours.

Members of the public should be aware that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless a currently valid OMB control number is displayed.

The public may view background documentation for this information collection at the following website: <*www.reginfo.gov*>. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) <*www.reginfo.gov/public/do/PRAMain*> and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Dated: September 22, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–21242 Filed 9–24–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 3:15 p.m. on Tuesday, September 29, 2020.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topic:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: September 22, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–21296 Filed 9–23–20; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89931; File No. SR–CBOE–2020–055]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of Amendment No. 2 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 2, To Amend Rule 5.24

September 21, 2020.

I. Introduction

On June 12, 2020, Cboe Exchange, Inc. (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt Rule 5.24(e)(3) to make available an audio and video communication program to serve as a ''virtual trading floor'' in one or more option classes during regular trading hours. The proposed rule change was published for comment in the **Federal Register** on June 29, 2020.[3] On July 23, 2020, the Exchange filed Amendment No. 1 to the proposed rule change.[4] On August 10, 2020, the Commission designated a longer period for Commission action on the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 89131 (June 29, 2020), 85 FR 38951 (''Notice'').

[4] In Amendment No. 1, the Exchange revised the proposal to: (i) Clarify that if the virtual trading floor is available in a class, the temporary rules in CBOE Rule 5.24(e)(1) will not apply to that class and (ii) permit clerks to access the virtual trading floor. Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-cboe-2020-055/srcboe2020055-7470763-221281.pdf.*

change, until September 27, 2020.[5] On August 21, 2020, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change, as modified by Amendment No. 1.[6] The Commission has received one comment letter on the proposal.[7] The Commission is publishing this notice and order to solicit comments on the proposed rule change, as modified by Amendment No. 2, from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act[8] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 2.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 2

The Exchange proposes to amend Rule 5.24 regarding the Exchange's business continuity and disaster recovery plans. Specifically, Rule 5.24(e) provides that if the Exchange trading floor becomes inoperable, the Exchange will continue to operate in a screen-based only environment using a floorless configuration of the system that is operational while the trading floor facility is inoperable. The Exchange would operate using that configuration only until the Exchange's trading floor facility became operational.[9] Open outcry trading would currently not be available in the event the trading floor becomes inoperable.[10] In the event that the trading floor becomes inoperable, trading will be conducted pursuant to all applicable system rules, except that open outcry rules would not be in force, including but not limited to the rules (or applicable portions) in Chapter 5, Section G,[11] and that all non-trading rules of the Exchange would continue to apply.[12]

On March 16, 2020, the Exchange suspended open outcry trading to help prevent the spread of COVID–19.[13] The Exchange operated in an all-electronic configuration until it reopened its trading floor on June 15, 2020, at which time the Exchange returned to operating as a hybrid exchange with electronic and open outcry trading.[14] However, given the uncertainty related to the ongoing pandemic, which includes the possibility of the Exchange having to close its trading floor again, and given the possibility that the Exchange's trading floor may be inoperable for other reasons in the future, the Exchange proposes to adopt Rule 5.24(e)(3) to permit it to make available an audio and video communication program to serve as a ''virtual trading floor'' in one or more option classes[15] if the physical trading floor is inoperable.[16]

In the program, the Exchange would create ''virtual trading pits,'' in each of which the Exchange would determine which options class(es) would be available for trading.[17] In a virtual trading pit, each Trading Permit Holder (''TPH'') authorized to access the virtual trading floor (as described below) that enters the virtual trading pit would be visible to all other TPHs in that virtual trading pit.[18] Additionally, all TPHs in a virtual trading pit may speak to each other through the proposed communication program.[19] The Exchange states that this would provide the same communication capabilities TPHs generally have on the physical trading floor so that they may conduct open outcry trading on the virtual trading floor in the same manner as they do on the physical trading floor.[20]

Proposed Rule 5.24(e)(3) states that all rules related to open outcry trading, including those in Chapter 5, Section G,[21] would apply to open outcry trading on the virtual trading floor in the same manner as they apply to open outcry trading on the physical trading floor, except as the context otherwise requires and as set forth in proposed subparagraph (e)(3). Proposed subparagraph (e)(3)(A) lists certain terms in the rules related to open outcry trading on the physical trading floor that would be deemed to refer to corresponding terms related to open outcry trading on the virtual trading floor. Specifically:

- References in the rules to the ''floor,'' ''trading floor,'' and ''Exchange floor'' (and any other terms with the same meaning) would be deemed to refer to the ''virtual trading floor.''
- References in the rules to ''pit,'' ''trading station,'' and ''trading post'' (and any other terms with the same meaning) would be deemed to refer to a ''virtual trading pit.''
- References in the rules to ''physical presence'' (any other terms with the same meaning) in a pit or on the trading floor would be deemed to refer to ''presence'' in a virtual trading pit or on the virtual trading floor, respectively.
- The terms ''in-crowd market participant'' and ''ICMP'' mean a Market-Maker, a Designated Primary Market-Maker (''DPM'') or Lead Market-Maker (''LMM'') with an allocation in a class, or a Floor Broker or PAR Official representing an order in a virtual pit on the virtual trading floor.
- References to an ''on-floor DPM'' or ''on-floor LMM'' would be deemed to refer to a DPM or LMM, respectively, in a virtual pit for its allocated class(es).

In addition, proposed Rule 5.24(e) states that the temporary rules set forth in Rule 5.24(e)(1) would not be applicable to trading in classes in which the Exchange makes a virtual trading

[5] *See* Securities Exchange Act Release No. 89514 (August 10, 2020), 85 FR 49696 (August 14, 2020).

[6] In Amendment No. 2, the Exchange revised the proposal to: (i) Eliminate access to the virtual trading floor when the physical trading floor is operating in a modified state; (ii) provide additional description of several aspects of the proposal, including access to the virtual trading floor, recordkeeping of all chats in the virtual trading floor, regulatory surveillance of the virtual trading floor; and (iii) make technical and conforming changes. Amendment No. 2 is available on the Commission's website at: *https://www.sec.gov/comments/sr-cboe-2020-055/srcboe2020055-7741240-223109.pdf.*

[7] *See* letter to Secretary, Commission, from Kevin Kennedy, Senior Vice President, North American Markets, Nasdaq, dated July 10, 2020, *available at https://www.sec.gov/comments/sr-cboe-2020-055/srcboe2020055-7409704-219196.pdf* (''Nasdaq Letter''). The Nasdaq Letter expressed support for CBOE's proposal, but raised questions about whether options classes should be able to trade in both virtual and floor-based trading environments and whether the virtual trading floor raises liquidity and access concerns.

[8] 15 U.S.C. 78s(b)(2)(B).

[9] *See* CBOE Rule 5.24(e).

[10] *See id.*

[11] Chapter 5, Section G of the Exchange's rulebook sets forth the rules and procedures for manual order handling and open outcry trading on the Exchange.

[12] The Exchange recently adopted several rule changes that would apply during a time in which the trading floor in inoperable, which are effective until September 30, 2020. *See, e.g.,* Securities Exchange Act Release Nos. 88386 (March 13, 2020), 85 FR 15823 (March 19, 2020) (SR–CBOE–2020–019); 88447 (March 20, 2020) (SR–CBOE–2020–023); 88490 (March 26, 2020), 85 FR 18318 (April 1, 2020) (SR–CBOE–2020–026); 88530 (March 31, 2020), 85 FR 19182 (April 6, 2020) (SR–CBOE–2020–031); 88886 (May 15, 2020), 85 FR 31008 (May 21, 2020) (SR–CBOE–2020–047); 89307 (July 14, 2020), 85 FR 43938 (July 20, 2020) (SR–CBOE–2020–066); and 89789 (September 8, 2020), 85 FR 56658 (September 14, 2020) (SR–CBOE–2020–081).

[13] *See supra* note 6, at 5.

[14] *See id.*

[15] Similar to open outcry trading on the physical trading floor, open outcry trading on the virtual trading floor would be available only during Regular Trading Hours. *See* proposed CBOE Rule 5.24(e)(3).

[16] The Exchange states that, while the recent amendments to Rule 5.24(e)(1) allowed all-electronic trading to occur more similarly to open outcry trading, an all-electronic trading environment cannot fully replicate open outcry trading. *See supra* note 6, at 5. For example, the Exchange states that there are certain features of open outcry trading that have been difficult to replicate in an electronic trading environment, particularly the human interaction that permits persons to negotiate pricing and to facilitate executions of larger orders and high-risk and complicated strategies. *See id.* at 6.

[17] The Exchange states that this is similar to the Exchange's authority with respect to open outcry trading on the physical trading floor. *See id.* at 6, n.6.

[18] *See id.* at 7.

[19] *See id.*

[20] *See id.*

[21] *See supra* note 11.

floor available when the physical trading floor is inoperable. As noted above, the temporary rules in Rule 5.24(e)(1) are intended to make electronic trading more similar to open outcry trading when open outcry trading is not available by replicating certain features of open outcry trading in an electronic environment. However, the virtual trading floor would permit open outcry trading to continue in a separate environment if the physical trading floor becomes inoperable. Therefore, trading opportunities that are generally only available in open outcry trading would continue to be available on the virtual trading floor, making the temporary rules in Rule 5.24(e)(1) unnecessary when the virtual trading floor is available.

The Exchange represents that access to the virtual trading floor would be substantially similar to access to the physical trading floor.[22] Proposed Rule 5.24(e)(3)(B) states that admission to the virtual trading floor is limited to TPHs, clerks,[23] Exchange employees, and any other persons the Exchange authorizes admission to the virtual trading floor.[24] The Exchange would provide access to the virtual trading floor to TPHs the Exchange has approved to perform a trading floor function (including Floor Brokers and Market-Makers).[25] Each authorized individual will receive one log-in to the virtual trading floor and may be present in only one virtual trading pit at one time.[26] The Exchange will not require a minimum number of Market-Makers to be present for the virtual trading floor, which is consistent with the manner of operation on the physical trading floor.[27]

Proposed Rule 5.24(e)(3)(C) states that TPHs may use any equipment (*e.g.,* any hardware or software related to a phone, system, or other device, including an instant messaging system, email system, or similar device) to access the virtual trading floor and do not need to register devices they use while on the virtual trading floor.[28] TPHs must use Exchange-provided equipment to access PAR workstations while transacting on the virtual trading floor.[29] The proposed rule change does not require TPHs to register devices they use while on the virtual trading floor.[30] The Exchange states that the requirements in Rule 5.81(a) would otherwise apply in the same manner to the virtual trading floor as it does to the physical trading floor (to the extent the context requires).[31]

Proposed Rule 5.24(e)(3)(d) provides that the Exchange may determine to require any Market-Maker or Floor Broker in a virtual trading pit that wants to trade against an order represented for execution to express its bid or offer in a chat available in the virtual trading pit.[32]

The Exchange represents that TPHs participating on the virtual trading floor would be subject to the same regulatory requirements on the virtual trading floor as they are on the physical trading floor, including those set forth in Chapters 8 and 9.[33] The Exchange states that its Regulatory Division would be able to utilize preexisting floor surveillances to surveil for the activity occurring on the virtual trading floor.[34] Furthermore, the Exchange states that the Regulatory Division may access the virtual trading floor if it deems necessary and appropriate, including records of any chats from the virtual trading floor, if that functionality is used.[35]

III. Proceedings To Determine Whether To Approve or Disapprove SR–CBOE–2020–055, as Modified by Amendment No. 2, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[36] to determine whether the proposed rule change, as modified by Amendment No. 2, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal and the comment received thereon. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved.

Pursuant to Section 19(b)(2)(B) of the Act,[37] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposal's consistency with the Act, including Sections 6(b)(5) and 6(b)(8) thereof,[38] and the rules and regulations thereunder.

The Commission is instituting proceedings to further consider the proposal and the issues raised by the commenter on the proposal as it determines whether the proposed virtual trading floor is consistent with the Act and the rules and regulations thereunder.

Specifically, the Commission is providing notice of the following

[22] *See* Notice, *supra* note 6, at 9. The Exchange states that, currently, admission to the physical trading floor is limited to TPHs, Exchange employees, clerks employed by TPHs and registered with the Exchange, service personnel, Exchange visitors that receive authorized admission to the trading floor pursuant to Exchange policy, and any other persons that the Exchange authorizes admission to the trading floor. *See id.* The proposed rule change excludes service personnel and visitors from accessing the virtual trading floor. *See id.* at 10.

[23] TPHs and clerks would not be required to display badges on the virtual trading floor. *See* proposed CBOE Rule 5.24(e)(3)(B). The virtual trading floor program would identify the TPH organization of each participant in a virtual trading pit. *See* Notice, *supra* note 6, at 11, n.16.

[24] The Exchange states that it does not anticipate granting any other individuals with access to the virtual trading floor outside of TPHs and Exchange personnel; however, the Exchange believes the flexibility to permit Exchange personnel to access the virtual trading floor is appropriate, such as to permit access to make updates to the communication program. *See id.* at 10, n.14.

[25] *See* proposed CBOE Rule 5.24(e)(3)(B). This includes TPHs (and individuals that represent TPH organizations) that are currently authorized to perform trading floor functions, as well as any TPHs that receive such authorization in the future. *See* Notice, *supra* note 6, at 10.

[26] *See* proposed CBOE Rule 5.24(e)(3)(B).

[27] *See* Notice, *supra* note 6, at 10.

[28] *See* Notice, *supra* note 6, at 11.

[29] The Exchange represents that the PAR will be used and work in the same manner for the virtual trading floor as it is on the physical trading floor. *See* Notice, *supra* note 6, at 11, n.16.

[30] *See id.* at 11–12.

[31] The Exchange states that this would include requirements related to audit trail and record retention, prohibition on using any device for the purpose of recording activities in the virtual trading pit or maintaining an open line of continuous communication whereby a non-associated person not located in the trading crowd may continuously monitor the activities in the trading crowd, and the prohibition on using devices to disseminate quotes or last sale reports. *See id.* at 12.

[32] The Exchange states that it will announce with sufficient advance notice to all TPHs any determination to require bids and offers to be expressed in a chat within the communication program pursuant to Rule 1.5 (such as by Exchange notice or regulatory circular). *See id.* at 12, n.19. The Exchange also represents that, regardless of whether it requires the chat function to be used, the Exchange will maintain records of all chats in the virtual trading floor in accordance with its self-regulatory organization record retention obligations. *See id.* at 13.

[33] *See id.* at 13.

[34] *See id.*

[35] *See id.* at 14–15.

[36] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding. *See id.*

[37] *Id.*

[38] 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78f(b)(8), respectively. Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed, among other things, 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 not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Act requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

grounds for possible disapproval under consideration:

• Whether the Exchange has demonstrated how its proposal is consistent with Section 6(b)(5) of the Act,[39] which requires the rules of CBOE to not be ''designed to permit unfair discrimination between customers, issuers, brokers, or dealers.''

• Whether the Exchange has demonstrated how its proposal is consistent with Section 6(b)(8) of the Act,[40] which requires that the rules of CBOE not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.'' [41] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[42] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[43] Moreover, ''unquestioning reliance'' on an SRO's representations in a proposed rule change would not be sufficient to justify Commission approval of a proposed rule change.[44]

For the reasons discussed above, the Commission believes it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Act to allow for additional consideration of the issues raised by the proposal as it determines whether the proposal should be approved or disapproved.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the concerns identified above, as well as any others they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change, as modified by Amendment No. 2, is inconsistent with Section 6(b)(5) [45] or any other provision of the Act, or the rules and regulation thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act, any request for an opportunity to make an oral presentation.[46]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as modified by Amendment No. 2, should be approved or disapproved by October 16, 2020. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by October 30, 2020.

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposed rule change, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the statements of the Exchange contained in Amendment No. 2,[47] and any other issues raised by the proposed rule change.

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–CBOE–2020–055 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–CBOE–2020–055. 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–CBOE–2020–055 and should be submitted by October 16, 2020. Rebuttal comments should be submitted by October 30, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–21142 Filed 9–24–20; 8:45 am]

BILLING CODE 8011–01–P

[39] 15 U.S.C. 78f(b)(5).

[40] 15 U.S.C. 78f(b)(8).

[41] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[42] *See id.*

[43] *See id.*

[44] *See Susquehanna Int'l Group, LLP* v. *Securities and Exchange Commission,* 866 F.3d 442, 446–47 (DC Cir. 2017) (rejecting the Commission's reliance on an SRO's own determinations without sufficient evidence of the basis for such determinations).

[45] 15 U.S.C. 78f(b)(5).

[46] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[47] *See* Amendment No. 2, *supra* note 6.

[48] 17 CFR 200.30–3(a)(57) and (58).

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235–0625; SEC File No. 270–563]

Submission for OMB Review; Comment Request; Rule 17g–1 and Form NRSRO 30 Day Notice 2020; Extension

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 17g–1, Form NRSRO and

Instructions to Form NRSRO under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).[1]

Rule 17g–1, Form NRSRO and the Instructions to Form NRSRO contain certain recordkeeping and disclosure requirements for NRSROs. Currently, there are 9 credit rating agencies registered as NRSROs with the Commission. Based on staff experience, the Commission estimates that the revised ongoing annual burden for respondents to comply with Rule 17g–1 and Form NRSRO remains at 275 hours, but with a decrease in industry total hours to 2,475 hours, reflecting the decrease in registered entities. In addition, the Commission estimates an industry-wide annual external cost to NRSROs of $3,600 to comply with the requirements.

An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Dated: September 22, 2020.

J. Matthew DeLesDenier,

Assistant Secretary.

[FR Doc. 2020–21245 Filed 9–24–20; 8:45 am]

BILLING CODE 8011–01–P

[1] *See* 17 CFR 240.17g–1 and 17 CFR 249b.300.

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235–0628, SEC File No. 270–564]

Rule 17g–2 30 Day Notice 2020—Submission for OMB Review; Comment Request

Extension:
Rule 17g–2

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 17g–2 (17 CFR 240.17g–2) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

Rule 17g–2, ''Records to be made and retained by nationally recognized statistical rating organizations,'' implements the Commission's recordkeeping rulemaking authority under Section 17(a) of the Exchange Act.[1] The rule requires a Nationally Recognized Statistical Rating Organization (''NRSRO'') to make and retain certain records relating to its business and to retain certain other business records, if such records are made. The rule also prescribes the time periods and manner in which all these records must be retained. There are 9 credit rating agencies registered with the Commission as NRSROs under section 15E of the Exchange Act, which have already established the record keeping policies and procedures required by Rule 17g–2. Based on staff experience, NRSROs are estimated to spend a total industry-wide burden of 2,151 annual hours to make and retain the appropriate records.

An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

The public may view background documentation for this information collection at the following website: <*www.reginfo.gov*>. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) <*www.reginfo.gov/public/do/PRAMain*> and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Dated: September 22, 2020.

J. Matthew DeLesDenier,

Assistant Secretary.

[FR Doc. 2020–21252 Filed 9–24–20; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C 78q.

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) plans to seek approval, from the Office of Management and Budget (OMB) to conduct the data collection activities described below. The Paperwork Reduction Act requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information to OMB, and to allow 60 days for the public to comment in response to the notice. This notice complies with such requirements and announces the SBA's proposal to conduct a survey of small businesses and lenders who participated in the SBA's Microloan program.

DATES: Submit comments on or before November 20, 2020.

ADDRESSES: Send all comments to Shay Meinzer, Lead Program Evaluator, Office of Program Performance, Analysis, and Evaluation, Small Business Administration, 409 3rd Street, 5th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Shay Meinzer, Lead Program Evaluator, Office of Program Performance, Analysis, and Evaluation, Small Business Administration, *shay.meinzer@sba.gov,* 202–539–1429, or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: This is a request for the collection of new information.

The purpose of the Microloan Program is to assist women, low income, veteran, and minority entrepreneurs, and other small

businesses in need of small amounts of financial assistance. Under the Microloan Program, the SBA makes direct loans to intermediaries (lenders) that, in turn, use the proceeds to make microloans (*i.e.,* loans of $50,000 or less) and to provide training and technical assistance to eligible borrowers in their SBA approved geographic service areas. By offering financing and assistance to these businesses, the Microloan Program aims to support job creation and retention for small businesses by providing access to financial capital unavailable through conventional channels.

The SBA is conducting an evaluation to examine how the Microloan Program activities of lending and technical assistance improve revenue, job creation, and survival for businesses that participate in the program. The evaluation also seeks to describe the population of borrowers, their business characteristics and their experiences with the program. The lender characteristics, and the training and technical assistance provided to borrowers will also be described. The results of the evaluation will be used to develop recommendations to improve the program. The recommendations will focus on improving access to financing, improving technical assistance and training, and improving other factors that promote small business growth.

The SBA proposes the use of four data collection instruments: (1) Borrower Web survey, (2) borrower semi-structured telephone interview, (3) lender web survey, (4) lender semi-structured telephone interview. The borrower survey will cover the topics of (1) training and technical assistance received; (2) program satisfaction and ratings of the program's contribution to the business growth; (3) how the Microloan program experiences compare with other programs; and (4) suggestions for the program improvements. The interviews with lenders will discuss (1) frequency and purpose of contacts with borrowers; (2) the most and the least effective types of training and technical assistance; (3) how the Microloan program experiences compare with other programs; and (4) suggestions for the program improvements.

Summary of Proposed Information Collection

Borrower Web Survey

Description of Respondents: Microloan program borrowers who received microloans 2010–2019.

Estimated Number of Respondents: 865.

Frequency of Response: Once per request.

Estimated Annual Responses: 865.

Estimated Average Minutes per Response: 20.

Estimated Annual Hour Burden: 288.

Borrower Telephone Interview

Description of Respondents: Microloan program borrowers who received microloans 2010–2019.

Estimated Number of Respondents: 24.

Frequency of Response: Once per request.

Estimated Annual Responses: 24.

Estimated Average Minutes per Response: 20.

Estimated Annual Hour Burden: 8.

Lender Web Survey

Description of Respondents: Microloan program lenders who participated in the program 2010–2019.

Estimated Number of Respondents: 150.

Frequency of Response: Once per request.

Estimated Annual Responses: 150.

Estimated Average Minutes per Response: 15.

Estimated Annual Hour Burden: 38.

Lender Telephone Interview

Description of Respondents: Microloan program lenders who participated in the program 2010–2019.

Estimated Number of Respondents: 24.

Frequency of Response: Once per request.

Estimated Annual Responses: 24.

Estimated Average Minutes per Response: 20.

Estimated Annual Hour Burden: 8.

Solicitation of Public Comments: The SBA requests comments on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information collected. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Curtis Rich,

Management Analyst.

[FR Doc. 2020–21132 Filed 9–24–20; 8:45 am]

BILLING CODE 8026–03–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2020–0051]

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 revisions of OMB-approved information collections.

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–2020–0051].

SSA submitted the information collections below to OMB for clearance. Your comments regarding these information collections 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 26, 2020. Individuals can obtain copies of these OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov*.

1. Government Pension Questionnaire—20 CFR 404.408a—0960–0160. The basic Social Security benefits application (OMB No. 0960–0618) contains a lead question asking if the applicants are qualified (or will qualify) to receive a government pension. If the respondent is qualified, or will qualify, to receive a government pension, the applicant completes Form SSA–3885 either on paper or through a personal interview with an SSA claims

specialist. If the applicants are not entitled to receive a government pension at the time they apply for Social Security benefits, SSA requires them to provide the government pension information as beneficiaries when they become eligible to receive their pensions. Regardless of the timing, at some point the applicants or beneficiaries must complete and sign Form SSA–3885 to report information about their government pensions before the pensions begin. SSA uses the information to: (1) determine whether the Government Pension Offset provision applies; (2) identify exceptions as stated in 20 CFR 404.408a; and (3) determine the benefit reduction amount and effective date. If the applicants and beneficiaries do not respond using this questionnaire, SSA offsets their entire benefit amount. The respondents are applicants or recipients of spousal benefits who are eligible for or already receiving a Government pension.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–3885	6,495	1	13	1,407	* $25.72	** 24	*** $103,009

* We based this figure on average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

2. RS/DI Quality Review Case Analysis: Sampled Number Holder; Auxiliaries/Survivors; Parent; and Stewardship Annual Earnings Test—0960–0189. Section 205(a) of the Social Security Act (Act) authorizes the Commissioner of SSA to conduct the quality review process, which entails collecting information related to the accuracy of payments made under the Old-Age, Survivors, and Disability Insurance Program (OASDI). Sections 228(a)(3), 1614(a)(1)(B), and 1836(2) of the Act require a determination of the citizenship or alien status of the beneficiary; this is only one item that we might question as part of the Annual Quality review. SSA uses Forms SSA–2930, SSA–2931, and SSA–2935 to establish a national payment accuracy rate for all cases in payment status, and to serve as a source of information regarding problem areas in the Retirement Survivors Insurance (RSI) and Disability Insurance (DI) programs. We also use the information to measure the accuracy rate for newly adjudicated RSI or DI cases. SSA uses Form SSA–4659 to evaluate the effectiveness of the annual earnings test, and to use the results in developing ongoing improvements in the process. About 25% of respondents have in-person reviews and receive one of the following appointment letters: (1) SSA–L8550–U3 (Appointment Letter—Sample Individual); (2) SSA–L8551–U3 (Appointment Letter—Sample Family); or (3) the SSA–L8552–U3 (Appointment Letter—Rep Payee). About 75% of respondents receive a notice for a telephone review using the SSA–L8553–U3 (Beneficiary Telephone Contact) or the SSA–L8554–U3 (Rep Payee Telephone Contact). To help the beneficiary prepare for the interview, we include three forms with each notice: (1) SSA–85 (Information Needed to Review Your Social Security Claim) lists the information the beneficiary needs to gather for the interview; (2) SSA–2935 (Authorization to the Social Security Administration to Obtain Personal Information) verifies the beneficiary's correct payment amount, if necessary; and (3) SSA–8552 (Interview Confirmation) confirms or reschedules the interview if necessary. The respondents are a statistically valid sample of all OASDI beneficiaries in current pay status or their representative payees.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–2930	1,500	1	30	750	* 18.23	** 24	*** 24,611
SSA–2931	850	1	30	425	* 18.23	** 24	*** 13,946
SSA–4659	325	1	10	54	* 18.23	** 24	*** 3,354
SSA–L8550–U3	385	1	5	32	* 18.23	** 24	*** 3,390
SSA–L8551–U3	95	1	5	8	* 18.23	** 24	*** 839
SSA–L8552–U3	35	1	5	3	* 18.23	** 24	*** 310
SSA–L8553–U3	4,970	1	5	414	* 18.23	** 24	*** 43,788
SSA–L8554–U3	705	1	5	59	* 18.23	** 24	*** 6,217
SSA–8552	2,350	1	5	196	* 18.23	** 24	*** 20,709
SSA–85	3,850	1	5	321	* 18.23	** 24	*** 33,926
SSA–2935	2,350	1	5	196	* 18.23	** 24	*** 20,709
SSA–8510 (also saved under OMB No. 0960–0707)	800	1	5	67	* 18.23	** 24	*** 7,055

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
Totals	18,215			2,525			*** 178,854

* We based this figure on averaging both the average DI payments based on SSA's current FY 2020 data (*https://www.ssa.gov/legislation/2020Fact%20Sheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

3. Application for Benefits under a U.S. International Social Security Agreement—20 CFR 404.1925—0960–0448. Section 233(a) of the Social Security Act (Act) authorizes the President to enter into international Social Security agreements (Totalization Agreements) between the United States and foreign countries. SSA collects information using Form SSA–2490–BK to determine entitlement to Social Security benefits from the United States, or from a country that enters into a Totalization Agreement with the United States. The respondents are individuals applying for Old Age Survivors and Disability Insurance (OASDI) benefits from the United States, or from a Totalization Agreement country.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–2490–BK (MCS)	16,195	1	30	8,098	* 10.73	** 24	*** 156,401
SSA–2490–BK (Paper)	2,120	1	30	1,060	* 10.73	** 24	*** 20,473
Totals	18,315			9,158			*** 176,874

* We based this figure on average DI payments based on SSA's current FY 2020 data (*https://www.ssa.gov/legislation/2020Fact%20Sheet.pdf*).

** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

4. Employee Identification Statement—20 CFR 404.702—0960–0473. When two or more individuals report earnings under the same Social Security Number (SSN), SSA collects information on Form SSA–4156 to credit the earnings to the correct individual and SSN. We send SSA–4156 to the employer to: (1) Identify the employees involved; (2) resolve the discrepancy; and (3) credit the earnings to the correct SSN. The respondents are employers involved in erroneous wage reporting for an employee.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–4156	3,600	1	10	600	* 25.72	** 24	*** 52,469

* We based this figure on average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

5. SSI Notice of Interim Assistance Reimbursement (IAR)—0960–0546. Section 1631(g) of the Act authorizes SSA to reimburse an IAR agency from an individual's retroactive Supplemental Security Income (SSI) payment for assistance the IAR agency gave the individual for meeting basic needs while an SSI claim was pending or SSI payments were suspended or terminated. The State or local agency needs an IAR agreement with SSA to participate in the IAR program. The individual receiving the IAR payment signs an authorization form with an IAR agency to allow SSA to repay the IAR agency for funds paid in advance prior to SSA's determination on the individual's claim. The authorization represents the individual's intent to file for SSI, if they did not file an application before SSA received the authorization. Agencies who wish to enter into an IAR agreement with SSA

need to meet the following requirements:

• Reporting Requirements—each IAR agency agrees to:

(a) notify SSA of receipt of an authorization for initial claims or cases the agency is appealing;

(b) submit a copy of that authorization either through a manual or electronic process;

(c) inform SSA of the amount of reimbursement;

(d) submit a written request for dispute resolution on a determination;

(e) notify SSA of interim assistance paid (using the SSA–8125 or the SSA–L8125–F6);

(f) inform SSA of any deceased claimants who participate in the IAR program;

(g) review and sign an agreement with SSA.

• Recordkeeping Requirements (h & i)—each IAR agency agrees to retain all notices, agreements, authorizations, and accounting forms for the period defined in the IAR agreement so SSA may verify transactions covered under the agreement.

• Third Party Disclosure Requirements (j): Each participating IAR agency agrees to send written notices from the IAR agency to the recipient regarding payment amounts and appeal rights.

• Periodic Review of Agency Accounting Process (k–m) – each IAR agency makes the IAR accounting records of paid cases available for SSA review and verification. SSA conducts reviews either onsite or through the mail of the authorization forms, notices to the claimant, and accounting forms. Upon completion of the review, SSA provides a written report of findings to the IAR agency director.

The respondents are State IAR officers.

Type of Request: Revision of an OMB-approved information [1] [2] [3] collection.

Modality of completion	Number of respondents (States)	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
(a) State notification of receipt of authorization (Electronic Process)	11	6,973	76,703	1	1,278	* 19.58	** 25,023
(b) State submission of copy of authorization (Manual Process)	27	1,894	51,138	3	2,557	* 19.58	** 50,066
(c) State submission of amount of IA paid to recipients (using eIAR)	38	1,346	51,148	8	6,820	* 19.58	** 133,536
(d) State request for determination—dispute resolution	(1)	1	2	30	1	* 19.58	** 20
(e) State computation of reimbursement due form SSA using paper Form SSA-L8125–F6	38	1	38	30	4	* 19.58	** 78
(f) State notification to SSA of deceased claimant	20	2	40	15	10	* 19.58	** 196
(g) State reviewing/signing of IAR Agreement	38	1	38	[2] 12	456	* 19.58	** 8,928

[1] Average of about 2 States per year.
[2] Hours.

Modality of completion	Number of respondents (States)	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
(h) Maintenance of authorization forms	38	3,364	[3] 127,832	3	6,392	* 21.09	** 134,807
(i) Maintenance of accounting forms and notices	38	1,346	51,148	3	2,557	* 21.09	** 53,927

[3] Includes both denied and approved SSI claims.

Modality of completion	Number of respondents (States)	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
(j) Written notice from State to recipient regarding amount of payment	38	2668	101,384	7	11,828	* 19.58	** 231,592

Modality of completion	Number of respondents (States)	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
(k) Retrieve and consolidate authorization and accounting forms	12	1	12	3	36	* 21.09	** 759
(l) Participate in periodic review	12	1	12	16	192	* 21.09	** 4,049
(m) Correct administrative and accounting discrepancies	6	1	6	4	24	* 21.09	** 506

Modality of completion	Number of respondents (States)	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
Total	38		408,353		32,155		** 643,487

* We based this figure on average Social and Human Services Assistants (*https://www.bls.gov/oes/current/oes211093.htm*), and Information and Records Clerks (*https://www.bls.gov/oes/current/oes434199.htm*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

6. Appeal of Determination for Help with Medicare Prescription Drug Plan Costs—0960–0695. Public Law 108–173, the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA), established the Medicare Part D program for voluntary prescription drug coverage for certain low-income individuals. The MMA stipulates the provision of subsidies for individuals who are eligible for the program and who meet eligibility criteria for help with premium, deductible, and co-payment costs. SSA uses Form SSA–1021, Appeal of Determination for Help With Medicare Prescription Drug Plan Costs, to obtain information from individuals who appeal SSA's decisions regarding eligibility or continuing eligibility for a Medicare Part D subsidy. The respondents are Medicare beneficiaries, or proper applicants acting on behalf of a Medicare beneficiary, who do not agree with the outcome of an SSA subsidy eligibility determination, and are filing an appeal.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–1021 (Paper version)	2,872	1	10	479	* $46.28	0	*** $22,168
SSA–1021 (Intranet version: MAPS)	9,691	1	10	1,615	* 46.28	** 24	*** 254,123
Totals	12,563			2,094			*** 276,291

* We based this figure on average U.S. worker's hourly wages (*https://www.bls.gov/oes/current/oes_nat.htm*); State and local government worker's salaries (*https://www.bls.gov/oes/current/naics4_999300.htm*); and attorney representative payee wages (*https://www.bls.gov/oes/current/oes231011.htm*), as reported by Bureau of Labor Statistics data.

** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

7. Request for Medical Treatment in an SSA Employee Health Facility: Patient Self-Administered or Staff Administered Care—0960–0772. SSA operates onsite Employee Health Clinics (EHC) in eight different States. These clinics provide health care for all SSA employees including treatments of personal medical conditions when authorized through a physician. Form SSA–5072 is the employee's personal physician's order form. The information we collect on Form SSA–5072 gives the EHC nurses the guidance they need to perform certain medical procedures and to administer prescription medications such as allergy immunotherapy. In addition, the information allows the SSA medical officer to determine whether the nurses can administer treatment safely and appropriately in the SSA EHCs. Respondents are physicians of SSA employees who need to have medical treatment in an SSA EHC.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents (states)	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden hours (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA–5072 Annually	25	1	25	5	2	* $96.85	** $194
SSA–5072 Bi-Annually	75	2	150	5	13	* 96.85	** 1,259
Totals	100				15		** 1,453

* We based this figure on average physician's hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes291216.htm*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

8. Medicare Income-Related Monthly Adjustment Amount—Life-Changing Event Form—0960–0784. Federally-mandated reductions in the Federal Medicare Part B and prescription drug coverage subsidies result in selected Medicare recipients paying higher premiums with income above a specific threshold. The amount of the premium subsidy reduction is an income-related monthly adjustment amount (IRMAA). The Internal Revenue Service transmits income tax return data to SSA for SSA to determine the IRMAA. SSA uses the Form SSA–44 to determine if a recipient qualifies for a reduction in the IRMAA. If affected Medicare recipients believe SSA should use more recent tax data because of a life-changing event that significantly reduces their income, they can report these changes to SSA and ask for a new initial determination of their IRMAA. The respondents are Medicare Part B and prescription drug coverage Retirement Insurance recipients and enrollees with modified adjusted gross income over a high-income threshold who experience one of eight significant life-changing events.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of esponse	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
Personal Interview (SSA field office)	178,840	1	30	89,420	* $25.72	** 24	*** $4,139,788
SSA–44	76,645	1	45	57,484	* 25.72	0	*** 1,478,488
Totals	255,485			146,904			*** 5,618,276

* We based this figure on average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

Dated: September 22, 2020.

Naomi Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2020–21180 Filed 9–24–20; 8:45 am]

BILLING CODE 4191–02–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 303 (Sub-No. 56X)]

Wisconsin Central Ltd.—Abandonment Exemption—in Kaukauna, Outagamie County, Wis.

Wisconsin Central Ltd. (WCL) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon an approximately 0.30-mile rail line between milepost 114.0 and milepost 113.7, at Kaukauna, Outagamie County,

Wis. (the Line).[1] The Line traverses U.S. Postal Service Zip Code 54130.

WCL has certified that: (1) It has handled no local traffic over the Line for at least two years; (2) there will be no effect on overhead traffic (of which none exists); (3) no formal complaint filed by a user of rail service (or by a state or local government entity acting on behalf of such user) regarding WCL's cessation of service over the Line is either pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the past two years; and (4) the requirements at 49 CFR 1105.7 and 1105.8 (notice of environmental and historic report), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

Any employee of WCL adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Pursuant to 49 CFR 1152.50(d)(3), an exemption will be effective 30 days after publication of the notice in the **Federal Register**. However, simultaneous with the notice, WCL filed a request to expedite the effective date. The Board will establish the effective date of the exemption in a separate decision addressing WCL's request.

Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an offer of financial assistance (OFA) under 49 CFR 1152.27(c)(2),[3] and interim trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 5, 2020.[4] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 15, 2020, with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to WCL's representative, Thomas J. Healey, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void ab initio.

WCL has filed a combined environmental and historic report that addresses the potential effects, if any, of the abandonment on the environment and historic resources. OEA will issue a Draft Environmental Assessment (Draft EA) by September 29, 2020. The Draft EA will be available to interested persons on the Board's website, by writing to OEA, or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the Draft EA becomes available to the public.

Environmental, historic preservation, public use, or interim trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), WCL shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by WCL's filing of a notice of consummation by September 25, 2021, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available at *www.stb.gov.*

Decided: September 22, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Eden Besera,

Clearance Clerk.

[FR Doc. 2020–21217 Filed 9–24–20; 8:45 am]

BILLING CODE 4915–01–P

[1] WCL states that the Line was part of a longer rail line between milepost 114.0 and milepost 112.9 for which WCL obtained abandonment authority in 2013. *See Wis. Cent. Ltd.—Aban. Exemption—in Kaukauna, Outagamie Cnty., Wis.,* AB 303 (Sub No. 40X) (Mar. 20, 2013). According to WCL, it sold the segment of the longer rail line between milepost 113.7 and milepost 112.9 to the City of Kaukauna (City) through the Wisconsin Department of Transportation pursuant to a notice of interim trail use or abandonment under the National Trails System Act (Trails Act), and the abandonment authority for the Line (which was not included in the sale) subsequently lapsed. WCL states that, because the City now seeks to acquire the Line pursuant to the Trails Act to connect existing trail systems, WCL once again seeks an abandonment exemption.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Given the request for an expedited effective date, any request for a stay should be filed as soon as possible.

[3] Persons interested in submitting an OFA must first file a formal expression of intent to file an offer, indicating the type of financial assistance they wish to provide (*i.e.,* subsidy or purchase) and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(2)(i).

[4] Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

SURFACE TRANSPORTATION BOARD

Release of Waybill Data

The Surface Transportation Board has received a request from N.C. State University (WB20–46—9/9/20) for permission to use select data from the Board's 1990–2018 Unmasked Carload Waybill Samples. A copy of this request may be obtained from the Board's website under docket no. WB20–46.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Alexander Dusenberry, (202) 245–0319.

Aretha Laws-Byrum,

Clearance Clerk.

[FR Doc. 2020–21161 Filed 9–24–20; 8:45 am]

BILLING CODE 4915–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Grandfathering (GF) Registration Notice

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Grandfathering Registration for projects by the Susquehanna River Basin Commission during the period set forth in DATES.

DATES: August 1–31, 2020.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries May be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists GF Registration for projects, described below, pursuant to 18 CFR 806, Subpart E for the time period specified above:

Grandfathering Registration Under 18 CFR Part 806, Subpart E

1. Borough of Everett Area Municipal Authority—Public Water Supply System, GF Certificate No. GF–202008107, Everett Borough and West Providence Township, Bedford County,

Pa.; Tatesville Tunnels, Well 1, and Well 2; Issue Date: August 12, 2020.

2. Carlisle Country Club, GF Certificate No. GF–202008108, Middlesex Township, Cumberland County, Pa.; Letort Spring Run and consumptive use; Issue Date: August 12, 2020.

3. Kerry, Inc.—Kerry Bio-Science, GF Certificate No. GF–202008109, Town of Norwich, Chenango County, N.Y.; Well 1, Well 2, and consumptive use; Issue Date: August 19, 2020.

4. Town of Owego—Water District #4, GF Certificate No. GF–202008110, Town of Owego, Tioga County, N.Y.; Well 1, Well 2, and Well 3; Issue Date: August 27, 2020.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: September 22, 2020.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2020–21191 Filed 9–24–20; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in ''DATES.''

DATES: August 1–31, 2020.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries May be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22 (f)(13) and 18 CFR 806.22 (f) for the time period specified above:

Water Source Approval—Issued Under 18 CFR 806.22(f)

1. Chesapeake Appalachia, L.L.C.; Pad ID: Slumber Valley; ABR–201008015.R2; Meshoppen Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 3, 2020.

2. XTO Energy, Inc.; Pad ID: Tome 8522H; ABR–20100556.R2; Moreland Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 4, 2020.

3. XTO Energy, Inc.; Pad ID: Moser 8521H; ABR–20100641.R2; Franklin Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 4, 2020.

4. BKV Operating, LLC; Pad ID: Sickler 5H; ABR–20100679.R2; Washington Township, Wyoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: August 6, 2020.

5. Chesapeake Appalachia, L.L.C.; Pad ID: Lattimer; ABR–201008038.R2; Litchfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.50000 mgd; Approval Date: August 6, 2020.

6. Inflection Energy (PA), LLC.; Pad ID: Strouse Well Pad; ABR–201505002.R1; Hepburn Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 6, 2020.

7. XTO Energy, Inc.; Pad ID: Brown 8519H; ABR–20100604.R2; Moreland Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 6, 2020.

8. Chesapeake Appalachia, L.L.C.; Pad ID: Dave; ABR–201008107.R2; Albany Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 18, 2020.

9. Tilden Marcellus, LLC; Pad ID: Simonetti 817 (rev); ABR–20100545.R2; Gaines Township, Tioga County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: August 18, 2020.

10. Tilden Marcellus, LLC; Pad ID: Coon Hollow 904; ABR–20100560.R2; West Branch Township, Potter County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: August 18, 2020.

11. Range Resources—Appalachia, LLC; Pad ID: Harman, Lewis Unit #1H; ABR–20100554.R2; Moreland Township, Lycoming County, Pa.; Consumptive Use of Up to 0.1000 mgd; Approval Date: August 18, 2020.

12. ARD Operating, LLC; Pad ID: COP Tr 728 Pad A; ABR–20100631.R2; Watson Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 18, 2020.

13. ARD Operating, LLC; Pad ID: David C Duncan Pad A; ABR–20100635.R2; Cascade Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 18, 2020.

14. ARD Operating, LLC; Pad ID: COP Tr 289 C; ABR–20100636.R2; McHenry Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 19, 2020.

15. Chief Oil & Gas, LLC.; Pad ID: Bedford; ABR–201008139.R2; Elkland Township, Sullivan County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 21, 2020.

16. Chief Oil & Gas, LLC.; Pad ID: Hottenstein; ABR–201008148.R2; Forks Township, Sullivan County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 26, 2020.

17. Chief Oil & Gas, LLC.; Pad ID: Benspond; ABR–201008146.R2; Elkland Township, Sullivan County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 26, 2020.

18. Chesapeake Appalachia, L.L.C.; Pad ID: Fremar; ABR–201008147.R2; Fox Township, Sullivan County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 26, 2020.

19. Chesapeake Appalachia, L.L.C.; Pad ID: Roundtop; ABR–201008067.R2; Colley Township, Sullivan County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 26, 2020.

20. Repsol Oil & Gas USA, LLC; Pad ID: ROY (03 046) B; ABR–20100629.R2; Wells Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: August 26, 2020.

21. Repsol Oil & Gas USA, LLC; Pad ID: LYON (01 078) S; ABR–20100696.R2; Troy Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: August 26, 2020.

22. Tilden Marcellus, LLC; Pad ID: Pierson 810; ABR–20100633.R2; Gaines Township, Tioga County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: August 26, 2020.

23. Range Resources—Appalachia, LLC; Pad ID: Shohocken Hunt Club Unit #1H—#6H; ABR–20100646.R2; Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: August 26, 2020.

24. Repsol Oil & Gas USA, LLC; Pad ID: ROY (03 040) B; ABR–20100650.R2; Wells Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: August 28, 2020.

25. Repsol Oil & Gas USA, LLC; Pad ID: SCHUCKER (03 006) A; ABR–20100654.R2; Columbia Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: August 28, 2020.

26. Repsol Oil & Gas USA, LLC; Pad ID: FEUSNER (03 053) J; ABR–201006100.R2; Columbia Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: August 28, 2020.

27. ARD Operating, LLC.; Pad ID: Larry's Creek F&G Pad D; ABR–

20100684.R2; Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 28, 2020.

28. EXCO Resources (PA), LLC; Pad ID: Confer (Pad 32); ABR–20100699.R2; Burnside Township, Centre County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: August 28, 2020.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: September 22, 2020.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2020–21189 Filed 9–24–20; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Actions Taken at September 18, 2020, Meeting

AGENCY: Susquehanna River Basin Commission

ACTION: Notice.

SUMMARY: As part of its regular business meeting held on September 18, 2020, from Harrisburg, Pennsylvania, the Commission approved the applications of certain water resources projects, and took additional actions, as set forth in the Supplementary Information below.

DATES: September 18, 2020.

ADDRESSES: Susquehanna River Basin Commission, 4423 N. Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary, telephone: (717) 238–0423, ext. 1312, fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address. See also Commission website at *www.srbc.net.*

SUPPLEMENTARY INFORMATION: In addition to the actions taken on projects identified in the summary above and the listings below, the following items were also presented or acted upon at the business meeting: (1) tabled action on a general permit; (2) rescission of Policy No. 98–03; (3) ratification of grants and agreements; (4) modifications to the Commission expense budget for fiscal year 2021; (5) adoption of the proposed expense budget for fiscal year 2022; (6) adoption of resolution regarding member allocation; (7) adoption of an updated Water Resources Program; (8) adoption of amendments to the Comprehensive Plan; (9) approval of two emergency certificate extensions; (10) approval of a request for waiver of 6-month renewal deadline; and (11) election of officers for FY2021.

Project Applications Approved

1. Project Sponsor and Facility: Bloomfield Borough Water Authority, Centre Township, Perry County, Pa. Application for renewal of groundwater withdrawal of up to 0.056 mgd (30-day average) from Well 1 (Docket No. 19901103).

2. Project Sponsor: Byler Golf Management, Inc. Project Facility: Iron Valley Golf Club, Cornwall Borough, Lebanon County, Pa. Modification to change consumptive use mitigation method (Docket No. 19981206).

3. Project Sponsor and Facility: Cabot Oil & Gas Corporation, Eaton Township, Wyoming County, Pa. Application for renewal of groundwater withdrawal of up to 0.864 mgd (30-day average) from the Hatchery Wellfield (Wells 1, 2, and 3) (Docket No. 20160610).

4. Project Sponsor and Facility: Cabot Oil & Gas Corporation (Susquehanna River), Great Bend Township, Susquehanna County, Pa. Application for renewal of surface water withdrawal of up to 2.000 mgd (peak day) (Docket No. 20160902).

5. Project Sponsor and Facility: Chesapeake Appalachia, L.L.C. (Susquehanna River), Wilmot Township, Bradford County, Pa. Application for surface water withdrawal of up to 3.000 mgd (peak day).

6. Project Sponsor and Facility: Chesapeake Appalachia, L.L.C. (Susquehanna River), Windham Township, Wyoming County, Pa. Application for surface water withdrawal of up to 3.000 mgd (peak day).

7. Project Sponsor and Facility: Chesapeake Appalachia, L.L.C. (Wyalusing Creek), Wyalusing Township, Bradford County, Pa. Application for surface water withdrawal of up to 3.000 mgd (peak day).

8. Project Sponsor and Facility: Green Leaf Water LLC (Lycoming Creek), Lewis Township, Lycoming County, Pa. Application for renewal of surface water withdrawal of up to 0.900 mgd (peak day) (Docket No. 20160601).

9. Project Sponsor and Facility: Lake Meade Municipal Authority, Reading Township, Adams County, Pa. Application for groundwater withdrawal of up to 0.252 mgd (30-day average) from Well 3.

10. Project Sponsor and Facility: Meadia Heights Golf Club LLC, West Lampeter Township, Lancaster County, Pa. Modification to change consumptive use mitigation method (Docket No. 20000204).

11. Project Sponsor and Facility: Montgomery Water Authority, Clinton Township, Lycoming County, Pa. Application for renewal of groundwater withdrawal of up to 0.267 mgd (30-day average) from Well 1 (Docket No. 19881102).

12. Project Sponsor: Pixelle Specialty Solutions LLC. Project Facility: Spring Grove Mill (Codorus Creek and Unnamed Tributary to Codorus Creek), Spring Grove Borough, Jackson Township, and North Codorus Township, York County, Pa. Applications for existing surface water withdrawals (peak day) of up to 19.800 mgd (New Filter Plant Intake), 6.000 mgd (Old Filter Plant Intake), and 0.750 mgd (Kessler Pond Intake); consumptive use of up to 3.650 mgd (peak day); and existing groundwater withdrawals (30-day average) of up to 0.039 mgd (Well 1) and 0.021 mgd (Well 2). Proposed action to include combining all existing and new approvals into a single approval document with a single approval term.

13. Project Sponsor and Facility: Repsol Oil & Gas USA, LLC (Susquehanna River), Sheshequin Township, Bradford County, Pa. Application for renewal of surface water withdrawal of up to 1.500 mgd (peak day) (Docket No. 20160908).

14. Project Sponsor and Facility: S.T.L. Resources, LLC (West Branch Susquehanna River), Grugan Township, Clinton County, Pa. Application for surface water withdrawal of up to 3.450 mgd (peak day).

15. Project Sponsor and Facility: Shippensburg Borough Authority, Southampton Township, Cumberland County, Pa. Application for renewal of groundwater withdrawal of up to 1.280 mgd (30-day average) from Well 1 (Docket No. 19900713).

Commission Initiated Project Approval Modifications

16. Project Sponsor and Facility: The Municipal Authority of the Borough of Berlin, Allegheny Township, Somerset County, Pa. Conforming the grandfathering amount with the forthcoming determination for a groundwater withdrawal up to 0.030 mgd (30-day average) from Well 6 (Docket No. 19980702).

17. Project Sponsor and Facility: Iron Masters Country Club, Bloomfield Township, Bedford County, Pa. Conforming the grandfathering amount with the forthcoming determination for groundwater withdrawals up to 0.051 mgd (30-day average) from Well 10 and

up to 0.061 mgd (30-day average) from Well 14 (Docket No. 20020813).

18. Project Sponsor and Facility: Sinking Valley Country Club, Tyrone Township, Blair County, Pa. Conforming the grandfathering amount with the forthcoming determination for groundwater withdrawals up to 0.081 mgd (30-day average) from the 14th Fairway Well and up to 0.099 mgd (30-day average) from the 8th Tee Well (Docket No. 20020811).

Project Application Tabled

19. Project Sponsor: Togg Mountain, LLC. Project Facility: Toggenburg Mountain Winter Sports Center (West Branch Tioughnioga Creek), Town of Fabius, Onondaga County, N.Y. Modification to increase consumptive use (peak day) by an additional 0.505 mgd, for a total consumptive use of up to 0.990 mgd, and increase surface water withdrawal (peak day) by an additional 2.300 mgd, for a total surface water withdrawal of up to 4.500 mgd (Docket No. 20180911).

Authority: Pub.L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2020–21190 Filed 9–24–20; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on the determination by the Secretary of State, in consultation with the heads of relevant agencies, that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Assistant Director for Licensing, tel.: 202–622–2480.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treas.gov/ofac*).

Notice of OFAC Actions

The Secretary of State, in consultation with the Secretary of the Treasury and heads of other relevant agencies, has selected certain sanctions to be imposed upon the persons listed below, pursuant to which the property and interests in property subject to U.S. jurisdiction of the persons listed below are blocked. The Secretary of State's determination is effective September 21, 2020.

Individuals

1. GHADIRIAN, Hamid Reza, Iran; DOB 23 Sep 1978; POB Aran o Bigdol, Iran; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; National ID No. 6199152344 (Iran) (individual) [NPWMD] [IFSR].

Designated pursuant to section 1(a)(ii) of Executive Order 13382 of June 28, 2005, 70 FR 38567, 3 CFR, 2006 Comp., p. 170 (E.O. 13382) for having engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by an person or foreign county of proliferation concern.

2. SHIVA'I, Ahmad Asghari (a.k.a. SHIVAEI, Ahmed Asghari), Iran; DOB 03 Mar 1973; POB Tehran, Iran; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; National ID No. 55690718 (Iran) (individual) [NPWMD] [IFSR].

Designated pursuant to section 1(a)(ii) of E.O. 13382 for having engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by an person or foreign county of proliferation concern.

Dated: September 21, 2020.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2020–21153 Filed 9–24–20; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for date sanctions become effective.

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Assistant Director for Licensing, tel.: 202–622–2480.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treas.gov/ofac*).

Notice of OFAC Actions

On September 3, 2020, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following person are blocked under the relevant sanctions authorities listed below.

Entities

1. ZAGROS PETROCHEMICAL (a.k.a. ''ZPC''), North Sheikh Bahaie Avenue Sheida Alley, Khoddami Street, Vanak Square, Tehran, Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Chamber of Commerce Number 2869 (Iran); Registration Number 148344 (Iran) [IRAN–EO13846] (Linked To: TRILIANCE PETROCHEMICAL CO. LTD.).

Designated pursuant to section 1(a)(iii)(B) of Executive Order 13846 of August 6, 2018, 83 FR 38939, 3 CFR, 2019 Comp., p. 854 (E.O. 13846), for, on or after November 5, 2018, having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, TRILIANCE PETROCHEMICAL CO. LTD.

2. TRIO ENERGY DMCC, Jumeirah Lake Towers Unit 2903, SABA 1 Tower, Plot JLT–

PH1–E3A, Dubai, United Arab Emirates; License DMCC564257 (United Arab Emirates) [IRAN–EO13846] (Linked To: TRILIANCE PETROCHEMICAL CO. LTD.).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13846, for, on or after November 5, 2018, having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, TRILIANCE PETROCHEMICAL CO. LTD.

3. JINGHO TECHNOLOGY CO. LIMITED, Hong Kong; Business Registration Number 2088397 (Hong Kong) [IRAN–EO13846] (Linked To: TRILIANCE PETROCHEMICAL CO. LTD.).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13846, for, on or after November 5, 2018, having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, TRILIANCE PETROCHEMICAL CO. LTD.

4. DYNAPEX ENERGY LIMITED (f.k.a. SINGH DAILY CULTURE PRESS LIMITED; f.k.a. SINGH SCIENCE AND TECHNOLOGY DEVELOPMENT CO., LIMITED), Flat/Rm 1105 11/F, Hua Qin International Building, 340 Queen's Road Central, Hong Kong; Business Registration Number 2066820 (Hong Kong) [IRAN–EO13846] (Linked To: TRILIANCE PETROCHEMICAL CO. LTD.).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13846, for, on or after November 5, 2018, having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, TRILIANCE PETROCHEMICAL CO. LTD.

5. PETROTECH FZE, Office Number E, 16f 35, LOB P2 E, Hamriyah Free Zone, Sharjah, United Arab Emirates [IRAN–EO13846] (Linked To: TRILIANCE PETROCHEMICAL CO. LTD.).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13846, for, on or after November 5, 2018, having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, TRILIANCE PETROCHEMICAL CO. LTD.

6. DINRIN LIMITED, Hong Kong; Business Registration Number 2849056 (Hong Kong) [IRAN–EO13846] (Linked To: ZAGROS PETROCHEMICAL).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13846, for, on or after November 5, 2018, having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ZAGROS PETROCHEMICAL.

Dated: September 3, 2020.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2020–19892 Filed 9–24–20; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The 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 applicable date(s).

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; or Assistant Director for Regulatory Affairs, tel.: 202–622–4855.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

On September 21, 2020, OFAC determined that determined that the property and interests in property subject to U.S. jurisdiction of the following person are blocked under the relevant sanctions authorities listed below.

Individuals

1. DEZFULIAN, Mohammed Reza (a.k.a. DEZFULIAN, Mohammad Reza), Iran; POB Tehran, Iran; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; National ID No. 0061496766 (Iran) (individual) [NPWMD] [IFSR] (Linked To: MAMMUT DIESEL).

Designated pursuant to section 1(a)(iv) of Executive Order 13382 of June 28, 2005, 70 FR 38567, 3 CFR, 2006 Comp., p. 170 (E.O. 13382) for acting or purporting to act for or on behalf of, directly or indirectly, MAMMUT DIESEL, a person whose property and interests in property are blocked pursuant to E.O. 13382.

ESMA'ILPUR, Asghar, Iran; DOB 07 Mar 1973; POB Tehran, Iran; citizen Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; National ID No. 0059243228 (Iran) (individual) [NPWMD] [IFSR] (Linked To: AEROSPACE INDUSTRIES ORGANIZATION).

Designated pursuant to section 1(a)(iv) of E.O. 13382 for acting or purporting to act for or on behalf of, directly or indirectly, AEROSPACE INDUSTRIES ORGANIZATION, a person whose property and interests in property are blocked pursuant to E.O. 13382.

2. FERDOWS, Behzad Daniel, Dubai, United Arab Emirates; DOB 14 Mar 1969; POB Tehran, Iran; nationality Iran; alt. nationality Germany; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; Passport C4KNRMNCF (Germany) expires 18 Mar 2018; National ID No. 0037251910 (Iran) (individual) [NPWMD] [IFSR] (Linked To: MAMMUT INDUSTRIAL GROUP P.J.S).

Designated pursuant to section 1(a)(iv) of E.O. 13382 for acting or purporting to act for or on behalf of, directly or indirectly, MAMMUT INDUSTRIAL GROUP P.J.S, a person whose property and interests in property are blocked pursuant to E.O. 13382.

3. FERDOWS, Mehrzad Manuel, Iran; DOB 23 Jul 1970; POB Tehran, Iran; nationality Iran; alt. nationality Germany; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; Passport C4JRGPJ7H (Germany) expires 11 Mar 2019; alt. Passport J32379304 (Iran); National ID No. 0055124240 (Iran) (individual) [NPWMD] [IFSR] (Linked To: MAMMUT INDUSTRIAL GROUP P.J.S).

Designated pursuant to section 1(a)(iv) of E.O. 13382 for acting or purporting to act for or on behalf of, directly or indirectly, MAMMUT INDUSTRIAL GROUP P.J.S, a person whose property and interests in property are blocked pursuant to E.O. 13382.

4. GHANNADI MARAGHEH, Mohammad (a.k.a. GHANNADI, Mohammad; a.k.a. GHANNADI–MARAGHEH, Mohammad; a.k.a. QANNADI, Mohammad), Tehran, Iran; DOB 13 Oct 1952; POB Maragheh, Iran; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male (individual) [NPWMD] [IFSR] (Linked To: ATOMIC ENERGY ORGANIZATION OF IRAN).

Designated pursuant to section 1(a)(iv) of E.O. 13382 for acting or purporting to act for or on behalf of, directly or indirectly, ATOMIC ENERGY ORGANIZATION OF IRAN, a person whose property and interests in property are blocked pursuant to E.O. 13382.

5. GHOLAMI, Mohammad, Iran; DOB 26 Dec 1973; POB Bojnord, Iran; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; National ID No. 5249398618 (Iran) (individual) [NPWMD] [IFSR] (Linked To: SHAHID HEMMAT INDUSTRIAL GROUP).

Designated pursuant to section 1(a)(iv) of E.O. 13382 for acting or purporting to act for or on behalf of, directly or indirectly, SHAHID HEMMAT INDUSTRIAL GROUP, a person whose property and interests in property are blocked pursuant to E.O. 13382.

6. KAMALVANDI, Behrouz, Iran; DOB 1955; alt. DOB 1956; POB Tehran, Iran; nationality Iran; Additional Sanctions

Information—Subject to Secondary Sanctions; Gender Male (individual) [NPWMD] [IFSR] (Linked To: ATOMIC ENERGY ORGANIZATION OF IRAN).

Designated pursuant to section 1(a)(iv) of E.O. 13382 for acting or purporting to act for or on behalf of, directly or indirectly, ATOMIC ENERGY ORGANIZATION OF IRAN, a person whose property and interests in property are blocked pursuant to E.O. 13382.

7. KARIMI SABET, Javad (a.k.a. KARIMI–SABET, Javad), Iran; DOB 01 Jan 1973; POB Iran; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male (individual) [NPWMD] [IFSR] (Linked To: ATOMIC ENERGY ORGANIZATION OF IRAN).

Designated pursuant to section 1(a)(iv) of E.O. 13382 for acting or purporting to act for or on behalf of, directly or indirectly, ATOMIC ENERGY ORGANIZATION OF IRAN, a person whose property and interests in property are blocked pursuant to E.O. 13382.

8. RAHIMIAN, Pezhman (a.k.a. RAHIMIAN, Pejman), Iran; POB Esfahan, Esfahan Province, Iran; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; National ID No. 1285917855 (Iran) (individual) [NPWMD] [IFSR] (Linked To: ATOMIC ENERGY ORGANIZATION OF IRAN).

Designated pursuant to section 1(a)(iv) of E.O. 13382 for acting or purporting to act for or on behalf of, directly or indirectly, ATOMIC ENERGY ORGANIZATION OF IRAN, a person whose property and interests in property are blocked pursuant to E.O. 13382.

Entities

9. ADVANCED TECHNOLOGIES COMPANY OF IRAN (f.k.a. GHANI SAZI ENRICHMENT; a.k.a. IRAN ADVANCED TECHNOLOGIES COMPANY; f.k.a. IRAN URANIUM ENRICHMENT COMPANY; f.k.a. IRANIAN ENRICHMENT COMPANY; a.k.a. ''ADVANCED TECHNOLOGIES''; a.k.a. ''ADVANCED TECHNOLOGIES COMPANY''; a.k.a. ''ADVANCED TECHNOLOGIES HOLDING COMPANY''; a.k.a. ''IATC''), Tehran, Iran; Additional Sanctions Information—Subject to Secondary Sanctions; National ID No. 10103378982 (Iran); Registration Number 299780 (Iran) [IRAN] [NPWMD] [IFSR] (Linked To: ATOMIC ENERGY ORGANIZATION OF IRAN).

Designated pursuant to section 1(a)(iv) of E.O. 13382 for being owned or controlled by ATOMIC ENERGY ORGANIZATION OF IRAN, a person whose property and interests in property are blocked pursuant to E.O. 13382.

10. MAMMUT DIESEL (a.k.a. MAMMUT DIESEL COMPANY), No. 158, 14th km, Makhsoos Road, Tehran 37515–335, Iran; website *www.mammutdiesel.com;* Additional Sanctions Information—Subject to Secondary Sanctions; National ID No. 10103952900 (Iran); Registration Number 1910 (Iran) [NPWMD] [IFSR] (Linked To: MAMMUT INDUSTRIAL GROUP P.J.S).

Designated pursuant to section 1(a)(iv) of E.O. 13382 for being owned or controlled by MAMMUT INDUSTRIAL GROUP P.J.S, a person whose property and interests in property are blocked pursuant to E.O. 13382.

11. MAMMUT INDUSTRIAL GROUP P.J.S (a.k.a. MAMMUT INDUSTRIAL GROUP; a.k.a. MAMMUT TEHRAN INDUSTRIAL GROUP; a.k.a. ''MAMMUT INDUSTRIES''), Khaled Eslamboli Street, Seventh Street No. 7, Tehran 15875–7974, Iran; No. 65 Lofti Street, Tehran, Iran; Vozara Str, 7th Str No. 7, Tehran, Iran; website *www.mammutco.com;* Additional Sanctions Information—Subject to Secondary Sanctions; Registration Number 3167 (Iran) [NPWMD] [IFSR] (Linked To: SHAHID HEMMAT INDUSTRIAL GROUP).

Designated pursuant to section 1(a)(iv) of E.O. 13382 for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, SHAHID HEMMAT INDUSTRIAL GROUP, a person whose property and interests in property are blocked pursuant to E.O. 13382.

12. MESBAH ENERGY COMPANY (a.k.a. MESBAH ENERGY; a.k.a. MESBAH ENERGY CO.), Science & Technology Park, Shahid Ghoddousi Blvd., Arak, Iran; Tehran, Iran; website *www.isotope.ir;* Additional Sanctions Information—Subject to Secondary Sanctions [IRAN] [NPWMD] [IFSR] (Linked To: ATOMIC ENERGY ORGANIZATION OF IRAN).

Designated pursuant to section 1(a)(iv) of E.O. 13382 for being owned or controlled by ATOMIC ENERGY ORGANIZATION OF IRAN, a person whose property and interests in property are blocked pursuant to E.O. 13382.

13. NUCLEAR SCIENCE AND TECHNOLOGY RESEARCH INSTITUTE (a.k.a. NUCLEAR SCIENCE AND TECHNOLOGY RESEARCH CENTER; a.k.a. NUCLEAR SCIENCES AND TECHNOLOGIES RESEARCH INSTITUTE; a.k.a. RESEARCH INSTITUTE OF NUCLEAR SCIENCE AND TECHNOLOGY; a.k.a. ''NSTRI''), North Kargar Street, Tehran, Iran; North Kargar Ave., Tehran, Iran; website *https://nstri.aeoi.org.ir/;* alt. Website *https://nstri.ir/;* Additional Sanctions Information—Subject to Secondary Sanctions [IRAN] [NPWMD] [IFSR] (Linked To: ATOMIC ENERGY ORGANIZATION OF IRAN).

Designated pursuant to section 1(a)(iv) of E.O. 13382 for being owned or controlled by ATOMIC ENERGY ORGANIZATION OF IRAN, a person whose property and interests in property are blocked pursuant to E.O. 13382.

Dated: September 21, 2020.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2020–21155 Filed 9–24–20; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (OFAC) is updating the identifying information on its list of Specially Designated Nationals and Blocked Persons (SDN List) for two persons whose property and interests in property are blocked pursuant to Executive Order 13382.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

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; or Assistant Director for Regulatory Affairs, tel.: 202–622–4855.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On September 21, 2020, OFAC published the following revised information for the following persons on OFAC's SDN List whose property and interests in property are blocked pursuant to Executive Order 13382, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters'':

Individual

NOOSHIN, Seyed Mirahmad (a.k.a. NOOSHIN, Seid Mir Ahmad; a.k.a. NUSHIN, Sayyed Mir Ahmad), Iran; DOB 11 Jan 1966; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; Passport G9311208 (Iran); Director, Aerospace Industries Organization (individual) [NPWMD] [IFSR] (Linked To: SHAHID HEMMAT INDUSTRIAL GROUP).

Entity

SHAHID MOVAHED INDUSTRIES (a.k.a. SHAHID HAJ ALI MOVAHED RESEARCH CENTER; a.k.a. SHAHID MOVAHED INDUSTRY; a.k.a. SHIG DEPARTMENT 7500), c/o SHIG, Damavand Tehran Highway, P.O. Box 16595–159, Tehran, Iran; Additional Sanctions Information—Subject to Secondary Sanctions [NPWMD] [IFSR] (Linked To: SHAHID HEMMAT INDUSTRIAL GROUP).

Dated: September 21, 2020.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2020–21154 Filed 9–24–20; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8851

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 8851, Summary of Archer MSAs.

DATES: Written comments should be received on or before November 24, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Paul Adams, Internal Revenue Service, room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Sara Covington, (737)800–6149 or at Internal Revenue Service, Room 66526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Summary of Archer MSAs.

OMB Number: 1545–1743.

Form Number: 8851.

Abstract: Internal Revenue Code section 220(j)(4) requires trustees, who establish medical savings accounts, to report the following: (a) Number of medical savings accounts established before July 1 of the taxable year (beginning January 1, 2001), (b) name and taxpayer identification number of each account holder and, (c) number of accounts which are accounts of previously uninsured individuals. Form 8851 is used for this purpose.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 400,000.

Estimated Time per Respondent: 3 hours, 51 minutes.

Estimated Total Annual Burden Hours: 1,540,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 17, 2020.

Sara L Covington,

IRS Tax Analyst.

[FR Doc. 2020–21169 Filed 9–24–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning generic clearance for the collection of qualitative feedback on agency service delivery.

DATES: Written comments should be received on or before November 24, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Number: 1545–2208.

Abstract: Executive Order 12862 directs Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. In order to work continuously to ensure that our programs are effective and meet our customers' needs, The Internal Revenue Service (hereafter ''the Agency'') seeks to obtain OMB approval of a generic clearance to collect qualitative feedback on our 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.

Current Actions: The IRS will be conducting different opinion surveys, focus group sessions, think-aloud interviews, and usability studies regarding cognitive research surrounding forms submission or IRS system/product development.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and businesses or other for-profit organizations.

Estimated Number of Respondents: 150,000.

Estimated Time Per Response: 6 minutes.

Estimated Total Annual Burden Hours: 15,000.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their

contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 21, 2020.

Chakinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2020–21168 Filed 9–24–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0002]

Agency Information Collection Activity Under OMB Review: Application for Veterans Pension and Income, Asset, and Employment Statement

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0002''.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, Enterprise Records Service (005R1B), Department of Veterans Affairs, 811 Vermont Avenue NW, Washington, DC 20420, (202) 421–1354 or email *danny.green2@va.gov.* Please refer to ''OMB Control No. 2900–0002'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 1502, 38 U.S.C. 1503 & 38 U.S.C. 5101(a).

Title: Application for Veterans Pension (VA Form 21P–527EZ) and Income, Asset, and Employment Statement (VA Form 21P–527).

OMB Control Number: 2900–0002.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21P–527EZ, is the prescribed form for claiming Veterans Pension under the Fully Developed Claim program. VA Form 21P–527 is used to gather the necessary information to determine a veteran's eligibility for Veterans Pension. Without this information, VA will not be able to determine a Veteran's eligibility to the benefit. A Veteran may also use this form to file a new Veterans Pension claim after VA has discontinued a previous pension award and the Veteran is requesting his or her benefits be reinstated. Without this information, VA will not be able to determine a Veteran's eligibility to the benefit.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 85 FR 114 on June 14, 2020, pages 35996 and 35997.

Affected Public: Individuals or Households.

Estimated Annual Burden: 56,250 hours.

Estimated Average Burden per Respondent: 33.75 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 100,000.

By direction of the Secretary.

Danny S. Green,

VA PRA Clearance Officer, Office of Quality, Performance and Risk (OQPR), Department of Veterans Affairs.

[FR Doc. 2020–21134 Filed 9–24–20; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0786]

Agency Information Collection Activity Under OMB Review: VR&E Longitudinal Study Survey

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veteran's Benefits Information, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0786.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, (202) 421–1354 or email *Danny.Green2@va.gov.* Please refer to ''OMB Control No. 2900–0786'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Public Law 112–56, Section 221–225.

Title: Department of Veterans Affairs (VA) VR&E Longitudinal Study Survey.

OMB Control Number: 2900–0786.

Type of Review: Extension of a currently approved collection.

Abstract: As required by Public Law 110–389 Section 334, VBA will continue to collect survey data on individuals who began participating in the VR&E program during fiscal years 2010, 2012, and 2014. VA will conduct a study of this data to determine the long-term positive outcomes of individuals participating in VBA's VR&E program. The purpose of this study is to monitor the effectiveness of VR&E program, so that we can find ways to improve the program and increase the support VA provide to Veterans daily. The data collected in this study is integral to VA submitting a congressionally-mandated annual report on the long-term outcomes of Veterans who participate in the VR&E program.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 85 FR 143, on July 24, 2020, page 44957.

Affected Public: Individuals.

Estimated Annual Burden: 2,695 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: Annual.

Estimated Number of Respondents: 8,084.

By direction of the Secretary.

Danny S. Green,

VA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2020–21218 Filed 9–24–20; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 85 Friday,

No. 187 September 25, 2020

Part II

Department of Homeland Security

8 CFR Parts 214, 248, et al.

Establishing a Fixed Time Period of Admission and an Extension of Stay Procedure for Nonimmigrant Academic Students, Exchange Visitors, and Representatives of Foreign Information Media; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 214, 248, and 274a.12

[DHS Docket No. ICEB–2019–0006]

RIN 1653–AA78

Establishing a Fixed Time Period of Admission and an Extension of Stay Procedure for Nonimmigrant Academic Students, Exchange Visitors, and Representatives of Foreign Information Media

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: Notice of proposed rulemaking.

SUMMARY: In fiscal year 2018, the Department of Homeland Security (DHS or the Department) admitted over 2 million foreign nationals into the United States in the F academic student, J exchange visitor, and I representatives of foreign information media nonimmigrant categories. This is a testament to the United States' exceptional academic institutions, cutting-edge technology, and environment that promotes the exchange of ideas, research, and mutual enrichment. Currently, aliens in the F, J, and I categories are admitted into the United States for the period of time that they are complying with the terms and conditions of their nonimmigrant category (''duration of status''), rather than an admission for a fixed time period. This duration of status framework generally lacks predetermined points in time for U.S. Citizenship and Immigration Services (USCIS) or U.S. Customs and Border Protection (CBP) immigration officers to directly evaluate whether F, J, and I nonimmigrants are maintaining their status and poses a challenge to the Department's ability to effectively monitor and oversee these categories of nonimmigrants. Specifically, because nonimmigrants admitted in the F, J, and I classifications generally do not currently begin to accrue unlawful presence until the day after there is a formal finding of a status violation by USCIS or an immigration judge, they are often are able to avoid accrual of unlawful presence for purposes of statutory inadmissibility grounds of unlawful presence, in part, because they do not file applications or petitions, such as extension of stay, that would result in a formal finding. The Department accordingly is concerned about the integrity of the programs and a potential for increased risk to national security. To address these issues, DHS proposes to amend its regulations by changing the admission period of F, J, and I aliens from duration of status to an admission for a fixed time period. Admitting individuals in the F, J, and I categories for a fixed period of time will require all F, J, and I nonimmigrants who wish to remain in the United States beyond their specifically authorized admission period to apply for an extension of stay directly with USCIS or to depart the country and apply for admission with CBP at a port of entry (POE). This change would provide the Department with additional protections and mechanisms to exercise the oversight necessary to vigorously enforce our nation's immigration laws, protect the integrity of these nonimmigrant programs, and promptly detect national security concerns.

DATES: Written comments and related material must be submitted on or before October 26, 2020.

ADDRESSES: You must submit comments on the proposed rule identified by DHS Docket No. ICEB–2019–0006, only through the following method:

• *Federal eRulemaking Portal (preferred): http://www.regulations.gov.* Follow the website instructions to submit comments.

Comments submitted in a manner other than the one listed above, including emails or letters sent to DHS or U.S. Immigration and Customs Enforcement (ICE) officials, will not be considered comments on the proposed rule and may not receive a response from DHS. Please note that DHS and ICE cannot accept any comments that are hand delivered or couriered. In addition, due to COVID–19, ICE cannot accept mailed comments whether paper or contained on any form of digital media storage devices, such as CDs/DVDs and USB drives.

Collection of information. You must submit comments on the collection of information discussed in this notice of proposed rulemaking to either DHS's 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. Immigration and Customs Enforcement, 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. Immigration and Customs Enforcement, DHS.

For additional instructions on sending comments, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Sharon Hageman, Acting Regulatory Unit Chief, Office of Policy and Planning, U.S. Immigration and Customs Enforcement, Department of Homeland Security, 500 12th Street SW, Washington, DC 20536. Telephone 202–732–6960 (not a toll-free number).

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

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P. Signature

I. Public Participation

DHS encourages all interested parties to participate in this rulemaking by submitting written data, views, comments and arguments on all aspects of this proposed rule. DHS also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Under the guidelines of the Office of the Federal Register, all properly submitted comments will be posted to *http://www.regulations.gov* as part of the public record and will include any personal information you have provided. See the **ADDRESSES** section for information on how to submit comments.

A. Submitting Comments

You must submit your comments in English or provide an English translation. The most helpful comments will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority supporting the recommended change. If you submit comments, please include the docket number for this rulemaking (ICEB–2019–0006), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and materials online. Due to COVID–19-related restrictions, ICE has temporarily suspended its ability to receive public comments by mail.

Instructions: To submit your comments online, go to *http://www.regulations.gov*, and insert ''ICEB–2019–0006'' in the ''Search'' box. Click on the ''Comment Now!'' box and input your comment in the text box provided. Click the ''Continue'' box, and, if you are satisfied with your comment, follow the prompts to submit it.

DHS will post them to the Federal eRulemaking Portal at *http://www.regulations.gov* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines is offensive. For additional information, please read the ''Privacy and Security Notice,'' via the link in the footer of *http://www.regulations.gov.*

DHS will consider all properly submitted comments and materials received during the comment period and may change this rule based on your comments.

B. Viewing Comments and Documents

Docket: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and insert ''ICEB–2019–0006'' in the ''Search'' box. Click on the ''Open Docket Folder,'' and you can click on ''View Comment'' or ''View All'' under the ''Comments'' section of the page. Individuals without internet access can make alternate arrangements for viewing comments and documents related to this rulemaking by contacting ICE through the **FOR FURTHER INFORMATION CONTACT** section above. You may also sign up for email alerts on the online docket to be notified when comments are posted or a final rule is published.

C. Privacy Act

As stated in the Submitting Comments section above, please be aware that anyone can search the electronic form of comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make to DHS. The Department may withhold information from public viewing that it determines is offensive. For additional information, please read the Privacy and Security Notice posted on *http://www.regulations.gov.*

II. Executive Summary

A. Purpose of the Regulatory Action

Studying and participating in exchange visitor and academic programs in the United States offers foreign nationals access to world-renowned faculty, cutting edge resources, state-of-the art courses, and individualized instructional programs. Similarly, the United States fosters an environment that promotes the exchange of ideas and encourages open discussions when there are differences of opinions, which the United States also encourages by allowing foreign news and media members the same unimpeded access and opportunity to share in the constitutional freedoms of the press as domestic news and media members. These benefits have attracted hundreds of thousands of foreign nationals to the United States in the F academic student,[1] J exchange visitor,[2] and I representatives of foreign information media[3] categories. DHS values the benefits these nonimmigrants, in turn, bring to the United States.

Unlike aliens in most nonimmigrant categories who are admitted until a specific departure date, F, J, and I nonimmigrants are admitted into the United States for an unspecified period of time to engage in activities authorized under their respective nonimmigrant classifications. This unspecified period of time is referred to as ''duration of status'' (D/S). D/S for F academic students is generally the time during which a student is pursuing a full course of study at an educational institution approved by DHS, or engaging in authorized practical training following completion of studies, plus authorized time to depart the country.[4] D/S for J exchange visitors is the time during which an exchange visitor is participating in an authorized program, plus authorized time to depart the country.[5] D/S for I representatives of foreign information media is the duration of his or her employment.[6] For dependents of principal F, J, or I nonimmigrants, D/S generally tracks the principal's period of admission so long as the dependents are also complying with the requirements for their particular classifications.[7] Since D/S was first introduced,[8] the number of F,

[1] INA 101(a)(15)(F), 8 U.S.C. 1101(a)(15)(F).

[2] INA 101(a)(15)(J), 8 U.S.C. 1101(a)(15)(J).

[3] INA 101(a)(15)(I), 8 U.S.C. 1101(a)(15)(I).

[4] Statutory and regulatory requirements restrict the duration of study for an alien who is admitted in F–1 status to attend a public high school to an aggregate of 12 months of study at any public high school(s). *See* Immigration and Nationality Act (INA) section 214(m), 8 U.S.C. 1184(m); *see also* 8 CFR 214.2(f)(5)(i).

[5] *See* 8 CFR 214.2(j)(1)(ii) (explaining the initial admission period) and (j)(1)(iv) (explaining that extensions of stay can be obtained with a new Form DS–2019). *See also* 22 CFR 62.43 (permitting responsible officers to extend J nonimmigrant's program beyond the original DS–2019 end date according to length permitted for the specific program category).

[6] 8 CFR 214.2(i).

[7] *See* 8 CFR 214.2(f)(3), (f)(5)(vi)(D) (discussing F–2 period of authorized admission); 214.2(j)(1)(ii), (j)(1)(iv) (discussing J–2 authorized period of admission); INA 101(a)(15)(I), 8 U.S.C. 1101(a)(15)(I); 22 CFR 41.52(c); USCIS Policy Manual, 2 USCIS–PM K.2 (Apr. 7, 2020).

[8] In 1985, when D/S was introduced for I and J nonimmigrants, there were 16,753 admissions in I

Continued

J, and I nonimmigrants admitted each year into the United States has significantly increased. In 2019 alone, there were over a million admissions in F status, a dramatic rise from the 263,938 admissions in F status when the legacy Immigration and Naturalization Service (INS) shifted to D/S admission in 1978.[9] Similar growth in the J population has also occurred over the past decades. In 2018, there were 611,373 admissions in J status, up over 300 percent from the 141,213 J admissions into the United States in 1985.[10] Finally, there were 44,140 admissions for foreign media representatives in the United States in 2018, over 160 percent growth from the 16,753 admissions into the U.S. in 1985.[11] DHS appreciates the academic benefits, cultural value, and economic contributions these foreign nationals make to academic institutions and local communities throughout the United States.[12]

However, the significant increase in the volume of F academic students, J exchange visitors, and I foreign information media representatives poses a challenge to the Department's ability to monitor and oversee these categories of nonimmigrants while they are in the United States. During the length of their stay for D/S, a period of admission without a specified end date, these nonimmigrants are not required to have direct interaction with DHS, except for a few limited instances, such as when applying for employment authorization for optional practical training or for reinstatement if they have failed to maintain status. Admission for D/S, in general, does not afford immigration officers enough predetermined opportunities to directly verify that aliens granted such nonimmigrant statuses are engaging only in those activities their respective classifications authorize while they are in the United States. In turn, this has undermined DHS's ability to effectively enforce compliance with the statutory inadmissibility grounds related to unlawful presence and has created incentives for fraud and abuse.

Given these concerns, DHS believes that the admission of F, J, and I nonimmigrants for D/S is no longer appropriate. With this notice of proposed rulemaking (NPRM), DHS proposes to replace the D/S framework for F, J, and I nonimmigrants with an admission period with a specific date upon which an authorized stay ends. Nonimmigrants who would like to stay in the United States beyond their fixed date of admission would need to apply directly with DHS for an extension of stay.[13] DHS anticipates that many F, J, and I nonimmigrants would be able to complete their activities within their period of admission. However, those who could not generally would be able to request an extension to their period of admission from an immigration officer. In addition, as proposed, certain categories of aliens would be eligible for shorter periods of admission based on national security, fraud, or overstay concerns but like all aliens with fixed admission periods, would have a specific date upon which they would be required to depart the United States or would need to apply to DHS to have their continued eligibility for F, J, or I status reviewed by immigration officers. DHS believes that this process would help to mitigate risks posed by foreign adversaries who seek to exploit these programs.

Replacing admissions for D/S with admissions for a fixed period of authorized stay is consistent with most other nonimmigrant categories,[14] would provide additional protections and oversight of these nonimmigrant categories, and would allow DHS to better evaluate whether these nonimmigrants are maintaining status while temporarily in the United States. DHS does not believe such a requirement would place an undue burden on F, J, and I nonimmigrants. Rather, providing F, J, and I nonimmigrants a fixed time period of authorized stay that would require them to apply to extend their stay, change their nonimmigrant status, or otherwise obtain authorization to remain in the United States (*e.g.,* by filing an application for adjustment of status) at the end of this specific admission period is consistent with requirements applicable to most other nonimmigrant classifications.

These changes would ensure that the Department has an effective mechanism to periodically and directly assess whether these nonimmigrants are complying with the conditions of their classifications and U.S. immigration laws, and to obtain timely and accurate information about the activities they have engaged in and plan to engage in during their temporary stay in the United States. If immigration officers discover a nonimmigrant in one of these categories has overstayed or otherwise violated his or her status, the proposed changes may result in the alien beginning to accrue unlawful presence for purposes of unlawful presence-related statutory grounds of inadmissibility under the Immigration and Nationality Act (INA). DHS believes this greater oversight would deter F, J, or I nonimmigrants from engaging in fraud and abuse and strengthen the integrity of these nonimmigrant classifications.

The Department believes that the provisions of each new regulatory

status, 141,213 admissions in J status, and 251,234 admissions in F–1 status. *See* 1997 Statistical Yearbook of the Immigration and Naturalization Service at *https://www.dhs.gov/sites/default/files/publications/Yearbook_Immigration_Statistics_1997.pdf* (last visited Jan. 7, 2020).

[9] In fiscal year (FY) 2019, there were 1,122,403 admissions in F–1 status. *See* DHS Office of Immigration Statistics (OIS) Legal Immigration and Adjustment of Status Report Data Tables (FY 2019), available at *https://www.dhs.gov/immigration-statistics/readingroom/special/LIASR* (last visited Aug. 27, 2020). In fiscal year 2016, there were approximately 1.11 million F and J nonimmigrants residing in the United States. *See* DHSOIS Population Estimates, Nonimmigrants Residing in the United States: Fiscal Year 2016 (Mar. 2018), available at *https://www.dhs.gov/sites/default/files/publications/Nonimmigrant_Population%20Estimates_2016_0.pdf* (last visited Jan. 22, 2020). That same year, 48,405 aliens were admitted into the United States in I status. *See* DHS OIS 2018 Yearbook of Immigration Studies (Nov. 13, 2019) available at *https://www.dhs.gov/immigration-statistics/yearbook/2018* (last visited Jan. 29, 2020).

[10] *See* DHS OIS Annual Flow Report, Annual Flow Report, U.S. Nonimmigrant Admissions: 2018 (Oct. 2019) available at *https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2018/nonimmigrant_admissions_2018.pdf* (last visited Jan. 22, 2020).

[11] *Id.*

[12] NAFSA: Association of International Educator's latest analysis finds that international students studying at U.S. colleges and universities contributed $41 billion and supported 458,290 jobs to the U.S. economy during the 2018–2019 academic year. *See https://www.nafsa.org/policy-and-advocacy/policy-resources/nafsa-international-student-economic-value-tool-v2.*

[13] *See generally* 8 CFR 214.1(c) (setting forth the general extension of stay (EOS) requirements applicable to most other nonimmigrants).

[14] For example, *see* 8 CFR 214.2(a)(1) (setting forth a period of admission for the A–3 nonimmigrant classification); (b)(1) (period of admission for aliens admitted under the B nonimmigrant classification); (c)(3) (period of admission for aliens in transit through the United States); (e)(19) (periods of admission for most E nonimmigrants); (g)(1) (period of admission for the G–5 nonimmigrant classification); (h)(5)(viii) (9)(iii) and (13) (various periods of admission and maximum periods of stay for the H–1B, H–2A, H–2B, and H–3 nonimmigrant classification); (k)(8) (period of admission for the K–3 and K–4 nonimmigrant classification); (l)(11)–(12) (periods of admission and maximum periods of stay for the L nonimmigrant classification); (m)(5), (10) (period of stay for the M nonimmigrant classification); (n)(3) (period of admission for certain parents and children eligible for admission as special immigrants under section 101(a)(27)(I)); (o)(6)(iii) and (10) (period of admission for the O nonimmigrant classification); (p)(8)(iii) and (12) (period of admission for the P nonimmigrant classification); (q)(2) (period of admission for the Q nonimmigrant classification); (r)(6) (period of admission for the R nonimmigrant classification); (s)(1)(ii) (period of admission for the NATO–7 nonimmigrant classification); (t)(5)(ii) (period of admission for the S nonimmigrant classification); and (w)(13) and (16) (period of admission for the CW–1 nonimmigrant classification).

amendment function sensibly independent of other provisions. However, to protect the Department's goals for proposing this rule, DHS proposes to add regulatory text stating that the provisions be severable so that, if necessary, the regulations may continue to function even if a provision is rendered inoperable.

B. Summary of the Proposed Regulatory Revisions

DHS proposes the following major changes:

- Amend 8 CFR 214.1, Requirements for admission, extension, and maintenance of status, by:
  - Striking all references to D/S for F, J, and I nonimmigrants;
  - Describing requirements for F and J nonimmigrants seeking admission;
  - Updating the cross reference and clarifying the standards for admission in the automatic extension visa validity provisions that cover F and J nonimmigrants applying at a port-of-entry after an absence not exceeding 30 days solely in a contiguous territory or adjacent islands;
  - Outlining the process for extension of stay (EOS) applications for F, J, and I nonimmigrants;
  - Specifying the effect of departure while an F or J nonimmigrant's application for an EOS in F or J nonimmigrant status and/or employment authorization (and an associated employment authorization document (EAD)) is pending;
  - Providing procedures specific to the transition from D/S to admission for a fixed time period of authorized stay for F, J, and I nonimmigrants; and
  - Replacing references to specific form names and numbers with general language, to account for future changes to form names and numbers.
- Amend 8 CFR 214.2, Special requirements for admission, extension, maintenance, and change of status, by:
  - Setting the authorized admission and extension periods for F and J nonimmigrants (with limited exceptions) up to the program length, not to exceed a 2- or 4-year period;
  - Listing the circumstances, including factors that relate to national security and program integrity concerns, when the period of admission for F and J nonimmigrants may be limited to a maximum of 2 years;
  - Outlining procedures and requirements for F–1 nonimmigrants who change educational levels while in F–1 status;
  - Providing limits on the number of times that F–1 nonimmigrants can change educational levels while in F–1 status;
  - Decreasing from 60 to 30 days the allowed period for F aliens to prepare to depart from the United States after completion of a course of study or authorized period of post-completion practical training;
  - Proposing to lengthen the automatic EOS for individuals covered by the authorized status and employment authorization provided by 8 CFR 214.2(f)(5)(vi) (the H–1B cap gap provisions);
  - Initiating a routine biometrics collection in conjunction with an EOS application for F, J, and I nonimmigrants;
  - Limiting language training students to an aggregate 24-month period of stay, including breaks and an annual vacation;
  - Providing that a delay in completing one's program by the program end date on Form I–20, due to a pattern of behavior demonstrating a student is repeatedly unable or unwilling to complete his or her course of study, such as failing grades, in addition to academic probation or suspension, is an unacceptable reason for program extensions for F nonimmigrants;
  - Providing that F nonimmigrants who have timely filed an EOS application and whose EOS application is still pending after their admission period indicated on Form I–94 has expired will receive an automatic extension of their F nonimmigrant status and, as applicable, of their on-campus employment authorization, off-campus employment authorization due to severe economic hardship, or Science Technology Engineering and Mathematics Optional Practical Training (STEM OPT) employment authorization, as well as evidence of employment authorization, for up to 180 days or until the relevant application is adjudicated, whichever is earlier;
  - Allowing F nonimmigrants whose timely filed EOS applications remain pending after their admission period has expired to receive an auto-extension of their current authorization for on-campus and off-campus employment based on severe economic hardship resulting from emergent circumstances under 8 CFR 214.2(f)(5)(v). The length of the auto-extension of employment authorization would be up to 180 days or the end date of the **Federal Register** notice (FRN) announcing the suspension of certain regulatory requirements related to employment, whichever is earlier;
  - Prohibiting F nonimmigrants whose admission period, as indicated on their Form I–94, has expired while their timely filed EOS applications and applications for employment authorization based on either an internship with an international organization, curricular practical training (CPT), pre-completion Optional Practical Training (OPT), or post-completion OPT are pending to engage in such employment until their applications are approved;
  - Replacing D/S for I nonimmigrants with admission for a fixed time period until they complete the activities or assignments consistent with the I classification, not to exceed 240 days, with an EOS available for I nonimmigrants who can meet specified EOS requirements;
  - Codifying the definition of a foreign media organization for I nonimmigrant status, consistent with long-standing USCIS and Department of State (DOS) practice;
  - Updating the evidence an alien must submit to demonstrate eligibility for the I nonimmigrant category;
  - Clarifying that I and J–1 nonimmigrants, who are employment authorized with a specific employer incident to status, continue to be authorized for such employment for up to 240 days under the existing regulatory provision at 8 CFR 274a.12(b)(20), if their status expires while their timely filed EOS application is pending, whereas J–2 spouses, who must apply for employment authorization as evidenced by an EAD, do not have the benefit of continued work authorization once the EAD expires;
  - Striking all references to ''duration of status'' and/or ''duration of employment'' for the F, J, and I nonimmigrant categories; and
  - Including a severability clause. In the event that any provision is not implemented for whatever reason, DHS proposes that the remaining provisions be implemented in accordance with the stated purposes of this rule.
- Amend 8 CFR 248.1, Eligibility, by:
  - Establishing requirements to determine the period of stay for F or J nonimmigrants whose change of status application was approved before the Final Rule's effective date and who depart the United States, then seek readmission after the Final Rule's effective date; and
  - Codifying the long-standing policy under which DHS deems abandoned an application to change to another nonimmigrant status, including F or J status, if the alien who timely filed the application departs the United States while the application is pending.
- Amend 8 CFR 274a.12, Classes of aliens authorized to accept employment, by:

○ Striking references to ''duration of status,'' to Form I–539, Application to Extend/Change a Nonimmigrant Status, and to Form I–765, Application for Employment Authorization;

○ Updating the employment authorization provisions to incorporate the proposed revisions in 8 CFR 214.2.

C. Legal Authorities

The Secretary of Homeland Security's (the Secretary) authority to propose the regulatory amendments in this rule can be found in various provisions of the immigration laws and the changes in this rule are proposed pursuant to these statutory authorities.

Section 102 of the Homeland Security Act of 2002 (HSA) (Pub. L. 107–296, 116 Stat. 2135), 6 U.S.C. 112, and section 103(a)(1) and (3) of the Immigration and Nationality Act (INA), 8 U.S.C. 1103 (a)(1), (3), charge the Secretary with the administration and enforcement of the immigration and naturalization laws of the United States. Section 214(a) of the INA, 8 U.S.C. 1184(a), gives the Secretary the authority to prescribe, by regulation, the time and conditions of admission of any alien as a nonimmigrant, including F, J, and I nonimmigrant aliens. *See also* 6 U.S.C. 271(a)(3), (b) (describing certain USCIS functions and authorities, including USCIS' authority to establish national immigration services policies and priorities and adjudicate benefits applications) and 6 U.S.C. 252(a)(4) (describing ICE's authority to collect information relating to foreign students and exchange visitor program participants and to use such information to carry out its enforcement functions).

Section 248 of the INA, 8 U.S.C. 1258, permits DHS to allow certain nonimmigrants to change their status from one nonimmigrant status to another nonimmigrant status, with certain exceptions, as long as they continue to maintain their current nonimmigrant status and are not inadmissible under section 212(a)(9)(B)(i) of the Act, 8 U.S.C. 1182(a)(9)(B)(i). Like extensions of stay, change of status adjudications are discretionary determinations.[15] Also, section 274A of the INA, 8 U.S.C. 1324a, governs the employment of aliens who are authorized to be employed in the United States by statute or in the discretion of the Secretary.

Finally, the INA establishes who may be admitted as F, J, or I aliens. Specifically, section 101(a)(15)(F) of the INA, 8 U.S.C. 1101(a)(15)(F)(i), established the F nonimmigrant classification for, among others, bona fide students qualified to pursue a full course of study who wish to enter the United States temporarily and solely for the purpose of pursuing a full course of study at an academic or language training school certified by ICE, Student and Exchange Visitor Program (SEVP), as well as for the spouse and minor children of such aliens. *See also* INA 214(m), 8 U.S.C. 1184(m) (limiting the admission of nonimmigrants for certain aliens who intend to study at public elementary and secondary schools).

Section 101(a)(15)(I) of the INA, 8 U.S.C. 1101(a)(15)(I), established, upon a basis of reciprocity, the I nonimmigrant classification for bona fide representatives of foreign information media (such as press, radio, film, print) seeking to enter the United States to engage in such vocation, as well as for the spouses and children of such aliens.

Section 101(a)(15)(J) of the INA, 8 U.S.C. 1101(a)(15)(J), established the J nonimmigrant classification for aliens who wish to come to the United States temporarily to participate in exchange visitor programs designated by the DOS, as well as for the spouses and minor children of such aliens.

Within DHS, ICE's SEVP is authorized to administer the program to collect information related to nonimmigrant students and exchange visitors under various statutory authorities. Section 641 of The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, 110 Stat. 3009–546, 3009–704 (Sep. 30, 1996) (codified as amended at 8 U.S.C. 1372) (IIRIRA), authorizes the creation of a program to collect current and ongoing information provided by schools and exchange visitor programs regarding F and J nonimmigrants during the course of their stays in the United States, using electronic reporting technology where practicable. Consistent with this statutory authority, DHS manages these programs pursuant to Homeland Security Presidential Directive-2 (HSPD–2), Combating Terrorism Through Immigration Policies (Oct. 29, 2001), as amended, *http://www.gpo.gov/fdsys/pkg/CPRT-110HPRT39618/pdf/CPRT-110HPRT39618.pdf),* and section 502 of the Enhanced Border Security and Visa Entry Reform Act of 2002, Public Law 107–173, 116 Stat. 543, 563 (May 14, 2002) (EBSVERA). HSPD–2 requires the Secretary of Homeland Security to conduct periodic, ongoing reviews of institutions certified to accept F nonimmigrants, and to include checks for compliance with recordkeeping and reporting requirements. Section 502 of EBSVERA directs the Secretary to review the compliance with recordkeeping and reporting requirements under 8 U.S.C. 1101(a)(15)(F) and 1372 of all schools approved for attendance by F students within two years of enactment, and every two years thereafter.

D. Costs and Benefits

Currently, aliens in the F (academic student), J (exchange visitor), and I (representatives of foreign information media) categories are admitted to the United States under the duration of status framework. However, admitting a nonimmigrant for duration of status creates a challenge to the Department's ability to efficiently monitor and oversee these nonimmigrants, because they may remain in the United States for indefinite periods of time without being required to have immigration officers periodically assess whether they are complying with the terms and conditions of their status. Nor are immigration officers required to make periodic assessments of whether these nonimmigrants present national security concerns. Under the D/S framework, these nonimmigrants are required to have direct interaction with DHS officials only if they file certain applications, such as when applying for employment authorization for optional practical training or for reinstatement if they have failed to maintain status, or if they are the subject of an enforcement action. To address these vulnerabilities, DHS proposes to replace D/S with an admission for a fixed time period. Admitting individuals in the F, J, and I categories for a fixed period of time would require all F, J, and I nonimmigrants who wish to remain in the United States beyond their specific authorized admission period to apply for authorization to extend their stay with USCIS if in the United States or if abroad then to apply for admission at a POE with CBP, thus requiring periodic assessments by DHS in order to remain in the United States for a longer period. This change would impose incremental costs on F, J, and I nonimmigrants, but would in turn protect the integrity of the F, J and I programs by having immigration officers evaluate and assess the appropriate length of stay for these nonimmigrants.

The period of analysis for the rule covers 10 years and assumes the proposed rule would go into effect in 2020. Therefore, the analysis period goes from 2020 through 2029. This analysis estimates the annualized value of future costs using two discount rates: 3 percent and 7 percent. In Circular A–4, OMB recommends that a 3 percent discount rate be used when a regulation

[15] *See* INA 248(a), 8 U.S.C. 1258(a); 8 CFR 248.1(a).

affects private consumption, and a 7 percent discount rate be used in evaluating a regulation that will mainly displace or alter the use of capital in the private sector. The discount rate accounts for how costs that occur sooner are more valuable. The NPRM would have an annualized cost ranging from $229.9 million to $237.8 million (with 3 and 7 percent discount rates, respectively).

III. Background

A. Regulatory History of Duration of Status

i. F Classification

Section 101(a)(15)(F)(i) of the INA, 8 U.S.C. 1101(a)(15)(F)(i), permits aliens who are bona fide students to temporarily be admitted to the United States solely for the purpose for pursuing a full course of study at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic language training program. Principal applicants are categorized as F–1 nonimmigrant aliens and their spouses and minor children may accompany or follow to join them as F–2 dependents.[16]

From 1973 to 1979, F students were admitted for 1-year and could be granted an EOS in increments of up to 1-year if they established that they were maintaining status.[17] However, on July 26, 1978, given the large number of nonimmigrant students in the United States at the time and the need to continually process their EOS applications, legacy INS proposed amending the regulations to permit F–1 aliens to be admitted for the duration of their status as students.[18] Legacy INS explained the changes would facilitate the admission of nonimmigrant students, provide dollar and manpower savings to the Government, and permit more efficient use of resources.[19] On November 22, 1978, the final rule was published amending the regulations at 8 CFR 214 to allow INS to admit F–1 aliens for the duration of their status as students.[20] The new rule became effective on January 1, 1979.[21]

Subsequently, the regulations addressing the admission periods for nonimmigrant students were amended four more times between January 23, 1981, and October 29, 1991.[22] On January 23, 1981, the former INS issued a rule eliminating D/S for F–1 nonimmigrants and limiting their admission to a fixed period of admission, *i.e.,* the time necessary to complete the course of study, with the opportunity for an EOS on a case-by-case basis.[23] Legacy INS explained this was necessary because admitting nonimmigrants students for D/S resulted in questionable control over foreign students and contributed to problems in record keeping.[24]

On April 5, 1983, legacy INS reinstituted D/S, while addressing areas of concern identified after the 1978 implementation of D/S for nonimmigrant students.[25] The amendments implemented new notification procedures for transfers between schools and new record-keeping and reporting requirements for Designated School Officials (DSO).[26] These amendments also limited D/S to the period when a student was enrolled in one educational level and required nonimmigrant students to apply for an EOS and, if applicable, a school transfer to pursue another educational program at the same level of educational attainment.[27]

On April 22, 1987, legacy INS refined the April 5, 1983, regulatory package, again amending regulations regarding F–1 students.[28] Additional regulations explained which medical and academic reasons allowed F–1 students to drop below a full-time course of study and remain in status and clarified when F–1 students must request an EOS or reinstatement.[29]

In 1991, the regulations were further revised to implement Section 221(a) of the Immigration Act of 1990 (IMMACT 90), Public Law 101–649, 104 Stat. 4978, which established a three-year off-campus program for F–1 students.[30] In the 1991 Final Rule, legacy INS also clarified and simplified the procedures for F–1 students seeking EOS and employment authorization. This included giving DSOs authority to grant a program extension (and therefore an EOS) for in-status students with a compelling academic or medical reason for failing to complete their educational program by the program end date on their Form I–20.[31] The rule required DSOs to notify legacy INS of the extension.[32] In the rulemaking, legacy INS specifically agreed to allow DSOs to issue program extensions, explaining that ''with the DSOs screening out ineligible students, the Service is satisfied that the purposes of the EOS can be effectively met through the notification procedure.'' [33] Pursuant to the 1991 Final Rule, DHS has relied on DSOs to report student status violators, issue program extensions, and transfer students between programs and schools.

ii. J Classification

The J nonimmigrant classification was created in 1961 by the Mutual Educational and Cultural Exchange Act of 1961, also known as the Fulbright-Hays Act of 1961, Public Law 87–256, 75 Stat. 527 (22 U.S.C. 2451, *et seq.*), to increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchanges. It authorizes foreign nationals to participate in a variety of exchange visitor programs in the United States. The Exchange Visitor Program regulations cover the following program categories: Professors and research scholars, short-term scholars, trainees and interns, college and university students, teachers, secondary school students, specialists, alien physicians,

[16] INA 101(a)(15)(F)(i)–(ii), 8 U.S.C. 1101(a)(15)(F)(i)–(ii); 8 CFR 214.2(f)(3).

[17] *See* 38 FR 35425 (Dec. 28, 1973) (The period of admission of a non-immigrant student shall not exceed one-year.)

[18] *See* 43 FR 32306 (Jul. 26, 1978).

[19] *See* 43 FR 32306, 32306–07 (Jul. 26, 1978).

[20] *See* 43 FR 54618 (Nov. 22, 1978) (The period of admission of a nonimmigrant student shall be for the duration of Status in the United States as a student if the information on his/her form 1–20 indicates that he/she will remain in the United States as a student for more than 1 year. If the information on form 1–20 indicates the student will remain in the United States for 1 year or less, he/she shall be admitted for the time necessary to complete his/her period of study).

[21] *Id.*

[22] *See* 46 FR 7267 (Jan. 23, 1981), 48 FR 14575 (Apr. 5, 1983); 52 FR 13223 (Apr. 22, 1987); 56 FR 55608 (Oct. 29, 1991).

[23] *See* 46 FR 7267 (Jan. 23, 1981).

[24] *Id.*

[25] *See* 48 FR 14575 (Apr. 5, 1983).

[26] A Designated School Official (DSO) means a regularly employed member of the school administration whose office is located at the school and whose compensation does not come from commissions for recruitment of foreign students. *See* 8 CFR 214.3(l).

[27] *See* 48 FR 14575, 84 (Apr. 5, 1983).

[28] *See* 52 FR 13223 (Apr. 22, 1987).

[29] *Id.*

[30] *See* 56 FR 55608 (Oct. 29, 1991).

[31] Form I–20, Certificate of Eligibility for Nonimmigrant Student Status, is the document used by DHS that provides supporting information for the issuance of a student visa. Applicants (including dependents) must have a Form I–20 to apply for a student visa, to enter the United States, and to apply for an employment authorization document to engage in optional practical training. *See* SEVP's web page, Form I–20, ''Certificate of Eligibility for Nonimmigrant Student Status'' at *https://studyinthestates.dhs.gov/student-forms?form=Forms_I-20* (last visited Jan. 29, 2020).

[32] *See* 56 FR 55608 (Oct. 29, 1991).

[33] *Id.*

international visitors, government visitors, camp counselors, au pairs, and summer work travel.[34]

Prior to 1985, J exchange visitors were granted an initial admission for the period of their program up to one year.[35] In 1985, the regulations were amended to allow J exchange visitors to be admitted for the duration of their program plus 30 days.[36] This change from being admitted for a fixed period to D/S was implemented as part of a continuing effort to reduce reporting requirements for the public as well as the paperwork burden associated with processing extension requests on the agency.[37]

A prospective exchange visitor must be sponsored by a DOS-designated program sponsor to be admitted to the United States in the J nonimmigrant category and participate in an exchange visitor program. The DOS designated sponsor will issue a prospective J exchange visitor a Form DS–2019, Certificate of Eligibility for Exchange Visitor (J–1) Status. The DS–2019 permits a prospective exchange visitor to apply for a J–1 nonimmigrant visa at a U.S. embassy or consulate abroad or seek admission as a J–1 nonimmigrant at a port of entry. A J–1 exchange visitor is admitted into the United States for D/S, which is the length of his or her exchange visitor program.[38]

Extensions of J exchange visitor programs are governed by DOS regulations.[39] If there is authority to extend a program, the exchange visitor program sponsor's Responsible Officer (RO),[40] similar to the DSO in the F–1 student context, is authorized to extend a J exchange visitor's program by issuing a duly executed Form DS–2019.[41] Requests for extensions beyond the maximum program duration provided in the regulations must be approved by DOS, which adjudicates these extensions. USCIS does not adjudicate these program extensions.

iii. I Classification

Section 101(a)(15)(I) of the INA defines the I classification as, upon a basis of reciprocity, an alien who is a bona fide representative of foreign press, radio, film, or other foreign information media who seeks to enter the United States solely to engage in such vocation, and the spouse and children of such a representative, if accompanying or following to join him. Nonimmigrant foreign information media representatives are currently admitted for the duration of their employment. They are not permitted to change their information medium or employer until they obtain permission from USCIS.[42]

From 1973 to 1985, aliens admitted to the United States in I nonimmigrant status were admitted for a period of 1 year with the possibility of extensions.[43] In 1985, legacy INS amended the regulations to allow nonimmigrant foreign information media representatives to be admitted for the duration of their employment.[44] This change from a set time period of admission to admission for duration of employment for I nonimmigrants was implemented as part of a continuing effort to reduce reporting requirements for the public, as well as the paperwork burden associated with processing extension requests on the agency.[45] Through its administration of the regulations authorizing I nonimmigrants admission for duration of employment, DHS currently admits all I nonimmigrants for D/S with the exception of those presenting a passport issued by the People's Republic of China.[46]

B. Risks to the Integrity of the F, J, and I Nonimmigrant Classifications

i. General Risks

DHS welcomes F academic students, J exchange visitors, and I representatives of foreign information media, but it also acknowledges that the sheer size of the population complicates its oversight and vetting functions. Since legacy INS introduced D/S in 1979, the number of F nonimmigrant students admitted into the United States has more than quadrupled. Similarly, since D/S was introduced for J and I nonimmigrants in 1985, the number of exchange visitors admitted into the United States has more than quadrupled while the number of representatives of foreign information media has more than doubled.[47]

The Department uses the Student and Exchange Visitor Information System (SEVIS), a web-based system, to maintain information regarding: SEVP-certified schools; F–1 students studying in the United States (and their F–2

[34] *See* INA 101(a)(15)(J), 8 U.S.C. 1101(a)(15)(J), and 22 CFR 62.20–62.32.

[35] *See* 8 CFR 214.2(j)(1)(ii) (1985).

[36] *See* 50 FR 42006 (Oct. 17, 1985).

[37] *Id.*

[38] Form DS–2019, Certificate of Eligibility for Exchange Visitor (J–1) Status, is the document required to support an application for an exchange visitor visa (J–1). It is a 2-page document that can only be produced through the Student and Exchange Visitor Information System (SEVIS). SEVIS is the DHS database developed to collect information on F, M, and J nonimmigrants (see 8 U.S.C. 1372 and 6 U.S.C. 252(a)(4)). The potential exchange visitor's signature on page one of the form is required. Page 2 of the current Form DS–2019 consists of instructions and certification language relating to participation. No blank Forms DS–2019 exist. Each Form DS–2019 is printed with a unique identifier known as a ''SEVIS ID number'' in the top right-hand corner, which consists of an ''alpha'' character (N) and 10 numerical characters (*e.g.,* N0002123457). The Department of State's Office of Private Sector Exchange Designation in the Bureau of Education and Cultural Affairs (ECA/EC/D) designates U.S. organizations to conduct exchange visitor programs. These organizations are known as program sponsors. When designated, the organization is authorized access to SEVIS and is then able to produce Form DS–2019 from SEVIS. The program sponsor signs the completed Forms DS–2019 in blue ink and transmits them to the potential exchange visitor and his or her spouse and minor children. J visa applicants must present a signed Form DS–2019 at the time of their visa interview. Once the visa is issued, however, the SEVIS record cannot be updated until the participant's program is validated (''Active'' in SEVIS). The sponsor is required to update the SEVIS record upon the exchange visitor's entry and no corrections to the record can be made until that time. In addition, in the event a visa is needed for a dependent spouse or child, the system will not permit a new Form DS–2019 to be created until after the primary's SEVIS record is validated. *See* 9 FAM 402.5–6(D)(1) (U) The Basic Form available at *https://fam.state.gov/fam/09FAM/09FAM040205.html#M402_5_6_D* (last visited Jan. 29, 2020). While applicants must still present a paper Form DS–2019 to DOS in order to qualify for a visa, the SEVIS record is the definitive record of student or exchange visitor status and visa eligibility. *See* 9 FAM 402.5–4(B) (U), Student and Exchange Visitor Information System (SEVIS) Record is Definitive Record, available at *https://fam.state.gov/FAM/09FAM/09FAM040205.html* (last visited Jan. 29, 2020).

[39] *See* 22 CFR part 62. These programs vary in length. For example, professors and research scholars are generally authorized to participate in the Exchange Visitor Program for the length of time necessary to complete the program, provided such time does not exceed five years. *See* 22 CFR 62.20(i)(1). And alien physicians, are generally limited to seven years. *See* 22 CFR 62.27(e)(2).

[40] A Responsible Officer (RO) is an employee or officer of a sponsor who has been nominated by the sponsor, and approved by the Department of State, to carry out the duties outlined in 22 CFR 62.11.

[41] *See* 22 CFR 62.43. A RO must be a citizen of the United States or a lawful permanent resident of the United States. *See* 22 CFR 62.2.

[42] *See* 8 CFR 214.2(i).

[43] *See* 38 FR 35425 (Dec. 28, 1973). *See also* 50 FR 42006 (Oct. 17, 1985), stating that prior to the publication of this rule, I nonimmigrants were admitted for one year.

[44] *See* 8 CFR 214.2(i); 50 FR 42006 (Oct. 17, 1985).

[45] *Id.*

[46] 85 FR 27645 (May 11, 2020). Note that the requirements in the May 11, 2020 Final Rule do not apply to Hong Kong Special Administrative Region (SAR) or Macau SAR passport holders. This proposed rule updates the requirements to remove the exception for Hong Kong passport holders, who will be admitted in the same manner as those presenting a passport issued by the People's Republic of China.

[47] As noted above, in fiscal year (FY) 2016, there were approximately 1.11 million F and J nonimmigrants residing in the United States. *See* DHS Office of Immigration Statistics (OIS) Population Estimates, Nonimmigrants Residing in the United States: Fiscal Year 2016 (March 2018), [USCIS: see edits] available at *https://www.dhs.gov/sites/default/files/publications/Nonimmigrant_Population%20Estimates_2016_0.pdf* (last visited Jan. 22, 2020). In 2018, 48,405 aliens were admitted into the United States in I status. *See* DHS OIS 2018 Yearbook of Immigration Studies (Nov. 13, 2019) available at *https://www.dhs.gov/immigration-statistics/yearbook/2018* (last visited Jan. 29, 2020).

dependents); M–1 students enrolled in vocational programs in the United States (and their M–2 dependents); DOS-designated Exchange Visitor Program sponsors; and J–1 Exchange Visitor Program participants (and their J–2 spouses and dependents).

Employees of educational institutions and program sponsors, specifically DSOs and ROs, play a large role in SEVIS. They are responsible for monitoring students and exchange visitors, accurately entering information about the students' and exchange visitors' activities into SEVIS, and properly determining whether the student or exchange visitor's SEVIS record should remain in active status or change to reflect a change in circumstances.[48] Under this framework, an academic student or exchange visitor generally maintains lawful status by complying with the conditions of the program, as certified by the DSO or RO. However, a program extension and an extension of an alien's nonimmigrant stay are different. The Department believes it is appropriate for the DSO to recommend an extension of an academic program and an RO to recommend an extension of an exchange visitor program; however, an EOS involves an adjudication of whether an alien is legally eligible to extend his or her stay in the United States in a given immigration status and has been complying with the terms and conditions of his or her admission. The Department believes that the determinations of program extension and extension of stay should be separated, with the DSO's and RO's recommendation being one factor an immigration officer reviews while adjudicating an application for EOS. Changing to a fixed period of admission would give immigration officers a mechanism to make this evaluation at reasonably frequent intervals.

Additionally, DHS expects this change would deter and prevent fraud, as a requirement to check-in directly with an immigration officer inherently is likely to deter some bad actors from exploiting perceived vulnerabilities in the F and J nonimmigrant categories. The same benefits of direct evaluation, better recordkeeping, and fraud prevention also would apply to the I population.

ii. Risks to the F Classification

While the F program provides enormous benefits to academic institutions and local communities, the Department is aware that the F–1 program is subject to fraud, exploitation, and abuse. Since 2008, multiple school owners and others have been criminally prosecuted for ''pay-to-stay'' fraud, in which school officials, in return for cash payments, falsely report that F–1 students who do not attend school are maintaining their student status.[49] In some cases, convicted school owners operated multiple schools and transferred students among them to conceal the fraud.[50] DHS is also concerned that DSOs at these schools were complicit in these abuses; some DSOs intentionally recorded a student's status inaccurately,[51] some issued program extensions to students who did not have compelling medical or academic reasons for failing to complete their program by its end date,[52] and some DSOs permitted students who failed to maintain status to transfer to another school rather than apply for reinstatement.[53] Beyond cases publicly identified by DHS and the Department of Justice (DOJ), DHS is concerned about cases where DSOs were not aware of status violations by students.

Apart from concerns about DSOs and school owners involved in fraudulent schemes, DHS also has concerns about the actions of the aliens themselves. Some aliens have used the F classification to reside in the United States for decades by continuously enrolling in or transferring between schools, a practice facilitated by the D/S framework.[54] DHS has identified aliens who have been in the United States in F–1 status since the 1990s and early 2000s, some of whom are in active F–1 status today. To extend their stay,

[48] 8 CFR 214.3(g)(1), (g)(2) (detailing a DSO's reporting requirements); 214.4(a)(2) (stating that failure to comply with reporting requirements may result in loss of SEVP certification).

[49] DOJ Press Release, ''Operator of English language schools charged in massive student visa fraud scheme,'' April 9, 2008, available at *https://www.justice.gov/archive/usao/cac/Pressroom/pr2008/038.html* (last visited Jan. 27, 2020); DOJ Press Release, ''Owner/Operator and employee of Miami-based school sentenced for immigration-related fraud,'' Aug. 30, 2010, available at *https://www.justice.gov/archive/usao/fls/PressReleases/2010/100830-02.html* (last visited Jan. 27, 2020); ICE Press Release, ''Pastor sentenced to 1 year for visa fraud, ordered to forfeit building housing former religious school,'' June 13, 2011, available at *https://www.ice.gov/news/releases/pastor-sentenced-1-year-visa-fraud-ordered-forfeit-building-housing-former-religious* (last visited Jan. 27, 2020); DOJ Press Release, ''School Official Admits Visa Fraud,'' Mar. 12, 2012, available at *https://www.justice.gov/archive/usao/pae/News/2012/Mar/tkhir_release.htm* (last visited Jan. 27, 2020); ICE Press Release, ''Owner of Georgia English language school sentenced for immigration fraud,'' May 7, 2014, available at *https://www.ice.gov/news/releases/owner-georgia-english-language-school-sentenced-immigration-fraud* (last visited Jan. 27, 2020); ICE Press Release, ''3 senior executives of for-profit schools plead guilty to student visa, financial aid fraud,'' (last visited Jan. 27, 2020); Apr. 30, 2015, available at *https://www.ice.gov/news/releases/3-senior-executives-profit-schools-plead-guilty-student-visa-financial-aid-fraud* (Jan. 27, 2020); ICE Press Release ''Owner of schools that illegally allowed foreign nationals to remain in US as 'students' sentenced to 15 months in federal prison,'' Apr. 19, 2018, available at *https://www.ice.gov/news/releases/owner-schools-illegally-allowed-foreign-nationals-remain-us-students-sentenced-15* (last visited Jan. 27, 2020).

[50] ICE Press Release, ''3 senior executives of for-profit schools plead guilty to student visa, financial aid fraud,'' April 30, 2015, available at *https://www.ice.gov/news/releases/3-senior-executives-profit-schools-plead-guilty-student-visa-financial-aid-fraud* (last visited Jan. 27, 2020).

[51] DOJ Press Release, ''Operator of English language schools charged in massive student visa fraud scheme,'' April 9, 2008, see *https://www.justice.gov/archive/usao/cac/Pressroom/pr2008/038.html;* DOJ Press Release, ''Owner/Operator and employee of Miami-based school sentenced for immigration-related fraud,'' Aug. 30, 2010, see *https://www.justice.gov/archive/usao/fls/PressReleases/2010/100830-02.html;* ICE Press Release, ''Pastor sentenced to 1 year for visa fraud, ordered to forfeit building housing former religious school,'' June 13, 2011, *see https://www.ice.gov/news/releases/pastor-sentenced-1-year-visa-fraud-ordered-forfeit-building-housing-former-religious;* DOJ Press Release, ''School Official Admits Visa Fraud,'' Mar. 12, 2012, *see https://www.justice.gov/archive/usao/pae/News/2012/Mar/tkhir_release.htm;* ICE Press Release, ''Owner of Georgia English language school sentenced for immigration fraud,'' May 7, 2014, *see https://www.ice.gov/news/releases/owner-georgia-english-language-school-sentenced-immigration-fraud;* ICE Press Release, ''3 senior executives of for-profit schools plead guilty to student visa, financial aid fraud,'' Apr. 30, 2015, *see https://www.ice.gov/news/releases/3-senior-executives-profit-schools-plead-guilty-student-visa-financial-aid-fraud;* ICE Press Release ''Owner of schools that illegally allowed foreign nationals to remain in US as 'students' sentenced to 15 months in federal prison,'' Apr. 19, 2018, *see https://www.ice.gov/news/releases/owner-schools-illegally-allowed-foreign-nationals-remain-us-students-sentenced-15.*

[52] For example, DHS identified a nonimmigrant who has been an F–1 student at a dance school since 1991 and who has been issued 16 program extensions since 2003, when the use of SEVIS was first mandated. Although the reported normal length of the program is 5 years, the school has issued multiple program extensions by claiming that ''[t]he student needs more time'' despite 28 years of enrollment. In another concerning extension of an academic program, an F–1 student was enrolled at an accredited language training school from 2007 to 2020, requiring 15 program extensions. Another student who was enrolled at the same school from 2009 to 2020 and has been an F–1 student since 2005, was granted 14 program extensions. The school, which has had its SEVP-certification withdrawn, issued multiple program extensions for each student with the justification of ''[e]xtended studies.'' F–1 students in doctoral programs have taken over 20 years to complete their programs. F–1 students at community colleges have been enrolled in associate degree programs for periods in excess of 5 years—some for as long as a decade.

[53] ICE Press Release, ''3 senior executives of for-profit schools plead guilty to student visa, financial aid fraud,'' April 30, 2015, *see* https://www.ice.gov/news/releases/3-senior-executives-profit-schools-plead-guilty-student-visa-financial-aid-fraud.

[54] Monitoring F–1 students on post-completion OPT can be even more complicated because the students are no longer attending classes. *See* GAO, Student and Exchange Visitor Program, DHS Needs to Assess Risks and Strengthen Oversight of Foreign Students with Employment Authorization, GAO–14–356 (Washington, DC, Feb. 27, 2014).

these aliens enrolled in consecutive educational programs, transferred to new schools, or repeatedly requested DSOs to extend their program end dates. This practice is not limited to any one particular type of school; students at community or junior colleges, universities, and language training schools have maintained F–1 status for lengthy periods. While these instances of extended stay may not always result in technical violations of the law, DHS is concerned that such stays violate the spirit of the law, given that student status is meant to be temporary and for the primary purpose of studying, not as a way to remain in the United States indefinitely.

The use of the F classification to remain in the United States for decades raises doubts that the alien's intention was to stay in the United States temporarily, as required by the INA.[55] It also raises concerns as to whether those aliens are bona fide nonimmigrant students who are maintaining valid lawful status by complying with the terms of their admission, which include solely pursuing a full course of study and progressing to completing a course of study. Likewise, it raises concerns as to whether these aliens have the financial resources to cover tuition and living expenses without engaging in unauthorized employment.

Further, while some school owners and school executives have faced legal consequences for their violation of the law, nonimmigrants admitted for D/S generally do not accrue unlawful presence for purposes of the 3- and 10-year bars described in INA 212(a)(9)(B) and (C), 8 U.S.C. 1182(a)(9)(B) and (C) unless an immigration officer finds they have violated their status in the context of adjudicating an immigration benefit request, or an immigration judge orders them excluded, deported, or removed.[56] Because F–1 nonimmigrant students are admitted for D/S, they generally do not file applications or petitions, such as extension of stay, with USCIS, and therefore, immigration officers do not generally have an opportunity to determine whether they are engaging in F–1 nonimmigrant activities in the United States and maintaining their F–1 nonimmigrant status.

The U.S. Government Accountability Office (GAO) has reported on DHS's concerns about DSOs and nonimmigrant students. In 2019, GAO and ICE published a report identifying fraud risks to SEVP related to managing school recertification and program training. The report included vulnerabilities associated with involving school owners and DSOs in overseeing the maintenance of status of F–1 students.[57] In the report, GAO identified fraud vulnerabilities on the part of both students and schools. Examples include students claiming to maintain status when they are not, such as failing to attend class or working without appropriate authorization, or school owners not requiring enrolled students to attend classes or creating fraudulent documentation for students who are ineligible for the academic program. GAO recommended that ICE develop a fraud risk profile and use data analytics to identify potential fraud indicators in schools petitioning for certification, develop and implement fraud training for DSOs, and strengthen background checks for DSOs. ICE is making a concerted effort to comply with GAO's recommendations, and has implemented controls to address the fraud risks identified in the GAO report through stricter scrutiny during the SEVP school certification, recertification and compliance process.[58]

DHS believes it can mitigate these fraud risks in part through, as this rule proposes, setting the authorized admission and extension periods for F nonimmigrants as the length of the F nonimmigrant's specific program, not to exceed a 2- or 4-year period. It would establish a mechanism for immigration officers to assess these nonimmigrants at defined periods (such as when applying for an extension of stay in the United States beyond a 2- or 4-year admission period) and determine whether they are complying with the conditions of their classification. Immigration officers receive background checks, clearances, and training before DHS authorizes them to implement the nation's immigration laws, which includes as part of adjudicating the application, whether nonimmigrants meet the requirements to extend their stay, whether a student has violated his or her nonimmigrant status without the DSO's awareness or whether DSOs are engaging in fraud by not requiring students to attend classes or by falsifying documents. Immigration officers are further trained to assess applications for fraud indicators, and conduct reviews and vetting that may assist in the detection of fraud or abuse. This would allow DHS to identify and hold accountable aliens who violate their F–1 status and their educational institutions. Under the current D/S framework, DHS might not detect an individual F–1 status violation for an extended period if the student stays enrolled in a school, does not seek readmission to the United States, and does not apply for additional immigration benefits. If DHS makes periodic assessments to verify that F–1 students are maintaining their student status, DHS could better detect and mitigate against these violations as well as violations by their school.[59] The proposed rule creates opportunities for this scrutiny if these nonimmigrants wish to remain beyond their fixed period of admission. This may also have the effect of deterring actors who would otherwise seek to come to the United States and engage in some of the behaviors discussed above, believing they would be able to do so undetected for long periods of time. DHS believes this is a more appropriate way to maintain the integrity of the U.S. immigration system. Additionally, the Department believes that the proposed changes would allow immigration officers to directly verify, among other things, that students applying for an EOS: Have the funds needed to live and study in the United States without

[55] *See* INA section 101(a)(15)(F)(i), 8 U.S.C. 1101(a)(15)(F)(i).

[56] *See* USCIS Interoffice Memorandum, ''Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act'' (May 6, 2009).

[57] In a 2019 report, GAO was asked to review potential vulnerabilities to fraud in the Student and Exchange Visitor Program. GAO examined, among other things, the extent to which ICE (1) implemented controls to address fraud risks in the school certification and recertification processes and (2) implemented fraud risk controls related to DSO training. *See* DHS Can Take Additional Steps to Manage Fraud Risks Related to School Recertification and Program Oversight, GAO–19–297: Published: Mar 18, 2019 available at *https://www.gao.gov/assets/700/697630.pdf;* Overstay Enforcement: Additional Mechanisms for Collecting, Assessing, and Sharing Data Could Strengthen DHS's Efforts but Would Have Costs, GAO–11–411: Published Apr. 15, 2011. Available at *https://www.gao.gov/assets/320/317762.pdf;* and Student and Exchange Visitor Program: DHS Needs to Assess Risks and Strengthen Oversight Functions, GAO–12–572: Published June 18, 2012 available at *https://www.gao.gov/assets/600/591668.pdf.*

[58] Since publishing its 2019 report, GAO has updated its website to include comments to the Recommendations for Executive Action included therein. The comments indicate that ICE is in the process of addressing GAO's concerns and has taken steps to implement the report's recommendations, including making a public announcement regarding changing the timeline for the recertification notification process for schools. *See* U.S. Government Accountability Office, Student and Exchange Visitor Program: DHS Can Take Additional Steps to Manage Fraud Risks Related to School Recertification and Program Oversight, RECOMMENDATIONS, *GAO.gov, https://www.gao.gov/products/GAO-19-297?mobile_opt_out=1#summary_recommend* (last visited April 7, 2020).

[59] For example, SEVP may withdraw a school's certification or deny a school's recertification if a DSO issues a false statement, including wrongful certification of a statement by signature, in connection with a student's school transfer or application for employment or practical training. *See* 8 CFR 214.4(a)(2)(v).

engaging in unauthorized work; are maintaining a residence abroad to which they intend to return; have pursued and are pursuing a full course of study; and are completing their studies within the 4 year generally applicable timeframe relating to their post-secondary education programs in the United States or are able to provide a permissible explanation for taking a longer period of time to complete the program.

Finally, the D/S framework, because it reduces opportunities for direct vetting of foreign academic students by immigration officers, creates opportunities for foreign adversaries to exploit the F–1 program and undermine U.S. national security. An open education environment in the United States offers enormous benefits, but it also places research universities and the nation at risk for economic, academic, or military espionage by foreign students. Foreign adversaries are using progressively sophisticated and resourceful methods to exploit the U.S. educational environment, including well-documented cases of espionage through the student program.[60] Detecting and deterring emerging threats to U.S. national security posed by adversaries exploiting the F–1 program requires additional oversight. DHS believes that replacing admissions for D/S for F–1 students with admission for a fixed time period would help mitigate these national security risks by ensuring an immigration official directly and periodically vets applicants for extensions of stay and, in so doing, confirms they are engaged only in activities consistent with their student status. F–1 nonimmigrants applying for EOS will also be required to establish they are admissible, and failure to do so will result in denial of the EOS. Admissibility grounds are complex and are properly assessed by a trained DHS officer. Such an assessment is not currently made when F–1 nonimmigrants apply for an extension of their program with their institution.[61] Significantly, under the proposed changes to the period of admission of F nonimmigrants and the applicable EOS process, DHS would collect biometrics and other information (such as evidence of financial resources to cover expenses and evidence of criminal activity) from F nonimmigrant students more frequently, thereby enhancing the Government's oversight and monitoring of these aliens.

iii. Risks to the J Classification

DHS believes that the national security risks posed by D/S admissions for individuals admitted under the J classification are similar to those posed by the F classification.[62] According to a December 2018 report by a panel of experts commissioned by the National Institutes of Health (NIH) to study foreign influence on federally-funded scientific research, ''Small numbers of scientists have committed serious violations of NIH's policies and systems by not disclosing foreign support (grants), laboratories, or funded faculty positions in other countries.'' [63] There are multiple examples of these ongoing national security threats. For example, in September 2019, a stark illustration of state-sponsored efforts to illegally obtain U.S. technology emerged when the FBI charged Chinese government official Liu Zhongsan with conspiracy to fraudulently procure U.S. research scholar visas for Chinese officials whose actual purpose was to recruit U.S. scientists for high technology development programs within China.[64] Additionally, in December 2019, a 29-year-old graduate student in J–1 status participating in an exchange visitor program at Harvard University was stopped at Boston Logan International Airport. Federal agents determined he was a ''high risk for possibly exporting undeclared biological material'' after finding 21 vials of brown liquid wrapped in a plastic bag inside a sock in his checked luggage; typed and handwritten notes indicated ''that [the exchange visitor] . . . was knowingly gathering and collecting intellectual property . . . possibly on behalf of the Chinese government.'' [65] Recently, in June 2020, a Chinese national who entered the United States on a J–1 visa to conduct research at the University of California, San Francisco (UCSF) was arrested at Los Angeles International Airport while attempting to return to China, and charged with visa fraud. According to court documents, he allegedly is an officer with the People's Republic of China's (PRC) People's Liberation Army and provided fraudulent information about his military service in his visa application. He allegedly was instructed by his military lab supervisor to bring back to China information about the lab at UCSF.[66]

Exchange visitor program categories include college and university students, which share similarities with the F–1 nonimmigrant classification. Students enrolled in such programs are pursuing post-secondary studies alongside F–1 nonimmigrants. J–1 college and

[60] In Dec. 2019, Weiyn Huang, the owner of Findream and Sinocontech pleaded guilty to conspiracy to commit visa fraud in the U.S. District Court in Chicago. In return for payments, Findream listed aliens as OPT workers, providing them with what appeared to be legal status. The FBI has charged one of those aliens with spying. See *https://media.nbcbayarea.com/2019/09/KellyHuangCriminalComplaint.pdf.* This vulnerability presented in the nonimmigrant student category has been highlighted by the FBI. In a 2018 hearing before the Senate Intelligence Committee, the FBI Director testified about the threat from China noting, ''that the use of nontraditional collectors, especially in the academic setting, whether it's professors, scientists, students, we see in almost every field office that the FBI has around the country. It's not just in major cities. It's in small ones as well. It's across basically every discipline. I think the level of naiveté on the part of the academic sector about this creates its own issues. They're exploiting the very open research and development environment that we have, which we all revere, but they're taking advantage of it. So, one of the things we're trying to do is view the China threat as not just a whole of government threat, but a whole of society threat on their end. I think it's going to take a whole of society response by us. So, it's not just the intelligence community, but it's raising awareness within our academic sector, within our private sector, as part of the defense.'' See Senate Select Committee on Intelligence Hearing (Feb. 13, 2018), transcript available at *https://www.intelligence.senate.gov/hearings/open-hearing-worldwide-threats-0#.* See also Foreign Threats to Taxpayer—Funded Research: Oversight Opportunities and Policy Solutions: Hearing before the Senate Finance Committee (2019) (Statement of Louis A. Rodi III). DSOs are not trained immigration officers nor are they in a position to make such determinations.

[61] In addition, DSOs may not be aware of a student's failure to maintain status, including engaging in criminal activity, nor do they have the authority or ability to acquire such information. Admitting F–1s for a fixed period of admission would provide trained immigration officers with the opportunity to vet these individuals.

[62] In its 2019 Report to Congress, the U.S.-China Economic and Security Review Commission, the Commission described the U.S. Government's efforts to curb China's extensive influence and espionage activities in academic and commercial settings. The Commission noted that these efforts took the form of visa restrictions for Chinese nationals, greater scrutiny of federal funding awarded to universities, legal action against those suspected of theft or espionage, and new legislation. *See* U.S.-China Economic And Security Review Commission, 2019 Annual Report to Congress (Nov. 2019) available at *https://www.uscc.gov/annual-report/2019-annual-report.*

[63] U.S. National Institutes of Health Advisory Committee to the Director (ACD), ACD Working Group for Foreign Influences on Research Integrity, Dec. 2018, discussing measures to address concerns about foreign influences related to graduate students and post-doctoral fellows, as well as foreign employees.

[64] U.S. Department of Justice, Chinese Government Employee Charged in Manhattan Federal Court with Participating in Conspiracy to Fraudulently Obtain U.S. Visas, Sept. 16, 2019.

[65] *See https://www.bostonherald.com/2019/12/30/peoples-republic-of-china-may-be-behind-theft-of-bio-samples-by-harvard-sponsored-chinese-student-feds-say/. See also https://www.thedailybeast.com/china-might-be-behind-harvard-student-zaosong-zhengs-theft-of-cancer-research-feds-claim.*

[66] U.S. Department of Justice, Officer of China's People's Liberation Army Arrested At Los Angeles International Airport, June 11, 2020, *https://www.justice.gov/usao-ndca/pr/officer-china-s-people-s-liberation-army-arrested-los-angeles-international-airport,* (last accessed June 20, 2020).

university students in a degree program may be authorized to participate in the exchange visitor program so long as they meet the requirements for duration of participation, including pursuing a full course of study, echoing the full course of study requirements for F–1 nonimmigrants. Their programs may also be extended by the ROs, subject to regulation and/or approval by DOS, without an application to DHS. These similarities give rise to the same concerns related to F–1s about national security, as described above, and about fraud and abuse by J–1s and their ROs. By requiring the same fixed period of admission for F–1s and J–1s, J–1 college and university students in exchange visitor programs would be unable to circumvent the intent of this proposed rule, which is to protect the integrity of these programs and provide additional protections and mechanisms for oversight. Because J exchange visitors are also tracked in SEVIS, DHS believes it would be more effective for an immigration officer to periodically confirm that an alien has properly maintained status, rather than relying on the checks of an RO that the J–1 is pursuing the activities permitted by the exchange visitor program. As noted above, DHS believes it is more appropriate for immigration officers, with their background checks, clearances, and training from the U.S. government, to adjudicate maintenance of nonimmigrant status and whether an alien is eligible for an additional admission period. Switching from D/S to a fixed period of admission would permit immigration officers the opportunity to determine whether an alien is eligible for an additional period of time. If an officer finds a violation of status while adjudicating the alien's request, the consequences could be immediate. Applicants for EOS must also establish that they are admissible, and failure to do so will result in denial of the EOS.[67] Admissibility grounds are complex and are properly assessed by a trained DHS officer. Such an assessment is not currently made when J exchange visitors apply for an extension of their program with their RO.[68] Thus, admitting J exchange visitors for a fixed time period, instead of for D/S, would give DHS more frequent opportunities to directly vet these foreign visitors and ensure they are bona fide exchange visitors. Under the proposed changes to the period of admission of J exchange visitors and the applicable EOS process, DHS would more frequently collect biometrics and other information from J exchange visitors, enhancing the Government's oversight and monitoring of these aliens.

iv. Risks to the I Classification

Admitting I nonimmigrants for duration of status affords them different treatment from most other nonimmigrants, who are admitted for a specified period of time. The Department believes admitting aliens temporarily in the United States for a fixed period would strengthen vetting and information collection and help immigration officers ensure that the I nonimmigrants are, and will be, engaged in activities that are permissible under INA 101(a)(15)(I). In addition, this rulemaking proposes to require individuals who wish to remain in I nonimmigrant status beyond the end date for their authorized stay to apply for an EOS with USCIS, at which point immigration officers can review their activities in the United States. It also clarifies what DHS would require these individuals to present as evidence supporting their EOS request.[69]

IV. Discussion of the Proposed Rule

All persons arriving at a port-of-entry to the United States must be inspected by a CBP officer and must apply for admission into the United States with CBP.[70] In the case of an alien, a CBP officer determines whether an alien is eligible for admission and, if they are, issues the Form I–94, Arrival/Departure Record with the nonimmigrant category and period of admission.[71] For the vast majority of aliens, their Form I–94 includes a specific date through which their status is valid; they must depart the United States on or before that date. An alien who wishes to lawfully remain in the United States in the same status past that date generally must apply for an EOS with USCIS.

However, as described above, certain nonimmigrant categories, including F academic students, J exchange visitors, and I representatives of foreign information media, and their dependents, may be admitted into the United States for D/S instead of a period of time with a specific departure date. DHS is proposing changes to the admission provisions for these particular nonimmigrant classifications, including replacing admissions for ''duration of status'' with a fixed admission period. This would enable immigration officers to independently and directly verify the continued eligibility of foreign visitors in F, J, or I nonimmigrant status. It would also require aliens who fall under certain criteria to apply more frequently for additional admission periods.

A. General Period of Admission for F and J Nonimmigrants

As a foundational matter, DHS proposes to add a new paragraph explaining the period of admission for nonimmigrants described in section 101(a)(15)(F) and (J) who are seeking admission after [effective date of the final rule]. In formulating this proposed rule, DHS considered and addressed various circumstances that might apply when F and J nonimmigrants apply for admission at a POE.

i. Application for Admission in F or J Nonimmigrant Status

Aliens applying for an admission in either F or J status who, under this proposal, would be eligible to be admitted for the length of time indicated by the program end date noted in their Form I–20 or DS–2019, not to exceed 4 years, unless they are subject to a 2-year admission proposed in 8 CFR 214.2(f)(20) or (j)(6), plus a period of 30 days following their program end date, to prepare for departure or to otherwise seek to obtain lawful authorization to remain in the United States. *See* proposed 8 CFR 214.1(a)(4)(i)(A) and (ii)(A).

ii. Application for Admission in the Same Status Following Departure From the United States

a. Aliens With Pending Extension of Stay Applications at Time of Application for Admission Whose Previous Period of Authorized Stay Has Expired

Aliens who departed the United States and are applying for admission before their timely filed EOS application has been adjudicated, but after their previously authorized period of stay has

[67] *See* 8 CFR 214.1(a)(3).

[68] ROs may not be aware of a student's failure to maintain status, including engaging in criminal activity. Admitting J–1s for a fixed period of admission would provide trained DHS officers with the opportunity to vet these individuals.

[69] These proposed changes, including additional evidence relating to foreign media organizations and activities the alien intends to engage in while in I status, would also apply to a nonimmigrant in the United States who requests to change his/her nonimmigrant status to that of an I nonimmigrant.

[70] 8 CFR 235.

[71] The Form I–94 is used by the U.S. Government to track arrivals and departures of nonimmigrants. Originally the form was designed in two parts—one for the Government and one for the nonimmigrant. The second part would be stapled into the nonimmigrant's passport and then removed upon departure. The form is now maintained electronically and can be accessed by nonimmigrants by downloading it from the CBP website. *See* I–94 website, U.S. Customs and Border Protection, *https://i94.cbp.dhs.gov/I94/#/recent-search* (last visited Dec. 9, 2019).

expired, could be eligible to be admitted for the length of time required to reach the program end date noted in their most recent Form I–20 or DS–2019, not to exceed 4 years, unless they are subject to the 2-year admission proposed in 8 CFR 214.2(f)(20) or (j)(6), plus a period of 30 days to prepare for departure or to otherwise seek to obtain lawful authorization to remain in the United States, similar to an initial period of admission. *See* proposed 8 CFR 214.1(a)(4)(i)(A) and (ii)(A). USCIS would consider the alien's EOS application abandoned because the alien's new fixed date of admission based on the most recent I–20 or DS–2019 had already been determined by CBP upon the most recent admission to the United States, and thus the pending EOS application is extraneous. *See* proposed 8 CFR 214.1(c)(6).

b. Aliens With Pending Extension of Stay Applications at Time of Application for Admission Whose Previous Period of Authorized Stay Has Not Expired

Aliens who departed the United States and are applying for admission before their timely filed EOS application has been adjudicated, but before their previously authorized period of stay has expired, could be eligible to be admitted either for:

i. The length of time as indicated by the program end date noted in their most recent Form I–20 or DS–2019, not to exceed 4 years, unless they are subject to the 2-year admission proposed in 8 CFR 214.2(f)(20) or (j)(6), plus a period of 30 days to prepare for departure or to otherwise seek to obtain lawful authorization to remain in the United States, similar to an initial period of admission. If the alien is admitted for the program length (not to exceed 2 or 4 years, as applicable), USCIS would consider the alien's EOS application abandoned because the alien's new fixed date of admission based on the most recent I–20 or DS–2019 had already been determined by CBP upon the most recent admission to the United States, and thus the pending EOS application is extraneous; or

ii. The period of time remaining on their previously authorized period of admission. As proposed, CBP could admit the alien for a period of time not to exceed the unexpired period of stay that was authorized before the alien's departure, plus a period of 30 days to prepare for departure or to otherwise seek to obtain lawful authorization to remain in the United States. In this scenario, in accordance with proposed 8 CFR 214.1(c)(6), an alien's EOS application is not considered abandoned and USCIS will grant a new period of stay upon subsequent adjudication of the EOS. *See* proposed 8 CFR 214.1(a)(4)(i)(B) and (a)(4)(ii)(B).

c. Aliens Applying for Admission Without a Pending Application of Extension of Stay

Aliens who departed the United States and are applying for admission in F or J status would be eligible to be admitted up to the length of their program listed on the Form I–20 or Form DS–2019, not to exceed a period of 4 years, plus an additional 30 days at the end of the program, as specified in 8 CFR 214.2(f)(5) and (j)(1)(ii)(A), respectively, if the alien seeks admission with a Form I–20 or DS–2019 for a program end date beyond their previously authorized period of admission, or for a period up to the unexpired period of stay authorized prior to departure. *See* proposed 8 CFR 214.1(a)(4)(i)(A) and (a)(4)(ii)(A).

d. Aliens Applying for Admission After EOS is Granted

For aliens who departed the United States after timely filing an EOS application and are applying for admission in F or J status after their EOS application is granted, DHS proposes that CBP could admit them for a period of time not to exceed the time authorized by their approved EOS, plus a period of 30 days to prepare for departure or to otherwise seek to obtain lawful authorization to remain in the United States. *See* proposed 8 CFR 214.1(a)(4)(i)(C) and (a)(4)(ii)(C).

e. Aliens Applying for Admission To Engage in Post-Completion or STEM OPT

F nonimmigrants who departed the U.S. and are applying for admission to engage in post-completion or STEM OPT. *See* proposed 8 CFR 214.1(a)(4)(i)(D). These aliens may, generally, be admitted either up to the end date of the approved employment authorization or up to the DSO's recommended employment end date for post-completion or STEM OPT specified on their Form I–20, whichever is later, plus a 30-day period to prepare for departure or to otherwise seek to obtain lawful authorization to remain in the United States. In instances where the EAD has not been approved and the alien is admitted based on the DSO's recommended employment end date on the Form I–20, USCIS's subsequent approval of the alien's EAD may result in less time for the EAD than the time for which the alien was admitted. Therefore, in the limited circumstance where the alien ceases employment because his or her EAD expires before the alien's fixed date of admission as noted on their I–94, the alien generally will be considered to be in the United States in a period of authorized stay from the date of the expiration noted on their EAD until the fixed date of admission as noted on their I–94.

When applying for admission at a POE while their application for employment authorization is pending, they should have a notice issued by USCIS indicating receipt of the employment authorization application necessary for post-completion or STEM OPT (currently Form I–797).

Finally, under this proposal, aliens applying for admission pursuant to the provisions relating to automatic extension of visa validity could be admitted for the unexpired period of stay authorized prior to their departure. *See* proposed 8 CFR 214.1(b)(1).

All of these cases assume, consistent with this proposed rule, that the admission period any F or J nonimmigrant previously admitted for D/S would be transitioned to a fixed date of admission. To provide adequate notice to aliens previously admitted for D/S regarding the date when their admission period ends pursuant to the proposed transition, DHS proposes that an alien's period of admission would expire on the program end date on the alien's Form I–20 or DS–2019 that is valid on the final rule's effective date, not to exceed a period of 4 years from the final rule's effective date, plus an additional period of 60 days for F nonimmigrants and 30 days for J nonimmigrants. *See* proposed 8 CFR 214.2(f)(5) and (j)(1). DHS believes that this proposal would provide adequate notice because all students and exchange visitors in F or J nonimmigrant status who want to extend their program currently need to apply for permission with their DSO or RO. At that time, the DSO or RO could explain that they are approving a program extension, but the nonimmigrant must apply for an EOS directly with DHS and such EOS must be granted to remain lawfully in the United States. Under current policy, F and J nonimmigrants do not accrue unlawful presence until the day after USCIS formally finds a nonimmigrant status violation while adjudicating a request for another immigration benefit or on the day after an immigration judge orders the alien excluded, deported, or removed (whether or not the decision is appealed), whichever comes first.[72] In

[72] *See* "*Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections*

Continued

reliance on this policy, some F and J nonimmigrants admitted for D/S may not have taken the appropriate steps to maintain status, otherwise change status, or depart the United States. This proposed rule is concerned with providing adequate notice to allow F and J nonimmigrants who are maintaining status to transition to a new date-certain admission.

Although some F and J nonimmigrants may have program end dates longer than 4 years, DHS believes that using the program end date on the Form I–20 or DS–2019, up to 4 years from the effective date of the final rule, as the fixed date of admission best aligns with the normal progress these nonimmigrants should be making. This alignment is based on the general structure of post-secondary education in the United States. According to the Department of Education (ED), students can normally earn a bachelor's degree in 4 years.[73] The total number of F–1 students pursuing a bachelor's degree in 2018 was 522,155, constituting almost 40 percent of the 2018 nonimmigrant student population. The total number of F–1 students pursuing a master's degree, generally 2-year programs, in 2018 was 498,625, representing almost 38 percent of the nonimmigrant student population. Taken together, this population represents almost 80 percent of the nonimmigrant students in the United States. Therefore, DHS believes that a 4-year period of admission would not pose an undue burden on them, because many F and J nonimmigrants would complete their studies within a 4-year period, and not have to request additional time from DHS.[74] The smaller proportion of students not pursuing a bachelor's or master's degree are enrolled in different programs, which may last more or less than 4 years.[75] As a significantly smaller percentage of students are engaged in programs which may last longer than 4 years, DHS considered that the proposed framework would accommodate many students, creating a less burdensome process.

The proposed 4-year period of admission would not apply to all F and J nonimmigrants. DHS believes a shorter admission period, up to 2 years, would be appropriate for a subset of the F and J population due to heightened concerns related to fraud, abuse, and national security, as discussed below. *See* proposed 8 CFR 214.2(f)(20) and (j)(6). For this subset of the F and J population, DHS believes that a 2-year maximum period of admission would be appropriate. This would give the Department an opportunity to verify that they are complying with the terms and conditions of their status more frequently and thereby better address any national security concerns. Using this risk-based approach, which focuses on certain factors predetermined by DHS and presented by some aliens, DHS anticipates that most F and J nonimmigrants would not need to file an EOS application at some point during their stay, and DHS consequently could allocate its resources more efficiently.

Before arriving at the 2- and 4-year admission periods, DHS considered various options. DHS considered a standard 1-year admission for all F and J nonimmigrants. This option would treat all nonimmigrants with F and J status equally and would likely allow for easier implementation by CBP at the POEs. Nevertheless, it could result in significant costs to nonimmigrants and the Department. There are more than 1 million F students enrolled in programs of study that last longer than 1 year.[76] With a 1-year admission period, students and exchange visitors participating in programs of greater duration would need to apply for additional time. This would be a significant cost to students and exchange visitors, and DHS is particularly mindful of those who comply with the terms and conditions of their admission and participate in programs, such as undergraduate programs, that typically require several years to complete.

Another alternative DHS considered was to admit all F and J nonimmigrants to their program end date, not to exceed 3 years. This option would give the Department more frequent direct check-in points with nonimmigrants than a 4-year maximum period of admission would. However, DHS was concerned it would unduly burden many F and J nonimmigrants. As discussed above, 4 years best accounts for the normal progress for most programs. Even considering those F or J nonimmigrants who are admitted into the U.S. after having already completed a portion of their program outside of the U.S., instituting a 3-year maximum period of stay would have required each nonimmigrant pursuing a 4 year program to extend, while 4 years allows additional time to complete a 4-year degree. This alternative also would place greater administrative burdens on USCIS and CBP compared to the proposed 4-year maximum period of admission. USCIS would have to adjudicate EOS applications more frequently, and CBP's workload would increase as individuals would travel to request admission at the POE, with a 3-year maximum period of stay than a 4-year one. Therefore, DHS believes an admission for the program end date, not to exceed 4 years (except for limited exceptions that would limit admissions to 2 years) is the best option. DHS welcomes comments on this proposal.

B. Automatic Extension of Visa Validity at Port of Entry

DHS proposes to change the admission language in the provision relating to extension of visa validity from ''shall'' to ''may'' clarifying that CBP always maintains the discretion to determine whether to admit an alien and for the period of admission. This change removes any ambiguity about whether CBP has an absolute duty to admit an alien to clarify that CBP has the discretion to admit an alien for a certain period of time. *See* proposed 8 CFR 214.1(b)(1).

DHS proposes technical revisions to the visa revalidation provisions that allow certain F, J, and M nonimmigrants to apply for readmission if eligible for admission as an F, J, or M nonimmigrant and if they are applying for readmission after an absence from the United States not exceeding thirty days solely in contiguous territory or adjacent islands. *See* 8 CFR 214.1(b). Such technical revisions include updating language to clarify that ''visa revalidation'' refers to automatic extension of visa validity at the port of entry. These provisions apply when, for example, a nonimmigrant finds himself or herself applying for reentry after going to Mexico on spring break without realizing that his or her visa had expired. Instead of having to get a new visa, CBP can readmit the nonimmigrant

212(a)(9)(b)(i) and 212(a)(9)(c)(i)(I) of the Act'', May 6, 2009, available at *https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/2009/revision_redesign_AFM.PDF* (last accessed June 20, 2020). The policy reflected by this memorandum currently applies to F, J, and I nonimmigrants in relation to duration of status but will change accordingly when duration of status no longer applies to them.) ICE does not make findings of status violations that result in the accrual of unlawful presence.

[73] *See* the Mobile Digest of Education Statistics, 2017, ''The Structure of American Education,'' available at *https://nces.ed.gov/programs/digest/mobile/The_Structure_of_American_Education.aspx* (last visited Feb. 4, 2020).

[74] *See* the Student and Exchange Visitor Program (SEVP), ''2018 SEVIS by the Numbers Report'' available at *https://www.ice.gov/doclib/sevis/pdf/sevisByTheNumbers2018.pdf* (last visited Feb. 4, 2020).

[75] Other programs include Associate's degrees, language training programs, and Ph.D.s., among others. *Id.*

[76] *See* the Student and Exchange Visitor Program (SEVP), ''2018 SEVIS by the Numbers Report'' available at *https://www.ice.gov/doclib/sevis/pdf/sevisByTheNumbers2018.pdf* (last visited Feb. 4, 2020).

whose visa validity is automatically extended by operation of Department of State regulations. *See* 22 CFR 41.112(d). DHS does not believe it is necessary to make a nonimmigrant get a new visa under these circumstances.

DHS proposes minor technical updates to account for inaccurate or no longer applicable terms and cites: First, DHS proposes to strike the reference to INA 101(a)(15)(Q)(ii) and reserve it, as that program no longer exists and is no longer in the INA.[77] *See* proposed 8 CFR 214.1(b)(1)–(3). Second, DHS proposes to update the cross reference to 22 CFR, from 22 CFR 41.125(f) to 22 CFR 41.112(d), which is the current provision describing automatic extension of visa validity at ports of entry. Third, DHS proposes to strike the reference to ''duration of status'' in 8 CFR 214.1(b)(1).

C. Extension of Stay (EOS)

This proposed rule would not create a new form for an EOS application; however, USCIS is in the process of transitioning from paper-based to electronic form processing and some form names and numbers may change. While DHS plans to update existing forms allowing F, J, and I nonimmigrants to apply for an EOS with USCIS, DHS believes it would be more efficient to replace references to specific form names and numbers throughout the current regulations with generally applicable language, specifically, ''extension request in the manner and on the form prescribed by USCIS, together with the required fees and all initial evidence specified in the applicable provisions of 8 CFR 214.2, and in the form instructions, including any biometrics required by 8 CFR 103.16.''

Using general language in the regulatory text instead of referring to specific form names and numbers helps both the Department and stakeholders. It allows for technical changes without requiring an entirely new rulemaking to update form names. Stakeholders would receive notice and specific guidance on USCIS' website and in the appropriate form instructions, as they already do for various other benefits. Therefore, DHS proposes to use this language in 8 CFR 214.1(c)(2) and to strike the current phrase exempting F and J nonimmigrants from the requirement to file an EOS, as they would be required to file an EOS if they wish to remain in the United States beyond their specified date of admission. *See* proposed 8 CFR 214.1(c)(2).

Like the technical updates to strike the specific form name from 8 CFR 214.1(c)(2), DHS is proposing to strike the references to forms ''I–129'' and ''I–539'' in 8 CFR 214.1(c)(5), replacing those specific form numbers with the aforementioned general language. *See* proposed 8 CFR 214.1(c)(5). The substance of that provision, including the language that does not allow an alien to appeal an EOS denial would remain the same.

Additionally, DHS proposes to strike ''other than as provided in 214.2(f)(7)'' from 8 CFR 214.1(c)(3)(v) to make it clear students must apply for an EOS. This requirement would not apply to other nonimmigrants admitted for D/S, such as A–1 or A–2 representatives of foreign governments and their immediate family members; they would remain ineligible to file an EOS.

As part of the EOS application, USCIS requires biometric collection and will require such collection from F, J, and I nonimmigrants under the proposed rule. USCIS has the general authority to require and collect biometrics (such as fingerprints, photograph, and or a digital signature) from applicants, petitioners, sponsors, beneficiaries, or other individuals residing in the United States for any immigration and naturalization benefit. *See* 8 CFR 103.16, and 103.2(b)(9). Biometric collection helps USCIS confirm an individual's identity and conduct background and security checks. Further, USCIS may also require any applicant, petitioner, sponsor, beneficiary or individual filing a benefit request, or any group or class of such persons submitting requests to appear for an interview. See 8 CFR 103.2(b)(9). USCIS may require such an interview as part of USCIS' screening and adjudication process that helps confirm an individual's identity, elicit information to assess the eligibility for an immigration benefit, and screen for any national security or fraud concerns.

Finally, DHS considered how to address the admission of F, J, and I nonimmigrants who timely filed an EOS and any corresponding applications for employment authorization but left the United States before receiving a decision from USCIS. DHS anticipates this scenario would apply mostly to F–1 students applying for post-completion OPT and STEM OPT extensions.

While USCIS generally does not consider an application for EOS abandoned when the nonimmigrant leaves the United States,[78] DHS recognizes the potential for conflict if a nonimmigrant receives authorization from both CBP and USCIS for what amounts to the same request (a specific period of time to pursue authorized activities).

Where an alien in F, J, or I status timely files an application for EOS, leaves the United States before USCIS approves that EOS application, and applies for admission to continue his or her activities for the balance of the previously authorized admission period, USCIS would not consider the EOS application abandoned. *See* proposed 8 CFR 214.1(c)(6)(i). In such circumstances, the pending EOS would remain relevant and ultimately determine the alien's fixed date of admission.

However, where the alien leaves the United States and applies for admission while his or her EOS application is pending and is admitted with a Form I–20 or DS–2019 for a program end date beyond their previously authorized period of admission, the pending EOS is deemed abandoned, and the admit until date provided by CBP on the alien's Form I–94 governs. *See* proposed 8 CFR 214.1(c)(6)(ii). This is because, in these cases, CBP's grant of a new period of authorized stay would supersede the pending EOS application seeking a period of authorized stay, rendering it superfluous.

The Department considered a policy whereby an F, J, or I nonimmigrant would automatically abandon an EOS application upon departing the United States. However, the Department believes such a strict requirement would not be practical, because people cannot always predict when they will have to travel.

Regarding applications for employment authorization for F–1s and J–2s, CBP does not adjudicate applications for employment authorization. USCIS would continue processing any such applications, notwithstanding a departure, and, if the application is approved, USCIS will not issue an EAD with a validity date that exceeds the fixed date of admission provided to the alien at the POE. For example, an F–1 student wishing to engage in post-completion or a STEM OPT extension would need to file both an EOS application and an application for employment authorization. Where the alien had departed the United States before his or her application are

[77] See Irish Peace Process Cultural and Training Program Act of 1998, Public Law 105–319, 112 Stat. 3013 (Oct. 30, 1998), as amended by Public Law 108–449, 114 Stat. 1526 (Dec. 10, 2004).

[78] *See* Memo, Cook, Acting Asst. Comm. Programs, HQ 70/6.2.9 (June 18, 2001), reprinted in 70 No. 46 Interpreter Releases 1604, 1626 (Dec. 6, 1993).

adjudicated, USCIS would not consider the employment authorization application abandoned.

In all events, when an F–1 or a J–2 nonimmigrant travels while the employment authorization or EOS application is pending, he or she is still expected to respond to any Request for Evidence (RFE) and to timely submit the requested documents. Because USCIS only sends RFEs to U.S. addresses, aliens traveling outside the United States while applications are pending are advised to make necessary arrangements to determine whether they have received an RFE relating to their application and to timely respond to any RFE.[79] Failure to do so could result in USCIS denying an employment authorization or EOS application for abandonment.

D. Transition Period

i. F and J Nonimmigrants

DHS proposes to generally allow all F and J nonimmigrants present in the United States on [the Final Rule's effective date], who are validly maintaining that status and who were admitted for D/S, to remain in the United States in F or J status, without filing an EOS request, up to the program end date reflected on their Form I–20 or DS–2019 that is valid on the Final Rule's effective date, not to exceed 4 years from the effective date of the Final Rule, plus an additional 60 days for F nonimmigrants and 30 days for J nonimmigrants. An alien who departs the United States and seeks admission after the Final Rule's effective date becomes subject to the fixed date framework imposed by this rule. *See* proposed 8 CFR 214.1(m)(1).

F and J nonimmigrants who depart the United States after the rule's effective date and before the end date reflected on their Form I–20 or DS–2019 would be readmitted with a new fixed admission period, like any other newly admitted F or J nonimmigrant, as provided for in proposed 8 CFR 214.1(a)(4). Aliens whose admission period is converted from D/S to a fixed period who would like to seek additional time to complete their studies, including those requesting post-completion OPT or STEM OPT extensions or starting a new course of study or exchange visitor program, would need to file an EOS application with USCIS for an admission period up to the new program end date listed on the Form I–20 or DS–2019, or successor form, reflecting such an extension or transfer, up to a maximum of 4-years, or 2 years, as appropriate. *See* proposed 8 CFR 214.1(m)(1) and 8 CFR 214.2(f)(20).

Regarding pending applications for employment authorization during the transition period, aliens in F status who are subject to the transition and who are seeking post-completion OPT and STEM–OPT employment authorization would be authorized to remain in the United States while the application is pending with USCIS if: (1) They are in the United States on the effective date of the final rule with admission for D/S; (2) they properly filed an application for employment authorization; and (3) their application is pending on the final rule's effective date. Unless otherwise advised by USCIS, they would not have to file for an EOS or re-file an application for employment authorization. *See* proposed 8 CFR 214.1(m)(2). If the application for employment authorization is approved, the F–1 will be authorized to remain in the United States in F status until the expiration date of the employment authorization document, plus 60 days as provided in their previous admission. If the employment application is denied, the F–1 would continue to be authorized to remain in the United States until the program end date listed on their Form I–20, plus 60 days as provided in their previous admission, as long as he or she continues to pursue a full course of study and otherwise meets the requirements for F–1 status.

Aliens in F–1 status with pending employment authorization applications, other than post-completion OPT and STEM OPT, also do not need to file for an extension or refile an employment authorization application. As long as these F–1s continue to pursue a full course of study and otherwise meet the requirements for F–1 status, they continue to be authorized to remain in the United States until the program end date listed on the Form I–20, plus 60 days, regardless of whether the employment authorization is approved or denied.

DHS believes that this transition proposal would not be unreasonably burdensome on F and J nonimmigrants. Many would be able to complete their programs per the terms of their initial admission (D/S) using the original program end date as an expiration of their authorized period of stay. DHS would grant such periods, which include an additional 60 days for Fs and 30 days for Js as provided in their previous admission, automatically without an application or fee. With this option, DHS believes that the majority of F and J nonimmigrants will be shifted to a fixed period of admission of 4 years or less, except for some F–1 students and J–1 exchange visitors. For example, J–1 research scholars and alien physicians who have program end dates for up to 5 or 7 years respectively, would need to apply for an EOS before the 4-year maximum period of stay expires, *i.e.,* the date that falls four years after the rule becomes effective.

Another benefit of this option is that it would enable DHS to transition F and J nonimmigrants to an admission for a fixed time period without unduly burdening them, USCIS or CBP. This option would ensure that no F and J nonimmigrants remain in the United States indefinitely by requiring all F and J nonimmigrants admitted for D/S who wish to extend their stay beyond their program end date or the four year maximum, whichever is applicable, to either file an EOS request or depart the United States and apply for admission at a POE by their program end date or the four year maximum period of stay from the final rule's effective date, plus an additional 60 days for Fs, and 30 days for Js.

In proposing these transition procedures, DHS took into consideration the effect of transitioning to a fixed period of admission will have on F and J nonimmigrants originally admitted for D/S who chose to temporarily come to the United States to pursue a program of study or an exchange visitor program. DHS believes the proposed changes would not significantly affect the reliance interests of these nonimmigrants admitted for D/S. DHS is not proposing to change the fundamental requirements to qualify for these nonimmigrant statuses, rather the proposal is only to change the length of time that an individual may lawfully remain in the United States in F or J status without filing an extension of stay. Admitting these categories of nonimmigrants for a fixed period of admission simply confirms that the admission is temporary and clearly communicates when that temporary admission period ends. Further, as is the case for the fixed period of admission policy more generally, a fixed

[79] *See* SEVP's Study in the States web page, ''Traveling as an International Student'' available at *https://studyinthestates.dhs.gov/traveling-as-an-international-student* (last visited Jan. 9, 2020). *See also* ICE's Re-entry for F–1 Non-immigrants Travelling Outside the United States for Five Months or Fewer web page, which notes, ''Can I reenter if my request for OPT is pending? Yes, but traveling during this time should be undertaken with caution. USCIS may send you a request for evidence while you are away, however, so you would want to make sure you have provided a correct U.S. address both to your DSO and on the application and would be able to send in requested documents. Also, if USCIS approves your OPT application, you will be expected to have your EAD in hand to re-enter the United States. Like a request for further information, USCIS can only send the EAD to your U.S. address,'' available at *https://www.ice.gov/sevis/travel* (last visited Jan. 9, 2020).

date of admission simply places these nonimmigrants in the same position as most other nonimmigrants who are temporarily in the United States. They would still be able to continue to pursue their full course of study or exchange visitor program; however, if they need additional time in F or J status, the burden would now be upon them to request authorization directly from DHS and establish eligibility to extend their period of stay in such status, whereas previously they obtained an extension of lawful status in conjunction with a program extension through a DSO or RO.

At the same time, this proposed process would provide immigration officials an opportunity to directly review and determine whether F and J nonimmigrants who wish to remain in the United States beyond their fixed period of admission are complying with U.S. immigration law and are indeed eligible to retain their nonimmigrant status. If there are F or J nonimmigrants relying on a D/S admission in an attempt to permanently remain in the United States, or otherwise circumvent their authorized status, this proposed process would allow DHS to detect and deny an extension of stay request.

DHS considered several alternatives before determining the above proposal was the best option. First, DHS considered whether to impose a consistent length for the fixed admission for all F and J nonimmigrants transitioning from a D/S admission, such as 1 or 3 years from the final rule's effective date. While this proposal would provide a standard end date, DHS was concerned about the expense and workload implications of this option on all stakeholders and DHS. As noted, DHS expects most F and J nonimmigrants to complete their program of study or exchange visitor program within a 4-year period. A date that does not align with this expectation could place a significant burden on the affected F and J nonimmigrants and on their academic institutions or exchange visitor programs' sponsors and employers, as applicable. USCIS would be especially affected if a significant percentage of these nonimmigrants chose to remain in the United States and file for an EOS in order to complete the balance of their program, study, or work activity. While USCIS could try to anticipate the volume, the sheer number of simultaneous nonimmigrants filing for EOS could significantly lengthen processing times. Because the proposed option is less burdensome on F and J nonimmigrants and on DHS, DHS does not believe that ending D/S for all F and J nonimmigrants at timeframes that do not align with the expected length of stay presents the best way to transition from D/S to admission for a fixed time period. The proposed transition period is consistent with the generally applicable policy and allows for the normal progress for most programs that nonimmigrants should be making. Further, it ensures that these nonimmigrants are complying with the terms and conditions of their status by requiring them to apply to extend their status by the end date on the I–20 or DS–2019, not to exceed four years.

A second option that DHS considered was to allow F and J nonimmigrants to keep their D/S period of admission until they depart the United States. The Department rejected this alternative, however, because one of the main reasons for proposing this rule is to address current abuse tied to the D/S period of authorized admission. Adopting this alternative would allow aliens currently violating their nonimmigrant status to largely avoid the consequences of non-compliance with U.S. immigration laws by simply remaining in the United States, as otherwise described in this rule.

Third, DHS evaluated an option to allow F and J nonimmigrants to retain their D/S admission up to their program end date, with the transfer to a fixed admission date implemented through any of the following actions of the nonimmigrant: (i) Departure from the United States; (ii) transfer to a different institution or sponsor; (iii) failure to maintain a full course of study; (iv) approval for reinstatement; [80] (v) having a DSO or RO extend the program end date; (vi) approval for a post-completion OPT or a STEM OPT extension; or (viii) engaging in any action that requires the issuance of a new Form I–20 or DS–2019. However, DHS felt that this alternative may fail to provide adequate notice to all affected nonimmigrants given the several scenarios under which the transfer to a fixed period of admission could occur, and could lead to some fraud by DSOs intentionally providing an unnecessarily long program end date on the Form I–20 prior to the final rule's effective date. Although this option is relatively similar to the proposed transition process, to make the transition easier for Fs, Js, ROs, and DSOs, triggering events were limited to those that result in a change to the program end date, as well as re-entry to the United States. In addition, while this option would allow DHS to effectuate the transition of the F and J population without requiring the expense and workload associated with large numbers of simultaneous filings, it would not capture those who have program end dates beyond 4 years from the effective date of the proposed rule.

Fourth, DHS weighed whether requiring various categories of F or J nonimmigrants to apply for an EOS within 60 days after the final rule's effective date would better address national security and fraud issues rather than transitioning all nonimmigrants from D/S to an admission for a fixed time period by using the program end date up to a maximum period of four years. To identify the categories that would be required to file an EOS soon after the final rule's effective date, DHS considered adopting the limiting factors listed at proposed 8 CFR 214.2(f)(20) and (j)(6) (including certain countries and U.S. national interests, unaccredited institutions, E-Verify participation, and language training programs). While such an approach could prioritize certain aliens for prompt, direct vetting and oversight, applying it to hundreds of thousands of nonimmigrants who had been admitted into the United States under D/S could have a significant impact. DHS believes that this approach could result in lengthy processing timeframes as the affected population would be required to file an EOS at the same time. Given USCIS' processing times, DHS does not believe there would be significant efficiency to excepting certain F or J categories from applying for EOS later than other F or J categories. In addition, this short timeframe to file EOS may be burdensome on F, Js, and the institutions and sponsors as they adapt to a new process, as compared with the proposed transition period within the 4-year period.

In sum, DHS's proposal is to transition all F and J nonimmigrants to a fixed admission date by using the program end date noted on their Form I–20 or DS–2019 (with the exception of F students engaging in post-completion or a STEM OPT extension who would use their EAD's expiration date), not to exceed 4 years, plus an additional 60 days for Fs and 30 days for Js as provided in their previous admission. DHS believes this is a natural way to transition the majority of these nonimmigrants to a fixed admission date without creating any loopholes, such as those that could be created by allowing Fs and Js to retain their duration of status, potentially permitting those who are abusing their status to continue to do so without the oversight and vetting conducted through

[80] *See* 8 CFR 214.2(f)(16), allowing an F–1 student, under certain circumstances, to apply for reinstatement with USCIS after receiving recommendation from the DSO, following a failure to maintain status.

EOS. It would also provide all affected nonimmigrants adequate notice of the events that would trigger the transition to a fixed admission date to a fixed admission date and their responsibilities resulting from such change.

ii. I Nonimmigrants

Turning to I nonimmigrants, DHS proposes an automatic extension of the length of time it takes the alien to complete his or her activity, for a period of up to 240 days. *See* proposed 8 CFR 214.1(m)(3). DHS based this proposed timeframe on the period of stay authorized in 8 CFR 274a.12(b)(20), which generally provides an automatic extension of employment authorization of 240 days to continue employment with the same employer, including for I nonimmigrants who have timely filed a Form I–539, Application to Extend/Change Nonimmigrant Status, *see* 8 CFR 214.2(i), which currently is required when an I nonimmigrant changes information mediums.[81] DHS believes that adopting an already established timeframe, to which I nonimmigrants are already accustomed, is reasonable. I nonimmigrants who seek to remain in the United States longer than the automatic extension period provided would be required to file an extension of stay request with USCIS.[82] In addition to I nonimmigrants being familiar with the timeframe under 8 CFR 274a.12(b)(20), DHS anticipates that this provision would reduce any gaps in employment due to USCIS' processing timeframes between the I nonimmigrant's application for extension and USCIS approval of the application. It would also facilitate an I nonimmigrant's ability to complete his or her assignment while temporarily in the United States on behalf of a foreign media organization, in that it would give ample time to any I nonimmigrant to either complete that assignment or ask for an extension, as needed.

Finally, the transition procedures would not apply to F, J, or I aliens who are outside the United States when the final rule takes effect, or to any aliens present in the United States in violation of their status. *See* proposed 8 CFR 214.1(m)(1)–(m)(3).

E. Requirements for Admission, Extension, and Maintenance of Status of F Nonimmigrants

DHS is proposing various changes under the regulations that provide the framework for admission, extension, and maintenance of status for F nonimmigrants. These changes would eliminate D/S, require students to file an EOS if requesting to remain in the United States beyond the period of their admission, and clarify terms to ensure that the activities an F nonimmigrant has engaged in are consistent with those of a bona fide student.

i. Admission for a Fixed Time Period

As a preliminary matter, DHS is proposing to strike the current regulation that allows F nonimmigrants to be admitted for D/S. DHS would replace it with a provision allowing F nonimmigrants to be granted status for the length of their program, not to exceed 4 years and subject to eligibility limitations, as well as national security and fraud concerns.

Second, DHS proposes to retain in the regulations the statutory limitation that restricts public high school students to an aggregate of 12 months of study at any public high school(s). *See* 8 CFR 214.2(f)(5)(i). However, this proposed rule moves this provision to a new section and further clarifies that the 12-month aggregate period includes any school breaks and annual vacations. *See* proposed 8 CFR 214.2(f)(5)(i)(D). Current requirements, including paying the full cost of education, would also remain in place.

Third, F–1 students who are applying to attend an approved private elementary or middle school or private academic high school would continue to be covered by the provisions of paragraph (f)(6)(i)(E). These provisions require the DSO to certify a minimum number of class hours per week prescribed by the school for normal progress toward graduation. *See* 8 CFR 214.2(f)(6)(i)(E). However, like all other F–1 students, they would be subject to the 4-year or 2-year maximum period of admission and they would need to apply for an extension of stay with DHS if staying beyond this period. *See* proposed 8 CFR 214.2(f)(7)(vi).

Fourth, DHS is proposing to exempt border commuter students from the general length of admission provisions. *See* proposed 8 CFR 214.2(f)(5)(i)(C). The regulations at 8 CFR 214.2(f)(18) would continue to govern these border commuter students, including that DHS to admit them for a fixed time period.

Fifth, F–1 students in a language training program would be restricted to a lifetime aggregate of 24 months of language study, which would include breaks and an annual vacation. *See* proposed 8 CFR 214.2(f)(5)(i)(B). DHS is proposing this limitation as a way to prevent abuse of the F–1 program. Public Law 111–306, enacted on December 14, 2010, and effective since 2011, requires language training schools enrolling F–1 students to be accredited by an accrediting agency recognized by the Secretary of Education. DHS consistently sees students enrolled in language training schools for very lengthy periods of time, including instances of enrollment for over a decade, either by extending a program at one school or transferring between language schools.[83] DHS has also found students enrolling in lengthy periods of language training despite previously enrolling in or completing undergraduate and graduate programs requiring English language proficiency.[84] Unlike degree programs that typically have prescribed course completion requirements, there are no nationally-recognized, standard completion requirements for language training programs and students are able to enroll in language training programs for lengthy periods of time. The lengthy enrollment in a language program, including enrollment in language courses for long periods subsequent to completion of a program of study that requires proficiency in English, raises concerns about whether the F–1s meet the statutory definition of a bona fide student with the intent of entering the U.S. for temporary study.[85] Therefore, DHS proposes a 24-month aggregate limit for F–1 students to participate in a language training program, as it would provide a reasonable period of time for students to attain proficiency while mitigating the Department's concerns about the integrity of the program. This timeframe generally comports with the length of language training classes offered by schools that are accredited by ED-recognized agencies.[86] DHS seeks

[81] *See* Instructions for Application to Extend/Change Nonimmigrant Status, available at *https://www.uscis.gov/i-539* (last visited April 13, 2020).

[82] Typically, fewer than 50,000 aliens enter the U.S. in I classification annually. *See 2017 Yearbook of Immigration Statistics,* Published by the DHS Office of Immigration Statistics, July 2019, page 63.

[83] For example, at one accredited English language training school, five students have been enrolled in language training since 2010; eight since 2011; three since 2012; two since 2013; two since 2014; and two since 2015.

[84] For example, one student has been enrolled in English language training programs at four different schools since 2015 despite being an F–1 student since at least 2002. She was enrolled in an English language training program from 2002–2004 and subsequently enrolled in an associate's program that required English language proficiency from 2004–2008. Her Form I–20 noted that she had the required English language proficiency for that program.

[85] *See* INA (101)(a)(15)(F).

[86] Courses listed by language training schools accredited by the Accrediting Council For Continuing Education & Training reflect that most

comments on whether 24 months is sufficient for a language training program.

Sixth, DHS proposes a maximum admission period of up to 2 years for certain students. *See* proposed 8 CFR 214.2(f)(5)(i)(A) and (f)(20). This period is based on factors that DHS identified as involving national security and public safety concerns, with the goal of encouraging compliance with immigration laws. They are:

• Aliens who were born in or are citizens of countries on the State Sponsor of Terrorism List. The State Sponsor of Terrorism List are countries, as determined by the Secretary of State, to have repeatedly provided support for acts of international terrorism pursuant to three laws: Section 6(j) of the Export Administration Act, section 40 of the Arms Export Control Act, and section 620A of the Foreign Assistance Act. Designation as a ''State Sponsor of Terrorism'' under these authorities also implicates other sanctions laws that penalize persons and countries engaging in certain trade with state sponsors. There are currently four countries designated as a state sponsor of terrorism under these authorities: The Democratic People's Republic of Korea (North Korea), Iran, Sudan, and Syria. Under this proposal, DHS anticipates admitting those who were born in or are citizens of those countries for a maximum period of up to 2 years. The Department believes it is appropriate to apply additional scrutiny on those born in these countries and citizens of these countries who are temporarily studying in the United States to ensure that these aliens do not pose risks to the national security of the United States. For easier reference and to ensure affected stakeholders have advanced notice of the countries on the State Sponsors of Terrorism List prior to choosing a country and institution to study in, DHS proposes to publish a **Federal Register** notice (FRN) with the DOS list. If DOS makes changes to the list, DHS proposes to publish an FRN with the updated list. Any future FRN will also announce the date that the new maximum 2-year period of admission would apply.

• Aliens who are citizens of countries with a student and exchange visitor total overstay rate of greater than 10 percent according to the most recent DHS Entry/Exit Overstay report.[87] The DHS Entry/Exit Overstay report compiles overstay rates for different classifications. It provides overstay rates per country for F, M, and J nonimmigrants together, rather than a separate overstay rate by classification, per country. Given the overlap between the F and J classifications, utilizing the data for both exchange visitors and students to establish overstay rates is useful in that it may deter aliens who may attempt to seek admission in one status rather than the other in order to obtain a lengthier period of admission. A key goal of shifting aliens in F status from D/S to an admission for a fixed time period is to provide pre-defined time periods for immigration officers to evaluate whether a nonimmigrant has maintained his or her status. If an immigration officer finds that an alien violated his or her status prior to or during the course of an EOS adjudication and denies the EOS request, the alien generally would begin accruing unlawful presence the day after issuance of the denial.[88] The Department finds it appropriate to apply additional oversight to nonimmigrants from countries with consistently high student and exchange visitor overstay rates, by requiring these aliens to more frequently request extensions of stay. Because there is an increased risk of overstay by nonimmigrants from these countries as reflected by the DHS Entry/Exit Overstay reports, DHS would be able to identify such violations sooner. Further, DHS believes this more frequent oversight could deter aliens from engaging in activities that would violate their status, as the consequences of doing so would arise more quickly.

A primary aim of this proposed rule is to institute policies that would encourage aliens to maintain lawful status and reduce instances in which F, J, and I nonimmigrants unlawfully remain in the United States after their program or practical training ends. Under this proposed rule, aliens who remain in the United States beyond a fixed time period generally would begin accruing unlawful presence. Depending on the extent of unlawful presence accrual, an alien may become inadmissible upon departing the United States and will be ineligible for benefits for which admissibility is required, such as adjustment of status to that of a lawful permanent resident. *See* INA 212(a)(9)(B), (C), 8 U.S.C. 1189(a)(9)(B), (C); INA 245(a), 8 U.S.C. 1255(a). Placing restrictions on citizens of countries with high overstay rates incentivizes timely departure. The aggregate effect of the policy may help reduce a country's overstay rate on the DHS Entry/Exit report below 10 percent, in which case nationals of the country would become eligible for a longer period of admission under the F nonimmigrant classification.

Finally, the ''greater than 10%'' student and exchange visitor overstay rate threshold aligns with the percentage described by the Administration as a 'high' overstay rate for the purpose of enabling DHS and DOS to ''immediately begin taking all appropriate actions that are within the scope of their respective authorities to reduce overstay rates for all classes of nonimmigrant visas.''[89] The ''greater than 10%'' overstay rate threshold is more than double the general overstay rate for nonimmigrant student and exchange visitors as noted in the 2018 DHS Entry/Exit Overstay report,[90] meaning that countries with such overstay rates are well outside the norm. DHS believes that it is appropriate to require more frequent check-ins on citizens of those countries to ensure that they are in compliance with the terms and conditions of their admission.

To ensure affected stakeholders have notice of which countries have an overstay rate exceeding that threshold, DHS proposes to issue FRNs listing countries with overstay rates triggering the 2-year admission period. The first such FRN would also list countries that have been designated as State Sponsors of Terrorism, and provide a link where

Intensive English Programs can be completed within 24 months, website available at *https://accet.org/* (last visited Feb. 7, 2020). For example, ELS Language Center's longest English as a Second Language (ESL) program is 1440 hours. Attending 18 clock hours per week, the minimum for a full course of study, for that period of time would result in 18.4 months.

[87] The overstay report for 2019 can be found at *https://www.dhs.gov/sites/default/files/publications/20_0513_fy19-entry-and-exit-overstay-report.pdf.* See Table 4, Column 6.

[88] *See* USCIS Policy Memo, *Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(b)(i) and 212(a)(9)(c)(i)(I) of the Act,* May 6, 2009, available at *https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/2009/revision_redesign_AFM.PDF* (last accessed June 20, 2020). This policy currently applies to F, J, and I nonimmigrants in relation to duration of status but will change accordingly when duration of status no longer applies to them).

[89] *See* Presidential Memorandum on Combating High Nonimmigrant Overstay Rates (April 22, 2019) available at *https://www.whitehouse.gov/presidential-actions/presidential-memorandum-combating-high-nonimmigrant-overstay-rates/(last* visited April 13, 2020). The Presidential Memorandum identified countries with a total overstay rate greater than 10 percent in the combined B–1 and B–2 nonimmigrant visa category as appropriate for additional engagement by the DOS, which ''should identify conditions contributing to high overstay rates among nationals of those countries . . .''

[90] According to the FY 2018 DHS Entry/Exit Overstay Report, for nonimmigrants who entered on a student or exchange visitor visa (F, M, or J visa) there were 1,840,482 students and exchange visitors scheduled to complete their program in the United States, of which 3.73 percent (68,593) stayed beyond the authorized window for departure at the end of their program.

stakeholders could access information about schools that have been accredited by an ED-recognized accrediting agency.[91]

DHS proposes to publish this FRN contemporaneously with the final rule. Any changes to the list would be made by a new FRN.

• U.S. national interest. Other factors that would be incorporated into a FRN would be a limitation of a student's period of stay to a maximum of a 2-year period based on factors determined to be in the U.S. national interest, which may include but not be limited to circumstances where they may be national security concerns or risks of fraud and abuse. For example, the Secretary of Homeland Security could determine that it is appropriate to limit the length of admission of students who are enrolled in specific courses of study, such as nuclear science. DHS believes collecting information more often and applying additional vetting helps mitigate national security risks. If the DHS Secretary determines that U.S. national interests warrant limiting admission to a 2-year maximum period in certain circumstances, then it would publish an FRN to give the public advance notice of such circumstance.

• Aliens who are not attending institutions accredited by an accrediting agency recognized by the Secretary of Education. The goal of accreditation is to ensure that by post-secondary institution provides an education that meets acceptable levels of quality. Specifically, the accreditation process involves the periodic review of institutions and programs to determine whether they meet established standards. and are achieving their stated educational objectives. Schools meeting the accreditation requirement are subjected to significant oversight by the accrediting body, including recurring assessment of the institutions' programs to ascertain their effectiveness in helping students attain both academic knowledge and professional skills. The intervals at which schools must submit to accreditation review vary across accrediting agencies, but review typically occurs at least every 10 years, with the accrediting agencies themselves subject to review by ED, to determine whether to grant or renew recognition, at least every 5 years.[92]

Accreditation may be institutional, meaning it applies to the school as a whole and covers any educational programs the school offers, or specialized/programmatic, meaning it covers specific programs only.[93] ED classifies each recognized accrediting agency as institutional or programmatic to help schools identify which agencies might be appropriate for their needs.[94] DHS believes the independent, third-party checks offered through accreditation minimize the risk of fraud and abuse by schools and DSOs.

The history of problems encountered at unaccredited schools approved for the attendance of F–1 students demonstrates the value of promoting attendance at accredited schools. For example, in 2014, the founder of Tri-Valley University, an unaccredited institution in Pleasanton, California, Susan Xiao-Ping Su, was sentenced to more than 16 years in prison for her role in a massive, highly profitable visa fraud scheme that lasted 2 years.[95] To execute the fraud, Su submitted fabricated paperwork to DHS to obtain certification to enroll nonimmigrant students. Once certified, Su issued F–1 visa-related documents to students on false premises, with no criteria for admission or graduation, and no requirement that students maintain the course loads required for F–1 status.[96] While it was operating, the school helped approximately 1,500 foreign nationals enter the country for work or other purposes by helping them illegally obtain F–1 visas.[97]

Also in 2014, the former head of College Prep Academy in Duluth, Georgia, another unaccredited institution, was sentenced to nearly 2 years in prison for overseeing an immigration fraud scheme that brought women into the country through illegally obtained F–1 visas.[98] Once in the United States, the women were put to work in bars operated by associates of the school's owner, with no expectation that they would ever attend classes at the school.[99]

More recently, in 2018, the owner of four unaccredited schools in and around Los Angeles was sentenced to over 1 year in prison for his role in conducting a ''sophisticated, extensive, and lucrative'' immigration document fraud scheme that lasted for at least 5 years.[100] The owner and his co-conspirators falsified student records and transcripts for thousands of foreign nationals as part of a ''pay-to-stay'' scheme. They enabled the nonimmigrants to remain in the United States illegally, despite rarely or ever attending the classes for which they were allegedly enrolled.[101]

DHS believes that the accreditation limitation will curtail the potential for fraudulent use of F–1 student status. It will provide a direct check-in point with the Department if a nonimmigrant enrolled in an unaccredited school wishes to remain in the U.S. beyond 2 years. While DHS is not imposing an ED-accreditation requirement on post-secondary institutions in order to be certified by SEVP to accept foreign students, the Department is proposing to rely on the accreditation process as a means to promote the integrity of the immigration system. DHS hopes that post-secondary institutions enrolling foreign students thereby would be incentivized to pursue accreditation by an ED-recognized agency, including meeting all requirements, rather than potentially lose future international students and associated revenue to those schools that do.

Because ED only has the authority to recognize post-secondary accreditors, aliens attending elementary, middle or high school would not be subject to this limitation and may be eligible for the maximum 4-year period of admission. A link to information about ED-accredited agencies would be included in a FRN that would be published concurrently with the final rule and updated as needed (including if ED changes the web page where it publishes accredited agencies).

• E-Verify Participation. USCIS administers E-Verify, a web-based

[91] The Department of Education (ED) provides this information on its Database of Accredited Postsecondary Institutions and Programs web page at *https://ope.ed.gov/dapip/#/home* (last visited Feb. 1, 2020).

[92] Report from U.S. Department of Education Office of the Inspector General, *U.S. Department of Education's Recognition and Oversight of Accrediting Agencies,* ED–OIG/A09R 0003, June 27, 2018.

[93] *Id.*

[94] List of ED's Database of Accredited Postsecondary Institutions and Programs, *https://ope.ed.gov/dapip/#/agency-list* (last visited Feb. 4, 2020).

[95] *See* U.S. Department of Justice (DOJ), U.S. Attorney's Office Northern District of California News Release, ''CEO and President of East Bay University Sentenced to 198 Months for Fraud Scheme,'' (Nov. 3, 2014) available at *https://www.justice.gov/usao-ndca/pr/ceo-and-president-east-bay-university-sentenced-198-months-fraud-scheme* (last visited Feb. 7, 2020).

[96] *Id.*

[97] *See* The Chronicle of Higher Education, ''Little-Known Colleges Exploit Visa Loopholes to Make Millions Off Foreign Students'' (March 20, 2011) available at *https://www.chronicle.com/article/Little-Known-Colleges-Make/126822* (last visited Feb. 7, 2020).

[98] *See* DOJ News Release, ''English Language School Owner Sentenced for Immigration Fraud,'' (May 7, 2014) available at *https://www.justice.gov/usao-ndga/pr/english-language-school-owner-sentenced-immigration-fraud* (last visited Feb. 7, 2020).

[99] *Id.*

[100] See DOJ News Release, *Owner of Schools that Illegally Allowed Foreign Nationals to Remain in U.S. as 'Students' Sentenced to 15 Months in Federal Prison, https://www.justice.gov/usao-cdca/pr/owner-schools-illegally-allowed-foreign-nationals-remain-us-students-sentenced-15* (last visited April 13, 2020).

[101] *Id.*

system that electronically compares information from an employee's Employment Eligibility Verification (Form I–9) with records available to DHS. E-Verify accesses millions of government records available to DHS and the Social Security Administration. It is the best means for employers to confirm the identity and employment eligibility of their new hires. E-Verify has over 850,000 enrolled employers and other participants of all sizes, encompassing more than 2.5 million hiring sites. It is one of the Federal Government's highest-rated services for user satisfaction. Twenty-two states currently have various forms of statutes or other legal requirements making participation in E-Verify a condition of business licensing or state contracting laws.

DHS believes that schools that are willing to go above and beyond to ensure compliance with immigration law in one respect (verifying identity and employment eligibility as required under section 274A of the INA and taking the additional step to confirm Form I–9 information using E-Verify) are more likely to comply with immigration law in other respects (SEVP purposes) by successfully monitoring their F students. DHS therefore proposes that E-Verify participation warrants a 4-year admission period for students of those schools, subject to other limitations on admission that may apply. Conversely, there is less confidence in schools that are unwilling to do all they can to ensure they have a legal workforce to support students' academic programs by participating in E-Verify. Accordingly, DHS proposes that it would monitor whether students of such schools maintain status more frequently by limiting their admission period to 2 years.

DHS believes that the E-Verify proposal would incentivize more schools to enroll in E-Verify. Should more schools enroll in E-Verify, DHS would be better assured that schools were meeting the certification standards at 8 CFR 214.3(a)(3). This provision is associated with evaluating whether an educational institution is a bona fide school possessing the necessary facilities, personnel, and finances. It helps ensure that F nonimmigrants are choosing educational institutions that have demonstrated a willingness to best ensure compliance with immigration laws in one respect (*i.e.,* hiring), and which DHS believes therefore would be more likely to comply with requirements pertaining to school certification and enrollment of F nonimmigrants.

E-Verify could also provide DHS another data point to assess and independently verify whether an educational institution has teachers, employees, and/or offices proportionate to the number of students that are enrolled and in attendance. When enrolling in E-Verify, employers indicate the size of the organization which can provide DHS with additional information about whether the school has necessary personnel as required by 8 CFR 213.3(a)(3). A school that uses E-Verify when they hire such employees is doing as much as it can to ensure they have a stable workforce to operate as a school. While the school's certification requirements would not be assessed when a student applies for EOS, the fact that a school participates in E-Verify should give DHS a greater level of assurance that the school is likely to comply with all other federal requirements and operates in accordance with the certification standards for which it is responsible.

When determining how to apply the 2-year admission limitation, DHS considered how to address situations when an alien admitted in F status for a 4-year period subsequently would become subject to a 2-year period if seeking admission. For example, a student may have a 4-year period of admission, but in the midst of this period, an FRN may be published indicating that his or her home country now has a student and exchange visitor total overstay rate of greater than 10 percent, as stated in the DHS Entry/Exit Overstay Report. Notwithstanding such intervening events, aliens will remain subject to the period of admission approved upon his or her application for admission, extension of stay, or change of status. Further, changing the terms of admission at irregular intervals for particular classes of F nonimmigrants would introduce significant confusion, make their stay unpredictable, and so potentially discourage some students from pursuing their studies in the United States. Therefore, DHS is proposing to allow such aliens to remain in the United States for the remainder of whatever period of admission is afforded them when they are admitted in, extend their stay in, or change status to F–1 status.

However, if such aliens depart the United States, the departure and subsequent application for admission would trigger a new review and these aliens would be treated the same as any other aliens applying for admission. At that point they would become subject to applicable terms and conditions of admission, including the 2-year limitation. Similarly if a student needs to file an EOS application in the midst of his or her 4-year admission period (for example, a student decides to request pre-completion OPT and receives a Form I–20 reflecting the new program end date), and their EOS application is filed on or after the student is subject to a 2-year maximum period of stay, that would trigger the new 2-year maximum period of stay. Similarly, if a student needs to file an EOS or departs and applies for readmission, and the student files or applies after he or she is no longer subject to the 2-year limitation, that would trigger the 4-year maximum period of stay.

DHS invites comments on all these proposals, and specifically the limitations on the language training schools, the U.S. national interest factor, E-Verify, whether additional limitations should be added, and whether exemptions to the limitations on admission should be possible.

ii. Changes in Educational Levels

Under current regulations, F–1 students who continue from one educational level to another are considered to be maintaining status. *See* 8 CFR 214.2(f)(5)(ii). However, DHS has observed that some students continuously enroll in different programs at the same degree level, such as by pursuing multiple associate, master's, undergraduate, or certificate programs. Alternatively, some students change to a lower educational level, such as by completing a master's degree and then changing to an associate's program. This has enabled some aliens to remain in the United States for lengthy periods of time in F–1 student status, raising concerns about the temporary nature of their stay. In 2019, DHS identified nearly 29,000 F–1 students who, since SEVIS was implemented in 2003, have spent more than 10 years in student status.[102] This includes individuals who enrolled in programs at the same educational level as many as 12 times, as well as students who have completed graduate programs followed by enrolling in undergraduate programs, including associate's degrees.

While there are legitimate cases of students wishing to gain knowledge at a lower or the same educational level, the traditional path of study progresses from a lower educational program to a higher one. The regulations contemplate a model consistent with the vast majority of bona fide students following

[102] DHS compiled this information while conducting an internal case analysis; however, the Department is withholding this information to prevent the disclosure of PII.

this upward trajectory. The term ''full course of study'' as defined in the regulations requires that the program ''lead to the attainment of a specific educational or professional objective.'' [103] Frequent or repeated changes within an educational level or to a lower level are not consistent with attainment of such an objective. This understanding was reflected in the preamble to a 1986 rulemaking proposing changes to the F regulations, which stated: ''The proposed regulation . . . places limitations on the length of time a student may remain in any one level of study. Thus, the Service has eliminated applications for extension of stay for students who are progressing from one educational level to another but has placed a control over students who, for an inordinate length of time, remain in one level of study.'' [104]

DHS thus proposes to limit the number of times a student can change to another program within an educational level, such as to pursue another bachelor's or master's degree. Specifically, any student who has completed a program at one educational level would be allowed to change to another program at the same educational level no more than two additional times while in F–1 status, for a total of three programs for the lifetime of the student. *See* proposed 8 CFR 214.2(f)(5)(ii)(B). DHS believes this would accommodate the legitimate academic activities of bona fide students that are not following the typical upward progression, such as a desire to pursue a different field of study, or to pursue more specialized studies in their field. In addition, an F–1 student who has completed a program at one educational level would be allowed to change to a lower educational level one time while in F–1 status. *See* proposed 8 CFR 214.2(f)(5)(ii)(C). These restrictions limiting the number of times a student can complete additional programs in one educational level or begin a new program at a lower educational level are lifetime restrictions; they do not reset, for instance, with a new admission as an F–1 student.

DHS believes that it is reasonable in most cases for a student to progress to a higher educational level rather than continue at the same level or pursue a lower level of education. When, after completion of one program, an F–1 wishes to pursue a new program at a lower educational level more than once or a new degree at the same educational level more than twice (for a total of three programs), concerns are raised regarding whether the F–1 alien is a bona fide student who intends to temporarily and solely pursue a full course of study rather than pursuing different degrees as a de facto way to permanently stay in the United States.

Aliens in F–1 status seeking to change to a new program following completion of a program at the same educational level (up to two additional times after completion of the initial program) or seeking to change to a lower educational level (no more than one additional time after completion of the initial program) would need to obtain a new Form I–20 from their DSO reflecting the new program. If the new program completion date exceeds the authorized period of admission, the alien would then apply for EOS on the form designated by USCIS, with the required fee and in accordance with form instructions, including any biometrics required by 8 CFR 103.16. *See* proposed 8 CFR 214.2(f)(5)(ii)(D).

DHS, of course, determines in all instances on a case-by-case basis whether an alien who has completed his or her initial program and seeks to change programs within the same level or to a lower educational level, has the requisite nonimmigrant intent, is a bona fide student, and has adequate financial resources to continue their studies, or is misusing the F–1 program as a pretext to unlawfully extend their stay in the United States.

DHS recognizes that this proposal will require updates to SEVIS and other systems. Because the timeframe for those updates is not fixed and there could be technical issues regarding implementation, DHS is proposing to include a provision whereby the Department may delay or suspend implementation, in its discretion, if it determines that the change in educational level limitation is inoperable for any reason. *See* proposed 8 CFR 214.2(f)(5)(ii)(E). If DHS delays or suspends the provisions in this section governing the change in degree level, DHS would make an announcement of the delay or suspension to the academic community through SEVP's various communication channels, including *ICE.gov/SEVP*, Study in the States (*https://studyinthestates.dhs.gov*) and SEVIS Broadcast Message. DHS would also announce the implementation dates of the change in degree level provision through SEVP's communication channels (*ICE.gov/SEVP*, Study in the States, and SEVIS Broadcast Message) at least 30 calendar days in advance. *Id.*

DHS considered a complete ban on changes to a lower or same educational level, supported by the assumption that these F–1 aliens are not reliably continuing to make normal progress towards the completion of their educational objectives. However, the Department believes such an option to be overbroad—there may be exceptions to the general upward progression in educational levels. For example, a student might wish to pursue an MBA following the completion of his or her Ph.D.

Additionally, DHS proposes to retain the term ''educational'' with respect to the change in level as the Department believes it more accurately reflects current academic models. Specifically, ''educational'' captures programs for non-degree students, whereas using a term such as ''degree'' may not. For example, currently, an F–1 student would not qualify for additional post-completion OPT if he or she changes to a certificate program, given that the certificate program is not a ''higher educational level.'' Similarly, certificate programs for professional advancement are typically not considered to be a ''higher educational level'' allowing students to qualify for additional post-completion OPT.

DHS believes these proposals will encourage foreign students to pursue a general upward progression in degree levels, which is expected from a qualified bona fide student who is coming to the United States temporarily and solely to pursue a course of study. While this change could dissuade some foreign nationals from choosing to study in the United States, the Department believes that this restriction would not significantly impact the choice of bona fide students who come to the United States temporarily to complete a full course of study. The F–1 program, with its statutory requirement that an alien be a bona fide student who seeks to enter the United States temporarily and solely for the purpose of pursuing a full course of study, should not be used by aliens wishing to remain in the United States permanently or indefinitely. These proposals would better ensure that this statutory intent is fulfilled without hindering the options presented to bona fide students seeking higher educational levels and thus create a balanced solution to this issue. DHS welcomes comments on this proposal.

iii. Preparation for Departure

DHS believes that the time allotted for F students to prepare for departure should be revised. Under current regulations, F–1 students are provided 60 days following the completion of

[103] 8 CFR 214.2(f)(6)(i).

[104] Nonimmigrant Classes, Change of Nonimmigrant Classification, 51 FR 27867 (proposed Aug. 4, 1986).

their studies and any practical training to prepare for departure from the United States. *See* 8 CFR 214.2(f)(5)(iv). However, this is twice as long as other student and exchange visitor categories—J exchange visitors and M vocational students are only allowed 30 days. *See* 8 CFR 214.2(j)(1)(ii) and (m)(10)(i).

This 60-day period is also six times longer than certain nonimmigrants who are authorized to remain in the United States for years, but are only provided with a 10-day period to depart the United States. For example, DHS provides a 10-day period following the end of the alien's admission period as stated on his or her Form I–94 for individuals in the E–1, E–2, E–3, H–1B, L–1, and TN classifications in a 2016 rulemaking.[105] In the rulemaking discussing this 10-day period for departure, DHS noted that a grace period of up to 10 days after the end of an authorized validity period provides a reasonable amount of time for such nonimmigrants to depart the United States or take other actions to extend, change, or otherwise maintain lawful status.[106] It is thus unclear to DHS why F students would need a significantly longer period of time—60 days—to prepare for departure when other nonimmigrants have less time to prepare for departure.[107]

DHS believes that 30 days for the F nonimmigrant population is the appropriate balance between a 60-day and a 10-day period of departure. DHS believes that the F category, albeit distinct from M or J, shares a core similarity in that many aliens in these categories are seeking admission to the United States to study at United States educational institutions. Thus, DHS thinks that these categories should have a standard period of time to prepare for departure, or take other actions to extend, change, or otherwise maintain lawful status. DHS thinks that 30 days is an adequate period for F–1 students to prepare for departure and is in line with similar categories (the M and J departure periods) but welcomes comments on whether a different period for departure would be more appropriate for the F nonimmigrant classification, including whether there are meaningful distinctions between F nonimmigrant students and both J exchange visitors and M vocational students that should be considered. DHS also welcomes comments regarding whether the 30-day departure period should be reflected in the Form I–94. *See* proposed 8 CFR 214.2(f)(5)(v) and (f)(10)(ii)(D).

Additionally, in the 2016 rulemaking establishing a 10-day grace period for certain nonimmigrant classifications, DHS chose to remove the phrase ''to prepare for departure from the United States or to seek an extension or change of status based on a subsequent offer of employment'' from the proposed regulatory text relating to the purpose of the grace period, with the justification that it was unnecessarily limiting and did not fully comport with how the existing 10-day grace period may be used by individuals in the H, O and P nonimmigrant [visa] classifications.[108] DHS clarified that the 10-day grace period may be granted to these nonimmigrants at time of admission or upon approval of an extension of stay or change of status and may be used for other permissible non-employment activities such as seeking to change one's status to that of a dependent of another nonimmigrant or vacationing prior to departure.[109] DHS notes that seeking an extension of stay or change of status is an allowable activity for F aliens during the 30 day departure period following the completion of their program and believes this same clarification should be incorporated into this proposed rulemaking. *See* proposed 8 CFR 214.2(f)(5)(iv).

DHS also proposes to clarify that the proposed period to prepare for departure or otherwise maintain status is 30 days from the Form I–94 (or successor form) end date or the expiration date noted on the Employment Authorization Document (Form I–766 or successor form), as applicable, to prepare for departure from the United States, or otherwise obtain lawful status. *See* proposed 8 CFR 214.2(f)(5)(iv).

Finally, DHS proposes to retain the current regulatory language that allows a 15-day period for departure from the United States if an alien is authorized by the DSO to withdraw from classes, but no additional time for departure if the alien fails to maintain a full course of study without the approval of the DSO or otherwise fails to maintain status. *See* 8 CFR 214.2(f)(5)(iv). Because DSOs generally authorize withdrawal based on compelling academic or medical circumstances when a student proactively requests permission, DHS believes retaining the 15-day period is appropriate. However, aliens who fail to maintain their full course of study or otherwise impermissibly violate their status are required to immediately depart the United States, as is consistent with other nonimmigrant categories. DHS considered allowing a short ''grace period'' for departure after an EOS denial, but does not see a compelling reason to treat F nonimmigrants who have received a denial more favorably than other nonimmigrant categories. As in other nonimmigrant categories, failure to immediately depart under these circumstances could result in accrual of unlawful presence and subject an individual to removal.

iv. Automatic Extension of Status

1. Authorized Status and Employment Authorization Under 8 CFR 214.2(f)(5)(vi)

Each year, a number of U.S. employers seek to employ F–1 students and file a Form I–129, Petition for a Nonimmigrant Worker, with USCIS, along with a change of status request, to obtain classification of the F–1 student as an H–1B nonimmigrant worker. The H–1B nonimmigrant visa program allows U.S. employers to temporarily employ foreign workers in specialty occupations, defined by statute as occupations that require the theoretical and practical application of a body of highly specialized knowledge and a bachelor's or higher degree in the specific specialty, or its equivalent. *See* INA sections 101(a)(15)(H)(i)(b) and 214(i); 8 U.S.C. 1101(a)(15)(H)(i)(b) and 1184(i). The H–1B classification, however, is subject to annual numerical allocations. *See* INA sections 214(g)(1)(A) and (g)(5)(C); 8 U.S.C. 1184(g)(1)(A) and (g)(5)(C).[110] For

[105] *See* 8 CFR 214.1(l)(1) (providing for 10-day grace periods for certain nonimmigrants).

[106] *See* Retention of EB–1, EB–2, and EB–3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers, 81 FR 82,398, 82,401 (Nov. 18, 2016).

[107] Rulemakings in the mid-1980s mention this 60-day period for departure but did not provide any explanation as to why this period of time to depart was given to students. *See e.g.,* Nonimmigrant Classes; F–1 Students, 52 FR 13,223 (Apr. 22, 1987) (referencing the proposed rule, and stating that in the ''proposed regulations, duration of status was defined to mean the period during which a student is pursuing a full course of studies in any educational program, and any period or periods of authorized practical training, plus sixty days,'' but not indicating the reason for the 60-day period). Nonimmigrant Classes; Change of nonimmigrant Classification, 51 FR 27,867 (Aug. 4, 1986) (proposing that duration of status would consist of an additional ''sixty days within which to depart from the United States,'' but silent on the reason for the 60-day period of departure).

[108] Retention of EB–1, EB–2, and EB–3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers, 81 FR 82,398, 82402, 82437 (Nov. 18, 2016).

[109] *Id at* 82437.

[110] Under INA 214(g)(1)(A), 8 U.S.C. 1184(g)(1)(A), 65,000 aliens may be issued H–1B visas or otherwise provided H–1B nonimmigrant status in a fiscal year. This limitation does not

Continued

purposes of the H–1B numerical allocations, each fiscal year begins on October 1. Petitioners may not file H–1B petitions more than six months before the date of actual need for the employee.[111] Thus, the earliest date an H–1B cap-subject petition may be filed for an allocation for a given fiscal year is April 1, six months prior to the start of the applicable fiscal year for which initial H–1B classification is sought. Many F–1 students complete a program of study or post-completion OPT in mid-spring or early summer. Per current regulations, after completing their program or post-completion OPT, F–1 students have 60 days (which DHS is proposing to change to 30 days) to take the steps necessary to maintain legal status or depart the United States. *See* 8 CFR 214.2(f)(5)(iv). However, because the change to H–1B status cannot occur until October 1, an F–1 student whose program or post-completion OPT expires in mid-spring has two or more months following the 60-day period before the authorized period of H–1B status can commence. To address this situation, commonly known as the ''cap-gap,'' DHS established regulations that automatically extended F–1 D/S and, if applicable, post-completion OPT employment authorization for certain F–1 nonimmigrants to October 1 for eligible F–1 students. *See* 8 CFR 214.2(f)(5)(vi). The extension of F–1 D/S and OPT employment authorization is commonly known as the ''cap-gap extension.''

DHS proposes to retain the cap-gap provisions automatically granting, for a certain period of time, the extension of F–1 students' stay and grant of employment authorization for aliens who are the beneficiaries of timely filed H–1B cap-subject petitions with an employment start date of October 1, and requesting a change of status. Under current regulations, the automatic cap-gap extension is valid only until October 1 of the fiscal year for which H–1B status is being requested. *See* 8 CFR 214.2(f)(5)(vi). With the consistently high volume of H–1B petitions each year, however, USCIS has been unable to complete adjudication of H–1B cap-subject petitions by October 1, resulting in situations where some individuals must stop working on October 1 because the employment authorization provided under 8 CFR 214.2(f)(5)(vi) terminates on that date, although generally these individuals may remain in the United States while the H–1B change of status application is pending.[112]

To account for this operational issue, DHS is proposing to revise 8 CFR 214.2(f)(5)(vi) to provide an automatic extension of F–1 status and post-completion OPT, as applicable, until April 1 of the fiscal year for which the H–1B petition is filed. The F–1 student would not need to file a separate EOS if their fixed date of admission passed during the period before April 1, as this provision would extend the applicant's F–1 status automatically if an H–1B petition requesting a change of status is timely filed on behalf of the F–1 student. *See* proposed 8 CFR 214.2(f)(5)(vi)(A). However, if the F–1 student's COS is still pending at the end of the cap-gap period, then his or her employment authorization would terminate on March 31, and the applicant would no longer be employment authorized on this basis as of April 1. If the H–1B petition underlying the cap-gap extension is denied, then, consistent with existing USCIS practice, the F–1 beneficiary of the petition, as well as any F–2 dependents, will receive the standard F–1 grace period (which this rule proposes to change to 30 days) to depart the United States.

DHS believes that proposing to change the automatic extension end date from October 1 to April 1 would avoid disruptions in employment authorization that some F nonimmigrants seeking cap gap extensions have been experiencing over the past several years. DHS fully expects USCIS would be able to adjudicate all H–1B cap-subject petitions requesting a change of status from F–1 to H–1B by that April 1 deadline. In addition to avoiding employment disruptions, the lengthier extension of F status and employment authorization for aliens with pending H–1B petitions until April 1, up to one year, depending on when the H–1B petition was filed, accounts for USCIS' competing operational considerations and would enable the agency to more appropriately balance workloads across petition types.

DHS is also proposing to clarify that the cap-gap provision does not authorize employment for dependents who seek to change status from F–2 status to H–1B or H–4 (spouse or child of H nonimmigrant) status. *See* proposed 8 CFR 214.2(f)(5)(vi)(D). Dependents may not accept employment as an F–2 nonimmigrant. Thus, there is no work that would be disrupted by a loss of employment authorization while the F–2 dependent's COS application remains pending with USCIS for adjudication. As is the case under the current regulation, an F–1 nonimmigrant's automatic extension of status under the cap-gap provision also applies to his or her F–2 dependents who timely file a change of status application to H–4.[113]

DHS believes that these changes would result in more flexibility for both students and the Department and would help to avoid disruption to U.S. employers who are lawfully employing F–1 students while a qualifying H–1B petition is pending. However, DHS is concerned with the impacts of this provision on U.S. workers and students, especially if it would result in increased competition for certain jobs, and invites comments from the public on this issue.

2. F–1 Status and Employment Authorization While EOS and Employment Authorization Applications Are Pending

DHS proposes to strike ''duration of status'' from 8 CFR 214.2(f)(5)(vi) and clarify that an alien with F–1 status whose admission period as indicated on his or her Form I–94 has expired, but who has timely filed an EOS application, would be authorized to continue pursuing a full course of study after the end date of his or her admission until USCIS adjudicates the EOS application. *See* proposed 8 CFR 214.2(f)(5)(vii). This change would provide ongoing authorization to continue studies as long as the student has timely filed his or her EOS and will not penalize students if USCIS is unable to adjudicate an EOS application before a student's new term or course of study is underway. In such cases, students would be able to continue pursuing their full course of study.

The shift to a fixed date of admission has implications for employment authorization. Currently, DSOs may authorize certain types of employment authorization, including on campus employment and CPT,[114] and students generally do not need to be concerned about a specific expiration date for their student status, and thus their employment authorization, because they

apply to aliens who have earned a master's or higher degree from a U.S. institution of higher education, as defined in 20 U.S.C. 1001(a), until the number of aliens who are exempted from such numerical limitation during such year exceeds 20,000. INA 214(g)(5)(C), 8 U.S.C. 1184(g)(5)(C).

[111] *See* 8 CFR 214.2(h)(2)(i)(I).

[112] In 2018, USCIS issued a web alert notifying the public that significant numbers of beneficiaries would lose their employment authorization and stating that individuals can generally remain in the United States without accruing unlawful presence while their application is pending, provided they do not work without authorization, available at *https://www.uscis.gov/news/alerts/f-1-cap-gap-status-and-work-authorization-extension-only-valid-through-sept-30-2018* (last visited Jan. 12, 2020).

[113] 8 CFR 214.2(f)(5)(vi)(D).

[114] *See* 8 CFR 214.2(f)(10)–(12), 8 CFR 274a.12(b)(6)(iv).

are admitted for duration of status. This rule would change that framework with different implications for various types of employment authorization.

For on-campus employment where no EAD is needed, DHS proposes to allow aliens in F–1 status to continue to be authorized for on-campus employment while their EOS applications with USCIS are pending, not to exceed a period of 180 days.[115] *See* proposed 8 CFR 214.2(f)(5)(vii). If the EOS application is still pending after 180 days have passed, the F–1 student would no longer be authorized for employment and would need to stop engaging in on-campus employment. DHS is proposing a 180-day automatic extension period in order to minimize disruptions to on-campus employment by teaching assistants, post-graduates working on research projects, and other positions that are integral to an F–1 student's educational program. A 180-day period would be consistent with the other automatic extension for F–1 STEM OPT students.[116] That timeframe has been in existence since 2008 and DHS expects the F–1 population of students and employers to be familiar with it. DHS welcomes comments on whether the 180 day period of automatic extension for employment is an appropriate time period.

Likewise, DHS is proposing an automatic extension of off-campus employment authorization for up to 180-days during the pendency of the EOS application, for F–1 aliens who have demonstrated severe economic hardship pursuant to 8 CFR 214.2(f)(9)(ii)(C). These circumstances may include loss of financial aid or on-campus employment without fault on the part of the student, substantial fluctuations in the value of currency or exchange rate, inordinate increases in tuition and/or living costs, unexpected changes in the financial condition of the student's source of support, medical bills, or other substantial and unexpected expenses. *Id.* In such cases, DHS believes a 180-day automatic extension of employment authorization would help alleviate the severe economic hardship and avoid a disruption in their employment, especially given the fact that an Employment Authorization Document is required and frequency at which these students must submit an application for employment authorization.[117] Additionally, given that USCIS' average EAD processing time is typically 90–120 days, a 180-day timeframe provides sufficient flexibility in case of unexpected delays.[118] A longer auto-extension period for automatic extension of employment authorization is unnecessary.

For F–1 aliens granted off-campus employment authorization on the basis of severe economic hardship resulting from emergent circumstances pursuant to 8 CFR 214.2(f)(5)(v), DHS is proposing an automatic extension of such employment authorization with a different validity period than the general 8 CFR 214.2(f)(9)(ii)(C) severe economic hardship employment authorization extension described above while their EOS applications are pending. As first promulgated in 1998, the regulations provide necessary flexibility to address unforeseeable emergencies by allowing DHS, by notice in the **Federal Register**, to suspend the applicability of some or all of the requirements for on- and off-campus employment authorization for specified F–1 students where an emergency situation has arisen calling for this action. These F–1 students must continue to attend classes, but are allowed to take a reduced course load. By regulation, aliens must take at least 6 semester or quarter hours of instruction at the undergraduate level or 3 semester or quarter hours of instruction at the graduate level. *See* 8 CFR 214.2(f)(5)(v). Failure to take the required credits could be considered a failure to maintain F–1 status. The special student relief (SSR) regulations are announced by notice in the **Federal Register** and that employment may only be undertaken during the validity period of the SSR notice. Currently, any extension of SSR-based employment would have to be granted before the expiration of the prior grant of SSR employment-based employment authorization, if it is not granted before the expiration of the prior authorization, the student must stop working under that SSR-based employment authorization benefit, until the renewal is reauthorized. Because students are currently admitted for D/S, these aliens generally do not have to be concerned about their F–1 period of authorized stay. However, with the shift to a fixed admission period, these aliens would have to be cognizant of that date in order for the EOS to be approved. DHS believes it is appropriate to provide an automatic extension of SSR-based employment so aliens' ability to benefit from this long-standing regulatory relief is not interrupted by USCIS processing times. Consistent with existing practice for certain nonimmigrants who require an EAD,[119] DHS proposes to automatically extend SSR authorization if an F–1 alien has a timely-filed EOS pending for up to the end date stated in the **Federal Register** notice announcing the suspension of certain requirements, or 180 days, whichever is earlier.

As evidence of these automatic extensions of employment authorization, DHS is proposing that the F–1 aliens' Form I–94 (or successor form) or Employment Authorization Document (EAD, Form I–766, or successor form), for F–1s requiring an EAD, when combined with a notice issued by USCIS indicating receipt of a timely filed extension of stay application (such as the Form I–797), would be considered unexpired until USCIS issues a decision on the EOS application, not to exceed 180 days. *See* proposed 8 CFR 214.2(f)(5)(vii). SSR-based employment authorization that has been automatically extended can be evidenced by the F–1 alien's EAD and receipt notice issued by USCIS (the Form I–797), not to exceed the lesser of 180 days or the end date stated in the **Federal Register** notice announcing the suspension of certain requirements.

DHS believes that continued employment authorization for aliens wishing to work as an intern for an international organization, engage in CPT, or in pre- or post-completion OPT present materially different circumstances from those pertaining to aliens who are experiencing emergent circumstances, severe economic hardship, or engaging in on campus employment, and that the same automatic extension policies therefore should not apply to them.

First, related to the employment authorization requests to engage in an internship with an international organization, such requests arise when a student has an opportunity for an internship with certain organizations and these make up a smaller proportion of employment authorization applications. These requests are not tied to economic necessity or emergent circumstances. Therefore, DHS is not

[115] *See* 8 CFR 214.2(f)(9)(i) for a description of on-campus employment. For on-campus employment that is based on severe economic hardship resulting from emergent circumstances pursuant to 8 CFR 214.2(f)(5)(v), see later discussion for additional restrictions.

[116] 8 CFR 274a.12(b)(6)(iv).

[117] See 8 CFR 274a.12(c)(3). 8 CFR 214.2(f)(9)(ii)(F)(2) provides that employment authorization based upon severe economic hardship may be granted in one-year intervals up to the expected date of completion of the student's current course of study.

[118] *See* Check Case Processing Time, available at *https://egov.uscis.gov/processing-times/* (last visited June 19, 2020). The Potomac Service Center, which adjudicates all applications for Employment Authorization for Optional Practical Training, lists processing times from 3.5 to 5.5 months.

[119] See 8 CFR 274a.13(d).

recommending an automatic extension of employment authorization while these aliens have a timely filed EOS pending.

Second, students engaging in CPT or pre-completion OPT are still enrolled in school and pursuing a curriculum. DHS expects that DSOs would not authorize any practical training for a length of time beyond their fixed date of admission on the I–94, so an automatic extension of employment authorization would be inappropriate. DHS proposes to add a sentence at the end of 8 CFR 214.2(f)(10)(i) stating that curricular practical training may not be granted for a period exceeding the alien's fixed date of admission as noted on his or her Form I–94, and that such alien must not engage in curricular practical training until USCIS approves his or her timely-filed EOS request. *See* proposed 8 CFR 214.2(f)(10)(i).

Third, where a student timely files an EOS and an application to engage in post-completion OPT employment, DHS believes the current and longstanding policy of obtaining authorization from USCIS, in the form of an EAD, before an alien may work in the United States is appropriate. Applications must be reviewed and adjudicated to determine that students are eligible for OPT. Students engaging in post-completion OPT often have less contact with their schools and DSOs, and this underscores the importance for DHS to directly examine these applicants, ensuring that their contact information is accurate, as well as checking that they have not engaged in any unauthorized activities.

DHS does not propose any changes to the STEM OPT extension provision at 8 CFR 274a.12(b)(6)(iv) under which an Employment Authorization Document issued for OPT is automatically extended for a period of up to 180 days while a timely filed application for employment authorization (Form I–765) for STEM OPT extension is pending. Students who are eligible for the STEM OPT extension have previously applied for OPT and received an EAD. Their applications were adjudicated by USCIS to determine that they were eligible for OPT. In addition, the STEM OPT program has requirements and safeguards for both students and employers that other practical training programs do not. For example, the student's STEM OPT employer is required to be enrolled in E-Verify, and the terms and conditions of a STEM practical training opportunity, including duties, hours, and compensation, must be commensurate with the terms and conditions applicable to the employer's similarly situated U.S. workers in the area of employment. *See* 8 CFR 214.2(f)(10)(ii)(C)(7). DHS also has oversight into this program through site visits to employer locations in which STEM OPT students are employed. Thus, DHS does not think changes to the automatic extension provision are needed.

Finally, DHS is proposing some technical amendments. In 8 CFR 214.2(f)(9)(i), the word ''Commissioner'' would be replaced by ''Secretary''; the term ''residents'' following ''United States'' would be replaced by ''workers'' for better accuracy; the term ''Form I–20 A–B'' would be replaced by the currently used form, ''Form I–20''; and the end of the paragraph would be revised to clarify that an alien who has a timely filed application for an EOS may engage in on-campus employment for a period not to exceed 180 days, or until USCIS approves his or her application, whichever is earlier. *See* proposed 8 CFR 214.2(f)(9)(i). DHS also proposes to strike and reserve 8 CFR 214.2(f)(10)(i)(A), which refers to a non-SEVIS process for requesting curricular practical training authorization. Because all schools enrolling F students must be SEVP-certified and use SEVIS to indicate CPT authorization, the provision is outdated. *See* proposed 8 CFR 214.2(f)(10)(i)(A).

v. New Process for EOS Applications

Under current regulations, F–1 students are able to obtain a program extension from a DSO as long as they are maintaining status and making normal progress toward the completion of their educational objectives. *See* 8 CFR 214.2(f)(7)(i) and (iii). The problem with the ''normal progress'' standard is that it is undefined, and DHS believes that retaining it could lead to inconsistent adjudications. Even now, the lack of a standard definition for normal progress leads DSOs to inconsistently extend F–1 students' program end dates and thus their stay in the United States. Some DSOs use a strict standard, evaluating, for example, documentation to support a student's claim of a compelling medical illness that serve as the basis for the student's request for extension of the student's current program. However, other DSOs claim that the student is making ''normal progress'' whenever a student simply needs more time to complete the program. This inconsistency results in some students being able to remain in F–1 status for years simply by having the DSO update the Form I–20 without providing a justification as to how the student is making ''normal progress'' and what academic or medical circumstances necessitate the extension of the program.

Therefore, DHS proposes not to use a ''normal progress'' standard with respect to seeking an extension of an authorized period of stay. In addition to the requirement that the applicant obtain an I–20 from the DSO recommending extension of the program, the applicant will be required to file an EOS application to request additional time to complete their current course of study beyond their authorized period of admission. *See* proposed 8 CFR 214.2(f)(7)(i).

Apart from pursuing a new course of study, DHS appreciates that the time for study can legitimately fluctuate given the changing goals and actions of the student. For example, a student may experience compelling academic or medical reasons, or circumstances beyond their control that cause them to need additional time in the United States beyond the predetermined end date of the program in which they were initially enrolled. DHS understands these circumstances arise and believes these scenarios present an appropriate situation for the Department to directly evaluate the nonimmigrant's eligibility for additional time in the United States. However, instead of effectively extending their stay through a DSO's program extension recommendation in SEVIS, students would have to obtain an I–20 from the DSO recommending a program extension and apply to USCIS for an extension of stay. Immigration officers thereby would be able to conduct appropriate background and security checks on the applicant at the time of the extension of stay application and directly review the proffered evidence to ensure that the alien is eligible for the requested extension of stay, including through assessing whether the alien remains admissible. *See* 8 CFR 214.1(a)(3)(i).

In these circumstances, the Department would only extend the stay beyond the prior admission date (typically the program end date for which the student was admitted to the United States as a F–1 nonimmigrant or was granted based on a change of status or extension of stay) of an otherwise eligible F–1 student requesting additional time to complete their program if the additional time needed is due to a compelling academic reason, documented medical illness or medical condition, or circumstance that was beyond the student's control. As with all nonimmigrant extensions of stay, an alien seeking an extension of stay generally must have continually maintained status.[120] And if a student

[120] Failure to file before the expiration of the previously accorded status or failure to maintain

dropped below a full course of study, that drop must have been properly authorized. Students seeking extensions of stay must primarily be seeking to temporarily stay in the United States solely to pursue a full course of study, INA section 101(a)(15)(F)(i), 8 U.S.C. 1101(a)(15)(F)(i), not for other reasons separate from, or in addition to, pursuing a full course of study.

By way of illustration, a student with a fixed date of admission may request an additional 4 months to complete his program because he was authorized to drop below a full course of study for one semester due to illness. The student would need to request an updated I–20 from the DSO recommending a program extension. In such an instance, an immigration officer could review the proffered evidence and ensure that the claim is supported by documentation from a medical doctor. Conversely, a student may request an EOS for additional time to complete an associate program, but fail to submit evidence they were properly authorized to drop below a full course of study. Under the proposed regulation, the immigration officer would have discretion to request transcripts from the student. If a student's transcripts reflect the student failed multiple classes one semester, an immigration officer could determine the student has failed to maintain status due to a failure to carry a full course of study as required. In another example, a student could submit an EOS request to continue in the same program because he or she was unable to take all the required classes for his or her major due to over-enrollment at the school. Again, an officer could request additional information, if needed, to determine that the student was maintaining a full course of study (or, if not, was properly authorized to reduce his or her course load), but due to the school's high enrollment, the student may validly require an additional semester to complete the degree requirements in order to graduate.

Therefore, DHS is proposing to eliminate a reference to ''normal progress'' with respect to seeking a program extension, and incorporate a new standard that makes it clear that acceptable reasons for requesting an extension of a stay for additional time to complete a program are: (1) Compelling academic reasons; (2) a documented illness or medical condition; and (3) exceptional circumstances beyond the control of the alien. *See* proposed 8 CFR 214.2(f)(7)(iii).[121] The first two factors are based on the current regulatory provisions for program extension, 8 CFR 214.2(f)(7)(iii), from current text (*i.e.,* changes of major or research topics, and unexpected research problems). DHS proposes to clarify that, in addition to academic probation and suspension, a pattern of behavior which demonstrates a student's repeated inability or unwillingness to complete his or her course of study, such as failing classes, is not an acceptable reason for an extension of stay for additional time to complete a program. *See* proposed 8 CFR 214.2(f)(7)(iii)(B)(*1*). Current program extension requirements do not address students who have failed to carry a full course of study due to failed classes in an academic term or students who have a pattern of failing grades during their studies. DHS expects bona fide students to be committed to their studies, attending classes as required, carrying a full course of study, and making reasonable efforts toward program completion. Passing a class, or not, is something that is within the student's control. Therefore, a student who has a pattern of failing grades or has failed to carry a full course of study due to failing grades would not be qualified for an extension of stay. This prohibition would not include students, such as those university students who, pursuant to DHS regulations, are permitted to take 12 semester hours of coursework and, therefore, necessarily would not complete their programs within 4 years. Absent academic probation or suspension, or negative factors such as repeatedly failing classes, these students would be eligible for extension based upon compelling academic reasons. This prohibition would also not include cases where the student was properly authorized to drop below a full course of study due to academic difficulties or medical conditions or has been reinstated to student status based on a reduction in course load that would have been within a DSO's power to authorize. The student would be expected to provide evidence demonstrating the compelling academic reason in order for the DSO to recommend program extension and then the student may apply for extension of stay. While a letter from the student may be sufficient to meet his or her burden of proof, an immigration officer will evaluate the individual case and make the determination if additional evidence (such as a letter from a member of the school administration or faculty) is needed to adjudicate the case.

Next, DHS is proposing to clarify that a student can qualify for a program extension and corresponding extension of stay based on a medical reason, but it must be a documented illness or medical condition. To provide an objective standard, DHS proposes to codify standards already included in 8 CFR 214.2(f)(6)(iii)(B), which requires a student to provide medical documentation from a licensed medical doctor, doctor of osteopathy, or licensed clinical psychologist to substantiate the illness or medical condition if seeking a reduced course load. *See* proposed 8 CFR 214.2(f)(7)(iii)(B)(*2*). As this is already a long-standing requirement for DSOs and students in a similar context, DHS believes that it would be appropriate and easy to implement in the program extension and corresponding extension of stay process. Further, requiring applicants to provide documentation of their medical illness or medical condition that caused their program delay is a reasonable request, because they are asking DHS to provide them additional time in the United States.

DHS is also proposing a new factor in the extension of stay provisions—circumstances beyond the student's control, including a natural disaster, a national health crisis, or the closure of an institution. *See* proposed 8 CFR 214.2(f)(7)(iii)(B)(*3*). As in the reinstatement context, DHS believes that there might be additional reasons beyond compelling academic or documented medical reasons that result in a student's inability to meet the program end date listed on the Form I–20.

Therefore, DHS is proposing a third prong that would encompass scenarios that are not envisioned in the current provisions governing the extension of a program end date, such as those noted above. Some of these examples are currently in the reinstatement provisions, 8 CFR 214.2(f)(16)(i)(F), and DHS believes that they merit favorable consideration in extension requests. However, the circumstances surrounding the closure of a school, if relevant, may be considered in determining whether the student qualifies for an extension of stay. For

such status may be excused at the discretion of USCIS if the alien demonstrates that at the time of filing: The delay was due to extraordinary circumstances beyond the control of the applicant, and USCIS finds the delay commensurate with the circumstances, the alien has not otherwise violated his or her status, and is not subject to deportation. 8 CFR 214.1(c)(3)(viii).

[121] DHS does not propose to update the term ''normal progress'' as defined in 8 CFR 214.2(f)(6)(i)(E) because the Department does not feel it addresses the same concerns as it does at 8 CFR 214.2(f)(5). The provision at 8 CFR 214.2(f)(6)(i)(E) relates to study at an approved private elementary or middle school or public or private academic high school. In that context, it is clear that ''normal progress'' is the completion of the academic year (for example, 6th grade).

example, if a school closes as a result of a criminal conviction of its owners for engaging in student visa fraud by not requiring students to attend, and the student is unable to demonstrate that he or she was attending classes prior to closure as required to fulfill a full course of study, the closure of the institution might not qualify the student for a program extension.

The requirements to timely request an extension of the program end date would remain largely unchanged; however, DHS proposes a technical change to replace all references to the DSO ''granting'' an extension of the program with the term ''recommend'' an extension of the program in order for the student to file for EOS because USCIS, not the DSO, would ''grant'' the extension of stay. *See* proposed 8 CFR 214.2(f)(7)(iii)(C). For example, a student may not necessarily be granted an extension of stay by USCIS if an adjudicator determines the student has not actually maintained status or does not actually have compelling academic or documented medical reasons for the delay, despite the DSO's recommendation for program extension. Where the alien requests a recommendation to extend the program end date, the DSO could only make a recommendation to extend the program if the alien requested the extension before the program end date noted on the most recent Form I–20, or successor form. *Id.* Additionally, consistent with changes throughout this NPRM, once the DSO recommends the extension of the program, the alien would need to timely file for an EOS on the form and in the manner designated by USCIS, with the required fees and in accordance with the filing instructions, including any biometrics required by 8 CFR 103.16 and a valid, properly endorsed Form I–20 or successor form, showing the new program end date, *id.,* barring extraordinary circumstances, *see* 8 CFR 214.1(c)(4).

If seeking an EOS to engage in any type of practical training, the alien in F–1 status would also need to have a valid Form I–20, properly endorsed for practical training, and be eligible to receive the specific type of practical training requested. Finally, as with all immigration benefit requests, an immigration officer would generally not grant an EOS where an alien in F–1 status failed to maintain his or her status. *Id.*

Finally, a student's failure to timely request from the DSO a recommendation for extension of the program end date, which would result in the DSO recommending an extension of the program end date in SEVIS *after* the end date noted on the most recent Form I–20 or successor form, would require the alien to file for a reinstatement of F–1 status, because the alien would have failed to maintain status and would be ineligible for an EOS. *See* proposed 8 CFR 214.2(f)(7)(iii)(D). A request for reinstatement must be filed in the manner and on the form designated by USCIS, with the required fee, including any biometrics required by 8 CFR 103.16. DHS is also requiring F–2 dependents seeking to accompany the F–1 principal student to file applications for an EOS or reinstatement, as applicable. These requirements are consistent with current provisions.

With the transition from D/S to admission for a fixed time period, F–1 students would need to apply for an EOS directly with USCIS, by submitting the appropriate form and following the requirements outlined in the form instructions. USCIS anticipates accepting the Form I–539, Application to Change/Extend Nonimmigrant Status, for this population but would like the flexibility to use a new form if more efficient or responsive to workload needs. Thus, DHS is proposing to use general language to account for a possible change in form in the future. If the form ever changes, USCIS would provide stakeholder's advanced notice on its web page and comply with Paperwork Reduction Act requirements.

Like all other aliens who file a Form I–539, F–1 applicants would be required to submit biometrics and may be required to appear for an interview pursuant to 8 CFR 103.2(b)(9). In addition, applicants would need to demonstrate that they are eligible for the nonimmigrant classification sought. Accordingly, applicants must submit evidence of sufficient funds to cover expenses. A failure to provide such evidence would render the applicant ineligible for the extension of stay. *See* proposed 8 CFR 214.2(f)(7)(iv).

While the sponsoring school is required to verify the availability of financial support before issuing the Form I–20, they may not be well-versed in foreign documentation submitted by applicants and circumstances may change between issuance of a Form I–20 and a request for an extension of stay Further, it is incumbent upon DHS to determine the veracity of the evidence submitted, and officers must ensure that the student has sufficient funds to study in the United States without resorting to unauthorized employment. The phrase ''sufficient funds to cover expenses'' is referred to in Department of State regulations concerning issuance of F and M nonimmigrant student visas, 22 CFR 41.61(b)(1)(ii), and Department of State policy requires an applicant to provide documentary evidence that sufficient funds are, or will be, available to defray all expenses during the *entire* period of anticipated study.[122] While this does not mean that the applicant must have cash immediately available to cover the entire period of intended study, which may last several years, the applicant must demonstrate enough readily available funds to meet all expenses for the first year of study.[123] DHS believes requiring evidence of financial resources to cover expenses for one year of study is reasonable given that F students are familiar with this requirement because this is the standard used by the Department of State in the issuance of F nonimmigrant visas. DHS also considers that this standard is appropriate because it establishes concrete resources for one full academic year of the program. Further, applicants must demonstrate that, barring unforeseen circumstances, adequate funds will be available for each subsequent year of study from the same source or from one or more other specifically identified and reliable financial sources. Such evidence for one year and subsequent years could include, but is not limited to: Complete copies of detailed financial account statements for each account intended to be used to fund the student's education; other immediately available cash assets; receipts and/or a letter from the school accounts office indicating tuition payments already made and any outstanding account balance; affidavits of support from a sponsor; proof of authorized private student loans; [124] and/or other financial documentation.

F–1 applicants would need to timely file their EOS application—meaning that USCIS would need to receive the application on or before the date the authorized admission period expires. *See* proposed 8 CFR 214.2(f)(7)(v). This timeframe would include the 30-day period of preparation for departure allowed after the completion of studies or any authorized practical training. However, if the extension application is received during the 30-day period of preparation for departure provided in proposed 8 CFR 214.2(f)(5)(iv) following the completion of studies, the alien in F–1 status may continue studying but may not continue or begin engaging in practical training or other employment until the extension request is approved

[122] *See* 9 FAM 402.5–5(G).

[123] *Id.*

[124] Federal student loans are only available to U.S. citizens and permanent residents.

and, as applicable, an employment authorization document is issued. *See* proposed 8 CFR 214.2(f)(7)(v).

The length of the extension granted could be up to the period of time needed to complete the program or requested practical training, not to exceed 4 years, unless the alien is a border commuter, enrolled in language training, attending a public high school, or the two-year limits on admission at paragraph (f)(20) apply in which case further restrictions apply, as described above. By permitting admission only ''up to'' the prescribed period, USCIS and CBP are afforded discretion as to the ultimate length of time to grant the applicant, and consider factors such as program length. Additionally, this proposal would replace the current provision at 8 CFR 214.2(f)(7)(iv), which references SEVIS and non-SEVIS schools and is outdated.

F–2 dependents seeking to accompany the F–1 principal student would need to file applications for an EOS or reinstatement, as applicable. *See* proposed 8 CFR 214.2(f)(7)(vii). Dependent F–2 spouses and children seeking to accompany the principal F–1 student during the additional period of admission would need to either be included on the primary applicant's request for extension or properly file their own EOS applications on the form designated by USCIS. If the dependent files a separate Form I–539, he or she would need to pay a separate Form I–539 filing fee. However, if the dependent files a Form I–539A as part of the primary applicant's EOS request on a Form I–539, only one fee would be required.

USCIS would need to receive the extension applications before the expiration of the previously authorized period of admission, including the 30-day period following the completion of the course of study, as indicated on the F–2 dependent's Form I–94. To qualify for an EOS, the F–2 dependent would need to demonstrate the qualifying relationship with the principal F–1 student who is maintaining status, also be maintaining his or her own status, and not have engaged in any unauthorized employment. *See* proposed 8 CFR 214.2(f)(7)(vii). Extensions of stay for F–2 dependents would not be able to exceed the authorized admission period of the principal F–1 student. *Id.*

Under proposed 8 CFR 214.2(f)(7)(viii), if USCIS denies the request for an extension, and the period of admission for the student and his or her dependents has expired, then the student and his or her dependents would need to immediately depart the United States. As with other nonimmigrant categories, they would not be given any period of time to prepare for departure from the United States after the denial, and there may be significant immigration consequences for failing to depart the country immediately. For example, such aliens generally would begin to accrue unlawful presence the day after the issuance of the denial. DHS believes this standard provides parity across nonimmigrant categories and invites the public to submit comments on this issue as well as the proposed EOS application process.

vi. School Transfers and Changes in Educational Levels

As discussed above, a significant concern with the current D/S framework is that it has enabled ''pay-to-stay'' fraud in which school owners falsely report to DHS that a student is maintaining status in return for cash payments even though the student is not attending or is otherwise violating his or her status. In some cases, school owners have operated multiple schools and transferred students between these schools to conceal this fraud. For example, in 2018, a defendant was sentenced by a federal judge in the Central District of California to 15 months in prison and ordered to forfeit more than $450,000 for running such a scheme involving three schools that he owned.[125] Furthermore, as discussed more thoroughly in Section 4.L.ii above, the D/S framework has enabled some aliens to become ''professional students'' who spend years enrolled in programs at the same educational level (for example, multiple associate programs) or complete programs at one educational level and enroll in lower educational levels (such as completing a master's degree then enrolling in an associate program). DHS believes the proposed changes previously discussed regarding admission for a fixed time period and limitations on program changes within and between educational levels will help to address these concerns and serve to further strengthen the integrity of the F nonimmigrant visa category by better ensuring that aliens are in the United States primarily to study, rather than to reside permanently in the United States. *See* proposed 8 CFR 214.2(f)(8)(i)(B).

In addition to proposing new restrictions for the number of programs an F–1 nonimmigrant can complete at the same or a lower educational level, DHS proposes to retain some of the current school transfer and change of educational level conditions. First, as is the case currently, aliens would need to begin classes at the transfer school or program within 5 months of transferring out of the current school or within 5 months of the program completion date on his or her current Form I–20; and second, if the alien is authorized to engage in post-completion OPT, he or she must be able to resume classes within 5 months of changing programs or transferring out of the school that recommended OPT or the date the OPT authorization ends, whichever is earlier. *See* proposed 8 CFR 214.2(f)(8)(i)(A) and (B).

Another indication of a violation of F–1 status is failing to pursue a full course of study at the school that the alien is authorized to attend. *See* proposed 8 CFR 214.2(f)(8)(ii). DHS is proposing to retain the current provisions, rendering aliens who do not pursue a full course of study ineligible to change programs or transfer schools, and is clarifying that failure to pursue a full course of study includes, but is not limited to, a student whose pattern of behavior demonstrates a repeated inability or unwillingness to complete his or her course of study, such as failing grades, resulted in the student not carrying a full course of study unless the student was previously authorized for a reduced course load. Just as delays caused by unacceptable patterns of behavior, academic probation or suspension would not be acceptable reasons for program extensions and corresponding EOS of a student's current program, neither would they be an acceptable reason for failing to carry a full course load. Such aliens would have failed to maintain F status, are ineligible for a change of program and school transfers, and would be required to file for a reinstatement of status, if eligible. *See* proposed 8 CFR 214.2(f)(8)(ii).

Finally, DHS proposes some technical updates. First, the Department would strike outdated provisions in 8 CFR 214.2(f)(8)(ii) to account for the fact that all schools must now be SEVP-certified and to clarify that the transfer provision applies only to transfers from a SEVIS school to a SEVIS school. *See* proposed 8 CFR 214.2(f)(8)(iii). Second, DHS proposes to update the current process by which DSOs notify USCIS of certain events, such as failure to maintain a full

[125] DOJ Press Release, *Owner of Schools that Illegally Allowed Foreign Nationals to Remain in U.S. as 'Students' Sentenced to 15 Months in Federal Prison,* (Apr. 19, 2018), available at *https://www.justice.gov/usao-cdca/pr/owner-schools-illegally-allowed-foreign-nationals-remain-us-students-sentenced-15* (last accessed April 11, 2020).

course load, to reflect the fact that SEVIS is used for this purpose and that a paper Form I–20 is no longer used for this purpose. *See* proposed 8 CFR 214.2(f)(8)(iv). Third, if the new program to which the student changes or transfers will not be completed within the authorized admission period established in paragraphs (f)(5)(i) or (f)(20) of this section, then, consistent with the other provisions throughout this proposed rule the F–1 student would need to apply for EOS in the manner and on the form designated by USCIS, with the required fee and in accordance with form instructions, together with a valid, properly endorsed Form I–20 indicating the new program end date, and would need to provide biometrics as authorized by 8 CFR 103.16. *See* proposed 8 CFR 214.2(f)(8)(v).

vii. OPT Employment Authorization

1. Pending Employment Authorization Requests

Currently, 8 CFR 214.2(f)(10)(ii)(D) provides for ''duration of status'' to include periods students spend in the United States on post-completion OPT. As D/S admissions would be replaced with admission for a fixed time period throughout this rulemaking, DHS is proposing to clarify that an alien in F–1 status recommended for post-completion OPT must apply for employment authorization and an EOS, and may not engage in post-completion OPT unless such employment authorization is granted.[126] *See* proposed 8 CFR 214.2(f)(10)(ii)(D).

Like several other types of employment, a student would need to stop working if USCIS does not adjudicate the employment authorization application before the specific end date for the period of authorized stay is reached. While DHS recognizes the challenge presented by the transition from a D/S regime to a fixed time period, the proposition that employment must cease until the EAD grant or renewal is approved is not unique to this scenario. 8 CFR 274a.13(d) automatically extends EADs upon the filing of a renewal request for 180 days, after which the alien must cease employment if the renewal is still pending. This policy is thus consistent with the treatment of several other nonimmigrant categories and DHS does not believe it would cause significant disruption to F–1 students as most are not working prior to this application for post-completion OPT.

Where the application for EOS and post-completion OPT are granted, the alien would receive an additional 30-day period [from the program end date or EAD end date, as applicable to prepare for departure from or otherwise maintain status in the United States following the expiration of the status approved to complete post-completion OPT. *See* proposed 8 CFR 214.2(f)(5)(iv).

2. Proposed Changes to Form Name and Filing Timeframes

DHS proposes to remove references in paragraphs 8 CFR 214.2(f)(11)(i)(A) and (C) to the Form I–765 currently used by nonimmigrants to request employment authorization and replace them with language used throughout the proposed rule: ''by filing the form designated by USCIS with the required fee and in accordance with form instructions.'' The Department believes that such language gives USCIS the flexibility to change the form number or name without having to engage in a full rulemaking. In all cases, DHS would provide applicants with advanced notice of which form to use and the accompanying instructions. Additionally, DHS proposes technical changes in 8 CFR 214.2(f)(11), such as replacing the term 'student' with 'alien in F–1 status' and other edits reorganizing and rewording some paragraphs to improve readability.

The other change that DHS proposes regarding filing applications for OPT-based employment authorization is to provide more time for aliens to submit their applications. Currently, the following filing deadlines are in place:

- Pre-completion OPT: Aliens may file the application for employment authorization up to 90 days before being enrolled for one full academic year, provided that the employment will not begin prior to the completion of the full academic year. 8 CFR 214.2(f)(11)(i)(B)(*1*).
- Post-completion OPT: File the application for employment authorization up to 90 days before program end date and no later than 60 days after program end date. 8 CFR 214.2(f)(11)(i)(B)(*2*).
- STEM OPT: File the application for employment authorization up to 90 days before the expiration of current EAD and within 60 days of the DSO's recommendation. 8 CFR 214.2(f)(11)(i)(C).

DHS proposes to increase the number of days applicants have to file prior to the program end date from 90 days to 120 days and shorten the number of days students have to file an application for post-completion OPT after the program end date from 60 days to 30 days. *See* proposed 8 CFR 214.2(f)(11)(i)(B)(*2*). Likewise, DHS proposes to strike the requirement in 8 CFR 214.2(f)(11)(i)(B)(*2*) and (C) which require students file their Form I–765 with USCIS within 30 days and 60 days, respectively, of the date that the DSO enters the recommendation into SEVIS. DHS believes that such a timeframe for obtaining the DSO recommendation seems unnecessary given that students would always be required to first get their DSO's recommendation before filing their Form I–765 requesting OPT employment authorization and a regulatory timeframe for submitting the I–765 is already in place. Once they get their DSO's recommendation, they would then be eligible to file their Form I–765 within 30 days after their program end date or up to 120 days before the expiration of their current EAD.

While USCIS anticipates timely processing these cases, there would be an increase in volume of EOS applications following the effective date of the final rule as those nonimmigrants who are required to file EOS begin to do so, and the Department believes that allowing applicants more time to file an EOS application would stagger the applications, helping to maintain a consistent volume. This, in turn, could enable USCIS to more efficiently manage this OPT-related workload, so the agency may be better equipped to adjudicate these requests in a timely manner and diminish the likelihood of gaps in employment. Additionally, DHS believes that shortening the filing window after the program end date would better align with the proposed period to prepare for departure. And, finally, DHS recommends technical changes such as replacing ''shall'' with ''will'' and clarifying edits throughout proposed 8 CFR 214.2(f)(11) for readability.

viii. Temporary Absence From the United States of F–1 Student Granted Employment Authorization

DHS proposes to strike and reserve 8 CFR 214.2(f)(13), which specifies how an F–1 student who has been granted employment authorization may apply for admission and resume employment, if readmitted to attend the same school which granted the employment authorization, when he or she returns to the U.S. from a temporary absence abroad. *See* 8 CFR 214.2(f)(13)(i) . The regulatory provision at 8 CFR 214.2(f)(13)(ii) states that an F–1 student who has an unexpired EAD, issued for post-completion practical training, and who is otherwise admissible, may return to the United States to resume

[126] The regulations set out the requirement that F–1 nonimmigrants seeking OPT and STEM OPT are required to apply for work authorization at 8 CFR 274a.12(c) and (c)(3).

employment after a period of temporary absence. As DHS sets forth admission procedures to pursue off campus employment, post-completion training, and STEM OPT in proposed 8 CFR 214.1(a)(4)(i)(D), the reference in 8 CFR 214.2(f)(13) is redundant and could lead to confusion.

ix. Border Commuter Students

DHS proposes to replace ''nonimmigrant student'' with ''alien with F–1 status'' consistent with proposed revisions throughout the NPRM, and to strike the sentence referencing how ''duration of status'' is inapplicable to border commuter students because DHS is proposing to eliminate duration of status for all F nonimmigrants. *See* proposed 8 CFR 214.2(f)(18)(iii).

F. Requirements for Admission, Extension, and Maintenance of Status of I Nonimmigrants

i. Definition of Foreign Media Organization

Changes in technology and in the way that the public consumes media information have raised novel questions as to whether certain individuals fit within the statutory and regulatory provisions that are applicable to representatives of foreign information media. To address these questions, DHS proposes to define a foreign media organization as ''an organization engaged in the regular gathering, production, or dissemination via print, radio, television, internet distribution, or other media, of journalistic information and has a home office in a foreign country.'' *See* proposed 8 CFR 214.2(i)(1). This proposal clarifies long-standing practice that the alien be a representative of a media organization with a home office in a foreign country by codifying what is considered a foreign media organization when seeking qualification as an I nonimmigrant.[127] By requiring evidence that shows that the foreign organization that employs or contracts the I nonimmigrant has a home office in a foreign country, and that the office in a foreign country continues to operate while the I nonimmigrant is in the United States, DHS would help ensure that the I nonimmigrant, at the time of application for admission, change of status, or application for extension of stay, is a bona fide representative of *foreign* media organization. *See* proposed 8 CFR 214.2(i)(2). Further, to conform to the statutory intent of the I classification, DHS is proposing to clarify and codify the DOS and USCIS long-standing practice interpreting ''foreign information media'' under INA 101(a)(15)(I) as ''journalistic information.'' This standard is in place when aliens apply for an I visa abroad or seek to change to I nonimmigrant status in the United States and aligns with statutory intent, which is to facilitate foreign press and journalism, rather than for entertainment or promotional purposes, such as performing or appearing on reality television programs. There are other options for those aliens, such as the P nonimmigrant classifications.[128]

DOS is the entity that determines whether an alien qualifies for an I visa, while USCIS is the entity that determines whether an alien who is in the United States in another nonimmigrant status can change to I status or whether an I alien who is already in the United States and seeks to change his or her employer or information medium continues to qualify for an I status. USCIS and DOS guidance discuss the distinction between journalistic content and content that is primarily for entertainment. DOS considers journalistic information as ''content that is primarily informational in nature, such as the reporting on recent or important events, investigative reporting, or producing educational materials, such as documentaries. It does not include content that is primarily designed to provide entertainment rather than information, including scripted or contrived situations, such as most ''reality television'' shows. It also does not include most personal content, such as discussions of personal experiences in the United States or materials aimed at fan engagement, or works produced for promotional or marketing purposes.'' [129] DOS' definition aligns with current USCIS practice where the ''officer should consider whether the intended use is journalistic, informational, or educational, as opposed to entertainment. The officer should also consider the foreign distribution of the film or video footage in addition to other factors, including the timeliness of the project relative to the subject event.'' [130]

Consistent with DOS guidance and current USCIS practice, whether content is journalistic information would depend on the nature of the content featured on the new media outlet. For example, a political blogger traveling to the United States to cover an election could qualify for I status, as election coverage would generally be considered journalistic information. In this example, the applicant would still need to demonstrate that he or she satisfies the other qualifications of an information media representative, including that he or she represents an organization involved in the regular gathering, production, or dissemination of journalistic information that has a home office in another country.[131]

Similarly, a professional travel blogger traveling to the United States to obtain and produce materials on national parks in the United States could also qualify for I classification if all aspects of the definition of an information media representative are established, including the requirement that the media content generated will be journalistic information and that he or she represents an organization having an office in a foreign country and that is involved in the regular gathering, production, or dissemination of journalistic information. However, a blogger traveling to the United States to report on his or her own activities at a national park may not qualify for I status if the applicant does not represent an organization involved in the regular gathering, production, or dissemination of journalistic information and the media content is not primarily journalistic information. Individuals who are not professional bloggers, but maintain a personal blog and will produce content on their blog based on their personal experiences in the United States, such as providing information and reviews of their personal vacation, generally would not qualify for I classification, but may qualify for a B classification, depending on the circumstances. Likewise, a blogger promoting a line of products would not qualify for I status.

These standards facilitate the travel of representatives of foreign information

[127] *See generally* USCIS Policy Manual, Vol. 2, Part K, Chap. 2. Available at *https://www.uscis.gov/policy-manual/volume-2-part-k-chapter-2* (last visited 6/18/2020); 22 CFR 41.52; 9 FAM 402.11–3(a)(1).

[128] INA section 101(a)(15)(P), 8 U.S.C. 1101(a)(15)(P).

[129] See DOS guidance for consular officers adjudicating I visa applications at 9 FAM 402.11–3.

[130] See USCIS Policy Manual, Vol. 2, Part K, Chap. 3. Available at *https://www.uscis.gov/policy-manual/volume-2-part-k-chapter-3* (last visited 4/13/2020) (stating that ''[i]ncreasingly, because of the growing popularity of documentary-type biographies and similar nonfiction film productions, the distinction between commercial filmmaking for entertainment and genuine news gathering is less clear. For example, filmed biographies may be regarded as documentary filmmaking or as news gathering).

[131] *See* 9 FAM 402.11–10, New Media—Blogging And Other Electronic Media Platforms, available at *https://fam.state.gov/FAM/09FAM/09FAM040211.html* (last visited Jan. 16, 2020).

media. These proposed standards codify and clarify existing U.S. government practice and thus would not significantly alter the current guidance used by DHS officers adjudicating these cases or by DOS when determining whether an I visa should be issued. Rather, codifying these standards in the regulation would clarify how representatives of foreign press, radio, film or other journalistic information media qualify for the I classification. DHS does not anticipate that the changes proposed in this rule would represent a significant departure from current processing.

ii. Evidence

In order to be granted I classification, an alien would need to meet his or her burden of proof to establish eligibility for admission in that nonimmigrant category. DHS believes that evidence presented by such individuals to establish employment as a bona fide representative of foreign press, radio, film or other journalistic information media should be provided in a letter from the employing foreign media organization verifying the employment, the work to be performed, and the remuneration involved. This evidence would provide a standard basis for DHS to evaluate whether the applicant intends to comply with the I category and only engage in the regular gathering, production or dissemination via print, radio, television, internet distribution or other media of journalistic information and represents, as an employee or under contract, an organization with an office in a foreign country. For example, such a letter would be able to describe the content that the foreign information media representative is covering in the United States, which must be primarily journalistic information in nature, such as the reporting on recent or important events, investigative reporting, or producing educational materials, such as documentaries. Foreign media organizations would be able to describe how the content is primarily designed to provide information rather than entertainment, such as scripted or contrived situations, such as most ''reality television'' shows, which do not qualify an individual for admission under the I nonimmigrant category.[132]

Where an alien is self-employed or freelancing, the alien must provide an attestation that verifies the employment, establishes that he or she is a representative of a qualifying foreign media organization that meets the foreign home office requirement, and describes the remuneration and work to be performed. In order to maintain the home office in another country, a self-employed applicant would need to demonstrate that he or she intends to depart the United States within a reasonable time frame consistent with the intended purpose of travel. Like the letter from the employing foreign media organization, the attestation from the alien would help to ensure that the individual is engaging in qualifying activities, not activities primarily intended for personal fan engagement, or promotional or marketing purposes, which are unrelated to the regular gathering, production, or dissemination of journalistic information. *See* proposed 8 CFR 214.2(i)(2).

iii. Admission Period and EOS

DHS is proposing an admission period for I nonimmigrants of up to 240 days and another period of up to 240 days for an extension, based on the length of the activity. *See* proposed 8 CFR 214.2(i)(3) and (5). As I nonimmigrants who file a Form I–539 request with USCIS to request a change in information medium are currently allowed an automatic extension of employment authorization with the same employer while a Form I–539 application is pending for a period not to exceed 240 days, 8 CFR 274a.12(b)(20), DHS believes that it is appropriate to extend such period of time to other I nonimmigrant contexts. DHS seeks comments on whether this is an appropriate period of time and whether exceptions for I nonimmigrants covered by certain international agreements, including Section 11 of the United Nations Headquarters Agreement, should be added to the final rule.

Aliens applying for an EOS currently file a Form I–539 with USCIS, with required fee and in accordance with form instructions, but DHS is using general terms in the proposed regulatory text when referencing the EOS application. DHS is using general terms, rather than referencing form names and numbers, in the regulatory text to provide flexibility for the future—if the form name or number changes, the Department would not need to engage in rulemaking to make the update. *See* proposed 8 CFR 214.2(i)(5). And, as with other applicants who file a Form I–539, under the proposed rule applicants would be required to submit biometrics. *See* proposed 8 CFR 214.2(i)(5). Specific guidance and any changes to the filing procedure would be provided in the form instructions, which USCIS would post on its website, making it easily accessible to applicants.

iv. Change in Information Medium or Employer

DHS proposes to retain the requirement that aliens in I status may not change the information medium or the employer they will be working with until they receive permission from USCIS. *See* proposed 8 CFR 214.2(i)(4). This is the current requirement and DHS believes it is appropriate to continue ensuring DHS has an opportunity to review the requested changes and ensure the changes would constitute as qualifying activities under the I program. Aliens would request such permission by submitting the form designated by USCIS, in accordance with that form's instructions, and with the required fee, including any biometrics required by 8 CFR 103.16, as appropriate. Aliens currently submit Form I–539, Application to Extend/Change Nonimmigrant Status, for this purpose. As in other parts of the rule, the proposed regulation does not reference specific form names and numbers in the regulatory text to provide flexibility for the future in the event the form name or number changes. In all cases, applicants would be provided sufficient notice of the appropriate form on USCIS' web page and in the form instructions.

v. Proposed Changes to Treatment of I Nonimmigrants Travelling or Presenting a Passport From the Hong Kong Special Administrative Region (SAR)

Earlier this year, DHS published a final rule (85 FR 27645, May 11, 2020) amending the I nonimmigrant provision in 8 CFR 214.2(i). The rule amended the regulations to achieve greater reciprocity in the treatment of certain foreign nationals admitted to the United States in I nonimmigrant status as bona fide representatives of foreign information media who are foreign nationals travelling on a passport issued by the PRC, with the exception of Hong Kong Special Administrative Region (SAR) and Macau SAR passport holders. Under the rule, DHS has begun to admit aliens in I nonimmigrant status or otherwise grant I nonimmigrant status to aliens only for the period necessary to accomplish the authorized purpose of their stay in the United States, not to exceed 90 days. The rule also allows such visitors to apply for extensions of stay. Since the effective date of this rulemaking involving I nonimmigrants from the PRC, the National People's Congress of China announced in late

[132] For more information about what qualifies as 'journalistic information' *see* 9 FAM 402.11–3 Definitions of ''Information Media Representative'' and ''Journalistic Information'', available at *https://fam.state.gov/FAM/09FAM/09FAM040211.html* (last visited Jan. 14, 2020).

May its intention to unilaterally and arbitrarily impose national security legislation on Hong Kong.[133] Accordingly, the President, under the authority vested to him by the Constitution and applicable laws of the United States, including, among others, section 202 of the United States-Hong Kong Policy Act of 1992 (22 U.S.C. 5722), has determined that the Special Administrative Region of Hong Kong is no longer sufficiently autonomous to justify differential treatment in relation to the People's Republic of China under relevant U.S. laws, and issued an Executive Order that, among others things, directed agencies to begin the process of eliminating policy exemptions that give Hong Kong differential treatment in relation to PRC. In light of this Executive Order, DHS is proposing to amend its regulations to eliminate differential treatment of I aliens who present, or are traveling on, passports from the Hong Kong SAR, and grant these aliens a period of stay necessary to accomplish the authorized purpose of their I status, not to exceed 90 days. The rule also proposes to allow these I aliens to apply for extensions of stay, not to exceed 90 days. In addition, aliens in I nonimmigrant status presenting passports issued by the Hong Kong SAR who are properly maintaining their status on the [FINAL RULE EFFECTIVE DATE] with admission for D/S are authorized to remain in the United States in I nonimmigrant status for a period necessary to complete their activity, not to exceed [DATE 90 DAYS AFTER EFFECTIVE DATE OF FINAL RULE]. I nonimmigrants who seek to remain in the United States longer than the automatic extension period provided would be required to file an extension of stay request with USCIS. These proposed changes are in line with the current requirements for I nonimmigrants who are traveling on, or have been issued a passport, by the PRC, which were enacted to achieve greater reciprocity between the United States and the PRC.

G. Requirements for Admission, Extension, and Maintenance of Status of J Exchange Visitors

i. Admission Period and Period of Stay

1. Principal Applicants

The proposed revisions to the J regulations at 8 CFR closely align with the proposed changes for F nonimmigrants. Under proposed 8 CFR 214.2(j)(1), J exchange visitors would be able to receive a period of admission not to exceed the program end date as stated on the Form DS–2019, up to a period of 4 years, unless otherwise limited to a shorter period under proposed section 8 CFR 214.2(j)(6). Currently, the permissible initial time periods for the J programs (as opposed to the periods of admission) are as follows, though further extensions are possible with DOS approval for all categories:

- Professors and research scholars: The length of program, not to exceed 5 years. *See* 22 CFR 62.20(i)(1).
- Short-term scholars: The length of program, not to exceed 6 months. *See* 22 CFR 62.21(g).
- Trainees and interns: General trainees may be granted 18 months; trainees in the field of agriculture, hospitality and tourism may be granted 12 months, and interns may be granted 12 months. *See* 22 CFR 62.22(k).
- College and university students: The length of time necessary to complete the goals and objectives of the training. *See* 22 CFR 62.23(f)(4). For undergraduate and pre-doctoral training, not to exceed 18 months, and for post-doctoral training, not to exceed a total of 36 months. 22 CFR 62.23(f)(4). Students enrolled in a degree program do not have a definite admission period but must comply with duration of participation requirements at 22 CFR 62.23(h).[134] If enrolled in a non-degree program, students may be granted up to 24 months. *See* 62.23(h)(2).
- Student intern: Up to 12 months. *See* 22 CFR 62.23(h)(3) and (i).
- Teachers: The length of time necessary to complete the program, not to exceed 3 years, unless a specific extension of 1 or 2 years is authorized by DOS. *See* 22 CFR 62.24(j).
- Secondary school students: Not more than two academic semesters (or quarter equivalency). *See* 22 CFR 62.25(c)(2).
- Specialists: The length of time necessary to complete the program, not to exceed 1 year. *See* 22 CFR 62.26(i).
- Alien physicians: Limited to 7 years, unless the alien physician has demonstrated to the satisfaction of the Secretary of State that the country to which the alien physician will return at the end of additional specialty education or training has an exceptional need for an individual with such additional qualification. *See* 22 CFR 62.27(e).
- International visitors: The length of time necessary to complete the program, not to exceed 1 year. *See* 22 CFR 62.28(g).
- Government visitors: The length of time necessary to complete the program, not to exceed 18 months. *See* 22 CFR 62.29(h).
- Camp counselors: 4 months. *See* 22 CFR 62.30(h)(2).
- Au pairs: Not more than 1 year. *See* 22 CFR 62.31(c)(1).
- Summer work travel: Up to 4 months. *See* 22 CFR 62.32(c).

As with the F category, many J exchange visitors are admitted to participate in programs shorter than 4 years. Some J exchange visitors, like most F nonimmigrants, enter as post-secondary students. Similar to the F–1 Ph.D. student, some J nonimmigrants, like physicians, may need to stay longer than a 4-year period to complete their J program. However, many categories of J nonimmigrants would be covered by the same 4-year period proposed for F nonimmigrants. As such, it makes sense for DHS to treat these similarly situated nonimmigrants in a consistent manner by providing them with the same proposed, maximum admission period. *See* proposed 8 CFR 214.2(j)(1)(ii)(A). This would help ensure compliance by providing consistency between the J program and the F program, which have programmatic similarities.

DHS proposes to retain the 30-day period that J nonimmigrants are provided before the report date or start of the approved program listed on the DS–2019 and the 30-day period at the end of the program. As DHS expects these nonimmigrants to use the 30-day period of time after the program ends to prepare for departure, the Department proposes to revise the language currently in 8 CFR 214.2(j)(1)(ii) that reads, ''period of 30 days for the purposes of travel or for the period designated by the Commissioner. . .,'' to instead read ''a period of 30 days at the end of the program for the purposes of departure or to otherwise maintain status.'' *See* proposed 8 CFR 214.2(j)(1)(ii)(C). DHS believes that the proposed language more accurately reflects the purpose of the period at the end of the program and accounts for other ways J exchange visitors may maintain status during this period, such as by filing an EOS or change of status application.

[133] *See* the President's Executive Order on Hong Kong Normalization, July 14, 2020, See *https://www.whitehouse.gov/presidential-actions/presidents-executive-order-hong-kong-normalization/* (last visited July 21, 2020).

[134] A student who is in a degree program may be authorized to participate in the Exchange Visitor Program as long as he or she is either: (i) Studying at the post-secondary accredited academic institution listed on his or her Form DS–2019 and: (A) Pursuing a full course of study as set forth in paragraph (e) of this section, and (B) Maintaining satisfactory advancement towards the completion of the student's academic program; or (ii) Participating in an authorized academic training program as permitted in paragraph (f) of this section. 22 CFR 62.23(h).

Similar to the limitations proposed in 8 CFR 214.2(f)(20), the factors proposed in section (j)(6) focus on fraud and national security concerns. The factors DHS identified for limiting initial admission to a maximum of 2 years are:

• Certain countries. Like F nonimmigrants, exchange visitors who were born in or are citizens of countries listed in the State Sponsor of Terrorism List. DHS would publish a notice in the **Federal Register** listing the countries whose nationals are subject to a 2-year maximum period of stay in J–1 status. Changes to the list would be made by issuance of a new **Federal Register** Notice. As the State Sponsor of Terrorism List are countries determined by the Secretary of State to have repeatedly provided support for acts of international terrorism, DHS believes it is appropriate to apply additional scrutiny to those who were born in these countries or are citizens of these countries who are temporarily in the United States to ensure that these aliens are complying with the terms of their admission and that they do not pose risks to the national security of the United States.

• Countries with high overstay rates. Like F nonimmigrants, exchange visitors who are citizens of countries with a nonimmigrant student and exchange visitor total overstay rate greater than 10 percent according to the most recent DHS Entry/Exit Overstay report.[135] The DHS Entry/Exit Overstay report compiles overstay rates for different classifications. It provides overstay rates per country for F, M, and J nonimmigrants together, rather than a separate overstay rate by classification, per country. Given the overlap between the F and J nonimmigrant classifications, utilizing the data for both exchange visitors and students to establish overstay rates is useful in that it may deter aliens who may attempt to seek admission in one status rather than the other in order to obtain a lengthier period of admission. DHS would publish a notice in the **Federal Register** listing the countries whose citizens are subject to a 2-year maximum period of stay in J–1 status. Changes to the list would be made by issuance of a new **Federal Register** Notice. Placing restrictions on citizens of countries with high overstay rates, consistent with the percent described by the Administration as a 'high' overstay rate for the purpose of enabling DHS and DOS to ''immediately begin taking all appropriate actions that are within the scope of their respective authorities to reduce overstay rates for all classes of nonimmigrant visas,'' [136] could encourage future compliance by incentivizing timely departures so that a country that exceeds the threshold might be removed from the list of high overstay rates on the DHS Entry/Exit report. The restriction also would permit DHS to have more frequent scrutiny of individuals from countries that present more risk, such that the agency may sooner ascertain whether an alien has violated their status.

• U.S. national interest. DHS proposes to include a factor to limit the maximum period of admission to 2 years if it serves the U.S. national interest. As in the F program, this provision would provide the Secretary of Homeland Security and Secretary of State the requisite flexibility to identify potential risks of fraud and abuse to the United States' immigration programs and risks to national security that do not fit precisely within the other named categories. If the Department determines that certain technical fields pose a national security risk, more frequent vetting of the exchange visitors may serve in the national interest to mitigate the threats. If DHS determines that certain circumstances would be in the U.S. national interest to limit admission to a 2-year maximum period, then it would provide the public advance notice of such circumstance through publication of a **Federal Register** Notice.

• E-Verify participation. While this proposed change would not impose a requirement that the program sponsor or host institution be enrolled in or be a participant in good standing in E-Verify, it would encourage those organizations that are not currently enrolled or in good standing to attain such status rather than potentially lose future exchange visitors. E-Verify participation helps to combat document fraud, identifies errors in certain Government records belonging to employees, and may be used by law enforcement agencies to aid in the prevention of identity theft.[137] E-Verify participation is also a fast and easy way for sponsors and host institutions to demonstrate their commitment to maintaining a legal workforce.

Like the limiting factors for admission of F students, any one factor could trigger the designation of a maximum 2-year period of stay. And, like F students, J exchange visitors who depart the United States or for any reason would need to file an EOS application become subject to all terms and conditions of admission, including the 2-year limitation. This would include cases where an exchange visitor is admitted for a 4-year period, but in the midst of their 4-year admission, a new **Federal Register** Notice is published, making the exchange visitor subject to the 2-year admission; even though the alien generally may remain in the United States for the remainder of the 4-year period without seeking an extension of stay, if they depart the United States or for any reason need to file an EOS application, then they will be subject to the 2-year maximum period of admission. *See* proposed 8 CFR 214.2(j)(6)(iii).

The ultimate decision as to whether to admit the alien, and the maximum period of admission for such alien, would remain with the Secretary of Homeland Security, consistent with the Secretary's statutory obligation to administer and enforce the nation's immigration laws. *See, e.g.,* INA 103(a), 235; *see also* proposed 8 CFR 214.2(j)(6). The first FRN listing the countries triggering the 2-year admission period, along with other determinations related to this provision,[138] would be published contemporaneously with the final rule. Subsequent updates would be made as needed and would provide stakeholders with notice in advance of any change.

2. Dependents

Consistent with the extension of stay eligibility requirements for the J–1 found at 8 CFR 214.1(c)(4), DHS proposes to codify the policy that extensions for spouses or children who are granted J–2 status based on their derivative relationship as a spouse or child of the principal J–1 nonimmigrant may not exceed the period of authorized admission of the principal J–1. The current regulations state that the initial admission of a spouse or child may not be for longer than the principal exchange visitor.[139] That is, the authorized period of initial admission

[135] The overstay report for 2018 can be found at *https://www.dhs.gov/sites/default/files/publications/19_0417_fy18-entry-and-exit-overstay-report.pdf,* see Table 4, Column 6.

[136] *See* Presidential Memorandum on Combating High Nonimmigrant Overstay Rates (April 22, 2019) available at *https://www.whitehouse.gov/presidential-actions/presidential-memorandum-combating-high-nonimmigrant-overstay-rates/* (last visited April 14, 2020). The Presidential Memorandum identified countries with a total overstay rate greater than 10 percent in the combined B–1 and B–2 nonimmigrant visa category as appropriate for additional engagement by the DOS, which ''should identify conditions contributing to high overstay rates among nationals of those countries. . .''

[137] *E-Verify.gov* website, How does E-Verify use my information?, *https://www.e-verify.gov/faq/privacy/how-does-e-verify-use-my-information* (last visited Apr.14, 2020).

[138] This information is currently available at *https://ope.ed.gov/dapip/#/home* (last visited Jan. 26, 2020).

[139] 8 CFR 214.2(j)(1)(ii).

for J–2 dependents would be subject to the same requirements as the J–1 exchange visitor and may not exceed the period of authorized admission of the principal J–1 exchange visitor. *See* proposed 8 CFR 214.2(j)(1)(ii)(B).

ii. EOS

The shift from D/S to admission for a fixed time period would mean that J nonimmigrants wishing to remain in the United States beyond their authorized period of stay would need to file an EOS application with USCIS. Like other nonimmigrants applying for EOS, they would currently need to file a Form I–539 in accordance with that form's instructions, with the required fee, and including any biometrics or interview as required by 8 CFR 103.16. *See* proposed 8 CFR 214.2(j)(1)(iv)(A). J–1s seeking a program extension will continue to first request such an extension through the RO, as provided for under current regulations.[140] If such a program extension is recommended by the RO, the J–1 must apply for an EOS with USCIS to remain in the U.S. beyond the status expiration date on their I–94.

Dependent J–2 spouses and children seeking to accompany the J–1 exchange visitor during the additional period of admission would either need to be included on the primary applicant's request for extension or file their own EOS applications on the form designated by USCIS, and may be required to provide biometrics consistent with 8 CFR 103.16. *See* proposed 8 CFR 214.2(j)(1)(iv)(D). As with other nonimmigrant categories, the period of stay for J–2 dependents cannot exceed the period of stay authorized for the principal J–1 exchange visitor. And, as with other nonimmigrant categories, if an EOS is denied, the aliens would need to immediately depart the United States once their authorized period of stay expires.

iii. Employment and Pending EOS and Employment Authorization Applications

Like I nonimmigrants, J–1 exchange visitors are authorized to engage in employment incident to status.[141] This means that they are authorized to work per the terms of their program, and they do not have to apply to USCIS for authorization to engage in employment. Upon timely filing of an EOS application, DHS proposes to allow the alien to continue engaging in activities consistent with the terms and conditions of the alien's program, including any employment authorization, beginning on the day after the admission period expires, for up to 240 days. *See* 8 CFR 274a.12(b)(20). Such authorization would be subject to any conditions and limitations of the initial authorization. *See* proposed 8 CFR 214.2(j)(1)(vii). This policy is consistent with current practice and prevents J–1 exchange visitors from being penalized on account of USCIS processing times, allows the alien to participate in the program without interruption, and, as applicable, prevents disruption to U.S. institutions employing or otherwise relying on the alien.

If the alien's initial date of admission passes, DHS proposes to consider the alien's Form I–94 unexpired when combined with a USCIS receipt notice indicating receipt of a timely filed EOS application and a valid, properly endorsed Form DS–2019 indicating his or her program's end date. An EOS application would be considered timely filed if the receipt notice for the application of EOS is on or before the date the authorized stay expires. The extension of an alien's authorized employment would terminate on the date of denial of an individual's application for an EOS. *See* proposed 8 CFR 214.2(j)(1)(iv)(B). DHS believes that such provision would clarify how exchange visitors would demonstrate authorization to continue engaging in employment authorized pursuant to their program and better facilitate employer compliance with I–9 employment verification requirements.

Unlike J–1 exchange visitors, J–2 spouses and minor children may only engage in employment with authorization by USCIS. *See* 8 CFR 214.2(j)(1)(v) as also provided for in proposed 8 CFR 214.2(j)(1)(vii)(C). DHS also proposes to retain the current restriction on the J–2 dependent's income described in 8 CFR 214.2(j)(1)(v)(A); the J–2 nonimmigrant's income may be used to support the family's customary recreational and cultural activities and related travel, among other things, but not to support the J–1. *See* proposed 8 CFR 214.2(j)(1)(v)( ).

If a J–2 dependent nonimmigrant's requested period of employment authorization exceeds his or her current admission period, the J–2 dependent would need to file an EOS application, in addition to a new application for employment authorization, in the manner designated by USCIS, with the required fee and in accordance with form instructions. *See* proposed 8 CFR 214.2(j)(1)(v)( ).

As noted above in the discussion concerning EOS applications for F nonimmigrants, DHS considered but declined to adopt a policy that would result in abandonment of the EOS application upon traveling outside the United States while the EOS is pending. A J–1 or J–2 alien who travels during the time the EOS is pending will not be considered to have abandoned the EOS application. *See* proposed 8 CFR 214.1(c)(6)(i).

Finally, DHS proposes minor technical updates. First, DHS proposes to update outdated terms such as ''Commissioner'' and ''Service'' in 8 CFR 214.2(j)(1)(vi), replacing them with USCIS. Second, in 8 CFR 214.2(j)(1)(vi) DHS proposes to strike the reference to duration of status and replace it with *'Extension of J–1 stay and grant of employment authorization for aliens who are the beneficiaries of a cap-subject H–1B petition'* which is consistent to the terminology proposed in 8 CFR 214.2(f)(5)(vi). Third, because proposed 8 CFR 214.2(j)(1)(vii) is being revised to describe J nonimmigrants with pending extension of stay applications and their employment authorization, it is necessary to revise and reassign current 8 CFR 214.2(j)(1)(vii) and (viii) to proposed 8 CFR 214.2(j)(1)(viii) and (ix) respectively. Fourth, DHS proposes conforming amendments to the provision which requires exchange visitors to report legal changes to their name and any changes in their address, replacing the term 'Service' with 'USCIS' and clarifying the number of days during which changes need to be reported by revising from 10 days to 10 'calendar' days for exchange visitors to report changes in their names and addresses and from 21 days to 10 business days for the RO to update SEVIS, in order to conform with existing DOS regulations.[142] *See* proposed 8 CFR 214.2(j)(1)(ix). This change is proposed because the differing number of days for ROs to report changes between DHS and DOS regulations may cause confusion given that the time frames are both regarding the requirement for ROs to

[140] *See* 22 CFR 62.43, describing J–1 program extension procedures.

[141] *See* 8 U.S.C. 1101(a)(15)(J) (including teaching, instructing, lecturing, and consulting among the permissible activities of nonimmigrants in the J category for participation in programs authorized by the Department of State); 8 CFR 214.2(j)(1)(v) (discussing employment authorization for J exchange visitors); 22 CFR 62.16 (stating that an exchange visitor program participant may receive compensation ''when employment activities are part of the exchange visitor's program'').

[142] 22 CFR 62.10(d)(3) clarifies that the J–1 exchange visitor must inform the RO or ARO of address changes within ''10 calendar days'' of the change, and 22 CFR 62.10(d)(4) states that the reporting window for ROs or AROs to update SEVIS is ''10 business days'' from receiving the J–1 exchange visitor's address change notification from the J–1 exchange visitor.

update changes in SEVIS, and this change provides for a common timeframe. In that same provision, DHS proposes to strike the sentence which references non-SEVIS programs, as SEVIS enrollment is now a mandatory requirement. *Id.* Finally, DHS proposes changes to the regulatory provisions to refer to J nonimmigrants as ''exchange visitors,'' to promote consistency with DOS regulations.

H. Change of Status

DHS is proposing to add two provisions to 8 CFR part 248, which governs changes of status. First, DHS is proposing to clarify that aliens who were granted a change to F or J status before the effective date of the final rule, and are applying for admission as an F or J after the final rule's effective date may be admitted up to the program end date as noted on the Form I–20 or DS–2019 that accompanied the change of status application that was approved prior to the alien's departure, not to exceed 4 years, unless they are subject to a 2-year admission proposed in 8 CFR 214.2(f)(20) or (j)(6), plus a period of 30 days following their program end date, to prepare for departure or to otherwise seek to obtain lawful authorization to remain in the United States. *See* proposed 8 CFR 248.1(e). That is, CBP may admit these aliens into the United States up to the program end date, on the Form I–20 or DS–2019 that accompanied the approved change of status prior to the alien's departure, plus an additional 30 days, thus ensuring that they do not get more time than allocated by their program end date, since these Fs and Js would have received an admission period for D/S on the I–94 that accompanied the change of status approval.

Second, DHS is proposing to codify long-standing policy that, when an alien timely files an application to change to another nonimmigrant status, including F or J status, but departs the United States while the application is pending, USCIS will consider the application abandoned.[143] Under INA 248, DHS may authorize a change of status to a nonimmigrant who, among other things, continues to maintain his or her status. Thus, pursuant to a policy that has been in place for decades, the change of status application of an alien who travels outside of the United States during the pendency of his or her request for a change of status is deemed abandoned.[144] *See* proposed 8 CFR 248.1(g). Note, however, if there is an underlying petition filed along with the change of status, that petition may still be approved, but the alien generally would have to obtain the necessary visa at a U.S. Embassy or Consulate abroad before applying for admission to the United States in the new nonimmigrant classification.

Additionally, DHS proposes minor technical edits: Replacing the words ''A district director'' in newly re-designated paragraph (g) with ''USCIS''; replacing ''shall'' in newly re-designated paragraph (g) with ''will''; and replacing all instances of ''shall'' with ''will'' in newly re-designated paragraph (h).

I. Classes of Aliens Authorized To Accept Employment

DHS is proposing the following updates to regulations pertaining to employment authorization: First, as discussed above, DHS proposes to change 8 CFR 274a.12(b)(6)(i) to conform with proposed revisions in 8 CFR 214.2(f)(9)(i), which as discussed above, would terminate on-campus employment as of the alien's fixed date of admission as noted on his or her Form I–94. If the alien has timely applied for an extension of stay, however, pursuant to proposed 8 CFR 214.2(f)(5)(vii), the current on-campus and severe economic hardship employment authorization of such an alien may be automatically extended for up to 180 days, or until adjudicated by USCIS, whichever is earlier, as described in that section. *See* proposed 8 CFR 274a.12(b)(6)(i). In cases where employment is authorized pursuant to severe economic hardship resulting from emergent circumstances under 8 CFR 214.2(f)(5)(v), the validity period of the employment authorization is provided by notice in the **Federal Register** and indicated by a Certificate of Eligibility for Nonimmigrant (F–1/M–1) Students, Form I–20 or successor form, endorsed by the Designated School Official recommending such an extension. *See* proposed 8 CFR 274a.12(b)(6)(i).

Second, as discussed above, DHS proposes to clarify that CPT terminates on the alien's fixed date of admission as noted on their Form I–94. An F–1 alien whose fixed date of admission noted on their Form I–94 has expired may not engage in CPT until USCIS approves an alien's EOS request. *See* proposed 8 CFR 274a.12(b)(6)(iii).

Third, as discussed above, DHS proposes to strike the reference to D/S in 8 CFR 274a.12(b)(6)(v) and update the language to be consistent with proposed cap-gap provisions at 8 CFR 214.2(f)(5)(vi).

Fourth, as discussed above, in proposed 8 CFR 274a.12(b)(10), DHS proposes to cross-reference proposed language in 8 CFR 214.2(i) for I nonimmigrants, which clarifies that limitations currently in the provision (an alien in this status may be employed only for the sponsoring foreign news agency or bureau) allow for freelance and self-employment situations where the I nonimmigrant may not have a ''sponsoring'' foreign news agency or bureau, and instead would need to show, among other requirements indicated in proposed 8 CFR 214.2(i), that they are working for a qualifying foreign media organization.

V. Statutory and Regulatory Requirements

DHS developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. The below sections summarize our analyses based on a number of these statutes or executive orders.

A. Executive Orders 12866, 13563, and 13771: Regulatory Review

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') 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, reducing costs, harmonizing rules and promoting flexibility. Executive Order 13771 (''Reducing Regulation and Controlling Regulatory Costs'') directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

This rule has been designated a ''significant regulatory action'' that is economically significant, under section 3(f)(1) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

1. Summary

Currently, aliens in the F (academic student), J (exchange visitor), and I

[143] *See* Letter, Bednarz, Chief, NIV Branch, Adjudications CO 238–C (Oct. 29, 1993), reprinted in 70 No. 46 Interpreter Releases 1604, 1626 (Dec. 6, 1993); INS Memorandum, HQ 70/6.2.9, *Travel After Filing a Request for a Change of Nonimmigrant Status,* (June 18, 2001).

[144] *Id.*

(representatives of foreign information media) categories are admitted to the United States under the duration of status framework. However, this framework poses a challenge to the Department's ability to efficiently monitor and oversee these nonimmigrants, as the duration of status framework does not require immigration officers to assess whether these nonimmigrants are complying with the terms and conditions of their stay, or whether they present a national security concern, unless some triggering event (such as an encounter in an enforcement setting, or a request for a benefit from USCIS) leads to a review of the nonimmigrant's compliance. To address these vulnerabilities, DHS proposes to replace duration of status (D/S) with an admission for a fixed time period. Admitting individuals in the F, J, and I categories for a fixed period of time would require all F, J, and I aliens who wish to remain in the United States beyond their specific authorized admission period to apply for authorization to extend their stay directly with USCIS or CBP. This change would impose incremental costs on F, J, and I aliens, but would in turn protect the integrity of the F, J and I programs by having immigration officers evaluate and assess the appropriate length of stay for these nonimmigrants.

The period of analysis for the rule covers 10 years and assumes the proposed rule would go into effect in 2020. Therefore, the analysis period goes from 2020 through 2029. This analysis estimates the annualized value of future costs using two discount rates: 3 percent and 7 percent. In Circular A–4, OMB recommends that a 3 percent discount rate be used when a regulation affects private consumption, and a 7 percent discount rate be used in evaluating a regulation that will mainly displace or alter the use of capital in the private sector. The discount rate accounts for how costs that occur sooner are more valuable. As shown in Table 1, the NPRM would have an annualized cost ranging from $229.9 million to $237.8 million (with 3 and 7 percent discount rates, respectively).

TABLE 1—OMB A–4 ACCOUNTING STATEMENT (2018$)

Category	7 Percent discount rate	3 Percent discount rate	Source citation (RIA, preamble, etc.)
BENEFITS:			
Annualized Monetized $millions/year	N/A	N/A	N/A.
Annualized Quantified	N/A	N/A	N/A.
Qualitative	• Would enhance DHS's ability to enforce the unlawful presence provisions of the INA at conclusion of their fixed period of admission. • Would deter F, J, and I nonimmigrants from engaging in fraud and abuse and strengthen the integrity of these nonimmigrant classifications. • Would provide DHS with additional information to promptly detect national security concerns. • Would increase DHS' ability to detect those non-immigrants who are not complying with the terms and conditions of their status. • Would ensure that immigration officers, who are U.S. Government officials, are responsible for reviewing and deciding each F, J or I nonimmigrant's extension of stay request.		Preamble, RIA Section VI.A.4.
COSTS:			
Annualized Monetized $millions/year	$237.8	$229.9	RIA Section VI.A.4.
Annualized quantified	N/A	N/A	N/A.
Qualitative	• Burden associated with government requests for additional information from or in-person interviews with non-immigrants. • Potential reduction in enrollment of nonimmigrant students and exchange visitors. • CBP and USCIS costs for proposed rule familiarization and training and additional steps at ports of entry to assess fixed period of time for admission. • Costs associated with EOS requests from F–1 non-immigrants attending schools that are not enrolled in E-Verify. • Potential burden to schools/program sponsors and DHS to update batch processing systems that facilitate exchange of data between DSOs/ROs and SEVIS. • Potential costs to F–1 students and schools from limitations on changes in education levels. • Potential burden on F–1 English language training (ESL) program students who could no longer pursue an ESL course of study beyond 24 months.		RIA Section V.A.4.
TRANSFERS:			
Annualized Monetized $millions/year	*N/A.*		*N/A.*
Annualized quantified	*N/A.*		*N/A.*

TABLE 1—OMB A–4 ACCOUNTING STATEMENT (2018$)—Continued

Category	7 Percent discount rate	3 Percent discount rate	Source citation (RIA, preamble, etc.)
Qualitative	Potential reduction in fees collected by SEVP and DOS to cover the cost of the programs due to a potential reduction in international enrollment.		*RIA V.A.4.*
Category	**Effects**		**Source Citation (RIA, preamble, etc.)**
State, Local, and/or Tribal Government	Some public schools would incur incremental costs to comply with the proposed rule and a potential decline in international enrollment.		RIA V.A.4.
Small business	Some small businesses would incur incremental costs to comply with the proposed rule.		Initial Regulatory Flexibility Analysis.
Wages	None.		N/A.
Growth	None.		N/A.

2. Background and Purpose of the Proposed Rule

Unlike aliens in most nonimmigrant categories who are admitted until a specific departure date, F, J, and I nonimmigrants are admitted into the United States for a period of time necessary to engage in activities authorized under their respective [visa] classifications. This period of time is referred to as ''duration of status'' (D/S) and, under the D/S framework, nonimmigrants do not receive a fixed period of admission. Since the introduction of D/S, the number of F, J, and I nonimmigrants admitted into the United States has significantly increased. Admission for D/S, in general, does not give immigration officers enough opportunities to directly verify that aliens granted such nonimmigrant status are engaging only in those activities authorized by their respective classifications while they are in the United States. In turn, this has undermined DHS's ability to effectively enforce the statutory inadmissibility grounds related to unlawful presence and has created incentives for fraud and abuse.

Additionally, the D/S framework creates opportunities for foreign adversaries to exploit these programs and undermine U.S. national security, in part due to the reduced opportunities for direct vetting of foreign academic students by immigration officers. An open education environment in the United States offers enormous benefits, but it also places research universities and the nation at risk for economic, academic, or military espionage by foreign students and exchange visitors. DHS believes that replacing admissions for D/S for F–1 students and J–1 exchange visitors with admission for a fixed time period would help mitigate these national security risks, by ensuring an immigration official directly and periodically vets their applications for extension of stay and, in doing so, confirm they are engaged only in activities consistent with their student or exchange visitor status. Under the proposed changes, DHS would more frequently collect biometrics and other information, enhancing the Government's oversight and monitoring of these aliens.

To address these concerns, the proposed rule would replace the D/S framework for F, J, and I nonimmigrants with a framework that authorizes an admission period with a specific date upon which an authorized stay ends. Nonimmigrants who would like to stay in the United States beyond their fixed date of admission would need to apply directly with DHS for an extension of stay. As the admission for a fixed time period of authorized stay is already in place for most other nonimmigrant categories, this change brings F, J and I nonimmigrants in line with most other classifications. Providing F, J and I nonimmigrants a fixed time period of authorized stay would require them to apply to extend their stay, change their nonimmigrant status, or otherwise seek to obtain authorization to remain in the United States (*e.g.,* by filing an application for adjustment of status) prior to the end of this specific admission period similar to most other nonimmigrants.

The proposed rule would ensure an effective mechanism for the Department to periodically and directly assess whether these nonimmigrants are complying with the conditions of their classifications and U.S. immigration laws, as well as to obtain timely and accurate information about the activities they have engaged in and plan to engage in during their temporary stay in the United States. In addition, as F, J, and I nonimmigrants would be admitted for a fixed period of admission under the proposed rule, they would generally begin to accrue unlawful presence following the expiration of their authorized period of admission, as noted on the Form I–94, and could potentially become inadmissible based on that accrual of unlawful presence under section 212(a)(9)(B) and (C), 8 U.S.C. 1182(a)(9)(B) and (C), upon departing the United States. Those grounds of inadmissibility have important and far-reaching implications on an alien's future eligibility for a nonimmigrant visa, admission to the United States, an immigrant visa, or adjustment of status to that of a lawful permanent resident, and therefore may deter F, J, and I nonimmigrants from failing to maintain status or engaging in fraud and abuse and strengthen the integrity of these nonimmigrant. classifications.

3. Affected Population

The proposed rule would primarily affect F, J, and I nonimmigrants and their dependents by requiring some nonimmigrants in these categories to file an EOS application to extend their stay beyond their fixed period of admission. F nonimmigrants are individuals enrolled as bona fide students at SEVP-certified schools, J nonimmigrants are individuals participating in work and study-based exchange visitor programs, and I nonimmigrants are foreign information media representatives. In the sections below, DHS describes the data and methods used to (1) estimate the annual population size for each analyzed visa classification, (2) characterize these annual populations with respect to the need to file an EOS request, and (3) develop projections for the annual number of EOS requests for the evaluation period from 2020 to 2029. These analytical steps have been implemented using the R Project for Statistical Computing, an open-source

analytical software platform.[145] The proposed rule's docket provides the SQL code used to query SEVIS and ADIS and the R code used to implement the logic for this analysis.

Estimating the Affected Population

To identify potentially affected nonimmigrants, DHS used data from several agencies. Data for F and J nonimmigrants were extracted from the Student and Exchange Visitor Information System (SEVIS), including data on student participation in OPT, and J exchange visitor program sponsors. The Student and Exchange Visitor Program (SEVP) oversees schools certified to enroll F and M nonimmigrant students and their dependents. The Department of State (DOS) manages Exchange Visitor Programs for nonimmigrant exchange visitors in the J classification, and their dependents. Both SEVP and DOS use SEVIS to track and monitor schools; exchange visitor programs; and F, M, and J nonimmigrants while they are temporarily in the United States.[146]

Data on I nonimmigrants were extracted from the CBP Arrival and Departure Information System (ADIS). ADIS consolidates entry, exit, and admission status information from DHS components, DOS, and the Canada Border Services Agency. ADIS contains biographic information, biometric indicators, and encounter data.[147]

DHS used nonimmigrant student and exchange visitor program sponsor data from SEVIS and ADIS for fiscal year (FY) 2016, FY 2017, and FY 2018 to estimate the potentially affected population. For each year of data, DHS estimated the total number of nonimmigrants in each category and the total number of individuals who would have to file an EOS in that year if the rule were in effect. Next, DHS used an average of these 3 years as a best estimate of the affected population.

To estimate the total population of nonimmigrants in each year of the analysis, DHS took steps to remove incomplete and incorrect data entries from the SEVIS and ADIS data. For F and J nonimmigrants, DHS first eliminated records that were missing data critical to the analysis such as data entries without start and end dates for the individual's current program or entries that had a program start date that occurred after the program end date as this indicates that the start and end dates were entered improperly. In each fiscal year of data, this resulted in elimination of approximately 4 percent of unique SEVIS entries for F nonimmigrants but no appreciable data loss for J nonimmigrants. In order to only select individuals who were enrolled during the year of analysis, DHS selected entries that had a program end date that occurred on or after the beginning of the year of analysis,[148] and had a program start date that occurred on or before the end of the year of analysis.[149] DHS also took steps to (1) remove outliers in the data by removing data entries with an end date beyond 2050, (2) identify unique records by removing duplicate entries, and (3) retain a single entry for nonimmigrants with multiple records by keeping either the entry linked to a currently active entry, or if there were no active entries, keeping the entry with the latest end date. In total, DHS reduced the number of entries by approximately 240,000 records for each fiscal year of data for the F nonimmigrants and approximately 4,000 records for each fiscal year of data for the J nonimmigrants. This data reduction has been largely driven by elimination of multiple entries associated with a unique SEVIS identifier, rather than by elimination of incomplete entries.[150]

Table 2 shows the estimated total number of F, J, and I nonimmigrants for each fiscal year from 2016 to 2018, as well as the 3-year average. The F estimates include F–1 and F–2 nonimmigrants, J estimates include J–1 and J–2 nonimmigrants, and I estimates include both principal I and dependent I nonimmigrants as there are no multiple categories of I visas. Over the 3-year period, there were approximately 1.7 million F nonimmigrants, 607,000 J nonimmigrants, and 35,000 I nonimmigrants active per year. Overall, approximately 2.3 million persons participated annually in the F, J, and I nonimmigrant programs combined.

TABLE 2—TOTAL NUMBER OF ACTIVE NONIMMIGRANTS BY CATEGORY AND FISCAL YEAR

Nonimmigrant category	FY 2016	FY 2017	FY 2018	Average
F	1,733,416	1,708,012	1,674,818	1,705,415
J	590,992	627,752	603,292	607,345
I	36,675	36,709	32,771	35,385
Total	2,361,083	2,372,473	2,310,881	2,348,145

Estimates derived from SEVIS and ADIS data.

Each year, only a subset of the total nonimmigrant F, J, and I population would be affected by the proposed rule provisions. DHS applied the criteria contained within the proposed rule to estimate the subset of nonimmigrants that would be required to extend their authorized period of admission in each year of the analysis in order to continue the duration of studies observed in the fiscal year 2016–2018 SEVIS data. These criteria vary across the nonimmigrant categories.

Estimating EOS Requests for F Nonimmigrants

F–1 nonimmigrants are bona fide students who seek to enter the United States temporarily and solely for the purpose of pursuing a full course of study at an academic or language training school certified by SEVP. F–2 nonimmigrants are their dependents. F nonimmigrants include, but are not limited to, individuals enrolled in language training, bachelor's degrees, and those engaged in OPT.

This rule proposes a fixed period of admission of up to 2 or 4 years for F nonimmigrants, depending on whether a nonimmigrant presents heightened concerns related to fraud, abuse, and national security. The proposed rule

[145] *https://www.r-project.org/about.html.*

[146] More information on SEVIS can be found at *https://www.ice.gov/sevis/overview.*

[147] More information on ADIS can be found at *https://www.dhs.gov/publication/arrival-and-departure-information-system.*

[148] In 2016, this cutoff is 10/01/2015; in 2017, it is 10/01/2016; in 2018 it is 10/01/2017.

[149] In 2016, this cutoff is 9/30/2016; in 2017, it is 9/30/2017; in 2018 it is 9/30/2018.

[150] There are approximately 1.15 entries per unique SEVIS identifier for F nonimmigrants and 1.01 entries per unique SEVIS identifier for J nonimmigrants.

includes the following criteria that could result in an EOS request:

• Program Length. The nonimmigrant's program length exceeds 4 years; [151]

• Certain Countries. The nonimmigrant was born in or is a citizen of a country on the State Sponsors of Terrorism list, or is a citizen of a country with a student and exchange visitor total overstay rate greater than 10 percent according to the most recent DHS Entry/Exit Overstay report; [152]

• Other Factors of U.S. National Interest. The nonimmigrant is subject to other factors determined to be in the U.S. national interest, which may include but not be limited to circumstances where there may be national security concerns or risks of fraud and abuse. These factors may be incorporated into a **Federal Register** Notice (FRN) to limit a student's period of stay to a 2-year maximum;

• Accreditation. The nonimmigrant is enrolled at a post-secondary school that is not accredited by an accrediting body recognized by the Secretary of Education;

• Extended Period of Admission. The nonimmigrant makes a change to his or her program that affects the program end date and requires an extension of stay, such as a change from OPT to a STEM OPT extension or a change in educational level; and

• E-Verify Enrollment. The nonimmigrant's school is not enrolled in E-Verify or is not a participant in good standing in E-Verify as determined by USCIS.

In this analysis, DHS does not present the number of individuals meeting each limitation criterion, as some individuals may meet multiple criteria. The affected population estimates reflect the overall effect of all of the NPRM's limitations, rather than the marginal effects of each limitation. To estimate EOS requests, DHS analyzed nonimmigrant data to identify individuals who would be subject to the limitation criteria in the year of analysis using the following steps:

1. Program Length. This analysis assumes that individuals would require an EOS in the year of analysis if they had a program duration longer than 4 years, were not in the final year of their program, and were in a year of their program that was a multiple of four (*e.g.,* 4, 8, 12).

2. Certain Countries. The rule proposes to limit the fixed time period of admission of up to 2 years for F nonimmigrants who were born in or are citizens of countries listed on the State Sponsors of Terrorism List or who are citizens of countries with a student and exchange visitor total overstay rate greater than 10 percent according to the most recent DHS Entry/Exit Overstay report.[153] F nonimmigrants subject to this limit would be eligible for an EOS of up to 2 years. To estimate the number of individuals meeting these criteria and needing an EOS in the year of analysis, DHS identified individuals who were born in or are citizens of countries on the State Sponsors of Terrorism list or who are citizens of countries with a student and exchange visitor total overstay rate greater than 10 percent according to the most recent DHS Entry/Exit Overstay report, not in the last year of their program, in a year of their program that was a multiple of two (*e.g.,* year 2, 4, 6) and whose program duration is greater than 2 years.

3. Other Factors of U.S. National Interest. Although the proposed rule does not explicitly list other factors that may serve the U.S. national interest, the analysis uses enrollment in the nuclear physics or nuclear engineering courses as examples of courses that could pose a risk to U.S. national security to estimate the potential impacts of this proposed requirement. The analysis assumes that nonimmigrants would require an EOS in the year of analysis if they were enrolled in these courses of study, not in the last year of their program, in a year of their program that was a multiple of two (*e.g.,* year 2, 4, 6), and had a program duration of greater than 2 years.

4. Accreditation. Similarly, the analysis assumes that nonimmigrants would require an EOS if they were enrolled at a post-secondary school not accredited by an accrediting body recognized by ED, not in the last year of their program, in a year of their program that was a multiple of two (*e.g.,* year 2, 4, 6), and had a program duration of greater than 2 years.

5. Extended Period of Admission. DHS identified nonimmigrants within each fiscal year who needed to change their authorized period of admission in the year of analysis. Individuals switching from an OPT program to a Science, Technology, Engineering, or Math (STEM) OPT extension program, individuals requesting additional time to complete their program of study, and individuals changing from one educational level to another, among others, were included. Individuals changing majors, transferring schools, enrolling in pre-completion OPT, or making other changes to their course of study that would not affect their program end date were not considered to require an EOS in the year of analysis if they did not meet any other limiting criteria that would require them to extend.

6. E-Verify Enrollment. To estimate the number of students affected by this proposed provision, DHS needed to identify nonimmigrants that were enrolled at a post-secondary school not enrolled in E-Verify or not a participant in good standing in E-Verify, not in the last year of their program, in a year of their program that was a multiple of two

[151] DHS acknowledges that recent estimates of median time to bachelor's degree completion in the United States published by the Department of Education's National Center for Education Statistics (NCES) is 52 months. *See* U.S. Department of Education, National Center for Education Statistics, Status and Trends in the Education of Racial and Ethnic Groups 2018, available at *https://nces.ed.gov/programs/raceindicators/indicator_red.asp.* NCES statistics on all postsecondary students in the U.S. also show factors positively associated with completion of bachelor's degree in under four years include financial dependent status and age of less than 23 years. The prevalence of U.S. citizens who are studying part-time in the NCES data indicates that the NCES data is not representative of the time to completion for students studying full time, including foreign students. *See* U.S. Department of Education, National Center for Education Statistics, Fast Facts, available at *https://nces.ed.gov/fastfacts/display.asp?id=569.* A longitudinal study of students beginning their postsecondary studies in 2011–2012 shows 75% of students completing a full course-load in their freshman year alone finish within 4 years. *See* U.S. Department of Education, National Center for Education Statistics, Courses Taken, Credits Earned, and Time to Degree: A First Look at the Postsecondary Transcripts of 2011–12 Beginning Postsecondary Students, available at *https://nces.ed.gov/pubs2020/2020501.pdf.* DHS does not assert that all foreign students will complete their course of study on time and has analyzed and discussed SEVIS data that forms the basis of our estimated number of bona fide extension requests resulting from this proposed rule.

[152] A list of State Sponsors of Terrorism can be found at *https://www.state.gov/state-sponsors-of-terrorism/.* The overstay report for 2018 can be found at *https://www.dhs.gov/sites/default/files/publications/19_0417_fy18-entry-and-exit-overstay-report.pdf,* see Table 4, Column 6. The DHS 2017 Entry/Exit Overstay Report can be found at *https://www.dhs.gov/sites/default/files/publications/18_1009_S1_Entry-Exit-Overstay_Report.pdf,* see Table 4, Column 6. The DHS 2016 Entry/Exit Overstay Report can be found at *https://www.dhs.gov/sites/default/files/publications/Entry%20and%20Exit%20Overstay%20Report%2C%20Fiscal%20Year%202016.pdf,* see Table 4, Column 6.

[153] A list of State Sponsors of Terror can be found at *https://www.state.gov/state-sponsors-of-terrorism/.* The overstay report for 2019 can be found at *https://www.dhs.gov/sites/default/files/publications/20_0513_fy19-entry-and-exit-overstay-report.pdf,* see Table 4, Column 6. The overstay report for 2018 can be found at *https://www.dhs.gov/sites/default/files/publications/19_0417_fy18-entry-and-exit-overstay-report.pdf,* see Table 4, Column 6. The 2017 Overstay Report can be found at *https://www.dhs.gov/sites/default/files/publications/18_1009_S1_Entry-Exit-Overstay_Report.pdf,* see Table 4, Column 6. The 2016 Overstay Report can be found at *https://www.dhs.gov/sites/default/files/publications/Entry%20and%20Exit%20Overstay%20Report%2C%20Fiscal%20Year%202016.pdf,* see Table 4, Column 6. The analysis uses 87 countries with overstay rate greater than 10 percent in at least one of the analysis years (*i.e.,* 2016, 2017, or 2018).

(*e.g.,* year 2, 4, 6), and had a program duration of greater than 2 years. DHS worked with both nonimmigrant data and employer data, attempting to match E-Verify enrollment with students' schools. However, because the datasets did not have a common, unique key, DHS was unable to comprehensively merge the student-based data with the employer-based data. Therefore, DHS did not quantify the marginal effect of the E-Verify enrollment provision.[154] As a result, the estimated number of extensions shown in Table 3 does not include extensions that would have been filed by nonimmigrants meeting all other 4-year eligibility requirements, but attending institutions that do not participate in E-Verify. However, DHS conjectures that this bias is unlikely to be significant. Approximately 20% of the educational services industry establishments already participate in E-Verify program.[155] These establishments employ 80% this industry's workers nation-wide. Assuming that the number of F–1 nonimmigrants is proportional to the number of employees in the educational services establishments, we expect the share of F–1 nonimmigrants in schools already enrolled in E-Verify to be substantial. This observation is further corroborated by the fact that 61% of F–1 nonimmigrants in SEVIS data are in 14% of schools that DHS has been able to match to E-Verify enrollment data.[156]

DHS calculated the total number of expected EOS requests from these criteria for FY 2016, FY 2017, and FY 2018, and used these yearly estimates to calculate the annual average number of EOS requests for both F–1 and F–2 nonimmigrants.[157] Table 3 shows the EOS estimates for F nonimmigrants. DHS estimates that approximately 249,000 F–1 nonimmigrants would request an EOS per year, while approximately 31,000 F–2 nonimmigrants would be required to apply for an EOS per year.

TABLE 3—NUMBER OF F NONIMMIGRANTS REQUIRING AN EOS PER YEAR

Nonimmigrant category	FY 2016	FY 2017	FY 2018	Average
F–1	246,613	236,746	263,692	249,017
F–2	33,314	29,846	30,067	31,076
Total	279,927	266,592	293,759	280,093

Estimates derived from SEVIS data.

Estimating EOS Requests for J Exchange Visitor Participants

J–1 exchange visitor participants are individuals approved to participate in work and study-based exchange visitor programs, and J–2 nonimmigrants are their dependents. For example, J exchange visitor participants include individuals enrolled in alien physician programs, camp counselors, and au pairs, among others.[158]

The proposed rule would impose a fixed period of admission of up to 2 or 4 years on J nonimmigrants, depending on limitations on the length of admission. In order to identify the potentially affected J nonimmigrants, DHS estimated the number of individuals in FY 2016, FY 2017, and FY 2018 meeting the following limitation criteria which would require an EOS under the NPRM:

- Program Length. The nonimmigrant's program length exceeds 4 years;
- Certain Countries. The nonimmigrant was born in or is a citizen of a country on the State Sponsors of Terrorism list or is a citizen of a country with a greater than 10 percent total overstay rate for students and exchange visitors according to the most recent DHS Entry/Exit Overstay report; [159]
- Other Factors of U.S. National Interest. The nonimmigrant is subject to other factors determined to be in the U.S. national interest, which may include but not be limited to circumstances where there may be national security concerns or risks of fraud and abuse. These factors may be incorporated into an FRN to limit a student's period of stay to a 2-year maximum;
- E-Verify Enrollment. The nonimmigrant's program sponsor is either not enrolled in E-Verify or, if enrolled, is not a participant in good standing in E-Verify as determined by USCIS.

In this analysis, DHS does not present the number of individuals meeting each limitation criterion, as some individuals may meet multiple criteria. The affected population estimates reflect the overall effect of all of the NPRM's limitations, rather than the marginal effects of each limitation. To estimate EOS requests, DHS analyzed nonimmigrant data to identify who would be subject to the limitation criteria in the year of analysis. DHS took the following steps to identify individuals who would be subject to these criteria in the year of analysis:

1. Program Length. For J nonimmigrants, DHS used the same

[154] See Section VI.A.4 for additional discussion of the impacts associated with the E-Verify provision.

[155] The nation-wide number of establishments and employment in the educational services industry (NAICS 61) comes from U.S. Census Bureau 2018 County Business Patterns data. The current E-Verify enrollment by establishment size category in the educational services industry comes from DHS USCIS E-Verify data at *https://www.e-verify.gov/about-e-verify.*

[156] DHS used name- and location-based fuzzy matching procedure to establish approximate links between 7,689 active schools in SEVIS and 2,264 unique schools in E-Verify enrollment data. Only 1,100 schools have been able to be linked, and cursory review established that the pool of unmatched SEVIS schools does include other schools that may be matched manually. As such, DHS believes that 14% match rate for active schools in SEVIS underestimates the true E-Verify participation rate.

[157] These numbers were developed using data from SEVIS. The SEVIS database was queried to extract data from FY 2016–2018. DHS used R Statistical Software to develop logic allowing DHS to identify individuals meeting the limitations specified in the proposed rule. DHS provides the SQL code used to query the SEVIS database and the R code used to develop the logic for this analysis on the proposed rule's docket.

[158] J exchange visitor programs include: Professors and research scholars; short-term scholars; trainees and interns; college and university students; teachers; secondary school students; specialists; alien physicians; international visitors; government visitors; camp counselors; au pairs; and summer work travel. *See* INA 101(a)(15)(j), 8 U.S.C. 1101(a)(15)(j) and 22 CFR 62.20–62.32.

[159] A list of State Sponsors of Terrorism can be found at *https://www.state.gov/state-sponsors-of-terrorism/.* The overstay report for 2019 can be found at *https://www.dhs.gov/sites/default/files/publications/20_0513_fy19-entry-and-exit-overstay-report.pdf,* see Table 4, Column 6. The overstay report for 2018 can be found at *https://www.dhs.gov/sites/default/files/publications/19_0417_fy18-entry-and-exit-overstay-report.pdf,* see Table 4, Column 6. The 2017 Overstay Report can be found at *https://www.dhs.gov/sites/default/files/publications/18_1009_S1_Entry-Exit-Overstay_Report.pdf,* see Table 4, Column 6. The 2016 Overstay Report can be found at *https://www.dhs.gov/sites/default/files/publications/Entry%20and%20Exit%20Overstay%20Report%2C%20Fiscal%20Year%202016.pdf,* see Table 4, Column 6. The analysis uses 87 countries with overstay rate greater than 10 percent in at least one of the analysis years (*i.e.,* 2016, 2017, or 2018).

approach described for F nonimmigrants in the Estimating EOS Requests for F Nonimmigrants section above to estimate individuals needing to file an EOS in the fourth year of their program;

2. Certain Countries. For J nonimmigrants, DHS used the same approach described for F nonimmigrants to estimate individuals needing to file an EOS due to meeting 2-year limitation criteria for their country of citizenship or country of birth;

3. Other Factors of U.S. National Interest. For J nonimmigrants, DHS applied the same approach described for F nonimmigrants, using participation in the field of nuclear physics or nuclear engineering as examples of programs that could pose a risk to U.S. national security, to estimate individuals needing to file an EOS due to meeting 2-year limitation criteria for factors that serve the U.S. national interest;

4. E-Verify Enrollment. DHS determined that any individual not employed by an employer enrolled in E-Verify [160] in a year of their program that is a multiple of two (*e.g.,* 2, 4, 6), not in the final year of their program, and enrolled in a program lasting longer than 2 years would be required to file an EOS. In cases where DHS did not have information about an employer's E-Verify enrollment, DHS assumed those employers were not enrolled in E-Verify unless the employer was a governmental organization. DHS does not have data on which governmental organizations are enrolled in E-Verify, but assumes that governmental agencies will typically be enrolled in E-Verify. In 2018,[161] 60 percent of non-governmental programs were not enrolled in E-Verify, 39 percent were enrolled in E-Verify, and 1 percent had no information on E-Verify enrollment status.[162] In addition, because of data limitations, DHS could not estimate impacts associated with participants not in good standing in E-Verify as determined by USCIS. The proposed rule may encourage employers to enroll in E-Verify. Employers enrolling in E-Verify would incur additional cost burdens when they enroll in and continue to use the E-Verify program. Employers would incur costs related to enrolling in the program, attending trainings, filling out associated forms, designating an E-Verify administrator within the company, and using E-Verify to confirm their newly hired employees are eligible to work in the United States.[163]

DHS calculated the total number of expected EOS requests from these criteria for FY 2016, FY 2017, and FY 2018, and used these yearly estimates to calculate the annual average number of EOS requests for both J–1 and J–2 nonimmigrants.[164] Table 4 shows the EOS estimates for J exchange visitors. DHS estimates that approximately 12,000 J–1 exchange visitors would request an EOS per year, while approximately 8,000 J–2 nonimmigrants would be required to apply for an EOS per year.

TABLE 4—NUMBER OF J EXCHANGE VISITORS REQUIRING AN EOS PER YEAR

Nonimmigrant category	FY 2016	FY 2017	FY 2018	Average
J–1	10,711	10,992	12,993	11,565
J–2	7,641	7,872	8,784	8,099
Total	18,352	18,864	21,777	19,664

Estimating EOS Requests for I Nonimmigrants

I nonimmigrants are bona fide representatives of foreign information media (such as press, radio, film, print) seeking to enter the United States to engage in such vocation, as well as the spouses and children of such aliens. *See* INA 101(a)(15)(I).

DHS proposes to give I nonimmigrants an admission period of up to 240 days, after which an EOS may be available for those who can meet EOS requirements. In order to estimate the number of EOS requests that would likely be filed by I nonimmigrants, DHS calculated the number of individuals in I status in FY 2016, FY 2017, and FY 2018 staying for greater than 240 days.[165] Any individual with a total in-country time of greater than 240 days was included in the analysis, as they would be required to get additional time from DHS, either by filing an EOS or departing the United States and applying for admission with CBP. Table 5 provides estimates for the number of I nonimmigrants that would apply for an EOS per year. Using this methodology, DHS estimates that approximately 1,200 I nonimmigrants would request an EOS each year.

These estimates do not include I nonimmigrants with an initial admission period shorter than 240 days because they departed the United States before their total in-country time during the initial admission exceeds 240 days. After a very short departure from the United States, these same individuals could have returned to the United States, and their cumulative total period of stay for both admissions could have been longer than 240 days. Therefore, more than 1,200 I nonimmigrants may request an EOS per year, as this number does not capture the number of I nonimmigrants requesting additional time, only those with a period of stay longer than 240 days. DHS seeks public comment on ways to improve the estimate of the affected I nonimmigrant population.

[160] Participation data from E-Verify Program System of Records, retrieved February 5, 2020.

[161] DHS used 2018 data because the percentage difference in E-Verify enrollment for non-governmental programs between years of analysis is minimal. Any variation between years is due to the number of programs active during each year.

[162] The percentages presented represent the percentage of exchange visitor programs that are enrolled in E-Verify. One employer may sponsor multiple programs. Therefore, this number does not reflect the percentage of employers that will be affected by this rule.

[163] For more information on E-Verify, go to *www.e-verify.gov.*

[164] These numbers were developed using data from SEVIS. The SEVIS database was queried to extract data from FY 2016–2018. DHS used R Statistical Software to develop logic allowing DHS to identify individuals meeting the limitations specified in the proposed rule. DHS provides the SQL code used to query the SEVIS database and the R code used to develop the logic for this analysis on the proposed rule's docket.

[165] DHS used data from ADIS to derive these estimates. Data were presented as the number I nonimmigrants whose duration of status fell into a given range of time. For this analysis, DHS summed the number of individuals staying for greater than or equal to 241 days but less than 366 days and those staying for greater than or equal to 366 days in a given year to estimate the number of EOS requests that would be filed by I nonimmigrants. During 2016–2018, approximately 3 percent of I nonimmigrants had an initial admission period longer than 240 days.

TABLE 5—NUMBER OF I FOREIGN INFORMATION MEDIA REPRESENTATIVES REQUIRING AN EOS PER YEAR

Nonimmigrant category	FY 2016	FY 2017	FY 2018	Average
I	1,433	1,215	944	1,197

Estimates derived from SEVIS data.

Transition Period

Proposed 8 CFR 214.1(m)(1) would establish a transition period for phasing in admissions for a fixed time period. Specifically, F and J nonimmigrants present in the United States on the final rule's effective date who are in D/S may remain in the United States in F or J status, without filing an EOS request and would be provided an authorized period of admission up to the program end date reflected on their Form I–20 or DS–2019 that is valid on the Final Rule's effective date, not to exceed 4 years from the effective date of the Final Rule, as long as they do not depart the United States. *See* proposed 8 CFR 214.1(m)(1). I nonimmigrants would be provided an extension of the length of time it takes the alien to complete his or her activity, for a period of up to 240 days. *See* proposed 8 CFR 214.1(m)(3).

To align with the proposed transition period, DHS adjusted the annual EOS estimates for F and J nonimmigrants over the 10-year period of analysis. The transition period for the I nonimmigrants did not require adjustments to the EOS estimates over the 10-year period of analysis as I nonimmigrants would not receive a period of admission over 240 days [going forward]. DHS anticipates that the rule would become effective in 2020 and estimated the number of EOS requests in each year from 2020 through 2029 (the 10-year period of analysis).

F and J nonimmigrants would not automatically be required to file an EOS request when the rule goes into effect. Rather, F and J nonimmigrants would be required to request an additional period of admission by filing an EOS if they meet the criteria associated with the period of admission limitations discussed above or the transition period requirements or alternatively they could depart the United States and apply for readmission with CBP under the new rule. In order to estimate the number of EOS requests in each year, DHS segmented the period of analysis into three distinct phases: (1) The early transition period, (2) the end of transition period, and (3) the full implementation period. Figure 1 describes the F and J nonimmigrants affected in each of these phases.

FIGURE 1—ESTIMATED EOS REQUESTS DURING THE TRANSITION PERIOD FOR F AND J NONIMMIGRANTS

EOS request during the "Early Transition Period" 2020–2023	EOS request during the "End Transition Period" 2024	EOS request during the "Full Implementation Period" 2025–2029
Aliens extending their program end date: EOS requests resulting from extended program end dates using the annual average number of individuals in 2016–2018 who seek a program end date extension. *Aliens subject to a 2-year limitation:* EOS requests resulting from 2-year limited aliens using the annual average number of individuals in 2016–2018 who meet the 2-year limitation criteria. These individuals are added in 2022–2023.	*Aliens extending their initial date certain:* EOS requests resulting from program end dates ending after 2024 based on the average number of individuals between 2016–2018 with greater than 4 years left to accomplish their program. *Aliens requiring an EOS outside of transition limitations:* EOS requests resulting from extending the program end date and being subject to a 2-year limitation.	*Aliens requiring an EOS after transition period ends:* The annual, ongoing average number of EOS requests expected each year.

In the early transition period, DHS assumes that, from 2020–2021, only F and J nonimmigrants extending their program end date beyond the program end date noted on their Form I–20 or DS–2019 would be filing an EOS because no other period of stay limitation would be triggered within the first 2 years of the transition period. Using FY 2016, FY 2017, and FY 2018 data, DHS estimates that approximately 203,000 EOS requests would be filed annually in 2020 and 2021.[166] DHS expects only F and I nonimmigrants would be required to file EOS requests in this period as the SEVIS data do not have records of J nonimmigrants extending their end date.

Beginning in 2022, DHS assumes that individuals subject to a 2-year limitation on the period of admission who were admitted after the effective date of the rule would begin filing EOS requests. Therefore, in 2022 and 2023, there would be two types of EOS requests filed: Those from individuals requesting an EOS due to a 2-year period of admission, and those from individuals requesting extensions to continue their same program or degree. Using FY 2016, FY 2017, and FY 2018 data, DHS estimates that approximately 259,000 EOS requests will be filed annually in the years 2022–2023.[167]

DHS anticipates that there would not be any nonimmigrants currently in the country in F, J, or I status at the time that the rule becomes effective who would receive a fixed period of admission that extends past 2024 because the transition period has a 4-

[166] DHS developed these estimates by looking at the data cross-sectionally and estimating how many individuals in each year would meet the necessary criteria for each stage of the transition period. DHS provides the R code used to develop the logic for this analysis on the proposed rule's docket. These numbers were developed using data from SEVIS. The SEVIS database was queried to extract data from FY 2016–2018. DHS used R Statistical Software to develop logic allowing DHS to identify individuals meeting the limitations specified in the proposed rule. DHS provides the SQL code used to query the SEVIS database and the R code used to develop the logic for this analysis on the proposed rule's docket.

[167] These numbers were developed using data from SEVIS. The SEVIS database was queried to extract data from FY 2016–2018. DHS used R Statistical Software to develop logic allowing DHS to identify individuals meeting the limitations specified in the proposed rule. DHS provides the SQL code used to query the SEVIS database and the R code used to develop the logic for this analysis on the proposed rule's docket.

year limitation. DHS assumes that this provision could lead to a spike in EOS requests in 2024, at the end of the transition period. To estimate EOS requests at the end of the transition period, DHS calculated the average number of individuals in FY 2016, FY 2017, and FY 2018 with more than 4 years left to complete their program. This number acts as a proxy for the number of individuals who would receive a fixed period of admission ending in 2024 when the rule goes into effect but would still need to request additional time to finish their program. DHS added these additional individuals to individuals extending their program, and those meeting the 2-year limitation in 2024. DHS estimates that approximately 364,000 nonimmigrants would file an EOS in 2024.

After the end of the transition period, DHS assumes that all F, J and I nonimmigrants would have a fixed date of admission. During this time, all nonimmigrants needing to file an EOS for any reason would need to request an additional period of admission from DHS, either by filing an EOS with USCIS or by applying for admission with CBP.

DHS estimates that between 2025–2029 approximately 301,000 EOS applications would be filed with USCIS annually. Table 6 provides the estimated number of EOS requests per year from each nonimmigrant category for the full 10-year period of analysis, showing the fluctuations across the early transition period, the end of the transition period, and the full implementation period.

TABLE 6—NUMBER OF EOS REQUESTS BY NONIMMIGRANT CATEGORY AND YEAR

Nonimmigrant category	Early transition period				End of transition	Full implementation period				
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
F–1	180,787	180,787	218,459	218,459	309,379	249,017	249,017	249,017	249,017	249,017
F–2	21,118	21,118	25,976	25,976	36,087	31,076	31,076	31,076	31,076	31,076
J–1	.....	.....	7,838	7,838	10,138	11,565	11,565	11,565	11,565	11,565
J–2	.....	.....	5,790	5,790	7,259	8,099	8,099	8,099	8,099	8,099
I	1,197	1,197	1,197	1,197	1,197	1,197	1,197	1,197	1,197	1,197
Total	203,103	203,103	259,261	259,261	364,060	300,954	300,954	300,954	300,954	300,954

Estimates derived from SEVIS and ADIS data.

4. Costs and Benefits of the Proposed Rule

Costs

DHS proposes to admit nonimmigrants seeking entry under the F, J, and I nonimmigrant categories for the period required to complete their academic program, foreign information media employment, or exchange visitor program. For F and J nonimmigrants, the period of admission would not exceed 4 years, or 2 years for F and J nonimmigrants meeting certain factors. For I nonimmigrants, the period of admission would not exceed 240 days. As these nonimmigrants would have a fixed time period of admission, this proposal includes provisions that would require nonimmigrants to apply for an EOS directly with USCIS or apply for admission with CBP and receive an admit until date on their Form I–94 if seeking to continue their studies, to participate in any type of post completion training related to their academic course of study, to continue working in their information medium, or to participate in an exchange visitor program beyond the initial admission period granted at entry.

DHS assessed the costs and benefits of the proposed rule relative to the existing baseline, that is, the current practice of admitting F, J, and I nonimmigrants for D/S, as well as monitoring and overseeing these categories of nonimmigrants. As summarized in RIA Section VI.A.1 Table 1, some impacts of the proposed requirements are discussed throughout this section qualitatively. In accordance with the regulatory analysis guidance articulated in OMB Circular A–4 and consistent with DHS's practices in previous rulemakings, this regulatory analysis focuses on the likely consequences of the proposed rule (*i.e.,* costs and benefits that accrue to affected entities). The analysis covers 10 years (2020 through 2029) to ensure it captures major costs and benefits that accrue over time. DHS expresses all quantifiable impacts in 2018 dollars and uses 7 percent and 3 percent discounting following OMB Circular A–4.

DSO and RO Rule Familiarization and Adaptation Costs

The proposed rule would impact DSOs and ROs from SEVP-certified schools and exchange visitor programs that run a SEVP or DOS approved program by requiring time for rule familiarization training, modification of training materials, and institutional awareness and response (during the first year only). I foreign information media representatives would not incur similar costs from the proposed rule as those incurred by DSOs and ROs because the burden for filing an EOS request falls on the I nonimmigrant, who, DHS assumes that in the baseline familiarize themselves with the pertinent visa requirements at the time the visa is needed, not at the point in time that Federal regulations change. DHS expects this behavior would not change as a result of the rule and, as a result, there would be no incremental costs associated with rule familiarization and adaptation for I foreign information media representatives.

Based on best professional judgment, SEVP estimates that DSOs and ROs would require 8 hours to complete rule familiarization training, 16 hours to create and modify training materials, and 16 hours to adapt to the proposed rule through system wide briefings and systemic changes. DHS welcomes public comments on these estimates. To estimate these costs, DHS multiplied the total time requirement (40 hours) by the loaded wage rate for DSOs and ROs ($28.93 wage rate * a 1.46 loaded wage rate factor [168]) and by the number of DSOs and ROs (55,207; 49,089 DSOs + 6,118 ROs [169]). DHS estimates that DSO

[168] Based on the Bureau of Labor Statistics (BLS) average hourly wage for SOC 21–1012 (Educational, Guidance, School, and Vocational Counselors), available at: *https://www.bls.gov/oes/2018/may/oes211012.htm.* The benefits-to-wage multiplier is calculated by the BLS as (Total Employee Compensation per hour)/(Wages and Salaries per hour) = $36.32/$24.91 = 1.458 (1.46 rounded) based on the average national wage for all occupations (wages represent 68.6 percent of total compensation). See Economic News Release, Employer Cost for Employee Compensation (March 2019), U.S. Dept. of Labor, BLS, Table 1. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group (March 19, 2019), available at: *https://www.bls.gov/news.release/archives/ecec_03192019.pdf.*

[169] The number of DSOs and ROs were pulled from SEVIS and are current as of September 2019.

and RO rule familiarization and adaptation would cost $93.3 million during the first year once the rule takes effect ($28.93 × 1.46 loaded wage rate factor × 40 hours × 55,207 DSOs and ROs).

Extension of Stay Filing Costs

Under the proposed rule, nonimmigrants who would like to extend their stay beyond their fixed period of admission would need to apply for additional time directly with DHS. Under the proposed framework, nonimmigrants could choose to file an EOS using the appropriate form from USCIS or apply for admission with CBP at a POE. DHS assumes nonimmigrants with existing international travel plans would prefer to request extensions with CBP at a POE rather than incurring the costs of filing an EOS. Because DHS is unable to estimate how many nonimmigrants would prefer to extend with CBP, DHS' best assessment of the cost of the proposed rule to the affected population is based on the assumption that each extension will require a Form I–539 filing. Actual costs to the affected population could be lower for those nonimmigrants able to extend while traveling through a POE.[170]

During the transition, F and J nonimmigrants who are properly maintaining their status, are present in the United States when the rule takes effect, and were admitted for D/S would be authorized to remain in the United States for a period of time up to the program end date noted on their Form I–20 or DS–2019, plus 30 days, not to exceed a period of 4 years. I nonimmigrants who are properly maintaining their status and are present in the United States when the rule takes effect would have their status, and employment authorization incident to such status, automatically extended for a period necessary to complete their activity, not to exceed 240 days after the rule takes effect. Any F academic students, J exchange visitors, and I representatives of foreign information media who are present when the rule takes effect would need to apply for an EOS if they require additional time required beyond the maximum specified transition time period.

EOS applicants would need to file Form I–539 (F–1, J–1, and I nonimmigrants) or Form I–539A (F–2, J–2 nonimmigrants, and I dependents), depending on the nonimmigrant category, in order to extend their period of stay. DHS assumes that all F–2 nonimmigrants, J–2 nonimmigrants, and I dependents would complete the I–539A instead of completing a separate Form I–539 because the I–539A is less burdensome to complete and does not require a separate application fee.[171] However, I nonimmigrant data contained the representatives of foreign information media and their dependents, without differentiating between the two. As a result, this analysis overestimates EOS filing costs for I nonimmigrants by assigning the primary I nonimmigrant costs to both the representatives of foreign information media and their dependents.

The most recently approved Paperwork Reduction Act (PRA) Information Collection Package Supporting Statement for Form I–539 at the time of this analysis, which provides the average applicant burden estimates for completing and submitting the form, states that F–1, J–1, and I nonimmigrants require 2.0 hours to complete a paper version of the Form I–539 (70 percent of applicants) or 1.08 hours to complete an electronic version (30 percent of applicants), and F–2 and J–2 nonimmigrants require 0.5 hours to complete the I–539A form.[172] USCIS's Inadmissibility on Public Charge Grounds Rule, published August 14, 2019, increased burden for the paper version of the Form I–539 to 2.38 hours due to the collection of additional information related to public benefits.[173] 84 FR 157 (Aug. 14, 2019). In addition to the labor burden of completing the Form I–539, DHS estimates in the Supporting Statement for Form I–539 that 35 percent of F–1, J–1, and I applicants may incur additional expenses for third party assistance to prepare responses, legal services, translators, and document search and generation. For those applicants who seek additional assistance, the average cost for these activities is approximately $490. DHS assumes that F–2 and J–2 applicants would not incur additional expenses for outside assistance and would instead work with the F–1 and J–1 applicants to complete the I–539A form.

In addition to completing the Form I–539/I–539A, all F, J, and I applicants would be required submit biometrics. The submission of biometrics requires travel to an application support center (ASC) for the biometric services appointment,[174] with an average round-trip travel time of 2.5 hours.[175] The Supporting Statement for Form I–539 estimates that each would spend 1 hour and 10 minutes (1.17 hours) at an ASC to submit biometrics. Summing the ASC time and travel time yields 3.67 hours for each applicant to submit biometrics.

F, J, and I nonimmigrants would pay fees to USCIS to file the Form I–539 and complete biometric processing, as described in the Supporting Statement for Form I–539. F–1, J–1, and I nonimmigrants would pay a $370 fee when submitting the Form I–539 (F–2 and J–2 nonimmigrants would not be required to pay a fee when submitting

More information on SEVIS can be found at *https://www.ice.gov/sevis/overview.*

[170] DHS is unable to estimate how many individuals would seek an extension to their period of stay while traveling through a POE instead of filing the I–539 or I–539A form. The analysis thus assumes that all F, J, and I nonimmigrants requiring an EOS would file using the I–539 or I–539A form. If DHS made the opposite assumption—that all F, J, and I nonimmigrants requiring an EOS would extend while traveling through a POE—the cost estimates would change in the following ways. First, F, J, and I nonimmigrants would not pay the I–539 or I–539A filing and biometric processing costs. However, the process of applying for readmission at a POE would require 8 minutes of time for each F, J, or I nonimmigrant requiring an EOS. The time estimate of 8 minutes is based on the time required for completing a paper I–94 form (Supporting Statement A for Form I–94, ''Arrival and Departure Record'', OMB Control Number 1651–0111). The cost to F, J, and I nonimmigrants for applying for readmission at a POE translates to a total undiscounted cost of $5.0 million over the 2020–2029 analysis period using the number of EOS requests presented in Table 6 and the nonimmigrant wage rates described in Table 7. F, J, and I nonimmigrants would also incur costs to travel to a POE. Second, CBP officers would also spend 8 minutes of time per F, J, or I nonimmigrant applying for readmission at a POE. Using a loaded wage rate of $87.94 (salary and benefit information was provided by CBP Office of Finance to ICE on April 9, 2020) and the number of EOS requests presented in Table 6, the cost to CBP officers for completing readmission at a POE for F, J, and I nonimmigrants requiring an EOS translates to $32.8 million over the 2020–2029 analysis period. DHS anticipates that the CBP labor burden required to processes readmissions at a POE can be incorporated in existing procedures without requiring additional staff.

[171] Form I–539 instructions ask applicants to list all family members in Form I–539A. Therefore, it is reasonable to assume that the co-applicants (F–2, J–2 nonimmigrants and I dependents) will use Form I–539A.

[172] Time estimates are taken from the Supporting Statement A for Form I–539, ''Application to Extend/Change Nonimmigrant Status'', found at: *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201907-1615-012.*

[173] Instructions for Application to Extend/Change Nonimmigrant Status, available at *https://www.uscis.gov/system/files_force/files/form/i-539instr-pc.pdf* (last visited Apr. 14, 2020).

[174] DHS expects the majority of biometrics appointments to occur in the United States at an ASC. However, in certain instances nonimmigrants may submit biometrics at an overseas USCIS office or DOS Embassy or consulate. 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 an EOS request.

[175] See DHS Final Rule, Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives, 78 FR 535 (Jan. 3, 2013).

the I–539A form).[176] All F, J, and I nonimmigrants who file an EOS would be required to pay an $85 fee for biometric processing. Lastly, the EOS filing cost estimates account for travel costs to an ASC to submit biometrics. In past rulemakings, DHS estimated that the average round-trip distance to an ASC is 50 miles.[177] Using the 2020 General Services Administration (GSA) rate of $0.58 per mile,[178] the travel costs are $29. DHS assumes that F–2 and J–2 applicants would not incur these travel costs since they would likely travel to an ASC with the F–1 and J–1 applicants.

Table 7 provides the unit cost and references for the costs for completing and submitting the Form I–539/I–539A and biometrics for each nonimmigrant category.

TABLE 7—APPLICANT UNIT COSTS FOR FILING AN EXTENSION OF STAY WITH USCIS

[2018$]

	F–1	F–2	J–1	J–2	I
[a] Average applicant burden for paper applications (in hours) [1]	2.38	0.50	2.38	0.50	2.38
[b] Average applicant burden for electronic applications (in hours) [2]	1.08	0.5	1.08	0.5	1.08
[c] Average biometric processing burden (in hours) [3]	3.67	3.67	3.67	3.67	3.67
[d] Total labor burden for paper applications (in hours) [a] + [c]	6.05	4.17	6.05	4.17	6.05
[e] Total labor burden for electronic applications (in hours) [b] + [c]	4.75	4.17	4.75	4.17	4.75
[f] Average hourly wage rate	[11] $12.05	[11] $12.05	[12] $36.47	[12] 36.47	[13] $36.81
[g] Filing fee [4]	$370	N/A	$370	N/A	$370
[h] Biometrics fee [4]	$85	$85	$85	$85	$85
[i] Travel costs to ASC to submit biometrics [5]	$29	N/A	$29	N/A	$29
[j] Burden costs for paper applications not requiring outside help [6] ([d] * [f]) + [g] + [h] + [i]	$557	$135	$705	$237	$707
[k] Burden costs for electronic applications not requiring outside help [7] ([e] * [f]) + [g] + [h] + [i]	$541	$135	$657	$237	$659
[l] Additional expenses for outside help with form [8]	$490	N/A	$490	N/A	$490
[m] Burden costs for paper applications requiring outside help [9] [j] + [l]	$1,047	N/A	$1,195	N/A	$1,197
[n] Burden costs for electronic applications requiring outside help [10] [k] + [l]	$1,031	N/A	$1,147	N/A	$1,149

[1] Supporting Statement for Form I–539 states that 70 percent of applicants will file by paper.

[2] Supporting Statement for Form I–539 states that 30 percent of applicants will file electronically.

[3] 1.17 hours at an ASC (Supporting Statement for Form I–539) + 2.5 hours of travel time to an ASC (78 FR 535) = 3.67 hours per applicant.

[4] Filing and biometrics fees described in the Supporting Statement for Form I–539.

[5] [5] 50 miles (78 FR 535) * $0.58/mile (2020 GSA rate) = $29.00.

[6] Supporting Statement for Form I–539 states that 65 percent of applicants will not need outside help for completing the form. DHS assumed that all F–2 and J–2 nonimmigrants would not need outside help. Thus, 45.5 percent of F–1, J–1, and I applicants (70% paper applicants * 65% not requiring outside assistance = 45.5%) and 70 percent of F–2 and J–2 applicants would incur these costs.

[7] Based on Supporting Statement for Form I–539 values, 19.5 percent of F–1, J–1, and I applicants (30% electronic applicants * 65% not requiring outside assistance = 19.5%) and 30 percent of F–2 and J–2 applicants would incur these costs.

[8] Supporting Statement for Form I–539 states that 35 percent of applicants will need outside help for completing the form. DHS assumed that no F–2 or J–2 nonimmigrants would require outside help.

[9] Based on Supporting Statement for Form I–539 values, 24.5 percent of F–1, J–1, and I applicants (70% paper applicants * 35% requiring outside assistance = 24.5%) would incur these costs.

[10] Based on Supporting Statement for Form I–539 values, 10.5 percent of F–1, J–1, and I applicants (30% electronic applicants * 35% requiring outside assistance = 10.5%) would incur these costs.

[11] The average hourly loaded wage rate for F nonimmigrants is based on the ''prevailing'' minimum wage of $8.25 (used in the analysis for the recent USCIS 30-Day Application for Employment Authorization Removal proposed rule) and accounting for benefits. $12.05 = $8.25 × 1.46 benefits-to-wage multiplier. DHS used the ''prevailing'' minimum wage to account for the type of service-based labor that students typically fill. As is reported by the Economic Policy Institute (EPI, 2016; *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/*). Many states have their own minimum wage, and, even within states, there are multiple tiers. *See* U.S. Department of Labor, Wage and Hour Division, State Minimum Wage Laws, available at *https://www.dol.gov/agencies/whd/minimum-wage/state.* Although the minimum wage could be considered a lower-end bound on true earnings, the prevailing minimum wage is fully loaded, at $12.05, which is 13.8 percent higher than the federal minimum wage. 84 FR 174 (Sept. 9, 2019). DHS requests public comment on other sources for the effective minimum wage in the United States.

[12] The average hourly loaded wage rate for J nonimmigrants is based on the May 2018 BLS wage rate of $24.98 for ''All Occupations'' (00–0000)), found at *https://www.bls.gov/oes/2018/may/oes_nat.htm,* and accounting for benefits. $36.47 = $24.98 × 1.46 benefits-to-wage multiplier. DHS used the ''All Occupations'' wage rate for J exchange visitors because of the diverse types of occupations that J exchange visitors can hold.

[13] The average hourly loaded wage rate for I nonimmigrants is based on the May 2018 BLS wage rate of $25.21 for ''Media and Communication Workers, All Other'' (27–3099)), found at *https://www.bls.gov/oes/2018/may/oes273099.htm,* and accounting for benefits. $36.81 = $25.21 × 1.46 benefits-to-wage multiplier.

[176] Effective October 2, 2020, DHS raises the I–539 fee to $400 for paper filing, $390 for online filing and lowers the Biometrics fee from $85 to $30. See DHS Final Rule, U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 85 FR 46788 (August 3, 2020). At the time of this analysis, the fees had not been finalized, so the fee of $370 and biometric fee of $85 was used in the analysis.

[177] See DHS Final Rule, Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives, 78 FR 535 (Jan. 3, 2013).

[178] *https://www.gsa.gov/travel/plan-book/transportation-airfare-rates-pov-rates/privately-owned-vehicle-pov-mileage-reimbursement-rates.*

DHS multiplied the expected number of EOS requests for F, J, and I nonimmigrants (Table 6) by the appropriate applicant unit costs (Table 7) to estimate EOS filing costs. As shown in Table 7, DHS assumed that 45.5 percent of F–1, J–1, and I nonimmigrants would incur burden costs for paper applications without outside help, 19.5 percent would incur burden costs for electronic applications without outside help, 24.5 percent would incur burden costs for paper applications with outside help, and 10.5 percent would incur burden costs for electronic applications with outside help. Burden costs for F–2 and J–2 nonimmigrants remain constant because their labor burden does not vary depending on paper versus electronic filing, and DHS assumes that F–2 and J–2 nonimmigrants would not pay for outside assistance with the I–539A form.

Table 8 presents undiscounted EOS filing costs by nonimmigrant category and year, along with a breakdown of costs based on filing type (paper or electronic) and the need for outside help to complete the form. EOS filing costs are lowest during the early transition period (2020–2023) and highest at the end of the transition period (2024) because of the variation in the estimated number of EOS requests (Table 6).

TABLE 8—EOS FILING COSTS BY NONIMMIGRANT CATEGORY AND YEAR

[Millions 2018$, undiscounted]

Number of EOS/cost	Early transition period				End of transition	Full implementation period				
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
F–1										
F–1 EOS Requests	180,787	180,787	218,459	218,459	309,379	249,017	249,017	249,017	249,017	249,017
Paper filing cost, no help [1]	$45.8	$45.8	$55.4	$55.4	$78.4	$63.1	$63.1	$63.1	$63.1	$63.1
E-filing cost, no help [2]	$19.1	$19.1	$23.1	$23.1	$32.7	$26.3	$26.3	$26.3	$26.3	$26.3
Paper filing cost, with help [3]	$46.4	$46.4	$56.0	$56.0	$79.4	$63.9	$63.9	$63.9	$63.9	$63.9
E-filing cost, with help [4]	$19.6	$19.6	$23.7	$23.7	$33.5	$27.0	$27.0	$27.0	$27.0	$27.0
F–1 Total	$130.8	$130.8	$158.1	$158.1	$223.9	$180.2	$180.2	$180.2	$180.2	$180.2
F–2										
F–2 EOS Requests	21,118	21,118	25,976	25,976	36,087	31,256	31,256	31,256	31,256	31,256
Paper filing cost, no help [5]	$2.0	$2.0	$2.5	$2.5	$3.4	$3.0	$3.0	$3.0	$3.0	$3.0
E-filing cost, no help [6]	$0.9	$0.9	$1.1	$1.1	$1.5	$1.3	$1.3	$1.3	$1.3	$1.3
F–2 Total	$2.9	$2.9	$3.5	$3.5	$4.9	$4.2	$4.2	$4.2	$4.2	$4.2
J–1										
J–1 EOS Requests	0	0	7,838	7,838	10,138	11,565	11,565	11,565	11,565	11,565
Paper filing cost, no help [1]	$0.0	$0.0	$2.5	$2.5	$3.3	$3.7	$3.7	$3.7	$3.7	$3.7
E-filing cost, no help [2]	$0.0	$0.0	$1.0	$1.0	$1.3	$1.5	$1.5	$1.5	$1.5	$1.5
Paper filing cost, with help [3]	$0.0	$0.0	$2.3	$2.3	$3.0	$3.4	$3.4	$3.4	$3.4	$3.4
E-filing cost, with help [4]	$0.0	$0.0	$0.9	$0.9	$1.2	$1.4	$1.4	$1.4	$1.4	$1.4
J–1 Total	$0.0	$0.0	$6.8	$6.8	$8.7	$10.0	$10.0	$10.0	$10.0	$10.0
J–2										
J–2 EOS Requests	0	0	5,790	5,790	7,259	8,099	8,099	8,099	8,099	8,099
Paper filing cost, no help [5]	$0.0	$0.0	$1.0	$1.0	$1.2	$1.3	$1.3	$1.3	$1.3	$1.3
E-filing cost, no help [6]	$0.0	$0.0	$0.4	$0.4	$0.5	$0.6	$0.6	$0.6	$0.6	$0.6
J–2 Total	$0.0	$0.0	$1.4	$1.4	$1.7	$1.9	$1.9	$1.9	$1.9	$1.9
I										
I EOS Requests	1,197	1,197	1,197	1,197	1,197	1,197	1,197	1,197	1,197	1,197
Paper filing cost, no help [1]	$0.4	$0.4	$0.4	$0.4	$0.4	$0.4	$0.4	$0.4	$0.4	$0.4
E-filing cost, no help [2]	$0.2	$0.2	$0.2	$0.2	$0.2	$0.2	$0.2	$0.2	$0.2	$0.2
Paper filing cost, with help [3]	$0.4	$0.4	$0.4	$0.4	$0.4	$0.4	$0.4	$0.4	$0.4	$0.4
E-filing cost, with help [4]	$0.1	$0.1	$0.1	$0.1	$0.1	$0.1	$0.1	$0.1	$0.1	$0.1
I Total	$1.0	$1.0	$1.0	$1.0	$1.0	$1.0	$1.0	$1.0	$1.0	$1.0
Total, All Visas	$134.7	$134.7	$170.8	$170.8	$240.3	$197.3	$197.3	$197.3	$197.3	$197.3

* Totals may not sum due to rounding to the nearest 100,000.
[1] (EOS request estimate) × (unit cost for paper applicants not requiring outside help) × (0.455).
[2] (EOS request estimate) × (unit cost for electronic applicants not requiring outside help) × (0.195).
[3] (EOS request estimate) × (unit cost for paper applicants requiring outside help) × (0.245).
[4] (EOS request estimate) × (unit cost for electronic applicants requiring outside help) × (0.105).
[5] (EOS request estimate) × (unit cost for paper applicants not requiring outside help) × (0.7).
[6] (EOS request estimate) × (unit cost for electronic applicants requiring outside help) × (0.3).

The total estimated cost for EOS filing in 2018 dollars would be $1.8 billion undiscounted,[179] or $1.6 billion and $1.3 billion at discount rates of 3 and 7 percent, respectively. The annualized cost of extension of stay filing over the 10-year period would be $187.4 million

[179] The undiscounted total differs slightly from the sum of the years provided in Table 8 because of rounding in the table values.

and $192.2 million at discount rates of 3 and 7 percent, respectively.

DSO/RO Costs for Processing Program Extension Requests and Updating SEVIS

SEVIS is a web-based system that DHS and DOS use to maintain information regarding: SEVP-certified schools; F–1 and M–1 students studying in the United States (and their F–2 and M–2 dependents); DOS-designated Exchange Visitor Program sponsors; and J–1 Exchange Visitor Program participants (and their J–2 dependents). Under the proposed rule, DSOs and ROs would need to process program extension requests, update SEVIS entries, and provide counseling for any students requesting a program extension. Based on best professional judgment, SEVP estimates that DSOs/ROs would require 3 hours per EOS request for reviewing the program extension requests by the student (1 hour), updating the SEVIS record and tracking program extension requests (1 hour), and advising the student or exchange visitor about the extension process and the requirements to file an EOS with USCIS (1 hour).

To estimate DSO/RO costs for processing program extension requests and updating SEVIS, DHS multiplied the estimated number of EOS requests for F–1 and J–1 nonimmigrants (Table 6) by the expected DSO/RO time requirement per EOS request (3 hours) and the DSO/RO loaded wage rate ($28.93 × 1.46 loaded wage rate factor). DHS assumed that, on average, the 3-hour time estimate accounted for time required to update SEVIS entries for F–2 and J–2 dependents. The per-program extension DSO/RO costs would be $126.72 (3 hours × $28.93 × 1.46 loaded wage rate factor).

Table 9 presents undiscounted DSO/RO costs for processing program extension requests and updating SEVIS throughout the 2020–2029 study period. Similar to EOS filing costs, DSO/RO costs for processing program extension requests and updating SEVIS are lowest during the early transition period (2020–2023) and highest at the end of the transition period (2024) because of the variation in the estimated number of EOS requests (Table 6).

TABLE 9—DSO/RO COSTS FOR PROCESSING PROGRAM EXTENSION REQUESTS BASED ON EOS REQUESTS AND UPDATING SEVIS, BY YEAR

[Millions 2018$, undiscounted]

	Early transition period				End of transition	Full implementation period				
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
Number of EOS Requests[1]	180,787	180,787	226,297	226,297	260,582	260,582	260,582	260,582	260,582	260,582
Costs[2]	$22.91	$22.91	$28.67	$28.67	$33.02	$33.02	$33.02	$33.02	$33.02	$33.02

[1] Sum of EOS request estimates for F–1 students and J–1 exchange visitors.
[2] (Number of EOS requests) × (3 hours) × (DSO/RO wage rate of $28.93) × (loaded wage rate factor of 1.46).

The total cost estimate for DSO/RO program extension requests processing and SEVIS updates would be $308.7 million undiscounted,[180] or $268.7 million and $226.9 million at discount rates of 3 and 7 percent, respectively. The annualized cost of EOS filings over the 10-year period would be $31.5 million and $32.3 million at discount rates of 3 and 7 percent, respectively.

DHS acknowledges that there may be additional costs to the government to upgrade SEVIS and provide additional support services to implement the proposed rule. DHS anticipates there may be costs for SEVIS development, supplemental Federal staff to assist in the development, increased call center volume, and operation and maintenance of SEVIS databases and other DHS IT systems. The costs for the SEVIS upgrade and support services would depend on the timeline for completion of the initial upgrade. DHS preliminary estimates show that under a 6-month timeline for upgrades, the costs in FY 2020 would be $22.5 million. This estimate includes costs for 55 additional Federal employees to handle the SEVIS development, additional call center volume, and operation and maintenance. Of the 55 additional positions, 23 of the positions would be temporary one-year positions to develop SEVIS and 32 of the positions would be permanent positions to handle the ongoing operation and maintenance and the additional call center volume. In FY 2021- FY 2029, there would be an annual cost of $16 million for the 32 additional Federal employees to handle the ongoing operation and maintenance of SEVIS databases and other DHS IT systems and to account for the additional call center volume.

The timeline for completion would impact the total SEVIS upgrade cost estimate. If DHS lengthens the timeline for implementing the provisions of this rule, DHS may be able to use existing resources to complete the necessary upgrades.

In addition to the changes due to this proposed rule, DHS is updating SEVIS due to other SEVP programmatic goals. The cost estimates of $22.5 million in FY 2020 and $16 million in FY 2021–FY 2029 include costs that are necessary to implement the provisions of this proposed rule but may have been implemented without this proposed rule. Therefore, these costs are not accounted for in the total cost of this proposed rule.

Requests for Additional Information or In-Person Interviews

For a subset of EOS request cases, USCIS may request additional information or conduct an in-person interview if the applicant has raised concerns of a risk to national security or public safety, possible criminal activity, or status violation. These requests would result in costs for both USCIS and the nonimmigrant EOS applicant. The additional burden on USCIS would depend on the time required to obtain and review the additional information or conduct the in-person interview. DHS anticipates that the additional burden on applicants, on average, would be equivalent to the added expense of seeking third party assistance for completing the Form I–539, or $490. Because the percentage of nonimmigrants that USCIS would ask to provide additional information or participate in an in-person interview is uncertain, this analysis does not quantify the costs of such requests on either nonimmigrants or USCIS.

Potential Reduction in Enrollment

While the intent of the proposed rule is to enhance national security, the elimination of duration of status has the potential to reduce the nonimmigrant student enrollment and exchange visitor participation. This regulatory impact

[180] The undiscounted total differs slightly from the sum of the years provided in Table 9 because of rounding in the table values.

analysis considers these potential impacts for each category of nonimmigrant affected by the proposed rule.

F and J Nonimmigrants Affiliated With SEVP-Certified Schools

The proposed rule may adversely affect U.S. competitiveness in the international market for nonimmigrant student enrollment and exchange visitor participation. Specifically, the proposed changes could decrease nonimmigrant student enrollments in the United States with corresponding increased enrollments in other English-speaking countries, notably in Canada, Australia, and the United Kingdom. Student visas and resulting nonimmigrant status in other English-speaking countries are typically valid for the duration of the student's course enrollment, so students are not generally required to file an EOS application. For example, Australia's most common student visa (Subclass 500) provides for an admission for a length of stay that corresponds to the student's enrollment, which may be more than 4 years.[181] Similarly, a Canadian study permit is typically valid for the length of the study program, plus an extra 90 days to let the student prepare to leave Canada or apply to extend their stay.[182] The admission period for a nonimmigrant with a Tier 4 (General) student visa in the United Kingdom depends on the length of the course as stated in the student's Confirmation of Acceptance for Studies. International students in the UK are granted a certain number of additional months at the end of the course to prepare for departure, apply to extend their stay or change their status, depending on the original course length.[183] In each case, some nonimmigrant students may consider other countries' visa programs to be less restrictive relative to the proposed rule, as they would not be required to file an application to extend their stay and incur this additional expense. Although it affects only those F–1 nonimmigrants who are applying for an extension of stay for additional time to complete their program who cannot establish that the reason for requesting an extension is due to compelling academic reasons, a documented illness or medical condition, or circumstances beyond the student's control, or have otherwise failed to maintain status, the possibility of an extension being denied and the student thus not being able to complete the degree in the U.S. might affect the student's choice of country in which to study. As a result, nonimmigrant students and exchange visitors may be incentivized to consider other English-speaking countries for their studies.

Nonimmigrant student enrollment and exchange visitor participation contributes to the U.S. economy. The Institute of International Education estimates that during the 2018 academic year, international students alone had an economic impact of $44.7 billion from tuition and fees, food, clothing, travel, textbooks, and other spending.[184] If these students and exchange visitors choose another country over the United States because of this proposed rule, then the reduced demand could result in a decrease in enrollment, therefore, impacting school programs in terms of forgone tuition and other fees, jobs in communities surrounding schools, and the U.S. economy. DHS conducted a literature search to find research estimating impacts associated with actions like the proposed requirements and found related research like the Institute of International Education's Open Doors®, as cited above, and NAFSA's Economic Value Tool [185] that provide annual estimates of the economic contribution of international students to the U.S. economy. While DHS acknowledges that the rule may decrease nonimmigrant student enrollments, there are many factors that make the United States attractive to nonimmigrant students and exchange visitors beyond the allowable admission period. For example, Daily, Farewell, and Guarav (2010) found that international students pursuing a business degree in the United States rate opportunities for post-graduation employment, availability of financial aid, and reputation of the school as the most important factors in selecting a university.[186] These factors may outweigh the perceived impacts from the proposed admission for a fixed period.

Other J Exchange Visitors

For other J exchange visitors, such as government visitors and alien physicians, DHS does not believe there would be a significant impact in participation. Alternatives to U.S.-based exchange visitor programs (outside of academia) may be more difficult to find in other countries, providing less of an incentive for nonimmigrants to choose an alternative. S.

I Foreign Information Media Representatives

Similar to J exchange visitors not affiliated with SEVP-certified schools, DHS does not believe the proposed rule would have a significant impact on I nonimmigrants. Using ADIS data from 2016–2018, DHS found that on average, 97 percent of I nonimmigrants have a period of stay shorter than 240 days, and there are fewer proposed changes to the I category relative to other nonimmigrants, such as F nonimmigrants. Therefore, DHS does not expect a reduction in admissions of I nonimmigrants.

DHS appreciates the importance of nonimmigrant student enrollment and exchange visitor participation to the U.S. culture and economy, but acknowledges the potential for the proposed rule to affect future nonimmigrant student enrollment and exchange visitor participation and associated revenue. DHS requests comment on this potential impact, including literature, data, and research estimating nonimmigrant student enrollment and exchange visitor participation impacts and the potential effect of the requirements on schools or sponsors and the larger economy.

Implementation and Operations Costs Incurred by CBP

DHS acknowledges there would be implementation and operational costs to the U.S. Government associated with assessing aliens at the POE for purposes of authorizing an admission period of 2 or 4 years. CBP officers would need training on new systems and procedures for conducting inspections at the POE. Once the rule is effective, CBP officers would need readily accessible information on the applicant to assist in

[181] Australian Government, Department of Home Affairs: Immigration and Citizenship, Subclass 500 (Student Visa). Retrieved from: *https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/student-500#Overview https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/student-500#Overview.*

[182] Government of Canada, Immigration and Citizenship, Study Permit: About the Process. Retrieved from: *https://www.canada.ca/en/immigration-refugees-citizenship/services/study-canada/study-permit.html https://www.canada.ca/en/immigration-refugees-citizenship/services/study-canada/study-permit.html.*

[183] *Gov.uk*, General Student Visa (Tier 4). Retrieved from: *https://www.gov.uk/tier-4-general-visa.*

[184] Institute of International Education, 2019 Open Doors® Report on International Educational Exchange, Retrieved from: *https://www.iie.org/Why-IIE/Announcements/2019/11/Number-of-International-Students-in-the-United-States-Hits-All-Time-High.*

[185] NAFSA: Association of International Educators, Economic Value Statistics, Retrieved from: *https://www.nafsa.org/policy-and-advocacy/policy-resources/nafsa-international-student-economic-value-tool-v2#main-content* (last visited Apr. 14, 2020).

[186] Daily, C., Farewell, S., & Guarav, K., (2010). *Factors Influencing the University Selection of International Students,* Academy of Educational Leadership Journal, 14(3), 59–75, Retrieved from: *https://www.abacademies.org/articles/aeljvol14no32010.pdf* (last visited Apr. 14, 2020).

(1) assessing the appropriate length of stay for admission; and (2) making an admissibility assessment in cases of re-admission. DHS may require modification to the Primary Processing System to deliver this information to CBP officers. DHS continues to explore the necessary upgrades to systems and procedures that would allow CBP officers to perform their duties in accordance with this proposed rule. Therefore, this analysis does not quantify the costs associated with training CBP officers or the operational costs associated with new systems and procedures.

E-Verify

DHS is proposing a 2-year limitation on F nonimmigrants accepted to and attending schools not enrolled in E-Verify, or if enrolled, not a participant in good standing in E-Verify as determined by USCIS. DHS also is proposing a 2-year limitation on J nonimmigrants participating in an exchange visitor program whose sponsor is not enrolled in E-Verify, or if enrolled, not a participant in good standing in E-Verify as determined by USCIS. The proposed rule would require these nonimmigrants to file an EOS request every 2 years to extend their stay.

The EOS estimates and quantitative cost impacts incorporate E-Verify enrollment for J exchange visitor program sponsors. This was done by matching the employer identification number for J exchange visitor program sponsors with the employer identification number for employers enrolled in E-Verify. However, DHS was not able to control for E-Verify enrollment for schools attended by F nonimmigrants because the student data did not contain the employer identification number for schools attended by F nonimmigrants. DHS attempted to manually identify schools enrolled in E-Verify using fields such as school name and employer name, but was unsuccessful. For this reason, DHS did not quantify the impact of the E-Verify provision on F nonimmigrants in this analysis.[187]

Batch Processing

Batch processing is a data-based transaction between a school and the SEVIS information database maintained by DHS. Batch processing is intended to help DSOs and ROs update and report their nonimmigrant student and exchange visitor information to SEVIS in a timely manner by automating the exchange of data. Rather than updating individual nonimmigrant student and exchange visitor information manually through SEVIS, batch processing allows schools and program sponsors to pool together and automatically process updates at the same time. The intended benefit of using batch processing is to streamline the SEVIS updating process. Instead of updating individual record information one-by-one through the SEVIS Portal, DSOs can update multiple records at once, automatically.

DSOs are required to submit changes or updates to the nonimmigrant student and exchange visitor information to the SEVIS database system. When using batch processing to submit information to SEVIS, DSOs are required to comply with the proper documentation by submitting their updates as Extensible Markup Language (''XML'') documents. Using the XML format allows the SEVIS batch system to recognize the new or updated student data automatically. The changes are stored in the SEVIS batch system and an updated report is returned to the school for record keeping and verification. Schools can develop their own software or use third-party software suppliers to organize, update, and store their student data according to the SEVIS XML requirements.[188]

If finalized, the rule could lead to system upgrades by schools and program sponsors that currently use batch processing to interface with SEVIS. DHS acknowledges that there are many factors that affect the magnitude of system upgrade costs incurred by schools. For example, there may be one-time software development costs to implement an updated system capable of storing and converting a higher volume of nonimmigrant student and exchange visitor records. There also may be differences in the burden of the proposed rule according to the size of the nonimmigrant student and exchange visitor population at the school, the willingness of the school to maintain up-to-date system-wide software and hardware, and other factors. DHS requests comment on this potential impact, including the potential effect of the requirements on schools or sponsors and any data associated with the impact, such as the typical expenses for third-party software licenses or the potential impact of system-wide hardware or software updates.

Preparing the SEVIS batch system to accept novel categories of information from schools and program sponsors could require new database management procedures. DHS acknowledges that accepting the updated XML files sent from DSOs has the potential to impact the functionality of its internal system. The SEVIS batch system may require system updates to maintain proper operations and system execution during the exchange between the user-system (the DSO's system) and the SEVIS batch system. Because of the uncertainty of the scope and scale of the system upgrades needed as a result of this proposed rule, DHS has not monetized the cost of these potential, future information technology investments.

English Language Training

DHS is proposing a limitation of an aggregate 24-month period of stay, including breaks and an annual vacation, for language training students. Unlike degree programs, there are no nationally-recognized, standard completion requirements for language training programs, allowing students to exploit the current system and stay for an excessive period of time. The proposed 24-month period of stay would allow students a reasonable period of time to attain proficiency in the English language while mitigating the Department's concerns of fraud with the program. DHS estimates that an average of 136,000 students participate in English language training programs annually.[189] This analysis does not estimate a cost for this proposed provision as students enrolled in English language training would not be able to extend their fixed period of stay beyond two years and would therefore not incur the costs associated with applying for an extension to their period of admission. However, it is possible language training programs would experience reduced enrollment due to the proposed rule. Additionally, some schools may choose to change their curriculum to be covered in a 2-year time period, representing an additional burden on language training program providers. However, DHS expects this to affect relatively few programs. For all years of analysis, the majority of English

[187] See the section titled, ''*Estimating EOS Requests for F Nonimmigrants*'' for a discussion regarding the E-Verify data limitations.

[188] Immigration and Customs Enforcement SEVIS document, *Application Program Interface Document for the Student and Exchange Visitor Information System Batch Interface Release 6.35,* p. 1–5 (July 31, 2017), Retrieved from: *https://www.ice.gov/doclib/sevis/pdf/batch_api_6.35_073117_main.pdf.*

[189] This estimate was developed using data from SEVIS. The SEVIS database was queried to extract data from FY 2016–2018. DHS used R Statistical Software to develop logic allowing DHS to identify individuals enrolled in language training programs. DHS provides the SQL code used to query the SEVIS database and the R code used to develop the logic for this analysis on the proposed rule's docket.

language training students were enrolled in programs shorter than two years. Table 10 shows the percentage of students enrolled in English language training programs by program duration for FY 2016–2018. DHS seeks public comment on potential reduced enrollment, and associated impacts, resulting from the proposed limitations on language training.

TABLE 10—PERCENT OF STUDENTS ENROLLED IN ENGLISH LANGUAGE TRAINING PROGRAMS BY LENGTH OF PROGRAM

	FY 2016	FY 2017	FY 2018
Percent of English Language Training Students with a Program Duration Less Than or Equal to 1 Year	58.4	58.9	58.0
Percent of English Language Training Students with a Program Duration Greater Than 1 year and Less Than or Equal to 2 years	27.7	25.8	26.3
Percent of English Language Training Students with a Program Duration Greater Than 2 Years	13.8	15.3	15.7

Estimates derived from SEVIS data.

Limitations on Changes in Educational Levels

DHS is proposing a limitation on the number of program changes at the same or lower educational levels that students would be permitted to further strengthen the integrity of the F visa category. Specifically, DHS proposes to restrict the number of program changes between educational levels after completion of their first program by limiting F–1 students to two additional changes in programs at the same level and one additional transfer to a lower level. *See* proposed 8 CFR 214.2(f)(8)(ii)(B). This limitation may cause minor nonimmigrant enrollment reductions at schools, especially where F–1 nonimmigrants have changed between programs to remain in the United States for lengthy periods, and may also reduce options to change programs available to nonimmigrant students, including those who are properly maintaining their status. Limiting the number of changes between education levels could potentially result in a corresponding reduction in tuition revenue for the universities and a reduction in extension of stay filing fees for the Federal government from students that are otherwise in compliance with their status, fulfilling their academic requirements, but are interested in additional programs beyond the proposed limitation. Based on an analysis of three fiscal years of SEVIS data between FY 2016 and FY 2018, DHS is unable to quantify the impact on nonimmigrant student program changes between educational levels due to the lack of reliable transfer data. DHS seeks public comment on this potential impact.

Pending EOS Applications for F Nonimmigrants

The proposed rule also would establish certain adjustments for F nonimmigrants with pending EOS applications. Specifically, F nonimmigrants with a timely filed EOS application and whose EOS application is still pending after their admission period indicated on Form I–94 has expired would:

- Receive an automatic extension of their F nonimmigrant status and, as applicable, of their on-campus employment authorization, off-campus employment authorization due to severe economic hardship, or STEM OPT employment authorization, as well as evidence of employment authorization, for up to 180 days or until the applicable applications are approved, whichever is earlier;
- receive an automatic extension of their current authorization for on-campus and off-campus employment based on severe economic hardship resulting from emergent circumstances under 8 CFR 214.2(f)(5)(v), for up to 180 days or the end date of the **Federal Register** notice (FRN) announcing the suspension of certain requirements, whichever is earlier;
- be prohibited from engaging in employment until their EOS applications and applications for employment authorization based on either an internship with an international organization, CPT, pre-completion OPT, or post-completion OPT are approved.

DHS acknowledges that these requirements would affect a cohort of F nonimmigrants. The total impact would depend on the number of F nonimmigrants with a timely filed EOS application and whose EOS application is still pending after their admission period indicated on Form I–94 has expired. DHS does not have data to estimate this sub-population. DHS believes that the incremental impact from these proposed requirements would not have a material impact on the results of this analysis, but requests public comment on these impacts.

Total Cost Estimates

Table 12 summarizes the impacts of the proposed rule. Total monetized costs of the proposed rule include DSO and RO rule familiarization and adaptation costs, EOS filing costs, and DSO/RO program extension request processing and SEVIS update costs. The 10-year discounted costs of the proposed rule in 2018 dollars would range from $1.7 billion to $2.0 billion (with 7 and 3 percent discount rates, respectively). The annualized costs of the proposed rule would range from $229.9 million to $237.7 million (with 3 and 7 percent discount rates, respectively).

TABLE 12—COSTS OF THE PROPOSED RULE

[2018$ millions]

Fiscal year	DSO/RO rule familiarization	EOS filing	DSO/RO EOS processing	Total costs
2020	$93.3	$134.7	$22.9	$250.9
2021	0.0	134.7	22.9	157.6
2022	0.0	170.8	28.7	199.4
2023	0.0	170.8	28.7	199.4

TABLE 12—COSTS OF THE PROPOSED RULE—Continued

[2018$ millions]

Fiscal year	DSO/RO rule familiarization	EOS filing	DSO/RO EOS processing	Total costs
2024	0.0	240.3	40.5	280.7
2025	0.0	197.3	33.0	230.3
2026	0.0	197.3	33.0	230.3
2027	0.0	197.3	33.0	230.3
2028	0.0	197.3	33.0	230.3
2029	0.0	197.3	33.0	230.3
Undiscounted Total	93.3	1,837.7	308.7	2,239.6
Total with 3% discounting	93.3	1,599.0	268.7	1,961.0
Total with 7% discounting	93.3	1,349.6	226.9	1,669.8
Annualized, 3% discount rate, 10 years	10.9	187.4	31.5	229.9
Annualized, 7% discount rate, 10 years	13.3	192.2	32.3	237.8

Transfers

Should there be a reduction in the number of nonimmigrant students and exchange visitors applying for visas or for F or J status in the United States, then there would be an impact on the amount of fees collected by SEVP and DOS from nonimmigrant students and exchange visitors through visa applications and SEVIS fees. These fees are used to cover the operational costs associated with processing the applications and adjudications. Nonetheless, DHS anticipates that any impacts resulting from potential decreased nonimmigrant student enrollment and exchange visitor participation would be outweighed by the national security benefits anticipated as a result of the proposed requirements.

Benefits

Among the unquantified benefits of the proposed rule is the opportunity for DHS to have additional opportunities to evaluate whether F, J, and I nonimmigrants are complying with their status requirements. Currently, the D/S framework does not require immigration officers to assess whether these nonimmigrants are complying with the terms and conditions of their stay, or whether they present a national security concern, unless some triggering event (such as an encounter in an enforcement setting, or a request for a benefit from USCIS) leads to a review of the nonimmigrant's compliance. By implementing fixed periods of admission for these nonimmigrants, they will be required to submit an application for EOS or travel and apply for admission, which they are not currently required to do, in order to stay beyond their period of admission. This gives DHS additional opportunities to evaluate whether they are complying with the requirements of their status, or if they present a national security concern. Requiring nonimmigrant academic students, exchange visitors, and representatives of foreign information media to request an additional period of admission directly with the Department would improve consistency of admissions between nonimmigrant categories, enable stronger oversight by immigration officers who would review the nonimmigrant's request and assess whether the nonimmigrant had been complying with the terms and conditions of his or her status, enhance DHS's ability to effectively enforce the statutory inadmissibility grounds related to unlawful presence, and deter aliens and entities from engaging in fraud and abuse within these nonimmigrant programs. Accordingly, these proposed changes would provide the Department with additional protections and mechanisms to exercise the oversight necessary to vigorously enforce our nation's immigration laws, protect the integrity of these categories, and promptly detect national security concerns.

DHS believes this proposed rule could result in reduced fraud, abuse, and national security risks for these nonimmigrant programs, but whether the rule will in fact result in a reduction will be borne out when the final rule is implemented. Compared to the current D/S framework in which a nonimmigrant's substantive compliance might never be reviewed by DHS, DHS believes that the rule would be likely to result in more prompt detection of national security concerns or abuse by F, J and I nonimmigrants and could serve as a deterrent to those who would otherwise plan to engage in fraud or otherwise abuse these nonimmigrant classifications. The rule proposes additional oversight of these individuals. Without this oversight, there is no data on prevalence of fraud and abuse by F, J, and I nonimmigrants and only limited data on these individuals' impact on national security.

5. Alternatives

Before arriving at a fixed admission period of up to either 2 or 4-years, DHS considered various options, including no action, a 1- and 3-year fixed admission period alternative, and a standard 1-year fixed admission period for all F and J nonimmigrants.

No Action Alternative

DHS first considered a ''no action'' alternative, under which F, J, and I nonimmigrants would continue being admitted for D/S. DHS determined that this alternative would not address the lack of pre-determined points for immigration officers to directly evaluate whether F, J and I nonimmigrants are maintaining their status, currently lacking because of the D/S framework. Additionally, DSOs and ROs would continue extending the program and therefore the nonimmigrant status of F and J aliens, instead of having immigration officers, who are government officials, make this assessment. As a result, there would continue to be challenges to the Department's ability to effectively monitor and oversee these categories of nonimmigrants. With this option, the Department would continue to be concerned about the integrity of the programs and the potential for increased risk to national security.

Alternative 1: 1- and 3-Year Fixed Admission Period

An alternative that DHS considered was to admit F and J nonimmigrants to their program end date, not to exceed 3 years, or 1 year for nonimmigrants

meeting certain conditions. While such an option would provide the Department with more frequent direct check in points with these nonimmigrants than provided by a 4-year maximum period of admission, or 2 years for nonimmigrants meeting certain conditions, DHS was concerned it would be unduly burdensome on many F and J nonimmigrants. Under the alternative, DHS estimates that, on average, 494,000 nonimmigrants would file an EOS each year. By comparison, DHS estimates that under the proposed rule, on average, 301,000 nonimmigrants would file an EOS each year. By selecting the 2- and 4- year option in the proposed rule over the 1- and 3-year alternative, DHS expects to receive 193,000 fewer EOS requests on average each year. DHS believes that a 4-year period best aligns with the normal progress for most programs, and a 3-year maximum period of stay would require almost every nonimmigrant enrolled in a 4-year program to apply for an EOS. A 3-year maximum also would result in greater administrative burdens on USCIS and CBP compared to the proposed 4-year maximum period of admission. USCIS would have to adjudicate extension of stay applications with more frequency if a 3-year maximum period of stay is chosen over a 4-year period. Similarly, CBP would have to process applications for admission at POEs more frequently under the 3-year maximum period of stay alternative. Therefore, DHS believes an admission for the program end date, not to exceed 4 years (except for limited exceptions that would limit admissions to 2 years) is the best option and welcomes comments on this proposal.

DHS calculated the costs for this alternative. DSO and RO rule familiarization and adaptation costs would remain the same under this alternative ($93.3 million during the first year after the rule takes effect). To calculate EOS filing costs, DHS multiplied the expected number of extension of stay requests under the 3-year and 1-year fixed admission period alternative for F, I, and J nonimmigrants (Table 13) by the appropriate applicant unit costs (Table 7).

TABLE 13—NUMBER OF EOS REQUESTS UNDER ALTERNATIVE #1 BY NONIMMIGRANT CATEGORY AND YEAR

Nonimmigrant category	Early transition period			End of transition	Full implementation period					
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
F–1	180,787	298,835	298,835	537,228	381,596	381,596	381,596	381,596	381,596	381,596
F–2	21,118	35,376	35,376	56,917	44,094	44,094	44,094	44,094	44,094	44,094
J–1	0	40,776	40,776	50,418	45,526	45,526	45,526	45,526	45,526	45,526
J–2	0	18,896	18,896	25,004	21,978	21,978	21,978	21,978	21,978	21,978
I	1,197	1,197	1,197	1,197	1,197	1,197	1,197	1,197	1,197	1,197
Total	203,102	395,080	395,080	670,764	494,391	494,391	494,391	494,391	494,391	494,391

Table 14 presents undiscounted EOS filing costs under the 3-year and 1-year fixed admission period alternative by nonimmigrant category and year, along with a breakdown of costs based on filing type (paper or electronic) and the use or nonuse of outside help to complete the form. EOS filing costs are lowest during the early transition period (2020–2022) and highest at the end of the transition period (2023) because of the variation in the estimated number of EOS requests (Table 13).

TABLE 14—EOS FILING COSTS UNDER ALTERNATIVE #1, BY NONIMMIGRANT CATEGORY AND YEAR

[Millions 2018$, undiscounted]

Number of EOS/cost	Early transition period			End of transition	Full implementation period					
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
F–1										
F–1 EOS Requests	180,787	298,835	298,835	537,228	381,596	381,596	381,596	381,596	381,596	381,596
Paper filing cost, no help [1]	$45.8	$75.7	$75.7	$136.1	$96.7	$96.7	$96.7	$96.7	$96.7	$96.7
E-filing cost, no help [2]	$19.1	$31.5	$31.5	$56.7	$40.3	$40.3	$40.3	$40.3	$40.3	$40.3
Paper filing cost, with help [3]	$46.4	$76.6	$76.6	$137.8	$97.9	$97.9	$97.9	$97.9	$97.9	$97.9
E-filing cost, with help [4]	$19.6	$32.4	$32.4	$58.2	$41.3	$41.3	$41.3	$41.3	$41.3	$41.3
F–1 Total	$130.8	$216.3	$216.3	$388.8	$276.2	$276.2	$276.2	$276.2	$276.2	$276.2
F–2										
F–2 EOS Requests	21,118	35,376	35,376	56,917	44,094	44,094	44,094	44,094	44,094	44,094
Paper filing cost, no help [5]	$2.0	$3.3	$3.3	$5.4	$4.2	$4.2	$4.2	$4.2	$4.2	$4.2
E-filing cost, no help [6]	$0.9	$1.4	$1.4	$2.3	$1.8	$1.8	$1.8	$1.8	$1.8	$1.8
F–2 Total	$2.9	$4.8	$4.8	$7.7	$6.0	$6.0	$6.0	$6.0	$6.0	$6.0
J–1										
J–1 EOS Requests	0	40,776	40,776	50,418	45,526	45,526	45,526	45,526	45,526	45,526
Paper filing cost, no help [1]	$0.0	$13.1	$13.1	$16.2	$14.6	$14.6	$14.6	$14.6	$14.6	$14.6
E-filing cost, no help [2]	$0.0	$5.2	$5.2	$6.5	$5.8	$5.8	$5.8	$5.8	$5.8	$5.8
Paper filing cost, with help [3]	$0.0	$11.9	$11.9	$14.8	$13.3	$13.3	$13.3	$13.3	$13.3	$13.3
E-filing cost, with help [4]	$0.0	$4.9	$4.9	$6.1	$5.5	$5.5	$5.5	$5.5	$5.5	$5.5
J–1 Total	$0.0	$35.1	$35.1	$43.5	$39.2	$39.2	$39.2	$39.2	$39.2	$39.2

TABLE 14—EOS FILING COSTS UNDER ALTERNATIVE #1, BY NONIMMIGRANT CATEGORY AND YEAR—Continued
[Millions 2018$, undiscounted]

Number of EOS/cost	Early transition period			End of transition	Full implementation period					
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
J–2										
J–2 EOS Requests	0	18,896	18,896	25,004	21,978	21,978	21,978	21,978	21,978	21,978
Paper filing cost, no help [5]	$0.0	$3.1	$3.1	$4.1	$3.6	$3.6	$3.6	$3.6	$3.6	$3.6
E-filing cost, no help [6]	$0.0	$1.3	$1.3	$1.8	$1.6	$1.6	$1.6	$1.6	$1.6	$1.6
J–2 Total	$0.0	$4.5	$4.5	$5.9	$5.2	$5.2	$5.2	$5.2	$5.2	$5.2
I										
I EOS Requests	1,197	1,197	1,197	1,197	1,197	1,197	1,197	1,197	1,197	1,197
Paper filing cost, no help [1]	$0.4	$0.4	$0.4	$0.4	$0.4	$0.4	$0.4	$0.4	$0.4	$0.4
E-filing cost, no help [2]	$0.2	$0.2	$0.2	$0.2	$0.2	$0.2	$0.2	$0.2	$0.2	$0.2
Paper filing cost, with help [3]	$0.4	$0.4	$0.4	$0.4	$0.4	$0.4	$0.4	$0.4	$0.4	$0.4
E-filing cost, with help [4]	$0.1	$0.1	$0.1	$0.1	$0.1	$0.1	$0.1	$0.1	$0.1	$0.1
I Total	$1.0	$1.0	$1.0	$1.0	$1.0	$1.0	$1.0	$1.0	$1.0	$1.0
Total, All Nonimmigrant Categories	$134.7	$261.7	$261.7	$446.9	$327.6	$327.6	$327.6	$327.6	$327.6	$327.6

* Totals may not sum due to rounding.
[1] (EOS request estimate) × (unit cost for paper applicants not requiring outside help) × (0.455).
[2] (EOS request estimate) × (unit cost for electronic applicants not requiring outside help) × (0.195).
[3] (EOS request estimate) × (unit cost for paper applicants requiring outside help) × (0.245).
[4] (EOS request estimate) × (unit cost for electronic applicants requiring outside help) × (0.105).
[5] (EOS request estimate) × (unit cost for paper applicants not requiring outside help) × (0.7).
[6] (EOS request estimate) × (unit cost for electronic applicants requiring outside help) × (0.3).

The total costs for EOS request filing under the 3-year and 1-year fixed period of admission alternative would be $3.1 billion undiscounted,[190] or $2.7 billion and $2.2 billion at discount rates of 3 and 7 percent, respectively. The annualized cost of EOS request filing over the 10-year period would be $312.8 million and $320.0 million at discount rates of 3 and 7 percent, respectively.

To estimate costs for DSOs and ROs to process program extension requests and update SEVIS under the 3-year and 1-year fixed period of admission alternative, DHS multiplied the expected number of F–1 and J–1 EOS requests under the 3-year and 1-year fixed admission period alternative (Table 13) by the expected DSO and RO time requirement per EOS request (3 hours) and the DSO and RO loaded wage rate ($28.93 × 1.46 loaded wage rate factor).

Table 15 presents undiscounted DSO/RO costs to process program extension requests and update SEVIS throughout the 2020–2029 study period under the 3-year and 1-year fixed admission period alternative. Similar to EOS filing costs, DSO/RO costs to process program extension requests and update SEVIS are lowest during the early transition period (2020–2022) and highest at the end of the transition period (2023) because of the variation in the estimated number of EOS requests (Table 13).

TABLE 15—DSO/RO COSTS FOR PROCESSING PROGRAM EXTENSION REQUESTS BASED ON EOS REQUESTS AND UPDATING SEVIS UNDER ALTERNATIVE #1, BY YEAR
[Millions 2018$, undiscounted]

	Early transition period			End of transition	Full implementation period					
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
Number of Extension Requests [1]	180,787	339,611	339,611	587,646	427,122	427,122	427,122	427,122	427,122	427,122
Costs [2]	$22.91	$43.03	$43.03	$74.46	$54.12	$54.12	$54.12	$54.12	$54.12	$54.12

[1] Sum of extension request estimates for F–1 students and J–1 exchange visitors.
[2] (Number of extension requests) × (3 hours) × (DSO/RO wage rate of $28.93) × (loaded wage rate factor of 1.46).

The total cost estimate for DSOs and ROs to process program extension requests and update SEVIS under the 3-year and 1-year fixed period of admission alternative would be $508.2 million undiscounted,[191] or $441.7 million and $372.1 million at discount rates of 3 and 7 percent, respectively. The annualized cost of DSOs and ROs to update SEVIS over the 10-year period would be $51.8 million and $53.0 million at discount rates of 3 and 7 percent, respectively.

Total monetized costs of the 3-year and 1-year fixed period of admission alternative include DSO and RO rule familiarization and adaptation costs, EOS filing costs, and DSO/RO costs for processing program extension requests and updating SEVIS. The 10-year discounted total costs of the 3-year and 1-year fixed period of admission alternative would be $3.2 billion with a 3 percent discount rate and $2.7 billion

[190] The undiscounted total differs slightly from the sum of the years provided in Table 14 because of rounding in the table values.

[191] The undiscounted total differs slightly from the sum of the years provided in Table 15 because of rounding in the table values.

with a 7 percent discount rate. The annualized total costs of the 3-year and 1-year fixed period of admission alternative would range from $375.5 million to $386.2 million (with 3 and 7 percent discount rates, respectively). The qualitative benefits of the 3-year and 1-year fixed period of admission alternative are same as the benefits of the 4-year and 2-year fixed period of admission alternative described in Section V.A.4.

Other Alternatives

DHS also considered a standard 1-year fixed admission period for all F and J nonimmigrants. This option would treat all F and J nonimmigrants equally and would likely allow for easier implementation by USCIS and CBP by reducing the complexity of implementation and enforcement. Nevertheless, it could result in significant costs to nonimmigrants and the Department. There are more than 1 million F students who are enrolled in programs of study that last longer than 1 year. With a 1-year admission period, DHS expects that all of them would be required to apply for additional time. This would be a significant cost to students and exchange visitors, especially those who comply with the terms and conditions of their admission and those attending undergraduate programs that typically require 4 years to complete. Further, such a restrictive admission period could have unintended consequences. For example, if USCIS's EOS processing time is significantly lengthened due to a 1-year admission period, cases presenting national security or fraud concerns would not necessarily be prioritized, thereby allowing a mala fide student or exchange visitor to remain in the United States until USCIS adjudicated his or her petition.

DHS also considered whether the Department could utilize data from SEVIS to identify potentially problematic F and J nonimmigrants and require only this targeted subset of F and J nonimmigrants to complete an EOS. SEVIS information is used when aliens apply for a visa and admission to the U.S. as an F or J nonimmigrant, as well as to track and monitor their status. While this information is likely to be helpful in identifying aliens who should be subjected to further review, in some cases the information may not be sufficient for determining whether these nonimmigrants are engaging in fraudulent behavior or otherwise have fallen out of status. The data received when applying for an EOS provides additional information not contained in SEVIS that helps the Department effectively monitor and oversee F and J nonimmigrants. Further, an EOS provides a direct interaction with an immigration officer. As a potential remedy, the Department considered whether the SEVIS data could be used to classify a subset of nonimmigrants as higher risk of being a national security threat or committing fraud. The identified subset would then be required to complete an EOS as described in the proposal. Depending on how the Department targeted higher risk aliens, a smaller number of EOS's would need to be completed as compared to the current proposal, thus lowering the burden on nonimmigrants, program sponsors, and the Department. The Department rejected this alternative in favor of moving all F and J nonimmigrants to a fixed period admission because SEVIS does not readily lend itself to this purpose, as it is used to gather information regarding technical compliance, and the data cannot replace the information that can be developed in the course of an adjudication, in which USCIS has the opportunity to ask questions via a request for evidence and, if necessary, conduct an interview. The Department also rejected this alternative due to the operational burden and challenges that would exist if some F and J nonimmigrants were admitted for D/S, but others for a fixed period of admission. In addition, by requiring all of the F and J nonimmigrants to be admitted for a fixed period, this allows for the opportunity for improved detection of fraud or abuse, as the Department has observed that abuse is not limited to one particular type of school or program. By fixing a date certain period of admission, all of these nonimmigrants are on notice as to the date their period of stay expires, and the Department will be in a position to provide greater oversight to help deter F and J nonimmigrants from engaging in fraud and abuse, including staying beyond that fixed date. All those who overstay would begin to accrue unlawful presence, generally the day after their period of stay expires, when admitted for a fixed period of admission. Lastly, the Department believes that a fixed period of admission for these populations may deter fraud, allow for earlier detection of national security concerns, and help reduce overstays which outweighs reducing the number of EOS requests that may be required.

Comparison Table of Alternatives

Table 16 compares the quantitative costs and qualitative benefits of the various alternatives. The ''no action'' alternative has zero costs but does not address how the D/S framework challenges the Department's ability to effectively implement the statutory inadmissibility grounds of unlawful presence, undermines the integrity of these programs, and presents a risk to national security. The alternative with a 3-year maximum period of admission (or 1-year for nonimmigrants meeting certain conditions) would provide the Department with more frequent direct check in points on the nonimmigrants than a 4-year maximum period of admission, but DHS determined that the expense and workload implications of this option would be too burdensome on all stakeholders. DHS thus selected the proposed rule, which would impose lower costs while providing the Department with an effective mechanism to exercise the oversight necessary to vigorously enforce our nation's immigration laws, protect the integrity of these categories, and promptly detect national security concerns.

TABLE 16—SUMMARY OF ALTERNATIVES

10-Year discounted totals (in $2018 million)			
Alternative	Annualized costs	Total costs	Qualitative benefits
3-Percent Discount			
No action	$0.00	$0.00	N/A.
Proposed Rule (4-year max admission).	229.9	1,961.0	Evaluations at pre-determined intervals provide oversight necessary to enforce immigration laws; protect the integrity of F, J, and I nonimmigrant categories; and promptly detect national security concerns.

TABLE 16—SUMMARY OF ALTERNATIVES—Continued

10-Year discounted totals (in $2018 million)			
Alternative	Annualized costs	Total costs	Qualitative benefits
Alternative 1 (3-year max admission).	375.5	3,203.5	More frequent evaluations of nonimmigrants (at least one check-in for every F, J, and I nonimmigrant).
7-Percent Discount			
No action	$0.00	$0.00	N/A.
Proposed Rule (4-year max admission).	237.8	1,669.8	Evaluations at pre-determined intervals provide oversight necessary to enforce immigration laws; protect the integrity of F, J, and I nonimmigrant categories; and promptly detect national security concerns.
Alternative 1 (3-year max admission).	386.2	2,712.7	More frequent evaluations of nonimmigrants (at least one check-in for every F, J, and I nonimmigrant).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 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 business, 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. DHS requests information and data from the public that would assist in better understanding the impact of this proposed rule on small entities. DHS also seeks input from the public on alternatives that will accomplish the same objectives and minimize the proposed rule's economic impact on small entities. An initial regulatory flexibility analysis (IRFA) follows.

1. A Description of the Reasons Why the Action by the Agency Is Being Considered

DHS proposes to amend its regulations to eliminate the practice of admitting F academic students, I representatives of foreign information media, and J exchange visitors for the period of time that they are complying with the conditions of their nonimmigrant category (''duration of status'') and replace it with a fixed period of admission. The proposed rule would enable DHS to more effectively combat fraud and abuse, more accurately account for the accrual of unlawful presence grounds of inadmissibility, and better protect our nation's immigration system. DHS's objectives and legal authority for this proposed rule are further discussed throughout this NPRM.

2. A Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The objective of the proposed rule is to establish requirements that would help: (1) Ensure that the Department has an effective mechanism to periodically and directly assess whether these nonimmigrants are complying with the conditions of their classifications and U.S. immigration laws; and (2), obtain timely and accurate information about the activities they engage in during their temporary stay in the United States. If immigration officers discover a nonimmigrant in one of these categories has overstayed or otherwise violated his or her status, the proposed changes would ensure the Department is better able to carry out the unlawful presence provisions of the Immigration and Nationality Act (INA). DHS believes this greater oversight would deter F, J, or I nonimmigrants from engaging in fraud and abuse and strengthen the integrity of these nonimmigrant classifications.

The legal basis for this proposed rule is grounded in the Secretary of Homeland Security's broad authority to administer and enforce the nation's immigration laws. Under Section 102 of the Homeland Security Act of 2002 (HSA) (Pub. L. 107–296, 116 Stat. 2135), 6 U.S.C. 112 and section 103(a)(1) and (3) of the INA, 8 U.S.C. 1103 (a)(1),(3), charge the Secretary with the administration and enforcement of the immigration and naturalization laws of the United States. Section 402(4) of the HSA, 6 U.S.C. 202(4), expressly authorizes the Secretary, consistent with 6 U.S.C. 236 (the DOS's statutory authority concerning visa issuance and refusal), to establish and administer rules governing the granting of visas or other forms of permission to enter the United States to individuals who are not U.S. citizens or lawful permanent residents. See also 6 U.S.C. 271(a)(3), (b) (describing certain USCIS functions and authorities, including USCIS' authority to establish national immigration services policies and priorities and adjudicate applications) and 6 U.S.C. 252(a)(4) (describing ICE's authority to collect information relating to foreign students and program participants and to use such information to carry out its enforcement functions). Section 214(a)(1) of the INA, 8 U.S.C. 1184(a)(1), and Title IV of the Homeland Security Act of 2002, Public Law 107–296, the Secretary of Homeland Security has the authority to prescribe, by regulation, the time and conditions of admission of all nonimmigrants.

3. A Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

The small entities to which the proposed rule would apply include all small SEVP-certified schools and J exchange visitor program sponsors. Employers of I foreign information media representatives would incur negligible costs from the proposed rule because the burden for filing an EOS request falls on the I nonimmigrant, not the employer. Employers of I foreign information media representatives are thus excluded from the small business impact analysis. SEVP-Certified Institutions Certified to Enroll Nonimmigrant Students

As of 2018, there were a total of 6,754 SEVP-certified institutions (schools) authorized to enroll F nonimmigrant students that would be subject to the proposed rule because they are authorized to enroll F–1 nonimmigrants for a length of time greater than 1 year. Of these schools, 1,346 are public, 655 are for-profit, 4,183 are private nonprofit, and 570 are private without a for-profit/nonprofit specification.[192]

[192] The number and type of schools were extracted from SEVIS, retrieved on September 5,

DHS estimated the percentage of public schools that are small entities using a random sample of the 1,346 SEVP-certified public schools. DHS does not keep data on the size of the jurisdiction where each SEVP-certified school is located and, therefore, needed to do additional research to determine which schools are small. Due to the large number of SEVP-certified public schools and the level of effort associated with additional data collection, DHS assessed the jurisdiction size for a sample of 299 public schools selected randomly from the 1,346 SEVP-certified public schools. [193] Of these sampled schools, none were affiliated with a governmental jurisdiction with a population of less than 50,000 because most schools had a statewide jurisdiction. Of the 299 sampled public schools, DHS found that none of the public schools were small entities because they are in a governmental jurisdiction with a population greater than 50,000.[194] Therefore, DHS estimates that all 1,346 public schools are not small entities.[195]

DHS conservatively assumes that all 4,183 private nonprofit schools are small entities because they are not dominant in their field. [196] DHS also assumes that all 570 schools that are private schools without a for-profit/nonprofit designation are small entities. DHS requests comments from the public regarding these assumptions.

To determine which of the remaining 655 private for-profit schools are considered a small entity, DHS sampled 243 for-profit schools.[197] DHS referenced the Small Business Administration (SBA) size standards represented by business average annual receipts. Receipts are generally defined as a firm's total income or gross income. SBA's Table of Small Business Size Standards provides business size standards for all sections of the North American Industry Classification System (NAICS) for industries.[198] DHS matched information provided by the schools in SEVIS regarding what programs of study it is engaged in with an appropriate six-digit NAICS industry description. NAICS is the standard classification used to categorize business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. economy.

DHS found that the revenue of 163 of the 243 sampled for-profit schools fell below the SBA size standard of a small business according to their industry. Therefore, DHS estimates that 67 percent of all for-profit schools authorized to enroll F nonimmigrants fall below the SBA size standard of a small business according to their industry. As a result, DHS estimates that 439 of the 655 for-profit schools fall below the SBA size standard of a small business according and are considered small entities (67% × 655 = 438.85, rounded to 439). Table 17 shows a breakdown of the number of small for-profit SEVP-certified schools by industry.

DHS estimated each private school's annual receipts by multiplying the approximate annual cost of room, board, and tuition by the average annual number of total students based on data provided by the schools to SEVP. DHS acknowledges that this method of estimating receipts may be an incomplete account of a school's income, which may also include contributions from private individuals or other endowments. Because these data reflect a snapshot of all SEVP-certified schools authorized to enroll F students in 2018, DHS acknowledges there may be changes in the school's enrollment numbers and that a school's estimated revenue may differ from actual revenue, which could include income generated from other sources.

TABLE 17—FOR-PROFIT SEVP-CERTIFIED SCHOOLS BY INDUSTRY

School industry	Size standard	NAICS codes	Number of small schools	Number of non-small schools	Total SEVP-certified schools	Percent small schools
Elementary and Secondary Schools	$12M	611110	44	19	63	70
Junior Colleges	22M	611210	1	2	3	33
Colleges, Universities and Professional Schools	30M	611310	46	24	70	66
Flight Training	30M	611512	1	1	2	50
Other Technical and Trade Schools	17M	611519	4	3	7	57
Fine Arts Schools	8M	611610	2	2	4	50
Language Schools	12M	611630	64	29	93	69
All Other Miscellaneous Schools and Instruction	12M	611699	1	0	1	100
Total			163	80	243	67

[1] U.S. Small Business Administration, Tables of Small Business Size Standards Matched to NAICS Codes.

2019. More information on SEVIS can be found at *https://www.ice.gov/sevis/overview*.

[193] In determining the sample size, DHS assumed a 95 percent confidence level (z-score of 1.96); 5 percent margin of error (e=0.05); and a 50 percent population proportion of small schools (p=0.5). DHS used the equation $S = ((z\wedge 2*p(1-p))/e\wedge 2) / (1+((z\wedge 2 * p(1-p))/(Ne\wedge 2)))$, where S is sample size, N is population size, and all other variables are as described in this footnote. The equation used to calculate the sample size can be found in Daniel WW (1999). Biostatistics: A Foundation for Analysis in the Health Sciences. 7th edition. New York: John Wiley & Sons.

[194] Section 601(5) of the Regulatory Flexibility Act defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000.

[195] DHS is aware that this conclusion differs from that of the findings in the 2019 SEVP Fee Rule FRFA (*See* 84 FR 23930 (May 29, 2019)). For the SEVP Fee Rule FRFA and the D/S NPRM IRFA, DHS used census data to search for the jurisdiction where the school was located. In the D/S NPRM IRFA, high schools were excluded from this search as they would not be subject to the rule limitations. Most public colleges and universities are run at the state level, and all states have a population greater than 50,000. In the SEVP Fee Rule FRFA, public elementary, secondary, and high schools are combined with public universities. There are necessarily more public elementary, secondary, and high schools than there are public universities. Therefore, DHS expects to see differences between the two rules.

[196] Section 601(4) of the Regulatory Flexibility Act defines the term ''small organization'' to mean any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

[197] In determining the sample size, DHS assumed a 95 percent confidence level (z-score of 1.96); 5 percent margin of error (e=0.05); and a 50 percent population proportion of small schools (p=0.5). DHS used the equation $S = ((z\wedge 2*p(1-p))/e\wedge 2) / (1+((z\wedge 2 * p(1-p))/(Ne\wedge 2)))$, where S is sample size, N is population size, and all other variables are as described in this footnote. The equation used to calculate the sample size can be found in Daniel WW (1999). Biostatistics: A Foundation for Analysis in the Health Sciences. 7th edition. New York: John Wiley & Sons.

[198] U.S. Small Business Administration, Tables of Small Business Size Standards Matched to NAICS Codes (Aug. 19, 2019), available at *https://www.sba.gov/document/support—table-size-standards*.

[2] Number of schools derived from SEVIS data.

Table 18 shows a summary by school type of the number of SEVP certified schools authorized to enroll F nonimmigrants and estimated small entities. DHS estimates that 5,192 schools meet the SBA definition of a small entity, or approximately 77 percent of the 6,754 schools included in this analysis.

TABLE 18—SEVP-CERTIFIED SCHOOLS AUTHORIZED TO ENROLL F NONIMMIGRANTS BY SCHOOL TYPE

Description	Total number of schools	Percent small schools	Percent small schools
Public schools	1,346	0	0
Private, nonprofit schools	4,183	4,183	100
Private, unspecified schools	570	570	100
For profit schools	655	439	67
Total Number of SEVP-Certified Schools	6,754	5,192	77

J Exchange Visitor Program Sponsors

As of 2018, there were a total of 1,171 J exchange visitor program sponsors that would be subject to the proposed rule because they are authorized by DOS to sponsor J exchange visitor programs for a length of time greater than 1 year. Of these sponsors, 54 are government entities, 891 are schools, 23 are hospitals and related institutions, 141 are nonprofit institutions, and 62 are for-profit institutions. These sponsors issue DS–2019s according to certain designation codes that map to specific programs. Table 19 shows the type for each J exchange visitor program designation code.

TABLE 19—DESCRIPTIONS OF J EXCHANGE VISITOR PROGRAM SPONSOR TYPES BY DESIGNATION CODE

Designation code	Program type
G–1	Programs sponsored by the Department of State.
G–2	Programs sponsored by the Agency for International Development (USAID).
G–3	Other U.S. Federal agencies.
G–4	International agencies or organizations in which the U.S. Government participates.
G–5	Other national, State, or local government agencies.
G–7	Federally funded national research and development center or a U.S. Federal laboratory.
P–1	Educational institutions, *e.g.*, schools, colleges, universities, seminaries, libraries, museums, and institutions devoted to scientific and technological research.
P–2	Hospitals and related institutions.
P–3	Nonprofit organizations, associations, foundations, and institutions (academic institutions conducting training programs can be classified as a P–3, as long as they are considered nonprofit).
P–4	For-profit organizations (business and industrial concerns).

Government Entities

DHS determined that all 54 government entities (G–1, G–2, G–3, G–4, G–5, and G–7 program sponsors) are large entities because 30 are federal government entities and 24 are state or local government entities. Of the 24 state or local government entities, all represented jurisdictions with populations greater than 50,000. Therefore, DHS classified all 54 government entities as large entities.

Educational Institutions

DHS identified 891 schools that are J exchange visitor program sponsors. To identify which J exchange visitor program sponsors were small entities, DHS compared the 891 schools sponsoring J exchange visitor programs to the schools authorized to enroll F nonimmigrants. Of the 891 schools sponsoring J exchange visitor programs, 713 (80 percent) also enrolled F nonimmigrants. Of the 713 schools sponsoring both F and J nonimmigrants, 357 (50 percent) of the schools are public schools and 357 (50 percent) are private, nonprofit schools. DHS assumes that the remaining 178 (20 percent) of schools sponsoring only J exchange visitors are also 50 percent public and 50 percent private, nonprofit schools. DHS thus estimates that there would be 446 public schools and 446 private, nonprofit schools (50 percent each of the 891 J-sponsor schools). Since all affected public schools have been found to be large entities and all affected private, nonprofit schools are assumed to be small entities, DHS estimates that 446 of the 891 J-sponsor schools are small entities.

Hospitals and Related Institutions

DHS identified 23 hospitals and related institutions sponsoring J exchange visitor programs. Of these 23 hospitals, 22 are nonprofit. DHS assumes that all 22 private nonprofit hospitals are small entities because they are not dominant in their fields. Only one hospital and related institution, a health maintenance organization medical health center with six-digit NAICS code 621491, sponsoring J exchange visitor programs is a for-profit institution that exceeded the threshold of $32.5 million annually in receipts for being a large entity.

Nonprofit Organizations

DHS conservatively assumes that all 141 nonprofits sponsoring J exchange visitor programs are small entities because they are not dominant in their field. DHS requests comments on these assumptions.

For-Profit Organizations

DHS identified a total of 62 potentially affected for-profit organizations sponsoring J exchange visitor programs. In order to determine which of these for-profit entities may be

affected by the proposed rule, DHS identified sponsors eligible to sponsor J exchange visitor programs for longer than one year, as those would be the only sponsors potentially affected by the rule. Sponsors for exchange visitors enrolled in short-term scholar, intern, specialist, secondary school student, college and university student, summer work travel, camp counselor, and au pair programs would not be affected by the proposed rule as the programs they offer are too short to be affected. Using these guidelines, DHS identified 61 organizations sponsoring J exchange visitor participants with a potential stay of greater than one year. Of these 61 organizations, DHS identified 32 potentially affected small entities. To identify these small entities, DHS referenced the SBA size standards represented by business average annual receipts. Receipts are generally defined as a firm's total income or gross income. SBA's Table of Small Business Size Standards is matched to the NAICS for industries.[199] DHS matched information provided by the sponsors in SEVIS with an appropriate NAICS industry description.

Total J Exchange Visitor Program Sponsors

Overall, DHS identified 1,171 unique entities sponsoring J exchange visitor programs. Of these 1,171 entities, DHS identified 642 small entities that may be affected by the proposed rule. Table 20 shows a summary by sponsor type of the number of J exchange visitor program sponsors and estimated small entities. DHS requests comments on these assumptions, particularly with regard to J exchange visitor program nonprofit sponsors.

TABLE 20—J EXCHANGE VISITOR PROGRAM SPONSORS BY TYPE AND SMALL ENTITY STATUS

Description	Total number of sponsors	Number of affected small entities
U.S. Department of State	1	0
U.S. Agency for International Development (USAID)	1	0
Other U.S. Federal agencies	26	0
International agencies or organizations [1]	1	0
Other national, state, or local government agencies	24	0
National research and development center or laboratory [2]	1	0
Educational institutions [3]	891	447
Hospitals and related institutions	23	22
Nonprofit organizations, associations, etc.[4]	141	141
For-profit organizations [5]	62	32
Total	1,171	642

[1] International agencies or organizations in which the U.S. Government participates.
[2] Federally funded national research and development center or a U.S. Federal laboratory.
[3] Educational institutions, *e.g.*, schools, colleges, universities, seminaries, libraries, museums, and institutions devoted to scientific and technological research.
[4] Nonprofit organizations, associations, foundations, and institutions (academic institutions conducting training programs can be included here, as long as they are considered nonprofit).
[5] For-profit organizations (business and industrial concerns).

4. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement and the Types of Professional Skills Necessary for Preparation of the Report or Record

The proposed rule would increase costs for SEVP-certified schools and J exchange visitor program sponsors because DSOs and ROs would have to spend approximately 40 hours for rule familiarization and adaptation (in the first year only; 8 hours to complete rule familiarization training, 16 hours to create and modify training materials, and 16 hours to adapt to the proposed rule through system wide briefings and systemic changes) and approximately 3 hours per F–1/J–1 program extension request to review the Form I–539 completed by the F–1/J–1 nonimmigrant (1 hour), update the SEVIS record and track program extension requests (1 hour), and advise the F–1/J–1 nonimmigrant about the extension process and the requirements to file an EOS with USCIS (1 hour annually). DHS estimates the annual impact to small SEVP-certified schools and J exchange visitor program sponsors based on the cost of compliance as represented as a percentage of their annual revenue. This analysis examines the impact that the proposed rule would have on small SEVP-certified schools and J exchange visitor program sponsors.

The IRFA evaluates the impacts that have been quantitatively estimated in the regulatory impact analysis. As discussed in the regulatory impact analysis, there are other proposed rule requirements that could impact small SEVP-certified schools and J exchange visitor program sponsors. The regulatory impact analysis qualitatively discusses proposed requirements affecting English language training programs; changes in educational levels; and extensions to employment authorizations. Therefore, the potential impacts of these requirements on small entities is not quantitatively evaluated in this IRFA.

SEVP-Certified Schools Authorized to Enroll F Nonimmigrants

As shown in Table18, DHS estimates that 5,192 SEVP-certified schools that are authorized to enroll F nonimmigrants meet the SBA definition of a small entity, including 4,183 private, nonprofit schools; 570 private schools without a for-profit/nonprofit designation; and 439 for-profit schools. DHS determined a SEVP-certified school's annual revenue by multiplying the average cost per F student by average annual enrollment. DHS acknowledges that this method to estimate revenue may be an incomplete account of a SEVP-certified school's revenue, which may also include contributions from private individuals or other endowments.

[199] U.S. Small Business Administration, Tables of Small Business Size Standards Matched to NAICS Codes (Aug. 19, 2019), available at *https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019_Rev.pdf.*

DHS examined all 5,192 small SEVP-certified schools authorized to enroll F nonimmigrants to estimate the impact of estimated DSO rule familiarization and adaptation costs in the first year of the rule. For this analysis, DHS assumed that each small SEVP-certified school has three DSOs that will incur rule familiarization and adaptation costs. [200] For each DSO, rule familiarization will cost $1,690 (40 hours × $28.93 × 1.46 loaded wage rate factor). in the first year after the rule takes effect. [201] DHS calculated the impact of rule familiarization and adaptation on SEVP-certified schools by dividing the rule familiarization and adaptation costs for three DSOs ($5,069) by each school's estimated annual revenue. For the private, for-profit schools, DHS assessed impacts of the rule familiarization and adaptation costs on the sample of for-profit schools and applied the percentage of schools falling within each impact category to the full universe of small for-profit schools.

Table 21 shows the number of small schools within the range of impact to each school's estimated annual revenue. Of the 5,192 small schools, 5,007, or 96.4 percent, would experience an impact less than or equal to 1 percent of their estimated annual revenue as a result of the rule familiarization and adaptation costs. DHS estimates 118 small schools (2.3 percent) would realize an impact between 1 percent and 2 percent of their estimated annual revenue, 29 small schools (0.6 percent) would realize an impact between 2 percent and 3 percent, and 38 small schools (0.7 percent) would realize an impact greater than or equal to 3 percent.

TABLE 21—IMPACT OF RULE FAMILIARIZATION AND ADAPTATION COSTS FOR SEVP-CERTIFIED SCHOOLS CERTIFIED TO ENROLL F NONIMMIGRANT STUDENTS [1]

Type of school	Rule familiarization and adaptation costs as a percent of annual revenue				Total
	<1%	1%–2%	2%–3%	≥3%	
Private, nonprofit schools	4,048	81	21	33	4,183
Private, unspecified schools	541	21	3	5	570
For-profit schools [2]	418	16	5	0	439
Total Small Schools	5,007	118	29	38	5,192
% of Small Schools	96.4%	2.3%	0.6%	0.7%	100.0%

[1] Values based on the assumption that small entities will have three DSOs that will incur rule familiarization and adaption costs.
[2] DHS assessed impacts of the rule familiarization and adaptation costs on the subsample of for-profit schools and applied the percentage of schools falling within each impact category to the full universe of small for-profit schools.

DHS also examined all 5,192 small SEVP-certified schools to estimate the impact of annual DSO costs for processing program extension requests and updating SEVIS. For this analysis, DHS estimated the number of program extension requests that each school is expected to process by dividing the estimated annual number of F–1 nonimmigrant EOS requests from the full implementation period (249,017; see Table 6) by the total number of SEVP-certified schools, small and large (6,754). This methodology produced an estimated average of 37 annual EOS requests for each school. The DSO cost per EOS request is $127 (3 hours × $28.93 × 1.46 loaded wage rate factor).[202] DHS calculates the impact by dividing the processing costs for 37 EOS requests ($4,670) by each school's estimated annual revenue. For the for-profit schools, DHS assessed impacts of EOS costs on the sample of for-profit schools and applied the percentage of schools falling within each impact category to the full universe of small for-profit schools.

Of the 5,192 small schools, 5,025, or 96.8 percent, would experience an impact less than or equal to 1 percent of their estimated annual revenue. DHS estimates 108 small schools (2.1 percent) would realize an impact between 1 percent and 2 percent of their estimated annual revenue, 27 small schools (0.5 percent) would realize an impact between 2 percent and 3 percent, and 32 small schools (0.6 percent) would realize an impact greater than or equal to 3 percent. Table 22 shows the number of small schools within the range of impact to each school's estimated annual revenue.

TABLE 22—IMPACT OF EOS COSTS FOR SEVP-CERTIFIED SCHOOLS [1]

Type of school	EOS costs as a percent of annual revenue				Total
	<1%	1%–2%	2%–3%	≥ 3%	
Private, nonprofit schools	4,062	75	17	29	4,183
Private, unspecified schools	545	17	5	3	570
Por-profit schools [2]	418	16	5	0	439
Total Small Schools	5,025	108	27	32	5,192
% Small Schools	96.8%	2.1%	0.5%	0.6%	100.0%

[1] Values based on the assumption that each small entity will process 37 EOS requests annually.
[2] DHS assessed impacts of the EOS costs on the subsample of for-profit schools and applied the percentage of schools falling within each impact category to the full universe of small for-profit schools.

[200] DHS estimated costs assuming that each small SEVP-certified school has one, three, and five DSOs. DHS presented the estimates for three DSOs as a midpoint value. The actual number of DSOs may vary by small SEVP-certified school. DHS welcomes public comment on the average number of DSOs at small SEVP-certified schools.

[201] See Section V.A of the NPRM for a detailed discussion of DSO and RO Rule Familiarization and Adaptation Costs.

[202] See Section V.A of the NPRM for a detailed discussion of DSO and RO Rule Familiarization and Adaptation Costs.

DHS recognizes that the 37 annual EOS requests assumption for each SEVP-certified school may overestimate the costs for schools with low average annual enrollment. As shown in Table 23, approximately 72 percent of the small schools identified as having EOS processing cost impacts greater than or equal to 3 percent of annual school revenue have 37 or fewer students enrolled on average, implying that the analysis may be overestimating the number of schools with impacts greater than 3 percent.[203]

TABLE 23—SMALL ENTITY SEVP-CERTIFIED SCHOOLS CERTIFIED TO ENROLL F NONIMMIGRANTS WITH EOS IMPACTS GREATER THAN OR EQUAL TO 3 PERCENT OF SCHOOL EARNINGS AND ENROLLMENT OF 37 OR FEWER STUDENTS [1]

Type of school	Number of schools with enrollment at or under 37 students and impacts ≥3%	Number of schools with impacts ≥3%	Percent of schools with impacts ≥3% and enrollment at or under 37 students
Private, nonprofit schools	20	29	69.0%
Private, unspecified schools	3	3	100.0%
For profit schools [2]	0	0	
Total Small Schools	23	32	71.9%

[1] Impact percentage based on the assumption that each small entity will process 37 EOS requests annually.
[2] DHS assessed impacts of the EOS costs on the subsample of for-profit schools and applied the percentage of schools falling within each impact category to the full universe of small for-profit schools.

J Exchange Visitor Program Sponsors

As shown in Table 20, 642 J exchange visitor program sponsors meet the SBA definition of a small entity. Because reliable financial information is not available for all J sponsors, DHS did not assess impacts of the proposed rule for each small J exchange visitor program sponsor. Instead, DHS determined the minimum earnings required for proposed rule costs to equal 1 percent, 2 percent, and 3 percent of J sponsor revenue. For this analysis, DHS assumed that each small J exchange visitor program sponsor will have three ROs that will incur rule familiarization and adaptation costs in the first year.[204] To assess the annual impacts of costs for processing program extension requests and updating SEVIS, DHS estimated the number of program extension requests that each J exchange visitor program sponsor is expected to process by dividing the estimated annual number of J–1 nonimmigrant EOS requests from the full implementation period (11,565; see Table 6) by the total number of J exchange visitor program sponsors, small and large (1,171). This methodology produced an estimated average of 10 annual EOS requests for each J sponsor. DHS recognizes that small entities will likely process fewer EOS requests than the average but does not have more detailed data on the EOS requests by entity. DHS also recognizes potential non-quantifiable risks of reduced enrollment in J exchange visitor programs that can lead to revenue reductions.

Table 24 provides the minimum annual earnings required for proposed rule costs to equal 1 percent, 2 percent, and 3 percent of J exchange visitor program visitor sponsor revenue. The impact of the RO rule familiarization and adaptation costs of the proposed rule ($5,069) will not exceed 1 percent of sponsor earnings if earnings are at least $506,854. If J exchange visitor program sponsors earnings are at least $168,951 or $253,427, the rule familiarization and adaption costs of the proposed rule will not exceed 3 percent or 2 percent, respectively, of sponsor earnings. DHS anticipates that the majority of small J sponsors will have earnings that exceed these thresholds. DHS requests comments on the availability of earnings data for J exchange visitor program sponsors in order to refine this analysis.

The impact of the costs for processing program extension requests and updating SEVIS (10 EOS requests; $1,251) will not exceed 1 percent of sponsor earnings if earnings are at least $125,144. If J exchange visitor program sponsor earnings are at least $41,715 or $62,572, the EOS request processing costs of the proposed rule will not exceed 3 percent or 2 percent, respectively, of sponsor earnings. DHS anticipates that the majority of small J sponsors will have earnings that exceed these thresholds. DHS requests comments on the availability of earnings data for J exchange visitor program sponsors in order to refine this analysis.

TABLE 24—MINIMUM J EXCHANGE VISITOR PROGRAM SPONSOR EARNINGS FOR PROPOSED RULE COSTS TO EQUAL 1 PERCENT, 2 PERCENT, OR 3 PERCENT OF SPONSOR REVENUE (2018$)

Minimum annual earnings	Percent of annual revenue		
	1%	2%	3%
Rule Familiarization and Adaptation Costs (first year only) [1]	$506,854	$253,427	$168,951
EOS Costs (annual) [2]	125,144	62,572	41,715

[1] Values based on the assumption that small entities will have 3 ROs that will incur rule familiarization/adaptation costs.
[2] Values based on the assumption that each small entity will process 10 EOS requests annually.

[203] Schools with 37 or fewer students include religious institutions, Montessori schools, schools for students with disabilities, specialty graduate schools, and boarding schools.

[204] DHS estimated costs assuming that each small J exchange visitor program sponsor has one, three, and five ROs. DHS presented the estimates for three ROs as a midpoint value. The actual number of ROs may vary by small J exchange visitor program sponsor. DHS welcomes public comment on the average number of ROs at small J exchange visitor program sponsors.

5. An Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

Department of State Exchange Visitor Program regulations would need to be updated to inform the sponsor community of this new EOS procedure. The regulations at 22 CFR part 62.43 describe the procedures for J–1 program extensions. These regulations may need to be updated to reference the changes made in this proposed rule, whereby a J–1 must file for an extension of stay with USCIS in order to remain in the United States beyond the status expiration date on their I–94, or depart the United States and seek admission as a J–1 nonimmigrant at a port of entry, in addition to securing a program extension from the Responsible Officer or from the Department of State, as required by the current regulations.''

6. A Description of Any Significant Alternatives to the Proposed Rule Which Accomplish the Stated Objectives of Applicable Statutes and Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

DHS first considered a ''no action'' alternative, under which DHS would continue admitting nonimmigrants with F, I, and J status without an end date for their authorized periods of stay. DHS determined that this alternative would not adequately provide immigration officers with an opportunity to evaluate an alien's maintenance of status at pre-determined points, nor would it enable immigration officers an opportunity to assess whether an alien is accruing unlawful presence, and the 'no action' alternative would do nothing to address the fraud and abuse currently present in these categories.

Another alternative DHS considered was to admit F and J nonimmigrants to their program end date, not to exceed 3 years (or 1 year for nonimmigrants meeting certain conditions). While such an option would provide the Department with more frequent direct evaluations of nonimmigrants than a 4-year maximum period of admission (or 2-year maximum for nonimmigrants meeting certain conditions), DHS was concerned it would be unduly burdensome on many F and J nonimmigrants. DHS believes that a period of admission for up to 4 years best aligns with the normal progress for most programs. A 3-year maximum period of stay would require almost every nonimmigrant enrolled in a 4-year program to apply for an EOS and would result in greater administrative burdens on USCIS and CBP compared to the proposed 4-year maximum period of admission. Specifically, USCIS would have to adjudicate extension of stay applications with more frequency if a 3-year maximum period of stay is chosen over a 4-year one. Similarly, CBP would have to process applications for admission at POEs more frequently under the 3-year maximum period of stay alternative. Therefore, DHS believes an admission for the program end date, not to exceed 4 years (except for limited exceptions that would limit admissions to 2 years) is the best option and welcomes comments on this proposal.

DHS also considered a standard 1-year fixed admission period for all F and J nonimmigrants. This option would treat all nonimmigrants with F and J status equally and would likely allow for easier implementation by CBP at the POEs. Nevertheless, it could result in significant costs to nonimmigrants and the Department. There are more than 1 million F students who are enrolled in programs of study that last longer than 1 year. With a 1-year admission period, DHS expects that all of them would be required to apply for additional time. This could be a significant cost to students and exchange visitors, especially those who comply with the terms and conditions of their admission and those attending undergraduate programs that typically require 4 years to complete. Further, such a short admission period could have unintended consequences. If USCIS's EOS processing time is significantly lengthened due to a 1-year admission period, cases presenting national security or fraud concerns would not necessarily be prioritized, thereby allowing a mala fide student or exchange visitor to remain in the United States until USCIS adjudicated his or her petition.

DHS requests comment on the impacts on small entities. Members of the public should submit a comment, as described in this proposed rule under Public Participation, if they think that their business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it. It would be helpful if commenters provide DHS with as much information as possible as to why this proposed rule would create an impact on small businesses. Commenters should also describe any recommended alternative measures that would mitigate the impact on small businesses.

C. Small Business Regulatory Enforcement Fairness Act of 1996

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult ICE using the contact information provided in the **FOR FURTHER INFORMATION CONTACT** section above.

D. Congressional Review Act

This proposed rule is a major rule as defined by 5 U.S.C. 804, also known as the ''Congressional Review Act,'' as enacted in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, 110 Stat. 847, 868 *et seq.* Accordingly, this rule, if enacted as a final rule, would be effective at least 60 days after the date on which Congress receives a report submitted by DHS under the Congressional Review Act, or 60 days after the final rule's publication, whichever is later.

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 year. Though this proposed rule would not result in such an expenditure, DHS does discuss the effects of this rule elsewhere in this preamble.

F. Paperwork Reduction Act—Collection of Information

Under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (1995) (PRA), all Departments are required to submit to OMB, for review and approval, any reporting or recordkeeping requirements inherent in a rule. DHS, USCIS and ICE are revising one information collection and proposing non-substantive edits to one information collection in association with this rulemaking action:

I–539 and I–539A

DHS, USCIS and ICE 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 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 and I–539A; 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 318,421 and the estimated hour burden per response is 2.38 hours; the estimated total number of respondents for the information collection Form I–539 (e-file) is 136,466 and the estimated hour burden per response is 1.083 hours; the estimated total number of respondents for the information collection Supplement A is 83,712 and the estimated hour burden per response is .50 hours; the estimated total number of respondents for biometrics processing is 538,599 and the estimated hour burden per response is 1.17 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 in hours is 1,577,242.

(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 $105,461,002.

USCIS Form I–765 and I–756 WS

Under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–12, DHS must submit to OMB, for review and approval, any reporting requirements inherent in a rule unless they are exempt. Although this rule does not impose any new reporting or recordkeeping requirements under the PRA for this information collection, this rule will require non-substantive edits to USCIS Form I–765, Application for Employment Authorization. Accordingly, USCIS has submitted a Paperwork Reduction Act Change Worksheet, Form OMB 83–C, and amended information collection instruments to OMB for review and approval in accordance with the PRA.

G. Executive Order 13132: Federalism

This proposed rule would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. DHS does not expect that this proposed rule would impose substantial direct compliance costs on State and local governments, or preempt State law even though schools, colleges, and universities may choose to enroll in E-Verify to permit their students a longer initial period of admission. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

H. Executive Order 12988: Civil Justice Reform

This proposed rule meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, *Civil Justice Reform,* to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

DHS has analyzed this proposed rule under Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.* DHS has determined that it is not a ''significant energy action'' under that order because it is a ''significant regulatory action'' under Executive Order 12866 but is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

J. National Environmental Policy Act (NEPA)

DHS Management Directive (MD) 023–01 Rev. 01 and Instruction Manual (IM) 023–01–001–01 Rev. 01 establish the policy and procedures that DHS and its Components use to implement the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4375, and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500 through 1508.

The CEQ regulations enable federal agencies to establish categories of actions that 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 1508.4. DHS's Categorical Exclusions are listed in IM 023–01–001–01 Rev. 01, Appendix A, Table 1.

For an action to be categorically excluded, the action must satisfy each of the following three conditions:

1. The entire action clearly fits within one or more of the Categorical Exclusions;

2. The action is not a piece of a larger action; and

3. No extraordinary circumstances exist that create the potential for a significant environmental effect. IM 023–01–001–01 Rev. 01 sec. V(B)(2)(a)–(c).

If the proposed action does not clearly meet all three conditions, DHS or the Component prepares an Environmental

Assessment or Environmental Impact Statement, according to CEQ requirements and MD 023–01 Rev. 01 and IM 023–01–001–01 Rev. 01.

DHS proposes to amend its regulations to eliminate the practice of admitting F–1 nonimmigrant students, I nonimmigrant representatives of information media, and J–1 exchange visitors (and F–2/J–2 family members) for D/S. The proposed rule would provide for nonimmigrants seeking entry under F, I, or J visas to be admitted for the period required to complete their academic program, foreign information media employment, or exchange visitor program, not to exceed the periods of time defined in this proposed rule. The proposed rule would also require nonimmigrants seeking to continue their studies, foreign information media employment, or exchange visitor program beyond the admission period granted at entry to apply for extension. DHS has analyzed this proposed rule under MD 023–01 Rev. 01 and IM 023–01–001–01 Rev. 01. DHS has determined that this proposed rulemaking 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 completely fits within the Categorical Exclusion found in IM 023–01–001–01 Rev. 01, Appendix A, Table 1, number A3(d): ''Promulgation of rules. that interpret or amend an existing regulation without changing its environmental effect.'' This proposed rule is not part of a larger action. This proposed rule presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, this proposed rule is categorically excluded from further NEPA review.

DHS seeks any comments or information that may lead to the discovery of any significant environmental effects from this proposed rule.

K. Executive Order 13175: Indian Tribal Governments

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.

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

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights.*

M. 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 proposed rule and determined that this rule is not an economically significant rule and 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.

N. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impracticable. 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 standards bodies. This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

O. Family Assessment

DHS has determined that this proposed action will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

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 214

Administrative practice and procedure, Aliens, Cultural exchange programs, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 248

Administrative practice and procedure, Aliens, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

Regulatory Amendments

Accordingly, DHS proposes to amend parts 214, 248, and 274a of chapter I, subchapter B, of title 8 of the Code of Federal Regulations as follows:

PART 214—NONIMMIGRANT CLASSES

■ 1. The authority citation for part 214 continues to read as follows:

Authority: 6 U.S.C. 202, 236; 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305, 1356, and 1372; section 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2; Pub. L. 115–218.

■ 2. Section 214.1 is amended by:
■ a. Adding paragraph (a)(4);
■ b. Revising paragraphs (b) introductory text, (b)(1) introductory text, (b)(2) introductory text, and (b)(3) introductory text;
■ c. Removing paragraph (b)(4);
■ d. Revising paragraphs (c)(2), (c)(3)(v), and (c)(5); and
■ e. Adding paragraphs (c)(6) and (m).

The additions and revisions read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

(a) * * *

(4) *Requirements for admission of aliens under section 101(a)(15)(F) and (J).* Aliens applying for admission as F or J nonimmigrants after [EFFECTIVE DATE OF FINAL RULE] will be

inspected and may be admitted into the United States, if in possession of a valid Form I–20 or Form DS–2019, or successor form, and otherwise eligible, and subject to the following:

(i) *Aliens applying for admission as F nonimmigrants.* (A) Aliens seeking admission to the United States, including those seeking admission with a properly filed, pending application for an extension of stay as an F nonimmigrant after a previously authorized period of admission as an F nonimmigrant expired, may be admitted for the period specified in 8 CFR 214.2(f)(5);

(B) Aliens seeking admission to the United States as an F nonimmigrant with a properly filed pending application for extension of stay as an F nonimmigrant may, if they have time remaining on the period of stay authorized prior to departure, be admitted for a period up to the unexpired period of stay authorized prior to the alien's departure, plus an additional 30 days as provided in 8 CFR 214.2(f)(5)(iv), subject to the requirements in paragraph (c)(6) of this section, or if the alien seeks admission with a Form I–20 for a program end date beyond their previously authorized period of admission, the alien may be admitted for the period specified in 8 CFR 214.2(f)(5), subject to the requirements in paragraph (c)(6) of this section;

(C) Aliens seeking admission to the United States as an F nonimmigrant with an approved extension of stay for F nonimmigrant status may be admitted until the expiration of the approved extension of stay, plus an additional 30 days, as provided in 8 CFR 214.2(f)(5)(iv);

(D) Post-completion Optional Practical Training (OPT) and Science Technology Engineering and Mathematics OPT extension (STEM OPT extension). Aliens seeking admission to the United States as an F nonimmigrant to pursue post-completion OPT or a STEM OPT extension may be admitted until the end date of the approved employment authorization for post-completion OPT or STEM OPT, or if the Application for Employment Authorization, Form I–765 or successor form for post-completion or STEM OPT is still pending with USCIS, as evidenced by a notice issued by USCIS indicating receipt of such application, until the Designated School Official's recommended employment end date for post-completion or STEM OPT specified on the Form I–20, subject to the requirements in paragraphs (c)(6) of this section and 8 CFR 274a.12(b)(6)(iv), plus a 30-day period as provided in 8 CFR 214.2(f)(5)(iv).

(ii) *Aliens applying for admission as J nonimmigrants.* (A) Aliens seeking admission to the United States, including those seeking admission with a properly filed, pending application for an extension of stay as a J nonimmigrant after a previously authorized period of admission as a J nonimmigrant expired, may be admitted for the period specified in 8 CFR 214.2(j)(1);

(B) Aliens seeking admission to the United States as a J nonimmigrant with a properly filed pending extension of stay as a J nonimmigrant may, if they have time remaining on the period of stay authorized prior to departure, be admitted for a period up to the unexpired period of stay authorized prior to the alien's departure, plus an additional 30 days as provided in 8 CFR 214.2(j)(1)(ii)(C), subject to the requirements in paragraph (c)(6) of this section, provided that if the alien seeks admission with a Form DS–2019 for a program end date beyond his or her previously authorized period of admission, the alien may be admitted for the period specified in 8 CFR 214.2(j)(1), subject to the requirements in paragraph (c)(6) of this section;

(C) Aliens seeking admission to the United States as a J nonimmigrant with an approved extension of stay in J nonimmigrant status may be admitted up to the expiration of the approved extension of stay, plus an additional 30 days as provided in 8 CFR 214.2(j)(1)(ii)(C).

(b) Readmission of nonimmigrants under section 101(a)(15) (F), (J), or (M) whose visa validity is considered automatically extended] to complete unexpired periods of previous admission or extension of stay—

(1) *Section 101(a)(15)(F).* The inspecting immigration officer may readmit up to the unexpired period of stay authorized prior to the alien's departure, any nonimmigrant alien whose nonimmigrant visa validity is considered automatically extended pursuant to 22 CFR 41.112(d) and who is applying for admission under section 101(a)(15)(F) of the Act, if the alien:

* * * * *

(2) *Section 101(a)(15)(J).* The inspecting immigration officer may readmit up to the unexpired period of stay authorized prior to the alien's departure, any nonimmigrant alien whose nonimmigrant visa validity is considered automatically extended pursuant to 22 CFR 41.112(d) and who is applying for admission under section 101(a)(15)(J) of the Act, if the alien:

* * * * *

(3) *Section 101(a)(15)(M).* The inspecting immigration officer may readmit for the unexpired period of stay authorized prior to the alien's departure, any nonimmigrant alien whose nonimmigrant visa validity is considered automatically extended pursuant to 22 CFR 41.112(d) and who is applying for admission under section 101(a)(15)(M) of the Act, if the alien:

* * * * *

(c) * * *

(2) *Filing for an extension of stay.* Any other nonimmigrant who seeks to extend his or her stay beyond the currently authorized period of admission, must apply for an extension of stay by filing an extension request in the manner and on the form prescribed by USCIS, together with the required fees and all initial evidence specified in the applicable provisions of 8 CFR 214.2, and in the form instructions, including the submission of any biometrics required by 8 CFR 103.16. More than one person may be included in an application if the co-applicants are all members of a single-family group and either all hold the same nonimmigrant status or one holds a nonimmigrant status and the other co-applicants are his or her spouse and/or children who hold derivative nonimmigrant status based on his or her status. Extensions granted to members of a family group must be for the same period of time. The shortest period granted to any member of the family will be granted to all members of the family. In order to be eligible for an extension of stay, nonimmigrant aliens in K–3/K–4 status must do so in accordance with 8 CFR 214.2(k)(10).

(3) * * *

(v) Any nonimmigrant admitted for duration of status.

* * * * *

(5) *Decisions for extension of stay applications.* Where an applicant or petitioner demonstrates eligibility for a requested extension, it may be granted at USCIS's discretion. The denial of an application for extension of stay may not be appealed.

(6) *Abandonment of extension of stay and pending employment authorization applications for F, I, and J nonimmigrant aliens.* (i) If an alien in F, I, or J nonimmigrant status timely files an application for an extension of stay, USCIS will not consider the application abandoned if the alien departs the United States while the application is pending, provided that when the alien seeks admission, the previously authorized period of admission has not expired and the alien seeks admission

for the balance of the previously authorized admission period.

(ii) An application for extension of stay in F, I, or J nonimmigrant status is abandoned if an alien departs the United States while the application is pending and seeks admission with a Form I–20 or DS–2019 for a program end date beyond their previously authorized period of admission. USCIS will not consider as abandoned any corresponding applications for employment authorization.

* * * * *

(m) *Transition period from duration of status to a fixed admission date*—(1) *Transition from D/S admission to a fixed admission period for aliens properly maintaining F and J status on [EFFECTIVE DATE OF FINAL RULE].* Aliens with F or J status who are properly maintaining their status on [EFFECTIVE DATE OF FINAL RULE] with admission for duration of status are authorized to remain in the United States in F or J nonimmigrant status until the later date of either the expiration date on an Employment Authorization Document (Form I–766, or successor form), or the program end date noted on their Form I–20 or Form DS–2019, as applicable, not to exceed a period of 4 years from [EFFECTIVE DATE OF FINAL RULE], plus the departure period of 60 days for F nonimmigrants and 30 days for J nonimmigrants. Any authorized employment or training continues until the program end date on such F or J nonimmigrant's Form I–20 or DS–2019, as applicable and as endorsed by the DSO or RO for employment or training, or expiration date on Employment Authorization Document (Form I–766, or successor form). Aliens who need additional time to complete their current course of study, including requests for post-completion OPT or STEM OPT, or exchange visitor program, or would like to start a new course of study or exchange visitor program must apply for an extension of stay with USCIS in accordance with paragraph (c)(2) of this section for an admission period to a fixed date.

(2) *Pending employment authorization applications with USCIS on [EFFECTIVE DATE OF FINAL RULE] filed by aliens with F–1 status.* F–1 aliens described in paragraph (m)(1) of this section who have timely and properly filed applications for employment authorization pending with USCIS on [EFFECTIVE DATE OF FINAL RULE] do not have to file for an extension or re-file such applications for employment authorization, unless otherwise requested by USCIS.

(i) If the F–1's application for post-completion OPT or STEM–OPT employment authorization is approved, the F–1 will be authorized to remain in the United States in F status until the expiration date of the employment authorization document, plus 60-days. If the employment authorization application is denied, the F–1 would continue to be authorized to remain in the United States until the program end date listed on their Form I–20, plus 60 days, as long as he or she continues to pursue a full course of study and otherwise meets the requirements for F–1 status.

(ii) Aliens in F–1 status with pending employment authorization applications, other than post-completion OPT and STEM–OPT, who continue to pursue a full course of study and otherwise meet the requirements for F–1 status, continue to be authorized to remain in the United States until the program end date listed on the Form I–20, plus 60 days, regardless of whether the employment authorization application is approved or denied.

(3) *Transition from D/S admission to a fixed admission period for aliens with I status present in the U.S. on [EFFECTIVE DATE OF FINAL RULE].* Except for those aliens described in 8 CFR 214.2(i)(3)(ii), aliens in I nonimmigrant status who are properly maintaining their status on [EFFECTIVE DATE OF FINAL RULE] with admission for duration of status are authorized to remain in the United States in I nonimmigrant status for a period necessary to complete their activity, not to exceed [DATE 240 DAYS AFTER EFFECTIVE DATE OF FINAL RULE] with the exception of aliens in I nonimmigrant status presenting passports issued by the Hong Kong Special Administrative Region, who are authorized to remain in the United States in I nonimmigrant status for a period necessary to complete their activity, not to exceed [DATE 90 DAYS AFTER EFFECTIVE DATE OF FINAL RULE]. Aliens who need additional time to complete their employment must apply for an extension of stay with USCIS in accordance with paragraph (c)(2) of this section for an admission period to a fixed date.

(4) *Severability.* The provisions in 8 CFR 214.1(m) are intended to be independent severable parts. In the event that any provision in this paragraph is not implemented, DHS intends that the remaining provisions be implemented as an independent rule.

■ 3. Section § 214.2 is amended by:

■ a. Revising the paragraph (f)(5) subject heading and paragraphs (f)(5)(i), (ii), (iv), and (vi);

■ b. Adding paragraph (f)(5)(vii);

■ c. Revising the paragraph (f)(7) subject heading and paragraphs (f)(7)(i), (iii), and (iv);

■ d. Adding paragraphs (f)(7)(v) through (viii);

■ e. Revising paragraph (f)(8);

■ f. Revising paragraphs (f)(9)(i), (f)(10)(i), (f)(10)(ii)(D), and (f)(11)(i);

■ g. Removing and reserving paragraph (f)(13);

■ h. Revising paragraph (f)(18)(iii);

■ i. Adding paragraphs (f)(20) and (21);

■ j. Revising paragraph (i), the paragraph (j) subject heading, and paragraphs (j)(1)(ii), (iv), (v), (vi), (vii), and (viii); and

■ k. Adding paragraphs (j)(1)(ix) and (j)(6) and (7).

The revisions and additions read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(f) * * *

(5) *Authorized admission periods*—(i) *General.* If eligible for admission as described in paragraph (f)(1)(i) of this section, aliens seeking F–1 status may be granted such nonimmigrant status for up to the length of their program (including any period of authorized practical training time following the completion of studies to engage in post-completion optional practical training (OPT) and Science Technology Engineering and Mathematics Optional Practical Training (STEM OPT) extensions) listed on the Form I–20, not to exceed a period of 4 years, plus a period up to 30 days before the indicated report date or program start date listed on Form I–20 and an additional 30 days at the end of the program, as provided in paragraph (f)(5)(iv) of this section, subject to the following exceptions:

(A) Aliens subject to the limitations described in paragraph (f)(20) of this section may be admitted for the applicable period under that paragraph.

(B) Aliens whose course of study is in a language training program are restricted to an aggregate total of 24 months of language study, including any school breaks and annual vacations.

(C) Aliens who are granted F–1 status as border commuter students under the provisions in paragraph (f)(18) of this section may be admitted for the applicable period described under that paragraph.

(D) Aliens who are granted F–1 status to attend a public high school are restricted to an aggregate of no more than 12 months to complete their course of study, including any school breaks and annual vacations.

(E) Aliens with pending employment authorization applications who are admitted based on the DSO's recommended employment end date for post-completion OPT or STEM OPT specified on their Form I–20, with a notice issued by USCIS indicating receipt of the Application for Employment Authorization, Form I–765 or successor form for post-completion or STEM OPT, who cease employment pursuant to an employment authorization document (EAD) that expires before the alien's fixed date of admission as noted on their I–94, will be considered to be in the United States in a period of authorized stay from the date of the expiration noted on their EAD until the fixed date of admission as noted on their I–94.

(F) The authorized period of stay for F–2 dependents may not exceed the authorized period of stay of the principal F–1 alien.

(ii) *Change of educational levels while in F–1 status.* (A) An alien in F–1 status who has completed a program in the United States at one educational level and begins a new program at the next highest educational level is considered to be maintaining F–1 status if otherwise complying with requirements under this paragraph (f).

(B) An alien in F–1 status who has completed a program in the United States at one educational level and begins a new program at the same educational level, up to, but not more than two additional times, is considered to be maintaining F–1 status if otherwise complying with requirements under this paragraph (f). This two-time limit on beginning additional programs after completion of a program in the United States at the same educational level is a lifetime limit and does not reset with a new admission as an F–1.

(C) An alien in F–1 status who has completed a program in the United States at one educational level and begins a new program at a lower educational level is considered to be maintaining F–1 status only in the first instance of such a change, and if the alien is otherwise complying with the requirements under this paragraph (f). The one-time limit on changing to a lower educational level following completion of a program at a higher level is a lifetime restriction and does not reset with a new admission as an F–1.

(D) When seeking a change in educational levels, aliens in F–1 status referenced in paragraphs (f)(5)(ii)(A) through (C) of this section must, if seeking an extension of stay, apply for an extension of stay on the form designated by USCIS, with the required fee and in accordance with the form instructions, including any biometrics required by 8 CFR 103.16.

(E) DHS may delay or suspend the implementation of paragraphs (f)(5)(ii)(A) through (C) of this section, in its discretion, if it determines that implementation is infeasible for any reason. If DHS delays or suspends any provisions in paragraphs (f)(5)(ii)(A) through (C) governing the change in degree level, DHS will make an announcement of the delay or suspension on SEVP's website at *https://www.studyinthestates.dhs.gov* (or successor uniform resource locator). DHS thereafter will announce the implementation dates of change in degree level provision on the SEVP website at *https://www.studyinthestates.dhs.gov* (or successor uniform resource locator), at least 30 calendar days in advance.

* * * * *

(iv) *Period of preparation for departure or to otherwise maintain status.* An alien in F–1 status who has completed a course of study or any authorized practical training following completion of studies will be allowed a 30-day period from the Form I–94 (or successor form) end date or the expiration date noted on the Employment Authorization Document (Form I–766 or successor form), as applicable, to prepare for departure from the United States, or to otherwise maintain status, including timely filing an extension of stay application in accordance with paragraph (f)(7) of this section and § 214.1 or timely filing a change of status application in accordance with 8 CFR 248.1(a). An alien authorized by the DSO to withdraw from classes will be allowed a 15-day period from the date of the withdrawal to depart the United States. An alien admitted in F–1 status who fails to maintain a full course of study without the approval of the DSO or otherwise fails to maintain status is not eligible for any additional period of time for departure.

* * * * *

(vi) *Extension of F–1 stay and grant of employment authorization for aliens who are the beneficiaries of an H–1B petition.* (A) The lawful nonimmigrant status and any employment authorization granted under 8 CFR 274a.12(c)(3)(i)(B) or (C) of an alien in F–1 status who is the beneficiary of an H–1B petition, subject to section 214(g)(1)(A) of the Act, as well as those eligible for exemption under section 214(g)(5)(C) of the Act, will be extended automatically until April 1 of the fiscal year for which the H–1B status is requested, where such petition:

(*1*) Has been timely filed;

(*2*) Requests a change of status; and

(*3*) Requests an H–1B employment start date of October 1 of the fiscal year for which the H–1B status is requested.

(B) The automatic extension of the alien's F–1 nonimmigrant status and employment authorization under paragraph (f)(5)(vi)(A) of this section will automatically terminate upon the rejection, denial, revocation, or withdrawal of the H–1B petition filed on such alien's behalf; upon the withdrawal or denial of the request for change of nonimmigrant status, even if the H–1B petition filed on the alien's behalf is approved for consular processing; or, if USCIS approves the H–1B petition and associated change of status request, and the change of status will take effect prior to April 1 of the fiscal year for which H–1B status was requested, upon the date that the change of status takes effect.

(C) In order to obtain the automatic extension of stay and employment authorization under this paragraph, the alien, consistent with 8 CFR 248, must not have violated the terms or conditions of his or her F–1 status.

(D) The automatic extension of F–1 status under this paragraph (f)(5)(vi) also applies to an F–2 dependent spouse and child(ren) who timely files a change of status application from an F–2 to an H–4 nonimmigrant. The automatic extension for these dependents ends upon termination of the F–1 nonimmigrant's automatic extension. The timely filing of such change of status application does not authorize employment for the F–2 dependents.

(vii) *F status and employment authorization while extension of stay and employment authorization applications are pending.* An F alien whose status as indicated on the Arrival-Departure Record (Form I–94 or successor form) has expired will be considered to be in a period of authorized stay if he or she has timely filed an extension of stay application pursuant to paragraph (f)(7) of this section until USCIS issues a decision on the extension of stay application. Subject to paragraphs (f)(9)(i) and (ii) of this section and 8 CFR 274a.12(b)(6)(i) and 8 CFR 274a.12(c)(3)(iii), any F–1 alien's current on-campus and severe economic hardship employment authorization is automatically extended during the pendency of the extension of stay application, but such automatic extension may not exceed 180 days beginning from the end date of his or her period of admission as indicated on the alien's Arrival-Departure Record

(Form I–94 or successor form). However, severe economic hardship employment authorization resulting from emergent circumstances under paragraph (f)(5)(v) of this section is automatically extended for up to 180 days or until the end date stated in the **Federal Register** notice announcing the suspension of certain requirements, whichever is earlier. If an F–1 alien files an extension of stay application during the 30-day period provided in paragraph (f)(5)(iv) of this section, he or she does not receive an automatic extension of employment authorization, including on-campus and severe economic hardship, and must wait for approval of the extension of stay application (and employment authorization application, if required) before engaging in employment. For purposes of employment eligibility verification (Form I–9) under 8 CFR 274a.2(b)(1)(v), for on-campus employment and severe economic hardship employment authorization resulting from emergent circumstances under paragraph (f)(5)(v) of this section, the alien's Form I–94 (or successor form) or Employment Authorization Document (Form I–766, or successor form) based on severe economic hardship, when combined with a notice issued by USCIS indicating receipt of a timely filed extension of stay application, is considered unexpired for 180 days or until USCIS issues a decision on the extension of stay application, or for severe economic hardship employment based on emergent circumstances, the end date stated in the **Federal Register** notice announcing suspension of certain requirements, whichever is less.

* * * * *

(7) *Extension of stay applications*—(i) *General.* A program end date as indicated on Form I–20, or successor form, standing alone, does not allow aliens with F status to remain in the United States in lawful status. Aliens in F–1 status must apply for an extension of stay to receive an additional admission period as stated on Form I–94, or successor form, if needed to complete the course of study, engage in optional practical training pursuant to paragraph (f)(10)(ii) of this section, or to start a new program through the new program end date indicated on Form I–20, or successor form. If a DSO extends an alien's program end date for any reason, the alien must apply to USCIS for an extension of stay.

* * * * *

(iii) *Extension of current program and extension of F–1 status*—(A) *Failure to meet program end date.* USCIS may grant an extension of stay to an alien who has maintained his or her F–1 status, but who is unable to meet the program end date on the Form I–20. Such aliens may be eligible for an extension if the DSO issues a new Form I–20, indicating that the alien:

(*1*) Has continually maintained lawful status;

(*2*) Is currently pursuing a full course of study; and

(*3*) Maintains documentation that the request is based on one of the reasons described in paragraph (f)(7)(iii)(B) of this section;

(B) *Required evidence.* In such cases where the alien fails to meet the program end date on the Form I–20, he or she must establish to the satisfaction of USCIS that the delays in completing the program within the time noted on the previous Form I–20, or successor form, are caused by:

(*1*) Compelling academic reasons, such as inability to take the required classes in his or her major due to over-enrollment, changes of major or research topics, or unexpected research problems. Unexpected research problems are those caused by an unexpected change in faculty advisor, need to refine investigatory topic based on initial research, research funding delays, and similar issues. Delays including, but not limited to those caused by academic probation or suspension, or where a student whose pattern of behavior demonstrates a repeated inability or unwillingness to complete his or her course of study, such as failing classes, are not acceptable reasons for extensions of a current program and corresponding extension of stay;

(*2*) A documented illness or medical condition. A documented illness or medical condition is a compelling medical reason, such as a serious injury, that is supported by medical documentation from a licensed medical doctor, doctor of osteopathy, or licensed clinical psychologist; or

(*3*) Circumstances beyond the student's control, including a natural disaster, national health crisis, or the closure of an institution.

(C) *Timely requested extension of current program end date and extension of F–1 status.* To obtain a new program end date reflected on an updated Form I–20, or successor form, aliens must request their DSO to make such a recommendation through SEVIS. The DSO may recommend an extension of the program end date in SEVIS only if the alien requested the recommendation before the program end date noted on the most recent Form I–20, or successor form. If the DSO recommends an extension of the program end date, then the applicant must timely file for an extension of stay on the form and in the manner designated by USCIS, with the required fees and in accordance with the filing instructions, including any biometrics required by 8 CFR 103.16 and a valid, properly endorsed Form I–20 or successor form, showing the new program end date. If seeking an extension of stay to engage in any type of practical training, the alien in F–1 status also must have a valid, properly endorsed Form I–20 and be eligible to receive the specific type of practical training requested. The alien in F–1 status must be maintaining his or her status and must not have engaged in any unauthorized employment.

(D) *Late requests of extension of current program end date.* If the DSO enters an extension of the program end date in SEVIS after the end date noted on the most recent Form I–20 or successor form, the alien must file a request for reinstatement of F–1 status in the manner and on the form designated by USCIS, with the required fee, including any biometrics required by 8 CFR 103.16. F–2 dependents seeking to accompany the F–1 principal student must file applications for an extension of stay or reinstatement, as applicable.

(iv) *Form.* To request an extension of stay, applicants must file an extension of stay application on the form and in the manner designated by USCIS, including submitting the updated, properly endorsed Form I–20 or successor form, submitting evidence of sufficient funds to cover expenses, appearing for any biometrics collection required by 8 CFR 103.16, and remitting the appropriate fee.

(v) *Timely filing.* An extension of stay application is considered timely filed if the receipt date, pursuant to 8 CFR 103.2(a)(7), is on or before the date the authorized period of admission expires, which includes the 30-day period provided in paragraph (f)(5)(iv) of this section. USCIS must receive the extension application before the expiration of the authorized period of admission, including the 30-day period provided in paragraph (f)(5)(iv) of this section allowed after the completion of studies or any authorized practical training. If the extension of stay application is received during the 30-day period provided in paragraph (f)(5)(iv) of this section, the alien in F–1 status is authorized to continue a full course of study but may not continue or begin engaging in practical training or other employment.

(vi) *Length of extensions.* Extensions of stay may be granted for up to the period of time needed to complete the

program or requested practical training, not to exceed 4 years, unless the alien is a border commuter, enrolled in language training or a public high school, or paragraph (f)(20) of this section applies, in which case the restrictions of paragraphs (f)(5)(i) and (f)(18) and (20) of this section will govern the new admission period and attendant employment authorization.

(vii) *Dependents.* Dependent F–2 spouses and children seeking to accompany the principal F–1 student during the additional period of admission must either be included on the primary applicant's request for extension of stay or file their own extension of stay applications on the form designated by USCIS, including any biometrics required by 8 CFR 103.16. USCIS must receive the extension of stay applications before the expiration of the previously authorized period of admission, including the 30-day period following the completion of the course of study, as indicated on the F–2 dependent's Form I–94, or successor form. The F–2 dependent must demonstrate the qualifying relationship with the principal F–1 student, be maintaining his or her status, and must not have engaged in any unauthorized employment. Extensions of stay for F–2 dependents may not exceed the authorized admission period of the principal F–1 student.

(viii) *Denials.* If an alien's extension of stay application is denied and the alien's authorized admission period has expired, the alien and his or her dependents must immediately depart the United States.

(8) *School transfer and change in educational level.* (i) An alien in F–1 status may change educational levels or transfer to SEVP-certified schools if he or she is maintaining status as described in paragraphs (f)(5)(ii)(A) through (C) of this section. An alien seeking a transfer to another SEVP-certified school, or to a different campus at the same school, must follow the notification procedure prescribed in paragraph (f)(8)(iii) of this section. Aliens in F–1 status changing educational levels or transferring to an SEVP-certified school also must meet the following requirements:

(A) The alien will begin classes at the transfer school or program within 5 months of transferring out of the current school or within 5 months of the program completion date on his or her current Form I–20, or successor form, whichever is earlier.

(B) If the alien is authorized to engage in post-completion optional practical training (OPT), he or she must be able to resume classes within 5 months of transferring out of the school that recommended OPT or the date the OPT authorization ends, whichever is earlier.

(ii) An alien who is not maintaining F–1 status, including because he or she failed to pursue a full course of study at the school that he or she was last authorized to attend, is ineligible to change educational levels or transfer and must either depart immediately, or apply for reinstatement under the provisions of paragraph (f)(16) of this section, if eligible. Academic probation, suspension, or a pattern of student behavior demonstrating a repeated inability or unwillingness toward completing his or her course of study, such as failing grades, resulting in the student failing to carry a full course of study, are not acceptable reasons for failing to pursue a full course of study, unless the student was previously authorized for a reduced course load pursuant to paragraph (f)(6)(iii) of this section.

(iii) To transfer schools, the alien must first notify the school he or she is attending (''transfer out school'') of the intent to transfer, then obtain a valid Form I–20, or successor form, from the school to which he or she intends to transfer (''transfer in school''). Upon notification by the student, the transfer out school will update the student's record in SEVIS as a ''transfer out'' and indicate the transfer in school and a release date. The release date will be the current semester or session completion date, or the date of expected transfer if earlier than the established academic cycle. The transfer out school will retain control over the student's record in SEVIS until the student completes the current term or reaches the release date, whichever is earlier. At the request of the student, the DSO of the current school may cancel the transfer request at any time prior to the release date. As of the release date specified by the current DSO, the transfer in school will be granted full access to the student's SEVIS record and then becomes responsible for that student. The transfer out school conveys authority and responsibility over that student to the transfer in school and will no longer have full SEVIS access to that student's record. As such, a transfer request may not be cancelled by the transfer out DSO after the release date has been reached. After the release date, the transfer in DSO must complete the transfer of the student's record in SEVIS and may issue a Form I–20. The student is then required to contact the DSO at the transfer in school within 15 days of the program start date listed on the Form I–20. Upon notification that the student is enrolled in classes, the DSO of the transfer in school must update SEVIS to reflect the student's registration and current address, thereby acknowledging that the student has completed the transfer process. In the remarks section of the student's Form I–20, the DSO must note that the transfer has been completed, including the date, and return the form to the student. The transfer is effected when the transfer-in school notifies SEVIS that the student has enrolled in classes in accordance with the 30 days required by 8 CFR 214.3(g)(3)(iii).

(iv) F–1 transfer students must report to the transfer in DSO no later than 15 days after their Program Start Date. No later than 30 days after the Initial Session Start Date as listed in SEVIS, the transfer-in DSO must:

(A) Register the student in SEVIS, if the student enrolls at the transfer in school; or

(B) Terminate the student's record in SEVIS, if the student does not enroll.

(v) If the new program to which the student transferred will not be completed within the authorized admission period established in paragraph (f)(5)(i) or (f)(20) of this section, the F–1 student must apply to USCIS for an extension of stay in the manner and on the form designated by USCIS, with the required fee and in accordance with form instructions, including any biometrics required by 8 CFR 103.16, together with a valid, properly endorsed Form I–20 indicating the new program end date.

(9) * * *

(i) *On-campus employment.* On-campus employment must either be performed on the school's premises, (including on-location commercial firms that provide services for students on campus, such as the school bookstore or cafeteria), or at an off-campus location that is educationally affiliated with the school. Employment with on-site commercial firms, such as a construction company building a school building, which do not provide direct student services is not deemed on-campus employment for the purposes of this paragraph. In the case of off-campus locations, the educational affiliation must be associated with the school's established curriculum or related to contractually funded research projects at the post-graduate level. In any event, the employment must be an integral part of the student's educational program. Employment authorized under this paragraph must not exceed 20 hours a week while school is in session, unless DHS suspends the applicability of this limitation due to emergent circumstances by means of publication of a document in the **Federal Register**,

the student demonstrates to the DSO that the employment is necessary to avoid severe economic hardship resulting from the emergent circumstances, and the DSO notates the Form I–20 in accordance with the **Federal Register** document. However, an alien in F–1 status or in a period of authorized stay during a pending F–1 extension of stay application may work on campus full-time when school is not in session or during the annual vacation. An alien in F–1 status or in a period of authorized stay during a pending F–1 extension of stay application who has been issued a Form I–20 to begin a new program in accordance with the provision of 8 CFR 214.3(k) and who intends to enroll for the next regular academic year, term, or session at the institution that issued the Form I–20 may continue on-campus employment incident to status but may not work beyond the fixed date of admission as noted on his or her Form I–94, or successor form. An alien in F–1 status or in a period of authorized stay during a pending F–1 extension of stay application may not engage in on-campus employment after completing a course of study, except employment for practical training as authorized under paragraph (f)(10) of this section. An alien in F–1 status or in a period of authorized stay during a pending F–1 extension of stay application may engage in any on-campus employment authorized under this paragraph that will not displace United States workers. In the case of a transfer in SEVIS, the alien may only engage in on-campus employment at the school having jurisdiction over the student's SEVIS record. Upon initial entry to begin a new course of study, such aliens may not begin on-campus employment more than 30 days prior to the actual start of classes. If applicable, an alien described in paragraph (f)(5)(vii) of this section, whose timely filed applications for an extension of stay and employment authorization (if required) are pending may engage in on-campus employment for a period not to exceed 180 days, or until USCIS approves his or her applications, whichever is earlier.

* * * * *

(10) * * *

(i) *Curricular practical training.* An alien in F–1 status may be authorized by the DSO to participate in a curricular practical training program that is an integral part of an established curriculum. Curricular practical training is defined to be alternative work/study, internship, cooperative education, or any other type of required internship or practicum that is offered by sponsoring employers through cooperative agreements with the school. Aliens in F–1 status who have received 1 year or more of full time curricular practical training are ineligible for post-completion academic training. Exceptions to the one academic year requirement are provided for students enrolled in graduate studies that require immediate participation in curricular practical training. A request for authorization for curricular practical training must be made to the DSO. An alien may begin curricular practical training only after receiving his or her Form I–20 with the DSO endorsement. Curricular practical training may not be granted for a period exceeding the alien's fixed date of admission as noted on his or her Form I–94, or successor form. If applicable, an alien described under paragraph (f)(5)(vii) of this section, must not engage in curricular practical training until USCIS approves his or her extension of stay application.

(A) [Reserved]

(B) *SEVIS process.* To grant authorization for a student to engage in curricular practical training, a DSO at a SEVIS school will update the student's record in SEVIS as being authorized for curricular practical training that is directly related to the student's major area of study. The DSO will indicate whether the training is full-time or part-time, the employer and location, and the employment start and end date. The DSO will then print a copy of the employment page of the SEVIS Form I–20 indicating that curricular practical training has been approved. The DSO must sign, date, and return the SEVIS Form I–20 to the student prior to the student's commencement of employment.

(ii) * * *

(D) *Extension of stay for post-completion OPT.* An alien in F–1 status recommended for post-completion OPT must apply for an extension of stay and employment authorization and may not engage in post-completion OPT unless such employment authorization is granted. If the application for an extension of stay and post-completion OPT are granted, the alien will receive an additional 30-day period provided in paragraph (f)(5)(iv) of this section following the expiration of the status approved to complete post-completion OPT.

* * * * *

(11) * * *

(i) *Applicant responsibilities.* An alien in F–1 status must initiate the OPT application process by requesting a recommendation for OPT from his or her DSO. Upon making the recommendation, the DSO will provide the alien a signed Form I–20, or successor form, indicating that recommendation.

(A) *Applications for employment authorization.* An alien in F–1 status must properly file an application for employment authorization, on the form and in the manner designated by USCIS, with the required fee, as described in the form's instructions, including submitting a valid, properly endorsed Form I–20 for OPT and other supporting documents.

(B) *Filing deadlines for pre-completion OPT and post-completion OPT*—(*1*) *Pre-completion OPT.* For pre-completion OPT, the alien in F–1 status may properly file his or her application for employment authorization up to 120 days before being enrolled for one full academic year, provided that the period of employment will not start prior to the completion of the first full academic year.

(*2*) *Post-completion OPT.* For post-completion OPT, not including a 24-month OPT extension under paragraph (f)(10)(ii)(C)(*2*) of this section, the alien in F–1 status must file his or her extension of stay and employment authorization application with USCIS up to 120 days prior to his or her program end date and no later than 30 days after his or her program end date.

(C) *Applications and filing deadlines for 24-month OPT extension*—(*1*) *Application.* An alien in F–1 status meeting the eligibility requirements for a 24-month OPT extension under paragraph (f)(10)(ii)(C) of this section to engage in STEM OPT must file an extension of stay application under paragraph (f)(7) of this section and an application for employment authorization on the form designated by USCIS with the required fees and in accordance with form instructions.

(*2*) *Filing deadline.* An alien in F–1 status may file the application for STEM OPT employment authorization up to 120 days prior to the expiration date of the alien's current OPT employment authorization and after the DSO enters the STEM OPT recommendation into the student's SEVIS record.

(*3*) *Extension of OPT.* If an alien timely and properly files an application for STEM OPT employment authorization and timely and properly requests a DSO recommendation, including by submitting the fully executed Form I–983, Training Plan for STEM OPT Students, or successor form, to his or her DSO, but the Form I–766, Employment Authorization Document or successor form, currently in the alien's possession expires before USCIS issues a decision on the alien's STEM

OPT employment application, the alien's Form I–766, or successor form, is extended automatically pursuant to the terms and conditions specified in 8 CFR 274a.12(b)(6)(iv).

* * * * *

(18) * * *

(iii) *Period of admission.* An alien with F–1 nonimmigrant status who is admitted as a border commuter student under this paragraph (f)(18) will be admitted until a date certain. The DSO is required to specify a completion date on the Form I–20 that reflects the actual semester or term dates for the commuter student's current term of study. A new Form I–20 will be required for each new semester or term that the alien attends at the school.

* * * * *

(20) *Limitations on period of admission.* Subject to the discretion of the Secretary of Homeland Security, aliens with F–1 status in the following categories may only be admitted for up to 2 years, or the program end date as stated on the Form I–20, whichever is shorter, and may be eligible for extensions of stay for additional periods of up to 2 years each, or until the program end date, whichever is shorter. These categories of 2-year maximum period of admission are:

(i) *Certain countries and U.S. national interest.* Aliens who were born in or are citizens of countries listed on the State Sponsor of Terrorism List, or who are citizens of countries with a student and exchange visitor total overstay rate greater than ten percent according to the most recent DHS Entry/Exit Overstay report. DHS will publish a document in the **Federal Register** listing the countries or circumstances which fall into the categories in this paragraph making aliens in F–1 status subject to the 2 year maximum period of admission, and any other such circumstances that may serve the U.S. national interest. Changes to the list will be made by the publication of a new **Federal Register** document;

(ii) *Unaccredited institutions.* The alien has been accepted to and attends a post-secondary educational institution not accredited by an accrediting agency recognized by the Secretary of Education;

(iii) *E-Verify participation.* The alien has been accepted to and attends an educational institution that is not enrolled in E-Verify, or if enrolled, is not a participant in good standing in E-Verify as determined by USCIS. Educational institutions that are participants in good standing in the E-Verify program are: Enrolled in E-Verify with respect to all hiring sites in the United States at the time of the alien's admission in F–1 status or at the time the alien files an application for an extension of or change to F–1 status with USCIS; are in compliance with all requirements of the E-Verify program, including but not limited to verifying the employment eligibility of newly hired employees in the United States; and continue to be participants in good standing in E-Verify at any time during which the alien is pursuing a full-course of study at the educational institution; or

(iv) *Language training programs.* The student is attending an English language training program, which does not lead to a degree.

(v) *Alien with a 4-year period of admission who becomes subject to a 2-year maximum period of admission.* If an alien was admitted in F status for a 4-year period of admission, but a new **Federal Register** Notice is subsequently published according to paragraph (f)(20)(i) of this section that would subject the alien to the 2-year maximum period of admission, then the alien may remain in the United States for the remainder of the 4-year period. However, if the alien departs the United States or otherwise must apply for admission or extension of stay, that alien will become subject to the 2-year limitation.

(21) *Severability.* The provisions in 8 CFR 214.2(f) are intended to be independent severable parts. In the event that any provision in this paragraph is not implemented, DHS intends that the remaining provisions be implemented as an independent rule.

* * * * *

(i) *Representatives of information media*—(1) *Foreign Media Organization.* A foreign information media organization is an organization engaged in the regular gathering, production or dissemination via print, radio, television, internet distribution, or other media, of journalistic information and has a home office in a foreign country.

(2) *Evidence.* Aliens applying for I nonimmigrant status must:

(i) Demonstrate that the foreign media organization that the alien represents has a home office in a foreign country, and that the home office will continue to operate in the foreign country while they are in the United States; and

(ii) Provide a letter from the employing foreign media organization or, if self-employed or freelancing, an attestation from the alien, that verifies the employment, establishes that they are representatives of that media organization, and describes the remuneration and work to be performed.

(3) *Admission.* (i) Generally, aliens seeking admission in I status may be admitted for a period of time necessary to complete the planned activities or assignments consistent with the I classification, not to exceed 240 days unless paragraph paragraph (i)(3)(ii) of this section applies.

(ii) Foreign nationals travelling on a passport issued by the People's Republic of China (with the exception of Macau Special Administrative Region passport holders) or Hong Kong Special Administrative Region passport holders: An alien who presents a passport from the People's Republic of China (with the exception of Macau Special Administrative Region passport holders) or an alien who is a Hong Kong Special Administrative Region passport holder, may be admitted until the activities or assignments consistent with the I classification are completed, not to exceed 90 days.

(4) *Change in activity.* Aliens admitted pursuant to section 101(a)(15)(I) of the Act may not change the information medium or employer until they obtain permission from USCIS. Aliens must request permission by submitting the form designated by USCIS, in accordance with that form's instructions, and with the required fee, including any biometrics required by 8 CFR 103.16, as appropriate.

(5) *Extensions of stay.* (i) Aliens in I status may be eligible for an extension of stay of up to 240 days (90 days for aliens who present a passport issued by the People's Republic of China or Hong Kong Special Administrative Region passport holders, with the exception of Macau Special Administrative Region passport holders) or until the activities or assignments consistent with the I classification are completed; whichever date is earlier. To request an extension of stay, aliens in I status must file an application to extend their stay by submitting the form designated by USCIS, in accordance with that form's instructions, and with the required fee, including any biometrics required by 8 CFR 103.16, as appropriate. An alien whose I status, as indicated on Form I–94, has expired but who has timely filed an extension of stay application is authorized to continue engaging in activities consistent with the I classification on the day after the Form I–94 expired, for a period of up to 240 days, as provided in 8 CFR 274a.12(b)(20). Such authorization may be subject to any conditions and limitations of the initial authorization.

(ii) Notwithstanding paragraph (i)(5)(i) of this section and 8 CFR 274a.12(b)(20), an alien in I status who is described in paragraph (i)(3)(ii) of this

section whose status, as indicated on Form I–94, has expired but who has timely filed an extension of stay application is authorized to continue engaging in activities consistent with the I classification on the day after the Form I–94 expired, for a period of up to 90 days. Such authorization may be subject to any conditions and limitations of the initial authorization.

(6) *Denials.* If an alien's extension of stay application is denied and the alien's authorized admission period has expired, the alien and his or her dependents must immediately depart the United States.

(7) *Severability.* The provisions in this paragraph (i) are intended to be independent severable parts. In the event that any provision in this paragraph is not implemented, DHS intends that the remaining provisions be implemented as an independent rule.

(j) *Exchange visitors.*

(1) * * *

(ii) *Admission period and period of stay*—(A) *J–1 exchange visitor.* A J–1 exchange visitor may be admitted for the duration of the exchange visitor program, as stated by the program end date noted on Form DS–2019, or successor form, not to exceed a period of 4 years, unless subject to paragraph (j)(6) of this section. If paragraph (j)(6) of this section applies, the admission period will be governed by the limitations of paragraph (j)(6) of this section.

(B) *J–2 accompanying spouse and dependent.* The authorized period of initial admission for J–2 dependents is subject to the same requirements as the J–1 exchange visitor and may not exceed the period of authorized admission of the principal J–1 exchange visitor.

(C) *Period of stay.* A J–1 exchange visitor and J–2 spouse and children may be admitted for a period up to 30 days before the report date or start of the approved program listed on Form DS–2019, or successor form, plus a period of 30 days at the end of the program for the purposes of departure, as provided by this paragraph (j)(1)(ii)(C), or to otherwise maintain status.

* * * * *

(iv) *Extension of stay.* A future program end date as indicated on the Form DS–2019, or successor form, standing alone, does not allow aliens with J status to remain in the United States in lawful status. If a sponsor issues a Form DS–2019 or successor form extending an alien's program end date for any reason, or the alien requires an additional admission period to complete his or her program, the alien must apply to USCIS for an extension of stay.

(A) *Form.* To request an extension of stay, an alien in J status must file an extension of stay application on the form and in the manner designated by USCIS, including submitting the valid Form DS–2019 or successor form, appearing for any biometrics collection required by 8 CFR 103.16, and remitting the appropriate fee.

(B) *Timely filing.* An application is considered timely filed if the receipt date is on or before the date the authorized admission period expires. USCIS must receive the extension of stay application before the expiration of the authorized period of admission, including the 30-day period of preparation for departure allowed after the completion of the program. If the extension application is received during the 30-day period provided in paragraph (j)(1)(ii)(C) of this section following the completion of the exchange visitor program, the alien in J–1 status may continue to participate in his or her exchange visitor program.

(C) *Length of extensions.* Extensions of stay may be granted for a period up to the length of the program, not to exceed 4 years, unless the J–1 exchange visitor is subject to paragraph (j)(6) of this section or otherwise restricted by regulations at 22 CFR part 62.

(D) *Dependents.* Dependent J–2 spouses and children seeking to accompany the J–1 exchange visitor during the additional period of admission must either be included on the primary applicant's request for extension or file their own extension of stay applications on the form designated by USCIS, including any biometrics required by 8 CFR 103.16. USCIS must receive the extension of stay applications before the expiration of the previously authorized period of admission, including the 30-day period following the completion of the program provided in paragraph (j)(1)(ii)(C) of this section, as indicated on the J–2 dependent's Form I–94, or successor form. J–2 dependents must demonstrate the qualifying relationship with the principal J–1 exchange visitor, be maintaining status, and not have engaged in any unauthorized employment. Extensions of stay for J–2 dependents may not exceed the authorized admission period of the principal J–1 exchange visitor.

(E) *Denials.* If an alien's extension of stay application is denied, and the alien's authorized admission period has expired, he or she and his or her dependents must immediately depart the United States.

(v) *Employment of J–2 dependents.* The spouse or minor children of a J–1 exchange visitor may only engage in employment if authorized by USCIS. The employment authorization is valid only if the J–1 is maintaining status. An application for employment authorization must be filed in the manner prescribed by USCIS, together with the required fee and any additional evidence required in the filing instructions. Income from the J–2 dependent's employment may be used to support the family's customary recreational and cultural activities and related travel, among other things. Employment will not be authorized if this income is needed to support the J–1 principal exchange visitor. If the requested period of employment authorization exceeds the current admission period, the J–2 dependent must file an extension of stay application, in addition to the application for employment authorization, in the manner designated by USCIS, with the required fee and in accordance with form instructions.

(vi) *Extension of J–1 stay and grant of employment authorization for aliens who are the beneficiaries of a cap-subject H–1B petition.* USCIS may, by notice in the **Federal Register**, at any time it determines that the H–1B numerical limitation as described in section 214(g)(1)(A) of the Act will likely be reached prior to the end of a current fiscal year, extend for such a period of time as deemed necessary to complete the adjudication of the H–1B application, the status of any J–1 alien on behalf of whom an employer has timely filed an application for change of status to H–1B. The alien, in accordance with 8 CFR part 248, must not have violated the terms of his or her nonimmigrant stay and not be subject to the 2-year foreign residence requirement at 212(e) of the Act. Any J–1 student whose status has been extended shall be considered to be maintaining lawful nonimmigrant status for all purposes under the Act, provided that the alien does not violate the terms and conditions of his or her J nonimmigrant stay. An extension made under this paragraph also applies to the J–2 dependent alien.

(vii) *Pending extension of stay applications and employment authorization.* (A) An alien whose J–1 status, as indicated on Form I–94, has expired but who has timely filed an extension of stay application is authorized to continue engaging in activities consistent with pursuing the terms and conditions of the alien's program objectives and including authorized training beginning on the day after the admission period expires, for a period of up to 240 days as provided in 8 CFR 274a.12(b)(20). Such

authorization may be subject to any conditions and limitations of the initial authorization.

(B) An Arrival-Departure Record (Form I–94 or successor form) is considered unexpired when combined with a USCIS receipt notice indicating receipt of a timely filed extension of stay application and a valid Form DS–2019, or successor form, indicating the duration of the program. An application is considered timely filed if the receipt notice for the application is on or before the date the admission period expires. Such extension may not exceed the earlier of 240 days, as provided in 8 CFR 274a.12(b)(20), or the date of denial of the alien's application for an extension of stay.

(C) An alien in J–2 status whose admission period has expired (as indicated on his or her Form I–94) may not engage in employment until USCIS approves his or her application for employment authorization.

(viii) *Use of SEVIS.* The use of the Student and Exchange Visitor Information System (SEVIS) is mandatory for designated program sponsors. All designated program sponsors must issue a SEVIS Form DS–2019 to any exchange visitor requiring a reportable action (*e.g.,* program extensions and requests for employment authorization), or for any aliens who must obtain a new nonimmigrant J visa. As of 2003, the records of all current or continuing exchange visitors must be entered in SEVIS.

(ix) *Current name and address.* A J–1 exchange visitor must inform USCIS and the responsible officer of the exchange visitor program of any legal changes to his or her name or of any change of address, within 10 calendar days of the change, in a manner prescribed by the program sponsor. A J–1 exchange visitor enrolled in a SEVIS program can satisfy the requirement in 8 CFR 265.1 of notifying USCIS by providing a notice of a change of address within 10 calendar days to the responsible officer, who in turn shall enter the information in SEVIS within 10 business days of notification by the exchange visitor. In cases where an exchange visitor provides the sponsor a mailing address that is different than his or her actual physical address, he or she is responsible to provide the sponsor his or her actual physical location of residence. The exchange visitor program sponsor is responsible for maintaining a record of, and must provide upon request from USCIS, the actual physical location where the exchange visitor resides.

* * * * *

(6) *Limitations on length of admission.* Subject to the discretion of the Secretary of Homeland Security, in consultation with the Secretary of State, a J–1 exchange visitor in the following categories may be admitted for a period of up to the length of the exchange visitor program as stated on the Form DS–2019 or up to 2 years, whichever is shorter, and may be eligible to apply for extensions of stay for additional periods of up to 2 years each, until the end date of the exchange visitor program. These categories of 2-year periods of admission are:

(i) *Certain countries and U.S. national interest.* Exchange visitors who were born in or are citizens of countries listed in the State Sponsor of Terrorism List or who are citizens of countries with a student and exchange visitor total overstay rate greater than ten percent according to the most recent DHS Entry/Exit Overstay report. DHS will publish a document in the **Federal Register** listing the countries or circumstances making aliens in J–1 status subject to the factors listed in this paragraph and such other factors that may serve the U.S. national interest. Changes to the list will be made by a new **Federal Register** document; or

(ii) *E-Verify participation.* The J exchange visitor is participating in an exchange visitor program whose sponsor is not enrolled in E-Verify, or if enrolled, is not a participant in good standing in E-Verify as determined by USCIS. A sponsor is a participant in good standing in the E-Verify program if it has enrolled in E-Verify with respect to all hiring sites in the United States at the time of the exchange visitor's admission in J–1 status or filing of an application for extension of or change to J–1 status with USCIS, is in compliance with all requirements of the E-Verify program, including but not limited to verifying the employment eligibility of newly hired employees in the United States; and continues to be a participant in good standing in E-Verify at any time during which the J–1 exchange visitor is participating in an exchange visitor program at the organization.

(iii) *Alien with a 4-year period of admission who becomes subject to a 2-year maximum period of admission.* If an alien in J status was originally admitted for a 4-year period of admission, but a new **Federal Register** document is subsequently published according to paragraph (j)(6)(i) of this section that would subject the alien to the 2-year maximum period of admission, then the alien may remain in the United States for the remainder of the 4-year period. However, if the J–1 exchange visitor departs the United States or otherwise must apply for admission or extension of stay, that alien will become subject to the 2-year limitation.

(7) *Severability.* The provisions in this paragraph (j) are intended to be independent severable parts. In the event that any provision in this paragraph is not implemented, DHS intends that the remaining provisions be implemented as an independent rule.

* * * * *

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

■ 4. The authority citation for part 248 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1258; 8 CFR part 2.

■ 5. Section 248.1 is amended:

■ a. By redesignating paragraphs (e) and (f) as paragraphs (g) and (h), respectively, and adding new paragraphs (e) and (f);

■ b. In newly redesignated paragraph (g) by removing the words ''A district director shall'' and adding in their place ''USCIS will''; and

■ c. In the first and second sentences of newly redesignated paragraph (h) by removing the word ''shall'' and adding in its place ''will''.

The additions read as follows:

§ 248.1 Eligibility

* * * * *

(e) *Admission of aliens under section 101(a)(15)(F) and (J) previously granted duration of status*—Aliens who were granted a change to F or J status prior to [EFFECTIVE DATE OF FINAL RULE] and who departed the United States and are applying for admission on or after [EFFECTIVE DATE OF FINAL RULE] will be inspected and may be admitted into the United States up to the program end date as noted on the Form I–20 or DS–2019 that accompanied the change of status application that was approved prior to the alien's departure, not to exceed a period of 4 years, unless subject to 8 CFR 214.2(f)(20) or (j)(6). To be admitted into the United States, all aliens must be eligible for the requested status and possess the proper documentation including a valid passport, valid nonimmigrant visa, if required, and valid Form I–20 or Form DS–2019, or successor form.

(f) *Abandonment of change of status application.* If an alien timely files an application to change to another nonimmigrant status but departs the United States while the application is pending, USCIS will consider the change of status application abandoned.

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 6. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 48 U.S.C. 1806; 8 CFR part 2; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 114–74, 129 Stat. 599.

■ 7. Section 274a.12 is amended by revising paragraphs (b)(6)(i), (iii), and (v), (b)(10), and (c)(3)(iii) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(b) * * *

(6) * * *

(i) On-campus employment for not more than 20 hours per week when school is in session or full-time employment when school is not in session if the student intends and is eligible to register for the next term or semester. Part-time on-campus employment is authorized by the school. On-campus employment terminates on the alien's fixed date of admission as noted on his or her Form I–94. If applicable, the employment authorization of an alien described in 8 CFR 214.2(f)(5)(vii) may be automatically extended for up to 180 days, or until authorized by USCIS, whichever is earlier. In cases where the employment is authorized pursuant to 8 CFR 214.2(f)(5)(v), the validity of the employment authorization is provided by notice in the **Federal Register** and indicated by a Certificate of Eligibility for Nonimmigrant (F–1/M–1) Students, Form I–20 or successor form, endorsed by the Designated School Official recommending such an extension.

* * * * *

(iii) Curricular practical training (internships, cooperative training programs, or work-study programs that are part of an established curriculum) after having been enrolled full-time in a SEVP-certified institution for one full academic year. Curricular practical training (part-time or full-time) is authorized by the Designated School Official on the student's Form I–20, or successor form. Curricular practical training terminates on the earlier of the employment end date indicated on Form I–20, or successor form, or on the alien's fixed date of admission as noted on his or her Form I–94. If applicable, an alien described in 8 CFR 214.2(f)(5)(vii) must not engage in curricular practical training until USCIS approves an alien's extension of stay request.

* * * * *

(v) The beneficiary of an H–1B petition and change of status request as described in 8 CFR 214.2(f)(5)(vi)(A) and whose status and employment authorization have been extended pursuant to 8 CFR 214.2(f)(5)(vi). These aliens are authorized to continue employment with the same employer beginning on the date of the expiration of the authorized period of admission until April 1 of the fiscal year for which H–1B status is requested. Such authorization will be subject to any conditions and limitations noted on the initial authorization. Such authorization, however, will automatically terminate upon the notification date in the denial decision if USCIS denies the H–1B petition or request for change of status. If USCIS approves the H–1B petition and associated change of status request, and the change of status will take effect prior to April 1 of the fiscal year for which H–1B status was requested, such authorization will automatically terminate on the date that the change of status takes effect.

* * * * *

(10) *A foreign information media representative (I), pursuant to 8 CFR 214.2(i).* An alien in this status may be employed pursuant to the requirements of 8 CFR 214.2(i). Employment authorization does not extend to the dependents of a foreign information media representative.

* * * * *

(c) * * *

(3) * * *

(iii) Is seeking employment because of severe economic hardship pursuant to 8 CFR 214.2(f)(9)(ii)(C) and has an Employment Authorization Document, Form I–766 or successor form, based on severe economic hardship pursuant to 8 CFR 214.2(f)(9)(ii)(C), and whose timely filed Application for Employment Authorization, Form I–765 or successor form, and Application to Extend/Change Nonimmigrant Status, Form I–539 or successor form, are pending, is authorized to engage in employment beginning on the expiration date of the Employment Authorization Document issued under paragraph (c)(3)(i)(B) of this section and ending on the date of USCIS' written decision on the current Application for Employment Authorization, Form I–765 or successor form, but not to exceed 180 days. For this same period, such Employment Authorization Document, Form I–766 or successor form, is automatically extended and is considered unexpired when combined with a Certificate of Eligibility for Nonimmigrant (F–1/M–1) Students, Form I–20 or successor form, endorsed by the Designated School Official recommending such an extension.

* * * * *

Chad R. Mizelle,

Senior Official Performing the Duties of the General Counsel, U.S. Department of Homeland Security.

[FR Doc. 2020–20845 Filed 9–24–20; 8:45 am]

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Part III

Department of Labor

Wage and Hour Division

29 CFR Parts 780, 788, and 795

Independent Contractor Status Under the Fair Labor Standards Act; Proposed Rule

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Parts 780, 788, and 795

RIN 1235–AA34

Independent Contractor Status Under the Fair Labor Standards Act

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Department of Labor (the Department) is revising its interpretation of independent contractor status under the Fair Labor Standards Act (FLSA or Act) in order to promote certainty for stakeholders, reduce litigation, and encourage innovation in the economy.

DATES: Submit written comments on or before October 26, 2020.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1235–AA34, by either of the following methods: *Electronic Comments:* Submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. *Mail:* Address written submissions to Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210. *Instructions:* Please submit only one copy of your comments by only one method. Commenters submitting file attachments on *www.regulations.gov* are advised that uploading text-recognized documents—*i.e.,* documents in a native file format or documents which have undergone optical character recognition (OCR)—enable staff at the Department to more easily search and retrieve specific content included in your comment for consideration. Please be advised that comments received will become a matter of public record and will be posted without change to *http://www.regulations.gov,* including any personal information provided. All comments must be received by 11:59 p.m. on October 26, 2020 for consideration in this rulemaking. Commenters should transmit comments early to ensure timely receipt prior to the close of the comment period, as the Department continues to experience delays in the receipt of mail. Submit only one copy of your comments by only one method. *Docket:* For access to the docket to read background documents or comments, go to the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Amy DeBisschop, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division (WHD), U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this Notice of Proposed Rulemaking (NPRM) may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693–0675 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1–877–889–5627 to obtain information or request materials in alternative formats.

Questions of interpretation and/or enforcement of the agency's regulations may be directed to the nearest WHD district office. Locate the nearest office by calling WHD's toll-free help line at (866) 4US–WAGE ((866) 487–9243) between 8 a.m. and 5 p.m. in your local time zone, or logging onto WHD's website for a nationwide listing of WHD district and area offices at *http://www.dol.gov/whd/america2.htm.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The FLSA requires covered employers to pay their nonexempt employees at least the federal minimum wage for every hour worked and overtime pay for every hour worked over 40 in a workweek, and mandates that employers keep certain records regarding their employees. A worker who performs services for an individual or entity (''person'' as defined in the Act) as an independent contractor, however, is not that person's employee under the Act. Thus, the FLSA does not require such person to pay an independent contractor either the minimum wage or overtime pay, nor does it require that person to keep records regarding that independent contractor. The Act does not define the term ''independent contractor,'' but it defines ''employer'' as ''any person acting directly or indirectly in the interest of an employer in relation to an employee,'' 29 U.S.C. 203(d), ''employee'' as ''any individual employed by an employer,'' *id.* at 203(e), and ''employ'' as ''includ[ing] to suffer or permit to work,'' *id.* at 203(g). *See also* Fair Labor Standards Amendments of 1974, Public Law 93–259 (Apr. 8, 1974). Courts and the Department have long interpreted the ''suffer or permit'' standard to require an evaluation of the extent of the worker's economic dependence on the potential employer—*i.e.,* the putative employer or alleged employer—and have developed a multifactor test to analyze whether a worker is an employee or an independent contractor under the FLSA. The ultimate inquiry is whether, as a matter of economic reality, the worker is dependent on a particular individual, business, or organization for work (and is thus an employee) or is in business for him- or herself (and is thus an independent contractor). But the test's underpinning and the process for its application lack focus and have not always been sufficiently explained by courts or the Department, resulting in uncertainty among the regulated community. The Department believes that clear articulation will lead to increased precision and predictability in the economic reality test's application, which will in turn benefit workers and businesses and encourage innovation and flexibility in the economy.

Accordingly, in this Notice of Proposed Rulemaking (NPRM) the Department proposes to introduce a new part to Title 29 of the Code of Federal Regulations setting forth its interpretation of the FLSA as relevant to the question whether workers are ''employees'' or are independent contractors under the Act. The proposed regulations would adopt general interpretations to which courts and the Department have long adhered. For example, the proposed regulations would explain that independent contractors are workers who, as a matter of economic reality, are in business for themselves as opposed to being economically dependent on the potential employer for work. The proposed regulations would also explain that the inquiry into economic dependence is conducted through application of several factors, with no one factor being dispositive, and that actual practices are entitled to greater weight than what may be contractually or theoretically possible. The Department proposes to sharpen this inquiry into five distinct factors, instead of the five or more overlapping factors used by most courts and the Department previously. Moreover, consistent with the FLSA's text, its purpose, and the Department's experience administrating and enforcing it, the Department proposes that two of those factors—the nature and degree of the worker's control over the work and the worker's opportunity for profit or loss—should be more probative of the question of economic dependence or lack thereof, and thus are afforded greater weight in the analysis than any others.

This proposed rule would be the Department's sole and authoritative

interpretation of independent contractor status under the FLSA. As such, it would replace the Department's previous interpretations of independent contractor status under the FLSA in certain contexts, including interpretations found at 29 CFR 780.330(b) (interpreting independent contractor status under the FLSA for tenants and sharecroppers) and 29 CFR 788.16(a) (interpreting independent contractor status under the FLSA for certain forestry and logging workers). The Department believes this proposal will significantly clarify to stakeholders how to distinguish between employees and independent contractors under the Act and seeks comment on all aspects of this proposed rule.

This proposed rule is expected to be an Executive Order (E.O.) 13771 deregulatory action. Details on the estimated increased efficiency and cost savings of this proposed rule can be found in the preliminary regulatory impact analysis (PRIA) provided below in section VI.

II. Background

A. Relevant FLSA Definitions

Enacted in 1938, the FLSA requires, among other provisions, that covered employers pay their nonexempt employees at least the federal minimum wage for every hour worked and overtime pay for every hour worked over 40 in a workweek, and mandates that employers keep certain records regarding their employees.[1] The FLSA does not define the term ''independent contractor.'' The Act defines ''employer'' in section 3(d) to ''include[ ] any person acting directly or indirectly in the interest of an employer in relation to an employee,'' ''employee'' in section 3(e)(1) to mean ''any individual employed by an employer,'' and ''employ'' in section 3(g) to include ''to suffer or permit to work.''[2] The Supreme Court has recognized that ''there is in the [FLSA] no definition that solves problems as to the limits of the employer-employee relationship under the Act.'' *Rutherford Food Corp.* v. *McComb,* 331 U.S. 722, 728 (1947).

The Supreme Court has held that the ''suffer or permit'' definition is broad on its face and is more inclusive than the common law standard for determining who is employed and thereby who is an employee. The common law utilizes traditional agency principles exclusively to examine the hiring party's right to control the manner and means by which the worker accomplishes his or her task. *See Nationwide Mut. Ins. Co.* v. *Darden,* 503 U.S. 318, 326 (1992) (''[T]he FLSA . . . defines the verb 'employ' expansively to mean 'suffer or permit to work.' This . . . definition, whose striking breadth we have previously noted, stretches the meaning of 'employee' to cover some parties who might not qualify as such under a strict application of traditional agency law principles.'' (citations omitted)); *Walling* v. *Portland Terminal Co.,* 330 U.S. 148, 150–51 (1947) (''But in determining who are 'employees' under the Act, common law employee categories or employer-employee classifications under other statutes are not of controlling significance. This Act contains its own definitions, comprehensive enough to require its application to many persons and working relationships, which prior to this Act, were not deemed to fall within an employer-employee category.'' (citations omitted)); *Rutherford Food,* 331 U.S. at 728 (''The [FLSA] definition of 'employ' is broad.'').

However, the Act's ''statutory definition[s] . . . have [their] limits.'' *Tony & Susan Alamo Found.* v. *Sec'y of Labor,* 471 U.S. 290, 295 (1985) (internal citation omitted); *see also Portland Terminal,* 330 U.S. at 152 (''The definition 'suffer or permit to work' was obviously not intended to stamp all persons as employees.''). For example, the Supreme Court recognized not long after the FLSA's passage that, despite the Act's broad definition of ''employ,'' ''[t]here may be independent contractors who take part in production or distribution who would alone be responsible for the wages and hours of their own employees.'' *Rutherford Food,* 331 U.S. at 729. Accordingly, federal courts of appeals have uniformly held, and the Department has consistently maintained, that independent contractors are not ''employees'' for purposes of the FLSA. *See, e.g., Saleem* v. *Corporate Transp. Group, Ltd.,* 854 F.3d 131, 139–40 (2d Cir. 2017) (noting that independent contractors are separate from employees in the context of the FLSA); *Karlson* v. *Action Process Serv. & Private Investigation, LLC,* 860 F.3d 1089, 1092 (8th Cir. 2017) (''FLSA wage and hour requirements do not apply to true independent contractors.''); *Scantland* v. *Jeffry Knight, Inc.,* 721 F.3d 1308, 1311 (11th Cir. 2013) (''[The Act's] 'broad' definitions do not, however, bring 'independent contractors' within the FLSA's ambit.''); *Hopkins* v. *Cornerstone America,* 545 F.3d 338, 342 (5th Cir. 2008) (observing that the ''FLSA applies to employees but not to independent contractors'').

Accordingly, the FLSA does not require any ''person'' to pay an independent contractor the minimum wage or overtime pay under sections 6(a) and 7(a) or to keep records regarding that independent contractor under section 11(c).

B. Economic Dependence and the Economic Reality Test

1. Supreme Court Development of the Economic Reality Test

In a series of cases from 1944 to 1947, the U.S. Supreme Court explored the limits of the employer-employee relationship under three different federal statutes: The FLSA, the National Labor Relations Act (NLRA), and the Social Security Act (SSA).

In the first of those cases, *NLRB* v. *Hearst Publications, Inc.,* 322 U.S. 111 (1944), the Court considered the meaning of ''employee'' under the NLRA, which merely defined the term to ''include any employee.'' *Id.* at 118–20. The Court explained that the meaning of employee ''takes color from its surroundings . . . [in] the statute where it appears, and derives meaning from the context of that statute, which must be read in the light of the mischief to be corrected and the end to be attained.'' *Id.* at 124 (citations omitted). The *Hearst* Court rejected application of the common law standard alone, *see id.* at 123–25, and concluded that ''the broad language of the [NLRA's] definitions . . . leaves no doubt that its applicability is to be determined broadly, in doubtful situations, by underlying economic facts rather than technically and exclusively by previously established legal classifications.'' *Id.* at 129. Congress's reaction to *Hearst's* interpretation of ''employee'' under the NLRA ''was adverse,'' and on June 23, 1947, Congress amended the NLRA ''with the obvious purpose of hav[ing] the Board and the courts apply general agency principles in distinguishing between employees and independent contractors under the [NLRA].'' *NLRB* v. *United Ins. Co. of Am.,* 390 U.S. 254, 256 (1968).

On June 16, 1947, one week before Congress amended the NLRA to abrogate *Hearst,* the Supreme Court decided *United States* v. *Silk,* 331 U.S. 704 (1947), which addressed the distinction between employees and independent contractors under the SSA. In that case, the Court favorably summarized *Hearst* as setting forth

[1] *See* 29 U.S.C. 206(a), 207(a) (minimum wage and overtime pay requirements); 29 U.S.C. 211(c) (recordkeeping requirements).

[2] 29 U.S.C. 203(d), (e), (g). The Act defines a ''person'' as ''an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.'' 29 U.S.C. 203(a).

''economic reality,'' as opposed to ''technical concepts'' of the common law standard alone, as the framework for determining workers' classification. *Id.* at 712–14. But it also acknowledged that not ''all who render service to an industry are employees.'' *Id.* Although the Court found it to be ''quite impossible to extract from the [SSA] a rule of thumb to define the limits of the employer-employe[e] relationship,'' the Court identified five factors as ''important for decision'': ''degrees of control, opportunities for profit or loss, investment in facilities, permanency of relation[,] and skill required in the claimed independent operation.'' *Id.* at 716. The Court added that ''[n]o one [factor] is controlling nor is the list complete.'' *Id.* Just a week after *Silk,* on June 23, 1947, the Court reiterated these five factors in another case involving employee or independent contractor status under the SSA. *See Bartels* v. *Birmingham,* 332 U.S. 126, 130 (1947). The Court explained that, under the SSA, employee status ''was not to be determined solely by the idea of control which an alleged employer may or could exercise over the details of the service rendered to his business by the worker.'' *Id.* Although ''control is characteristically associated with the employer-employee relationship,'' employees under ''social legislation'' such as the SSA are ''those who as a matter of economic reality are dependent upon the business to which they render service.'' *Id.* Thus, in addition to control, ''permanency of the relation, the skill required, the investment in the facilities for work[,] and opportunities for profit or loss from the activities were also factors'' to consider. *Id.* Although the Court identified these specific factors as relevant to the analysis, it explained that ''[i]t is the total situation that controls'' the worker's classification under the SSA. *Id.*

Decided the same day as *Silk, Rutherford Food* applied *Hearst's* and *Silk's* reasoning to the FLSA. *Rutherford Food* addressed whether certain workers at a plant owned by Kaiser Packing Company (Kaiser) who cut meat from the bones of slaughtered cattle were Kaiser's employees under the FLSA or were instead independent contractors. Noting that ''[d]ecisions that define the coverage of the employer-[e]mployee relationship under the [NLRA and the SSA] are persuasive in the consideration of a similar coverage under the [FLSA],'' 331 U.S. at 723–24 (citing *Hearst* and *Silk*), the Court seemed to follow the path laid down in these previous cases by examining facts pertaining to the five factors identified in *Silk.* For example, the Court noted that the slaughterhouse workers performed unskilled work ''on the production line.'' *Id.* at 730. ''The premises and equipment of Kaiser were used for the work,'' indicating little investment by the workers. *Id.* ''The group had no business organization that could or did shift as a unit from one slaughter-house to another,'' indicating a permanent work arrangement. *Id.* ''The managing official of the plant kept close touch on the operation,'' indicating control by the alleged employer. *Id.* And ''[w]hile profits to the boners depended upon the efficiency of their work, it was more like piecework than an enterprise that actually depended for success upon the initiative, judgment or foresight of the typical independent contractor.'' *Id.*

In addition to facts relevant to the five *Silk* factors, the Court also considered whether the work was ''a part of the integrated unit of production'' (meaning whether the putative independent contractors were integrated into the assembly line alongside the company's employees) to assess whether they were employees or independent contractors under the FLSA. *Id.* at 729–730. Ultimately, the Court agreed with the appellate court that the ''underlying economic realities'' led to the conclusion that the boners were employees of Kaiser under the FLSA. *See id.* at 727.

In November 1947, five months after *Silk* and *Rutherford Food,* the Department of Treasury (Treasury) proposed regulations governing the determination of whether an individual is an independent contractor or employee under the SSA, which used a test that balanced the following factors:

1. Degree of control of the individual;
2. Permanency of relation;
3. Integration of the individual's work in the business to which he renders service;
4. Skill required by the individual;
5. Investment by the individual in facilities for work; and
6. Opportunity of the individual for profit or loss.

12 FR 7966. Factors 1, 2, and 4–6 corresponded directly with the five factors identified as being ''important for decision'' in *Silk,* 331 U.S. at 716, and the third factor corresponded with *Rutherford Food's* consideration of the fact that the workers were ''part of an integrated unit of production.'' 331 U.S. at 729. The Treasury proposal further relied on *Bartels,* 332 U.S. at 130, to apply these factors to determine whether a worker was ''dependent as a matter of economic reality upon the business to which he renders services.'' 12 FR 7966.

However, in 1948, Congress promptly rejected this application of the proposed test. A committee report described the test as '''a dimensionless and amorphous abstraction' '' that would confer upon '' 'the administrative agencies and the courts an unbridled license to say, at will, whether an individual is an employee or an independent contractor' '' for purposes of the SSA. *United States* v. *W.M. Webb, Inc.,* 397 U.S. 179, 187–88 (1970) (quoting S. Rep. No. 1255, at 12 (1948) and H.R. Rep. No. 2168, at 9 (1948)). The report stated that Congress amended the SSA to ''avoid[ ] the uncertainty of the proposed 'economic reality' test'' and to ensure that the common law control definition of employee alone would apply to that statute. *See id.* at 183–86, 191; 42 U.S.C. 410(j) (''The term 'employee' [under the SSA] means . . . any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.'').

Congress abrogated the interpretations of the definitions of ''employee'' adopted in *Hearst* for the NLRA and in *Silk* and *Bartels* for the SSA ''to demonstrate that the usual common-law principles were the keys to meaning.'' *Darden,* 503 U.S. at 324–25. However, Congress did not similarly amend the FLSA. Thus, the Supreme Court stated in *Darden* that the scope of employment under the FLSA is broader than that under common law and is determined by the economic reality of the relationship at issue, relying on the ''suffer or permit'' standard that is unique to the FLSA. *See id.* However, since implicitly doing so in *Rutherford Food,* the Court has not again applied (or rejected the application of) the *Silk* factors to an FLSA classification question. Accordingly, the Supreme Court has not mandated any specific set or formulation of economic reality factors for purposes of the FLSA, nor has it explicitly opined on any factor's relative probative value to the inquiry. *See Goldberg* v. *Whitaker House Co-op., Inc.,* 366 U.S. 28, 33 (1961) (noting that '' 'economic reality' rather than 'technical concepts' is . . . the test of employment'' under the FLSA (citing *Silk,* 331 U.S. at 713; *Rutherford Food,* 331 U.S. at 729)); *Tony & Susan Alamo,* 471 U.S. at 301 (''The test of employment under the Act is one of 'economic reality.' '' (quoting *Whitaker House,* 366 U.S. at 33)).[3]

[3] In *Whitaker House,* the Supreme Court concluded that certain homeworkers were employees under the FLSA, as opposed to being ''self-employed'' or ''independent.'' 366 U.S. at 33.

2. Application of the Economic Reality Test by Federal Courts of Appeals

Following *Rutherford Food,* federal courts of appeals have also stated that the common law standard alone does not determine employee or independent contractor status under the FLSA and that instead the inquiry was one of economic reality. *See, e.g., Wirtz* v. *Dr. Pepper Bottling Co. of Atlanta,* 374 F.2d 5, 8 (5th Cir. 1967) (''[C]ommon law concepts of the employer-employee relationship are not controlling.''); *McComb* v. *Homeworkers' Handicraft Coop.,* 176 F.2d 633, 636 (4th Cir. 1949) (same). For several decades after *Rutherford Food,* courts applied this reasoning to ask, for example, whether a worker took ''the usual path of an employee,'' *Dr. Pepper,* 347 F.2d at 8, or had characteristics that ''resembled . . . the typical independent contractor,'' *Schultz* v. *Cadillac Assocs., Inc.,* 413 F.2d 1215, 1217 (7th Cir. 1969). But they did not adopt a systematic approach to the question.

In the 1970s and 1980s, federal courts of appeals began to adopt a multifactor ''economic reality'' test based on *Silk, Rutherford Food,* and *Bartels* similar to Treasury's 1947 proposed SSA regulation to analyze whether a worker was an employee or an independent contractor under the FLSA.[4]

Drawing on the Supreme Court precedent discussed above, courts have recognized that the heart of the inquiry is whether ''as a matter of economic reality'' the workers are ''*dependent* upon the business to which they render service.'' *Usery* v. *Pilgrim Equip. Co.,* 527 F.2d 1308, 1311 (5th Cir. 1976) (quoting *Bartels,* 332 U.S. at 130 (emphasis added)). And some courts have clarified that this question of economic dependence may be boiled down to asking ''whether the individual is or is not, as a matter of economic fact, in business for himself.'' *Donovan* v. *Tehco, Inc.,* 642 F.2d 141, 143 (5th Cir. 1981); *see also Parrish* v. *Premier Directional Drilling, L.P.,* 917 F.3d 369, 380 (5th Cir. 2019) (''Essentially, our task is to determine whether the individual is, as a matter of economic reality, in business for himself.'' (internal quotation marks and citation omitted)); *Saleem,* 854 F.3d at 139 (''[O]ur ultimate concern [is] whether, as a matter of economic reality, the workers depend upon someone else's business for the opportunity to render service or are in business for themselves.'' (internal quotation marks and citations omitted)); *Baker* v. *Flint Eng'g & Constr. Co.,* 137 F.3d 1436, 1443 (10th Cir. 1998) (''Our final step is to review the findings on each of the above factors and determine whether plaintiffs, as a matter of economic fact, depend upon [the employer's] business for the opportunity to render service, or are in business for themselves.''). Courts have emphasized that the inquiry into the level and nature of dependence in a given relationship should be based on the totality of the circumstances. *See, e.g., Donovan* v. *DialAmerica Mktg., Inc.,* 757 F.2d 1376, 1382 (3d Cir. 1985) (noting that *Rutherford Food* ''emphasized that the circumstances of the whole activity should be considered . . .''). But these courts have also explained that a non-exhaustive, standard set of factors—derived from *Silk* and *Rutherford*—shape and guide this inquiry. *See, e.g., Usery,* 527 F.2d at 1311 (identifying ''[f]ive considerations [which] have been set out as aids to making the determination of dependence, vel non''); *Real* v. *Driscoll Strawberry Assocs., Inc.,* 603 F.2d 748, 754 (9th Cir. 1979) (articulating a six-factor test).

In *Driscoll,* the Ninth Circuit Court of Appeals described its six-factor test as follows:

1. The degree of the alleged employer's right to control the manner in which the work is to be performed;
2. the alleged employee's opportunity for profit or loss depending on his managerial skill;
3. the alleged employee's investment in equipment or materials required for his task, or his employment of helpers;
4. whether the service rendered requires a special skill;
5. the degree of permanency of the working relationship; and
6. whether the service rendered is an integral part of the alleged employer's business.

Id. at 754. Most courts of appeals articulate a similar test, but application between courts may vary significantly. *See, e.g., Sec'y of Labor* v. *Lauritzen,* 835 F.2d 1529, 1534–35 (7th Cir. 1987); *DialAmerica Mktg.,* 757 F.2d at 1382; *Donovan* v. *Brandel,* 736 F.2d 1114, 1117 (6th Cir. 1984). For example, the Second Circuit has analyzed opportunity for profit or loss and investment (the second and third factors listed above) together as one factor. *See, e.g., Brock* v. *Superior Care, Inc.,* 840 F.2d 1054, 1058 (2d Cir. 1988). And the Fifth Circuit has not adopted the sixth factor listed above, which analyzes the integrality of the work. *See, e.g., Usery,* 527 F.2d at 1311.

A few courts of appeals have adopted noteworthy modifications to the economic reality factors as originally articulated in 1947 by the Supreme Court and by the Treasury Department. *Compare, e.g., DialAmerica Mktg.,* 757 F.2d at 1382, *with Silk,* 331 U.S. at 716, *and* 12 FR 7966. First, the ''skill required'' factor identified in *Silk,* 331 U.S. at 716, is now articulated more expansively by some courts of appeals as including consideration of ''initiative.'' *See, e.g., Parrish,* 917 F.3d at 379 (''the skill and initiative required in performing the job''); *Karlson,* 860 F.3d at 1093 (same); *Superior Care,* 840 F.2d at 1058–59 (''the degree of skill and independent initiative required to perform the work''). Second, *Silk* analyzed workers' investments, 331 U.S. at 717–19, and the investment factor was articulated in the proposed 1947 Treasury regulation as evaluating ''investments *by the individual* in facilities for work.'' 12 FR 7966 (emphasis added). However, the Fifth Circuit Court of Appeals has modified the ''investment'' factor to consider ''the extent of the relative investments of the worker and the alleged employer.'' *Hopkins,* 545 F.3d at 343. Some other circuits have adopted this ''relative investment'' approach but continue to use the phrase ''worker's investment'' to describe the factor. *See, e.g., Keller* v. *Miri Microsystems LLC,* 781 F.3d 799, 810 (6th Cir. 2015); *Dole* v. *Snell,* 875 F.2d 802, 805 (10th Cir. 1989).

Third, although the permanence factor under *Silk* was understood in the 1947 Treasury proposal to mean the continuity and duration of working relationships, *see* 12 FR 7967, some courts of appeals have expanded this factor to also consider the exclusivity of such relationships. *See, e.g., Scantland,* 721 F.3d at 1319; *Keller,* 781 F.3d at 807. Finally, *Rutherford Food's* consideration of whether work is ''part of an integrated unit of production,'' 331 U.S. at 729—which was articulated as ''integration of the individual's work'' in the 1947 Treasury proposal, 12 FR 7966—is now typically articulated by many courts of appeal as whether the service rendered is ''integral,'' which those courts have mistakenly applied as meaning important or central to the potential employer's business. *See, e.g., Verma* v. *3001 Castor, Inc.,* 937 F.3d 221, 229 (3rd Cir. 2019) (concluding that workers' services were integral because they were the providers of the business's ''primary offering''); *Acosta*

The Court's analysis did not explicitly mention the *Silk* factors or the concept of economic dependence from *Bartels.* However, the Court focused on the fact that workers were not ''selling their products on the market for whatever price they could command,'' but were instead ''regimented under one organization, manufacturing what the organization desire[d] and receiving the compensation the organization dictates.'' *Id.*

[4] As explained below, this multifactor economic realty test had also been enforced and articulated by the Department in subregulatory guidance since the 1950s.

v. *Off Duty Police Servs., Inc.,* 915 F.3d 1050, 1055 (6th Cir. 2019) (concluding that services provided by workers were ''integral'' because the putative employer ''built its business around'' those services); *McFeeley,* 825 F.3d at 244 (consideration ''the importance of the services rendered to the company's business''); *DialAmerica,* 757 F.2d at 1385 (''[W]orkers are more likely to be 'employees' under the FLSA if they perform the primary work of the alleged employer.'').

Courts of appeals applying the multifactor economic reality test draw from the totality of circumstances, with no single factor being determinative by itself. *See, e.g., Keller,* 781 F.3d at 807 (''No one factor is determinative.''); *Baker,* 137 F.3d at 1440 (''None of the factors alone is dispositive; instead, the court must employ a totality-of-the-circumstances approach.''); *Martin* v. *Selker Bros.,* 949 F.2d 1286, 1293 (3rd Cir. 1991) (''It is a well-established principle that the determination of the employment relationship does not depend on isolated factors . . . neither the presence nor the absence of any particular factor is dispositive.'').

3. Application of the Economic Reality Test by WHD

Since at least 1954, WHD has applied a multifactor analysis when considering whether a worker is an employee under the FLSA or is instead an independent contractor. *See* WHD Opinion Letter (Aug. 13, 1954) (applying six factors very similar to the six economic reality factors currently used by courts of appeal and noting that ''the determination depends on the circumstances of the whole activity considered in light of the statutory purposes of the Act'' (internal quotation marks omitted)). In 1956, WHD reiterated the six factors and noted that ''[t]he degree of control retained by the principal has [been] rejected as the sole criterion to be applied.'' WHD Opinion Letter (Feb. 8, 1956). In 1964, WHD stated: ''The Supreme Court has made it clear that an employee, as distinguished from a person who is engaged in a business of his own, is one who as a matter of economic reality follows the usual path of an employee and is dependent on the business which he serves.'' WHD Opinion Letter FLSA–795 (Sept. 30, 1964).

Over the years since, WHD has issued numerous opinion letters addressing whether a worker is an employee under the FLSA or an independent contractor. In those letters, WHD has generally relied on a multifactor analysis very similar to the six economic reality factors identified above; the circumstances of the whole activity are considered; the inquiry is broader than the common law control standard alone; and a worker is an employee if, as a matter of economic reality, he or she is economically dependent on the employer as opposed to in business for him- or herself.[5] WHD has also promulgated regulations applying a multifactor analysis for independent contractor status under the FLSA in certain specific industries. *See, e.g.,* 29 CFR 780.330(b) (applying a six factor economic reality test to determine whether a sharecropper or tenant is an independent contractor or employee under the Act); 29 CFR 788.16(a) (applying a six factor economic reality test in forestry and logging operations with no more than eight employees). And WHD has promulgated a regulation applying a multifactor economic reality analysis for determining independent contractor status under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA).The MSPA regulation is based on the FLSA's definition of ''employ'' because MSPA incorporates that definition, and it asks ''whether or not an *independent contractor* or *employment* relationship exist under the Fair Labor Standards Act.'' 29 CFR 500.20(h)(4) (emphasis in original).

WHD Fact Sheet #13, ''Employment Relationship under the Fair Labor Standards Act (FLSA)'' (Jul. 2008), similarly states that, when determining whether an employment relationship exists under the FLSA: The common law control is not the exclusive consideration; instead, ''it is the total activity or situation which controls''; and ''an employee, as distinguished from a person who is engaged in a business of his or her own, is one who, as a matter of economic reality, follows the usual path of an employee and is dependent on the business which he or she serves.''[6] The Fact Sheet identifies seven economic reality factors; in addition to factors that are similar to the six factors identified above, it also considers the worker's ''degree of independent business organization and operation.''[7]

WHD's most recent opinion letter addressing this issue, from 2019, generally applied the principles and factors similar to those described in the prior opinion letters and Fact Sheet #13, but not the ''business organization'' factor (which it said was ''[e]ncompassed within'' the other factors). The opinion letter addressed the FLSA classification of service providers who used a virtual marketplace company to be referred to end-market consumers to whom the services were actually provided. WHD concluded that the service providers appeared to be independent contractors and not employees of the virtual marketplace company. *See* WHD Opinion Letter FLSA2019–6 at 7. WHD found that it was ''inherently difficult to conceptualize the service providers' 'working relationship' with [the virtual marketplace company], because as a matter of economic reality, they are working for the consumer, not [the company].'' *Id.* Because ''[t]he facts . . . demonstrate economic independence, rather than economic dependence, in the working relationship between [the virtual marketplace company] and its service providers,'' WHD opined that they were not employees of the company under the FLSA but rather were independent contractors. *Id.* at 9.

As explained in greater detail below, these prior interpretations of independent contractor status, which themselves have evolved over time, are subject to the same limitations as the court opinions from the same period, and the Department believes that stakeholders would benefit from clarification. As such, the Department is proposing to promulgate a clearer and more consistent standard for evaluating whether a worker is an employee or independent contractor under the FLSA.

III. Need for Rulemaking

The Department has never promulgated a generally applicable regulation addressing the question of who is an independent contractor and, thus, not an employee under the Act. Instead, as described above, the Department has issued and revised subregulatory guidance since at least

[5] *See, e.g.,* WHD Opinion Letter FLSA2019–6 at 4 (Apr. 29, 2019); WHD Opinion Letter, 2002 WL 32406602, at *2 (Sept. 5, 2002); WHD Opinion Letter, 2000 WL 34444342, at *3 (Dec. 7, 2000); WHD Opinion Letter, 2000 WL 34444352, at *1 (Jul. 5, 2000); WHD Opinion Letter, 1999 WL 1788137, at *1 (Jul. 12, 1999); WHD Opinion Letter, 1995 WL 1032489, at *1 (June 5, 1995); WHD Opinion Letter, 1995 WL 1032469, at *1 (Mar. 2, 1995); WHD Opinion Letter, 1986 WL 740454, at *1 (June 23, 1986); WHD Opinion Letter, 1986 WL 1171083, at *1 (Jan. 14, 1986); WHD Opinion Letter WH–476, 1978 WL 51437, at *2 (Oct. 19, 1978); WHD Opinion Letter WH–361, 1975 WL 40984, at *1 (Oct. 1, 1975); WHD Opinion Letter (Sept. 12, 1969); WHD Opinion Letter (Oct. 12, 1965).

[6] Fact Sheet #13 is available at *https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs13.pdf.*

[7] On July 15, 2015, WHD issued Administrator's Interpretation No. 2015–1, ''The Application of the Fair Labor Standards Act's 'Suffer or Permit' Standard in the Identification of Employees Who Are Misclassified as Independent Contractors'' (AI). The AI provided guidance regarding the employment relationship under the FLSA and the application of the six economic realities factors. The AI was withdrawn on June 7, 2017 and is no longer in effect.

1954, using different variations of a multifactor economic reality test that analyzes economic dependence to distinguish independent contractors from employees. The Department has also applied the multifactor test in regulations addressing the meaning of independent contractor in specific industries. *See, e.g.,* 29 CFR 780.330(b); 29 CFR 788.16(a); 29 CFR 500.20(h)(4). For reasons explained below, however, that multifactor test, as currently applied, has proven to be unclear and unwieldy. The Department thus proposes to promulgate a regulation that explains the contours of the economic reality test and clarifies and sharpens a test that has become less clear and consistent through decades of case-by-case administration in the courts of appeals. If this proposed rule were finalized, it would contain the Department's sole and authoritative interpretation of independent contractor status under the FLSA. As such, the Department is proposing to strike previous industry-specific interpretations set forth in 29 CFR 780.330(b) and 788.16(a) and replace them with cross-references to the interpretation set forth in this proposed rule. The Department considered making similar revisions to its regulation addressing independent contractor status under the MSPA in 29 CFR 500.20(h)(4), but is not proposing not to make such revisions at this time, as explained further below. The Department invites comments on the need for conforming edits to these or similar provisions.

A. Challenges Presented by the Economic Reality Test and Its Application

The economic reality test has been criticized on several fronts. First, the test's overarching concept of ''economic dependence'' is under-developed and sometimes inconsistently applied, rendering it a source of confusion. Second, the test is indefinite and amorphous in that it makes all facts potentially relevant without providing any guidance on how to prioritize or balance different and sometimes competing considerations. Third, inefficiency and lack of structure in the test further stem from blurred boundaries between the factors. Fourth, these shortcomings have become more apparent over time as technology, economic conditions, and work relationships have evolved.

1. Confusion Regarding the Meaning of Economic Dependence

Courts and the Department agree that economic dependence is the touchstone of the economic reality test. *See, e.g., Parrish,* 917 F.3d at 380; *McFeeley,* 825 F.3d at 241; *see also Bartels,* 332 U.S. at 130 (noting that the inquiry is whether ''as a matter of economic reality,'' the worker is ''dependent upon the business to which [he or she] render[s] service''). But underdeveloped analysis and inconsistency cloud the application of this touchstone, generating uncertainty both in and outside of litigation. Given the central importance of the economic dependence concept, any confusion on this front is problematic. The 1948 Senate Report criticized Treasury's proposal to rely on economic dependence for determining independent contractor status under the SSA by rhetorically asking: ''Who, in this whole world engaged in any sort of service relationship, is not dependent as a matter of economic reality on some other person? The corner grocer, clearly not an employee, is economically dependent upon his customers, his banker, his supplier.'' S. Rep. No. 80–1255 at 12 (1948). In other words, ''economic dependency is a vague concept that without further explanation and refinement is often difficult, if not impossible, to apply.'' [8]

The Department and some courts have attempted to provide a measure of clarity by explaining, for example, that the proper inquiry is '''whether the workers are dependent on a particular business or organization *for their continued employment'* in that line of business,'' *Mr. W Fireworks,* 814 F.2d at 1054 (emphasis in original) (quoting *DialAmerica,* 757 F.2d at 1385), or instead ''are in business for themselves,'' *Saleem,* 854 F.3d at 139. But the Department and many courts have often applied the test without helpful clarification on the meaning of the economic dependency that they are seeking.[9]

The lack of explanation of economic dependence has sometimes led to inconsistent approaches and results. For example, the Fifth Circuit held in 2009 that cable splicers hired as putative independent contractors by BellSouth to provide post-Hurricane Katrina repairs along the Gulf Coast were actually employees. *See Cromwell* v. *Driftwood Elec. Contractor, Inc.,* 348 F. App'x 57 (5th Cir. 2009). That case applied the same approach to economic dependence as *Mr. W. Fireworks* and similar cases, asking whether ''the worker is economically dependent upon the alleged employer or is instead in business for himself.'' *Id.* at 59. Less than a year later, a different panel of that same circuit applied a second approach to economic dependence to find another cable splicer hired under a very similar arrangement by the same company to be an independent contractor. *See Thibault* v. *BellSouth Telecommunication,* 612 F.3d 843 (5th Cir. 2010).[10] The *Thibault* court distinguished the result in *Cromwell* in part by highlighting the plaintiff's sources of income and wealth other than from BellSouth in the analysis of economic dependence. *Id.* at 849.[11] *Thibault's* reliance on income and wealth sources to analyze economic dependence is incompatible with *Mr. W. Fireworks* and similar decisions, which have repeatedly explained that ''[e]conomic dependence is *not* conditioned on reliance on an alleged employer for one's primary source of income, for the necessities of life.'' 814 F.2d at 1054 (emphasis in original).[12]

The Department agrees with *Mr. W Fireworks* and similar courts that ''the proper test of economic dependence . . . 'examines whether the workers are dependent on a particular business or organization for *their continued employment.'*'' *Id.* (quoting *DialAmerica,* 757 F.2d at 1385); *see also Halferty,* 821 F.2d at 268 (''[I]t is not dependence in the sense that one could not survive without the income from the job that we examine, but dependence for continued employment.''). Dependence for work as opposed to income comports with the FLSA's ''suffer or permit'' standard for employment relationship. 29 U.S.C. 203(g). An individual who depends on a potential employer for work is an employee whom the

[8] Bruce Goldstein, *et al., Enforcing Fair Labor Standards in the Modern American Sweatshop: Rediscovering the Statutory Definition of Employment,* 46 UCLA L. Rev. 983, 1009 (1999) (collecting cases).

[9] *Id.* at 1010.

[10] In both cases, the splicers performed post-Hurricane Katrina repairs for BellSouth along the Gulf Coast; provided their own tools and trucks; received assignments in the same manner; received neither training nor close supervision; and worked the same 12-hour shifts for 13 days at a time. *Compare Cromwell,* 348 F. App'x at 58–59, *with Thibault,* 612 F.3d at 844–49.

[11] Specifically, Mr. Thibault earned significant profits from his own sales company, ''owned eight drag-race cars [that] generated $1,478 in income from racing professionally[,]'' and managed ''commercial rental property that generated some income.'' *Thibault,* 612 F.3d at 849. The *Thibault* court also highlighted the fact that Mr. Thibault worked for only three months—although he intended to work for seven or eight months—before being fired. *Id.* at 846, 849. In contrast, the splicers in *Cromwell* worked approximately eleventh months. 348 F. App'x at 58.

[12] *See also Off Duty Police,* 915 F.3d at 1058 (''[W]hether a worker has more than one source of income says little about that worker's employment status.''); *DialAmerica,* 757 F.2d at 1385 (''The economic-dependence aspect of the [economic reality] test does not concern whether the workers at issue depend on the money they earn for obtaining the necessities of life.'').

employer suffers or permits to work. In contrast, an independent contractor does not work at the sufferance or permission of an employer because, as a matter of economic reality, he or she is in business for him- or herself. *See Saleem,* 854 F.3d at 139.

Without a consistent understanding of economic dependence, the multifactor balancing test is left without a meaningful anchor. As a result, the test's factors may become ''an end in themselves'' instead of, as they are intended to be, guideposts in the inquiry of economic dependence or lack thereof.[13] For example, in *Parrish,* 917 F.3d 369, the Fifth Circuit appears to have applied three different concepts of economic dependence in a single opinion to analyze the control, opportunity for profit or loss, and investment factors. First, the court analyzed the control factor through the same concept of dependence as *Mr. W Fireworks,* announcing that ''our task is to determine whether the individual is, as a matter of economic reality, in business for himself.'' *Parrish,* 917 F.3d at 379. The *Parrish* court reasoned that mandated ''safety training and drug testing, when working at an *oil-drilling site,* is not the type of control that counsels in favor of employee status.'' *Id.* at 382 (emphasis in original). This analysis is consistent with the ''in business for himself'' approach because an oil-drilling company reasonably would require safety and drug testing of both employees (who depend on the company for work) and independent contractors (who are in business for themselves), since an accident could pose potentially significant risks to the worksite and to workers, regardless whether caused by an employee or an independent contractor.

The *Parrish* court then expressly departed from *Mr. W Fireworks* in favor of *Thibault's* dependence-for-income approach to analyze the opportunity for profit or loss factor. *Id.* at 384. Specifically, the court held that the consultant was an independent contractor, in part, because he also earned income from his own goat farm. *See id.* at 383 (''*Thibault* is more on point [than *Mr. W. Fireworks*]. Accordingly we consider . . . plaintiffs' enterprises, such as the goat farm, as a part of the overall analysis of how dependent plaintiffs were on [defendant].''). But the goat farm has absolutely nothing to do with whether the worker was in business for himself as a consultant or was ''dependent on a particular business or organization for [his] continued employment in that line of business.'' *Mr. W Fireworks,* 814 F.2d at 1054. Put another way, the economic reality analysis should ask whether the plaintiff had ''opportunity for profit or loss . . . in the claimed independent operations,'' *Silk,* 331 U.S. at 716, which in *Parrish* was consulting, not goat farming.

The *Parrish* court impliedly took yet a third approach to economic dependence when it analyzed the investment factor by comparing the dollar value of ''each worker's *individual* investment'' to the investment made by an oil drilling company in its overall operations: ''Obviously, [the drilling company] invested more money at a drill site compared to each plaintiff's investments.'' *Id.* at 383 (emphasis in original). That comparison was unresponsive to the economic dependence inquiry of whether the worker is ''[e]ssentially . . . in business for himself,'' *id.* at 379, because large companies routinely contract for services with smaller entrepreneurs. Instead, the worker's investment (or lack thereof) should have been analyzed to determine whether the worker had an independent operation, distinct from the potential employer's business, which created an opportunity for profit or loss.

The 1948 Senate Report cautioned that economic dependence was potentially ''dimensionless.'' And although courts and the Department have since added some guidance, the concept may be inconsistently applied and under-analyzed. A more developed and dependable touchstone at the heart of the economic reality test is needed to guide the regulated community. Under this proposal, the Department would interpret and apply ''economic dependence'' consistent with the foregoing discussion.

2. The Lack of Focus in the Multifactor Balancing Test

Under the test, the Department and courts analyze the totality of circumstances making up the economic reality of the relationship to determine a worker's classification. But, as Judge Easterbrook warned in 1987, '' 'reality' encompasses millions of facts, and unless we have a legal rule with which to sift the material from the immaterial, we might as well examine the facts through a kaleidoscope.'' *Lauritzen,* 835 F.2d at 1539 (Easterbrook J., concurring) (''[A]ny balancing test begs questions about which aspects of 'economic reality' matter, and why.''). Indeed, Congress rejected Treasury's 1947 proposal to use the multifactor balancing test under the SSA, with some senators expressing concern that, ''on virtually no state of facts may anyone be certain whether or not he has a tax liability.'' *Webb,* 397 U.S. at 188 (quoting S. Rep. No. 1255, at 12 (1948)). The same uncertainty often exists under the FLSA. So far, neither the Department nor courts have articulated clear, generally applicable guidance about how the multiple factors, and the countless facts encompassed therein, are to be balanced, creating uncertainty for the regulated community when, as is often the case, the significance of facts is unclear or factors point in opposite directions.

Courts applying the economic reality test often analyze the factors individually and then reach an overall decision about a worker's classification without meaningful explanation of how they balanced the factors to reach the final decision. *See, e.g., Parrish,* 917 F.3d at 380 (analyzing each factor separately and then explaining ''for the reasons stated *supra,* we reach the same conclusions as did the district court''); *Chao* v. *Mid-Atl. Installation Servs., Inc.,* 16 F. App'x 104, 108 (4th Cir. 2001) (same); *Snell,* 875 F.2d at 912 (same). This is so even where many facts and factors support both sides of the classification inquiry. *See, e.g., Acosta* v. *Paragon Contractors Corp.,* 884 F.3d 1225, 1238 (10th Cir. 2018) (concluding, without explanation as to weighing of the factors, that workers were employees where two factors (control and integral part) favored independent contractor status and four factors (opportunity for profit or loss, investment, skill, and permanence) favored employee status); *Iontchev* v. *AAA Cab. Services,* 685 F. App'x 548, 550 (9th Cir. 2017) (concluding, without explanation as to weighing of the factors, that the workers were independent contractors where two factors (control and opportunity for profit or loss) favored independent contractor status; one factor (investment) was neutral; and three factors (skill, permanence, and integral part) favored employee status).

At other times, courts have provided analysis as to the relative weight of the factors in the specific case before them. For example, some courts have noted where factors weigh ''strongly'' or ''weakly.'' *See, e.g., Scantland,* 721 F.3d at 1313–19 (finding that, assuming factual inferences in favor of the workers, the control, opportunity for profit or loss, permanence, and integral part factors strongly point to employee status, and the investment and skill factors weakly favor independent contractor status); *Superior Care,* 840 F.2d at 1059 (finding that opportunity

[13] *Goldstein, supra* note 8 at 1010.

for profit or loss and integral part factors ''both weigh heavily in favor of the . . . conclusion that nurses are employees,'' while skill and permanence factors ''weigh slightly in favor of independent status, [but] do not tip the balance''). And at least one court recently dispensed with a factor-by-factor analysis and instead focused its analysis on only those facts that determined the outcome in the case. *See Saleem,* 854 F.3d at 140 (''draw[ing] upon and discuss[ing] the *Silk* factors where relevant'' to the economic reality of the relationship at issue).

While identifying the most relevant factors in a specific case lends more clarity than a siloed analysis of each factor devoid of context, this approach still leaves the regulated community without generally applicable guidance as to what matters most and why. *See Lauritzen,* 835 F.2d at 1539 (Easterbrook J., concurring) (''A legal approach calling on judges to examine all of the facts, and balance them, avoids formulating a rule of decision . . . [and] keep[s businesses] in the dark about the legal consequences of their deeds.''). In other words, the multifactor economic reality test is missing direction on the relative importance of the factors.

3. Confusion and Inefficiency Due to Overlapping Factors

The economic reality test's multifactor framework gives some structure to an otherwise roving inquiry by filtering the totality of circumstances into distinct relevant categories. But three factors—skill, permanence, and integral part—have been expanded by courts and the Department to incorporate aspects of economic reality that also fall under the control factor, creating overlapping coverage. There is additional overlap between the opportunity for profit/loss and investment factors, which ''relate logically to one [an]other.'' *McFeeley,* 825 F.3d at 243; *Lauritzen,* 835 F.2d at 1537 (''The capital investment factor is . . . interrelated to the profit and loss consideration.''). The structure provided by a multifactor framework breaks down when the lines between factors are blurred. *See Saleem,* 854 F.3d at 140 n. 20 (''[C]aution is merited because the *Silk* factors, while helpful in identifying relevant facts, overlap to a substantial degree[.]''). Blurred lines further create inefficiency by requiring courts to analyze the same facts multiple times, sometimes in inconsistent ways. Additionally, litigants address and analyze the same facts repeatedly, and businesses must evaluate those same facts again and again when making worker classification decisions. Each of these overlaps are discussed in more detail below.

Silk articulated a ''skill required'' factor as part of the economic reality test, 331 U.S. at 716, and several federal courts of appeals continue to apply this factor to consider ''the degree of skill required to perform the work.'' *Paragon,* 884 F3d at 1235; *see also Iontchev,* 685 F. App'x at 550 (asking ''whether services rendered . . . require[d] a special skill''); *Keller,* 781 F.3d at 807 (analyzing ''the degree of skill required''). As explained above, this inquiry has been expanded by some other courts into a ''skill and initiative'' factor which, in addition to asking whether workers have ''some unique skill set,'' also analyzes whether they ''exercise significant initiative within the business.'' *Parrish,* 917 F.3d at 385; *see also, e.g., Superior Care,* 840 F.2d at 1060. The ability to exercise significant initiative is already analyzed as part of the control factor. This expansion of the skill factor to incorporate the initiative aspect of control occurred because courts recognized that ''the use of special skills is not itself indicative of independent contractor status, especially if the workers do not use those skills in any independent way.'' *Selker Bros.,* 949 F.2d at 1295; *see also Superior Care,* 840 F.2d at 1060. The Department now believes this sentiment could have been better incorporated into the analysis by explaining that capacity for initiative under the control factor is more important than having a specialized skill. Such an approach would have also provided helpful guidance regarding how to balance the factors that point in different directions.

Instead, courts and the Department have imported a control analysis into the skill factor. *See Selker Bros.,* 949 F.2d at 1295 (concluding that the skill factor weighed towards employee classification due to ''the degree of control exercised by [the potential employer] over the day-to-day operations''); *see also* WHD Fact Sheet #13 (describing the skill factor to include ''initiative, judgment, or foresight''). For many courts, the analysis of control appears to have become the most important part of the skill factor, overriding presence or absence of actual specialized skill. *See Baker,* 137 F.3d at 1443 (finding that the skill factor weighed towards employee classification where skilled welders ''are told what to do and when to do it''); *Superior Care,* 840 F.2d at 1060 (finding that the skill factor weighed towards employee classification for skilled nurses because ''Superior Care in turn controlled the terms and conditions of the employment relationship''). In short, by adding ''initiative'' to the ''skill required'' factor originally articulated by *Silk,* courts have turned that factor into an extension of the control factor. The ''skill and initiative'' factor also overlaps with the opportunity for profit or loss factor, which considers whether a worker's earnings are determined by initiative. *See, e.g., Snell,* 875 F.2d at 810 (finding employee status in part because the workers' ''earnings did not depend upon their judgment or initiative, but on the [potential employer's] need for their work''). Thus, facts relating to initiative are analyzed through three factors: Control, opportunity for profit, and skill.[14]

Such overlap exacerbates confusion by blurring the lines between the economic reality factors. It also requires redundant analysis of the same facts under different factors, which may yield inconsistent and confusing results within the same case. For example, in *Express Sixty-Minutes Delivery,* the court concluded that the control factor pointed towards independent contractor status in part because the delivery drivers had substantial capacity for initiative: ''Drivers set their own hours and days of work[,] can reject deliveries without retaliation,'' and ''can work for other courier delivery systems.'' 161 F.3d at 303. The court further determined that each ''driver's profit or loss is determined largely on his or her skill, initiative, ability to cut costs, and understanding of the courier business.'' *Id.* at 304. But confusingly, the court also held that the ''skill and initiative factor points towards employee status'' due to ''the key missing ingredient . . . [of] initiative.'' *Id* at 305. Read together, these holdings may be confusing because the court held that drivers lacked the very initiative that the court recognized in the same opinion to determine their profits and losses. It may also appear inconsistent for the court to hold that initiative was a ''missing ingredient'' when it determined in the same opinion that drivers had freedom to set hours, reject assignments, and work for competitors.

Next, the permanence factor originally concerned the continuity and duration of a working relationship. The factor has since been expanded by many courts and the Department to also consider the exclusivity of the relationship. *See, e.g.,*

[14] While both the control factor and the opportunity for profit or loss factor overlap with the ''skill and initiative'' factor, they do not overlap with each other in this regard. The control factor concerns the *capacity* for initiative, *i.e.,* whether a worker is able to exercise initiative. The opportunity for profit concerns the *effect* of initiative, *i.e.,* the extent to which profits (or losses) are determined by the exercise of initiative. The former is a prerequisite for the latter.

Parrish, 917 F.3d at 386–87 (considering as part of the permanence factor whether any worker worked exclusively for the potential employer); *Keller,* 781 F.3d at 807–09 (considering the exclusivity of the working relationship as part of the permanence factor); *Scantland,* 721 F.3d at 1319 (finding installation technicians' relationships with the potential employer were permanent because they ''could not work for other companies''); *see also* WHD Opinion Letter FLSA2019–6 at 8. But exclusivity is already an aspect of control. *See, e.g., Saleem,* 854 F.3d at 141 (''[A] company relinquishes control over its workers when it permits them to work for its competitors.''); *Express Sixty-Minutes Delivery,* 161 F.3d at 303 (concluding that the control factor indicated independent contractor status in part because the workers ''can work for other courier delivery systems, and [their agreement] does not contain a covenant-not-to-compete''). This overlap results in exclusivity being analyzed twice in many cases,[15] once as part of the control factor and again as part of the permanence factor. As with initiative, such repetitive analysis is inefficient and may exacerbate confusion.

Third, the integral part factor used by some courts to analyze importance appears to be a proxy for control.[16] Courts appear to assume that businesses will use employees and not independent contractors to perform important work in order to control how and when that work is performed. For example, one court explained the use of this factor by stating ''it is presumed that, with respect to vital or integral parts of the business, the employer will prefer to engage an employee rather than an independent contractor. This is so because the employer retains control over the employee and can compel attendan[ce] at work on a consistent basis.'' *Baker* v. *Dataphase, Inc.,* 781 F. Supp. 724, 735 (D. Utah 1992); *see also Baker* v. *Barnard Const. Co. Inc.,* 860 F. Supp. 766, 777 (D.N.M. 1994), *aff'd sub nom. Baker* v. *Flint Eng'g & Const. Co.,* 137 F.3d 1436 (10th Cir. 1998) (same). As an initial matter, this observation appears to rest on a mistaken premise. Manufacturers, for example, commonly have critical parts and components produced and delivered by wholly separate companies. In any event, the control factor already directly analyzes whether a business can compel a worker to work on a consistent basis or otherwise closely supervise and manage performance of the work. *See, e.g., Nieman* v. *Nat'l Claims Adjusters, Inc.,* 775 F. App'x 622, 625 (11th Cir. 2019) (''The first factor—control—weighs in favor of independent contractor status because Nieman . . . controlled his schedule.''). Such analysis presumes a relationship between control and integral part, and therefore is redundant.[17]

Finally, while *Silk* articulated opportunity for profit or loss and investment as separate factors, 331 U.S. at 716, there is clear overlap because ''[e]conomic investment, by definition, creates the opportunity for loss, [and] investors take such a risk with an eye to profit.'' *Saleem,* 854 F.3d at 145 n.29. Indeed, the Supreme Court analyzed these two factors together in *Silk,* concluding that coal unloaders were employees because they had ''no opportunity to gain or lose except from the work of their hands and [ ] simple tools.'' 331 U.S. at 717–18. In contrast, truck drivers in that case were independent contractors in part because they invested in their own trucks and had an ''opportunity for profit from sound management'' of that investment. *Id.* at 319.

There often is redundancy where the opportunity for profit or loss and investment factors are considered separately. *See, e.g., Mid-Atlantic Installation Servs.,* 16 F. App'x at 106–07. And separate analyses may result in confusion to the extent that it encourages analysis of a worker's investment outside of the context of the worker's opportunity for profit or loss. As discussed above, some courts compare the dollar value of a worker's personal investment against the total investment of large companies that, for example, ''maintain[ ] corporate offices,'' *Hopkins,* 545 F.3d at 344; *see also Parrish,* 917 F.3d at 383; *Keller,* 781 F.3d at 810, which says nothing about whether the worker is in business for him- or herself, as opposed to being economically dependent on the potential employer for work. Such irrelevant and potentially misleading comparisons could be avoided if investment were analyzed together with the opportunity for profit or loss factor, as the Supreme Court did in *Silk,* 331 U.S. at 719. That is precisely what the Second Circuit has done by combining opportunity for profit or loss and investment in a single factor. *See Superior Care,* 840 F.2d at 1058.

In summary, significant overlaps between factors exacerbate confusion about how certain facts are analyzed and balanced. They also create inefficiency by requiring redundant review of the same facts by courts, redundant litigation over the same facts by parties, and redundant analysis of the same facts by business seeking to classify workers.

4. The Shortcomings and Misconceptions That This Proposal Seeks To Remedy Are More Apparent in the Modern Economy

Certain shortcomings of the economic reality test have become more apparent in the modern economy. In particular, technological and social change—such as falling transaction costs, the transition from more of an industrial economy to more of a knowledge economy, and shorter job tenures—have revealed how analyzing the integral part factor through the lens of importance rather than integration, and giving undue weight to the investment and permanence factors, may send misleading signals regarding an individual's classification.

First, falling transaction costs in many sectors of the economy highlight the potential for errors resulting from analyzing the integral part factor through the lens of importance instead of integration. When the transaction costs of hiring are high, firms tend to hire employees rather than independent contractors for core tasks that must be performed on a routine basis.[18] Thus, analyzing the importance, centrality, or frequency of the work to an organization's business may have been correlated with a worker's classification,

[15] *Compare, e.g., Freund,* 185 F. App'x at 783 (''Hi–Tech exerted very little control over Mr. Freund [in part because] Freund was free to perform installations for other companies.''), *with id.* at 784 (''Freund's relationship with Hi–Tech was not one with a significant degree of permanence . . . [because] Freund was able to take jobs from other installation brokers.'').

[16] As discussed above, the Supreme Court's *Rutherford* opinion did not analyze whether work was important but rather whether it was ''part of an integrated unit.'' 331 U.S. at 729. Notably, the Fifth Circuit does not typically consider the integral part factor.

[17] Moreover, some courts have further conflated the integrality analysis by assuming that easily ''replaceable'' workers are less integral to a business. *Browning* v. *Ceva Freight, LLC,* 885 F. Supp. 2d 590, 610 (E.D.N.Y. 2012); *see also Velu* v. *Velocity Exp., Inc.,* 666 F. Supp. 2d 300, 307 (E.D.N.Y. 2009) (observing that integrality to business diminished where ''work is interchangeable with the work of other[s]''). That may be true, but being easily replaceable or interchangeable makes workers more economically dependent on that business for work, not less. Thus, focusing on integrality can sometimes obscure the ultimate issue of economic dependence.

[18] Ronald Coase, *Nature of the Firm,* 4 Economica 386 (1937), *https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.1468-0335.1937.tb00002.x. See also* Nobel Prizes and Laureates, Oct., 15, 1991, *https://www.nobelprize.org/prizes/economic-sciences/1991/press-release/* (explaining *The Nature of the Firm's* contribution to economics literature as a central reason for Coase's receipt of the 1991 Nobel Prize in Economics).

even though such analysis departs from *Rutherford Food's* consideration of whether work is part of an ''integrated unit of production.'' 331 U.S. at 726. Over the past several decades, however, technological innovations have driven transactions costs down in many (but not all) sectors of the economy, sometimes to negligible levels.[19] Firms in those sectors can now often hire independent contractors rather than employees for core tasks without incurring onerous transaction costs. For example, drivers are vital to the personal transportation business, but transportation companies increasingly hire independent contractor drivers rather than employees. *See, e.g., Saleem,* 854 F.3d at 140; *Iontchev,* 685 F. App'x at 550. The Department thus believes analyzing the importance or centrality of work may send misleading signals in low-transaction-cost environments that have become more commonplace, which militates in favor of refocusing the integral part factor on integration rather than importance.[20]

Second, the transition from a more industrial economy to more of a knowledge-based economy has diminished the investment factor's ability to indicate economic dependence.[21] Broadly speaking, the factors of production in a more industrial economy consist of either physical capital that produced investment returns or labor for which wages were paid. Such a more industrial economy facilitated a relatively clear distinction between ''wage earners toiling for a living'' and ''independent entrepreneurs seeking a return on their risky capital investments.'' *Mr. W Fireworks,* 814 F.2d at 1051. In today's more knowledge-based economy, however, it is often human rather than physical capital that matters most. Because personal initiative and know-how can enable entrepreneurship in a more knowledge-based economy, workers who lack ''capital investments'' cannot be assumed to be ''wage earners toiling for a living.'' *See, e g., Lauritzen,* 835 F.2d at 1540–41 (Easterbrook, J. concurring) (observing that an attorney ''sells human capital rather than physical capital, but this does not imply that lawyers are 'employees' of their clients under the FLSA''); *Meyer* v. *U.S. Tennis Ass'n,* 607 F. App'x 121, 123 (2d Cir. 2015) (holding that tennis umpires were independent contractors even though they ''invest little''). So, while the presence of significant capital investment is still probative, its absence may be less so in more knowledge-based occupations and industries. Indeed, technological advances enable, for example, freelance journalists, graphic designers, or consultants to be entrepreneurs with little more than a personal computer and smartphone. *See, e.g., Faludi* v. *U.S. Shale Sols., L.L.C.,* 950 F.3d 269, 276 (5th Cir. 2020) (holding that a consultant who ''provided his own phone and computer'' and ''made investments in his continuing education and home office equipment'' was an independent contractor).

Finally, shorter job tenures among American workers have diminished the underlying rationale of the permanence factor.[22] That factor assumes that independent contractors have relatively short working relationships while employees have longer ones.[23] Such distinction was sharp when the vast majority of employees had job tenures that lasted many years or even decades, as may have been the case for employees born in the 1940s and earlier.[24] But the Atlanta Federal Reserve's 2015 analysis of BLS data for U.S. workers born between 1933 and 1993 found that median job tenure has declined steadily for every age cohort, with younger generations having the lowest job tenures.[25] The most recently available data from the Department's Bureau of Labor Statistics (BLS) shows that, since 2014, job tenure rates have resumed their long-term decline, following a brief increase attributable to the 2008 recession, with the lowest job tenure rates for younger workers. The lowest median tenure (2.2 years) was found in the leisure and hospitality industry, which tends to have younger workers on average. This means that many employees today have shorter working relationships with their employers, which dulls the usefulness of job duration to distinguish an employee from an independent contractor.

In summary, the Department believes the current multifactor economic reality test suffers because the analytical lens through which all the factors are to be filtered remains inconsistent; there is no clear principle regarding how to balance the multiple factors; the lines between many of the factors are blurred; and these shortcomings have become more apparent in the modern economy. The result is legal uncertainty that obscures workers' and businesses' respective rights and obligations under the FLSA. Such uncertainty is especially acute when it comes to the growing number of more flexible and nimble work relationships. While such relationships benefit workers and businesses alike, they also lead to complex questions about a worker's classification under the FLSA, which are difficult to answer due in part to the shortcomings described above.[26]

The Department is further concerned that continued legal uncertainty may deter innovative work arrangements by creating legal risks with respect to misclassifying workers as independent contractors instead of employees. Take, for example, the workers in WHD's April 2019 opinion letter who searched for job opportunities and negotiated for prices by '' 'multi-app[ing]'—that is simultaneously run[ing a company]'s virtual platform alongside the platform of a competitor to compare virtual opportunities in real time and pick the best opportunity on a job-by-job basis.'' WHD Opinion Letter FLSA2019–6 at 8. Multi-apping creates significant economic value by letting workers find the best paying opportunities, providing app companies with access to a larger workforce, and helping consumers

[19] *See, e.g.,* Anders Henten and Iwona Windekie, ''Transaction Costs and the Sharing Economy,'' *26th European Regional ITS Conference* p. 2 (2015) (asserting that ''digital platforms allow for decreasing transaction costs''), *https://www.econstor.eu/bitstream/10419/127145/1/Henten-Winderkilde.pdf.*

[20] As noted in the Background section and explained in further detail below, the Supreme Court did not analyze whether work was important, but rather whether work was ''part of an integrated unit of production.'' *Rutherford Food,* 331 U.S. at 726. The Department proposes to return to the Supreme Court's original factors.

[21] *See, e.g.,* Walter Powell and Kaisa Snellman, *The Knowledge Economy,* 30 Annu. Rev. Sociol. 199–220 (2004).

[22] The Department has not investigated the cause of shorter job tenures since 1947 as part of this rulemaking.

[23] *Compare, e.g., Bartels,* 332 U.S. at 127 (finding that band members were independent contractors in part because ''[a]lmost all of the engagements . . . involved were one-night stands''), *with Whitaker House,* 366 U.S. at 29 (finding that homeworkers were employees of a cooperative that ''required [the homeworkers] to remain members at least a year'').

[24] Julie Hotchkiss and Christopher Macpherson, *Falling Job Tenure: It's Not Just about Millennials,* Federal Reserve Bank of Atlanta, June 8, 2015, *https://www.frbatlanta.org/blogs/macroblog/2015/06/08/falling-job-tenure-its-not-just-about-millennials.aspx.*

[25] *Id.*

[26] *See, e.g.,* Kati L. Griffith, *The Fair Labor Standards Act at 80: Everything Old Is New Again,* 104 Cornell L. Rev. 557, 561 (2019) (''[N]ew trends raise complicated questions about who is a true independent contractor excluded from the [FLSA]'s protections. Most notably, the recent growth in workers who depend on freelance or 'contract work,' has received a lot of attention.''); Griffin Toronjo Pivateau, *The Prism of Entrepreneurship: Creating A New Lens for Worker Classification,* 70 Baylor L. Rev. 595, 625 (2018) (''The economic realities test fails to cope with innovative working arrangements.''); Keith Cunningham-Parmeter, *From Amazon to Uber: Defining Employment in the Modern Economy,* 96 B.U. L. Rev. 1673, 1683–84, 1688 (2016) (''[P]ersistent uncertainty impacts an ever-expanding list of businesses in retail, service, home care, construction, information technology, and the burgeoning on-demand economy.'').

benefit from competition. This innovative practice depends on being able to confidently classify workers as independent contractors.[27] For this reason, a clear standard for employee classification can help encourage multi-apping and other economic innovations. Under the status quo, a company may believe it cannot be sure of a classification outside of costly litigation applying the economic reality test (which may be too unwieldly as currently applied). The prospect of such litigation expense and any potential back wages and penalties may be enough to deter businesses from exploring innovative business models and working relationships. Thus, legal uncertainty regarding worker classification may inhibit the development of new job opportunities or result in the elimination of existing jobs.

The Department is therefore issuing this NPRM to provide greater legal certainty and solicits comments on all these issues.

IV. Proposed Regulatory Provisions

In light of the foregoing concerns, the Department is proposing to introduce a new part to Title 29 of the Code of Federal Regulations addressing whether particular workers are ''employees'' or independent contractors under the FLSA. In relevant part, and as discussed in greater detail below, the Department proposes:

- Introductory provisions at § 795.100 explaining the purpose and legal authority for the new part;
- a provision at § 795.105(a) explaining that independent contractors are not employees under the FLSA;
- a provision at § 795.105(b) discussing the ''economic reality'' test for distinguishing FLSA employees from independent contractors, clarifying that the concept of economic dependence turns on whether a worker is in business for him- or herself (independent contractor) or is economically dependent on a potential employer for work (employee);
- provisions at § 795.105(c) and (d) describing factors examined as part of the economic reality test, including two ''core'' factors—the nature and degree of the worker's control over the work and the worker's opportunity for profit or loss—which are afforded greater weight in the analysis, as well as three other factors that may serve as additional guideposts in the analysis;
- a provision at § 795.110 advising that the parties' actual practice is more relevant than what may be contractually or theoretically possible; and
- a severability provision at § 795.115.

These proposals would significantly clarify how the Department distinguishes between employees and independent contractors under the Act.

The Department welcomes comment on all aspects of its proposal.

The Department further proposes to adopt the above-described provisions as its sole and authoritative interpretation of independent contractor status under the FLSA. Accordingly, the Department would replace industry-specific interpretations of independent contractor status for sharecroppers or tenants at § 780.330(b) and certain forestry or logging operations at § 788.16(a) with cross-references to the interpretation set forth in this rule. These previous industry-specific interpretations of independent contractor status all rely on the same FLSA terms as the interpretation set forth in this propose rule.[28] As such, the Department believes the justifications articulated in the need for rulemaking discussion in Section III, particularly the need for a consistent and clear standard for determining independent contractor status in all FLSA cases, largely apply to the question of independent contractor status in those industries.

The Department considered, but is not proposing at this time, similar revisions to 29 CFR 500.20(h)(4), which addresses independent contractor status under MSPA. The Department recognizes that MSPA adopts by reference the FLSA's definition of ''employ,'' *see* 18 U.S.C. 1802(5), and that 29 CFR 500.20(h)(4) considers ''whether or not an independent contractor or employment relationship exists under the Fair Labor Standards Act'' to interpret independent contractor status under MSPA. Nonetheless, MSPA imposes different legal obligations than the FLSA's minimum wage and overtime pay obligations and applies to different employers and employees.[29] And the Department's enforcement experience does not indicate that there is confusion regarding workers' classifications as an employee or independent contractor in the MSPA context to the same extent as the FLSA context. As such, it is not entirely clear whether the justifications articulated in the need for rulemaking discussion in Section III apply in the MSPA context. The Department therefore proposes to proceed incrementally by first seeking comment on a revised interpretation of independent contractor status under the FLSA before considering whether to revise the MSPA regulations.[30] The Department welcomes comments regarding whether 29 CFR 500.20(h)(4) should be revised to be consistent with the interpretation of independent contractor status set forth in this proposed rule.

A. Introductory Statements

Proposed § 795.100 explains that the interpretations provided in part 795 will guide WHD's enforcement of the FLSA and are intended to be used by employers, businesses, the public sector, employees, workers, and courts to assess employment status classifications under the Act. Proposed § 795.100 further clarifies that, if proposed part 795 is adopted, employers may safely rely upon the interpretations provided in part 795 under section 10 of the Portal-to-Portal Act, unless and until any such interpretation ''is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect.'' 29 U.S.C. 259.

[27] Businesses have a strong incentive to restrict multi-apping to independent contractors because an employee who multi-apps may create complicated questions regarding which of the multiple app companies is responsible for FLSA obligations for time spent multi-apping. During the multi-app period, a worker would be searching for customers on behalf of multiple app companies, and it therefore may be difficult or impractical to determine the company or companies for which the worker is performing compensable work if he or she is a non-exempt employee. This could raise challenging questions that create legal risk for each employer. The Department believes that the greater the legal certainty of workers' respective classifications, the more the Department encourages innovative work arrangements like multi-apping by providing companies with clear frameworks to set up these arrangements.

[28] The interpretation of independent contractor status under § 780.330(b) for sharecroppers or tenants pertain to an exemption for certain ''employee[s] employed in agriculture'' under section 13(a)(6) of the FLSA. The Department believes the distinction this proposed rule draws between independent contractors and employees would apply in the agricultural exemption context because the same statutory terms, *i.e.,* employee and employ, are being interpreted.

[29] *See* WHD Fact Sheet #49, ''The Migrant and Seasonal Agricultural Worker Protection Act'' (Jul. 2008).

[30] *See, e.g., Pharm. Research & Mfrs. of Am.* v. *FTC.,* 790 F.3d 198, 203 (D.C. Cir. 2015) (affirming that agency had discretion to ''proceeding incrementally'' in promulgating rules that were directed to one industry but not others); *Inv. Co. Inst.* v. *Commodity Futures Trading Comm'n,* 720 F.3d 370, 378 (D.C. Cir. 2013) (observing that ''[n]othing prohibits federal agencies from moving in an incremental manner'' (quoting *F.C.C.* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 522 (2009)); *City of Las Vegas* v. *Lujan,* 891 F.2d 927, 935 (D.C. Cir. 1989) (noting that ''agencies have great discretion to treat a problem partially'').

B. Proposal To Explain That Independent Contractors Are Not Employees Under the Act

Proposed § 795.105(a) explains that an independent contractor who renders services to a person is not an employee of that person under the FLSA. This is consistent with the Supreme Court's affirmation in *Rutherford Food* that the Act's definition of employee has consistently been interpreted as excluding individuals who ''might work for their own advantage,'' including ''independent contractors who take part in production or distribution.'' 331 U.S. at 728–29; *see also, e.g., Hopkins,* 545 F.3d at 342; *Saleem,* 854 F.3d at 139–40; *Karlson,* 860 F.3d at 1092. Minimum wage and overtime pay requirements under sections 6 and 7 of the Act apply only to a person's *employees. See* 29 U.S.C. 206(a), 207(a)(1). As such, those requirements do not apply with respect to a person's independent contractors. For the same reason, the recordkeeping obligations for employers under section 11 of the Act do not apply to a person with respect to services received from an independent contractor. *See* 29 U.S.C. 211(c) (''Every employer subject to any provision of [the FLSA] shall make, keep, and preserve such records of the persons *employed* by him[.]'') (emphasis added).

C. Proposal To Adopt the Economic Reality Test To Determine a Worker's Employee or Independent Contractor Status Under the Act

Proposed § 795.105(b) adopts the economic reality test to determine a worker's status as an employee or an independent contractor under the Act.

The Department's analysis begins with the text of the statute, following well-settled principles of statutory construction by ''reading the whole statutory text, considering the purpose and context of the statute, and consulting any precedents or authorities that inform the analysis.'' *Kasten* v. *Saint-Gobain Performance Plastics Corp.,* 563 U.S. 1, 7 (2011) (interpreting the FLSA) (internal quotation marks and citation omitted). An employer employs an individual under the Act if the employer ''suffer[s] or permit[s]'' the individual to work. 29 U.S.C. 203(g). Proposed § 795.105(b) codifies the Supreme Court's statement that ''suffer or permit'' means something broader than the common law conception of control; namely, economic dependence. *See, e.g., Darden,* 503 U.S. at 326. Therefore, the Department proposes that the central inquiry as to whether an individual is an employee or independent contractor under the Act is whether, as a matter of economic reality, the individual is economically dependent on the potential employer for work. *See Pilgrim Equip.,* 527 F.2d at 1311 (''It is dependence that indicates employee status.'').

However, all workers—employees and independent contractors alike—are economically dependent on others to some degree. Business owners are likewise economically dependent on the workers they hire, but this does not make them employees of their own workers. The economic reality test can be '' 'a dimensionless and amorphous abstraction' '' unless its touchstone—economic dependence—is clarified. *Webb,* 397 U.S. at 188 (quoting S. Rep. No. 1255, at 12 (1948)). As explained in the need for rulemaking discussion earlier in Section III, the meaning of economic dependence is sometimes inconsistently applied and would benefit from further explanation.

Clarifying the test requires putting the question of economic dependence in the proper context. ''Economic dependence is not conditioned reliance on an alleged employer for one's primary source of income, for the necessities of life.'' *Mr. W Fireworks,* 814 F.2d at 1054. Rather, courts have framed the question as ''whether, as a matter of economic reality, the workers depend upon someone else's business for the opportunity to render service or are in business for themselves.'' *Saleem,* 854 F.3d at 139; *see also Parrish,* 917 F.3d at 379; *Baker,* 137 F.3d at 1440 (''[T]he focal point is whether the individual is economically dependent on the business to which he renders service . . . or is, as a matter of economic fact, in business for himself.'') (internal quotation marks and citation omitted); *Donovan* v. *Tehco, Inc.,* 642 F.2d 141, 143 (5th Cir. 1981) (''The focal inquiry in the characterization process is thus whether the individual is or is not, as a matter of economic fact, in business for himself.''). In other words, the key question is whether workers are ''more closely akin to wage earners,'' who depend on others to provide work opportunities, or ''entrepreneurs,'' who create work opportunities for themselves. *Mr. W Fireworks,* 814 F.2d at 1051; *see also Express Sixty-Minutes,* 161 F.3d at 305 (asking whether workers ''are more like wage earners than independent entrepreneurs''); *cf.* H.R. Rep. No. 245, 80th Cong., 1st Sess. 18 (1947) (' 'Employees' work for wages or salaries under direct supervision. 'Independent contractors' undertake to do a job for a price, decide how the work will be done, usually hire others to do the work, and depend for their income not upon wages, but upon the difference between what they pay for goods, materials, and labor and what they receive for the end result, that is, upon profits.'').

The above-described concept of economic dependence comports with the FLSA's definition of employ as ''includ[ing] to suffer or permit to work.'' *See* 29 U.S.C. 203(g). An individual who depends on a potential employer for work is able to work only by the sufferance or permission of the potential employer. Such an individual is therefore an employee under the Act. In contrast, an independent contractor does not work at the sufferance or permission of others because, as a matter of economic reality, he or she is in business for him- or herself. In other words, an independent contractor is an entrepreneur who works for him- or herself, as opposed to an employer.

Some courts have relied on a worker's entrepreneurship with respect to one type of work to conclude that the worker was also in business for him- or herself in a second, unrelated type of work. *See, e.g., Parrish,* 917 F.3d at 384 (considering ''plaintiff's enterprise, such as the goat farm, as part of the overall analysis of how dependent plaintiffs were on [defendant]'' for working as consultants); *Thibault,* 612 F.3d at 849 (concluding that plaintiff was an independent contractor as a cable splicer in part because he managed unrelated commercial operations and properties in a different state). However, the Supreme Court was clear that the economic reality analysis is limited to ''the claimed independent operation.'' *Silk,* 331 U.S. at 716. Thus, the relevant question in this context is whether the worker providing certain service to a potential employer is an entrepreneur ''in that line of business.'' *Mr. W Fireworks,* 814 F.2d at 1054. Otherwise, businesses must make worker classification decisions based on facts outside the working relationship, such as whether a consultant manages a ''goat farm,'' *Parrish* 917 F.3d at 384, or whether a cable splicer owns an out-of-state commercial venture. *Thibault,* 612 F.3d at 849.[31]

At bottom, the phrase ''economic dependence'' may mean many different things. But in the context of the economic reality test, ''economic dependence'' is best understood in terms of what it is not. The phrase excludes individuals who, as a matter of economic reality, are in business for themselves. Such individuals work for themselves rather than at the sufferance

[31] It is possible for a worker to be an employee in one line of business and an independent contractor in another.

or permission of a potential employer, *see* 29 U.S.C. 203(g), and thus are not dependent on that potential employer for work. Proposed § 795.105(b) therefore recognizes the principle that, as a matter of economic reality, workers who are in business for themselves with respect to work being performed are independent contractors for that type of work.

D. Proposal To Apply the Economic Reality Factors To Determine a Worker's Independent Contractor or Employee Status

The uncertainty and unpredictability of the traditional multifactor analysis of economic dependence has led some courts and commentators to call for alternative approaches. Judge Easterbrook's concurrence in *Lauritzen,* for instance, urged the Seventh Circuit to ''abandon these unfocused 'factors' and start again.'' 835 F.2d at 1543 (Easterbrook J., concurring). One commentator in a recent article has proposed replacing the economic reality factors with ''three main dimensions to entrepreneurship.'' [32] The Department, however, prefers to sharpen the existing test, rather than to create a new test out of whole cloth, in part because many existing work relationships are structured around the current multifactor test and wholesale abandonment of that test may impose undue and prohibitive adjustment costs on the regulated community. Moreover, the economic reality test, properly construed and applied, is effective at distinguishing employees from independent contractors. As such, proposed § 795.105(c) and (d) would adopt a variation on the traditional multifactor analysis of economic dependence to improve certainty and predictability, as well as increase the test's probative value into the underlying question of economic dependence.

Proposed § 795.105(c) explains that certain nonexclusive economic reality factors guide the determination of whether an individual is, on one hand, economically dependent on a potential employer and therefore an employee or, on the other, in business for him- or herself and therefore an independent contractor. These factors are listed in § 795.105(d) and are based on economic reality factors currently used by the Department and most federal courts of appeals, with certain proposed clarifications.

First, the Department proposes to follow the Second Circuit's approach of analyzing the worker's investment as part of the opportunity for profit or loss factor. The combined factor would ask whether the worker has an opportunity to earn profits or incur losses based on his or her exercise of initiative or management of investments. Second, the Department proposes to clarify that the ''skill required'' factor originally articulated by the Supreme Court should be used, as opposed to the ''skill and initiative'' factor currently used in some circuits, because considering initiative as part of the skill factor creates unnecessary and confusing overlaps with the control and opportunity for profit or loss factors. Third, the Department proposes to further reduce overlap by analyzing the exclusivity of the relationship as a part of the control factor only, as opposed to both the control and permanence factors. Lastly, the Department proposes to reframe the ''whether the service rendered is an integral part of the alleged employer's business'' factor in accordance with the Supreme Court's original inquiry of whether the work is ''part of an integrated unit of production.'' *See Rutherford,* 331 U.S. at 729.

Proposed § 795.105(c) further improves the certainty and predictability of the test by focusing it on two core factors: (1) The nature and degree of the worker's control over the work; and (2) the worker's opportunity for profit or loss. These core factors, listed in proposed § 795.105(d)(1), are highly probative to the inquiry because the ability to control one's work and to earn profits and risk losses strikes at the core of what it means to be an entrepreneurial independent contractor, as opposed to a ''wage earner'' employee. *Mr. W Fireworks,* 814 F.2d at 1051; *cf. FedEx Home Delivery* v. *NLRB,* 563 F.3d 492, 497 (D.C. Cir. 2009) (''[I]ndependent contractors have 'significant entrepreneurial opportunity for gain or loss[.]' ''). Other factors listed in proposed § 795.105(d)(2) are also probative depending on the circumstances, but should be evaluated in the context of these two core factors. Given their greater weight, if both proposed core factors point towards the same classification—whether employee or independent contractor—there is a substantial likelihood that the individual's classification is accurate. This is because it is highly unlikely for the other, less probative factors to outweigh the combined weight of the core factors.[33]

The following discussion addresses the five economic reality factors, including proposed modifications and clarifications made to each, and explains why the two core factors are entitled to greater weight than other factors.

1. The Nature and Degree of the Individual's Control Over the Work

The first economic reality factor (proposed § 795.105(d)(1)(i)) is ''the nature and degree of the individual's control over the work.'' [34] This factor would weigh towards the individual being an independent contractor to the extent that the individual, as opposed to the potential employer, exercises substantial control over key aspects of the performance of the work. Examples in the proposed regulatory text of an individual's substantial control include setting his or her own work schedule, choosing assignments, working with little or no supervision, and being able to work for others, including a potential employer's competitors.[35] In addition, the Department agrees with courts that have found that an individual worker's ''substantial control of the key aspects'' of the work weighs in favor of independent contractor classification ''even if the worker is not solely in control of the work.'' *Parrish,* 917 F.3d at 381–82; *see also Mid-Atl. Installation Servs.,* 16 F. App'x at 106 (affirming the

[32] Pivateau, *supra* note 26, at 631. The proposal would replace the six-factor approach with ''the three main dimensions to entrepreneurship,'' which are: ''(1) the processes and events that make up entrepreneurship; (2) the skills and traits that characterize an entrepreneur; and (3) the results that entrepreneurship generates.'' *Id.*

[33] As discussed in greater detail below, the Department's review of federal appellate decisions indicates that, when the two proposed core factors are in alignment, they point to what the court finds to be the individual's correct classification.

[34] Many courts articulate this factor as the degree of control over the work by the potential employer as opposed to by the worker. *See, e.g., Razak,* 951 F.3d at 142; *Hobbs,* 946 F.3d at 829; *McFeeley,* 825 F.3d at 241; *Keller,* 781 F.3d at 807; *Scantland,* 721 F.3d at 1312. This distinction, however, is of no consequence. As the proposed regulatory text and this accompanying discussion make clear, the nature and degree of control over the work by the worker and by the potential employer are considered to determine whether control indicates employee or independent contractor status.

[35] *See, e.g., Saleem,* 854 F.3d at 147 (noting that the workers' ''flexible work schedules and considerable control over when, where, and in what circumstances to accept a . . . fare'' indicated that they were independent contractors); *Parrish,* 917 F.3d at 382 (finding control factor favored independent contractor status where workers ''did not have to accept a project'' and occasionally ''turned down projects without negative repercussion''); *Thibault,* 612 F.3d at 847 (finding control factor favored independent contractor status where ''supervisors would only come by occasionally, and never specified how [the worker] should do the [work]''); *Express Sixty-Minutes Delivery,* 161 F.3d at 303 (determining that the potential employer ''had minimal control'' over the delivery drivers where drivers ''set their own hours and days of work,'' ''can work for other currier delivery systems,'' and ''can reject deliveries without retaliation'').

district court's conclusion that, although the potential employer exercised some control over the work, the manner in which the workers completed their work was ''left to their broad discretion and business judgment, which suggests that they are independent contractors'').

In contrast, the control factor would weigh in favor of classification as an employee to the extent that a potential employer, as opposed to the individual, exercises substantial control over key aspects of the work, including through requirements that the individual work exclusively for it during the working relationship or prohibiting the individual from working for others after that relationship ends. According to the proposed regulatory text, a potential employer may exercise substantial control, for example, where it explicitly requires an exclusive working relationship or where it imposes restrictions that effectively prevent an individual from working with others. *Cf. Keller,* 781 F.3d at 814 (''[A] reasonable jury could find that the way that [the potential employer] scheduled [the worker's] installation appointments made it impossible for [the worker] to provide installation services for other companies.''); *Baker,* 137 F.3d at 1441 (''[T]he hours [the workers] are required to work on a project (ten to fourteen hours a day, six days a week), coupled with driving time between home and often remote work sites each day, make it practically impossible for them to offer services to other employers.''). However, a ''non-disclosure agreement does not require exclusive employment.'' *Parrish,* 917 F.3d at 382; *see also Talbert,* 405 F. App'x at 85 (''[T]here is nothing in the confidential agreement that would have precluded . . . working for other[s].'').

Proposed § 795.105(d)(1)(i) clarifies that requiring an individual to comply with specific legal obligations, satisfy health and safety standards, carry insurance, meet contractually agreed-upon deadlines or quality control standards, or satisfy other similar terms that are typical of contractual relationships between businesses (as opposed to employment relationships) does not constitute control that makes the individual more or less likely to be an employee under the Act. These requirements frequently apply to work performed by employees and independent contractors alike; as such, they are not probative as to whether a working relationship is one of employment or independent contracting. The case law supports this approach. *See, e.g., Iontchev,* 685 F. App'x at 550 (noting that the potential employer's ''disciplinary policy primarily enforced the Airport's rules and [the city's] regulations governing the [drivers'] operations and conduct'' in finding that the potential employer exercised ''relatively little control over the manner in which the [d]rivers performed their work''); *Mid-Atl. Installation Servs.,* 16 F. App'x at 106 (rejecting an argument that backcharging the workers ''for failing to comply with various local regulations or with technical specifications demonstrates the type of control characteristic of an employment relationship,'' and noting that withholding money in such circumstances is common in contractual relationships); *Mr. W Fireworks,* 814 F.2d at 1048 (finding that, because a scheduling requirement was imposed by the potential employer and not by state law, it suggested control over the workers).

In addition, this aspect of the Department's proposal is supported by case law regarding FLSA joint employer status. For example, the Second Circuit agreed that control with respect to ''contractual warranties of quality and time of delivery has no bearing on the joint employment inquiry'' because such control is ''perfectly consistent with a typical, legitimate subcontracting relationship.'' *Zheng* v. *Liberty Apparel Co. Inc.,* 355 F.3d 61, 75 (2d Cir. 2003).[36]

Moreover, control exercised by a potential joint employer over a contractor's employees to ''ensure compliance with various safety and security regulations'' has been found to be ''qualitatively different'' from control that indicates employer status. *Moreau* v. *Air France,* 356 F.3d 942, 950–51 (9th Cir. 2003). Accordingly, the Department agrees with the above case law that the types of control listed in the last sentence of proposed § 795.105(d)(1)(i) are ''qualitatively different'' from control that evinces employer status. *Moreau,* 343 F.3d at 1189; *see also Iontchev,* 685 F. App'x at 550; *Mid-Atlantic Installation Servs.,* 16 F. App'x at 106; *Mr. W Fireworks,* 814 F.2d at 1048; *Freund,* 185 F. App'x at 783. The Department welcomes comment regarding this approach, including the distinction being drawn between bona fide quality control measures and control that is indicative of an employment relationship.

2. The ''Opportunity for Profit or Loss'' Factor

The second economic reality factor (proposed § 795.105(d)(1)(ii)) is ''the individual's opportunity for profit or loss.'' In analyzing this factor, courts generally consider whether such opportunities are based on personal initiative, managerial skill, or business acumen.[37] The Second Circuit also considers the individual's opportunity for profit or loss based on investments. *See Superior Care,* 840 F.2d at 1060. The Department and courts of appeals outside of the Second Circuit have traditionally analyzed ''opportunity for profit or loss'' and ''investment'' as separate factors, but at least some of those courts recognize that the two are ''interrelated.'' *Lauritzen,* 835 F.2d at 1537; *see also McFeeley,* 825 F.3d at 243. The Department believes the Second Circuit's approach of combining the factors is preferable because it minimizes duplicative analysis of the same facts under different factors and aligns more closely with the Supreme Court's original analysis in *Silk,* 331 U.S. at 717–19.

As explained in the need for rulemaking discussion in Section III, treating ''opportunity for profit or loss'' and ''investment'' as separate factors results in duplicative analysis of the same facts. For example, in *Mid-Atlantic Installation Services,* the Fourth Circuit found that the opportunity for profit or loss factor weighed in favor of independent contractor status because the cable installer's ''net profit or loss depends on [in part] . . . the business acumen with which the Installer makes

[36] *See also, e.g., Godlewska* v. *HDA,* 916 F. Supp. 2d 246, 259 60 (E.D.N.Y. 2013), *aff'd sub nom. Godlewska* v. *Human Dev. Ass'n, Inc.,* 561 F. App'x 108 (2d Cir. 2014) (''Quality control and compliance monitoring . . . are qualitatively different from control that stems from the nature of the relationship between the employees and the putative employer.'' (quotation marks omitted)); *Jacobson* v. *Comcast Corp.,* 740 F. Supp. 2d 683, 691–92 (D. Md. 2010) (holding that the potential joint employer's ''quality control procedures . . . [were] qualitatively different from the control exercised by employers over employees''); *Thornton* v. *Charter Commc'ns, LLC,* No. 4:12CV479 SNLJ, 2014 WL 4794320, at *16 (E.D. Mo. Sept. 25, 2014) (same).

[37] *See, e.g., Karlson,* 860 F.3d at 1094–95 (discussing how the worker's decisions and choices regarding assignments and customers affected his profits); *Saleem,* 854 F.3d at 145 (noting in support of independent contractor status that the degree to which the worker's relationship with the potential employer ''yielded returns was a function . . . of the business acumen of each [worker]''); *McFeeley,* 825 F.3d at 243 (''The more the worker's earnings depend on his own managerial capacity rather than the company's . . . the less the worker is economically dependent on the business and the more he is in business for himself and hence an independent contractor.'') (internal quotation marks omitted); *Express Sixty-Minutes,* 161 F.3d at 304 (agreeing with district court that ''driver's profit or loss is determined largely on his or her skill, initiative, ability to cut costs, and understanding of the courier business.''); WHD Opinion Letter FLSA2019–6 at 6 (''These opportunities typically exist where the worker receives additional compensation based, not [merely] on greater efficiency, but on the exercise of initiative, judgment, or foresight.'').

his required capital investments in tools, equipment, and a truck.'' 16 F. App'x at 106. The court further held that the investment factor also pointed in that direction based on those same facts, *i.e.,* the installers ''suppl[ied] their own trucks (equipped with 28-foot ladders), specialized tools, uniforms, and pagers.'' *Id.* at 107. Such duplicative analysis is unwieldly, and it can be potentially confusing where the two factors analyzing the same facts reach opposite conclusions regarding a worker's classification. *See, e.g., Parrish,* 917 F.3d at 382–85; *Cromwell,* 348 F. App'x at 61.

The Second Circuit avoids duplication and potential confusion by analyzing investment and opportunity for profit or loss together. Under this approach, the worker's meaningful capital investments may evince opportunity for profit or loss: ''[e]conomic investment, by definition, creates the opportunity for loss, [and] investors take such a risk with an eye to profit.'' *Saleem,* 854 F.3d at 145 n.29. But investment is not the only way to satisfy this factor because workers who ''invest little'' may nonetheless have an opportunity for profit through the exercise of personal initiative. *Meyer,* 607 F. App'x at 121; *accord Parrish,* 917 F.3d at 384–85; *Express Sixty-Minutes,* 161 F.3d at 304. In short, meaningful investment is a sufficient but not necessary dimension of the opportunity for profit or loss. *See Lauritzen,* 835 F.2d at 1540–41 (Easterbrook, J. concurring) (''[P]ossess[ing] little or no physical capital . . . is true of many workers we would call independent contractors. Think of lawyers, many of whom do not even own books. The bar sells human capital rather than physical capital, but this does not imply that lawyers are 'employees' of their clients under the FLSA.''); *see also Faludi,* 950 F.3d at 275 (''Faludi provided his own phone and computer'' and ''made investments in his continuing education and home office equipment'').

The Second Circuit's approach of combining opportunity for profit or loss and investment is also more faithful to the Supreme Court's original analysis in *Silk. See* 331 U.S. at 716. In that case, the Court listed the two factors separately but analyzed them together. In particular, the Court found that coal unloaders were employees because they had ''no opportunity to gain or lose except from the work of their hands and [ ] simple tools,'' while truck drivers who invested in their own vehicles had ''opportunity for profit from sound management'' of that investment by, for instance, hauling for different customers. *Id.* at 719. Thus the question is whether workers are more like unloaders whose profits were based solely on ''the work of their hands and [ ] simple tools'' or the drivers whose profits depended on their initiative and investments. *See id.; see also Rutherford Food,* 331 U.S. at 730 (concluding that workers were employees in part because their opportunity for profit ''was more like piecework than an enterprise that actually depended for success upon the initiative, judgment or foresight of the typical independent contractor'').

Not all courts follow the Second Circuit and the Supreme Court's approach of analyzing investment through the lens of profit and loss. Some, for instance, ''use[ ] a side-by-side comparison method'' that directly ''compare[s] 'each worker's *individual* investment to that of the alleged employer.' '' *Parrish,* 917 F.3d at 383 (quoting *Hopkins,* 545 F.3d at 344); *see also, e.g., Keller,* 781 F.3d at 810 (agreeing that ''courts must compar[e] the worker's investment in the equipment to perform his job with the [potential employer's] total investment''). In *Hopkins,* for example, the Fifth Circuit held that insurance sales leaders' investments were insignificant because ''it is clear that [the insurance company's] investment—including maintaining corporate offices, printing brochures and contracts, providing accounting services, and developing and underwriting insurance products—outweighs the personal investment of any one Sales Leader.'' 545 F.3d at 344.

But such a ''side-by-side comparison method'' does not illuminate the ultimate question of economic dependence. *See Karlson,* 860 F.3d at 1096 (''[C]omparing the amount Karlson spent . . . with [potential employer's] total expenses in operating APS has little relevance . . . [because] [l]arge corporations can hire independent contractors, and small businesses can hire employees.''). Indeed, it merely highlights the obvious and unhelpful fact that individual workers—whether employees or independent contractors—likely have fewer resources than businesses that, for example, ''maintain[ ] corporate offices,'' *see Hopkins,* 545 F.3d at 344, or drill oil wells, *see Parrish,* 917 F.3d at 383 (''Obviously, [the oil drilling company] invested more money at a drill site compared to each plaintiff's investments.''). In contrast, analyzing investment as part of individuals' opportunity for profit or loss illuminates the ultimate inquiry of whether individuals are ''more closely akin to wage earners toiling for a living, than to independent entrepreneurs seeking a return on their risky capital investments.'' *Mr. W. Fireworks,* 814 F.2d at 1051.

The Department is therefore proposing to adopt an approach similar to that of the Second Circuit, which analyzes the worker's investment as part of the opportunity for profit or loss factor. The combined factor would weigh towards the individual being classified as an independent contractor if he or she has an opportunity for profit or loss based on either or both: (1) The exercise of personal initiative, including managerial skill or business acumen; and/or (2) the management of investments in, or capital expenditure on, for example, helpers, equipment, or material. While the effects of the individual's exercise of initiative and management of investment are both considered under this factor, for reasons explained above, the individual would not need to have an opportunity for profit or loss based on both for this factor to weigh towards the individual being an independent contractor. This factor would weigh towards the individual being an employee to the extent the individual is unable to affect his or her earnings through initiative or investment or is only able to do so by working more hours or more efficiently.[38]

The Department also considered keeping opportunity for profit or loss and investment as separate factors in its proposal, but believes that approach may be needlessly duplicative and confusing for reasons stated above. If investment were kept as a separate factor, the Department would emphasize that the factor should not reconsider opportunity for profit or loss. Instead, it would focus on whether a worker's investment (or lack thereof) in the equipment, materials, technology, etc. necessary to perform the worker's work

[38] Workers who are paid on a piece-rate basis are an example of workers who are able to affect their earnings only through working more hours or more efficiently. Courts have generally agreed that such workers lack meaningful opportunity for profit or loss. *See, e.g., Whitaker House,* 366 U.S. at 33 (plaintiffs who manufactured knitted goods at home were employees under the FLSA, in part, because ''[t]he management fixes the piece rates at which they work''); *Hodgson* v. *Cactus Craft of Arizona,* 481 F.2d 464, 467 (9th Cir. 1973) (persons who manufacture novelty and souvenir gift items at homes and were compensated at a piece rate were employees under the FLSA). In *DialAmerica,* 757 F.2d at 1385, for example, the Third Circuit held that homeworkers who were paid on a piece-rate basis to perform the simple service of researching telephone numbers were employees who lacked meaningful opportunity for profit or loss. In contrast, distributors who recruited and managed researchers and were paid based on the productivity of those they managed were independent contractors, in part, because distributors' earnings depended on ''business-like initiative.'' *Id.* at 1387.

renders the worker more or less economically dependent on the potential employer for work. The Department welcomes comments on this alternative approach.

3. The ''Skill Required'' Factor

''The amount of skill required for the work'' is an economic reality factor under proposed § 795.105(d)(2)(i). The Supreme Court articulated the ''skill required'' factor in *Silk,* 331 U.S. at 716, which several courts of appeals continue to consider as ''the degree of skill required to perform the work.'' *Paragon,* 884 F.3d at 1235; *see also Iontchev,* 685 F. App'x at 550; *Keller,* 781 F. 3d at 807. The Department and other courts of appeals, however, have traditionally expanded this factor to include consideration of ''initiative'' and ''judgment.'' *See, e.g., Parrish,* 917 F.3d at 379; *Karlson,* 860 F.3d at 1093; *Superior Care,* 840 F.2d at 1058–59; *see also* WHD Fact Sheet #13. This expansion was intended to increase the probative value of the skill factor by analyzing therein the worker's capacity to ''exercise significant initiative within the business.'' *See Parrish,* 917 F.3d at 379; *see also Selker Bros.,* 949 F.2d at 1295 (''[T]he use of special skills is not itself indicative of independent contractor status, especially if the workers do not use those skills in any independent way.''); *Superior Care,* 840 F.2d at 1060 (same). But the worker's capacity to exercise on-the-job initiative is already analyzed in multiple ways under the control factor, including, for example, whether the worker controls the means and manner of work, decides when to work, or choice of assignments. *Express Sixty-Minutes,* 161 F.3d at 304. And the effects of a worker's initiative are already analyzed as part of the opportunity for profit or loss factor. *Id.*

As explained in the need for rulemaking discussion in Section III, importing aspects of the control factor into the skill factor has diluted the consideration of actual skill to the point of near irrelevance. In many cases, analysis of control rather than skill drives whether the skill factor favors independent contractor or employee status. *See, e.g., Selker Bros.,* 949 F.2d at 1295; *Baker,* 137 F.3d at 1443; *Superior Care,* 840 F.2d at 1060. The Department believes such dilution generates confusion regarding the relevance and weight of the worker's skill in the evaluation of economic dependence. It also blurs the lines between the economic reality factors, thereby undermining the structural benefits of a multifactor test. Furthermore, as at least one court of appeals has found, workers can exercise enough initiative to have a meaningful opportunity for profit or loss but apparently not enough to satisfy the ''skill and initiative required'' factor. *Express Sixty-Minutes,* 161 F.3d at 304–05. This calls into question the relevance of initiative as part of a separate skill factor.

The Department therefore proposes to clarify that this factor should focus on the ''amount of skill required,'' as originally articulated by the Supreme Court in *Silk,* 331 U.S. at 716, and used today by several courts of appeals, *see, e.g., Paragon,* 884 F.3d at 1235; *Iontchev,* 685 F. App'x at 550; *Keller,* 781 F.3d at 807. Notably, this factor would not include a consideration of ''initiative'' (or the related concepts of judgment and foresight) because facts related to initiative are considered as part of the control and opportunity for profit or loss factors. Proposed § 795.105(d)(2)(i) thus explains that the ''skill required'' factor weighs in favor of classification as an independent contractor where the work at issue requires specialized training or skill that the potential employer does not provide. Otherwise, it weighs in favor of classification as an employee.

The Department believes that this approach would sharpen the distinction between the economic reality factors by focusing on skill, as opposed to aspects of control. The worker's ability to exercise initiative would remain more important than the presence of skill because it would be analyzed under the control factor, a core factor that would be given more weight than the skill factor. And the effect of the worker's initiative would be analyzed under the opportunity for profit or loss factor, another core factor that would be given more weight. The Department considered keeping initiative as an aspect of the skill factor, but believes that such an approach may be needlessly duplicative and confusing for the reasons stated above. The Department welcomes comment on this alternative approach.

4. The ''Permanence of the Working Relationship'' Factor

''The degree of permanence of the working relationship between the individual and the potential employer'' is an economic reality factor under proposed § 795.105(d)(2)(ii). Courts and the Department routinely consider this factor when applying the economic reality analysis under the FLSA to determine employee or independent contractor status. *See, e.g.,* WHD Opinion Letter FLSA2019–6 at 4; *Razak,* 951 F.3d at 142; *Hobbs,* 946 F.3d at 829; *Karlson,* 860 F.3d at 1092–93; *McFeeley,* 825 F.3d at 241; *Keller,* 781 F.3d at 807; *Scantland,* 721 F.3d at 1312. However, they sometimes redundantly analyze the exclusivity of the working relationship as part of the permanence factor. The control factor already considers whether a worker has freedom to pursue external opportunities by working for others, including a potential employer's rivals. *See, e.g., Freund,* 185 F. App'x at 783 (affirming district court's finding that ''Hi–Tech exerted very little control over Mr. Freund,'' in part, because ''Freund was free to perform installations for other companies'').[39] The same concept of exclusivity is then re-analyzed as part of the permanence factor. *Compare id.* (''Freund's relationship with Hi–Tech was not one with a significant degree of permanence . . . [because] Freund was able to take jobs from other installation brokers.''), *with Scantland,* 721 F.3d at 1319 (finding installation technicians' relationships with the potential employer were permanent because they ''could not work for other companies'').

Such duplicative analysis of exclusivity under the permanence factor is not supported by the Supreme Court's original articulation of that factor in *Silk. See* 331 U.S. at 716 (analyzing the ''regularity'' of unloaders' work); *id.* at 719 (analyzing truck drivers' ability to work ''for any customer'' as an aspect of ''the control exercised'' but not permanence); *see also* 12 FR 7967 (describing the permanence factor as pertaining to ''continuity of the relation'' but with no reference to exclusivity). Nor is the concept of exclusivity part of the common understanding of the word ''permanent.''[40] In a similar vein to the Department's analysis of the concept of initiative, the Department believes analysis of exclusivity as part of the permanence factor dilutes the significance of actual permanence within that factor, blurs the lines between the economic reality factors,

[39] In addition, the opportunity for profit or loss factor considers whether a worker's decisions to work for others affects profits or losses. *See, e.g., Freund,* 185 F. App'x at 783 (affirming the district court's finding that the ''looseness of the relationship between Hi–Tech and Freund permitted him great ability to profit,'' in part, because ''Freund could have accepted installation jobs from other companies.''). The Department does not believe this consideration overlaps with the control factor. While the control factor concerns the *ability* to work for others, the opportunity for profit or loss factor concerns the *effects* of doing so.

[40] *See* Merriam-Webster Dictionary, *https://www.merriam-webster.com/dictionary/permanent* (defining permanent as ''continuing or enduring without fundamental or marked change''); *see also* Oxford American Dictionary 1980 (defining permanent as ''lasting or meant to last indefinitely''); Merriam-Webster Pocket Dictionary 1947 (defining permanent as ''Lasting; enduring'').

and creates confusion by incorporating a concept that is distinct from permanence.

Because the worker's ability to work for others is already analyzed as part of the control factor, proposed § 795.105(d)(2)(ii) articulates the permanence factor without referencing the exclusivity of the relationship between the worker and potential employer. This proposal does not require any changes to the articulation of this factor because the current articulation, *i.e.,* ''the permanency of the working relationship,'' provides no hint that exclusivity is also considered. This approach would focus the permanence factor on the continuity and duration of the working relationship, which align both with how the factor was originally articulated and with the plain meaning of ''permanence.'' The permanence factor would weigh in favor of an individual being classified as an independent contractor where his or her working relationship with the potential employer is by design definite in duration or sporadic. In contrast, the factor would weigh in favor of classification as an employee where the individual and the potential employer have a working relationship that is by design indefinite in duration or continuous. The Department notes that the seasonal nature of some jobs does not necessarily suggest independent contractor classification, especially where the worker's position is permanent for the duration of the relevant season and where the worker has done the same work for multiple seasons. *See Paragon Contractors,* 884 F.3d at 1236–37.

The Department also considered keeping exclusivity as part of this factor but changing the articulation to ''permanence and exclusivity of the working relationship'' to be more accurate. However, the Department believes that such an approach may be needlessly duplicative and confusing for the reasons stated above. The Department welcomes comments on this alternative approach.

5. The ''Integrated Unit'' Factor

The Department and courts outside of the Fifth Circuit have typically articulated the sixth factor of the economic reality test as ''the extent to which services rendered are an integral part of the [potential employer's] business.'' WHD Fact Sheet #13. Under this articulation, the ''integral part'' factor considers ''the importance of the services rendered to the company's business.'' *McFeeley,* 825 F.3d at 244. In line with this thinking, courts generally state that this factor favors employee status if the work performed is so important that it is central to or at ''[t]he heart of [the potential employer's] business.'' *Werner* v. *Bell Family Med. Ctr., Inc.,* 529 F. App'x 541, 545 (6th Cir. 2013); *see also Baker,* 137 F.3d at 1443 (''[R]ig welders' work is an important, and indeed integral, component of oil and gas pipeline construction work.''); *Lauritzen,* 835 F.2d at 1537–38 (''[P]icking the pickles is a necessary and integral part of the pickle business[.]''); *DialAmerica,* 757 F.2d at 1385 (''[W]orkers are more likely to be 'employees' under the FLSA if they perform the primary work of the alleged employer.'').

The Department is concerned that this focus on importance or centrality departs from the Supreme Court's original articulation of the economic reality test, has limited probative value regarding the ultimate question of economic dependence, and may be misleading in some instances. As such, proposed § 795.105(d)(2)(iii) would clarify that the ''integral part'' factor should instead consider ''whether the work is part of an integrated unit of production,'' which aligns with the Supreme Court's analysis in *Rutherford Food,* 331 U.S. at 729. As explained earlier, the ''integral part'' factor was not one of the distinct factors identified in *Silk* as being ''important for decision.'' 331 U.S. at 716.[41] Nor was the importance of the work discussed in *Rutherford Food* as one of the distinct considerations. Instead, *Rutherford Food* observed that the work at issue was ''part of an integrated unit of production'' in the potential employer's business and concluded that workers were employees in part because they ''work[ed] alongside admitted employees of the plant operator at their tasks.'' 331 U.S. at 729. The 1947 proposed Treasury regulations under the Social Security Act articulated the sixth factor of the economic reality test in line with *Rutherford Food's* ''integrated unit'' discussion as: ''[i]ntegration of the individual's work in the businesses to which he renders services,'' which concerned ''the merger of the individual's services into the businesses, so that such services constitute a part of the unity or whole which comprise such business.'' 12 FR at 7966–67.

The word ''integral'' can mean either very important or integrated.[42] As some courts recognize, a worker can perform services that are important to a business without being integrated, meaning merged, into that business's operations. *See, e.g., Green* v. *Premier Telecomm. Servs., LLC,* No. 1:16–CV–0332–LMM, 2017 WL 4863239, at *14 (N.D. Ga. Aug. 15, 2017) (''While certainly Plaintiff performing his job was integral to Premier's bottom-line, unlike in *Rutherford,* Plaintiff did not perform one step in an integrated system.''). Federal courts of appeals typically considered integration of worker into the potential employer's production process until the 1970s. *See, e.g., Driscoll,* 603 F.2d at 754 (''Appellants' activities appear to be an integral part of Driscoll's strawberry growing operation, rather than an independently viable enterprise.''); *Mednick* v. *Albert Enterprises, Inc.,* 508 F.2d 297 (5th Cir. 1975) (asking whether the service ''was [ ]an integrated part of the business of [a potential employer] in the same way as the work of the meat boners in *Rutherford.*''); *Tobin* v. *Anthony-Williams Mfg. Co.,* 196 F.2d 547, 550 (8th Cir. 1952) (''The haulers and woods workers here are such an integrated part of defendant's production.'').[43] Starting in the 1980s, courts instead began to analyze whether the work is important to the potential employer. *See, e.g., Lauritzen,* 835 F.2d 1529, 1534–35; *DialAmerica Mktg.,* 757 F.2d at 1386.

Focusing on whether an individual's work is important to a potential employer has questionable probative value regarding the issue of economic dependence, and may even be counterproductive in some cases. Judge Easterbrook's *Lauritzen* concurrence argued that asking whether work is integral ''has neither significance nor

[41] *Silk* did ask whether workers themselves were ''an integral part of [defendants'] businesses,'' as opposed to operating their own businesses, but that question was presented as the ultimate economic reality inquiry, as opposed to a factor to be weighed in that analysis. 331 U.S. at 716.

[42] *Compare, e.g.,* Cambridge Dictionary, *https://dictionary.cambridge.org/us/dictionary/english/integral* (defining integral as ''necessary and important'') *with* Merriam-Webster Dictionary, *https://www.merriam-webster.com/dictionary/integral* (defining ''integral'' as ''formed as a unit with another part''); *see also* Merriam Webster Pocket Dictionary 1947 (defining integral as either ''Needed for completeness'' or ''Composed of parts that make up a whole'').

[43] The Department has generally used ''integral'' rather than ''integrated'' in its subregulatory guidance since the 1950s. *See* WHD Opinion Letter (Aug. 13, 1954); WHD Opinion Letter (Feb. 8, 1956). A 2002 opinion letter interpreted the factor to focus on the importance of the work, explaining that ''[w]hen workers play a crucial role in a company's operation, they are more likely to be employees than independent contractors.'' WHD Opinion Letter, 2002 WL 32406602, at *3 (Sept. 5, 2002). However, the Department's most recent opinion letter on this subject characterized the factor as ''the extent of the *integration* of the worker's services into the potential employer's business.'' WHD Opinion Letter FLSA2019–6 at 6 (emphasis added).

meaning'' because ''*[e]verything* the employer does is 'integral' to its business—why else do it?'' 835 F.2d at 1541 (Easterbrook, J. concurring) (emphasis in original); *see also Zheng,* 355 F.3d at 73 (cautioning in the joint employer context that interpreting the factor to focus on importance ''could be said to be implicated in *every* subcontracting relationship, because all subcontractors perform a function that a general contractor deems 'integral' to a product or a service'') (emphasis in original). Some courts have explained that ''a worker who performs a routine task that is normal and integral to the putative employer's business is likely to be dependent on the defendant's overall enterprises.'' *Beck* v. *Boce Grp., L.C.,* 391 F. Supp. 2d 1183, 1192 (S.D. Fla. 2005); *see also Charles* v. *Burton,* 169 F.3d 1322, 1332–33 (11th Cir. 1999) (same). This explanation, however, may be flawed: If certain workers perform tasks that are important to a business, the logical inference is that the business is dependent on those workers—not the reverse. Put differently, the relative importance of the worker's task to the business of the potential employer says nothing about whether the worker economically depends on that business for work.

Other courts have explained that ''it is presumed that, with respect to vital or integral parts of the business, the employer will prefer to engage an employee rather than an independent contractor. This is so because the employer retains control over the employee and can compel attendan[ce] at work on a consistent basis.'' *Dataphase,* 781 F. Supp. at 735; *see also Barnard Const.,* 860 F. Supp. at 777, *aff'd sub nom. Baker* v. *Flint Eng'g & Const. Co.,* 137 F.3d 1436 (10th Cir. 1998) (same). But the control factor already directly analyzes whether a business can compel a worker to work on a consistent basis. *See, e.g., Nieman,* 775 F. App'x at 625 (''The first factor—control—weighs in favor of independent contractor status because Nieman . . . controlled his schedule.''). It is unclear why there is a need to indirectly analyze control by presuming a relationship between vital or integral services and control. Nor is it clear that such presumption survives scrutiny because businesses appear to routinely hire independent contractors over whom they exercise little control to perform vital or integral services.[44] Indeed, as transaction costs fall, as is the trend in many sectors of the economy,[45] firms become more willing to hire independent contractors for vital or integral tasks, further diminishing the probative value of the importance of the work.

Focusing on the importance of work can sometimes send misleading signals regarding economic dependence. For instance, some courts have explained that ''easily replaceable'' workers are less integral to a business, and therefore, are less dependent on that business. *Browning* v. *Ceva Freight, LLC,* 885 F. Supp. 2d 590, 610 (E.D.N.Y. 2012); *see also Velu* v. *Velocity Exp., Inc.,* 666 F. Supp. 2d 300, 307 (E.D.N.Y. 2009) (observing that integrality to business diminished where ''work is interchangeable with the work of other[s]''). But the workers in *Rutherford Food* were also ''easily replaceable'' precisely because they were ''part of the integrated unit of production'' of a slaughterhouse processing line, which in turn indicated they were employees. 331 U.S. at 729. More often than not, easily replaceable workers are more dependent on that business for work—not less. Thus, focusing on the worker's importance to a business under the ''integral part'' factor may obscure rather than illuminate the ultimate economic dependence inquiry.

Finally, analyzing the importance of work under the ''integral part'' factor may send misleading signals due to the increasing difficulty of defining important or core functions of a growing number of intermediary companies whose main activity is ''selling reductions in transaction costs.''[46] By one view, the core functions of a company that connects service providers to customers might be the service being provided. *See O'Connor* v. *Uber Techs., Inc.,* 82 F. Supp. 3d 1133, 1153 (N.D. Cal. 2015) (''[D]rivers perform a regular and integral part of Uber's business[.]''). But in another view, such a company's core services might be connecting service providers and customers.[47] *See Razak,* 951 F.3d at 147 n. 12 (''We also believe [there] could be a disputed material fact'' whether Uber is ''a technology company that supports drivers' transportation businesses, and not a transportation company that employs drivers.''). Under this view, the intermediary company's ''business operations effectively terminate at the point of connecting service providers to consumers and do not extend to the service provider's actual provision of services.'' WHD Opinion Letter FLSA2019–6 at 10. While intermediary companies are more prevalent in the virtual marketplace, they are not limited to that context.[48] For instance, health care brokers may be intermediaries that are in the business of connecting health care providers to health care consumers. *See State Dep't of Employment, Training & Rehab., Employment Sec. Div.* v. *Reliable Health Care Servs. of S. Nevada, Inc.,* 983 P.2d 414, 419 (Nev. 1999) (''[W]e cannot ignore the simple fact that providing patient care and brokering workers are two distinct businesses.'').

Analyzing the importance of services to a potential employer often first requires characterizing the potential employer's business as either an intermediary or a direct provider of services. But that characterization, in turn, requires answering the economic dependence question. If a potential employer is an intermediary company that merely connects service providers with customers, those service providers would have distinct businesses of their own. WHD Opinion Letter FLSA2019–6 at 10. As such, they would not be a part, let alone an essential or important part, of the potential employer's business. Analyzing the importance of services to evaluate economic dependence thus becomes a circular exercise. The factor considers whether workers' services are an important part of the potential employer's business to answer the ultimate inquiry of whether workers provide services as part of their own distinct businesses. *See Silk,* 331 U.S. at 716 (asking whether workers were ''an integral part of [defendants'] businesses,'' as opposed to operating their own businesses, as the ultimate inquiry, rather than a discrete factor to be weighed).

For these reasons, proposed § 795.105(d)(2)(iii) would rearticulate the ''integral part'' factor in accordance with the Supreme Court's original inquiry in *Rutherford Food* of whether the work was ''part of the integrated unit of production,'' with an emphasis

[44] *See, e.g., Iontchev,* 685 F. App'x at 551; *Meyer,* 607 F. App'x at 123; *Freund,* 185 F. App'x at 784; *Mid-Atl. Installation Servs., Inc.,* 16 F. App'x at 107.

[45] *See, e.g.,* L. Katz and A. Krueger, ''The Rise and Nature of Alternative Work Arrangements in the United States, 1995–2015,'' p. 25 (2018) (''Coase's (1937) classic explanation for the boundary of firms rested on the minimization of transaction costs within firm-employee relationships. Technological changes may be reducing the transaction costs associated with contracting out job tasks, however, and thus supporting the disintermediation of work.'').

[46] *See* Michael Munger, Tomorrow 3.0: Transaction Costs and the Sharing Economy, 51 (2018).

[47] *See id.* at 61 (''The middleman makes possible transactions that otherwise could not take place . . . [by] selling transaction cost reduction[.]'').

[48] *See id.* at 125 (''The idea of a 'gig economy' is old, but the possibility of serial short term employment or 'gigs' are expanding rapidly'' because ''entrepreneurs have found [new] ways to sell reductions in transaction costs.'').

that the factor is different from the concept of importance or centrality. Courts that have applied the ''integral part'' factor to analyze integration rather than importance have typically grounded this factor to the specific circumstances in *Rutherford Food.* The Second Circuit, for example, recognized in a joint employer case that this factor was derived from the Supreme Court's focus on the fact that the *Rutherford Food* plaintiffs ''did a specialty job on the production line,'' and thus limited this factor's application to the production line or an analogous context. *Zheng,* 355 F.3d at 73 (''[W]e construe *Rutherford* to mean that work on a production line occupies a special status under the FLSA[.]''); *see also Antenor* v. *D & S Farms,* 88 F.3d 925, 937 (11th Cir. 1996) (asking whether workers ''were analogous to employees working at a particular position on a larger production line''); *Mednick,* 508 F.2d at 300 (analyzing whether the service ''was [ ]an integrated part of the business of [a potential employer] in the same way as the work of the meat boners in *Rutherford*''); *Green,* 2017 WL 4863239, at *14 (''[U]nlike in *Rutherford,* Plaintiff did not perform one step in an integrated system. He was not dependent on Premier's overall process to execute his duties.'').

Proposed § 795.105(d)(2)(iii) thus focuses the ''integrated unit'' factor on whether an individual works in circumstances analogous to a production line. This factor weighs in favor of employee status where a worker is a component of a potential employer's integrated production process, whether for goods or services. The overall production process need not be a physical assembly line, but it must be an integrated process that requires the coordinated function of interdependent subparts working towards a specific unified purpose.[49] This may occur where the worker depends on the overall process to perform work duties, such as, for example, a programmer who works on a software development team. *See Antenor,* 88 F.3d at 937 (finding farmworkers ''were dependent on the growers' overall production process''). Another example would be where an individual works closely alongside conceded employees and performs identical or closely interrelated tasks as those employees, such as where an individual provides office cleaning services as part of a team of employees.

Conversely, if the individual's work is not integrated into the potential employer's production process, the factor would favor classification as an independent contractor. This includes where an individual service provider is able to perform his or her duties without depending on the potential employer's production process. *Green,* 2017 WL 4863239, at *14 (''[U]nlike in *Rutherford,* [residential cable installer] . . . was not dependent on Premier's overall process to execute his duties.''). Thus, performance of discrete, segregable services for individual customers is not part of an integrated unit of production. *See* WHD Opinion Letter FLSA 2019–6 at 11 (concluding that the workers who provide services to the virtual marketplace company's individual customers ''are not integrated into [the company]'s referral business''). The Department welcomes comments on this approach to the ''integrated unit'' factor.

The Department considered removing the ''integral part'' factor instead of rearticulating it as the above-described ''integrated unit'' factor, in part, out of concern that the ''integrated unit'' factor may have limited applicability in the modern economy. However, the Department believes that the ''integrated unit'' factor described above would be applicable in sufficient cases to warrant its listing as an economic reality factor. The Department also welcomes comments on this alternative approach to remove this factor and instead focus the economic reality test on four factors.

6. Affording Greater Weight to the Two Core Factors

Proposed § 795.105(c) explains that the two core factors—*i.e.,* control and opportunity for profit or loss—are each afforded more weight in the analysis of economic dependence than are any of the others. As a result of their greater weight, if both core factors point towards the same classification, their combined weight is substantially likely to outweigh the combined weight of other factors that may point towards the opposite classification. In other words, where the two core factors align, the bulk of the analysis is complete. Anyone who is assessing the classification—whether a business, a worker, the Department, a court, or a jury—may approach the remaining factors and circumstances with skepticism, as only in unusual cases may such considerations outweigh the combination of the two core factors. At the same time, if the two core factors do not point toward the same classification, the remaining enumerated factors will usually determine the correct classification. The discussion below explains in greater detail why Department's proposes to focus the economic reality test on the two core factors in § 795.105(d)(1) over the other factors listed in § 795.105(d)(2) and any additional factors that may be considered.

The Department proposes a focus on the two core factors in light of the sharpened articulation of economic dependence in proposed § 795.105(b). The Supreme Court cautioned that control is not the sole consideration, *see Rutherford Food,* 331 U.S. at 730, but it did not deny that factor's significance in the analysis. Indeed, the Court recognized that, ''[o]bviously control is characteristically associated with the employer-employee relationship,'' *Bartels,* 332 U.S. at 130. And the opportunity for profit and loss factor is more closely tied to the concept of economic dependence than any other factors because it is a necessary component of being in business for oneself. As the D.C. Circuit observed in an NLRA case, '' 'significant entrepreneurial opportunity for gain or loss' . . . [even] better captures the distinction between an employee and an independent contractor'' than control. *Corporate Exp. Delivery Sys.* v. *NLRB,* 292 F.3d 777, 780 (2002); *see also FedEx Home Delivery,* 563 F.3d at 497. Together, these two factors shape the economic dependence inquiry of ''whether the individual is, as a matter of economic reality, in business for himself.'' *Parrish,* 917 F.3d at 379. In ordinary circumstances, an individual ''who is in business for him- or herself'' will have meaningful control over the work performed and a meaningful opportunity to profit (or risk loss). In sum, it is not possible to properly assess whether workers are in business for themselves or are instead dependent on another's business without analyzing their control over the work and profit or loss opportunities.

While the Supreme Court established a multifactor approach to the question of employee versus independent contractor status, it did not require all factors to be treated equally. To the contrary, focusing on the control and opportunity for profit or loss factors is supported by the reasoning in *Silk,* 331 U.S. at 316, and *Whitaker House,* 366 U.S. at 32–33, the latter of which is the only post-*Rutherford Food* Supreme Court decision analyzing whether workers were employees or independent contractors under the FLSA. *Silk* held that coal unloaders were employees in the SSA context based on their lack of meaningful opportunity for profit or loss, and further recognized that the

[49] The unified purpose must be defined with specificity and thus would not include general business objectives such as increasing profits, cutting costs, or satisfying customer's needs.

lack of permanence was not significant. 331 U.S. at 317–18. The Court further held that truck drivers in that case were independent contractors because of ''the control [they] exercised [and] the opportunity for profit from sound management,'' without discussing any of the other economic reality factors. *Id.* at 319.

In *Whitaker House,* the Court concluded that homeworkers who were paid on a piece-rate basis to produce knitted goods were employees, as opposed to being ''self-employed'' or ''independent.'' 366 U.S. at 32–33. While the Court reaffirmed that '' 'economic reality' rather than 'technical concepts' is to be the test for employment,'' *id.* at 33 (citing *Silk,* 331 U.S. at 713, and *Rutherford Food,* 331 U.S. at 729), it did not analyze any of the specific factors that are part of the current economic realty test. Instead, the *Whitaker House* Court's conclusion was based on the facts that the homeworkers could not ''sell[ ] their products on the market for whatever price they can command'' and were instead ''regimented under one organization, manufacturing what the organization desires and receiving the compensation the organization dictates.'' *Id.* at 32. In other words, the Supreme Court's reasoning was based entirely on facts that related to control (''regimented under one organization, manufacturing what the organization desires'') and opportunity for profit (''selling their products on the market for whatever price they can command'' versus ''receiving the [piece rate] compensation the organization dictates''). The Court did not analyze any facts related to the workers' skill, capital investment, permanence of relationship, or integration of the work to the business.

Focusing on control and opportunity for profit or loss is further supported by the results of federal courts of appeals cases weighing the economic reality factors since 1975. In these cases, whenever the court found (or affirmed a district court finding) that the potential employer predominantly controlled the work, that court concluded that the worker is an employee. *See, e.g., Hobbs,* 946 F.3d at 830–36; *Verma,* 937 F.3d at 230–32; *Gayle* v. *Harry's Nurses Registry, Inc.,* 594 F. App'x 714, 717–18 (2d Cir. 2014); *Schultz* v. *Capital Int'l Sec., Inc.,* 466 F.3d 298, 307–09 (4th Cir. 2006); *Baker,* 137 F.3d at 1440–44; *Martin,* 949 F.2d at 1289. Conversely, whenever the court of appeals found (or affirmed a district court finding) that the worker predominantly controlled the work, that court nearly always concluded that the worker is an independent contractor. *See, e.g., Parrish,* 917 F.3d at 379–388; *Nieman,* 775 F. App'x at 624–25 (per curiam); *Saleem,* 854 F.3d at 140–48; *Iontchev,* 685 F. App'x at 550–51; *Barlow* v. *C.R. England, Inc.,* 703 F.3d 497, 506–07 (10th Cir. 2012); *Mid-Atl. Installation Servs.,* 16 F. App'x at 106–08.

The few occasions where an appellate court's ruling on a worker's classification was contrary to what the control factor indicated were cases in which the other core factor—opportunity for profit or loss—pointed in the opposite direction. For example, in *Acosta* v. *Paragon Contractors Corporation,* the Tenth Circuit held that the control factor ''indicates status as an independent contractor'' because the defendant ''could set his own hours and determine how best to perform his job within broad parameters.'' 884 F.3d 1225, 1235–36 (10th Cir. 2018). The court nonetheless held that he was an employee, in part, because he ''was paid only a flat fee'' and therefore ''could not increase or decrease his profits based on how well he did his job.'' *Id.* at 1236; *see also Cromwell,* 348 F. App'x at 61 (concluding that the workers were employees even though they ''controlled the details of how they performed their work [and] were not closely supervised'' because, in part, defendant's ''complete control over [their] schedule and pay[ ] had the effect of severely limiting any opportunity for profit or loss'').

This trend is also true, indeed even more so, for the opportunity for profit or loss factor. Since 1975, virtually every time a circuit court of appeals has found (or affirmed a district court finding) that the potential employer predominantly determined the opportunities for profit or loss, the court has concluded that the worker was an employee. *See, e.g., Hobbs,* 946 F.3d at 832–36; *Off Duty Police,* 915 F.3d at 1059–1062; *McFeeley,* 825 F.3d at 243–44; *Hopkins,* 545 F.3d at 344–46; *Baker,* 137 F.3d at 1441–44; *Snell,* 875 F.2d at 808–812; *Superior Care,* 840 F.2d at 1059–61. Conversely, if the court found (or affirmed a district court finding) that the worker predominantly determined the opportunities for profit or loss, the court concluded that the worker was an independent contractor. *See, e.g., Parrish,* 917 F.3d at 384–88; *Saleem,* 854 F.3d at 140–48; *Iontchev,* 685 F. App'x at 550–51; *Freund,* 185 F. App'x at 783–84; *Eberline* v. *Media Net, L.L.C.,* 636 F. App'x 225, 228–29 (5th Cir. 2016); *Mid-Atl. Installation Servs.,* 16 F. App'x at 106–08. The opportunity for profit or loss factor as proposed in this rulemaking should be even more probative than these cases indicate because it would incorporate the probative value of the facts regarding investment.[50]

In summary, each of the two core factors is, by itself, highly probative of a worker's economic dependence. Together, *i.e.,* in cases where they both indicate the same classification, they are substantially likely to point to the answer of the classification question—whether employee or independent contractor.

The Department's proposal is consistent with case law and adopting a more focused approach. Many courts have analyzed all six factors (or five depending on the circuit) on a factor-by-factor basis, even where some factors were recognized as having limited relevance in a particular context. *See, e.g., Hobbs,* 946 F.3d at 830–36; *Off Duty Police,* 915 F.3d at 1055–1062; *Nieman,* 775 F. App'x at 624–25; *Verma,* 937 F.3d at 230–32; *Snell,* 875 F.2d at 805–12; *Lauritzen,* 835 F.2d at 1535–38; *Mr. W Fireworks,* 814 F.2d at 1047–55; *DialAmerica,* 757 F.2d at 1382–88; *Donovan* v. *Sureway Cleaners,* 656 F.2d 1368, 1370–73 (9th Cir. 1981). Several recent court opinions focus their analysis on just the most relevant facts and factors to the case, thereby achieving efficiency and clarity. In each such opinion, the most relevant factors on which the court focused its attention were control and opportunity for profit or loss. And to the extent that the court considered elements of investment and initiative, such elements are part of the control and opportunity for profit or loss factors under the Department's proposal.

In *Saleem,* the Second Circuit did not engage in the same factor-by-factor analysis as did the district court

[50] Even if the Department were to keep opportunity for profit or loss and investment as separate factors, the opportunity for profit or loss factor would still be of primary importance. In the above cited cases, the opportunity for profit or loss factor aligned with the overall result of the case even where that factor did not explicitly include consideration of the worker's investment. A separate investment factor, however, would not be a core factor because its importance is secondary compared to opportunity for profit or loss. Federal courts of appeals have repeatedly concluded that workers without meaningful investment in a business are nonetheless independent contractors if they have meaningful opportunity for profit or loss based on their initiative or business acumen. *See, e.g., Parrish,* 917 F.3d at 382–85; *Meyer,* 607 F. App'x at 123; *Express Sixty-Minutes,* 161 F.3d at 303–04. Conversely, where the investment factor favors independent contractor classification to some degree, workers may nonetheless be employees if they lack such opportunity. *See Cromwell,* 348 F. App'x at 61. Thus, if opportunity for profit or loss and investment were kept as separate factors in a final rule, the Department would propose making opportunity for profit or loss a core factor and investment a non-core factor. The Department welcomes comments on this alternative approach.

regarding the black-car drivers, noting the economic reality ''factors are merely aids to analysis.'' 854 F.3d at 138–39. Instead, the court focused on the drivers' ''considerable discretion in choosing the nature and parameters of their relationship with the defendant,'' ''significant control over essential determinants of profits in [the] business,'' how they ''invested heavily in their driving businesses,'' and the ''ability to choose how much work to perform,'' to conclude that they were ''in business for themselves'' as independent contractors. *Id.* at 139–47. In other words, *Saleem* primarily analyzed facts pertaining to the drivers' control over their work and opportunity for profit or loss based on initiative or investment, the core factors under this proposed rule. In particular, the Second Circuit explicitly questioned the relevance of the permanence factor in light of the control factor, observing that ''whatever 'the permanence or duration' of Plaintiffs' affiliation with Defendants, both its length and the 'regularity' of work was entirely of Plaintiffs' choosing,'' *id.* at 147 (citation omitted), and gave no consideration whatsoever to the district court's findings, 52 F. Supp. 3d 526, 543 (S.D.N.Y. 2014), ''that driving is not a 'specialized skill' and that ''drivers were integral to Defendants' business.''

The Second Circuit again focused on control and opportunity for profit or loss in *Agerbrink* v. *Model Service LLC* by relying on several disputed material facts (''control over her work schedule, whether she had the ability to negotiate her pay rate, and, relatedly, her ability to accept or decline work'') relating to those two factors to vacate summary judgment. 787 F. App'x 22, 25–27 (2d Cir. 2019). The Third Circuit took a similar approach in *Razak* v. *Uber Technologies., Inc.,* which held that summary judgment was inappropriate because there were genuine disputes of fact regarding ''whether Uber exercises control over drivers'' and whether drivers have ''the opportunity for profit or loss depending on managerial skill.'' 951 F.3d at 145–47.[51] And the Eighth Circuit recently affirmed a jury verdict that a process server was an independent contractor, relying primarily on evidence relating to the control and opportunity for profit or loss factors, including the process server's ability to determine his own profits by controlling hours, which assignments to take, and for which company to work. *See Karlson,* 860 F.3d at 1095.

In summary, control and opportunity for profit or loss drive at the heart of what it means to be an independent contractor who is in business for oneself and are the most relevant factors in virtually every case. As such, the Department believes focusing on these two as the core factors would add much needed clarity and efficiency to the economic reality test. The Department welcomes comments on this approach, which departs from courts' and Department's previous practice of not expressly identifying which types of facts or factors are the most important.

7. The Other Factors

In contrast to the two core factors, the other factors listed in § 795.105(d)(2) relating to skill, permanence, and integration are not always as probative to an inquiry into whether a worker is, as a matter of economic reality, in business for him- or herself or economically dependent on someone else for work. Rather, their relevance varies depending on the circumstances. Moreover, relevant aspects of the skill and permanence factors under the current test—*i.e.,* initiative and exclusivity, respectively—are already part of the analysis with respect to the core factors. Since this rulemaking would remove such confusing overlaps by removing initiative and exclusivity from the skill and permanence factors, respectively, the probative value of these two factors would become even more limited.

Skill factor. To be sure, some independent contractors in business for themselves have ''some unique skill set[s].'' *Parrish,* 917 F.3d at 385. But many skills that count towards this factor are not necessarily relevant to the question of economic dependence. In *Scantland,* for instance, the Eleventh Circuit reasoned that the skill factor weakly favored independent contractor status in part because ''a highly trained technician could gain economic independence by the ability to market his skills to a competing employer.'' *Scantland,* 721 at 1318. But ''the ability to market oneself to a competing *employer,*'' without more, does not help answer the ultimate question the *Scantland* court was attempting to answer: ''whether an individual is in business for himself or is dependent upon finding employment in the business of others.'' *Id.* at 1312 (emphasis added).

Thus, the skill factor is over-inclusive to the extent it includes skills that may merely enable a worker to find employment, but do not indicate the worker is in business for him- or herself. Recognizing this over-inclusiveness issue, some courts have explained that ''the use of special skills is not itself indicative of independent contractor status, especially if the workers do not use those skills in any independent way.'' *Selker Bros.,* 949 F.2d at 1295; *see also Superior Care,* 840 F.2d at 1060. As discussed above, these courts made the worker's capacity for initiative, a consideration under the control factor in the Department's proposal, the most important aspect of the skill factor. This proposed rule would remove initiative as a consideration under the skill factor. Because capacity for initiative is already a part of the control factor and the effect of initiative is already a part of the opportunity for profit or loss factor, these changes would thus cement the secondary importance of the skill factor.

The skill factor is also under-inclusive because it excludes certain managerial and business skills that are highly probative as to economic dependence. *See Hopkins,* 545 F.3d at 345 (''Certainly, the Sales Leaders required a general set of skills to effectively manage their offices and teams. However, these are not specialized skills; they are abilities common to *all* effective managers.''). A pair of cases involving drivers are illustrative in this regard. In *Express Sixty-Minutes Delivery,* the Fifth Circuit recognized that a delivery driver ''must rely on his own judgment, knowledge of traffic patterns and road conditions . . . , ability to read [mapping software], and ability to anticipate the need for an alternative route.'' 161 F.3d at 304. However, these did not constitute skill indicating independent contractor status. *See id.* at 305 (''We agree with the Secretary that the skill and initiative factor points toward employee status.''). Nonetheless, the court ultimately found the drivers were independent contractors, in part, because ''a driver's profit or loss is determined largely on his or her skill, initiative, ability to cut costs, and understanding of the courier business.'' *Id.* at 304. In other words, the skill factor expressly excluded the precise attributes that gave drivers an opportunity for profit, thereby

[51] The *Razak* court also found a genuine dispute regarding degree of permanence of the working relationship, but characterized that dispute in one sentence solely as an issue of control, as opposed to permanence of the relationship: ''On one hand, Uber can take drivers offline, and on the other hand, Plaintiffs can drive whenever they choose to turn on the Driver App, with no minimum amount of driving time required.'' 951 F.3d at 147. In addition, the court agreed with the district court that the skill factor ''certainly weighs in favor of finding that Plaintiffs are employees.'' *Id.* Finally, the court acknowledged in a footnote that ''Uber strenuously disputes'' the district court's finding that the ''integral'' factor weighed in favor of employee status and indicated that there could be disputed material facts relating to this factor. *Id.* at n.12.

indicating their independent contractor status. *Id.* A similar omission occurred in *Iontchev,* a case in which the Ninth Circuit concluded that certain taxi drivers were independent contractors in part because the ''[d]rivers' opportunity for profit or loss depended upon their managerial skill.'' 685 F. App'x at 550. But such managerial skill evidently did not count towards the skill factor because the court concluded that ''[t]he service rendered by the Drivers did not require a special skill.'' *Id.*

The Department's proposal to deemphasize the skill factor as compared to the core factors is supported by the statutory text and case law. Employers can ''suffer and permit'' both skilled and non-skilled individuals to perform work as employees, 29 U.S.C. 203(g), and federal courts of appeals have routinely held that the presence of specialized skill does not mean a worker is an independent contractor if the worker lacks control over the work, an opportunity for profit or loss, or both. *See, e.g., Cromwell,* 348 F. App'x at 60 (telecom splicers); *Superior Care,* 840 F.2d at 1060 (nurses). Nor does the absence of specialized skill mean a worker is an employee if the worker otherwise has control over the work and an opportunity for profit or loss. *See, e.g., Express Sixty-Minutes Delivery,* 161 F.3d at 304 (delivery workers); *Iontchev,* 685 F. App'x at 550 (taxi drivers).

Permanence factor. Under the current test, this factor concerns the exclusivity and length of the relationship between the worker and the potential employer. If this rule were finalized as proposed, exclusivity of the relationship would be analyzed under the control factor rather than the permanence factor to reduce confusing overlap between factors. The permanence factor would consider the duration, continuity, and regularity of the relationship.[52]

The Department believes that the remaining considerations that are part of this factor—duration, continuity, and regularity—are relevant to an economic reality analysis, though less so than the core factors. Specifically, the length of relationship between a worker and a potential employer has less relevance to the issue of economic dependence than the core factors. To be sure, many independent contractors who are in business for themselves lack a long-term relationship with a single client because they work on ''a project-by-project basis.'' *See, e.g., Parrish* 917 F.3d at 387. But that does not mean independent contractors cannot have long-term working relationships. To the contrary, the existence of a long-term relationship has not prevented courts from finding workers to be independent contractors, particularly when such workers control their work and enjoy opportunities for profit or loss. *See, e.g., Iontchev,* 685 Fed. App'x at 550–51 (concluding that ''Drivers were not economically dependent upon AAA Cab'' even though ''[t]he working relationship was often lengthy''); *Eberline,* 636 F. App'x at 229 (concluding that installers were independent contractors even though ''the length of the relationship between the Defendants and the installers was indefinite'' and ''no reasonable jury could have concluded that [the permanence] factor favored independent contractor status''); *DialAmerica,* 757 F.2d at 1387 (concluding that ''distributors were not employees under the FLSA because they operated more like independent contractors'' even though ''many distributors did perform delivery work for DialAmerica continuously for several years'').

Nor does the absence of a long-term working relationship preclude a finding of employee status. Workers who move from job to job or work for short periods of time can still be economically dependent on an employer. As the Second Circuit observed in *Superior Care,* ''even where work forces are transient, the workers have been deemed employees where the lack of permanence is due to operational characteristics intrinsic to the industry rather than to the workers' own business initiative.'' 840 F.2d at 1060–61. It is therefore unsurprising that federal courts of appeals have held that workers who lack a permanent relationship with a potential employer are nonetheless economically dependent if the worker lacked control over the work and an opportunity for profit or loss. *See, e.g., Verma,* 937 F.3d at 230–32; *Reich* v. *Circle C. Investments, Inc.,* 998 F.2d 324, 327–29 (5th Cir. 1993); *Superior Care,* 840 F.2d at 1060–61. Because it is often trumped by the core factors, the proposed regulation gives less weight to the permanence of the relationship.

Integrated unit factor. As discussed above, the applicability of the ''integrated unit'' factor in proposed § 795.105(d)(2)(iii) is limited to the instances where a potential employer has an integrated production process (including a service business). Given this limited applicability, the Department believes the integrated unit factor is entitled to less weight than the core factors.

In sum, the two core factors drive at the heart of the economic dependence question because they bear a causal relationship with the ultimate inquiry. A worker's control over the work and the opportunity for profit or loss are generally what transforms him or her from being economically dependent on an employer as a matter of economic reality into being in business for him- or herself. This is not so with the other factors. Possessing a specialized skill, having a temporary working relationship, and not being part of an integrated unit of production are certainly characteristics shared by many workers who are in business for themselves. But they are often indicators rather than essential elements of being in business for oneself.

Accordingly, the Department proposes to focus the economic reality test on the two core factors. Instead of balancing six or so unweighted and overlapping factors, a worker's classification as an employee or independent contractor can be largely determined in many cases by two simple questions: (1) Does the worker exercise substantial control over the key aspects of the work; and (2) does the worker have an opportunity for profit or a risk of loss based on initiative or investment? If the answer to both is ''yes,'' the worker is most likely an independent contractor. And if the answer to both is ''no,'' the worker is most likely an employee. Other factors may also be probative as part of the circumstances of the whole activity, but are less important. They are especially relevant when the two core factors do not point in the same direction or do not point strongly in either direction. The Department believes this proposed approach would improve the clarity and predictability of the economic reality test.

In the course of formulating this NPRM, the Department also considered a more structured approach to sharpening the economic reality test under the FLSA. In particular, the Department considered creating a presumption of employee or independent contractor status where both core factors indicate the same status. Such a presumption would be rebuttable only by a showing that other factors weighed strongly in favor of the other outcome. The Department is concerned that this approach would be confusing or burdensome on courts and the regulated community. Accordingly, the Department is not proposing a presumption-based approach at this time, but is nonetheless interested in

[52] Even if the Department were to retain the analysis of exclusivity under a newly named ''permanence and exclusivity'' factor, that factor would be of secondary importance. This is because the most important part of the ''permanence and exclusivity'' factor, *i.e.,* exclusivity, would add no additional probative value on top of what is already provided by the control factor.

comments on this, or other possible approaches to the economic reality test.

E. Proposed Guidance Regarding the Primacy of Actual Practice

Proposed § 795.110 states that the actual practice of the parties involved—both of the worker (or workers) at issue and of the potential employer—is more relevant than what may be contractually or theoretically possible. This principle is derived from the Supreme Court's holding that '' 'economic reality' rather than 'technical concepts' is to be the test of employment'' under the FLSA. *Whitaker House,* 366 U.S. at 33; *see also Tony & Susan Alamo,* 471 U.S. at 301 (''The test of employment under the [FLSA] is one of 'economic reality' '' (citing *Whitaker House,* 366 U.S. at 33)). Applying this guidance, federal courts of appeals have emphasized the primacy of actual practice when evaluating whether workers are employees or independent contractors under the FLSA. *See, e.g., Saleem,* 854 F.3d at 142 (''[P]ursuant to the economic reality test, it is not what [Plaintiffs] could have done that counts, but as a matter of economic reality what they actually do that is dispositive.'') (citations omitted); *Parrish,* 917 F.3d at 387 (''The analysis is focused on economic reality, not economic hypotheticals.''); *Scantland,* 721 F.3d at 1311 (''It is not significant how one 'could have' acted under the contract terms. The controlling economic realities are reflected by the way one actually acts.'') (citations omitted).

As the examples in proposed § 795.110 illustrate, the primacy of the parties' actual practice applies to every potentially relevant factor, and it can weigh in favor of either an employee or independent contractor relationship. In some cases, the actual practice of the parties involved may suggest that the worker or workers are employees. *See, e.g., Sureway Cleaners,* 656 F.2d at 1371 (''[T]he fact that Sureway's 'agents' possess, in theory, the power to set prices, determine their own hours, and advertise to a limited extent on their own is overshadowed by the fact that in reality the 'agents' work the same hours, charge the same prices, and rely in the main on Sureway for advertising.''); *DialAmerica,* 757 F.2d at 1387 (concluding that evidence showing workers were not doing similar work for any other businesses ''although they were free to do so'' indicates employee status). In other cases, it may suggest that the worker or workers at issue are independent contractors. *See Saleem,* 854 F.3d at 143 (concluding that black-car drivers were independent contractors in part because ''many Plaintiffs . . . picked up passengers via street hail, despite TLC's (apparently under-enforced) prohibition of this practice''); *see also Bartels,* 332 U.S. at 129 (rejecting in an SSA case the argument that employee status under an economic reality test could ''be determined solely by the idea of control which an alleged employer *may* or *could* exercise over the details of the service rendered to his business by the worker or workers'') (emphasis added).

Importantly, proposed § 795.110 does not suggest that what is contractually or theoretically possible in a work arrangement is irrelevant. Contractual and theoretical possibilities are also part of the economic reality of the parties' relationship, and excluding them outright would not be consistent with the Supreme Court's instruction in *Rutherford Food* to evaluate ''the circumstances of the whole activity.'' 331 U.S. at 730; *see also Mid-Atlantic Installation Servs.,* 16 F. App'x at 107 (determining that cable installers were independent contractors in part because they had a ''right to employ [their own] workers''); *Keller,* 781 F.3d at 813 (citing as relevant ''the fact that Miri never explicitly prohibited Keller from performing installation services for other companies'' and finding ''a material dispute as to whether Keller could have increased his profitability had he improved his efficiency or requested more assignments''). Contractual or theoretical possibilities are less relevant evidence to the employment status inquiry, but the Department believes they are potentially relevant nonetheless.

F. Severability

Finally, the Department proposes to include a severability provision in part 795 so that, if one or more of the provisions of part 795 is held invalid or stayed pending further agency action, the remaining provisions would remain effective and operative. The Department proposes to add this provision as § 795.115.

V. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* and its attendant regulations, 5 CFR part 1320, require the Department to consider the agency's need for its information collections, their practical utility, as well as the impact of paperwork and other information collection burdens imposed on the public, and how to minimize those burdens. The PRA typically requires an agency to provide notice and seek public comments on any proposed collection of information contained in a proposed rule. *See* 44 U.S.C. 3506(c)(2)(B); 5 CFR 1320.8. This NPRM does not contain a collection of information subject to OMB approval under the Paperwork Reduction Act. The Department welcomes comments on this determination.

VI. Executive Order 12866, Regulatory Planning and Review; and Executive Order 13563, Improved Regulation and Regulatory Review

A. Introduction

Under E.O. 12866, OMB's Office of Information and Regulatory Affairs determines whether a regulatory action is significant and, therefore, subject to the requirements of the Executive Order and OMB review.[53] Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that: (1) Has an annual effect on the economy of $100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Because the annual effect of this proposed rule would be greater than $100 million, this proposed rule would be economically significant under section 3(f) of Executive Order 12866.[54]

Executive Order 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; that it is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and that, in choosing among alternative regulatory approaches, the agency has selected the approaches that maximize net benefits. Executive Order 13563 recognizes that some benefits are difficult to quantify and provides that, when appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or

[53] *See* 58 FR 51735 (Sept. 30, 1993).

[54] The entirety of the estimated costs from this deregulatory action, which exceed the $100 million threshold and relate strictly to familiarization, fall in the first year alone. The Department's Regulatory Impact Analysis further explains that these one-year costs are more than offset by continuing annual cost-savings of $447 million per year, accruing to the same parties that face the familiarization costs.

impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

B. Overview of Analysis

The Department estimates there were 10.6 million workers who worked at any given time as independent contractors as their primary jobs in the United States in 2017 (6.9 percent of all workers), the most recent year of data available. Including independent contracting on secondary jobs results in an estimate of 18.9 million independent contractors (12.3 percent of all workers). The Department discusses other studies providing estimates of the total number of independent contractors, ranging from 6.1 percent to 14.1 percent of workers (see Table 3 in VI.C.2). Due to uncertainties regarding magnitude and other factors, the Department has not quantified the potential change to the aggregate number of independent contractors that may occur if this proposed rule is finalized. Furthermore, the Department's analysis relies on data collected prior to 2020, which reflects the state of the economy prior to the COVID–19 pandemic. The Department acknowledges that data on independent contractors could look different following the economic effects of the pandemic, but does not yet have information to determine how the number of independent contractors could change nor whether these changes would be lasting or a near term market distortion. The Department invites comments from stakeholders on the data used in this analysis and on how the universe of independent contractors might change as a result of this proposed rule. Specifically, the Department requests data and comment on the possible impacts resulting from the COVID–19 pandemic as it relates to the composition of the labor market, the share and scope of independent contractors in the workforce, and any associated wage effects.

The Department estimated regulatory familiarization costs to be $370.9 million in the first year. The Department estimated cost savings due to increased clarity to be $447.2 million per year, and cost savings due to reduced litigation to be $33.6 million per year. This results in a 10-year annualized net cost savings of $374.8 million using a 3 percent discount rate and $369.0 million using a 7 percent discount rate.[55] For purposes of E.O. 13771, the annualized net cost savings over a perpetual time horizon are $221.3 million.[56] Other costs, benefits, and cost savings are discussed qualitatively.

TABLE 3—SUMMARY OF ESTIMATES OF INDEPENDENT CONTRACTING

Impact	Year 1	Year 2	Year 10	Annualized values [a]	
				7% Discount	3% Discount
Regulatory Familiarization Costs ($2019 millions)					
Establishments	$152.3	$0.0	$0.0	$21.7	$17.9
Independent Contractors	218.6	0.0	0.0	31.1	25.6
Total	370.9	0.0	0.0	52.8	43.5
Increased Clarity Cost Savings ($2019 millions)					
Employers	369.0	369.0	369.0	369.0	369.0
Independent Contractors	78.1	78.1	78.1	78.1	78.1
Total	[b] 447.2	447.2	447.2	447.2	447.2
Reduced Litigation Cost Savings ($2019 millions)					
	33.6	33.6	33.6	33.6	33.6
Total Cost Savings ($2019 millions)					
	480.8	480.8	480.8	480.8	480.8
Net Cost Savings (Cost Savings – Costs) ($2019 millions)					
	109.9	480.8	480.8	369.0	374.8

[a] Annualized over 10-years.
[b] The numbers in this table do not sum to the total exactly because of rounding. Please see Table 4 for unrounded values.

C. Independent Contractors: Size and Demographics

1. Current Number of Independent Contractors

The Department estimated the number of independent contractors to provide a sense of the current size of this population. There are a variety of estimates of the number of independent contractors and these span a wide range based on methodologies and how the population is defined. The Department believes that the Current Population Survey (CPS) Contingent Worker Supplement (CWS) offers an appropriate lower bound for the number of independent contractors; however, there are potential biases in these data that will be noted. Additionally, estimates from other sources will be presented to demonstrate the potential range.

The CPS is conducted by the U.S. Census Bureau and published monthly by the Bureau of Labor Statistics (BLS). The sample includes approximately 60,000 households and is nationally representative. Periodically since 1995, and most recently in 2017, the CPS has included a supplement to the May

[55] Discount rates are directed by OMB. *See* Circular A–4, OMB (Sept. 17, 2003).

[56] Per OMB guidelines, E.O. 13771 data is represented in 2016 dollars, inflation-adjusted for when the proposed rule would take effect.

survey to collect data on contingent and alternative employment arrangements. Based on the CWS, there are 10.6 million independent contractors, which amounts to 6.9 percent of workers.[57] The CWS measures those who say that their independent contractor job is their primary job and that they worked at the independent contractor job in the survey's reference week. It is an important data set and analysis. However, based on the survey's design, while the Department refers to the CWS measure of independent contractors throughout this analysis, it should be uniformly recognized as representing a constrained subsection of the entire independent contractor pool. Due to its clear methodological constraints, the CWS measure should be differentiated from other, more comprehensive measures.

The BLS's estimate of independent contractors includes ''[w]orkers who are identified as independent contractors, independent consultants, or freelance workers, regardless of whether they are self-employed or wage and salary workers.'' BLS asks two questions to identify independent contractors: [58]

- Workers reporting that they are self-employed are asked: ''Are you self-employed as an independent contractor, independent consultant, freelance worker, or something else (such as a shop or restaurant owner)?'' (9.0 million independent contractors). We refer to these workers as ''self-employed independent contractors'' in the remainder of the analysis.
- Workers reporting that they are wage and salary workers are asked: ''Last week, were you working as an independent contractor, an independent consultant, or a freelance worker? That is, someone who obtains customers on their own to provide a product or service.'' (1.6 million independent contractors). We refer to these workers as ''other independent contractors'' in the remainder of the analysis.

It is important to note that independent contractors are identified in the CWS in the context of the respondent's ''main'' job (*i.e.,* the job with the most hours).[59] Therefore, the estimate of independent contractors does not include those who may be defined as an employee for their primary job, but may work as an independent contractor for a secondary or tertiary job.[60] For example, Lim et al. (2019) estimate that independent contracting work is the primary source of income for 48 percent of independent contractors.[61] Applying this estimate to the 10.6 million independent contractors estimated from the CWS, results in 22.1 million independent contractors (10.6 million ÷ 0.48). Alternatively, a survey of independent contractors in Washington found that 68 percent of respondents reported that independent contract work was their primary source of income.[62] Applying that estimate to the 10.6 million independent contractors from the CWS results in an estimated 15.6 million independent contractors (10.6 million ÷ 0.68).

The CWS's large sample size results in small sampling error. However, the questionnaire's design may result in some non-sampling error. For example, one potential source of bias is that the CWS only considers independent contractors during a single point in time—the survey week (generally the week prior to the interview).

These numbers will thus underestimate the prevalence of independent contracting over a longer timeframe, which may better capture the size of the population.[63] For example, Farrell and Greig (2016) used a randomized sample of 1 million Chase customers to estimate prevalence of the Online Platform Economy.[64] They found that ''[a]lthough 1 percent of adults earned income from the Online Platform Economy in a given month, more than 4 percent participated over the three-year period.'' Additionally, Collins et al. (2019) examined tax data from 2000 through 2016 and found that the number of workers who filed a form 1099 grew substantially over that period, and that fewer than half of these workers earned more than $2,500 from 1099 work in 2016. The prevalence of lower annual earnings implies that most workers who received a 1099 did not work as an independent contractor every week.[65]

The CWS also uses proxy responses, which may underestimate the number of independent contractors. The RAND American Life Panel (ALP) survey conducted a supplement in 2015 to mimic the CWS questionnaire, but used self-responses only. The results of the survey were summarized by Katz and Krueger (2018).[66] This survey found that independent contractors comprise 7.2 percent of workers.[67] Katz and Krueger identified that the 0.5 percentage point difference in magnitude between the CWS and the ALP was due to both cyclical conditions, and the lack of proxy responses in the ALP.[68] Therefore, the Department believes a reasonable upper-bound on the potential bias due to the use of proxy responses in the CWS is 0.5 percentage points (7.2 versus 6.7).[69] [70]

[57] Bureau of Labor Statistics, ''Contingent and Alternative Employment Arrangements—May 2017,'' USDL–18–0942 (June 7, 2018), *https://www.bls.gov/news.release/pdf/conemp.pdf.*

[58] The variables used are PES8IC = 1 for self-employed and PES7 = 1 for other workers.

[59] While self-employed independent contractors are identified by the worker's main job, other independent contractors answered yes to the CWS question about working as an independent contractor last week. Although the survey question does not ask explicitly about the respondent's main job, it follows questions asked in reference to the respondent's main job.

[60] Even among independent contractors, failure to report multiple jobs in response to survey questions is common. For example, Katz and Krueger (2019) asked Amazon Mechanical Turk participants the CPS-style question ''Last week did you have more than one job or business, including part time, evening or weekend work?'' In total, 39% of respondents responded affirmatively. However, these participants were asked the follow-up question ''Did you work on any gigs, HITs or other small paid jobs last week that you did not include in your response to the previous question?'' After this question, which differs from the CPS, 61 percent of those who indicated that they did not hold multiple jobs on the CPS-style question acknowledged that they failed to report other work in the previous week. As Katz and Krueger write, ''If these workers are added to the multiple job holders, the percent of workers who are multiple job holders would almost double from 39 percent to 77 percent.'' *See* L. Katz and A. Krueger, ''Understanding Trends in Alternative Work Arrangements in the United States,'' RSF: The Russell Sage Foundation Journal of the Social Sciences 5(5), p. 132–46 (2019).

[61] K. Lim, A. Miller, M. Risch, and E. Wilking, ''Independent Contractors in the U.S.: New Trends from 15 years of Administrative Tax Data,'' Department of Treasury, p. 61 (Jul. 2019), *https://www.irs.gov/pub/irs-soi/19rpindcontractorinus.pdf.*

[62] Washington Department of Commerce, ''Independent Contractor Study,'' p. 21 (Jul. 2019), *https://deptofcommerce.app.box.com/v/independent-contractor-study.*

[63] In any given week, the total number of independent contractors would have been roughly the same, but the identity of the individuals who do it for less than the full year would likely vary. Thus, the number of unique individuals who work at some point in a year as independent contractors would exceed the number of independent contractors who work within any one-week period as independent contractors.

[64] D. Farrell and F. Greig, ''Paychecks, Paydays, and the Online Platform,'' JPMorgan Chase Institute (2016), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2911293.*

[65] Collins, Brett, Andrew Garin, Emile Jackson, Dmitri Koustas, and Mark Payne. 2019. ''Is Gig Work Replacing Traditional Employment? Evidence from Two Decades of Tax Returns.'' Unpublished paper, IRS SOI Joint Statistical Research Program.

[66] *See* Katz and Krueger (2018), *supra* note 45.

[67] *Id.* at 49. The estimate is 9.6 percent without correcting for overrepresentation of self-employed workers or multiple job holders. *Id.* at 31.

[68] *Id.* at Addendum (''Reconciling the 2017 BLS Contingent Worker Survey'').

[69] Note that they estimate 6.7 percent of employed workers are independent contractors using the CWS, opposed to 6.9 percent as estimated by the BLS. This difference is attributable to changes to the sample to create consistency.

[70] In addition to the use of proxy responses, this difference is also due to cyclical conditions. The impacts of these two are not disaggregated for independent contractors, but if we applied the relative sizes reported for all alternative work

Another potential source of bias in the CWS is that some respondents may not self-identify as an independent contractor, and others who self-identify may be misclassified. There are reasons to believe that some workers, who are legally considered independent contractors, would not self-identify as such. For example, if the worker has only one employer/client, or did not actively pursue the employer/client, then they may not agree that they ''[obtain] customers on their own to provide a product or service.'' Additionally, individuals who do only informal work may not view themselves as independent contractors.[71] This population could be substantial. Abraham and Houseman (2019) confirmed this in their examination of the Survey of Household Economics and Decision-making. They found that 28 percent of respondents reported doing informal work for money over the past month.[72] Conversely, some workers misclassified as independent contractors may answer in the affirmative, despite not truly being independent contractors. The prevalence of misclassification is unknown, but it is generally agreed to be common.[73] Because reliable data on the potential magnitude of these biases are unavailable, and so the net direction of the biases is unknown, the Department has not calculated any estimates of how these biases may impact the estimated number of independent contractors.

Because the CWS estimate represents only the number of workers who worked as independent contractors on their primary job during the survey reference week, the Department applied the research literature and adjusted this measure to include workers who are independent contractors in a secondary job or who were excluded from the CWS estimate due to other factors. As noted above, integrating the estimated proportions of workers who are independent contractors on secondary or otherwise excluded jobs yields from other surveys produces estimates of 15.6 million and 22.1 million. The Department used the average of these two estimates, 18.9 million, as the estimated total number of workers working as independent contractors in any job at a given time. Given the prevalence of independent contractors who work sporadically and earn minimal income, adjusting the estimate according to these sources captures some of this population. It is likely that this figure is still an underestimate of the true independent contractor pool. The Department requests comments and data on the assumptions made to calculate this estimate.

2. Range of Estimates in the Literature

To further consider the range of estimates available, the Department conducted a literature review, the findings of which are presented in Table 3. Other studies were also considered but are excluded from this table because the study populations were broader than just independent contractors or limited to one state.[74] The RAND ALP[75] and the General Social Survey's (GSS's) Quality of Worklife (QWL)[76] supplement are widely cited alternative estimates. However, the Department chose to use sources with significantly larger sample sizes and more recent data for the primary estimate.

Jackson et al. (2017)[77] and Lim et al. (2019)[78] use tax information to estimate the prevalence of independent contracting. In general, studies using tax data tend to show an increase in prevalence of independent contracting over time. The use of tax data has some advantages and disadvantages over survey data. Advantages include large sample sizes, the ability to link information reported on different records, the reduction in certain biases such as reporting bias, records of all activity throughout the calendar year (the CWS only references one week), and inclusion of both primary and secondary independent contractors. Disadvantages are that independent contractor status needs to be inferred; there is likely an underreporting bias (*i.e.,* some workers do not file taxes); researchers are generally trying to match the IRS definition of independent contractor, which does not mirror the scope of independent contractors under the FLSA; and the estimates include

arrangements, we would get 0.36 percentage point difference due to proxy responses. Additionally, it should be noted that this may not entirely be a bias. It stems from differences in independent contracting reported by proxy respondents and actual respondents. As Katz and Krueger explain, this difference may be due to a ''mode'' bias or proxy respondents may be less likely to be independent contractors. *Id.* at Addendum p. 4.

[71] The Department believes that including data on informal work is useful when discussing the magnitude of independent contracting, although not all informal work is done by independent contractors. The Survey of Household Economics and Decision-making asked respondents whether they engaged in informal work sometime in the prior month. It categorized informal work into three broad categories: Personal services, on-line activities, and off-line sales and other activities, which is broader than the scope of independent contractors. These categories include activities like house sitting, selling goods online through sites like eBay or Craigslist, or selling goods at a garage sale. The Department acknowledges that the data discussed in this study might not be a one-to-one match with independent contracting, but it nonetheless provides useful data for this purpose.

[72] Katherine G. Abraham, and Susan N. Houseman. 2019. ''Making Ends Meet: The Role of Informal Work in Supplementing Americans' Income.'' RSF: The Russell Sage Foundation Journal of the Social Sciences 5(5): 110–31, *https://www.aeaweb.org/conference/2019/preliminary/paper/QreAaS2h.*

[73] *See, e.g.,* U.S. Gov't Accountability Off., GAO–09–717, *Employee Misclassification: Improved Coordination, Outreach, and Targeting Could Better Ensure Detection and Prevention* 10 (2008) (''Although the national extent of employee misclassification is unknown, earlier national studies and more recent, though not comprehensive, studies suggest that employee misclassification could be a significant problem with adverse consequences.'').

[74] Including, but not limited to: McKinsey Global Institute, ''Independent Work: Choice, Necessity, and the Gig Economy'' (2016), *https://www.mckinsey.com/featured-insights/employment-and-growth/independent-work-choice-necessity-and-the-gig-economy;* Kelly Services, ''Agents of Change'' (2015); Robles and McGee, ''Exploring Online and Offline Informal Work: Findings from the Enterprising and Informal Work Activities (EIWA) Survey'' (2016); Upwork, ''Freelancing in America'' (2019); Washington Department of Commerce, *supra* note 62; Farrell and Greig, *supra* note 64; MBO Partners, ''State of Independence in America'' (2016); Abraham et al., ''Measuring the Gig Economy: Current Knowledge and Open Issues'' (2018), *https://www.nber.org/papers/w24950;* Collins et al., ''Is Gig Work Replacing Traditional Employment? Evidence from Two Decades of Tax Returns,'' IRS Working Paper (2019); Gitis et al., ''The Gig Economy: Research and Policy Implications of Regional, Economic, and Demographic Trends,'' American Action Forum (2017), *https://www.americanactionforum.org/research/gig-economy-research-policy-implications-regional-economic-demographic-trends/#ixzz5IpbJp79a;* Dourado and Koopman, ''Evaluating the Growth of the 1099 Workforce,'' Mercatus Center (2015), *https://www.mercatus.org/publication/evaluating-growth-1099-workforce.*

[75] *See* Katz and Krueger (2018), *supra* note 45.

[76] *See* Abraham et al., *supra* note 743, Table 4 (2018).

[77] E. Jackson, A. Looney, and S. Ramnath, ''The Rise of Alternative Work Arrangements: Evidence and Implications for Tax Filing and Benefit Coverage,'' OTA Working Paper 114 (2017), *https://www.treasury.gov/resource-center/tax-policy/tax-analysis/Documents/WP-114.pdf.*

[78] Lim et al., *supra* note 61.

misclassified independent contractors.[79] A major disadvantage of using tax data for this NPRM is that the data are not publicly available and thus the analyses conducted cannot be directly verified or adjusted as necessary (*e.g.,* to describe characteristics of independent contractors, *etc.*).

TABLE 3—SUMMARY OF ESTIMATES OF INDEPENDENT CONTRACTING

Source	Method	Definition [a]	Percent of workers	Sample size	Year
CPS CWS	Survey	Independent contractor, consultant or freelance worker (main only).	6.9	50,392	2017
ALP	Survey	Independent contractor, consultant or freelance worker (main only).	7.2	6,028	2015
GSS QWL	Survey	Independent contractor, consultant or freelancer (main only).	14.1	2,538	2014
Jackson et al	Tax data	Independent contractor, household worker	[b] 6.1	[c] ~5.9 million	2014
Lim et al	Tax data	Independent contractor	8.1	1% of 1099–MISC and 5% of 1099–K.	2016

[a] The survey data only identify independent contractors on their main job. Jackson et al. include independent contractors as long as at least 15 percent of their earnings were from self-employment income; thus, this population is broader. If Jackson et al.'s estimate is adjusted to exclude those who are primary wage earners, the rate is 4.0 percent. Lim et al. include independent contractors on all jobs. If Lim et al.'s estimate is adjusted to only those who receive a majority of their labor income from independent contracting, the rate is 3.9 percent.

[b] Summation of (1) 2,132,800 filers with earnings from both wages and sole proprietorships and expenses less than $5,000, (2) 4,125,200 primarily sole proprietorships and with less than $5,000 in expenses, and (3) 3,416,300 primarily wage earners.

[c] Estimate based on a 10 percent sample of self-employed workers and a 1 percent sample of W–2 recipients.

3. Demographics of Independent Contractors

This section presents demographic information of independent contractors using the CWS, which, as stated above, only measures those who say that their independent contractor job is their primary job and that they worked at the independent contractor job in the survey's reference week. According to the CWS, these primary independent contractors are most prevalent in the construction and professional and business services industries. These two industries employ 44 percent of primary independent contractors. Independent contractors tend to be older and predominately male (65 percent). Millennials have a significantly lower prevalence of primary independent contracting than older generations: 3.6 percent for Millennials compared to 6.0 percent for Generation X and 8.8 percent for Baby Boomers and Matures.[80] However, surveys suggest that this trend is reversed when secondary independent contractors, or those who did informal work as independent contractors, are included. These divergent data suggest that younger workers are more likely to use contractor work sporadically and/or for supplemental income.[81] White workers are somewhat overrepresented among primary independent contractors; they comprise 85 percent of this population but only 79 percent of the population of workers. Conversely, black workers are somewhat underrepresented (comprising 9 percent and 13 percent, respectively).[82] The opposite trends emerge when evaluating informal work, where racial minorities participate at a higher rate than white workers.[83] Primary independent contractors are spread across the educational spectrum, with no group especially overrepresented. The same trend in education attainment holds for workers who participate in informal work.[84]

D. Potential Transfers

The substantive effect of the rule is not intended to favor independent contractor or employee classification relative to the status quo. However, the Department assumes in this RIA that the increased legal certainty associated with this proposed rule could lead to an increase in the number of independent contractor arrangements. The Department has not attempted to estimate the magnitude of this change, primarily because there are not objective tools for quantifying the clarity, simplification, and enhanced probative value of the Department's proposals for sharpening and focusing the economic reality test.[85] Therefore, potential transfers are discussed qualitatively with some numbers presented on a per worker basis. Potential transfers may result from differences in employer provided benefits, tax liabilities, and earnings between employees and independent contractors. Although employer-provided benefits could decrease, and tax liabilities could increase for these workers, the Department believes the net impact on total compensation should be small in either direction. Furthermore, in order to attract qualified workers, companies must offer competitive compensation. Therefore, in a competitive labor market, any reduction in benefits and increase in taxes is likely to be offset by

[79] In comparison to household survey data, tax data may reduce certain types of biases (such as recall bias) while increasing other types (such as underreporting bias). Because the Department is unable to quantify this tradeoff, it could not determine whether, on balance, survey or tax data are more reliable.

[80] The Department used the generational breakdown used in the MBO Partner's 2017 report, ''The State of Independence in America.'' ''Millennials'' were defined as individuals born 1980–1996, ''Generation X'' were defined as individuals born 1965–1980, and ''Baby Boomers and Matures'' were defined as individuals born before 1965.

[81] Abraham and Houseman (2019), *supra* note 7272, find that informal work decreases as a worker's age increases. Among 18 to 24 years olds, 41.3 percent did informal work over the past month. The rate fell to 25.7 percent for 45 to 54 year olds, and 13.4 percent for those 75 years and older. *See also* Upwork, ''Freelancing in America'' (2019).

[82] These numbers are based on the respondents who state that their race is ''white only'' or ''black only'' as opposed to identifying as being multiracial.

[83] Abraham and Houseman (2019), *supra* note 72.

[84] *Id.*

[85] Another uncertainty limiting the Department's ability to quantify the possible increase in independent contracting is the nature and effect of state wage and hour laws. Some states, such as California, have laws that place more stringent limitations on who may qualify as independent contractors than the FLSA. *See* Cal. Labor Code 2775 (establishing a demanding ''ABC'' test applicable to most workers when determining independent contractor status under California law). Because the FLSA does not preclude states and localities from establishing broader wage and hour protections than those that exist under the FLSA, *see* 29 U.S.C. 218(a), workers in some states may be unaffected by this proposed rule. However, because the Department is not well positioned to interpret the precise scope of each state's wage and hour laws, the Department is unable to definitively determine the degree to which workers in particular states would or would not be affected by this proposed rule.

higher base earnings—referred to as an ''earnings premium.'' As explained elsewhere, however, the data provides mixed evidence of this earnings premium.

Assuming that independent contractor arrangements increase following this proposed rule, it is unclear whether this would occur as a result of employees being subsequently classified as independent contractors or as a result of the hiring of new workers as independent contractors. This will have implications for transfers. If current employees change classifications, then there may be transfers. Employers could only change the classification of current employees if those workers had previously been misclassified or by changing the working conditions such that the relationship becomes a true independent contractor relationship, assuming doing so is consistent with any applicable employment contracts, collective bargaining agreement, or other applicable laws. Lim et al. (2019) found ''little evidence that firms are increasingly reclassifying existing employee relationships as [independent contractor] relationships,'' however, they found that ''firms are hiring more new workers as [independent contractors] rather than as employees.'' [86]

By decreasing uncertainty and thus potentially opening new opportunities for firms, companies may hire independent contractors who they otherwise would not have hired. In this case, there may be a decrease in unemployment and/or an increase in the size of the labor force. In a study of respondents from both Europe and the U.S., McKinsey Global Institute found that 15 percent of those not working are interested in becoming an independent contractor for their primary job.[87] Attracting these individuals to join the labor force would be considered a societal benefit, rather than a transfer, and therefore, is analyzed more fully below as part of the discussion on Cost Savings and Benefits.

The Department invites comment on its assumption that use of independent contractors will increase if the proposed rule is finalized. The Department also welcomes comments and data from companies looking to increase their use of independent contractors, specifically on whether employees' classifications would change to independent contractor status, consistent with this proposed rule and their other contractual and legal obligations, or whether they would instead hire new workers as independent contractors.

1. Employer Provided Benefits

Although this rule only affects workers' independent contractor status under the FLSA, the Department assumes in this analysis that employers are likely to keep the status of the worker the same across all benefits and requirements.[88] To the extent that employers currently provide employees benefits such as health insurance, retirement contributions, and paid time off, these would likely decrease with an increase in the use of independent contractors because independent contractors generally do not receive these benefits directly (although independent contractors are able to purchase at least some of these benefits for themselves). Employer provided benefits are a significant share of workers' compensation. According to the BLS's Employer Costs for Employee Compensation (ECEC), the value of employer benefits that directly benefit employees average 21 percent of total compensation.[89] The Department used the CWS to compare prevalence of health insurance and retirement benefits across employees and independent contractors. However, it should be noted that these two populations may differ in ways other than just their employment classification which may impact benefit amounts. For instance, an employee shifting to independent contractor status who already receives health benefits through a partner's benefit plan would not be impacted by losing heath benefit eligibility. Additionally, lower benefits may be offset by increased base pay in order to attract staff because workers consider the full package of pay and benefits when accepting a job.

According to the CWS's relatively narrow definition of independent contractor:

- 79.4 percent of self-employed independent contractors have health insurance. Most of these workers either purchased insurance on their own (31.5 percent) or have access through their spouse (28.6 percent).
- 80.7 percent of other independent contractors have health insurance. There are three main ways these workers receive health insurance: Through their spouse (25.1 percent), through an employer (24.2), or on their own (20.1 percent).
- 88.3 percent of employees have health insurance. Most of these workers receive health insurance through their work (64.1 percent). Furthermore, according to the ECEC, employers pay on average 12 percent of an employee's base compensation in health insurance premiums.

From these data, it is unclear exactly how health insurance coverage would change if the number of independent contractors increased, but the data suggest that independent contractors, on average, may be less likely to have health insurance coverage. That said, employment is not a guarantee of health insurance, nor do independent contractors generally lack health insurance.

A major source of retirement savings is employer sponsored retirement accounts. According to the CWS, 55.5 percent of employees have a retirement account with their current employer; in addition, the ECEC found that employers pay 5.3 percent of employees' total compensation in retirement benefits on average ($1.96/$37.03). If a worker shifts from employee to independent contractor status, that worker may no longer receive employer-provided retirement benefits, but may choose alternate investment options. As with health insurance, it is not clear whether retirement savings for such a worker would increase or decrease, but such a worker would need to take a more active role in saving for retirement vis-à-vis an employee with an employer-sponsored retirement plan.

2. Tax Liability

Payroll tax liability is generally divided between the employer and the employee in the United States. Most economists believe that the ''incidence'' of the payroll tax, regardless of liability, falls on the employee.[90] As self-

[86] Lim et al., *supra* note 61 at 3.

[87] McKinsey Global Institute, *supra* note 74 at 71.

[88] Courts have noted that the FLSA has the broadest conception of employment under federal law. *See, e.g., Darden,* 503 U.S. at 326. To the extent that businesses making employment status determinations base their decisions on the most demanding federal standard, a rulemaking addressing the FLSA's distinction between employees and independent contractors may affect the businesses' classification decisions for purposes of benefits and legal requirements under other federal and state laws.

[89] BLS, ''Employer Costs for Employee Compensation News Release'' (Sept. 2019), *https://www.bls.gov/news.release/archives/ecec_12182019.htm,* Civilian Workers. This includes paid leave ($2.68), insurance ($3.22), and retirement and savings benefits ($1.96). It does not include overtime and premium pay, shift differential pay, nonproduction bonuses, or legally required benefits. Calculated as ($2.68 + $3.22 + $1.96)/$37.03.

[90] The share of payroll taxes borne by employees versus firms is unknown but economists generally believe that employer payroll taxes are partially-to-completely shifted to employees in the long run. For a detailed review of the literature see J. Deslauriers, B. Dostie, R. Gagné, and J. Paré, ''Estimating the Impacts of Payroll Taxes: Evidence from Canadian Employer-Employee Tax Data,'' IZA

Continued

employed workers, independent contractors are legally obligated to pay both the employee and employer shares of the Federal Insurance Contributions Act (FICA) taxes. Thus, if workers' classifications change from employees to independent contractors, there may be a transfer in federal tax liabilities from employers to workers (regardless of whether this affects the actual cost of these taxes to the worker). These payroll taxes include: [91]

- Social Security tax: The 6.2 percent employer component (half of the 12.4 percent total).[92]
- Medicare tax: The 1.45 percent employer component (half of the 2.9 percent total).[93]

In sum, independent contractors are legally responsible for an additional 7.65 percent of their earnings in FICA taxes vis-à-vis an employee. However, any tax-related transfers from employers to workers are likely to be offset by higher wages employers pay to ensure workers' take-home pay remains the same.

Companies also cover unemployment insurance and workers' compensation taxes for their employees. Independent contractors may choose to pay for comparable insurance protection offered in the private market, but are not obligated to. The resulting regulatory effect (experienced as savings, either by companies or employees, depending on who ultimately bears the cost of the tax) combines societal cost savings (the lessened administrative cost of incrementally lower participation in unemployment insurance and workers' compensation programs) and transfers (from individuals whose unemployment insurance or workers' compensation payments decline, to entities paying less in taxes). Independent contractors may recoup some or all of the employer portion of these taxes and insurance premiums in the form of increased wages. This rule could decrease employers' tax liabilities and increase independent contractors' take-home compensation. However, there are costs to independent contractors if they become unemployed or injured or ill on the job because they no longer are protected, unless they purchase their own private insurance. The Department did not attempt to quantify the cost of changes in coverage or whether the net effect is a benefit or cost to the worker.

3. Earnings

Although the minimum wage and overtime pay requirements of the FLSA would no longer apply to workers who shift from employee status to independent contractor status, the Department anticipates an increase in labor force activity. That said, the Department does not attempt to quantify the magnitude of any increase in earnings as a result of increased labor force activity.

If currently unemployed workers or individuals who are out of the labor market become independent contractors due to this rule, their earnings will increase as they currently have no employment-related earnings other than possibly unemployment benefits. The impact on earnings is more ambiguous if employees' classifications change to independent contractors. In theory, companies would likely have to pay more per hour to independent contractors than to employees because independent contractors generally do not receive employer-provided benefits and have higher tax liabilities. Data show an hourly wage premium for independent contractors when comparing unconditional means. But as the analysis below shows, when controlling for certain differences in worker characteristics, this expected wage premium may not always be observable at a statistically significant level. It should be noted, however, that these estimates do not attempt to incorporate the value of flexibility and satisfaction that independent contractors cite as key factors in their preference of independent contracting arrangements over traditional employment.

Comparing the average earnings, hourly wages, and hours of current employees and independent contractors may provide some indication of the impact on wages of a worker who transitions from an employee to independent contractor classification. A regression analysis that controls for observable differences between independent contractors and employees may help isolate the impact on earning, hourly wages, and usual hours of being an independent contractor. Katz and Krueger (2018) [94] regressed the natural log of usual weekly earnings, the natural log of hourly wages, and the natural log of weekly hours worked on independent contractor status,[95] occupation, sex, potential experience, potential experience squared, education, race, and ethnicity. They use the 2005 CWS and the 2015 RAND ALP (the 2017 CWS was not available at the time of their analysis). The Department conducted similar regressions using the 2017 CWS. In both Katz and Krueger's regression results and the Department's calculations of unconditional averages in the 2017 CWS data presented below, the following outlying values were removed: Workers reporting earning less than $50 per week, less than $1 per hour, or more than $1,000 per hour.[96]

The Department combined the CWS data on usual earnings per week and hours worked per week to estimate hourly wage rates.[97] Examining mean earnings, the Department found that independent contractors tend to earn more per hour: Employees earned an average of $24.07 per hour, self-employed independent contractors earned an average of $27.43 per hour, and other independent contractors earned an average of $26.71 per hour (the average hourly wage is $27.29 when combining the two types of independent contractors).[98] Katz and Krueger conducted similar hourly earnings estimates based on 2005 CWS and 2015 ALP data. Their analysis of the 2005 CWS data indicated that ''[b]efore conditioning on covariates, the 2005 and 2015 results are similar: Freelancers

Institute of Labor Economics Discussion Paper Series IZA DP No. 11598 (June 2018), *http://ftp.iza.org/dp11598.pdf.* Further information is available by the Tax Foundation, *https://taxfoundation.org/what-are-payroll-taxes-and-who-pays-them/.*

[91] Internal Revenue Service, ''Publication 15, (Circular E), Employer's Tax Guide'' (Dec. 23, 2019), *https://www.irs.gov/pub/irs-pdf/p15.pdf.*

[92] The social security tax has a wage base limit of $137,700 in 2020.

[93] An additional Medicare Tax of 0.9 percent applies to wages paid in excess of $200,000 in a calendar year for individual filers.

[94] *See* Katz and Krueger (2018), *supra* note 45.

[95] On-call workers, temporary help agency workers, and workers provided by contract firms are excluded from the base group of ''traditional'' employees.

[96] Choice of exclusionary criteria from Katz and Krueger (2018), *supra* note 45.

[97] The CWS data, based on its relatively narrow definition of independent contractors, indicated that employees worked more hours per week in comparison to primary independent contractors. The Department found that 81 percent of employees worked full-time, compared to 72 percent for self-employed independent contractors and 69 percent for other independent contractors. Katz and Krueger similarly found that independent contractors work fewer hours per week than employees (statistically significant at the 1 percent level of significance in all specifications with both datasets). Despite working fewer hours per week than employees, self-employed independent contractors earned more per week on average ($980 per week compared to $943 per week). Other independent contractors, on average, worked fewer hours per week and earned less per week than employees ($869 per week compared to $943 per week). Given the difference between hours worked by primary independent contractors and employees, and the appeal of flexibility cited by many independent contractors, average weekly earnings may be an inadequate measure. Accordingly, the Department's analysis focuses on hourly wages.

[98] The Department followed Katz and Krueger's methodology in excluding observations with weekly earnings less than $50, hourly wages less than $1, or with hourly wages above $1,000. Additionally, workers with weekly earnings above $2,885 are topcoded at $2,885. Weekly earnings are used to calculate imputed hourly wages.

and contract workers are paid more per hour than traditional employees.'' [99] When controlling for education, potential experience, potential experience squared, race, ethnicity, sex and occupation, independent contractors' higher hourly wages in the 2005 CWS data were not statistically significant. But Katz and Krueger's analysis of the 2015 ALP data under the same specifications found that primary independent contractors earned more per hour than traditional employees with a statistically significant degree of confidence.[100]

Conceptually, the Department expects that independent contractors would earn more per hour than traditional employees in base compensation as an offset to employer-provided benefits and increases in tax liabilities. Katz and Krueger's analysis of the 2015 RAND ALP data appears to support this prediction.[101] However, they recommend caution in interpreting the estimates from the ALP due to the relatively small sample size. Their analysis of the 2005 CWS data and the Department's similar analysis of 2017 CWS data did not show a statistically significant difference. But as previously noted, comparing current employees to current primary independent contractors may not be indicative of how earnings would change for current employees who became independent contractors. Nor do such wage-based comparisons reflect the non-pecuniary attributes of employees and independent contractors.[102]

One potential reason for the variance among the estimates for independent contractor wages could be error in the measurement of independent contractor status and earnings, a factor that is present throughout all of the analyses in this area. As a recent analysis concluded, ''different data sources provide quite different answers to the simple question of what is the level and trend of self-employment in the U.S. economy,'' which suggest substantial measurement error in at least some data sources.[103] As noted above, reporting errors by survey respondents may contribute to measurement error in CWS data.[104] Additionally, CWS questions ''were asked only about people who had already been identified as employed in response to the survey's standard employment questions and only about their main jobs,'' and therefore may miss important segments of the population. BLS has recently acknowledged limitations in the 2017 CWS survey in response to a GAO audit and is reevaluating how it would measure independent contractors in the future.[105]

Another potential bias in the Department's results could be due to the exclusion of relevant explanatory variables from the model specification, including the omission of observable variables that correlate with hourly earnings. For example, the Department's analysis of 2017 CWS data used 22 occupation dummy variables but did not control for a worker's job position within any of the occupations (although it did control for ''potential experience''). However, as the Department's Guidance indicates, a statistical comparison of earnings between workers generally must control for ''job level or grade'' in addition to experience to ensure the comparison is for workers in similar jobs.[106] If, hypothetically, independent contractors on average have lower job levels (or equivalents) than traditional employees within each occupation,[107] the Department's analysis would not be comparing the hourly earnings of primary independent contractors and employees who have the same jobs. Instead, the Department would be comparing a population of relatively low-level independent contractors with a population that includes both low- and high-level employees.

The existence of unobservable differences between independent contractors and employees that are correlated with earnings, such as productivity, skill, and preference for flexibility also bias comparison of hourly earnings. For example, independent contractors may be on average more willing than employees to trade monetary compensation for increased workplace flexibility, which would obscure the observability of an earnings premium for independent contractors. It is possible that independent contractors' hourly earnings premium may be best observed at the margin, such as comparing a worker's behavior when deciding between two similar positions, one as an employee and one as an independent contractor.

Labor market frictions and personal preferences facing both employers and workers may further prevent a clear detection of a full picture of any earnings premium. Employees that transition to independent contractor classification may prefer monetary compensation over employer-provided benefits (*e.g.,* subsidies for health insurance when they already have other coverage).[108] The non-pecuniary benefits of independent contracting, such as workplace flexibility, may impact the observability of an earnings premium. Specifically, a range of research shows that workers are willing to accept lower wages in exchange for increased flexibility.[109]

An additional consideration is that minimum wage and overtime pay would no longer apply if workers shift from employee status to independent contractor status. The 2017 CWS data

[99] *Id.* at 19.

[100] *Id.* at 34.

[101] *See* Katz and Kreuger (2018), *supra* note 45 at 20 (''A positive hourly wage premium for independent contractors could reflect a compensating differential for lower benefits and the need to pay self-employment taxes.'').

[102] In particular, at least some research reveals significant non-pecuniary advantages to independent contracting, including through increased job satisfaction. *See* ''The State of Independence in America,'' MBO Partners (2019), *https://www.mbopartners.com/state-of-independence/;* Chen et al., ''The Value of Flexible Work: Evidence from Uber Drivers,'' Journal of Political Economy 127:6, 2735–794 (2019); He, H. et al., ''Do Workers Value Flexible Jobs? A Field Experiment,'' NBER Working Paper No. w25423, (2019), *https://ssrn.com/abstract=3311395;* McKinsey Global Institute, *supra* note 74; Upwork, ''Freelancing in America'' (2019).

[103] Abraham et al., *supra* note 74, at 15. Generally, ''[h]ousehold surveys consistently show lower levels of self-employment than tax data and a relatively flat or declining long-term trend in self-employment as contrasted with the upward trend that is evident in tax data.'' *Id.; see also id.* at 45.

[104] ''For example, a household survey respondent might fail to mention informal work that they do not think of as a job, something that further probing might uncover. To take another example, a household member who is doing work for a business may be reported as an employee of that business, even in cases where further probing might reveal that the person is in fact an independent contractor or freelancer.'' *Id.* at 15.

[105] Specifically, BLS recognized that: (1) The ''CWS measures only respondents' main jobs . . ., thus potentially missing workers with nontraditional second or supplementary income jobs''; (2) ''CWS only asks respondents about their work in the past week and may fail to capture seasonal workers or workers that supplement their income with occasional work''; and (3) ''added questions regarding electronically-mediated employment resulted in a large number of false positive answers.'' Government Accountability Office, Contingent Workforce: BLS is Reassessing Measurement of Nontraditional Workers, Jan. 29, 2019, *https://www.gao.gov/assets/700/696643.pdf.*

[106] Department of Labor, Office of Federal Contracting Compliance Programs, Directive 2018–5, Aug. 24, 2018, *https://www.dol.gov/agencies/ofccp/directives/2018-05#ftn.id10.*

[107] For example, because individuals working as independent contractors are less likely to be in positions with managerial responsibilities over other workers.

[108] Research using hedonic wage models has found mixed results on the trade-off between pay and benefits, with some researchers finding a positive correlation between increased pay and benefits, rather than a trade-off. *See* Simon, K. (2001), Displaced workers and employer-provided health insurance: Evidence of a wage/fringe benefit tradeoff? Int J Health Care Finance Econ., (3–4): 249–71. *https://www.ncbi.nlm.nih.gov/pubmed/14625928.*

[109] He, H. et al. 2019. Do Workers Value Flexible Jobs? A Field Experiment. NBER Working Paper No. w25423. *https://ssrn.com/abstract=3311395.*

indicate that, before conditioning on covariates, independent contractors under the narrower definition of primary, active work are more likely than employees to report earning less than the FLSA minimum wage of $7.25 per hour (8 percent for self-employed independent contractors, 5 percent for other independent contractors, and 2 percent for employees). That data further indicated that, before conditioning on covariates, primary independent contractors are more likely to work overtime at their main job (30 percent for self-employed independent contractors and 19 percent for other independent contractors versus 18 percent for employees). The Department was unable to determine whether these differences were the result of differences in worker classification, as opposed to other factors.

E. Costs

The Department estimated that regulatory familiarization costs will total $370.9 million in Year 1.

1. Regulatory Familiarization Costs

Regulatory familiarization costs represent direct costs to businesses and current independent contractors associated with reviewing the new regulation. To estimate the total regulatory familiarization costs, the Department used (1) the number of establishments, government entities, and current independent contractors; (2) the wage rates for the employees and for the independent contractors reviewing the rule; and (3) the number of hours that it estimates employers and independent contractors will spend reviewing the rule. This section presents the calculation for establishments first and then the calculation for independent contractors.

It is not clear whether regulatory familiarization costs are a function of the number of establishments or the number of firms.[110] Presumably, the headquarters of a firm will conduct the regulatory review for businesses with multiple locations, and may also require some locations to familiarize themselves with the regulation at the establishment level. Other firms may either review the rule to consolidate key takeaways for their affiliates or they may rely entirely on outside experts to evaluate the rule and provide the relevant information to their organization (*e.g.,* a chamber of commerce). The Department used the number of establishments to estimate the fundamental pool of regulated entities—which is larger than the number of firms. This assumes that regulatory familiarization occurs at both the headquarters and establishment levels.

There may be differences in familiarization cost by the size of establishments; however, the analysis does not compute different costs for establishments of different sizes. Furthermore, the analysis does not revise down for states where the laws may more stringently limit who qualifies as an independent contractor (such as California). To estimate the number of establishments incurring regulatory familiarization costs, the Department began by using the Statistics of U.S. Businesses (SUSB) to define the total pool of establishments in the United States.[111] In 2017, the most recent year available, there were 7.86 million establishments. These data were supplemented with the 2017 Census of Government that reports 90,075 local government entities, and 51 state and federal government entities.[112] The total number of establishments and governments in the universe used for this analysis is 7,950,800.

The applicable universe used by the Department for assessing familiarization costs of this proposed rule is all establishments that engage independent contractors, which is a subset of the universe of all establishments. The Department estimates the impact of regulatory familiarization based upon assessment of the regulated universe. For the Department's recent Joint Employer Status under the Fair Labor Standards Act, Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, and Regular Rate Under the Fair Labor Standards Act rulemakings, it estimated that the regulated universe comprised all establishments because the rules were broadly applicable to every employer. For those rules, the Department estimated familiarization costs by assuming each establishment would review each rule. Because the proposed rule affects only some establishments, *i.e.,* those that do or may face an independent contractor versus employee classification determination, the Department accordingly reduces the estimated pool to better estimate the establishments affected by the rule by assessing regulatory familiarity costs only for those establishments that engage independent contractors.

In 2019, Lim et al. used extensive IRS data to model the independent contractor market, finding that 34.7 percent of firms have any independent contractors.[113] These data are based on annual tax filings, so the dataset includes firms that may contract for only parts of a year. This figure forms the foundation of the multiplier used in this analysis. The Department requests public comments and data on these assumptions.

OMB Circular A–4 instructs that regulatory impact analyses establish a baseline, usually a ''no action'' baseline, to represent what the world is expected to be like in the absence of the proposed rule.[114] In the absence of this proposed rule, establishments that do not currently have any independent contractors but are looking to hire one or more will need to familiarize themselves with the current legal framework.[115] Accordingly, firms that do not currently use independent contractors are not counted in this universe of employers; however, to allow for an error margin, the Department is using a rounded 35 percent of the total number of establishments defined above (7,950,800), resulting in 2,782,780 establishments estimated to incur familiarization costs.

The Department assumes that a Compensation, Benefits, and Job Analysis Specialist (SOC 13–1141) (or a staff member in a similar position) will review the rule.[116] According to the

[110] An establishment is commonly understood as a single economic unit, such as a farm, a mine, a factory, or a store, that produces goods or services. Establishments are typically at one physical location and engaged in one, or predominantly one, type of economic activity for which a single industrial classification may be applied. An establishment contrasts with a firm, or a company, which is a business and may consist of one or more establishments. *See* BLS, ''Quarterly Census of Employment and Wages: Concepts,'' *https://www.bls.gov/opub/hom/cew/concepts.htm.*

[111] U.S. Census Bureau, 2017 SUSB Annual Data Tables by Establishment Industry. *https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html.*

[112] U.S. Census Bureau, 2017 Census of Governments. *https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html.*

[113] Table 10: Firm sample summary statistics by year (2001–2015), *https://www.irs.gov/pub/irs-soi/19rpindcontractorinus.pdf.*

[114] OMB Circular A–4, *https://www.reginfo.gov/public/jsp/Utilities/circular-a-4_regulatory-impact-analysis-a-primer.pdf.*

[115] An added dimension is that the proposed rule is expected to provide significant clarity, which would result in time and cost savings (net of regulatory familiarization costs) for those outside the pool of firms with existing independent contractor relationships. These (net) cost savings are not included in this analysis, consistent with this analysis' treatment of resulting growth in the independent contractor universe.

[116] A Compensation/Benefits Specialist ensures company compliance with federal and state laws, including reporting requirements; evaluates job positions, determining classification, exempt or non-exempt status, and salary; plans, develops, evaluates, improves, and communicates methods and techniques for selecting, promoting, compensating, evaluating, and training workers. *See*

Occupational Employment Statistics (OES), these workers had a mean wage of $33.58 per hour in 2019 (most recent data available). Given the proposed clarification to the Department's interpretation of who is an employee and who is an independent contractor under the FLSA, the Department assumes that it will take on average about 1 hour to review the rule as proposed. The Department believes that an hour, on average, is appropriate, because while some establishments will spend longer than one hour to review the rule, many establishments may rely on third-party summaries of the changes or spend little or no time reviewing the rule. Assuming benefits are paid at a rate of 46 percent of the base wage, and overhead costs are 17 percent of the base wage, the reviewer's effective hourly rate is $54.74; thus, the average cost per establishment conducting regulatory familiarization is $54.74. Therefore, regulatory familiarization costs to businesses in Year 1 are estimated to be $152.3 million ($54.74 × 2,782,780) in 2019 dollars.

For regulatory familiarization costs for independent contractors, the Department used its estimate of 18.9 million independent contractors and assumed each independent contractor will spend 15 minutes to review the regulation. The time estimates used for independent contractors is estimated to be smaller than for establishments. This difference is in part because the Department believes independent contractors are likely to rely on summaries of the key elements of the rule change published by the Department, worker advocacy groups, media outlets, and accountancy and consultancy firms, as has occurred with other rulemakings. Furthermore, the repercussions for independent contractors are smaller (*i.e.,* the costs associated with misclassification tend to fall on establishments). This time is valued at $46.36, which is the mean hourly wage rate for independent contractors in the CWS, $27.27, with an additional 46 percent benefits and 17 percent for overhead, then updated to 2019 dollars.

The estimate of 18.9 million independent contractors captures the universe of workers over a one-year period. Using this figure for the overall cost estimate results in an artificially high value because it includes workers who would have otherwise been included in the baseline case without the proposed rule and thus spent time familiarizing themselves with the legal framework in the matter of course, without incurring a supplementary cost. Furthermore, the Department believes that it is probable that independent contractors would review the regulation only when they had reason to believe that the benefits would outweigh the costs incurred in familiarizing themselves with the rule, and since this analysis does not attempt to calculate those economic benefits it is possible that the costs presented in this section are overestimated.[117]

The total one-time regulatory familiarization costs for independent contractors are estimated to be $218.6 million. The total one-time regulatory familiarization costs for establishments and independent contractors are estimated to be $370.9 million.

Regulatory familiarization costs in future years are assumed to be de minimis. Similar to the baseline case for employers, independent contractors would continue to familiarize themselves with the applicable legal framework in the absence of the rule, so this proposed rulemaking—anticipated to provide more clarity—is not expected to impose costs after the first year.[118] This amounts to a 10-year annualized cost of $43.5 million at a discount rate of 3 percent or $52.8 million at a discount rate of 7 percent.

2. Other Costs

There may be other costs associated with this NPRM that have not been quantified due to uncertainties or data limitations. The Department invites public comments and data to address this issue.

F. Cost Savings

This NPRM is expected to result in cost savings to firms and workers. The Department has quantified only the cost savings from increased clarity and reduced litigation. The other areas of anticipated cost savings were not estimated due to uncertainties or data limitations. The Department welcomes data and comments on the potential cost savings and benefits to society.

1. Increased Clarity

This proposed rule is expected to increase clarity concerning whether a worker is classified as an employee or as an independent contractor under the FLSA. This would reduce the burden faced by employers, potential employers, and workers to understand the distinction and how the working relationship should be classified. It is unclear exactly how much time would be saved, but the Department provides some quantitative estimates to provide a sense of the magnitude. To quantify this benefit, the following variables need to be defined and estimated: (1) The number of new employer-worker relationships being assessed to determine the appropriate classification; (2) the amount of time saved per assessment; and (3) an average wage rate for the time spent. The Department estimates this will result in a $447.2 million in savings annually. The Department requests comments on these assumptions and calculations.

The Department began with its estimate of the number of current independent contractors as the basis for estimating the number of new relationships. As discussed in section VI.C, according to the CWS, there are 10.6 million workers who are independent contractors on their primary job. Adjusting this figure to account for independent contractors on their secondary job results in 18.9 million independent contractors. According to Lim et al. (2019), in 2016 the average number of 1099–MISC forms issued per independent contractor was 1.43. Therefore, the Department assumes the average independent contractor has 1.43 jobs per year.[119] This number does not account for the workers who do not file taxes, a recognized limitation in the cited study. Because it is unclear whether those who do not file taxes would have a higher or lower number jobs per year, the Department does not believe that this biases the estimate in either direction. Multiplying these two numbers results in an estimated 27.0 million new independent contractor relationships each year.[120]

The independent contracting sector is characterized by churn. In their annual *State of Independence in America* 2019 report, MBO Partners, a leading American staffing firm, finds that 47.8

BLS, ''13–1141 Compensation, Benefits, and Job Analysis Specialists,'' *https://www.bls.gov/oes/current/oes131141.htm.*

[117] For example, independent contractors in states with classification frameworks that are known to be more stringent than the existing FLSA classification framework, such as in California, may not review the rule since it would be unlikely to affect their classification.

[118] As explained below, the Department considers that the regulation may produce benefits along this dimension in future years by simplifying the regulatory environment.

[119] Lim et al., *supra* note 61, at 61.

[120] The Department in this analysis did not incorporate estimates of potential growth in independent contracting due to uncertainty. For example, the trend in independent contracting varies significantly based on the source. Additionally, the impact of this rule on the prevalence of independent contracting is uncertain. Lastly, state laws, such as those in California discussed below, may have significant impacts on the prevalence of independent contracting, which would make historical growth rates potentially inappropriate.

percent of U.S. adults reported working as an independent contractor at some point in their career; they estimate that figure will reach 53 percent in the next five years.[121] This fits with the range of estimates for the size of the independent contractor universe presented in section VI.C. Thus, it is assumed that over the ten-year time horizon of this analysis, millions of Americans will choose independent contractor work either for the first time or return to it. This churn is not explicitly estimated for use in this analysis, but it provides a qualitative rationale for not attempting to taper the expected size of the independent contractor universe over time. The Department requests comments and data on these assumptions.

A subset of new independent contractor relationships may have time savings associated with the proposed rule. Such a reduction is difficult to quantify because it is unclear how many establishments and independent contractors will realize benefits of increased clarity. It is also possible that the increased clarity of the classification process will lead to compound effects that generate far greater benefits over time. Nonetheless, because it is possible that only a subset of contracts would receive the cost savings associated with increased clarity, the Department has reduced the number of contracts in the estimate by 25 percent. This results in 20.2 million contracts with cost savings to both the employer and the independent contractor.[122] The Department requests comments and data on this assumption.

Per each new contract with time savings, the Department has assumed that employers would save 20 minutes of time and independent contractors would save 5 minutes.[123] [124] These numbers are small because they represent the marginal time savings for each contract, not the entire time necessary to identify whether an independent contractor relationship holds. For employers, this time is valued at a loaded hourly wage rate of $54.74. This is the mean hourly rate of Compensation, Benefits & Job Analysis Specialists (13–1141) from the OES multiplied by 1.63 to account for benefits and overhead. For independent contractors, this time is valued at $46.36 per hour (mean wage rate for independent contractors in the CWS of $27.29 with the amount of benefits and overhead paid by employers for employees, then adjusted to 2019 dollars using the GDP deflator).

Using these numbers, the Department estimates that employers will save $369.0 million annually and independent contractors will save $78.1 million annually due to increased clarity (Table 4). In sum, this is estimated to be a $447.2 million savings. The Department assumes the parameters used in this cost savings estimate will remain constant over time. This assumes no growth in independent contracting, no real wage growth, and no subsequent innovation in the employer-worker relationship. These assumptions, while highly unlikely to be true in reality, facilitate simplicity of calculation. The annualized savings over both a 10-year horizon and in perpetuity, with both the 3 percent and 7 percent discount rates is $447.2 million.

In addition to increased clarity when assessing whether each relationship qualifies as an independent contractor or employment relationship, there may also be upfront time savings for new entrants who must familiarize themselves with the definition of an employee as compared to an independent contractor, and who now have clearer guidance to aid in that understanding. This would apply to new independent contractors, new establishments, and current establishments that are considering hiring independent contractors for the first time. The Department did not quantify this benefit due to uncertainty and the difficulty of determining reliable variables. However, such benefits are expected to be real and significant. The Department requests comments and data to address these constraints.

TABLE 4—COST SAVINGS FOR INCREASED CLARITY TO EMPLOYERS AND INDEPENDENT CONTRACTORS

Parameter	Value
Number of new relationships (per year):	
Independent contractors	18,858,000
Number of jobs per contractor	1.43
New independent contractor jobs	26,966,940
Adjustment factor	75%
Total	20,225,205
Time savings per job (minutes):	
Employers	20
Independent contractors	5
Value of time:	
Employers	$54.74
Independent contractors	$46.36
Total savings:	
Employers	$369,042,574
Independent contractors	$78,137,248
Total	$447,179,822

2. Reduced Litigation

These proposed changes are expected to result in decreased litigation due to increased clarity and reduced misclassification. The Department provides analysis here to assess the potential magnitude of this cost savings. The methodology of this section mirrors previous final rules promulgated in recent years. The Department requests comments on the assumptions in this section.[125]

The Department estimates that, due to increased clarity on independent contractor status, $33.6 million in litigation costs will be avoided per year. To reach this estimate, the Department determined that there were 6,711 federal cases relating to the FLSA filed in 2019.[126] Of these cases, the Department estimates that 7 percent of these cases relate to independent contractor status. To determine this percentage, the Department reviewed a random sample of 500 of the FLSA cases closed in 2014 (8,256 cases).[127] Of those cases, the Department identified 35 cases within this sample that related to independent contractor status. This ratio was applied to the 6,711 FLSA cases from 2019 to

[121] State of Independence in America, MBO Partners (2019). *https://www.mbopartners.com/state-of-independence/.*

[122] 18.9 million ICs × 1.43 contracts per year × (1 − 0.25 possible reduction in clarity benefits) = 20.2 million.

[123] These time savings are based on a 33 percent assumed reduction in the estimated familiarization time per contract for both independent contractors (15 minutes) and employers (1 hour).

[124] The Department requests comment on whether more meaningful estimates would distinguish between time periods (with, for example, relatively large upfront savings at the time contracts are arranged and smaller ongoing amounts) and/or would vary by affected industry.

[125] The Department applied a similar approach to litigation costs in the 2019 final rule *Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees,* 81 FR 51230 (2019).

[126] Downloaded from Public Access to Court Electronic Records (PACER).

[127] The Department used data from 2014 already obtained for use in the analysis performed for the 2019 overtime and regular rate final rules. *See* 84 FR 51230, 51280–81 (reduced litigation estimate for the final rule updating the FLSA's white collar exemptions at 29 CFR part 541); 84 FR 68736, 68767–68 (reduced litigation estimate for the final rule updating the FLSA's ''regular rate'' regulations at 29 CFR part 778). The Department invites comment on its methodology but has no reason to believe that a more recent sample would materially affect the results in this analysis.

estimate 470 cases related to independent contractor status. The Department assumes that the increased clarity of the proposed rule would reduce litigation in this area by 10 percent as stakeholders would better understand and be better able to agree on classification determinations. This estimate is based on an initial Departmental review of FLSA cases, and the Department requests comments and data to help inform and refine this assumption. Multiplying these variables results in an estimated 47 cases avoided annually.

Next, the Department applied a previous estimate of litigation costs of $654,182 per case. To obtain this estimate, the Department examined a selection of 56 FLSA cases concluded between 2012 and 2015 that contained litigation cost information to estimate the average costs of litigation.[128] The Department looked at records of court filings in the Westlaw Case Evaluator tool and on PACER to ascertain how much plaintiffs in these cases were paid for attorney fees, administrative fees, and/or other costs, apart from any monetary damages attributable to the alleged FLSA violations. After determining the plaintiff's total litigation costs for each case, the Department then doubled the figures to account for litigation costs that the defendant employers incurred. According to this analysis, the average litigation cost for FLSA cases concluded between 2012 and 2015 was $654,182. Adjusting for inflation, using the GDP deflator, results in a value of $715,637 in 2019.[129]

Applying these figures to the estimated 47 cases that could be prevented each year due to this rulemaking, the Department estimates that avoided litigation costs resulting from the rule total $33.6 million per year (2019 dollars).[130]

The Department estimates that annual cost savings associated with this rule would be $480.8 million ($447.2 million in increased clarity + $33.6 million in avoided litigation costs).

3. Other Cost Savings and Benefits

Removing uncertainty improves labor market efficiency by reducing deadweight loss. As discussed in the need for rulemaking, the Department believes emerging and innovative economic arrangements that benefit both workers and business require reasonable certainty regarding the worker's classification as an independent contractor. The current legal uncertainty may deter businesses from offering these arrangements or developing them in the first place.[131] If so, the result would be economic deadweight loss: Legal uncertainty prevents mutually beneficial independent contractor arrangements. This proposed rule may produce cost savings by reducing deadweight loss. Nonetheless, due to the abundance of variables at play, the Department has not attempted to quantify the precise amount of that reduction. The Department invites data and comments on this topic.

By decreasing uncertainty and thus potentially opening new opportunities for firms, this proposed rule may encourage companies to hire independent contractors whom they otherwise would not have hired. Eisenach (2010) outlines the potential costs of curtailing independent contracting.[132] If independent contracting is expanded due to this rule, this could generate benefits that may include:

- Increased job creation and small business formation.
- Increased competition and decreased prices.
- A more flexible and dynamic work force, where workers are able to more easily move to locations or to employers where their labor and skills are needed.

Eisenach explains several channels through which these efficiency gains may be achieved. First, by avoiding some fixed employment costs, it is easier for firms to adjust their labor needs based on fluctuations in demand. Second, by using pay-for-preference, independent contractors are incentivized to increase production and quality. Third, ''contracting can be an important mechanism for overcoming legal and regulatory barriers to economically efficient employment arrangements.'' The analysis of these benefits assume that businesses, especially in other industries, would like to increase their use of independent contractors, but have refrained from doing so because of uncertainty regarding who can appropriately be engaged as an independent contractor under the FLSA. Conversely, significant use of independent contractors may not be suitable for all industries, thus limiting the growth in its utilization.

The Department believes this rulemaking may also result in greater autonomy and job satisfaction for workers. Several surveys have shown that independent contractors have high job satisfaction.[133] Using the CWS, which only considers primary, active contractors, the Department estimates that of independent contractors with valid responses, 83 percent prefer their current arrangement rather than being an employee, compared with only 9 percent who would prefer an employment arrangement (the remaining 8 percent responded that it depends). Additionally, the main reasons they work as independent contractors demonstrate that they enjoy the benefits of being an independent contractor: 31 percent enjoy being their own boss or the independence it allows, and 27 percent enjoy the scheduling flexibility.[134] Additionally, McKinsey Global Institute found that ''[i]ndependent workers report higher levels of satisfaction on many aspects of their work life than traditional workers.'' [135] The McKinsey Global

[128] The 56 cases used for this analysis were retrieved from Westlaw's Case Evaluator database using a keyword search for case summaries between 2012 and 2015 mentioning the terms ''FLSA'' and ''fees.'' This was not limited to cases associated with independent contracting. Although the initial search yielded 64 responsive cases, the Department excluded one duplicate case, one case resolving litigation costs through a confidential settlement agreement, and six cases where the defendant employer(s) ultimately prevailed. Because the FLSA only entitles prevailing plaintiffs to litigation cost awards, information about litigation costs was only available for the remaining 56 FLSA cases that ended in settlement agreements or court verdicts favoring the plaintiff employees.

[129] These totals may underestimate total litigation costs because some FLSA cases are heard in state court and thus were not captured by PACER; some filings are resolved before litigation or by alternative dispute resolution; and some attorneys representing FLSA plaintiffs may take a contingency fee atop their statutorily awarded fees and costs.

[130] Using the median litigation cost, rather than the mean, results in a value of $122,341 (2019 dollars) per case, which for the estimated 47 annual cases produces a total annual litigation cost savings of $5.7 million. However, the median values do not adequately capture the magnitude of the impact resulting from large-scale litigation cases that are expected to benefit from the clarity provided in this proposed rule. Therefore, the mean average is used for this analysis.

[131] *See* Pivateau, *supra* note 26, at 628 (''The continued demand for innovative work solutions requires a new classification test. Without clarification, parties will be unwilling to engage in new or innovative work arrangements.''); *see also* Hollrah and Hollrah, ''The Time Has Come for Congress to Finish Its Work on Harmonizing the Definition of 'Employee,' '' 26 J. L. & Pol'y 439 (2018), *https://brooklynworks.brooklaw.edu/jlp/vol26/iss2/1/.*

[132] J. Eisenach, ''The Role of Independent Contractors in The U.S. Economy,'' Navigant Economics (2010), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1717932.*

[133] *See, e.g.,* ''The State of Independence in America,'' MBO Partners (2019) *https://www.mbopartners.com/state-of-independence/.*

[134] The Department used PES26IC to identify preferred work arrangement and PES26IR to identify the reason they work as an independent contractor.

[135] McKinsey Global Institute, *supra* note 74 at 11. A 2009 Pew survey similarly found that self-

Continued

Institute examined workers who work independently by choice and those who do so by necessity (such as needing supplemental income) and found that both groups report being happy with the flexibility and autonomy of their work.[136] Similarly, Kelly Services found that ''free agents''—*i.e.,* workers who ''derive their primary income from independent work and actively prefer it''—report higher satisfaction than traditional workers concerning overall employment situation; work-life balance; opportunities to expand skills; and opportunities to advance career.[137]

By clarifying that control and opportunity for profit are the core economic reality factors, this proposed rule is likely to encourage the creation of independent contractor jobs that provide autonomy and entrepreneurial opportunities that workers find satisfying. For the same reason, this proposed rule likely would diminish the incidence of independent contractor jobs that lack these desired characteristics. Thus, the Department expects this NPRM, if finalized, to result in more independent contractor opportunities which bring with them autonomy and job satisfaction. The benefits of worker autonomy and satisfaction obviously ''are difficult or impossible to quantify,'' but they nonetheless merit consideration.

G. Regulatory Alternatives

When proposing an economically significant rule, Executive Order 12866 requires agencies to conduct ''[a]n assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation.'' [138] Here, in addition to ''the alternative of not regulating,'' [139] the Department considered three alternatives to the proposed rule, listed below from least to most restrictive of independent contracting: [140]

(1) Codification of the common law control test, which applies in distinguishing between employees and independent contractors under various other federal laws; [141]

(2) codification of the traditional six-factor ''economic reality'' balancing test, as recently articulated in WHD Opinion Letter FLSA2019–6; and

(3) codification of the ''ABC'' test, as adopted by the California Supreme Court in *Dynamex Operations W., Inc.* v. *Superior Court,* 416 P.3d 1 (Cal. 2018).[142]

Although the Department recognizes that legal limitations prevent some of these alternatives from being actionable, the Department nonetheless presents them as regulatory alternatives in accord with OMB guidance.[143] These three regulatory alternatives are analyzed below in qualitative terms, due to data constraints and inherent uncertainty in measuring the exact stringency of multi-factor legal tests and likely responses from the regulated community. The Department welcomes comment on these regulatory alternatives, as well as suggestions regarding any other potential alternatives.

1. Codifying a Common Law Control Test

The least stringent alternative to the proposed rule's streamlined ''economic reality'' test would be to adopt a common law control test, as is generally used to determine independent contractor classification questions arising under the Internal Revenue Code and various other federal laws.[144] The overarching focus of the common law control test is ''the hiring party's right to control the manner and means by which [work] is accomplished,'' *Reid,* 490 U.S. at 751, but the Supreme Court has explained that ''other factors relevant to the inquiry [include] the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party.'' *Id.* at 751–52.

Although the common law control test considers many of the same factors as those identified in the proposed rule's ''economic reality'' test (*e.g.,* skill, length of the working relationship, the source of equipment and materials, *etc.*), courts generally recognize that, because of its focus on control, the common law test is more permissive of independent contracting arrangements than the economic reality test, which more broadly examines the economic dependence of the worker. *See, e.g., Diggs* v. *Harris Hospital-Methodist, Inc.,* 847 F.2d 270, 272 n. 1 (5th Cir. 1988) (observing that ''[t]he 'economic realities' test is a more expansive standard for determining employee status'' than the common law control test). Thus, if a common law control test determined independent contractor status under the FLSA, it is possible that some workers presently classified as FLSA employees could be reclassified as independent contractors, increasing the overall number of independent

employed workers are ''significantly more satisfied with their jobs than other workers.'' Rich Morin, ''Job Satisfaction among the Self-Employed,'' Pew Research Center, (September 2009), *http://pewsocialtrends.org/pubs/743/job-satisfaction-highest-among-self-employed.* In particular, 39 percent of self-employed workers reported being ''completely satisfied'' with their jobs, compared with 28 percent of employees. *Id.*

[136] McKinsey Global Institute, *supra* note 74 at 10. The McKinsey survey found that, while ''those working independently out of necessity report being happier with the flexibility and content of the work,'' they also report being ''less satisfied with their level of income level and their income security.'' *Id.* This rulemaking is unlikely to negatively impact the average income level of such workers by encouraging independent contractor opportunities because there is no statistical evidence that independent contractor earn less than employees. To the contrary and as discussed above, there are data indicating that independent contractors, on average, may earn higher hourly wages than employees. Nor is rulemaking likely to negatively impact workers' income security, on average. The Department believes income security is best achieved by removing barriers that prevent laid-off Americans from finding paid work, including as independent contractors. *See* 151 Ph.D. Economists and Political Scientists in California, ''Open Letter to Suspend California AB–5'' (April 14, 2020). This lesson may be all the greater in light of the COVID–19 emergency.

[137] Kelly Services, ''Agents of Change'' (2015), *https://www.kellyservices.com/global/siteassets/3-kelly-global-services/uploadedfiles/3-kelly_global_services/content/sectionless_pages/kocg1047720freeagent20whitepaper20210x21020final2.pdf.*

[138] Exec. Order No. 12866 § 6(a)(3)(C)(iii), 58 FR 51741.

[139] Exec. Order No. 12866 § 1, 58 FR 51735.

[140] OMB guidance advises that, where possible, agencies should analyze at least one ''more stringent option'' and one ''less stringent option'' to the proposed approach. OMB Circular A–4 at 16.

[141] *See* 26 U.S.C. 3121(d)(2) (generally defining the term ''employee'' under the Internal Revenue Code as ''any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee''); 42 U.S.C. 410(j) (similarly defining ''employee'' under the Social Security Act); *see also, e.g., Community for Creative Non-Violence* v. *Reid,* 490 U.S. 730, 751 (1989) (applying ''principles of general common law of agency'' to determine ''whether . . . work was prepared by an employee or an independent contractor'' under the Copyright Act of 1976); *Darden,* 503 U.S. 318 (holding that ''a common-law test'' should resolve employee/independent contractor disputes under ERISA).

[142] *See also Hargrove* v. *Sleepy's, LLC,* 106 A.3d 449, 465 (N.J. 2015) (extending the ABC test to state wage claims in New Jersey).

[143] OMB Circular A–4 advises that agencies ''should discuss the statutory requirements that affect the selection of regulatory Approach. If legal constraints prevent the selection of a regulatory action that best satisfies the philosophy and principles of Executive Order 12866, [agencies] should identify these constraints and estimate their opportunity cost. Such information may be useful to Congress under the Regulatory Right-to-Know Act.''

[144] *See supra* note 141.

contractors and reducing the overall number of employees. The Department is unable to estimate the exact magnitude of such a reclassification effect, but believes that the vast majority of FLSA employees would remain FLSA employees under a common law control test.[145]

Codifying a common law control test would create a simpler legal regime for regulated entities interested in receiving services from an independent contractor, thereby reducing confusion, compliance costs, and legal risk for entities interested in doing business with independent contractors. Entities would not, for example, have to understand and apply one employment classification standard for tax purposes and a different employment classification standard for FLSA purposes. Thus, adopting the common law control test would likely increase perpetual cost savings for regulated entities attributable to improved clarity and reduced litigation as compared to the proposed rule. It could, on the other hand, impose burdens on workers who might prefer to be employees subject to FLSA protections.

The Department notes that the Supreme Court has interpreted the ''suffer or permit'' language in section 3(g) of the FLSA as demanding a broader definition of employment than that which exists under the common law. *See, e.g., Darden,* 503 U.S. at 326; *Portland Terminal Co.,* 330 at 150–51. Accordingly, the Department believes it is legally constrained from adopting the common law control test absent Congressional legislation to amend the FLSA.

2. Codifying the Six-Factor ''Economic Reality'' Balancing Test

As discussed earlier in section II(B), WHD has long applied a multifactor ''economic reality'' balancing test to distinguish between employees and independent contractors in enforcement actions and subregulatory guidance. Recently articulated in WHD Opinion Letter FLSA2019–6, the six factors presently considered in WHD's multifactor balancing test are as follows:

(1) The nature and degree of the potential employer's control;

(2) The permanency of the worker's relationship with the potential employer;

(3) The amount of the worker's investment in facilities, equipment, or helpers;

(4) The amount of skill, initiative, judgment, or foresight required for the worker's services;

(5) The worker's opportunities for profit or loss; and

(6) The extent of integration of the worker's services into the potential employer's business.

WHD Opinion Letter FLSA2019–6 at 4 (citing *Rutherford,* 331 U.S. at 730, and *Silk,* 331 U.S. at 716).

The Department believes that the six-factor balancing test (as articulated in WHD Opinion Letter FLSA2019–6) is neither more nor less permissive of independent contractor relationships as compared to the streamlined test proposed in this rulemaking. Both tests describe the ''economic dependence'' of the worker at issue as the ultimate inquiry of the test; both emphasize the primacy of actual practice over contractual or theoretical possibilities (*i.e.,* the ''economic reality'' of the work arrangement); and both evaluate the same set of underlying factors, notwithstanding an emphasis and consolidation of certain factors under the streamlined test. Notably, like § 795.105(d)(1)(i) of the proposed rule, WHD Opinion Letter FLSA2019–6 advised that certain safety measures and quality control standards do not constitute ''control'' indicative of an FLSA employment relationship. *See id.* at 8 n. 4.

Although codifying this six-factor balancing test would thus impose a comparably stringent legal standard on the regulated community, the Department believes, as explained earlier in section III, that the six-factor balancing test presently used by WHD and most courts would benefit from clarification, sharpening, and streamlining. For this reason, the Department believes that codifying such a test would not yield the perpetual benefits and cost savings discussed earlier in this analysis, such as improved clarity and reduced FLSA litigation. Additionally, the Department does not believe that codifying the six-factor balancing test would reduce initial regulatory familiarization costs or provide per-contract clarity cost savings, as interested establishments and independent contractors will likely spend the same amount of time learning about any new regulatory language addressing independent contractor status under the FLSA (no regulatory guidance on the topic currently exists).

3. Codifying California's ''ABC'' Test

The most stringent regulatory alternative to the Department's proposed rule would be to codify the ''ABC'' test recently adopted under California's state wage and hour law to distinguish between employee/independent contractor statuses.[146] As described by the California Supreme Court in *Dynamex,* ''[t]he ABC test presumptively considers all workers to be employees, and permits workers to be classified as independent contractors only if the hiring business demonstrates that the worker in question satisfies *each* of three conditions: (a) That the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of the work and in fact; *and* (b) that the worker performs work that is outside the usual course of the hiring entity's business; *and* (c) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.'' 416 P.3d at 34 (emphasis in original).[147] In justifying the adoption of such a stringent test, the *Dynamex* court noted the existence of an ''exceptionally broad suffer or permit to work standard'' in California's wage and hour statute, *id.* at 31,[148] as well as ''the more general principle that wage orders are the type of remedial legislation that must be liberally construed in a manner that

[145] As discussed earlier in section IV(D)(7), a review of federal appellate case law since 1975 shows that the classification outcome of almost every FLSA employee/independent contractor dispute has aligned with the court's specific finding on the control factor. Thus, adoption of a common law control test would be unlikely to alter most FLSA worker classifications, including those close enough to merit federal appellate litigation under the economic reality test.

[146] *See Dynamex,* 416 P.3d 1; Assembly Bill (''A.B.'') 5, Ch. 296, 2019–2020 Reg. Sess. (Cal. 2019) (codifying the ABC test articulated in *Dynamex*); A.B. 2257, Ch. 38, 2019–2020 Reg. Sess. (Cal. 2020) (retroactively exempting certain professions, occupations, and industries from the ABC test that A.B. 5 had codified). The ABC test originated in state unemployment insurance statutes, but some state courts and legislatures have recently extended the test to govern employee/independent contractor disputes under state wage and hour laws. *See* Keith Cunningham-Parmeter, *Gig-Dependence: Finding the Real Independent Contractors of Platform Work,* 39 N. Ill. U. L. Rev. 379, 408–11 (2019) (discussing the origins and recent expansion of the ABC test).

[147] California's ABC test is slightly more stringent than versions of the ABC test adopted (or presently under consideration) in other states. For example, New Jersey provides that a hiring entity may satisfy the ABC test's ''B'' prong by establishing either: (1) That the work provided is outside the usual course of the business for which the work is performed, or (2) that the work performed is outside all the places of business of the hiring entity. N.J. Stat. Ann. § 43:21–19(i)(6)(A–C). The Department has chosen to analyze California's ABC test as a regulatory alternative because businesses subject to multiple standards, including nationwide businesses, are likely to comply with the most demanding standard if they wish to make consistent classification determinations.

[148] *See* Cal. Code Regs., tit. 8, § 11090, subd. 2(D) (''Employ' means to engage, suffer, or permit to work.''). The *Dynamex* court noted that California's adoption of the ''suffer or permit to work'' standard predated the enactment of the FLSA and was therefore ''not intended to embrace the federal economic reality test'' that subsequently developed. 416 P.3d at 35.

serves its remedial purposes.'' *Id.* at 32.[149]

On its face, California's ABC test is far more restrictive of independent contracting arrangements than any formulation of an ''economic reality'' balancing test, including the proposed rule. Whereas no single factor necessarily disqualifies a worker from independent contractor status under an economic reality test, *each* of the ABC test's three factors may alone disqualify the worker from independent contractor status. Thus, adoption of an ABC test to govern independent contractor status under the FLSA would directly result in a large-scale reclassification of many workers presently classified as independent contractors into FLSA-covered employees. This reclassification effect would be particularly disruptive in industries that depend on independent contracting arrangements within the ''usual course of the hiring entity's business,'' such as transportation, residential construction, cable installation, *etc.* While some independent contractors might benefit from reclassification by newly receiving overtime pay and/or a guaranteed minimum wage, these workers might also experience a reduction in work hours or diminished scheduling flexibility as their new employers attempt to avoid incurring additional expenses for overtime work. Others workers, particularly off-site workers who operate free from the business' direct control and supervision, might see their work arrangements terminated by businesses unwilling or unable to assume the financial burden and legal risk of the FLSA's overtime pay requirement. Some businesses in California responded to the increased legal risk of treating certain workers as independent contractors under the ABC test by terminating their relationships with workers,[150] thereby eliminating some of the flexible work arrangements sought, for example, by parents and others who must balance work and family obligations.[151] The Department believes adopting the ABC test as the FLSA's generally applicable standard for distinguishing employees from independent contractors would be unduly restrictive and disruptive to the economy. The fact that California recently enacted numerous exemptions to the ABC test highlights the test's limitations as a possible alternative under the FLSA.[152]

In any event, the Department believes it is legally constrained from adopting California's ABC test because the Supreme Court has instituted the economic reality test as the relevant standard for determining workers' classification under the FLSA as an employee or independent contractor. *See Tony & Susan Alamo,* 471 U.S. at 301 (''The test of employment under the Act is one of 'economic reality.' ''); *Whitaker House,* 366 U.S. at 33 (1961) (' 'economic reality' rather than 'technical concepts' is . . . the test of employment'' under the FLSA) (citing *Silk,* 331 U.S. at 713; *Rutherford Food,* 331 U.S. at 729)).

The California Supreme Court explicitly recognized that the ABC test defines ''employee'' more broadly than the FLSA when it explained that the ABC test rests on a ''standard in California wage orders [that] was not intended to embrace the [FLSA's] economic reality test'' and was instead ''intended to provide broader protection than that accorded workers under the [FLSA] standard.'' *Dynamex,* 416 P.3d at 35.[153] Moreover, the Supreme Court has stated that the existence of employment relationships under the FLSA ''does not depend on such isolated factors'' as the three independently determinative factors in the ABC test, ''but rather upon the circumstances of the whole activity.'' *Rutherford Food,* 331 U.S. at 730. Because the ABC test is therefore inconsistent with Supreme Court precedent interpreting the FLSA, the Department concludes it could not adopt the ABC test.

Although the ABC test is ''a simpler, more structured test'' than a multifactor balancing test and would likely lead to more consistent classification outcomes, *Dynamex,* 416 P.3d at 34, legal constraints and the disruptive economic effects of adopting such a stringent standard advises against its adoption in the FLSA context. As mentioned earlier, the Department has engaged in this rulemaking to clarify the existing standard, not to radically transform it.

H. Summary of Impacts

In summary, the Department believes that this rule will increase clarity regarding whether a worker is classified as an employee or an independent contractor under the FLSA. This clarity could result in an increased use of independent contractors. The costs and benefits to a worker being classified as an independent contractor are discussed throughout this analysis, and are summarized below.

The Department believes that there are real benefits to the use of independent contractor status, for both workers and employers. Independent contractors generally have greater autonomy and more flexibility in their hours, providing them more control over the management of their time. The use of independent contracting for employers allows for a more flexible and dynamic workforce, where workers provide labor and skills where and when they are needed. Independent contractors may more easily work for multiple companies simultaneously, have more control over their labor-leisure balance, and more explicitly define the nature of their work. Independent contractors also appear to have higher job satisfaction.

An increase in the number of job openings for independent contractors can also have benefits for the economy as a whole. Increased job creation and enhanced flexibility in work arrangements are critical benefits during periods of economic uncertainty, such as the current COVID–19 pandemic.

There are unique challenges that face independent contractors compared to employees subject to the FLSA. Independent contractors are not subject to the protections of the FLSA, such as minimum wage and overtime pay. Independent contractors generally do not receive the same employer-provided benefits as employees, such as health insurance, retirement contributions, and

[149] *See* Cal. Code Regs., tit. 8, § 11090, subd. 2(D) (' 'Employ' means to engage, suffer, or permit to work.'').

[150] *See, e.g.,* Marc Tracy and Kevin Draper, ''Vox Media to Cut 200 Freelancers, Citing California Gig-Worker Law,'' *New York Times* (Dec. 16, 2019), *www.nytimes.com/2019/12/16/business/media/vox-media-california-job-cuts.html;* Dawn Kawamoto, ''Exclusive: Fast-growing S.F. company to exit market as result of state's new gig worker law,'' *San Francisco Business Times* (Jan. 3, 2020), *www.bizjournals.com/sanfrancisco/news/2020/01/03/exclusive-fast-growing-s-f-company-to-exit-market.html;* Sophia Bollag and Dale Kasler, ''California Workers Blame New Labor Law for Lost Jobs. Lawmakers are Scrambling to Fix It,'' *Sacramento Bee* (Feb. 10, 2020), *www.sacbee.com/news/politics-government/capitol-alert/article239822623.html.*

[151] *See, e.g.,* Elaine Pofeldt, ''California's AB–5 leaves Women Business Owners Reeling,'' *Forbes* (Jan. 19, 2020), *www.forbes.com/sites/elainepofeldt/2020/01/19/californias-ab5-leaves-women-business-owners-reeling/#460fb6f05ef3.*

[152] *See* A.B. 2257, Ch. 38, 2019–2020 Reg. Sess. (Cal. 2020).

[153] The ABC test would define ''employee'' to include workers who have been held by the Supreme Court to be independent contractors under the economic reality test. For instance, under the ABC test, the term ''employee'' would include individuals who perform work that falls within the usual course of the hiring entity's business, regardless of all other considerations. Even though transporting coal falls within a coal company's usual course of business, the United States Supreme Court held in *Silk* that truck drivers hired by a coal company to transport coal were independent contractors rather than employees. 331 U.S. at 719. Similarly, the Court held in *Bartels* that musicians were independent contractors rather than employees of the music hall where they played, even though playing music falls within the music hall's usual course of business. 332 U.S. at 130.

paid time off.[154] Independent contractors may have a higher tax liability than employees, as they are legally obligated to pay both the employee and employer shares of the Federal Insurance Contributions Act (FICA) taxes. However, economists recognize that payroll taxes generally are subtracted from the wage rate of employees. Employers also cover unemployment insurance and workers' compensation taxes for their employees. These costs are also components of businesses' worker costs, and employee wages are expected to reflect that accordingly. Independent contractors do not pay these taxes nor are they generally protected by these insurance programs, but there are private insurance companies that offer equivalent coverage.

Because the Department does not know how many workers may shift from employee status to independent contractor status, or how many people who were previously unemployed or out of the labor force will gain work as an independent contractor, these costs and benefits have not been quantified. The Department welcomes comments and data on these costs and benefits, and on how the prevalence of independent contractor relationships will change as a result of this proposed rule.

VII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (1996), requires federal agencies engaged in rulemaking to consider the impact of their proposals on small entities, consider alternatives to minimize that impact, and solicit public comment on their analyses. The RFA requires the assessment of the impact of a regulation on a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Accordingly, the Department examined the regulatory requirements of the proposed rule to determine whether they would have a significant economic impact on a substantial number of small entities. Because both costs and cost savings are minimal for small business entities, the Department certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The Department used the Small Business Administration size standards, which determine whether a business qualifies for small-business status, to estimate the number of small entities.[155] The Department then applied these thresholds to the U.S. Census Bureau's 2012 Economic Census to obtain the number of establishments with employment or sales/receipts below the small business threshold in the industry.[156] These ratios of small to large establishments were then applied to the more recent 2017 SUSB data.[157] The Department estimated there are 6.4 million small establishments or governments.[158]

The per-entity cost for small business employers is the regulatory familiarization cost of $54.74, or the fully loaded mean hourly wage of a Compensation, Benefits, and Job Analysis Specialist multiplied by one hour. The per-entity rule familiarization cost for independent contractors, some of whom would be small businesses, is $11.59, or the fully loaded mean hourly wage of independent contractors in the CWS ($46.36) multiplied by 0.25 hour.

The cost savings due to increased clarity estimated per year for each small business employer is $18.25, or the fully loaded mean hourly wage of a Compensation, Benefits, and Job Analysis Specialist multiplied by 0.33 hours. The cost savings due to increased clarity for each independent contractor, some of whom would be a small business, is $3.86 per year, or the fully loaded mean hourly wage of independent contractors in the CWS multiplied by 0.83 hours. Because regulatory familiarization is a one-time cost and the cost savings from clarity recur each year, the Department expects cost savings to outweigh regulatory familiarization costs in the long run. Because both costs and cost savings are minimal for small business entities, and well below one percent of their gross annual revenues, which is typically at least $100,000 per year for the smallest businesses, the Department certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

There is some evidence that small firms use independent contractors for a greater proportion of their workforce than large firms.[159] If so, then it may be reasonable to assume that the increased use of independent contractors may also favor smaller companies. In which case, costs and benefits and cost savings may be larger for these small firms. Because benefits and cost savings are expected to outweigh costs, the Department does not expect this rule will result in an undue hardship for small businesses. The Department requests comments and data on this finding, including the numbers of small entities affected by this rule and the compliance costs and associated cost savings and benefits.

VIII. Unfunded Mandates Reform Act Analysis

The Unfunded Mandates Reform Act of 1995 (UMRA)[160] requires agencies to prepare a written statement for rules with a federal mandate that may result in increased expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $156 million ($100 million in 1995 dollars adjusted for inflation) or more in at least one year.[161] This statement must: (1) Identify the authorizing legislation; (2) present the estimated costs and benefits of the rule and, to the extent that such estimates are feasible and relevant, its estimated effects on the national economy; (3) summarize and evaluate state, local, and tribal government input; and (4) identify reasonable alternatives and select, or explain the non-selection, of the least costly, most cost-effective, or least burdensome alternative.

A. Authorizing Legislation

This proposed rule is issued pursuant to the Fair Labor Standards Act, 29 U.S.C. 201, *et seq.*

B. Assessment of Costs and Benefits

For purposes of the UMRA, this rule includes a federal mandate that is expected to result in increased expenditures by the private sector of more than $156 million in at least one year, but will not result in increased expenditures by state, local, and tribal governments, in the aggregate, of $156 million or more in any one year.

Based on the cost analysis from this proposed rule, the Department determined that the proposed rule will result in Year 1 total costs for state and local governments totaling $1.7 million, all for regulatory familiarization. There

[154] In some situations, independent contractors may be provided with benefits similar to those provided to employees.

[155] SBA, Summary of Size Standards by Industry Sector, 2017, *www.sba.gov/document/support--table-size-standards.*

[156] The 2012 data are the most recently available with revenue data.

[157] For this analysis, the Department excluded independent contractors who are not registered as small businesses, and who are generally not captured in the SUSB, from the calculation of small establishments.

[158] The number of small governments was calculated based on data from the 2017 Census of Governments.

[159] Lim et al, *supra* note 61 at 51.

[160] *See* 2 U.S.C. 1501.

[161] Calculated using growth in the Gross Domestic Product deflator from 1995 to 2019. Bureau of Economic Analysis. Table 1.1.9. Implicit Price Deflators for Gross Domestic Product.

will be no additional costs incurred in subsequent years.

The Department determined that the proposed rule will result in Year 1 total costs for the private sector of $369.2 million, all of them incurred for regulatory familiarization. The Department included all independent contractors in the private sector total regulatory familiarization costs. There will be no additional costs incurred in subsequent years.

UMRA requires agencies to estimate the effect of a regulation on the national economy if such estimates are reasonably feasible and the effect is relevant and material.[162] However, OMB guidance on this requirement notes that such macroeconomic effects tend to be measurable in nationwide econometric models only if the economic effect of the regulation reaches 0.25 percent to 0.5 percent of Gross Domestic Product (GDP), or in the range of $53.6 billion to $107.2 billion (using 2019 GDP).[163] A regulation with a smaller aggregate effect is not likely to have a measurable effect in macroeconomic terms, unless it is highly focused on a particular geographic region or economic sector, which is not the case with this proposed rule.

The Department's PRIA estimates that the total costs of the proposed rule will be $369.2 million. Given OMB's guidance, the Department has determined that a full macroeconomic analysis is not likely to show that these costs would have any measurable effect on the economy.

C. Least Burdensome Option Explained

This Department believes that it has chosen the least burdensome but still cost-effective methodology to clarify its interpretation of the FLSA's distinction between employees and independent contractors. Although the proposed regulation would impose costs for regulatory familiarization, the Department believes that its proposal would reduce the overall burden on organizations by simplifying and clarifying the analysis for determining whether a worker is classified as an employee or an independent contractor under the FLSA. The Department believes that, after familiarization, this rule will reduce the time spent by organizations to determine whether a worker is an independent contractor. Additionally, revising the Department's guidance to provide more clarity could promote innovation and certainty in business relationships.

IX. Effects on Families

The undersigned hereby certifies that the proposed rule would not adversely affect the well-being of families, as discussed under section 654 of the Treasury and General Government Appropriations Act, 1999.

List of Subjects

29 CFR Part 780

Agriculture, Child labor, Wages.

29 CFR Part 788

Forests and forest products, Wages.

29 CFR Part 795

Employment, Wages.

Signed at Washington, DC, this 18th day of September, 2020.

Cheryl M. Stanton,

Administrator, Wage and Hour Division.

For the reasons set out in the preamble, the Department of Labor proposes to amend Title 29 of the Code of Federal Regulations parts 780 and 788 and add part 795, as follows:

PART 780—EXEMPTIONS APPLICABLE TO AGRICULTURE, PROCESSING OF AGRICULTURAL COMMODITIES, AND RELATED SUBJECTS UNDER THE FAIR LABOR STANDARDS ACT

■ 1. The authority citation for part 780 continues to read as follows:

Authority: Secs. 1–19, 52 Stat. 1060, as amended; 29 U.S.C. 201–219.

■ 2. Amend § 780.330 by revising paragraph (b) as follows:

§ 780.330 Sharecroppers and tenant farmers.

* * * * *

(b) In determining whether such individuals are employees or independent contractors, the criteria laid down in §§ 795.100 through 795.110 of this chapter are used.

* * * * *

PART 788—FORESTRY OR LOGGING OPERATIONS IN WHICH NOT MORE THAN EIGHT EMPLOYEES ARE EMPLOYED

■ 3. The authority citation for part 788 continues to read as follows:

Authority: Secs. 1–19, 52 Stat. 1060, as amended; 29 U.S.C. 201–219.

■ 4. Amend § 788.16 by revising paragraph (a) as follows:

§ 788.16 Employment relationship.

(a) In determining whether individuals are employees or independent contractors, the criteria laid down in §§ 795.100 through 795.110 of this chapter are used.

* * * * *

■ 5. Add part 795 to read as follows:

PART 795—EMPLOYEE OR INDEPENDENT CONTRACTOR CLASSIFICATION UNDER THE FAIR LABOR STANDARDS ACT

Sec.
795.100 Introductory statement.
795.105 Determining employee and independent contractor classification under the FLSA.
795.110 Primacy of actual practice.
795.115 Severability.

Authority: 52 Stat. 1060, as amended; 29 U.S.C. 201–219.

§ 791.100 Introductory statement.

This part contains the Department of Labor's general interpretations of the text governing individuals' classification as employees or independent contractors under the Fair Labor Standards Act (FLSA or Act). *See* 29 U.S.C. 201–19. The Administrator of the Wage and Hour Division will use these interpretations to guide the performance of his or her duties under the Act, and intends the interpretations to be used by employers, employees, and courts to understand employers' obligations and employees' rights under the Act. To the extent that prior administrative rulings, interpretations, practices, or enforcement policies relating to classification as an employee or independent contractor under the Act are inconsistent or in conflict with the interpretations stated in this part, they are hereby rescinded. The interpretations stated in this part may be relied upon in accordance with section 10 of the Portal-to-Portal Act, 29 U.S.C. 251–262, notwithstanding that after any such act or omission in the course of such reliance, any such interpretation in this part ''is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect.'' 29 U.S.C. 259.

§ 795.105 Determining employee and independent contractor classification under the FLSA.

(a) *Independent contractors are not employees under the Act.* An individual who renders services to a potential employer—*i.e.,* a putative employer or alleged employer— as an independent contractor is not that potential employer's employee under the Act. As such, sections 6, 7, and 11 of the Act, which impose obligations on employers

[162] *See* 2 U.S.C. 1532(a)(4).

[163] According to the Bureau of Economic Analysis, 2019 GDP was $21.43 trillion. *https://www.bea.gov/system/files/2020-02/gdp4q19_2nd_0.pdf.*

regarding their employees, are inapplicable. Accordingly, the Act does not require a potential employer to pay an independent contractor either the minimum wage or overtime pay under sections 6 or 7. Nor does section 11 of the Act require a potential employer to keep records regarding an independent contractor's activities.

(b) *Economic dependence as the ultimate inquiry.* An ''employee'' under the Act is an individual whom an employer suffers, permits, or otherwise employs to work. 29 U.S.C. 203(e)(1), (g). An employer suffers or permits an individual to work as an employee if, as a matter of economic reality, the individual is economically dependent on that employer for work. *Rutherford Food Corp.* v. *McComb,* 331 U.S. 722, 727 (1947); *Bartels* v. *Birmingham,* 332 U.S. 126, 130 (1947). An individual is an independent contractor, as distinguished from an ''employee'' under the Act, if the individual is, as a matter of economic reality, in business for him- or herself.

(c) *Determining economic dependence.* The economic reality factors in paragraph (d) of this section guide the determination of whether the relationship between an individual and a potential employer is one of economic dependence and therefore whether an individual is properly classified as an employee or independent contractor. These factors are not exhaustive, and no single factor is dispositive. However, the two core factors listed in paragraph (d)(1) of this section are the most probative as to whether or not an individual is an economically dependent ''employee,'' 29 U.S.C. 203(e)(1), and each is therefore afforded greater weight in the analysis than is any other factor. Given the greater weight afforded each of these two core factors, if they both point towards the same classification, whether employee or independent contractor, there is a substantial likelihood that is the individual's accurate classification. This is because other factors, which are less probative and afforded less weight, are highly unlikely, either individually or collectively, to outweigh the combined weight of the two core factors.

(d) *Economic reality factors*—(1) *Core factors*—(i) *The nature and degree of the individual's control over the work.* This factor weighs towards the individual being an independent contractor to the extent the individual, as opposed to the potential employer, exercises substantial control over key aspects of the performance of the work, such as by setting his or her own schedule, by selecting his or her projects, and/or through the ability to work for others, which might include the potential employer's competitors. In contrast, this factor weighs in favor of the individual being an employee under the Act to the extent the potential employer, as opposed to the individual, exercises substantial control over key aspects of the performance of the work, such as by controlling the individual's schedule or workload and/or by directly or indirectly requiring the individual to work exclusively for the potential employer. Requiring the individual to comply with specific legal obligations, satisfy health and safety standards, carry insurance, meet contractually agreed-upon deadlines or quality control standards, or satisfy other similar terms that are typical of contractual relationships between businesses (as opposed to employment relationships) does not constitute control that makes the individual more or less likely to be an employee under the Act.

(ii) *The individual's opportunity for profit or loss.* This factor weighs towards the individual being an independent contractor to the extent the individual has an opportunity to earn profits or incur losses based on his or her exercise of initiative (such as managerial skill or business acumen or judgment) or management of his or her investment in or capital expenditure on, for example, helpers or equipment or material to further his or her work. While the effects of the individual's exercise of initiative and management of investment are both considered under this factor, the individual does not need to have an opportunity for profit or loss based on both for this factor to weigh towards the individual being an independent contractor. This factor weighs towards the individual being an employee to the extent the individual is unable to affect his or her earnings or is only able to do so by working more hours or more efficiently.

(2) *Other factors*—(i) *The amount of skill required for the work.* This factor weighs in favor of the individual being an independent contractor to the extent the work at issue requires specialized training or skill that the potential employer does not provide. This factor weighs in favor of the individual being an employee to the extent the work at issue requires no specialized training or skill and/or the individual is dependent upon the potential employer to equip him or her with any skills or training necessary to perform the job.

(ii) *The degree of permanence of the working relationship between the individual and the potential employer.* This factor weighs in favor of the individual being an independent contractor to the extent the work relationship is by design definite in duration or sporadic, which may include regularly occurring fixed periods of work, although the seasonal nature of work by itself would not necessarily indicate independent contractor classification. This factor weighs in favor of the individual being an employee to the extent the work relationship is instead by design indefinite in duration or continuous.

(iii) *Whether the work is part of an integrated unit of production.* This factor weighs in favor of the individual being an employee to the extent his or her work is a component of the potential employer's integrated production process for a good or service. This factor weighs in favor of an individual being an independent contractor to the extent his or her work is segregable from the potential employer's production process. This factor is different from the concept of the importance or centrality of the individual's work to the potential employer's business.

§ 795.110 Primacy of actual practice.

In evaluating the individual's economic dependence on the potential employer, the actual practice of the parties involved is more relevant than what may be contractually or theoretically possible. For example, an individual's theoretical abilities to negotiate prices or to work for competing businesses are less meaningful if, as a practical matter, the individual is prevented from exercising such rights. Likewise, a business' contractual authority to supervise or discipline an individual may be of little relevance if in practice the business never exercises such authority.

§ 795.115 Severability.

If any provision of this part is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the provision shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event the provision shall be severable from part 795 and shall not affect the remainder thereof.

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Part IV

Department of Energy

10 CFR Part 431

Energy Conservation Program: Energy Conservation Standards for Computer Room Air Conditioners and Air-Cooled, Three-Phase, Small Commercial Package Air Conditioning and Heating Equipment With a Cooling Capacity of Less Than 65,000 Btu/h; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2020–BT–STD–0008]

RIN 1904–AF01

Energy Conservation Program: Energy Conservation Standards for Computer Room Air Conditioners and Air-Cooled, Three-Phase, Small Commercial Package Air Conditioning and Heating Equipment With a Cooling Capacity of Less Than 65,000 Btu/h

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

ACTION: Notification of data availability and request for information.

SUMMARY: The U.S. Department of Energy (DOE) is publishing an analysis of the energy savings potential of amended industry consensus standards for certain classes of computer room air conditioners (CRACs) and air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h (air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment). As required under the Energy Policy and Conservation Act (EPCA), DOE has been triggered to act by changes to the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 90.1. DOE is also soliciting information regarding energy conservation standards for CRACs and air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment for which the industry consensus standards have not been amended, pursuant to EPCA's six-year-lookback review requirement. This notice of data availability (NODA) and request for information (RFI) solicits information from the public to help DOE determine whether more-stringent amended standards for CRACs or air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment would result in significant additional energy savings and whether such standards would be technologically feasible and economically justified. DOE welcomes written comments from the public on any subject within the scope of this document (including topics not specifically raised in this NODA/RFI), as well as the submission of data and other relevant information.

DATES: Written comments and information are requested and will be accepted on or before November 9, 2020.

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–0008 and/or RIN 1904–AF01, by any of the following methods:

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

2. *Email: 2019ASHRAE2020STD0008@ee.doe.gov.* Include the docket number EERE–2020–BT–STD–0008 and/or RIN 1904–AF01 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, Energy Conservation Standards NODA and RFI for Certain Categories of Commercial Air-Conditioning and Heating Equipment, 1000 Independence Avenue SW, Washington, DC 20585–0121. 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.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document (Public Participation).

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* (search EERE–2020–BT–STD–0008). 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-0008.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section V of this document for information on how to submit comments through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Rivest and Mr. Antonio Bouza, 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) 586–7335. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (202) 586–5827. Email: *Eric.Stas@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.*

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I. Introduction

A. Authority

The Energy Policy and Conservation Act, as amended (EPCA),[1] Public Law 94–163 (42 U.S.C. 6291–6317, as codified) among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part C[2] of EPCA (42 U.S.C. 6311–6317, as codified), added by Public Law 95–619, Title IV, § 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This equipment includes CRACs and air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment, which are categories of small, large, and very large commercial package air conditioning and heating equipment, which are the subjects of this document. (42 U.S.C. 6311(1)(B)–(D)).

Under EPCA, the energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of the EPCA specifically include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption in limited circumstances for particular State laws or regulations, in accordance with the procedures and other provisions set forth under EPCA. (See 42 U.S.C. 6316(b)(2)(D)).

In EPCA, Congress initially set mandatory energy conservation standards for certain types of commercial heating, air-conditioning, and water-heating equipment. (42 U.S.C. 6313(a)) Specifically, the statute sets standards for small, large, and very large commercial package air conditioning and heating equipment,[3] packaged terminal air conditioners (PTACs) and packaged terminal heat pumps (PTHPs), warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks. *Id.* In doing so, EPCA established Federal energy conservation standards at levels that generally corresponded to the levels in ASHRAE Standard 90.1, *Energy Standard for Buildings Except Low-Rise Residential Buildings,* as in effect on October 24, 1992 (*i.e.,* ASHRAE Standard 90.1–1989), for each type of covered equipment listed in 42 U.S.C. 6313(a).

In acknowledgement of technological changes that yield energy efficiency benefits, Congress further directed DOE through EPCA to consider amending the existing Federal energy conservation standard for each type of covered equipment listed, each time ASHRAE amends Standard 90.1 with respect to such equipment. (42 U.S.C. 6313(a)(6)(A)) When triggered in this manner, DOE must undertake and publish an analysis of the energy savings potential of amended energy efficiency standards, and amend the Federal standards to establish a uniform national standard at the minimum level specified in the amended ASHRAE Standard 90.1, unless DOE determines that there is clear and convincing evidence to support a determination that a more-stringent standard level as a national standard would produce significant additional energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(i)–(ii)) If DOE decides to adopt as a uniform national standard the minimum efficiency levels specified in the amended ASHRAE Standard 90.1, DOE must establish such standard not later than 18 months after publication of the amended industry standard. (42 U.S.C. 6313(a)(6)(A)(ii)(I)) However, if DOE determines, supported by clear and convincing evidence, that a more-stringent uniform national standard would result in significant additional conservation of energy and is technologically feasible and economically justified, then DOE must establish such more-stringent uniform national standard not later than 30 months after publication of the amended ASHRAE Standard 90.1.[4] (42 U.S.C. 6313(a)(6)(A)(ii)(II) and (B)(i)).

In an update to 10 CFR part 430, subpart C, appendix A, ''Procedures, interpretations, and policies for consideration of new or revised energy conservation standards and test procedures for commercial/industrial equipment'' (the updated Process Rule),[5] DOE codified in its regulations its long-standing interpretation that the ASHRAE ''trigger'' is applicable only to those equipment classes for which ASHRAE Standard 90.1 has adopted an increase to the efficiency level as compared to the current Federal standard for that specific equipment

[1] All references to EPCA in this document refer to the statute as amended through America's Water Infrastructure Act of 2018, Public Law 115–270 (Oct. 23, 2018).

[2] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

[3] EPCA defines *commercial package air-conditioning and heating equipment* as meaning air-cooled, water-cooled, evaporatively-cooled, or water source (not including ground water source) electrically operated, unitary central air conditioners and central air-conditioning heat pumps for commercial application. (42 U.S.C. 6311(8)(A)) Commercial package air-conditioning and heating equipment includes CRACs and air-cooled, three-phase small commercial package AC and HP (<65 K) equipment.

[4] In determining whether a more-stringent standard is economically justified, EPCA directs DOE to determine, after receiving views and comments from the public, whether the benefits of the proposed standard exceed the burdens of the proposed standard by, to the maximum extent practicable, considering the following:

(1) The economic impact of the standard on the manufacturers and consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the product compared to any increases in the initial cost or maintenance expense;

(3) The total projected amount of energy savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary considers relevant.

(42 U.S.C. 6313(a)(6)(B)(ii)).

[5] The updated Process Rule is applicable to covered equipment and includes provisions specific to rulemakings related to ASHRAE equipment. 85 FR 8626, 8704, 8708, and 8711 (Feb. 14, 2020).

class. 85 FR 8626, 8644–8645 (Feb. 14, 2020). DOE's review in adopting amendments based on an action by ASHRAE to amend Standard 90.1 is strictly limited to the specific standards or test procedure amendment for the specific equipment for which ASHRAE has made a change (*i.e.,* determined down to the equipment class level). 85 FR 8626, 8708 (Feb. 14, 2020).

Although EPCA does not explicitly define the term ''amended'' in the context of what type of revision to ASHRAE Standard 90.1 would trigger DOE's obligation, DOE's longstanding interpretation has been that the statutory trigger is an amendment to the standard applicable to that equipment under ASHRAE Standard 90.1 that increases the energy efficiency level for that equipment. *See* 72 FR 10038, 10042 (March 7, 2007). In other words, if the revised ASHRAE Standard 90.1 leaves the energy efficiency level unchanged (or lowers the energy efficiency level), as compared to the energy efficiency level specified by the uniform national standard adopted pursuant to EPCA, regardless of the other amendments made to the ASHRAE Standard 90.1 requirement (*e.g.,* the inclusion of an additional metric), DOE has stated that it does not have the authority to conduct a rulemaking to consider a higher standard for that equipment pursuant to 42 U.S.C. 6313(a)(6)(A). *See* 74 FR 36312, 36313 (July 22, 2009) and 77 FR 28928, 28937 (May 16, 2012). If an amendment to ASHRAE Standard 90.1 changed the metric for the standard on which the Federal requirement was based, DOE would perform a crosswalk analysis to determine whether the amended metric under ASHRAE Standard 90.1 resulted in an energy efficiency level that was more stringent than the current DOE standard.

DOE notes that Congress adopted amendments to these provisions related to ASHRAE Standard 90.1 equipment under the American Energy Manufacturing Technical Corrections Act (Pub. L. 112–210 (Dec. 18, 2012); ''AEMTCA''). In relevant part, DOE is prompted to act whenever ASHRAE Standard 90.1 is amended with respect to ''the standard levels or design requirements applicable under that standard'' to any of the enumerated types of commercial air conditioning, heating, or water heating equipment covered under EPCA. (42 U.S.C. 6313(a)(6)(A)(i)).

In those situations where ASHRAE has not acted to amend the levels in ASHRAE Standard 90.1 for the covered equipment types enumerated in the statute, EPCA also provides for a 6-year-lookback to consider the potential for amending the uniform national standards. (42 U.S.C. 6313(a)(6)(C)) Specifically, pursuant to the amendments to EPCA under AEMTCA, DOE is required to conduct an evaluation of each class of covered equipment in ASHRAE Standard 90.1 ''every 6 years'' to determine whether the applicable energy conservation standards need to be amended. (42 U.S.C. 6313(a)(6)(C)(i)) DOE must publish either a notice of proposed rulemaking (NOPR) to propose amended standards or a notice of determination that existing standards do not need to be amended. (42 U.S.C. 6313(a)(6)(C)(i)(I)–(II)) In proposing new standards under the 6-year-lookback review, DOE must undertake the same considerations as if it were adopting a standard that is more stringent than an amendment to ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(C)(i)(II), 42 U.S.C. 6313(a)(6)(B)).

The 6-year-lookback review is a separate statutory review obligation, as differentiated from the obligation triggered by an ASHRAE Standard 90.1 amendment, as previously discussed. ASHRAE not acting to amend Standard 90.1 is tantamount to a decision that the existing standard remain in place. 85 FR 8626, 8708 (Feb. 14, 2020). Thus, when undertaking a review as required by 42 U.S.C. 6313(a)(6)(C), DOE would need to find clear and convincing evidence, as defined in the Process Rule, to issue a standard more stringent than the existing standard for the equipment at issue. *Id.* In those instances where DOE makes a determination that the standards for the equipment in question do not need to be amended, the statute requires the Department to revisit that decision within three years to either make a new determination or propose amended standards. (42 U.S.C. 6313(a)(6)(C)(iii)(II)).

On October 24, 2019, ASHRAE officially released for distribution and made public ASHRAE Standard 90.1–2019. As discussed in the following sections, DOE has preliminarily determined that the amendments to ASHRAE Standard 90.1 have triggered DOE's obligations under 42 U.S.C. 6313(a)(6), for certain equipment classed of CRACs and air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment.

As a preliminary step in the process of reviewing the changes to ASHRAE Standard 90.1, EPCA directs DOE to publish in the **Federal Register** for public comment an analysis of the energy savings potential of amended standards within 180 days after ASHRAE Standard 90.1 is amended with respect to any of the covered equipment specified under 42 U.S.C. 6313(a). (42 U.S.C. 6313(a)(6)(A)) This notice of data availability (NODA) presents the analysis of the energy savings potential of the amended energy efficiency standards in ASHRAE Standard 90.1–2019, as required under 42 U.S.C. 6313(a)(6)(A)(i).

Although not compelled to do so by the statute, DOE may decide in appropriate cases to simultaneously conduct an ASHRAE trigger rulemaking (*i.e.,* for those equipment classes for which ASHRAE set a higher standard) and a 6-year-lookback rulemaking (*i.e.,* for those equipment classes where ASHRAE left levels unchanged or set a lower standard) so as to address all classes of an equipment category at the same time. 85 FR 8626, 8645 (Feb. 14, 2020). For CRACs and air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment, DOE is also evaluating possible amendments to the standards for those equipment classes for which the stringency of standards was not changed by ASHRAE Standard 90.1, consistent with its obligations under EPCA.

For all classes of CRACs and air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment (including both the classes for which ASHRAE did and did not increase the stringency of energy efficiency levels applicable under ASHRAE Standard 90.1), DOE seeks data and information that could enable the agency to determine whether a more-stringent standard: (1) Would not result in significant additional savings of energy; (2) is not technologically feasible; (3) is not economically justified; or (4) any combination of the foregoing. If for the triggered equipment classes, standard levels more stringent than the amended ASHRAE levels do not meet the statutory criteria, DOE would adopt the amended ASHRAE Standard 90.1 levels. If for the non-triggered equipment classes, standard levels more stringent than the current Federal standards do not meet the statutory criteria, DOE would determine the standards do not need to be amended.

B. Purpose of the Notice of Data Availability

As explained previously, DOE is publishing this NODA as a preliminary step pursuant to EPCA's requirements for DOE to consider amended standards for certain categories of commercial equipment covered by ASHRAE Standard 90.1, whenever ASHRAE amends its standard to increase the energy efficiency level for an equipment class within a given equipment category. Specifically, this NODA

presents for public comment DOE's analysis of the potential energy savings for amended national energy conservation standards for the equipment classes of commercial equipment for which amended efficiency levels are contained within ASHRAE Standard 90.1–2019. DOE describes these analyses and preliminary conclusions and seeks input from interested parties, including the submission of data and other relevant information. Specifically, DOE seeks comment on the potential energy savings for amended national energy conservation standards for these categories of commercial equipment based on: (1) The amended efficiency levels contained within ASHRAE Standard 90.1–2019 and (2) more-stringent efficiency levels. DOE is also taking the opportunity to consider the potential for more-stringent standards for the other equipment classes within the subject equipment categories (*i.e.,* classes for which energy efficiency levels in ASHRAE Standard 90.1–2019 were not increased, and, therefore, for which DOE was not triggered) under EPCA's 6-year-lookback authority, so as to conduct a thorough review for the entire equipment category of CRACs and the entire equipment category of air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment.

DOE carefully examined the changes for equipment in ASHRAE Standard 90.1 in order to thoroughly evaluate the amendments in ASHRAE Standard 90.1–2019, thereby permitting DOE to determine what action, if any, is required under its statutory mandate. Section II of this NODA contains DOE's evaluation of the amendments in ASHRAE Standard 90.1–2019. For equipment classes preliminarily determined to have increased efficiency levels or changes in design requirements in ASHRAE Standard 90.1–2019, DOE subjected that equipment to further analysis as discussed in section III of this NODA. Section IV requests comment for those equipment classes for which efficiency levels and design requirements have not been increased or changed in ASHRAE Standard 90.1–2019, but are undergoing review under EPCA's 6-year-lookback authority.

In summary, the energy savings analysis presented in this NODA is a preliminary step required under 42 U.S.C. 6313(a)(6)(A)(i). DOE is also treating it as an opportunity to gather information regarding its obligations under 42 U.S.C. 6313(a)(6)(C). After review of the public comments on this NODA, DOE will either establish amended uniform national standards for the subject equipment at the minimum level specified in ASHRAE Standard 90.1–2019, or where supported by clear and convincing evidence, consider more-stringent efficiency levels that would be expected to result in significant additional conservation of energy and are technologically feasible and economically justified. If DOE determines it appropriate to conduct such a rulemaking under the statute, DOE will address the anti-backsliding provision,[6] and if DOE determines it appropriate to conduct a rulemaking to establish more-stringent efficiency levels, DOE will also address the general rulemaking requirements applicable under 42 U.S.C. 6313(a)(6)(B), such as, the criteria for making a determination of economic justification as to whether the benefits of the proposed standard exceed the burden of the proposed standard,[7] and the prohibition on making unavailable existing products with performance characteristics generally available in the United States.[8]

C. Rulemaking Background

EPCA defines ''commercial package air conditioning and heating equipment'' as air-cooled, water-cooled, evaporatively-cooled, or water source (not including ground water source) electrically operated, unitary central air conditioners and central air conditioning heat pumps for commercial application. (42 U.S.C. 6311(8)(A); 10 CFR 431.92) EPCA further divides ''commercial package air conditioning and heating equipment'' based on cooling capacity (*i.e.,* small, large, and very large categories). (42 U.S.C. 6311(8)(B)–(D); 10 CFR 431.92) ''Small commercial package air conditioning and heating equipment'' means equipment rated below 135,000 Btu per hour (cooling capacity). (42 U.S.C. 6311(8)(B); 10 CFR 431.92) ''Large commercial package air conditioning and heating equipment'' means equipment rated: (i) At or above 135,000 Btu per hour; and (ii) below 240,000 Btu per hour (cooling capacity). (42 U.S.C. 6311(8)(C); 10 CFR 431.92) ''Very large commercial package air conditioning and heating equipment'' means equipment rated: (i) At or above 240,000 Btu per hour; and (ii) below 760,000 Btu per hour (cooling capacity). (42 U.S.C. 6311(8)(D); 10 CFR 431.92) DOE generally refers to these broad classifications as ''equipment types.''

1. Computer Room Air Conditioners

Pursuant to its authority under EPCA (42 U.S.C. 6313(a)(6)(A)) and in response to updates to ASHRAE Standard 90.1, DOE has established additional categories of equipment that meet the EPCA definition of ''commercial package air conditioning and heating equipment,'' but which EPCA did not expressly identify. These equipment categories include CRACs (*see* 10 CFR 431.92 and 10 CFR 431.97). Within these additional equipment categories, further distinctions are made at the equipment class level based on capacity and other equipment attributes.

DOE's current energy conservation standards for 30 equipment classes of CRACs are codified at 10 CFR 431.97. DOE defines ''computer room air conditioner'' as a commercial package air-conditioning and heating equipment (packaged or split) that is: Used in computer rooms, data processing rooms, or other information technology cooling applications; rated for sensible coefficient of performance (SCOP) and tested in accordance with 10 CFR 431.96, and is not a covered product under 42 U.S.C. 6291(1)–(2) and 42 U.S.C. 6292. A computer room air conditioner may be provided with, or have as available options, an integrated humidifier, temperature, and/or humidity control of the supplied air, and reheating function. 10 CFR 431.92.

DOE's regulations include test procedures and energy conservation standards that apply to the current CRAC equipment classes that are differentiated by condensing system

[6] The anti-backsliding provision mandates that the Secretary may not prescribe any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6313 (a)(6)(B)(iii)(I))

[7] In deciding whether a potential standard's benefits outweigh its burdens, DOE must consider to the maximum extent practicable, the following seven factors:

(1) The economic impact on manufacturers and consumers of the product subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the product in the type (or class), compared to any increase in the price, initial charges, or maintenance expenses of the products likely to result from the standard;

(3) The total projected amount of energy savings likely to result directly from the standard;

(4) Any lessening of product utility or performance of the product likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, likely to result from the standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary considers relevant.

(42 U.S.C. 6313(a)(6)(B)(ii)(I)–(VII)).

[8] The Secretary may not prescribe an amended standard if interested persons have established by a preponderance of evidence that the amended standard would likely result in unavailability in the United States of any covered product type (or class) of performance characteristics (including reliability, features, capacities, sizes, and volumes) that are substantially the same as those generally available in the U.S. at the time of the Secretary's finding. (42 U.S.C. 6313(a)(6)(B)(iii)(II)).

type (air-cooled, water-cooled, water-cooled with fluid economizer, glycol-cooled, or glycol-cooled with fluid economizer), net sensible cooling capacity (NSCC) (less than 65,000 Btu/h, greater than or equal to 65,000 Btu/h and less than 240,000 Btu/h, or greater than or equal to 240,000 Btu/h and less than 760,000 Btu/h), and direction of conditioned air over the cooling coil (upflow or downflow). 10 CFR 431.96 and 10 CFR 431.97, respectively.

DOE's test procedure for CRACs, set forth at 10 CFR 431.96, currently incorporates by reference American National Standards Institute (ANSI)/ASHRAE Standard 127–2007 (ANSI/ASHRAE 127–2007), ''*Method of Testing for Rating Computer and Data Processing Room Unitary Air Conditioners,*'' (omit section 5.11), with additional provisions indicated in 10 CFR 431.96(c) and (e). The energy efficiency metric is sensible coefficient of performance (SCOP) for all CRAC equipment classes. ASHRAE Standard 90.1–2016, which was published on October 26, 2016, updated its test procedure reference for CRACs from ANSI/ASHRAE 127–2007 to AHRI Standard 1360–2016, ''*Performance Rating of Computer and Data Processing Room Air Conditioners*'' (AHRI 1360–2016), which in turn references ANSI/ASHRAE Standard 127–2012, ''*Method of Testing for Rating Computer and Data Processing Room Unitary Air Conditioners*'' (ANSI/ASHRAE 127–2012). Subsequently, ASHRAE Standard 90.1–2019, which was published on October 24, 2019, further updated its test procedure reference for CRACs to AHRI Standard 1360–2017, ''*Performance Rating of Computer and Data Processing Room Air Conditioners*'' (AHRI 1360–2017), which also references ANSI/ASHRAE 127–2012. The energy efficiency metric for CRACs in AHRI 1360–2016 and AHRI 1360–2017 is net sensible coefficient of performance (NSenCOP).

The energy conservation standards for CRACs were most recently amended through the final rule for energy conservation standards and test procedures for certain commercial HVAC and water heating equipment published in the **Federal Register** on May 16, 2012 (May 2012 final rule). 77 FR 28928. The May 2012 final rule established separate equipment classes for CRACs and adopted energy conservation standards that generally correspond to the levels in the 2010 revision of ASHRAE Standard 90.1 for most of the equipment classes.

DOE published a Notice of Data Availability and Request for Information (NODA/RFI) in response to the amendments to the industry consensus standard contained in ASHRAE Standard 90.1–2016 in the **Federal Register** on September 11, 2019 (the September 2019 NODA/RFI). 84 FR 48006. In the September 2019 NODA/RFI, DOE explained its methodology and assumptions to compare the current Federal standards for CRACs (in terms of SCOP) to the levels in ASHRAE Standard 90.1–2016 (in terms of NSenCOP) and requested comment on its methodology and results. (The document also addressed changes related to dedicated outdoor air systems (DOASes).) DOE received a number of comments from interested parties in response to the September 2019 NODA/RFI. Table I–1 lists the commenters relevant to CRACs, along with each commenter's abbreviated name used throughout this NODA/RFI. Discussion of the relevant comments, and DOE's responses, are provided in the appropriate sections of this document. Several other comments received in response to the September 2019 NODA/RFI pertain only to DOASes and will be addressed in a separate notice.[9]

TABLE I–1—INTERESTED PARTIES PROVIDING COMMENT ON CRACS IN RESPONSE TO THE SEPTEMBER 2019 NODA/RFI

Name	Abbreviation	Type
Air-Conditioning, Heating, and Refrigeration Institute	AHRI	IR.
Pacific Gas and Electric Company, Southern California Gas Company, San Diego Gas and Electric, and Southern California Edison.	California Investor-Owned Utilities (CA IOUs).	U.
Trane	Trane	M.
Pano Koutrouvelis	Koutrouvelis	I.

EA: Efficiency/Environmental Advocate; IR: Industry Representative; M: Manufacturer; U: Utility; and I: Individual.

As noted previously, on October 24, 2019, ASHRAE officially released for distribution and made public ASHRAE Standard 90.1–2019. ASHRAE Standard 90.1–2019 revised the efficiency levels for certain commercial equipment, including certain classes of CRACs (as discussed in the following section). ASHRAE Standard 90.1–2019 either maintained or increased the stringency of the efficiency levels applicable to CRAC in ASHRAE Standard 90.1–2016, and as such, addressing the amendments for CRACs in ASHRAE Standard 90.1–2019 will also address DOE's obligations for CRACs resulting from the 2016 update to ASHRAE Standard 90.1 (*i.e.,* ASHRAE Standard 90.1–2016).

2. Air-Cooled, Three-Phase, Small Commercial Package AC and HP (<65 K) Equipment

The energy conservation standards for air-cooled, three-phase, small commercial package air conditioning and heating equipment were most recently amended through the final rule for energy conservation standards and test procedures for certain commercial HVAC and water heating equipment published in the **Federal Register** on July 17, 2015 (July 2015 final rule). 80 FR 42614. The July 2015 final rule adopted energy conservation standards that correspond to the levels in the 2013 revision of ASHRAE Standard 90.1 for air-cooled, three-phase, small commercial package air conditioners (single package) and heat pumps (single package and split system). The July 2015 final rule also determined that standards for air-cooled, three-phase, small commercial package air conditioners (split system) did not need to be amended. DOE's current energy conservation standards for air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment are codified at 10 CFR 431.97.

The current DOE test procedure at 10 CFR 431.96 for air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment incorporates by reference ANSI/AHRI Standard 210/240–2008, ''Performance Rating of Unitary Air-Conditioning & Air-Source Heat Pump Equipment,'' approved by

[9] As noted, the September 2019 NODA/RFI addressed both CRACs and DOASes and is available under docket number EERE–2017–BT–STD–0017. As this NODA/RFI addresses only CRACs, it has been assigned a separate docket number (*i.e.,* EERE–2020–BT–STD–0008). Subsequent rulemaking activity regarding DOASes will continue to rely on the docket number for the September 2019 NODA/RFI.

ANSI on October 27, 2011 and updated by addendum 1 in June 2011 and addendum 2 in March 2012 (ANSI/AHRI 210/240–2008).[10]

As noted previously, on October 24, 2019, ASHRAE officially released for distribution and made public ASHRAE Standard 90.1–2019. ASHRAE Standard 90.1–2019 revised the efficiency levels for certain commercial equipment, including certain classes of air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment (as discussed in the following section).

II. Discussion of Changes in ASHRAE Standard 90.1–2019

Before beginning an analysis of the potential energy savings that would result from adopting a uniform national standard as specified by ASHRAE Standard 90.1–2019 or more-stringent uniform national standards, DOE must first determine whether the ASHRAE Standard 90.1–2019 standard levels actually represent an increase in efficiency above the current Federal standard levels or whether ASHRAE Standard 90.1–2019 adopted new design requirements, thereby triggering DOE action.

This section contains a discussion of: (1) Each equipment class for which the ASHRAE Standard 90.1–2019 efficiency levels differ from the current Federal minimum efficiency levels [11] (2) newly added equipment classes in ASHRAE Standard 90.1, and (3) DOE's preliminary conclusion regarding the appropriate action to take with respect to these equipment classes. DOE is also examining the other equipment classes for the triggered equipment categories under its 6-year-lookback authority. (42 U.S.C. 6313(a)(6)(C))

As noted in section I.C of this document, ASHRAE adopted efficiency levels for all CRAC equipment classes denominated in terms of NSenCOP in the 2016 and 2019 versions of Standard 90.1 (measured per AHRI 1360–2016 and AHRI 1360–2017, respectively), whereas DOE's current standards are denominated in terms of SCOP (measured per ANSI/ASHRAE 127–2007). For this NODA, DOE's analysis focuses on whether DOE has been triggered by ASHRAE Standard 90.1–2019 updates to minimum efficiency levels for CRACs and whether more-stringent standards are warranted; DOE will separately consider whether to adopt the NSenCOP metric for all CRAC equipment classes as part of the ongoing test procedure rulemaking. As discussed in detail in section II.A of this NODA, DOE has conducted a crosswalk analysis of the ASHRAE Standard 90.1–2019 standard levels (in terms of NSenCOP) and the corresponding current Federal energy conservation standards (in terms of SCOP) to compare the stringencies. DOE has tentatively determined that the updates in ASHRAE Standard 90.1–2019 increased the stringency of efficiency levels for 48 equipment classes and maintained equivalent levels for six equipment classes of CRACs relative to the current Federal standard.[12] In addition, ASHRAE Standard 90.1–2019 includes efficiency levels for 18 classes of horizontal-flow [13] CRACs and 48 classes of ceiling-mounted CRACs which are not currently subject to Federal standards.

Current Federal standards for air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment are in terms of seasonal energy efficiency ratio (SEER) and heating seasonal performance factor (HSPF) as measured by the current DOE test procedure which incorporates by reference the ANSI/AHRI 210/240–2008. 10 CFR 431.96, Table 1. ASHRAE Standard 90.1–2019 adopts new energy efficiency levels and new metrics for all equipment classes of air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment. Beginning January 1, 2023, the metrics for this equipment under ASHRAE Standard 90.1–2019 are SEER2 and HSPF2, as measured by AHRI 210/240–2023, ''Performance Rating of Unitary Air-Conditioning & Air-Source Heat Pump Equipment'' (published in May 2020).[14] [15] AHRI 210/240–2023 aligns test methods and ratings to be consistent with DOE's test procedure for single-phase central at conditioners at Appendix M1 to 10 CFR part 430, subpart B. The year 2023 was chosen as the version year to align compliance to AHRI 210/240–2023 with Appendix M1.

On October 2, 2018, DOE published in the **Federal Register** a request for information on its test procedure (and certification and enforcement requirements) for air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment. 83 FR 49501 (October 2018 TP RFI). The October 2018 TP RFI notes that air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment is essentially identical to its single-phase residential counterparts, is manufactured on the same production lines, and is physically identical to their corresponding single-phase central air conditioner and heat pump models (with the exception of the electrical systems and compressors). 83 FR 49501, 49504 (Oct. 2, 2018).

In order to determine whether the 2023 efficiency levels in ASHRAE Standard 90.1–2019 represent an increase in efficiency, DOE has developed a preliminary crosswalk for translating SEER to SEER2 and HSPF to HSPF2 based on the metric translations between SEER to SEER2 and HSPF to HSPF2 developed for single-phase products (see section II.B.1 of this document for details). DOE has tentatively determined that the levels in ASHRAE Standard 90.1–2019 for this equipment category are more stringent for two equipment classes, equivalent for two equipment classes, and less stringent for six equipment classes relative to the current Federal standard.

Table II–1 and Table II–2 show the equipment classes and efficiency levels for CRACs and air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment provided in ASHRAE Standard 90.1–2019 and the current Federal energy conservation standards. Table II–1 and Table II–2 also display the corresponding existing Federal equipment classes for clarity and indicate whether the updated levels in ASHRAE Standard 90.1–2019 trigger DOE's evaluation as required under EPCA (*i.e.,* whether the update results in a standard level more stringent than the current Federal level), and, therefore, whether analysis of potential energy savings from amended Federal standards is warranted. The remainder of this section explains DOE's methodology for evaluating the updated levels in ASHRAE Standard 90.1–2019 and addresses comments received regarding CRAC efficiency levels and associated analyses discussed in the September 2019 NODA/RFI.

[10] DOE notes that the Federal test procedure omits the use of section 6.5 of ANSI/AHRI Standard 210/240–2008. 10 CFR 431.96, Table 1.

[11] ASHRAE Standard 90.1–2019 did not change any of the design requirements associated with the minimum efficiency tables for the commercial heating, air conditioning, and water heating equipment covered by EPCA, so this potential category of change is not discussed in this section.

[12] ASHRAE 90.1–2019 added separate classes for ''air cooled with fluid economizer'' CRACs. This change resulted in nine new ''air cooled with fluid economizer'' equipment classes being added and made subject to Federal standards.

[13] ''Horizontal flow'' refers to the direction of airflow of the unit.

[14] Levels effective prior to January 1, 2023 are unchanged from ASHRAE Standard 90.1–2016.

[15] Prior to ASHRAE Standard 90.1–2019, ''space-constrained'' classes were referred to as ''through-the-wall.''

TABLE II–1—ENERGY EFFICIENCY LEVELS FOR CRACS IN ASHRAE STANDARD 90.1–2019, AND THE CORRESPONDING FEDERAL ENERGY CONSERVATION STANDARDS

ASHRAE standard 90.1–2019 equipment class [1]	Current federal equipment class [1]	Energy efficiency levels in ASHRAE standard 90.1–2019 [2]	Federal energy conservation standards [2]	DOE triggered by ASHRAE standard 90.1–2019 amendment?
CRAC, Air-Cooled, <80,000 Btu/h, Downflow	CRAC, Air-Cooled, <65,000 Btu/h, Downflow	2.70 NSenCOP	2.20 SCOP	Yes.
CRAC, Air-Cooled, <65,000 Btu/h, Horizontal-flow.	N/A	2.65 NSenCOP	N/A	Yes.[3]
CRAC, Air-Cooled, <80,000 Btu/h, Upflow Ducted.	CRAC, Air-Cooled, <65,000 Btu/h, Upflow	2.67 NSenCOP	2.09 SCOP	Yes.
CRAC, Air-Cooled, <65,000 Btu/h, Upflow Non-Ducted.	CRAC, Air-Cooled, <65,000 Btu/h, Upflow	2.16 NSenCOP	2.09 SCOP	Yes.
CRAC, Air-Cooled, ≥80,000 and <295,000 Btu/h, Downflow.	CRAC, Air-Cooled, ≥65,000 and <240,000 Btu/h, Downflow.	2.58 NSenCOP	2.10 SCOP	Yes.
CRAC, Air-Cooled, ≥65,000 and <240,000 Btu/h, Horizontal-flow.	N/A	2.55 NSenCOP	N/A	Yes.[3]
CRAC, Air-Cooled, ≥80,000 and <295,000 Btu/h, Upflow Ducted.	CRAC, Air-Cooled, ≥65,000 and <240,000 Btu/h, Upflow.	2.55 NSenCOP	1.99 SCOP	No.[4]
CRAC, Air-Cooled, ≥65,000 and <240,000 Btu/h, Upflow Non-Ducted.	CRAC, Air-Cooled, ≥65,000 and <240,000 Btu/h, Upflow.	2.04 NSenCOP	1.99 SCOP	Yes.
CRAC, Air-Cooled, ≥295,000 Btu/h, Downflow	CRAC, Air-Cooled, ≥240,000 Btu/h and <760,000 Btu/h, Downflow.	2.36 NSenCOP	1.90 SCOP	Yes.
CRAC, Air-Cooled, ≥240,000 Btu/h, Horizontal-flow.	N/A	2.47 NSenCOP	N/A	Yes.[3]
CRAC, Air-Cooled, ≥295,000 Btu/h, Upflow Ducted.	CRAC, Air-Cooled, ≥240,000 Btu/h and <760,000 Btu/h, Upflow.	2.33 NSenCOP	1.79 SCOP	Yes.
CRAC, Air-Cooled, ≥240,000 Btu/h, Upflow Non-ducted.	CRAC, Air-Cooled, ≥240,000 Btu/h and <760,000 Btu/h, Upflow.	1.89 NSenCOP	1.79 SCOP	Yes.
CRAC, Air-Cooled with fluid economizer, <80,000 Btu/h, Downflow.	CRAC, Air-Cooled, <65,000 Btu/h, Downflow	2.70 NSenCOP	2.20 SCOP	Yes.[5]
CRAC, Air-Cooled with fluid economizer, <65,000 Btu/h, Horizontal-flow.	N/A	2.65 NSenCOP	N/A	Yes.[3]
CRAC, Air-Cooled with fluid economizer, <80,000 Btu/h, Upflow Ducted.	CRAC, Air-Cooled, <65,000 Btu/h, Upflow	2.67 NSenCOP	2.09 SCOP	Yes.[5]
CRAC, Air-Cooled with fluid economizer, <65,000 Btu/h, Upflow Non-Ducted.	CRAC, Air-Cooled, <65,000 Btu/h, Upflow	2.09 NSenCOP	2.09 SCOP	No.[4]
CRAC, Air-Cooled with fluid economizer, ≥80,000 and <295,000 Btu/h, Downflow.	CRAC, Air-Cooled, ≥65,000 and <240,000 Btu/h, Downflow.	2.58 NSenCOP	2.10 SCOP	Yes.[5]
CRAC, Air-Cooled with fluid economizer, ≥65,000 and <240,000 Btu/h, Horizontal-flow.	N/A	2.55 NSenCOP	N/A	Yes.[3]
CRAC, Air-Cooled with fluid economizer, ≥80,000 and <295,000 Btu/h, Upflow Ducted.	CRAC, Air-Cooled, ≥65,000 and <240,000 Btu/h, Upflow.	2.55 NSenCOP	1.99 SCOP	No.[4]
CRAC, Air-Cooled with fluid economizer, ≥65,000 and <240,000 Btu/h, Upflow Non-Ducted.	CRAC, Air-Cooled, ≥65,000 and <240,000 Btu/h, Upflow.	1.99 NSenCOP	1.99 SCOP	No.[4]
CRAC, Air-Cooled with fluid economizer, ≥295,000 Btu/h, Downflow.	CRAC, Air-Cooled, ≥240,000 Btu/h and <760,000 Btu/h, Downflow.	2.36 NSenCOP	1.90 SCOP	Yes.[5]
CRAC, Air-Cooled with fluid economizer, ≥240,000 Btu/h, Horizontal-flow.	N/A	2.47 NSenCOP	N/A	Yes.[3]
CRAC, Air-Cooled with fluid economizer, ≥295,000 Btu/h, Upflow Ducted.	CRAC, Air-Cooled, ≥240,000 Btu/h and <760,000 Btu/h, Upflow.	2.33 NSenCOP	1.79 SCOP	Yes.[5]
CRAC, Air-Cooled with fluid economizer, ≥240,000 Btu/h, Upflow Non-ducted.	CRAC, Air-Cooled, ≥240,000 Btu/h and <760,000 Btu/h, Upflow.	1.81 NSenCOP	1.79 SCOP	Yes.[5]
CRAC, Water-Cooled, <80,000 Btu/h, Downflow.	CRAC, Water-Cooled, <65,000 Btu/h, Downflow.	2.82 NSenCOP	2.60 SCOP	Yes.
CRAC, Water-Cooled, <65,000 Btu/h, Horizontal-flow.	N/A	2.79 NSenCOP	N/A	Yes.[3]
CRAC, Water-Cooled, <80,000 Btu/h, Upflow Ducted.	CRAC, Water-Cooled, <65,000 Btu/h, Upflow	2.79 NSenCOP	2.49 SCOP	Yes.
CRAC, Water-Cooled, <65,000 Btu/h, Upflow Non-ducted.	CRAC, Water-Cooled, <65,000 Btu/h, Upflow	2.43 NSenCOP	2.49 SCOP	Yes.
CRAC, Water-Cooled, ≥80,000 and <295,000 Btu/h, Downflow.	CRAC, Water-Cooled, ≥65,000 and <240,000 Btu/h, Downflow.	2.73 NSenCOP	2.50 SCOP	Yes.
CRAC, Water-Cooled, ≥65,000 and <240,000 Btu/h, Horizontal-flow.	N/A	2.68 NSenCOP	N/A	Yes.[3]
CRAC, Water-Cooled, ≥80,000 and <295,000 Btu/h, Upflow Ducted.	CRAC, Water-Cooled, ≥65,000 and <240,000 Btu/h, Upflow.	2.70 NSenCOP	2.39 SCOP	No.[4]
CRAC, Water-Cooled, ≥65,000 and <240,000 Btu/h, Upflow Non-ducted.	CRAC, Water-Cooled, ≥65,000 and <240,000 Btu/h, Upflow.	2.32 NSenCOP	2.39 SCOP	Yes.
CRAC, Water-Cooled, ≥295,000 Btu/h, Downflow.	CRAC, Water-Cooled, ≥240,000 Btu/h and <760,000 Btu/h, Downflow.	2.67 NSenCOP	2.40 SCOP	Yes.
CRAC, Water-Cooled, ≥240,000 Btu/h, Horizontal-flow.	N/A	2.60 NSenCOP	N/A	Yes.[3]
CRAC, Water-Cooled, ≥295,000 Btu/h, Upflow Ducted.	CRAC, Water-Cooled, ≥240,000 Btu/h and <760,000 Btu/h, Upflow.	2.64 NSenCOP	2.29 SCOP	Yes.
CRAC, Water-Cooled, ≥240,000 Btu/h, Upflow Non-ducted.	CRAC, Water-Cooled, ≥240,000 Btu/h and <760,000 Btu/h, Upflow.	2.20 NSenCOP	2.29 SCOP	Yes.
CRAC, Water-Cooled with fluid economizer, <80,000 Btu/h, Downflow.	CRAC, Water-Cooled with fluid economizer, <65,000 Btu/h, Downflow.	2.77 NSenCOP	2.55 SCOP	Yes.

TABLE II–1—ENERGY EFFICIENCY LEVELS FOR CRACS IN ASHRAE STANDARD 90.1–2019, AND THE CORRESPONDING FEDERAL ENERGY CONSERVATION STANDARDS—Continued

ASHRAE standard 90.1–2019 equipment class [1]	Current federal equipment class [1]	Energy efficiency levels in ASHRAE standard 90.1–2019 [2]	Federal energy conservation standards [2]	DOE triggered by ASHRAE standard 90.1–2019 amendment?
CRAC, Water-Cooled with fluid economizer, <65,000 Btu/h, Horizontal-flow.	N/A	2.71 NSenCOP	N/A	Yes.[3]
CRAC, Water-Cooled with fluid economizer, <80,000 Btu/h, Upflow Ducted.	CRAC, Water-Cooled with fluid economizer, <65,000 Btu/h, Upflow.	2.74 NSenCOP	2.44 SCOP	Yes.
CRAC, Water-Cooled with fluid economizer, <65,000 Btu/h, Upflow Non-ducted.	CRAC, Water-Cooled with fluid economizer, <65,000 Btu/h, Upflow.	2.35 NSenCOP	2.44 SCOP	Yes.
CRAC, Water-Cooled with fluid economizer, ≥80,000 and <295,000 Btu/h, Downflow.	CRAC, Water-Cooled with fluid economizer, ≥65,000 and <240,000 Btu/h, Downflow.	2.68 NSenCOP	2.45 SCOP	Yes.
CRAC, Water-Cooled with fluid economizer, ≥65,000 and <240,000 Btu/h, Horizontal-flow.	N/A	2.60 NSenCOP	N/A	Yes.[3]
CRAC, Water-Cooled with fluid economizer, ≥80,000 and <295,000 Btu/h, Upflow Ducted.	CRAC, Water-Cooled with fluid economizer, ≥65,000 and <240,000 Btu/h, Upflow.	2.65 NSenCOP	2.34 SCOP	No.[4]
CRAC, Water-Cooled with fluid economizer, ≥65,000 and <240,000 Btu/h, Upflow Non-ducted.	CRAC, Water-Cooled with fluid economizer, ≥65,000 and <240,000 Btu/h, Upflow.	2.24 NSenCOP	2.34 SCOP	Yes.
CRAC, Water-Cooled with fluid economizer, ≥295,000 Btu/h, Downflow.	CRAC, Water-Cooled with fluid economizer, ≥240,000 Btu/h and <760,000 Btu/h, Downflow.	2.61 NSenCOP	2.35 SCOP	Yes.
CRAC, Water-Cooled with fluid economizer, ≥240,000 Btu/h, Horizontal-flow.	N/A	2.54 NSenCOP	N/A	Yes.[3]
CRAC, Water-Cooled with fluid economizer, ≥295,000 Btu/h, Upflow Ducted.	CRAC, Water-Cooled with fluid economizer, ≥240,000 Btu/h and <760,000 Btu/h, Upflow.	2.58 NSenCOP	2.24 SCOP	Yes.
CRAC, Water-Cooled with fluid economizer, ≥240,000 Btu/h, Upflow Non-ducted.	CRAC, Water-Cooled with fluid economizer, ≥240,000 Btu/h and <760,000 Btu/h, Upflow.	2.12 NSenCOP	2.24 SCOP	Yes.
CRAC, Glycol-Cooled, <80,000 Btu/h, Downflow.	CRAC, Glycol-Cooled, <65,000 Btu/h, Downflow.	2.56 NSenCOP	2.50 SCOP	Yes.
CRAC, Glycol-Cooled, <65,000 Btu/h, Horizontal-flow.	N/A	2.48 NSenCOP	N/A	Yes.[3]
CRAC, Glycol-Cooled, <80,000 Btu/h, Upflow Ducted.	CRAC, Glycol-Cooled, <65,000 Btu/h, Upflow Ducted.	2.53 NSenCOP	2.39 SCOP	Yes.
CRAC, Glycol-Cooled, <65,000 Btu/h, Upflow Non-ducted.	CRAC, Glycol-Cooled, <65,000 Btu/h, Upflow Non-ducted.	2.08 NSenCOP	2.39 SCOP	Yes.
CRAC, Glycol-Cooled, ≥80,000 and <295,000 Btu/h, Downflow.	CRAC, Glycol-Cooled, ≥65,000 and <240,000 Btu/h, Downflow.	2.24 NSenCOP	2.15 SCOP	Yes.
CRAC, Glycol-Cooled, ≥65,000 and <240,000 Btu/h, Horizontal-flow.	N/A	2.18 NSenCOP	N/A	Yes.[3]
CRAC, Glycol-Cooled, ≥80,000 and <295,000 Btu/h, Upflow Ducted.	CRAC, Glycol-Cooled, ≥65,000 and <240,000 Btu/h, Upflow.	2.21 NSenCOP	2.04 SCOP	Yes.
CRAC, Glycol-Cooled, ≥65,000 and <240,000 Btu/h, Upflow Non-ducted.	CRAC, Glycol-Cooled, ≥65,000 and <240,000 Btu/h, Upflow.	1.90 NSenCOP	2.04 SCOP	Yes.
CRAC, Glycol-Cooled, ≥295,000 Btu/h, Downflow.	CRAC, Glycol-Cooled, ≥240,000 Btu/h and <760,000 Btu/h, Downflow.	2.21 NSenCOP	2.10 SCOP	Yes.
CRAC, Glycol-Cooled, ≥240,000 Btu/h, Horizontal-flow.	N/A	2.18 NSenCOP	N/A	Yes.[3]
CRAC, Glycol-Cooled, ≥295,000 Btu/h, Upflow Ducted.	CRAC, Glycol-Cooled, ≥240,000 Btu/h and <760,000 Btu/h, Upflow Ducted.	2.18 NSenCOP	1.99 SCOP	Yes.
CRAC, Glycol-Cooled, ≥240,000 Btu/h, Upflow Non-ducted.	CRAC, Glycol-Cooled, ≥240,000 Btu/h and <760,000 Btu/h, Upflow Non-ducted.	1.81 NSenCOP	1.99 SCOP	Yes.
CRAC, Glycol-Cooled with fluid economizer, <80,000 Btu/h, Downflow.	CRAC, Glycol-Cooled with fluid economizer, <65,000 Btu/h, Downflow.	2.51 NSenCOP	2.45 SCOP	Yes.
CRAC, Glycol-Cooled with fluid economizer, <65,000 Btu/h, Horizontal-flow.	N/A	2.44 NSenCOP	N/A	Yes.[3]
CRAC, Glycol-Cooled with fluid economizer, <80,000 Btu/h, Upflow Ducted.	CRAC, Glycol-Cooled with fluid economizer, <65,000 Btu/h, Upflow Ducted.	2.48 NSenCOP	2.34 SCOP	Yes.
CRAC, Glycol-Cooled with fluid economizer, <65,000 Btu/h, Upflow Non-ducted.	CRAC, Glycol-Cooled with fluid economizer, <65,000 Btu/h, Upflow Non-ducted.	2.00 NSenCOP	2.34 SCOP	Yes.
CRAC, Glycol-Cooled with fluid economizer, ≥80,000 and <295,000 Btu/h, Downflow.	CRAC, Glycol-Cooled with fluid economizer, ≥65,000 and <240,000 Btu/h, Downflow.	2.19 NSenCOP	2.10 SCOP	Yes.
CRAC, Glycol-Cooled with fluid economizer, ≥65,000 and <240,000 Btu/h, Horizontal-flow.	N/A	2.10 NSenCOP	N/A	Yes.[3]
CRAC, Glycol-Cooled with fluid economizer, ≥80,000 and <295,000 Btu/h, Upflow Ducted.	CRAC, Glycol-Cooled with fluid economizer, ≥65,000 and <240,000 Btu/h, Upflow.	2.16 NSenCOP	1.99 SCOP	Yes.
CRAC, Glycol-Cooled with fluid economizer, ≥65,000 and <240,000 Btu/h, Upflow Non-ducted.	CRAC, Glycol-Cooled with fluid economizer, ≥65,000 and <240,000 Btu/h, Upflow.	1.82 NSenCOP	1.99 SCOP	Yes.
CRAC, Glycol-Cooled with fluid economizer, ≥295,000 Btu/h, Downflow.	CRAC, Glycol-Cooled with fluid economizer, ≥240,000 Btu/h and <760,000 Btu/h, Downflow.	2.15 NSenCOP	2.05 SCOP	Yes.
CRAC, Glycol-Cooled with fluid economizer, ≥240,000 Btu/h, Horizontal-flow.	N/A	2.10 NSenCOP	N/A	Yes.[3]

TABLE II–1—ENERGY EFFICIENCY LEVELS FOR CRACS IN ASHRAE STANDARD 90.1–2019, AND THE CORRESPONDING FEDERAL ENERGY CONSERVATION STANDARDS—Continued

ASHRAE standard 90.1–2019 equipment class [1]	Current federal equipment class [1]	Energy efficiency levels in ASHRAE standard 90.1–2019 [2]	Federal energy conservation standards [2]	DOE triggered by ASHRAE standard 90.1–2019 amendment?
CRAC, Glycol-Cooled with fluid economizer, ≥295,000 Btu/h, Upflow Ducted.	CRAC, Glycol-Cooled with fluid economizer, ≥240,000 Btu/h and <760,000 Btu/h, Upflow Ducted.	2.12 NSenCOP	1.94 SCOP	Yes.
CRAC, Glycol-Cooled with fluid economizer, ≥240,000 Btu/h, Upflow Non-ducted.	CRAC, Glycol-Cooled with fluid economizer, ≥240,000 Btu/h and <760,000 Btu/h, Upflow Non-ducted.	1.73 NSenCOP	1.94 SCOP	Yes.
Ceiling-mounted CRAC, Air-cooled with free air discharge condenser, Ducted, <29,000 Btu/h.	N/A	2.05 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Air-cooled with free air discharge condenser, Ducted, ≥29,000 Btu/h and <65,000 Btu/h.	N/A	2.02 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Air-cooled with free air discharge condenser, Ducted, ≥65,000 Btu/h.	N/A	1.92 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Air-cooled with free air discharge condenser, Non-ducted, <29,000 Btu/h.	N/A	2.08 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Air-cooled with free air discharge condenser, Non-ducted, ≥29,000 Btu/h and <65,000 Btu/h.	N/A	2.05 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Air-cooled with free air discharge condenser, Non-ducted, ≥65,000 Btu/h.	N/A	1.94 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Air-cooled with free air discharge condenser with fluid economizer, Ducted, <29,000 Btu/h.	N/A	2.01 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Air-cooled with free air discharge condenser with fluid economizer, Ducted, ≥29,000 Btu/h and <65,000 Btu/h.	N/A	1.97 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Air-cooled with free air discharge condenser with fluid economizer, Ducted, ≥65,000 Btu/h.	N/A	1.87 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Air-cooled with free air discharge condenser with fluid economizer, Non-ducted, <29,000 Btu/h.	N/A	2.04 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Air-cooled with free air discharge condenser with fluid economizer, Non-ducted, ≥29,000 Btu/h and <65,000 Btu/h.	N/A	2.00 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Air-cooled with free air discharge condenser with fluid economizer, Non-ducted, ≥65,000 Btu/h.	N/A	1.89 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Air-cooled with ducted condenser, Ducted, <29,000 Btu/h.	N/A	1.86 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Air-cooled with ducted condenser, Ducted, ≥29,000 Btu/h and <65,000 Btu/h.	N/A	1.83 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Air-cooled with ducted condenser, Ducted, ≥65,000 Btu/h.	N/A	1.73 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Air-cooled with ducted condenser, Non-ducted, <29,000 Btu/h.	N/A	1.89 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Air-cooled with ducted condenser, Non-ducted, ≥29,000 Btu/h and <65,000 Btu/h.	N/A	1.86 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Air-cooled with ducted condenser, Non-ducted, ≥65,000 Btu/h.	N/A	1.75 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Air-cooled with ducted condenser with fluid economizer, Ducted, <29,000 Btu/h.	N/A	1.82 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Air-cooled with ducted condenser with fluid economizer, Ducted, ≥29,000 Btu/h and <65,000 Btu/h.	N/A	1.78 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Air-cooled with ducted condenser with fluid economizer, Ducted, ≥65,000 Btu/h.	N/A	1.68 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Air-cooled with ducted condenser with fluid economizer, Non-ducted, <29,000 Btu/h.	N/A	1.85 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Air-cooled with ducted condenser with fluid economizer, Non-ducted, ≥29,000 Btu/h and <65,000 Btu/h.	N/A	1.81 NSenCOP	N/A	Yes.[6]

TABLE II–1—ENERGY EFFICIENCY LEVELS FOR CRACS IN ASHRAE STANDARD 90.1–2019, AND THE CORRESPONDING FEDERAL ENERGY CONSERVATION STANDARDS—Continued

ASHRAE standard 90.1–2019 equipment class [1]	Current federal equipment class [1]	Energy efficiency levels in ASHRAE standard 90.1–2019 [2]	Federal energy conservation standards [2]	DOE triggered by ASHRAE standard 90.1–2019 amendment?
Ceiling-mounted CRAC, Air-cooled with ducted condenser with fluid economizer, Non-ducted, ≥65,000 Btu/h.	N/A	1.70 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Water-cooled, Ducted, <29,000 Btu/h.	N/A	2.38 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Water-cooled, Ducted, ≥29,000 Btu/h and <65,000 Btu/h.	N/A	2.28 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Water-cooled, Ducted, ≥65,000 Btu/h.	N/A	2.18 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Water-cooled, Non-ducted, <29,000 Btu/h.	N/A	2.41 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Water-cooled, Non-ducted, ≥29,000 Btu/h and <65,000 Btu/h.	N/A	2.31 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Water-cooled, Non-ducted, ≥65,000 Btu/h.	N/A	2.20 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Water-cooled with fluid economizer, Ducted, <29,000 Btu/h.	N/A	2.33 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Water-cooled with fluid economizer, Ducted, ≥29,000 Btu/h and <65,000 Btu/h.	N/A	2.23 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Water-cooled with fluid economizer, Ducted, ≥65,000 Btu/h.	N/A	2.13 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Water-cooled with fluid economizer, Non-ducted, <29,000 Btu/h.	N/A	2.36 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Water-cooled with fluid economizer, Non-ducted, ≥29,000 Btu/h and <65,000 Btu/h.	N/A	2.26 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Water-cooled with fluid economizer, Non-ducted, ≥65,000 Btu/h.	N/A	2.16 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Glycol-cooled, Ducted, <29,000 Btu/h.	N/A	1.97 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Glycol-cooled, Ducted, ≥29,000 Btu/h and <65,000 Btu/h.	N/A	1.93 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Glycol-cooled, Ducted, ≥65,000 Btu/h.	N/A	1.78 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Glycol-cooled, Non-ducted, <29,000 Btu/h.	N/A	2.00 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Glycol-cooled, Non-ducted, ≥29,000 Btu/h and <65,000 Btu/h.	N/A	1.98 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Glycol-cooled, Non-ducted, ≥65,000 Btu/h.	N/A	1.81 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Glycol-cooled with fluid economizer, Ducted, <29,000 Btu/h.	N/A	1.92 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Glycol-cooled with fluid economizer, Ducted, ≥29,000 Btu/h and <65,000 Btu/h.	N/A	1.88 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Glycol-cooled with fluid economizer, Ducted, ≥65,000 Btu/h.	N/A	1.73 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Glycol-cooled with fluid economizer, Non-ducted, <29,000 Btu/h.	N/A	1.95 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Glycol-cooled with fluid economizer, Non-ducted, ≥29,000 Btu/h and <65,000 Btu/h.	N/A	1.93 NSenCOP	N/A	Yes.[6]
Ceiling-mounted CRAC, Glycol-cooled with fluid economizer, Non-ducted, ≥65,000 Btu/h.	N/A	1.76 NSenCOP	N/A	Yes.[6]

[1] Note that equipment classes specified in ASHRAE Standard 90.1–2019 do not necessarily correspond to the equipment classes defined in DOE's regulations. Capacity ranges in ASHRAE Standard 90.1–2019 are specified in terms of NSCC, as measured according to AHRI 1360–2017. Capacity ranges in Federal equipment classes are specified in terms of NSCC, as measured according to ANSI/ASHRAE 127–2007. As discussed in section II.A.1 of this document, for certain equipment classes, AHRI 1360–2017 results in increased NSCC measurements as compared to the NSCC measured in accordance with ANSI/ASHRAE 127–2007. Therefore, some CRACs would switch classes (*i.e.,* move into a higher capacity equipment class) if the equipment class boundaries are not changed accordingly. Consequently, DOE performed a ''capacity crosswalk'' analysis to translate the capacity boundaries for certain equipment classes.

[2] For CRACs, ASHRAE Standard 90.1–2019 adopted efficiency levels in terms of NSenCOP based on test procedures in AHRI 1360–2017, while DOE's current standards are in terms of SCOP based on the test procedures in ANSI/ASHRAE 127–2007. DOE performed a crosswalk analysis to compare the stringency of the ASHRAE Standard 90.1–2019 efficiency levels with the current Federal standards. See section II.A of this NODA for further discussion on the crosswalk analysis performed for CRACs.

[3] Horizontal-flow CRACs are new equipment classes included in ASHRAE Standard 90.1–2016 and ASHRAE Standard 90.1–2019 (and not subject to current Federal standards), but DOE does not have any data to indicate the market share of horizontal-flow units. In the absence of data regarding market share and efficiency distribution, DOE is unable to estimate potential savings for horizontal-flow equipment classes.

[4] The preliminary CRAC crosswalk analysis indicates that there is no difference in stringency of efficiency levels for this class between ASHRAE Standard 90.1–2019 and the current Federal standard.

[5] Air-cooled CRACs with fluid economizers are new equipment classes included in ASHRAE Standard 90.1–2019 and are currently subject to the Federal standard for air-cooled CRACs. DOE does not have data regarding market share for air-cooled CRACs with fluid economizers. Although DOE is unable to disaggregate the estimated potential savings for these equipment classes, energy savings for these equipment classes are included in the savings presented for air-cooled CRACs.

[6] Ceiling-mounted CRACs are new equipment classes in ASHRAE Standard 90.1–2019 (and not subject to current Federal standards), and DOE does not have any data to indicate the market share of ceiling-mounted units. In the absence of data regarding market share and efficiency distribution, DOE is unable to estimate potential savings for ceiling-mounted equipment classes.

TABLE II–2—ENERGY EFFICIENCY LEVELS FOR AIR-COOLED, THREE-PHASE, SMALL COMMERCIAL PACKAGE AC AND HP (<65 K) IN ASHRAE STANDARD 90.1–2019, AND THE CORRESPONDING FEDERAL ENERGY CONSERVATION STANDARDS

ASHRAE standard 90.1–2019 equipment class	Current federal equipment class	Energy efficiency levels in ASHRAE standard 90.1–2019	Federal energy conservation standards [1]	DOE triggered by ASHRAE standard 90.1–2019 amendment?
Air-cooled Air Conditioner, Three-Phase, Single-Package, <65,000 Btu/h.	Air-cooled Air Conditioner, Three-Phase, Single-Package, <65,000 Btu/h.	14.0 SEER before 1/1/2023, 13.4 SEER2 after 1/1/2023.	14.0 SEER	No.
Air-cooled Air Conditioner, Three-Phase, Split-System, <65,000 Btu/h.	Air-cooled Air Conditioner, Three-Phase, Split-System, <65,000 Btu/h.	13.0 SEER before 1/1/2023, 13.4 SEER2 after 1/1/2023.	13.0 SEER	Yes.
Air-cooled Heat Pump, Three-phase, Single-Package, <65,000 Btu/h.	Air-cooled Heat Pump, three-phase, Single-Package, <65,000 Btu/h.	14.0 SEER/8.0 HSPF before 1/1/2023, 13.4 SEER2/6.7 HSPF2 after 1/1/2023.	14.0 SEER, 8.0 HSPF.	No.
Air-cooled Heat Pump, Three-phase, Split-System, <65,000 Btu/h.	Air-cooled Heat Pump, three-phase, Split-System, <65,000 Btu/h.	14.0 SEER/8.2 HSPF before 1/1/2023, 14.3 SEER2/7.5 HSPF2 after 1/1/2023.	14.0 SEER, 8.2 HSPF.	Yes.
Space-Constrained, Air-cooled Air Conditioner, Three-Phase, Single-Package, ≤30,000 Btu/h.	Air-cooled Air Conditioner, Three-Phase, Single-Package, <65,000 Btu/h.	12.0 SEER before 1/1/2023, 11.7 SEER2 after 1/1/2023.	14.0 SEER [2]	No.
Space-Constrained, Air-cooled Air Conditioner, Three-Phase, Split-System, ≤30,000 Btu/h.	Air-cooled Air Conditioner, Three-Phase, Split-System, <65,000 Btu/h.	12.0 SEER before 1/1/2023, 11.7 SEER2 after 1/1/2023.	13.0 SEER [2]	No.
Space-Constrained, Air-cooled Heat Pump, Three-Phase, Single-Package, ≤30,000 Btu/h.	Air-cooled Heat Pump, three-phase, Single-Package, <65,000 Btu/h.	12.0 SEER/7.4 HSPF before 1/1/2023, 11.7 SEER2/6.3 HSPF2 after 1/1/2023.	14.0 SEER,[2] 8.0 HSPF [2].	No.
Space-Constrained, Air-cooled Heat Pump, Three-Phase, Split-System, ≤30,000 Btu/h.	Air-cooled Heat Pump, three-phase, Split-System, <65,000 Btu/h.	12.0 SEER/7.4 HSPF before 1/1/2023, 11.7 SEER2/6.3 HSPF2 after 1/1/2023.	14.0 SEER,[2] 8.2 HSPF [2].	No.
Small-Duct, High-Velocity, Air-cooled Air Conditioner, Three-Phase, Split-System, <65,000 Btu/h.	Air-cooled Air Conditioner, Three-Phase, Split-System, <65,000 Btu/h.	12.0 SEER before 1/1/2023, 12.0 SEER2 after 1/1/2023.	13.0 SEER [2]	No.
Small-Duct, High-Velocity, Air-cooled Heat Pump, Three-Phase, Split-System, <65,000 Btu/h.	Air-cooled Heat Pump, three-phase, Split-System, <65,000 Btu/h.	12.0 SEER/7.2 HSPF before 1/1/2023, 12.0 SEER2/6.1 HSPF2 after 1/1/2023.	14.0 SEER,[2] 8.2 HSPF [2].	No.

[1] ASHRAE Standard 90.1–2019 adopts levels in terms of SEER2 and HSPF2 effective on 1/1/2023, as measured by AHRI 210/240–2023, while Federal standards are in terms of SEER and HSPF. DOE performed a preliminary crosswalk analysis to determine whether the ASHRAE Standard 90.1–2019 levels due to take effect on 1/1/2023 represent an increase in stringency relative to the current Federal standards.

[2] Although ASHRAE Standard 90.1–2019 specifies separate standard levels for three-phase space-constrained and small-duct, high-velocity equipment, the Federal standards for these equipment classes are the same as other types of small commercial package air-conditioning and heating equipment.

A. Computer Room Air Conditioners

DOE currently prescribes energy conservation standards for 30 equipment classes of CRACs at 10 CFR 431.97. The current CRAC equipment classes are differentiated by condensing system type (air-cooled, water-cooled, water-cooled with fluid economizer, glycol-cooled, or glycol-cooled with fluid economizer), NSCC (less than 65,000 Btu/h, greater than or equal to 65,000 Btu/h and less than 240,000 Btu/h, or greater than or equal to 240,000 Btu/h and less than 760,000 Btu/h), and direction of conditioned air over the cooling coil (upflow or downflow). Federal standards established in 10 CFR 431.97 are specified in terms of SCOP, based on rating conditions in ANSI/ASHRAE 127–2007. 10 CFR 431.96(b)(2).

As discussed in the September 2019 NODA/RFI, ASHRAE Standard 90.1–2016 established new equipment classes for CRACs. 84 FR 48006, 48013 (Sept. 11, 2019). ASHRAE Standard 90.1–2016 added efficiency levels for horizontal-flow CRAC equipment classes, disaggregated the upflow CRAC equipment classes into upflow ducted and upflow non-ducted equipment classes, and established different sets of efficiency levels for upflow ducted and upflow non-ducted equipment classes based on the corresponding rating conditions specified in AHRI 1360–2016. In contrast, DOE currently specifies the same set of standards at 10 CFR 431.97 for all covered upflow CRACs, regardless of ducting configuration.

ASHRAE Standard 90.1–2019 maintains the equipment class structure for floor-mounted CRACs as established in ASHRAE Standard 90.1–2016. ASHRAE Standard 90.1–2019 amended the efficiency levels in ASHRAE Standard 90.1–2016 for all but three of those equipment classes. ASHRAE Standard 90.1–2019 also added classes for air-cooled CRACs with fluid economizers and a new table with new efficiency levels for ceiling-mounted CRAC equipment classes. The equipment in horizontal-flow and ceiling-mounted classes is not currently subject to Federal standards set forth in 10 CFR 431.97, although DOE issued a draft guidance document on October 7, 2015 to clarify that horizontal-flow and ceiling-mounted CRACs are covered equipment and are required to be tested under the current DOE test procedure for purposes of making representations of energy consumption. (Docket No. EERE–2014–BT–GUID–0022, No. 3, pp. 1–2) In contrast, upflow and downflow air-cooled CRACs with fluid economizers are currently subject to the Federal standards in 10 CFR 431.97 for air-cooled equipment classes.

DOE considered whether there were any increases in stringency in the ASHRAE Standard 90.1–2019 levels for CRAC classes covered by DOE standards, thus triggering DOE obligations under EPCA. As with the assessment of ASHRAE Standard 90.1–2016, for CRACs, this assessment has been complicated because the current standards established in 10 CFR 431.97 are specified in terms of SCOP and based on the rating conditions in ANSI/

ASHRAE 127–2007, while the efficiency levels for CRACs set forth in ASHRAE Standard 90.1–2019 are specified in terms of NSenCOP and based on rating conditions in AHRI 1360–2017. While EPCA does not expressly state how DOE is to consider a change to an ASHRAE efficiency metric, DOE is guided by the criteria established under EPCA for the evaluation of amendments to the test procedures referenced in ASHRAE Standard 90.1. For ASHRAE equipment under 42 U.S.C. 6313(a)(6)(A)(i), EPCA directs that if the applicable test procedure referenced in ASHRAE Standard 90.1 is amended, DOE must amend the Federal test procedure to be consistent with the amended industry test procedure, unless DOE makes a determination, supported by clear and convincing evidence, that to do so would result in a test procedure that is not reasonably designed to provide results representative of use during an average use cycle, or is unduly burdensome to conduct. (42 U.S.C. 6314(a)(4)(B)) In evaluating an update to an industry test procedure referenced in ASHRAE Standard 90.1, DOE must also consider any potential impact on the measured energy efficiency as compared to the current Federal test procedure and in the context of the current Federal standard. (42 U.S.C. 6314(a)(4)(C) and 42 U.S.C. 6293(e))

As discussed in section II.A.1 of this document, the rating conditions in AHRI 1360–2016 and AHRI 1360–2017 differ from those specified in ANSI/ASHRAE 127–2007 (the industry standard referenced in the current DOE test procedure for CRACs) for most CRAC equipment classes. As part of the analysis for the September 2019 NODA/RFI, DOE conducted a crosswalk analysis for the classes affected by rating condition changes to determine whether the ASHRAE Standard 90.1–2016 levels in terms of NSenCOP and determined according to AHRI 1360–2016 are more stringent than DOE's current standards in terms of SCOP and determined according to ANSI/ASHRAE 127–2007. 84 FR 48006, 48014–48022 (Sept. 11, 2019). Because the rating conditions specified in AHRI 1360–2017 and AHRI 1360–2016 are the same for the classes covered by the crosswalk (upflow ducted, upflow non-ducted, and downflow), the same crosswalk as described in the September 2019 NODA/RFI can be used to compare DOE's current SCOP-based CRAC standards to the NSenCOP values in ASHRAE Standard 90.1–2019 (determined according to AHRI 1360–2017), in order to perform the current analysis required by EPCA. Section II.A.1 of this document includes a detailed discussion of the differences in rating conditions between DOE's current test procedure for CRACs (which references ANSI/ASHRAE 127–2007), AHRI 1360–2016, and AHRI 1360–2017.

The crosswalk allows DOE to determine whether any of the levels specified in the updated ASHRAE Standard 90.1 are more stringent than the current DOE standards; any such levels would be considered ''amended'' for the purpose of the evaluation required by EPCA. To the extent that the crosswalk identifies amended standards (*i.e.,* ASHRAE Standard 90.1 levels more stringent than the Federal standards), the crosswalk also allows DOE to conduct an analysis of the energy savings potential of amended standards, also as required by EPCA. (42 U.S.C. 6313(a)(6)(A)(i)) Additionally, in order to make the required determination of whether adoption of a uniform national standard more stringent than the amended ASHRAE Standard 90.1 level is technologically feasible and economically justified (42 U.S.C. 6313(a)(6)(A)(ii)), DOE must understand the relationship between the current Federal standard and the corresponding ASHRAE Standard 90.1 efficiency level. Finally, for any standard that DOE does not make more stringent because the Federal standard is already more stringent than the ASHRAE Standard 90.1 level and where more-stringent levels are not justified (under the 6-year-lookback), DOE must express these levels in terms of the new efficiency metric so as to be consistent with the relevant industry test procedure (42 U.S.C. 6314(a)(4)).

1. Methodology for Efficiency and Capacity Crosswalk Analyses

a. General

DOE performed an efficiency crosswalk analysis to compare the stringency of the current Federal standards (represented in terms of SCOP based on the current DOE test procedure) for CRACs to the stringency of the efficiency levels for this equipment in ASHRAE Standard 90.1–2019 (represented in terms of NSenCOP and based on AHRI 1360–2017). The rating conditions for upflow ducted, upflow non-ducted, and downflow equipment classes specified in AHRI 1360–2017 are the same as in AHRI 1360–2016, so for these classes, the same crosswalk can relate SCOP levels measured according to ANSI/ASHRAE 127–2007 to NSenCOP levels measured according to either the 2016 or 2017 editions of AHRI 1360. Therefore, the crosswalk methodology and resulting ''crosswalked'' levels of the current Federal standards used in this NODA/RFI are the same as those presented in the September 2019 NODA/RFI (*i.e.,* the methodology and resulting levels used to compare the current Federal standards to the levels in ASHRAE Standard 90.1–2016; *see* 84 FR 48006, 48014–48019 (Sept. 11, 2019)). Because ASHRAE Standard 90.1–2019 added classes for air-cooled CRACs with fluid economizers, DOE also presents in this NODA/RFI crosswalked levels for the 9 air-cooled with fluid economizer classes currently being made subject to Federal standards. However, the crosswalk results for these classes are the same as the results for corresponding classes for air-cooled CRACs without fluid economizers, because: (1) These classes are subject to the same current Federal standards as air-cooled CRACs without fluid economizers; and (2) per AHRI 1360–2017, air-cooled units with fluid economizers are not tested differently than units without fluid economizers.

DOE received several comments in response to the September 2019 NODA/RFI addressing DOE's crosswalk methodology. AHRI stated that it agrees with DOE's crosswalk methodology and analysis, with only slight discrepancies in some of the percentages. However, AHRI also stated that the efficiency levels in ASHRAE 90.1–2019, which were developed by AHRI and DOE, resolve the shortcomings that AHRI stated were in the crosswalk presented in the September 2019 NODA/RFI. (AHRI, No. 7 at p. 4) [16] The CA IOUs commented that they support DOE's crosswalk analysis. (CA IOUs, No. 6 at p. 2) Similarly, Trane commented that it generally agrees with the high-level methodology in DOE's crosswalk analysis. (Trane, No. 5 at p. 1) Trane also commented that cooling capacity alone must be compared when determining if backsliding has occurred, as opposed to what minimum SCOP requirement was previously required for that individual unit. Trane further stated that CRACs can achieve higher cooling capacities with smaller box sizes and less power input at the test conditions specified in AHRI 1360 as compared to DOE's current test procedure. (Trane, No. 5 at p. 2) In response to Trane, while the measured NSCC will be higher for models in certain equipment classes when tested

[16] DOE identifies comments received in response to the September 2019 NODA/RFI and placed in Docket No. Docket EERE–2017–BT–STD–0017 by the commenter, the number of the comment document as listed in the docket maintained at *http://www.regulations.gov,* and the page number of that document where the comment appears (for example: AHRI, No. 7 at p. 4).

to AHRI 1360–2016 or AHRI 1360–2017 as compared to when tested to ANSI/ASHRAE 127–2007, DOE specifies minimum standards in terms of energy efficiency, not cooling capacity. Therefore, DOE's analysis to determine if the ASHRAE Standard 90.1 levels constitute backsliding must compare the stringency of the current Federal SCOP standards to the NSenCOP levels in ASHRAE Standard 90.1. As discussed later in this section, DOE also performed a ''capacity crosswalk'' analysis to translate the capacity boundaries for certain equipment classes, because some CRACs would switch classes (*i.e.,* move into a higher capacity equipment class) if the equipment class boundaries are not changed accordingly. Such switching of classes has the potential to subject existing CRACs to lower standards (which could raise concerns vis-à-vis EPCA's anti-backsliding provision at 42 U.S.C. 6313(a)(6)(B)(iii)(I)). Based on these comments, for this NODA/RFI, DOE did not make any changes to the methodology of the efficiency or capacity crosswalks presented in the September 2019 NODA/RFI.

For the efficiency crosswalk, DOE analyzed the CRAC equipment classes in ASHRAE Standard 90.1–2019 that are currently subject to Federal standards (*i.e.,* all upflow and downflow classes).[17] ASHRAE Standard 90.1–2019 includes separate sets of efficiency levels for upflow ducted and upflow non-ducted CRACs to reflect the differences in rating conditions for upflow ducted and upflow non-ducted units in AHRI 1360–2017 (*e.g.,* return air temperature and external static pressure (ESP)). The current Federal test procedure does not specify different rating conditions for upflow ducted as compared to upflow non-ducted CRACs, and DOE's current standards set forth in 10 CFR 431.97 do not differentiate between upflow ducted and upflow non-ducted CRACs. For the purpose of the efficiency crosswalk analysis, DOE converted the single set of current Federal SCOP standards for all upflow CRACs to sets of ''crosswalked'' NSenCOP levels for both the upflow ducted and upflow non-ducted classes included in ASHRAE Standard 90.1–2019.

Similarly, DOE's current standards set forth in 10 CFR 431.97 do not distinguish between air-cooled CRACs with and without fluid economizers, whereas ASHRAE Standard 90.1–2019 includes separate sets of efficiency levels for air-cooled CRACs with and without fluid economizers. Therefore, DOE converted the single set of current Federal standards for air-cooled classes in terms of SCOP to crosswalked standards in terms of NSenCOP for air-cooled classes both with and without fluid economizers. However, there is no difference between the rating conditions for air-cooled CRACs with and without fluid economizers in AHRI 1360–2017 so the crosswalk results are identical for these classes.

As explained previously, the levels for CRACs as updated in ASHRAE Standard 90.1–2019 rely on a different metric (NSenCOP) and test procedure (AHRI 1360–2017) than the metric and test procedure required under the Federal standards (SCOP and ANSI/ASHRAE 127–2007, respectively). AHRI 1360–2017 and ANSI/ASHRAE 127–2007 specify different rating conditions, which are listed in Table II–3.[18] AHRI 1360–2016 specifies the same rating conditions for these classes as AHRI 1360–2017.

TABLE II–3—DIFFERENCES IN RATING CONDITIONS BETWEEN DOE'S CURRENT TEST PROCEDURE AND AHRI STANDARD 1360–2017

Test parameter	Affected equipment categories	Current DOE test procedure (ANSI/ASHRAE 127–2007)		AHRI 1360–2017	
Return air dry-bulb temperature (RAT)	Upflow ducted and downflow	75 °F dry-bulb temperature		85 °F dry-bulb temperature.	
Entering water temperature (EWT)	Water-cooled	86 °F		83 °F	
ESP (varies with NSCC)	Upflow ducted	<20 kW	0.8 in H_2O	<65 kBtu/h	0.3 in H_2O.
		≥20 kW	1.0 in H_2O	≥65 kBtu/h and <240 kBtu/h.	0.4 in H_2O.
				≥240 kBtu/h and <760 kBtu/h.	0.5 in H_2O.
Adder for heat rejection fan and pump power (add to total power consumption).	Water-cooled and glycol-cooled	No added power consumption for heat rejection fan and pump.		5 percent of NSCC for water-cooled CRACs. 7.5 percent of NSCC for glycol-cooled CRACs.	

[17] ASHRAE Standard 90.1–2019 includes efficiency levels for horizontal-flow and ceiling-mounted classes of CRACs. DOE does not currently prescribe standards for horizontal-flow or ceiling-mounted classes, so these classes were not included in the crosswalk analysis.

[18] Pursuant to EPCA, DOE is conducting a separate evaluation of its current test procedure as compared to AHRI 1360–2017. (42 U.S.C. 6314(a)(4)(B)).

Additionally, in ASHRAE Standard 90.1–2019 (which references AHRI 1360–2017 as the test procedure for CRACs), the capacity boundaries for downflow and upflow-ducted CRAC equipment classes are increased relative to the boundaries of analogous classes in the current Federal standards (which references ANSI/ASHRAE 127–2007 for the test procedure). The capacity values that bound the CRAC equipment classes are in terms of NSCC. For certain equipment classes, NSCC values determined according to AHRI 1360–2017 are higher than the NSCC values determined according to ANSI/ASHRAE 127–2007 because of differences in the specified rating conditions. Because the test procedure in ASHRAE Standard 90.1–2019 results in an increased NSCC value for certain equipment classes, as compared to the NSCC measured in accordance with the current Federal test procedure requirement, some CRACs would switch classes (*i.e.,* move into a higher capacity equipment class) if the equipment class boundaries are not changed accordingly.[19]

As the equipment class capacity increases for upflow or downflow CRAC classes, the stringency of both the ASHRAE Standard 90.1 efficiency level and the current Federal standard decreases. As a result, class switching would subject some CRAC models to an efficiency level under ASHRAE Standard 90.1–2019 that is less stringent than the standard level that is applicable to that model under the current Federal requirements. Such result would be impermissible under EPCA's anti-backsliding provision at 42 U.S.C. 6313(a)(6)(B)(iii)(I).

To provide for an appropriate comparison between current Federal efficiency standards and the efficiency levels in ASHRAE Standard 90.1–2019, address potential backsliding, and evaluate the capacity boundaries in ASHRAE Standard 90.1–2019, a capacity crosswalk was conducted to adjust the NSCC boundaries that separate equipment classes in the Federal efficiency standards to account for the expected increase in measured NSCC values for affected equipment classes (*i.e.,* equipment classes with test procedure changes that increase NSCC). The capacity crosswalk calculated necessary increases in the capacity boundaries of affected equipment classes to prevent this equipment class switching issue and avoid potential backsliding that would occur if capacity boundaries were not adjusted.

Both the efficiency and capacity crosswalk analyses have a similar structure and the data for both analyses came from several of the same sources. The crosswalk analyses were informed by numerous sources, including public manufacturer literature, manufacturer performance data obtained through non-disclosure agreements (NDAs), results from DOE's testing of two CRAC units, and DOE's Compliance Certification Database for CRACs. DOE analyzed each test procedure change independently and used the available data to determine an aggregated percentage by which that change impacted efficiency (SCOP) and/or NSCC. Updated SCOP levels and NSCC equipment class boundaries were calculated for each class (as applicable) by combining the percentage changes for every test procedure change applicable to that class.

The following sub-sections describe the approaches used to analyze the impacts on the measured efficiency and capacity of each difference in rating conditions between DOE's current test procedure and AHRI 1360–2017. As discussed previously, the crosswalk analysis methodology described in the following sub-sections is the same as presented in the September 2019 NODA/RFI. No additional data sources were added to the analysis.

b. Increase in Return Air Dry-Bulb Temperature From 75 °F to 85 °F

ANSI/ASHRAE 127–2007, which is referenced by DOE's current test procedure, specifies a return air dry-bulb temperature (RAT) of 75 °F for testing all CRACs. AHRI 1360–2017 specifies an RAT of 85 °F for upflow ducted and downflow CRACs, but specifies an RAT for upflow non-ducted units of 75 °F. SCOP and NSCC both increase with increasing RAT for two reasons. First, a higher RAT increases the cooling that must be done for the air to approach its dew point temperature (*i.e.,* the temperature at which water vapor will condense if there is any additional cooling). Second, a higher RAT will tend to raise the evaporating temperature of the refrigerant, which in turn raises the temperature of fin and tube surfaces in contact with the air—the resulting reduction in the portion of the heat exchanger surface that is below the air's dew point temperature reduces the potential for water vapor to condense on these surfaces. This is seen in product specifications which show that the sensible heat ratio[20] is consistently higher at a RAT of 85 °F than at 75 °F. Because SCOP is calculated with NSCC, an increase in the fraction of total cooling capacity that is sensible cooling rather than latent cooling also inherently increases SCOP.

To analyze the impacts of increasing RAT for upflow ducted and downflow CRACs on SCOP and NSCC, DOE gathered data from three separate sources and aggregated the results for each crosswalk analysis. First, DOE used product specifications for several CRAC models that provide SCOP and NSCC ratings for RATs ranging from 75 °F to 95 °F. Second, DOE analyzed manufacturer performance data obtained under NDAs that showed the performance impact of individual test condition changes, including the increase in RAT. Third, DOE used results from testing two CRAC units: one air-cooled upflow ducted and one air-cooled downflow unit. DOE combined the results of these sources to find the aggregated increases in SCOP and NSCC due to the increase in RAT. The increase in SCOP due to the change in RAT was found to be approximately 19 percent, and the increase in capacity was found to be approximately 22 percent.

c. Decrease in Entering Water Temperature for Water-Cooled CRACs

ANSI/ASHRAE 127–2007, which is referenced by DOE's current test procedure, specifies an entering water temperature (EWT) of 86 °F for water-cooled CRACs, while AHRI 1360–2017 specifies an entering water temperature of 83 °F. A decrease in the EWT for water-cooled CRACs increases the temperature difference between the water and hot refrigerant in the condenser coil, thus increasing cooling capacity and decreasing compressor power. To analyze the impact of this decrease in EWT on SCOP and NSCC, DOE analyzed manufacturer data obtained through NDAs and a publicly-available presentation from a major CRAC manufacturer and calculated an SCOP increase of approximately 2 percent and an NSCC increase of approximately 1 percent.

d. Changes in External Static Pressure Requirements for Upflow Ducted CRACs

For upflow ducted CRACs, AHRI 1360–2017 specifies lower ESP requirements than ANSI/ASHRAE 127–

[19] This difference in capacity values might shift the boundaries between statutorily defined categories (*i.e.,* small, large and very large commercial package air conditioning and heating equipment), but would not impact which equipment is within scope of DOE's authority under these statutorily defined categories (*i.e.,* DOE has authority to regulate all small, large, and very large commercial package air conditioning and heating equipment).

[20] ''Sensible heat ratio'' is the ratio of sensible cooling capacity to the total cooling capacity. The total cooling capacity includes both sensible cooling capacity (cooling associated with reduction in temperature) and latent cooling capacity (cooling associated with dehumidification).

2007, which is referenced in DOE's current test procedure. The ESP requirements in all CRAC industry test standards vary with NSCC; however, the capacity bins (*i.e.,* capacity ranges over which each ESP requirement applies) in ANSI/ASHRAE 127–2007 are different from AHRI 1360–2017. Testing with a lower ESP decreases the indoor fan power input without a corresponding decrease in cooling capacity, thus increasing the measured efficiency. Additionally, the reduction in fan heat entering the indoor air stream that results from lower fan power also slightly increases NSCC.

To determine the impacts on measured SCOP and NSCC of the changes in ESP requirements between DOE's current test procedure and AHRI 1360–2017, DOE aggregated data from its analysis of fan power consumption changes, manufacturer data obtained through NDAs, and results from DOE testing. More details on each of these sources are included in the following paragraphs. The impact of changes in ESP requirements on SCOP and NSCC was calculated separately for each capacity range specified in AHRI 1360–2017 (*i.e.,* <65 kBtu/h, 65–240 kBtu/h, and ≥240 kBtu/h).

DOE conducted an analysis to estimate the change in fan power consumption due to the changes in ESP requirements using performance data and product specifications for 77 upflow CRAC models with certified SCOP ratings at or near the current applicable SCOP standard level in DOE's Compliance Certification Database. Using the certified SCOP and NSCC values, DOE determined each model's total power consumption for operation at the rating conditions specified in DOE's current test procedure. DOE then used fan performance data for each model to estimate the change in indoor fan power that would result from the lower ESP requirements in AHRI 1360–2017, and modified the total power consumption for each model by the calculated value. For several models, detailed fan performance data were not available, so DOE used fan performance data for comparable air conditioning units with similar cooling capacity, fan drive, and fan motor horsepower.

DOE also received manufacturer data (obtained through NDAs) showing the impact on efficiency and NSCC of the change in ESP requirements. Additionally, DOE conducted tests on an upflow-ducted CRAC at ESPs of 1 in. H_2O and 0.4 in. H_2O (the applicable ESP requirements specified in ANSI/ASHRAE 127–2007 and AHRI 1360–2017, respectively), and included the results of those tests in this analysis.

For each of the three capacity ranges for which ESP requirements are specified in AHRI AHRI 1360–2017, Table II–4 shows the approximate aggregated percentage increases in SCOP and NSCC associated with the decreased ESP requirements specified in AHRI 1360–2017 for upflow ducted units. As discussed previously, AHRI 1360–2016 specifies the same rating conditions for upflow ducted classes as AHRI 1360–2017.

TABLE II–4—PERCENTAGE INCREASE IN SCOP AND NSCC FROM DECREASES IN EXTERNAL STATIC PRESSURE REQUIREMENTS FOR UPFLOW DUCTED UNITS BETWEEN DOE'S CURRENT TEST PROCEDURE AND AHRI STANDARD 1360–2017

Net sensible cooling capacity range (kBtu/h) *		ESP requirements in DOE's current test procedure (ANSI/ASHRAE 127–2007) (in H_2O)	ESP requirements in AHRI 1360–2017 (in H_2O)	Approx. average percentage increase in SCOP	Approx. average percentage increase in NSCC
<65		0.8	0.3	7	2
≥65 to <240	** ≥65 to <68.2	0.8	0.4	*** 8	*** 2
	** ≥68.2 to <240	1			
≥240 to <760		1	0.5	6	2

* These boundaries are consistent with the boundaries in ANSI/ASHRAE 127–2007, AHRI 1360–2016, and AHRI 1360–2017, and do not reflect the expected capacity increases for upflow-ducted and downflow equipment classes at the AHRI 1360–2016 and AHRI 1360–2017 test conditions.

** 68.2 kBtu/h is equivalent to 20 kW, which is the capacity value that separates ESP requirements in ANSI/ASHRAE 127–2007, which is referenced in DOE's current test procedure.

*** This average percentage increase is an average across upflow ducted CRACs with net sensible cooling capacity ≥65 and <240 kBtu/h, including models with capacity <20 kW and ≥20 kW. DOE's Compliance Certification Database shows that most of the upflow CRACs with a net sensible cooling capacity ≥65 kBtu/h and <240 kBtu/h have a net sensible cooling capacity ≥20 kW.

As discussed in section II.A.1.a of this document, NSCC values determined according to ANSI/ASHRAE 127–2007 are lower than NSCC values determined according to AHRI 1360–2017 for certain CRAC classes, including upflow-ducted classes. The increase in NSCC also impacts the ESP requirements for upflow-ducted units in AHRI 1360–2017 because these requirements are specified based on NSCC. Differences in ESP requirements impact the stringency of the test. For the efficiency and capacity crosswalk analyses in this NODA, DOE used the adjusted capacity boundaries for upflow ducted classes presented in Table II–5 (as discussed in section II.A.1.f of this document) to specify the applicable ESP requirement in AHRI 1360–2017 (rather than using the capacity boundaries specified in AHRI 1360–2017) so that all CRACs within an equipment class would be subject to the same ESP requirement. The same methodology was used in the crosswalk analysis discussed in the September 2019 NODA/RFI.

e. Power Adder To Account for Pump and Heat Rejection Fan Power in NSenCOP Calculation for Water-Cooled and Glycol-Cooled CRACs

Energy consumption for heat rejection components for air-cooled CRACs (*i.e.,* condenser fan motor(s)) is measured in the industry test standards for CRACs; however, energy consumption for heat rejection components for water-cooled and glycol-cooled CRACs is not measured because these components (*i.e.,* water/glycol pump, dry cooler/cooling tower fan(s)) are not considered to be part of the CRAC unit. ANSI/ASHRAE 127–2007, which is referenced in DOE's current test procedure, does not include any factor in the calculation of SCOP to account for the power consumption of heat rejection components for water-cooled and glycol-cooled CRACs. In contrast, AHRI 1360–2017 specifies to increase the measured total power input for CRACs to account for the power consumption of fluid pumps and heat rejection fans. Specifically, Notes 2 and 3 to Table 3 of AHRI 1360–2017 specify to add a percentage of the measured NSCC (5 percent for water-cooled CRACs and 7.5 percent for glycol-cooled CRACs) in kW to the total power input used to calculate NSenCOP. DOE calculated the impact of these additions on SCOP using Equation 1:

$$SCOP_1 = \frac{SCOP}{1 + (x * SCOP)}$$

Equation 1

Where, x is equal to 5 percent for water-cooled CRACs and 7.5 percent for glycol-cooled CRACs, and $SCOP_1$ is the SCOP value adjusted for the energy consumption of heat rejection pumps and fans.

f. Calculating Overall Changes in Measured Efficiency and Capacity From Test Procedure Changes

Different combinations of the test procedure changes between DOE's current test procedure and AHRI 1360–2017 affect each of the CRAC equipment classes considered in the crosswalk analyses. To combine the impact on SCOP of the changes to rating conditions (*i.e.,* increase in RAT, decrease in condenser EWT for water-cooled units, and decrease of the ESP requirements for upflow ducted units), DOE multiplied together the calculated adjustment factors representing the measurement changes corresponding to each individual rating condition change, as applicable, as shown in Equation 2. These adjustment factors are equal to 100 percent plus the calculated percent change in measured efficiency.

To account for the impact of the adder for heat rejection pump and fan power for water-cooled and glycol-cooled units, DOE used Equation 3. Hence, DOE determined crosswalked NSenCOP levels corresponding to the current Federal SCOP standards for each CRAC equipment class using the following two equations.

$$NSenCOP_1 = SCOP * (1 + x_1) * (1 + x_2) * (1 + x_3)$$

Equation 2

$$NSenCOP = \frac{NSenCOP_1}{1 + (x_4 * NSenCOP_1)}$$

Equation 3

In these equations, $NSenCOP_1$ refers to a partially-crosswalked NSenCOP level that incorporates the impacts of changes in RAT, condenser EWT, and indoor fan ESP (as applicable), but not the impact of adding the heat rejection pump and fan power; x_1, x_2, and x_3 represent the percentage change in SCOP due to changes in RAT, condenser EWT, and indoor fan ESP requirements, respectively; and x_4 is equal to 5 percent for water-cooled equipment classes and 7.5 percent for glycol-cooled equipment classes. For air-cooled classes, x_4 is equal to 0 percent; therefore, for these classes, NSenCOP is equal to $NSenCOP_1$.

To combine the impact on NSCC of the changes to rating conditions, DOE used a methodology similar to that used for determining the impact on SCOP. To determine adjusted NSCC equipment class boundaries, DOE multiplied together the calculated adjustment factors representing the measurement changes corresponding to each individual rating condition change, as applicable, as shown in Equation 4. These adjustment factors are equal to 100 percent plus the calculated percent change in measured NSCC. In this equation, *Boundary* refers to the original NSCC boundaries (*i.e.,* 65,000 Btu/h, 240,000 Btu/h, or 760,000 Btu/h as determined according to ANSI/ASHRAE 127–2007), $Boundary_1$ refers to the updated NSCC boundaries as determined according to AHRI 1360–2017, and y_1, y_2, and y_3 represent the percentage changes in NSCC due to changes in RAT, condenser EWT, and indoor fan ESP requirements, respectively.

$$Boundary_1 = Boundary * (1 + y_1) * (1 + y_2) * (1 + y_3)$$

Equation 4

As mentioned previously, ASHRAE Standard 90.1–2019 includes adjusted equipment class capacity boundaries for only upflow-ducted and downflow equipment classes. The adjusted class ranges for these categories are <80,000 Btu/h, ≥80,000 Btu/h and <295,000 Btu/h, and ≥295,000 Btu/h. In previous versions of ASHRAE Standard 90.1, these ranges are <65,000 Btu/h, ≥65,000 Btu/h and <240,000 Btu/h, and ≥240,000 Btu/h. The capacity range boundaries for upflow non-ducted classes were left unchanged at 65,000 Btu/h and 240,000 Btu/h in ASHRAE Standard 90.1–2019. DOE's capacity crosswalk analysis indicates that the primary driver for increasing NSCC is increasing RAT. The increases in RAT in AHRI 1360–2017, as compared to ANSI/ASHRAE 127–2007, only apply to upflow ducted and downflow equipment classes. Based on the analysis performed for this document, DOE found that all the equipment class boundaries in ASHRAE Standard 90.1–2019, which are in increments of 5,000 Btu/h, are within 1.4 percent of the boundaries calculated from DOE's capacity crosswalk. As such, to more closely align DOE's analysis with ASHRAE Standard 90.1–2019, DOE has used the equipment class boundaries in ASHRAE Standard 90.1–2019 as the preliminary adjusted boundaries for the crosswalk analysis. Use of the equipment class boundaries from ASHRAE Standard 90.1–2019 allows for an appropriate comparison between the energy efficiency levels and equipment classes specified in ASHRAE Standard 90.1 and those in the current DOE standards, while addressing the backsliding potential discussed previously.

ASHRAE Standard 90.1–2019 does not include an upper capacity limit for coverage of CRACs. DOE's current standards are applicable only to CRACs with an NSCC less than 760,000 Btu/h, which is consistent with the statutory limits on DOE's authority.[21] 10 CFR 431.97(e). In order to account for all equipment currently subject to the Federal standards, DOE adjusted the 760,000 Btu/h equipment class boundary for certain equipment classes as part of its capacity crosswalk analysis. This adjustment to the upper boundary of the equipment classes applies only for downflow and upflow-ducted classes (the classes for which the RAT increase applies). Consistent with the adjustments made in ASHRAE Standard 90.1–2019, DOE averaged the cross-walked capacity results across the affected equipment classes, and rounded to the nearest 5,000 Btu/h. Following this approach, DOE has used 930,000 Btu/h as the adjusted upper capacity limit for downflow and upflow-ducted CRACs in the analysis presented in this notice. The 930,000 Btu/h upper capacity limit (as measured per AHRI 1360–2017) used in the crosswalk analysis is equivalent to the 760,000 Btu/h upper capacity limit (as measured per ANSI/ASHRAE 127–2007) established in the current DOE standards.

2. Crosswalk Results

The ''crosswalked'' DOE efficiency levels (in terms of NSenCOP) and adjusted equipment class capacity boundaries were then compared with the NSenCOP efficiency levels and capacity boundaries specified in ASHRAE Standard 90.1–2019 to determine whether the ASHRAE Standard 90.1–2019 requirements are more stringent than current Federal standards.

Table II–5 presents the preliminary results for the crosswalk analyses (see section II.A.1 of this document for detailed discussion of the methodology for the crosswalk analyses). The last column in the table, labeled ''Crosswalk Comparison,'' indicates whether the ASHRAE Standard 90.1–2019 levels are less stringent, equivalent to, or more stringent than the current Federal standards, based on DOE's analysis.

TABLE II–5—CROSSWALK RESULTS

Condenser system type	Airflow configuration	Current NSCC range (kBtu/h)	Current federal standard (SCOP)	Test procedure changes affecting efficiency*	Cross-walked NSCC range (kBtu/h)	Cross-walked current federal standard (NSenCOP)	ASHRAE standard 90.1–2019 NSenCOP level	Crosswalk comparison
Air-cooled	Downflow	<65	2.20	Return air dry-bulb temperature.	<80	2.62	2.70	More Stringent.
Air-cooled	Downflow	≥65 and <240	2.10		≥80 and <295	2.50	2.58	More Stringent.
Air-cooled	Downflow	≥240 and <760	1.90		≥295 and <930	2.26	2.36	More Stringent.
Air-cooled with fluid economizer.	Downflow	<65	2.20		<80	2.62	2.70	More Stringent.
Air-cooled with fluid economizer.	Downflow	≥65 and <240	2.10		≥80 and <295	2.50	2.58	More Stringent.
Air-cooled with fluid economizer.	Downflow	≥240 and <760	1.90		≥295 and <930	2.26	2.36	More Stringent.
Water-cooled	Downflow	<65	2.60	Return air dry-bulb temperature. Condenser entering water temperature. Add allowance for heat rejection components to total power input.	<80	2.73	2.82	More Stringent.
Water-cooled	Downflow	≥65 and <240	2.50		≥80 and <295	2.63	2.73	More Stringent.
Water-cooled	Downflow	≥240 and <760	2.40		≥295 and <930	2.54	2.67	More Stringent.

[21] In initially establishing standards CRACs, DOE noted that the energy efficiency levels from ASHRAE Standard 90.1 adopted as the Federal standards were based on ANSI/ASHRAE 127–2007. 77 FR 28928, 28945 (May 16, 2012). This includes the relevant capacity values. DOE notes further that EPCA provides a definition for ''very large commercial package air conditioning and heating equipment'' that encompasses such equipment rated at or above 240,000 Btu/h and less than 760,000 Btu/h. (42 U.S.C. 6311(8)(D)) Consequently, DOE does not have authority to set standards for models beyond the capacity range specified for this type of covered equipment.

TABLE II–5—CROSSWALK RESULTS—Continued

Condenser system type	Airflow configuration	Current NSCC range (kBtu/h)	Current federal standard (SCOP)	Test procedure changes affecting efficiency *	Cross-walked NSCC range (kBtu/h)	Cross-walked current federal standard (NSenCOP)	ASHRAE standard 90.1–2019 NSenCOP level	Crosswalk comparison
Water-cooled with fluid economizer.	Downflow	<65	2.55		<80	2.68	2.77	More Stringent.
Water-cooled with fluid economizer.	Downflow	≥65 and <240	2.45		≥80 and <295	2.59	2.68	More Stringent.
Water-cooled with fluid economizer.	Downflow	≥240 and <760	2.35		≥295 and <930	2.50	2.61	More Stringent.
Glycol-cooled	Downflow	<65	2.50	Add allowance for heat rejection components to total power input.	<80	2.43	2.56	More Stringent.
Glycol-cooled	Downflow	≥65 and <240	2.15		≥80 and <295	2.15	2.24	More Stringent.
Glycol-cooled	Downflow	≥240 and <760	2.10		≥295 and <930	2.11	2.21	More Stringent.
Glycol-cooled with fluid economizer.	Downflow	<65	2.45		<80	2.39	2.51	More Stringent.
Glycol-cooled with fluid economizer.	Downflow	≥65 and <240	2.10		≥80 and <295	2.11	2.19	More Stringent.
Glycol-cooled with fluid economizer.	Downflow	≥240 and <760	2.05		≥295 and <930	2.06	2.15	More Stringent.
Air-cooled	Upflow Ducted	<65	2.09	Return air dry-bulb temperature. ESP requirements.	<80	2.65	2.67	More Stringent.
Air-cooled	Upflow Ducted	≥65 and <240	1.99		≥80 and <295	2.55	2.55	Equivalent.
Air-cooled	Upflow Ducted	≥240 and <760	1.79		≥295 and <930	2.26	2.33	More Stringent.
Air-cooled with fluid economizer.	Upflow Ducted	<65	2.09		<80	2.65	2.67	More Stringent.
Air-cooled with fluid economizer.	Upflow Ducted	≥65 and <240	1.99		≥80 and <295	2.55	2.55	Equivalent.
Air-cooled with fluid economizer.	Upflow Ducted	≥240 and <760	1.79		≥295 and <930	2.26	2.33	More Stringent.
Water-cooled	Upflow Ducted	<65	2.49	Return air dry-bulb temperature. Condenser entering water temperature. ESP requirements. Add allowance for heat rejection components to total power input.	<80	2.77	2.79	More Stringent.
Water-cooled	Upflow Ducted	≥65 and <240	2.39		≥80 and <295	2.70	2.70	Equivalent.
Water-cooled	Upflow Ducted	≥240 and <760	2.29		≥295 and <930	2.56	2.64	More Stringent.
Water-cooled with fluid economizer.	Upflow Ducted	<65	2.44		<80	2.72	2.74	More Stringent.
Water-cooled with fluid economizer.	Upflow Ducted	≥65 and <240	2.34		≥80 and <295	2.65	2.65	Equivalent.
Water-cooled with fluid economizer.	Upflow Ducted	≥240 and <760	2.24		≥295 and <930	2.51	2.58	More Stringent.
Glycol-cooled	Upflow Ducted	<65	2.39	Return air dry-bulb temperature. ESP requirements. Add allowance for heat rejection components to total power input.	<80	2.47	2.53	More Stringent.
Glycol-cooled	Upflow Ducted	≥65 and <240	2.04		≥80 and <295	2.19	2.21	More Stringent.
Glycol-cooled	Upflow Ducted	≥240 and <760	1.99		≥295 and <930	2.11	2.18	More Stringent.
Glycol-cooled with fluid economizer.	Upflow Ducted	<65	2.34		<80	2.43	2.48	More Stringent.
Glycol-cooled with fluid economizer.	Upflow Ducted	≥65 and <240	1.99		≥80 and <295	2.14	2.16	More Stringent.
Glycol-cooled with fluid economizer.	Upflow Ducted	≥240 and <760	1.94		≥295 and <930	2.07	2.12	More Stringent.
Air-cooled	Upflow Non-Ducted.	<65	2.09	No changes	<65	2.09	2.16	More Stringent.
Air-cooled	Upflow Non-Ducted.	≥65 and <240	1.99		≥65 and <240	1.99	2.04	More Stringent.
Air-cooled	Upflow Non-Ducted.	≥240 and <760	1.79		≥240 and <760	1.79	1.89	More Stringent.
Air-cooled with fluid economizer.	Upflow Non-Ducted.	<65	2.09		<65	2.09	2.09	Equivalent.
Air-cooled with fluid economizer.	Upflow Non-Ducted.	≥65 and <240	1.99		≥65 and <240	1.99	1.99	Equivalent.
Air-cooled with fluid economizer.	Upflow Non-Ducted.	≥240 and <760	1.79		≥240 and <760	1.79	1.81	More Stringent.

TABLE II–5—CROSSWALK RESULTS—Continued

Condenser system type	Airflow configuration	Current NSCC range (kBtu/h)	Current federal standard (SCOP)	Test procedure changes affecting efficiency *	Cross-walked NSCC range (kBtu/h)	Cross-walked current federal standard (NSenCOP)	ASHRAE standard 90.1–2019 NSenCOP level	Crosswalk comparison
Water-cooled ...	Upflow Non-Ducted.	<65	2.49	Condenser entering water temperature. Add allowance for heat rejection components to total power input.	<65	2.25	2.43	More Stringent.
Water-cooled ...	Upflow Non-Ducted.	≥65 and <240	2.39		≥65 and <240	2.17	2.32	More Stringent.
Water-cooled ...	Upflow Non-Ducted.	≥240 and <760	2.29		≥240 and <760	2.09	2.20	More Stringent.
Water-cooled with fluid economizer.	Upflow Non-Ducted.	<65	2.44		<65	2.21	2.35	More Stringent.
Water-cooled with fluid economizer.	Upflow Non-Ducted.	≥65 and <240	2.34		≥65 and <240	2.13	2.24	More Stringent.
Water-cooled with fluid economizer.	Upflow Non-Ducted.	≥240 and <760	2.24		≥240 and <760	2.05	2.12	More Stringent.
Glycol-cooled ...	Upflow Non-Ducted.	<65	2.39	Add allowance for heat rejection components to total power input.	<65	2.03	2.08	More Stringent.
Glycol-cooled ...	Upflow Non-Ducted.	≥65 and <240	2.04		≥65 and <240	1.77	1.90	More Stringent.
Glycol-cooled ...	Upflow Non-Ducted.	≥240 and <760	1.99		≥240 and <760	1.73	1.81	More Stringent.
Glycol-cooled with fluid economizer.	Upflow Non-Ducted.	<65	2.34		<65	1.99	2.00	More Stringent.
Glycol-cooled with fluid economizer.	Upflow Non-Ducted.	≥65 and <240	1.99		≥65 and <240	1.73	1.82	More Stringent.
Glycol-cooled with fluid economizer.	Upflow Non-Ducted.	≥240 and <760	1.94		≥240 and <760	1.69	1.73	More Stringent.

* Refer to Table II–4 of this document for specific changes in rating conditions.

CRAC Issue 1: DOE requests comment on the methodology and results of the crosswalk analysis.

As indicated by the crosswalk, the standard levels established for CRACs in ASHRAE Standard 90.1–2019 are equivalent to the current Federal standards for 6 equipment classes, and are more stringent than the current Federal standards for all other equipment classes of CRACs. ASHRAE Standard 90.1–2019 also added 66 equipment classes of ceiling-mounted and horizontal-flow CRACs that did not require a crosswalk because there are currently no Federal standards for classes. ASHRAE Standard 90.1–2019 also incorporates shifted capacity bin boundaries for upflow ducted and downflow CRAC equipment classes. DOE's crosswalk analysis indicates that these updated boundaries appropriately reflect the increase in NSCC that results from the changes in test procedure adopted under ASHRAE Standard 90.1–2019 (as discussed in previous sections).

3. Discussion of Comments Received Regarding Amended Standards for CRACs

As mentioned in section I.C of this document, DOE published a description of a crosswalk comparing current Federal standards to the minimum efficiency levels in ASHRAE Standard 90.1–2016 and requested comment on the crosswalk methodology and results in the September 2019 NODA/RFI. 84 FR 48006, 48019 (Sept. 11, 2019). The crosswalk and resulting crosswalked levels of the current Federal standards (*i.e.,* current Federal standards translated to the NSenCOP metric for the purpose of comparison to ASHRAE Standard 90.1 levels) presented in the September 2019 NODA/RFI are the same as in this NODA/RFI because the test conditions specified in AHRI 1360–2016 and AHRI 1360–2017 are the same and the Federal standards were unchanged, so no additional changes to the crosswalk methodology were necessary. DOE received several comments in response to the September 2019 NODA/RFI addressing of DOE's crosswalk methodology and results.

In response to the September 2019 NODA/RFI, several stakeholders commented that DOE should not adopt the efficiency levels in ASHRAE Standard 90.1–2016 and should instead adopt the levels in the Second Public Review Draft of Addendum 'be' to ASHRAE Standard 90.1–2016 (''the second public review draft''),[22] which were subsequently included in ASHRAE Standard 90.1–2019. (AHRI, No. 7 at p. 3; Trane, No. 5 at p. 1) AHRI also commented that the levels in the second public review draft were generated by AHRI, discussed with DOE, and approved by the ASHRAE 90.1 committee to address all backsliding concerns from the ASHRAE Standard 90.1–2016 levels. AHRI further stated that the levels in the second public review draft are all equal to or greater than the DOE crosswalk values from the current Federal standard and would resolve their concerns over DOE's crosswalk findings presented in the September 2019 NODA/RFI. Specifically, AHRI stated that the levels in the second public review draft represent an increase in stringency by 3 to 5 percent from current Federal minimums for most equipment classes. AHRI recommended that DOE adopt new energy efficiency metrics for the national standards and revise capacity demarcations for relevant equipment classes to be published in the 2019 edition of ASHRAE Standard 90.1. (AHRI, No. 7 at pp. 2–4)

Trane commented that there have been no recent technological advancements for CRACs that would merit an increase of stringency in standards relative to the current efficiency levels (which are

[22] The second public review draft was published by ASHRAE in November 2018. The same levels were included in the subsequent ASHRAE Standard 90.1–2019, which did not publish until after the September 2019 NODA/RFI.

denominated in terms of SCOP), and, therefore, that the levels in ASHRAE Standard 90.1–2019 are the ''most stringent across of all the CRAC systems,'' in addition to being technically feasible and economically justified. (Trane, No. 5 at p. 1) The CA IOUs stated that the publication of ASHRAE Standard 90.1–2019 triggered DOE's statutory requirements to adopt those levels or more-stringent standards, and that the levels in ASHRAE Standard 90.1–2019 ensure that CRAC efficiency levels will be maintained or strengthened. (CA IOUs, No. 6 at pp. 2–3)

AHRI and Trane both recommended that DOE analyze and adopt the levels in ASHRAE Standard 90.1–2019 for all CRAC classes rather than amend efficiencies for only a small subset of products. (Trane, No. 5 at p. 2; AHRI, No. 7 at p. 7) Along these lines, AHRI cautioned that a ''no-new-standards'' decision for a subset of CRACs would ''create a serial rulemaking situation for this equipment.'' (AHRI, No. 7 at p. 7) The CA IOUs similarly encouraged DOE to move forward with an expanded energy conservation standards analysis for all equipment subject to the ASHRAE trigger, as well as the covered equipment classes subject to the six-year-lookback provision. CA IOUs also recommended that DOE not make the decision on whether efficiency levels above ASHRAE 90.1 levels can be justified for CRACs until all energy savings and cost-benefit analyses have been completed. (CA IOUs, No. 6 at p. 3)

In response to these comments, DOE notes that this NODA/RFI evaluates the efficiency levels for CRACs included in ASHRAE Standard 90.1–2019. Section III.F of this NODA/RFI includes discussion of DOE's consideration of standards more stringent than the levels in ASHRAE Standard 90.1–2019 for all CRAC equipment classes. Regarding AHRI's concern of a ''serial rulemaking,'' DOE notes that EPCA prescribes specific timing requirements. As discussed, this NODA/RFI evaluates potential standards pursuant to the ASHRAE trigger in EPCA (42 U.S.C. 6313(a)(6)(A)), as well as pursuant to the periodic lookback review required by EPCA (42 U.S.C. 6313(a)(6)(C)). While DOE has some flexibility to consolidate the reviews mandated by the two separate statutory obligations, EPCA prescribes the specific timing requirements.

In general, EPCA requires DOE conduct an evaluation of each class of covered equipment within six years following an amendment to the Federal standards. (42 U.S.C. 6313(a)(6)(C)(i)) For equipment classes evaluated pursuant to the 6-year-lookback and for which DOE determines amended standards are not justified, EPCA requires DOE to conduct a subsequent review within three years of such a determination. (42 U.S.C. 6313(a)(6)(C)(iii)(II)) As DOE has stated, it may decide in appropriate cases to simultaneously conduct an ASHRAE trigger rulemaking and a lookback rulemaking so as to address all classes of an equipment category at the same time (*see* 85 FR 8626, 8645 (Feb. 14, 2020), but DOE is still bound by the timeframes established in EPCA.

4. CRAC Standards Amended Under ASHRAE Standard 90.1–2019

As discussed, DOE has analyzed the updated CRAC efficiency levels in ASHRAE Standard 90.1–2019 for the purpose of satisfying the requirements of 42 U.S.C. 6313(a)(6)(A). DOE identified 48 equipment classes for which the ASHRAE Standard 90.1–2019 efficiency levels are more stringent than current DOE efficiency levels (expressed in NSenCOP, see the crosswalk results presented in section II.A.2 of this document), 6 equipment classes for which the ASHRAE Standard 90.1–2019 efficiency levels are equal to the current DOE efficiency levels, and 66 classes of CRACs for which standards are specified in ASHRAE Standard 90.1–2019 that are not currently subject to DOE's standards (*i.e.,* horizontal-flow and ceiling-mounted classes).

DOE was unable to obtain the market share data needed to disaggregate energy savings for the 6 air-cooled with fluid economizer equipment classes that currently have DOE standards (*i.e.,* upflow ducted, upflow non-ducted, and down-flow) and that DOE identified as having more-stringent standards under ASHRAE Standard 90.1–2019. Additionally, DOE lacked market share data to establish a market baseline for estimating energy savings potential for the 66 horizontal-flow or ceiling-mounted equipment classes. Thus, DOE conducted an energy savings analysis, presented in section III of this document, for 42 of the 48 CRAC classes that currently have DOE standards and that DOE identified as having more-stringent standards under ASHRAE Standard 90.1–2019.

B. Air-Cooled, Three-Phase, Small Commercial Package AC and HP (<65 K) Equipment

DOE's current standards for small three-phase, air-cooled, commercial package AC and HP (<65 K) equipment cover four equipment classes codified at 10 CFR 431.97, including both single package and split systems. The energy efficiency metric as measured under the DOE test procedure listed in Table 1 to 10 CFR 431.96 is SEER for all equipment types in cooling mode and HSPF for heat pumps operating in heating mode.

ASHRAE Standard 90.1–2019 adopted new energy efficiency levels for air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment levels, as well as a metric change. The energy efficiency levels in ASHRAE Standard 90.1–2019 maintain the previous ASHRAE Standard 90.1–2016 levels until January 1, 2023. After this date, the levels for almost all equipment classes in ASHRAE Standard 90.1–2019 will align with Federal standards for air-cooled, single-phase, central air conditioners at 10 CFR 430.32(c)(5), which will also be effective on January 1, 2023. The one exception is the ASHRAE Standard 90.1–2019 energy efficiency level for three-phase space-constrained (S–C) heat pumps, which matches the SEER2 Federal standard for single-phase S–C air conditioners in cooling mode, rather than for single-phase S–C heat pumps in cooling mode. In aligning levels with single-phase central air conditioning standard, the efficiency rating metrics in ASHRAE 90.1–2019 change from SEER to SEER2 and HSPF to HSPF2 effective January 1, 2023.

As discussed, the current DOE test procedure at 10 CFR 431.96 for air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment incorporates by reference ANSI/AHRI 210/240–2008. AHRI has recently published updated industry standards in AHRI 210/240–2017 (published in December 2017), as well as AHRI 210/240–2017 with Addendum 1 (published in April 2019). While ASHRAE Standard 90.1–2016 references AHRI 210/240–2008 with Addendum 1 and 2, ASHRAE Standard 90.1–2019 references AHRI 210/240–2017 for the period prior to January 1, 2023. The reference to AHRI 210/240–2017 does not include Addendum 1, which DOE believes was an oversight.

As part of the October 2018 TP RFI, DOE reviewed AHRI 210/240–2017 (with and without Addendum 1) and initially determined that it is consistent with AHRI 210/240–2008 and would not be expected to impact the measured efficiency of the subject equipment during a representative average use cycle as compared to the 2008 version. 83 FR 49501, 49503 (Oct. 2. 2018). Therefore, DOE determined that the pre-2023 levels in ASHRAE Standard 90.1–2019 based on AHRI 210/240–2017 are consistent with those levels in ASHRAE

Standard 90.1–2016 based on AHRI 210/240–2008 and do not constitute a change in efficiency levels that requires a crosswalk analysis.

For the period beginning January 1, 2023, ASHRAE Standard 90.1–2019 references AHRI 210/240–2023 (to align with updates to minimum efficiency standards that take effect on January 1, 2023). AHRI 210/240–2023, which published in May 2020, adopts the SEER2 and HSPF2 metrics and aligns with the test procedure for single-phase central air conditioners in DOE's test procedure at Appendix M1 to 10 CFR part 430, subpart B.

For the analysis of air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment conducted for this NODA to assess whether the post-2023 levels in ASHRAE Standard 90.1–2019 are a change that triggers DOE review, DOE has applied the crosswalk from SEER to SEER2 (and HSPF to HSPF2 for heat pumps) developed for single-phase products switching to the SEER2 (and HSPF2 for heat pumps) metric. DOE will update the crosswalk as needed based on any separate test procedure rulemaking that DOE may conduct. The crosswalk methodology and results are discussed in the following section.

DOE also notes that ASHRAE Standard 90.1–2019 provides separate levels for small-duct high-velocity (SDHV) and S–C heat pumps, as did ASHRAE Standard 90.1–2013 and ASHRAE Standard 90.1–2016 [23] (using the nomenclature ''through the wall'' rather than space-constrained). In the notice of proposed rule preceding the July 2015 final rule, DOE stated that EPCA does not separate these equipment from other types of small commercial package air-conditioning and heating equipment in its definitions, and, therefore, EPCA's definition of ''small commercial package air conditioning and heating equipment'' includes SDHV and S–C heat pumps. 80 FR 1172, 1184 (Jan. 8, 2015). As the levels for those classes in ASHRAE Standard 90.1–2013 were lower than the Federal standards for the main classes, DOE concluded that it was not required to take action on those classes. *Id.* As DOE has previously determined that the pre-2023 levels for SDHV and S–C, which are equivalent to the ASHRAE Standard 90.1–2013 levels, constitute backsliding in relation to the Federal standards, DOE is now assessing whether the ASHRAE Standard 90.1–2019 post-2023 levels for SDHV and S–C equipment constitute an increase in stringency as compared to the current Federal standards for the broader equipment classes of single-package and split-system air conditioners and heat pumps. DOE notes that there are currently no three-phase SDHV or S–C air conditioners or heat pumps on the market.

1. Crosswalk Methodology and Results

Given the similarity of the changes occurring, DOE based its preliminary crosswalk analysis on the analysis conducted for single-phase residential central air conditioners and heat pumps switching from SEER and HSPF to SEER2 and HSPF2 in the January 6, 2017 Direct Final Rule for Residential Central Air Conditioners and Heat Pumps (January 2017 direct final rule) published in the **Federal Register**. 82 FR 1786, 1857–1858 (Jan. 6, 2017). The January 2017 direct final rule provides the adopted standard levels for single-phase central air conditioners and heat pumps in terms of SEER (and HSPF for heat pumps) and corresponding crosswalked SEER2 (and HSPF2 for heat pumps) values. 82 FR 1786, 1848–1849, Tables V–29 and V–30 (Jan. 6, 2017). For three-phase equipment classes with Federal standards matching SEER and HPSF standards in Table V–29 of the January 2017 direct final rule, DOE used the corresponding SEER2 and HSPF2 value from Table V–30 of the January 2017 direct final rule.

For three-phase equipment classes that did not have matching SEER values in Table V–29 of the January 2017 direct final rule, DOE evaluated the stringency of the ASHRAE Standard 90.1–2019 SEER2 levels relative to the Federal SEER standard by qualitatively assessing how the testing method changes made for single-phase equipment switching from SEER to SEER2 would impact three-phase equipment. For ducted equipment, the difference between Appendix M to 10 CFR part 430 (the pre-2023 test method) and Appendix M1 to 10 CFR part 430 (the post-2023 test method) that impacts measured energy use is an increase in external static pressure. For a given unit, the increase in external static pressure in the post-2023 test method leads to an increased measurement of unit energy consumption, resulting in a lower SEER2 rating (relative to the unit's comparable SEER rating). For SDHV equipment classes, the specified external static pressure is the same in both the pre-2023 and post-2023 test method. Consequently, for a given unit, there is no change between SEER and SEER2 rating.

For three-phase equipment classes that did not have matching HSPF values in Table V–29 of the January 2017 direct final rule, DOE also evaluated the stringency of the ASHRAE Standard 90.1–2019 HSPF2 levels relative to the Federal HSPF standard by qualitatively assessing how the testing method changes made for single-phase equipment switching from HSPF to HSPF2 would impact three-phase equipment. The primary difference between the pre-2023 test method and the post-2023 test method is a change in heating load line. For a given unit, the change in heating load line in the post-2023 test method leads to an increased measurement of unit energy consumption, resulting in a significantly lower HSPF2 rating (relative to the unit's comparable HSPF rating). DOE applied these changes in order to compare the current Federal HSPF to the ASHRAE Standard 90.1–2019 HSPF2.

The results of DOE's preliminary crosswalk are found Table II–6. The last column in the table, labeled ''Crosswalk Comparison,'' indicates whether the ASHRAE Standard 90.1–2019 levels beginning on January 1, 2023, are less stringent, equivalent to, or more stringent than the crosswalked Federal standards, based on DOE's analysis.

TABLE II–6—CROSSWALK RESULTS FOR AIR-COOLED, THREE-PHASE, SMALL COMMERCIAL PACKAGE AC AND HP (<65 K) EQUIPMENT

ASHRAE Standard 90.1–2019 equipment class	Current federal equipment class	Energy efficiency levels in ASHRAE Standard 90.1–2019	Federal energy conservation standard(s)	Cross-walked current federal standard(s)	Crosswalk comparison [1]
Air-cooled Air Conditioner, Three-Phase, Single-Package, <65,000 Btu/h.	Air-cooled Air Conditioner, Three-Phase, Single-Package, <65,000 Btu/h.	14.0 SEER before 1/1/2023; 13.4 SEER2 on and after 1/1/2023.	14.0 SEER	13.4 SEER2	Equivalent.

[23] DOE notes that ASHRAE Standard 90.1–2016 did not amend levels relative to ASHRAE Standard 90.1–2013 for air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment.

TABLE II–6—CROSSWALK RESULTS FOR AIR-COOLED, THREE-PHASE, SMALL COMMERCIAL PACKAGE AC AND HP (<65 K) EQUIPMENT—Continued

ASHRAE Standard 90.1–2019 equipment class	Current federal equipment class	Energy efficiency levels in ASHRAE Standard 90.1–2019	Federal energy conservation standard(s)	Cross-walked current federal standard(s)	Crosswalk comparison [1]
Air-cooled Air Conditioner, Three-Phase, Split-System, <65,000 Btu/h.	Air-cooled Air Conditioner, Three-Phase, Split-System, <65,000 Btu/h.	13.0 SEER before 1/1/2023; 13.4 SEER2 on and after 1/1/2023.	13.0 SEER	<13.0 SEER2 [2]	More Stringent.
Air-cooled Heat Pump, Three-Phase, Single-Package, <65,000 Btu/h.	Air-cooled Heat Pump, Three-Phase, Single-Package, <65,000 Btu/h.	14.0 SEER/8.0 HSPF before 1/1/2023; 13.4 SEER2/6.7 HSPF on and after 1/1/2023.	14.0 SEER; 8.0 HSPF	13.4 SEER2; 6.7 HSPF2	Equivalent.
Air-cooled Heat Pump, Three-Phase, Split-System, <65,000 Btu/h.	Air-cooled Heat Pump, Three-Phase, Split-System, <65,000 Btu/h.	14.0 SEER/8.2 HSPF before 1/1/2023; 14.3 SEER2/7.5 HSPF2 on and after 1/1/2023.	14.0 SEER; 8.2 HSPF	13.4 SEER2; <7.5 HSPF2 [3].	More Stringent.
Space-Constrained, Air-cooled Air Conditioner, Three-Phase, Single-Package, ≤30,000 Btu/h.	Air-cooled Air Conditioner, Three-Phase, Single-Package, <65,000 Btu/h.	12.0 SEER before 1/1/2023; 11.7 SEER2 on and after 1/1/2023.	14.0 SEER	>11.7 SEER2 [4]	Less Stringent.
Space-Constrained, Air-cooled Air Conditioner, Three-Phase, Split-System, ≤30,000 Btu/h.	Air-cooled Air Conditioner, Three-Phase, Split-System, <65,000 Btu/h.	12.0 SEER before 1/1/2023; 11.7 SEER2 on and after 1/1/2023.	13.0 SEER	>11.7 SEER2 [4]	Less Stringent.
Space-Constrained, Air-Cooled Heat Pump, Three-Phase, Single-Package, ≤30,000 Btu/h.	Air-cooled Heat Pump, Three-Phase, Single-Package, <65,000 Btu/h.	12.0 SEER/7.4 HSPF before 1/1/2023; 11.7 SEER2/6.3 HSPF2 on and after 1/1/2023.	14.0 SEER; 8.0 HSPF	>11.7 SEER2; [4] >6.3 HSPF2 [3].	Less Stringent.
Space-Constrained, Air-cooled Heat Pump, Three-Phase, Split-System, ≤30,000 Btu/h.	Air-cooled Heat Pump, Three-Phase, Split-System, <65,000 Btu/h.	12.0 SEER/7.4 HSPF before 1/1/2023; 11.7 SEER2/6.3 HSPF2 on and after 1/1/2023.	14.0 SEER; 8.2 HSPF	>11.7 SEER2; [4] >6.3 HSPF2 [3].	Less Stringent.
Small Duct High Velocity, Air-cooled Air Conditioner, Three-Phase, Split-System, <65,000 Btu/h.	Air-cooled Air Conditioner, Three-Phase, Split-System, <65,000 Btu/h.	12.0 SEER before 1/1/2023; 12.0 SEER2 on and after 1/1/2023.	13.0 SEER	13.0 SEER2	Less Stringent.
Small Duct, High Velocity, Air-cooled Heat Pump, Three-Phase, Split-System, <65,000 Btu/h.	Air-cooled Heat Pump, Three-Phase, Split-System, <65,000 Btu/h.	12.0 SEER/7.2 HSPF before 1/1/2023; 12.0 SEER2/6.1 HSPF2 on and after 1/1/2023.	14.0 SEER; 8.2 HSPF	14.0 SEER2; >6.1 HSPF2 [3].	Less Stringent.

[1] Column indicates whether the ASHRAE Standard 90.1–2019 levels beginning on January 1, 2023, are less stringent, equivalent to, or more stringent than the crosswalked Federal standards.

[2] The Federal SEER standard is lower than the ASHRAE Standard 90.1–2019 SEER2 level indicating that the crosswalked Federal SEER2 standard will also be lower than the ASHRAE Standard 90.1–2019 SEER2 level.

[3] For single-phase equipment, the decrease in HSPF2 compared to the equivalent HSPF is in the range of 1.1–1.3 points. 82 FR 1786, 1848–1849, Tables V–29 and V–30 (Jan. 6, 2017). We expect a similar relationship for three-phase equipment and use this to assess whether the crosswalked Federal standard HSPF2 value for a given HSPF value will be greater or less than the ASHRAE Standard 90.1–2019 HSPF2 level.

[4] For S–C equipment classes, there is a small increase in external static pressure between the testing methods for SEER and SEER2 which, for a given unit, decreases the SEER2 rating slightly compared to the equivalent SEER rating. Therefore, the crosswalked Federal SEER2 is expected to be significantly higher than the ASHRAE Standard 90.1–2019 level of 11.7 SEER2.

Based on DOE's preliminary crosswalk, two equipment classes have ASHRAE Standard 90.1–2019 levels that are more stringent that current Federal standards; two equipment classes are equivalent, and six equipment classes have ASHRAE Standard 90.1–2019 levels less stringent than the Federal standards.

DOE notes that although the post-2023 values for S–C and SDHV equipment are less stringent than current Federal standards for these equipment, DOE still intends to consider these ASHRAE classes separately in this rulemaking as part of the six-year-lookback review.

Three-Phase CAC/HP Issue 1: DOE requests feedback on its methodology for determining crosswalked SEER2 and HSPF2 values for three-phase equipment based on crosswalked values of single-phase residential central air conditioners.

III. Analysis of Standards Amended and Newly Established by ASHRAE Standard 90.1–2019

As required under 42 U.S.C. 6313(a)(6)(A), for CRAC and air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment classes for which ASHRAE Standard 90.1–2019 specifies amended energy efficiency levels that are more stringent than the corresponding Federal energy conservation standards, DOE performed an analysis to determine the energy-savings potential of amending Federal standards to the amended ASHRAE levels as specified in ASHRAE Standard 90.1–2019. DOE's energy savings analysis is limited to equipment classes for which sufficient data are available. However, as discussed in section III.F of this document, DOE has tentatively determined that it lacks clear and convincing evidence that standards more stringent than the amended ASHRAE Standard 90.1 levels for either CRACs or air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment would result in significant additional energy savings because of uncertainty in estimated energy savings resulting from the change in energy efficiency metrics.

The following discussion provides an overview of the energy savings analysis conducted for 42 classes of CRACs and 2 classes of air-cooled, three-phase, small commercial package AC and HP (<65 K) as defined by ASHRAE Standard 90.1–2019, followed by summary results of that analysis. Although ASHRAE Standard 90.1–2019 included levels for horizontal flow and ceiling-mounted CRAC equipment classes (which currently do not have Federal standards), DOE was unable to find market data that could be used to establish a market baseline for these

classes and, thus, estimate energy savings.

In addition to the specific issues identified in the following sections on which DOE requests comment, DOE requests comment on its overall approach and analyses used to evaluate potential standard levels for CRACs and air-cooled, three-phase, small commercial package AC and HP (<65 K).

For the equipment classes where ASHRAE Standard 90.1–2019 specified more-stringent levels than the corresponding Federal energy conservation standard, DOE calculated the potential energy savings to the Nation associated with adopting ASHRAE Standard 90.1–2019 as the difference between a no-new-standards case projection (*i.e.,* without amended standards) and the ASHRAE Standard 90.1–2019 standards-case projection (*i.e.,* with adoption of ASHRAE Standard 90.1–2019 levels).

The national energy savings (NES) refers to cumulative lifetime energy savings for equipment purchased in a 30-year period that differs by equipment (*i.e.,* the compliance date differs by equipment class (*i.e.,* capacity) depending upon whether DOE is acting under the ASHRAE trigger or the 6-year-lookback (*see* 42 U.S.C. 6313(a)(6)(D)). In the standards case, equipment that is more efficient gradually replaces less-efficient equipment over time. This affects the calculation of the potential energy savings, which are a function of the total number of units in use and their efficiencies. Savings depend on annual shipments and equipment lifetime. Inputs to the energy savings analysis are presented in this document.

A. Annual Energy Use

The purpose of the energy use analysis is to assess the energy savings potential of different equipment efficiencies in the building types that utilize the equipment. DOE uses the annual energy consumption and energy-savings potential in the life-cycle cost (LCC) and payback period (PBP) analyses [24] to establish the savings in consumer operating costs at various equipment efficiency levels.

The Federal standard and ASHRAE Standard 90.1–2019 levels are expressed in terms of an efficiency metric or metrics. For each equipment class, this section describes how DOE developed estimates of annual energy consumption at the Federal baseline efficiency level and the ASHRAE Standard 90.1–2019 level. These annual unit energy consumption (UEC) estimates form the basis of the national energy savings estimates discussed in section III.E of this document.

1. Computer Room Air Conditioners

a. Equipment Classes and Analytical Scope

As noted previously in section II.A.4 of this document, DOE has conducted an energy savings analysis for the 42 CRAC classes that currently have both DOE standards and more-stringent standards under ASHRAE Standard 90.1–2019. DOE was unable to identify market data that would allow for disaggregating results for the six air-cooled with fluid economizer equipment classes with ASHRAE Standard 90.1–2019 levels more stringent than current Federal standards. Although ASHRAE Standard 90.1–2019 included levels for horizontal flow and ceiling-mounted equipment classes which currently are not subject to Federal standards, DOE was unable to identify market data that could be used to establish a market baseline for these classes in order to estimate energy savings. Based on information received in response to this document or otherwise identified, DOE may disaggregate these equipment classes in future analyses and analyze them separately.

In the May 2012 final rule, DOE conducted an energy analysis for 15 downflow CRAC equipment classes using a modified outside temperature bin analysis. 77 FR 28928, 28954 (May 16, 2012). For each air-cooled equipment class, DOE calculated fan energy and condensing unit power consumption at each 5 °F outdoor air dry-bulb temperature bin. The condensing unit power in this context included the compressor(s) and condenser fan(s) and/or pump(s) included as part of the equipment rating. For water-cooled and glycol-cooled equipment, the May 2012 final rule analysis first estimated the entering fluid temperature from either an evaporative cooling tower or a dry cooler for water-cooled and for glycol-cooled CRAC equipment, respectively, based on binned weather data. Using these results, DOE then estimated the condensing unit power consumption and adds to this the estimated supply fan power. The sum of the CRAC condensing unit power and the CRAC supply fan power is the estimated average CRAC total power consumption for each temperature bin. Annual estimates of energy use are developed by multiplying the power consumption at each temperature bin by the number of hours in that bin for each climate analyzed. In the May 2012 final rule, DOE then took a population-weighted average over results for 239 different climate locations to derive nationally representative CRAC annual energy use values. DOE assumed energy savings estimates derived for downflow equipment classes would be representative of upflow equipment. 77 FR 28928, 28954 (May 16, 2012). In this document, DOE is using the results from the May 2012 final rule as the basis for the energy savings potential analysis of the CRAC equipment classes analyzed for this document, similar to the methodology used in the September 2019 NODA/RFI.

b. Efficiency Levels

DOE analyzed the energy savings potential of adopting ASHRAE Standard 90.1–2019 levels for CRAC equipment classes that currently have a Federal standard and have an ASHRAE Standard 90.1–2019 standard more stringent than the current Federal standard. For each equipment class, energy savings are measured relative to the baseline (*i.e.,* the current Federal standard for that class).

c. Analysis Method and Annual Energy Use Results

For this analysis, DOE used a similar analysis to that presented in the September 2019 NODA/RFI. To derive UECs for the equipment classes analyzed in this document, DOE started with the adopted standard level UECs (*i.e.,* the current DOE standard) for downflow equipment classes analyzed in the May 2012 final rule. DOE assumed that these UECs correspond to the NSenCOP derived through the crosswalk analysis (*i.e.,* ''Cross-walked Current Federal Standard'' column in Table II–5). DOE determined the UEC for the ASHRAE Standard 90.1–2019 level by dividing the baseline NSenCOP level by the NSenCOP for the ASHRAE Standard 90.1–2019 level and multiplied the resulting percentage by the baseline UEC.

In the May 2012 final rule, DOE assumed energy savings estimates derived for downflow equipment classes would be representative of upflow equipment classes which differed by a fixed 0.11 SCOP. 77 FR 28928, 28954 (May 16, 2012). Because of the fixed 0.11 SCOP difference between upflow and downflow CRAC units in ASHRAE Standard 90.1–2013, DOE determined

[24] The purpose of the LCC and PBP analyses are to analyze the effects of potential amended energy conservation standards on commercial consumers of CRACs and air-cooled, three-phase, small commercial AC and HP (<65 K) by determining how a potential amended standard affects the commercial consumers' operating expenses (usually decreased) and total installed costs (usually increased).

that the per-unit energy savings benefits for corresponding CRACs at higher efficiency levels could be represented using the 15 downflow equipment classes. *Id.* However, in this analysis, the efficiency levels for the upflow non-ducted equipment classes do not differ from the downflow equipment class by a fixed amount. For this document, DOE assumed that the fractional increase/decrease in NSenCOP between upflow and downflow units corresponds to a proportional decrease/increase in the baseline UEC within a given equipment class grouping of condenser system and capacity.

In response to the September 2019 NODA/RFI, AHRI stated that DOE's proposed approach to determine the UEC of upflow units using the fractional increase or decrease in NSenCOP relative to the baseline downflow unit in a given equipment class grouping of condenser system and capacity was reasonable and an acceptable method to use. (AHRI, No. 7 at p. 5) Trane stated that return air conditions are becoming more likely to approach AHRI 1360 class 4 levels in response to increased use of High-Performance Computing models. At higher return temperatures, CRACs can avoid latent cooling and be more efficient. (Trane, No. 5 at p. 2) However, Trane stated that using the UECs derived for the 2012 rule might be the most workable option for evaluating the impact of proposed standards. (Trane, No. 5 at p. 2) After consideration of these comments, DOE has tentatively decided to maintain the same methodology in this document.

CRAC Issue 2: DOE seeks comment on its energy-use analysis methodology.

Table III–1 shows UEC estimates for the equipment classes triggered by ASHRAE Standard 90.1–2019 (*i.e.,* equipment classes for which the ASHRAE Standard 90.1–2019 energy efficiency level is more stringent than the current applicable Federal standard).

TABLE III–1—NATIONAL UEC ESTIMATES (kWh/Year) FOR CRAC SYSTEMS [1]

Condenser system type	Airflow configuration	Current net sensible cooling capacity	Current federal standard		ASHRAE Standard 90.1–2019	
			NSenCOP	UEC (kwh)	NSenCOP	UEC (kwh)
Air-cooled	Downflow	<65,000 Btu/h	2.62	27,411	2.70	26,599
		≥65,000 Btu/h and <240,000 Btu/h.	2.50	102,762	2.58	99,575
		≥240,000 Btu/h and <760,000 Btu/h.	2.26	246,011	2.36	235,587
	Upflow, ducted	<65,000 Btu/h	2.65	27,100	2.67	26,897
		≥240,000 Btu/h and <760,000 Btu/h.	2.26	247,104	2.33	238,620
	Upflow, non-ducted	<65,000 Btu/h	2.09	34,362	2.16	33,248
		≥65,000 Btu/h and <240,000 Btu/h.	1.99	129,097	2.04	125,933
		≥240,000 Btu/h and <760,000 Btu/h.	1.79	310,606	1.89	294,172
Water-cooled	Downflow	<65,000 Btu/h	2.73	24,726	2.82	23,850
		≥65,000 Btu/h and <240,000 Btu/h.	2.63	92,123	2.73	88,749
		≥240,000 Btu/h and <760,000 Btu/h.	2.54	208,727	2.67	198,564
	Upflow, ducted	<65,000 Btu/h	2.77	24,280	2.79	24,106
		≥240,000 Btu/h and <760,000 Btu/h.	2.56	207,096	2.64	200,821
	Upflow, non-ducted	<65,000 Btu/h	2.25	29,891	2.43	27,677
		≥65,000 Btu/h and <240,000 Btu/h.	2.17	112,169	2.32	104,433
		≥240,000 Btu/h and <760,000 Btu/h.	2.09	254,888	2.20	240,985
Water-cooled with fluid economizer.	Downflow	<65,000 Btu/h	2.68	15,443	2.77	14,885
		≥65,000 Btu/h and <240,000 Btu/h.	2.59	57,537	2.68	55,390
		≥240,000 Btu/h and <760,000 Btu/h.	2.50	129,787	2.61	123,819
	Upflow, ducted	<65,000 Btu/h	2.72	15,159	2.74	15,048
		≥240,000 Btu/h and <760,000 Btu/h.	2.51	128,753	2.58	125,259
	Upflow, non-ducted	<65,000 Btu/h	2.21	18,657	2.35	17,546
		≥65,000 Btu/h and <240,000 Btu/h.	2.13	70,022	2.24	66,271
		≥240,000 Btu/h and <760,000 Btu/h.	2.05	158,416	2.12	152,438
Glycol-cooled	Downflow	<65,000 Btu/h	2.43	24,671	2.56	23,419
		≥65,000 Btu/h and <240,000 Btu/h.	2.15	101,844	2.24	97,297
		≥240,000 Btu/h and <760,000 Btu/h.	2.11	227,098	2.21	215,794
	Upflow, ducted	<65,000 Btu/h	2.47	24,272	2.53	23,696
		≥65,000 Btu/h and <240,000 Btu/h.	2.19	99,975	2.21	98,618
		≥240,000 Btu/h and <760,000 Btu/h.	2.11	226,021	2.18	218,764

TABLE III–1—NATIONAL UEC ESTIMATES (kWh/Year) FOR CRAC SYSTEMS [1]—Continued

Condenser system type	Airflow configuration	Current net sensible cooling capacity	Current federal standard		ASHRAE Standard 90.1–2019	
			NSenCOP	UEC (kwh)	NSenCOP	UEC (kwh)
	Upflow, non-ducted	<65,000 Btu/h	2.03	29,679	2.08	28,823
		≥65,000 Btu/h and <240,000 Btu/h.	1.77	123,833	1.90	114,708
		≥240,000 Btu/h and <760,000 Btu/h.	1.73	275,668	1.81	263,483
Glycol-cooled with fluid economizer.	Downflow	<65,000 Btu/h	2.39	19,813	2.51	18,866
		≥65,000 Btu/h and <240,000 Btu/h.	2.11	81,668	2.19	78,312
		≥240,000 Btu/h and <760,000 Btu/h.	2.06	182,034	2.15	174,414
	Upflow, ducted	<65,000 Btu/h	2.43	19,567	2.48	19,094
		≥65,000 Btu/h and <240,000 Btu/h.	2.14	80,142	2.16	79,400
		≥240,000 Btu/h and <760,000 Btu/h.	2.07	182,034	2.12	176,882
	Upflow, non-ducted	<65,000 Btu/h	1.99	23,796	2.00	23,677
		≥65,000 Btu/h and <240,000 Btu/h.	1.73	99,135	1.82	94,232
		≥240,000 Btu/h and <760,000 Btu/h.	1.69	221,888	1.73	216,757

[1] The air-cooled, upflow ducted, >65,000 Btu/h and <240,000 Btu/h; water-cooled, upflow ducted, >65,000 Btu/h and <240,000 Btu/h; and water-cooled with fluid economizer, upflow ducted, >65,000 Btu/h and <240,000 Btu/h equipment classes are not included in this table, as the ASHRAE Standard 90.1–2019 levels for these equipment classes are equivalent to the current Federal standard.

2. Air-Cooled, Three-Phase, Small Commercial Package AC and HP (<65 K) Equipment

a. Equipment Classes and Analytical Scope

In response to the ASHRAE trigger at 42 U.S.C. 6313(a)(6)(A), DOE conducted an analysis of energy savings potential for two equipment classes of air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment: (1) Air-cooled, three-phase, split-system air conditioners less than 65,000 Btu/h, and (2) air-cooled, three-phase, split-system heat pumps less than 65,000 Btu/h.

b. Efficiency Levels

DOE analyzed the energy savings potential of adopting the post-2023 ASHRAE Standard 90.1–2019 levels for air-cooled, three-phase, small commercial package AC and HP (<65 K) classes that currently have a Federal standard and have an ASHRAE Standard 90.1–2019 standard more stringent than current Federal standards. For each equipment class, energy savings are measured relative to the baseline (*i.e.,* current Federal standard for that class).

c. Annual Energy Use Results

The energy use analysis provides estimates of the annual energy consumption of air-cooled, three-phase, small commercial package AC and HP (<65 K), at the current Federal baseline and at the ASHRAE Standard 90.1–2019 level. To estimate the savings of the ASHRAE Standard 90.1–2019 level relative to the current Federal baseline, DOE used the cooling UECs that were developed for the same kind of split systems in the July 2015 final rule. 80 FR 42614, 42625 (July 17, 2015). The UECs in the July 2015 final rule came from the national impact analysis of a direct final rule for residential central air conditioners and heat pumps published June 27, 2011 (76 FR 37408) (June 2011 DFR), specifically the UECs for residential split-system equipment that were used in commercial buildings. (EERE–2011–BT–STD–0011–0011) In the July 2015 final rule, DOE accounted for variability by climate and building type by using estimates of the Full Load Equivalent Operating Hours (FLEOH) for cooling and heating equipment from a Pacific Northwest National Laboratory report.[25] In the July 2015 final rule, DOE reviewed the heating loads that were used to determine heating energy use for the June 2011 DFR and determined that the heating loads were small (less than 500 kWh/year) and, therefore, did not include any energy savings due to the increase in HSPF for this equipment in the July 2015 final rule. 80 FR 42614, 42625 (July 17, 2015). DOE maintained that approach to develop UECs in its current analysis for this rulemaking. The UECs for split-system air conditioners and split-system heat pumps are shown in Table III–2.

[25] See Appendix D of the 2000 Screening Analysis for EPACT-Covered Commercial HVAC and Water-Heating Equipment. (EERE–2006–STD–0098–0015).

TABLE III–2—UNIT ENERGY CONSUMPTION OF SPLIT-SYSTEM AIR CONDITIONERS AND HEAT PUMPS

Efficiency Level	Three-phase, air-cooled split-system air conditioners <65,000 Btu/h	Three-phase, air-cooled split-system heat pumps <65,000 Btu/h
	Annual Energy Use (kWh)	
Federal Baseline	2,701	2,660
ASHRAE Standard 90.1–2019	2614	2,502

Three-Phase CAC/HP Issue 2: DOE requests comment on its approach to estimate the energy use of air-cooled, three-phase, small commercial package AC and HP (<65 K).

B. Shipments

DOE uses shipment projections by equipment class to calculate the national impacts of standards on energy consumption, as well as net present value and future manufacturer cash flows. DOE shipments projections typically are based on available historical data broken out by equipment. Current sales estimates allow for a more accurate model that captures recent trends in the market.

1. Computer Room Air Conditioners

In the September 2019 NODA/RFI, DOE performed a ''bottom-up'' calculation to estimate CRAC shipments based on the cooling demand required from CRAC-cooled data centers. Where possible, DOE has incorporated data and information received in comments to that document to better inform its analysis. DOE's approach in this document estimates total annual shipments for the entire CRAC market and then uses market share data to estimate shipments for ASHRAE Standard 90.1–2019 triggered equipment classes.

DOE's shipments model first estimates the installed CRAC base stock by equipment size from information on data centers in the 2012 Commercial Business Energy Consumption Survey (CBECS).[26] CBECS identifies buildings that contain data centers, the number of servers in the data center, and associated square footage. CBECS does not specifically inquire about the presence of CRACs.

In the September 2019 NODA/RFI, DOE assumed any building identified as having a data center in CBECS 2012 that did not have a central chiller or district chilled water system would be serviced by a CRAC. DOE assumed that a building with a central chiller or district chilled water system would use a computer room air handler (CRAH) and not a CRAC for its data center cooling, and, thus, such building was not included in the analysis.[27] Additionally, DOE assumed buildings that contained 10 or more servers (but did not explicitly identify as having a data center) and did not have a central chiller or district chilled water system would also be serviced by CRAC units.

In response to the September 2019 NODA/RFI, DOE received a number of comments on DOE's assumptions for identifying data centers that would be serviced by CRACs. AHRI stated that DOE's methodology for using server count to identify data centers could be improved by using either counts by ''rack'' or estimates for ''kW per rack.''[28] (AHRI, No. 7 at p. 5) Trane recommended using the definitions of ''computer room'' in ASHRAE Standard 90.1, the International Energy Conservation Code (IECC), and the CFR, rather than use a threshold of 10 servers, to determine whether CRACs should be used for cooling. (Trane, No. 5 at p. 2) Regarding DOE's assumption that buildings with a central chiller or district water system would not utilize a CRAC, AHRI stated that edge computing centers[29] may use a chilled water system that may also use a CRAC for cooling. (AHRI, No. 7 at pgs. 6–7)

For this RFI/NODA, DOE adjusted its assumptions for identifying data centers in CBECS 2012 that would utilize CRACs. DOE is unable to use rack counts or ''kW per rack'' to identify data centers in CBECS 2012 because this information is not recorded in the survey. CBECS 2012 provides a variable as to whether or not the building has a data center. In this RFI/NODA, DOE assumed that any building with a data center, regardless of the building's main cooling system, would use a CRAC, in order to account for the use of CRACs in edge computing centers and to align with the ASHRAE Standard 90.1 definition of a ''computer room''.

CRAC Issue 3: DOE seeks comment on its methodology for identifying data centers within CBECS 2012.

After identifying buildings with data centers in CBECS 2012, DOE then estimated the CRAC cooling capacity required by estimating the total heat generated from servers, networks, and storage equipment within data centers. In the September 2019 NODA/RFI, DOE used estimates from the Lawrence Berkeley National Laboratory (LBNL) data center report to estimate average power consumption of volume servers, network equipment, and storage equipment.[30] Servers that were not in a data center were assumed to only have network equipment, while servers in a data center had both network and storage equipment, and thus a higher power draw.[31] DOE assumed 100 percent of the power draw was converted into heat exhaust that would need to be removed by a CRAC.

In comments in the September 2019 NODA/RFI, AHRI recommended using ASHRAE Datacom Series Book 2, ''IT Equipment Power Trends,'' third edition, published in 2018, which shows power consumption trends for all types of IT equipment through 2026. AHRI noted that that source is what the industry uses to estimate server power, expectations of future server stock, and energy use in many different types of data centers. (AHRI, No. 7 at p. 6) Trane also suggested using the same source for projecting future server power consumption. (Trane, No. 5 at p. 2)

In this analysis, DOE used estimates for server power draw for different IT applications matched to CBECS building type based on ASHRAE Datacom Series Book 2, ''IT Equipment Power Trends.''[32] For volume servers used in office buildings, DOE assumed a typical power consumption of 575 W based on the typical heat load for a business analytics 2U server.[33] For volume servers used in buildings identified as laboratories, DOE used a typical power consumption of 1150 W based on the typical heat load for a scientific computing 2U server. DOE used a multiplier of 1.265 to account for the heating load due to network devices connected to servers within the data center based on the LBNL data center report.[34] The LBNL data center report assigned mid-range and high-end servers, which have estimated power consumptions of 2 kW and 12 kW, respectively, to localized, mid-tier, and high-end data centers. To account for the higher cooling needs of these servers with high power consumption, DOE assumed that 1 percent of servers in CBECS 2012 were high end, and that 6 percent were mid-range. The LBNL data center report did not provide estimates of the high-end and mid-range server stock; however, it did provide estimates of total electricity consumption by server class. The high-end and mid-range classes represent about 30 percent of electricity consumption (when

[26] U.S. Department of Energy—Energy Information Administration, 2012 CBECS Survey Data (Last accessed March 9, 2020) (Available at: *https://www.eia.gov/consumption/commercial/data/2012/*). This is the most recent release of CBECS.

[27] A ''CRAH'' is a specialized air handling unit designed for use in data centers with an internal cooling coil supported by centralized chilled water system. In contrast, CRACs contain a cooling coil filled with a refrigerant.

[28] Server racks are racks designed to hold and organize multiple servers and supporting information technology (IT) equipment. The amount of energy produced by a server rack can be measured in terms of kW per rack.

[29] ''Edge'' data centers are small-scale data centers built closer to the end user, thereby reducing the time it takes for a server to respond to a user's request.

[30] Shehabi, A., Smith, S.J., Horner, N., Azevedo, I., Brown, R., Koomey, J., Masanet, E., Sartor, D., Herrlin, M. and Lintner, W., *United States data center energy usage report* (2016), Lawrence Berkeley National Laboratory, LBNL–1005775 (Available at: *https://datacenters.lbl.gov/sites/all/files/DataCenterEnergyReport2016_0.pdf*) (Last accessed June 6, 2019).

[31] *Id.*

[32] ASHRAE, *IT Equipment Power Trends,* Third Edition, ASHRAE Datacom Series: Book 2 (2018).

[33] In Table 4.4 of the ASHRAE *IT Equipment Power Trends* book, an example of the server heat by workload is given. 575 W represents the workloads for analytics, storage, and visualization and audio. 550 Watts is the workload for business processing. In non-scientific buildings, these workloads are likely the most common. Therefore, DOE used 575 W for the servers in most data centers.

[34] Shehabi, A., Smith, S.J., Horner, N., Azevedo, I., Brown, R., Koomey, J., Masanet, E., Sartor, D., Herrlin, M. and Lintner, W., *United States data center energy usage report* (2016), Lawrence Berkeley National Laboratory, LBNL–1005775 (Available at: *https://datacenters.lbl.gov/sites/all/files/DataCenterEnergyReport2016_0.pdf)* (Last accessed June 6, 2019).

removing unbranded servers, which are used in hyperscale data centers that are not considered in this report as they do not used CRACs). By assigning 1 percent of the servers in CBECS to high-end and 6 percent to mid-range, the total CRAC cooling required by those servers is approximately 30 percent of the total calculated for all CBECS data centers.

In the September 2019 NODA/RFI, DOE calculated the cooling load for each data center by multiplying the total server power draw by the number of servers in each CBECS-identified building and then applying an oversize factor of 1.3. Research has shown that oversizing of the cooling load gives the data center operator the flexibility to add more servers (and thus more heat) without having to increase the size of the cooling system.[35] 84 FR 48006, 48028 (Sept. 11, 2019).

In response to the September 2019 NODA/RFI, Trane stated that redundant or oversized units, if used, would be closely tied to specific needs of the system they are cooling, so the commenter does not recommend using broad assumptions for CRAC oversizing. (Trane, No. 5 at p. 2) AHRI stated that DOE is likely overestimating energy use by using an oversize factor and recommended DOE not oversize equipment in its energy use analysis. (AHRI, No. 7 at p. 5) Based on information gathered by Red Car Analytics, the CA IOUs stated that oversizing factors of 20 to 30 percent are common for CRACs. (CA IOUs, No. 6 at p. 3).

In response, DOE continues to believe that oversizing is occurring in data center settings, based upon the available literature and the comment of the CA IOUs. However, DOE is taking account of other commenters' suggestions that the Department's previous oversize factor of 1.3 may have been too high. Accordingly, for this analysis, based on AHRI's and Trane's comments, DOE has adjusted the oversizing factor to 1.2, consistent with the lower estimate provided by the CA IOUs.

CRAC Issue 4: DOE requests comment on its server power consumption estimates and any information or data on expectations of future server stock and energy use in small data centers.

One ton of cooling can remove 3.5 kW of heat from a space.[36] All data centers without central chillers were assumed to have CRACs, and the cooling capacity of the CRAC units were based on the three representative capacities analyzed in the May 2012 final rule. 77 FR 28928, 28954 (May 16, 2012). For CRACs with a cooling capacity of less than 65,000 Btu/h, a 3-ton unit was assigned as the representative capacity; cooling capacities from 65,000 Btu/h to 240,000 Btu/h were assigned a representative capacity of 11 tons, and air conditioners greater than or equal to 240,000 Btu/h and less than 760,000 Btu/h were assigned a 24-ton unit.

The final part of the stock methodology is estimating the redundancy requirements of the data center which reduces the per-unit energy use and increases the total estimated shipment of CRACs. Redundancy varies significantly across data centers, ranging from having one extra CRAC unit (N + 1 redundancy) to having complete redundancy (2N redundancy).[37]

In the September 2019 NODA/RFI, DOE assigned redundancy depending on the data center square footage provided in CBECS 2012. Categories 1–4 (data centers under 10,000 square feet) were given N + 1 redundancy; category 5 (greater than 10,000+ sq. ft.) was assigned 2N redundancy. DOE assumed that servers that were not in a data center do not have cooling redundancy. 84 FR 48006, 48028 (Sept. 11, 2019).

In response to the September 2019 NODA/RFI, AHRI stated that redundancy can be N + 1 or 2N, but argued that it will not be operational all the time. (AHRI, No. 7 at p. 5) Trane states that the level of redundancy is dependent on the size and need of the data center. (Trane, No. 5 at p. 2) The CA IOUs recommended DOE base the breakout between N + 1 and 2N redundancy on total load (with a cut-off of 50 cooling tons) and load density (with a cut-off of 100 watts/square foot (ft^2)). The CA IOUs suggested that load densities above this threshold would have higher redundancy. (CA IOUs, No. 6 at pp. 3–4).

Through a confidential data submission, AHRI provided DOE with a CRAC shipments time series from 2012–2018 and market shares broken out by the 30 Federal equipment classes. Accordingly, for this analysis, DOE calibrated the stock of CRACs in CBECS 2012 to an amount that would be equal to the number of 2012 shipments multiplied by the average lifetime of a CRAC (*i.e.,* 15 years). In this model, DOE assumed an N + 1 redundancy in this NODA/RFI for any data center that is larger than 1,501 square feet and has a cooling load that requires a CRAC that is larger than 65,000 Btu/h. All data centers with a cooling load less than 65,000 Btu/h were assigned one CRAC without redundancy. For buildings that had more than 20 servers but did not identify as having a data center in CBECS, a CRAC without redundancy was used, regardless of the cooling load. As DOE was able to calibrate shipments without using 2N redundancy, DOE did not consider those levels of redundancy in this analysis. As in the May 2012 final rule, DOE assumed the average sensible cooling load on a CRAC unit would be 65 percent of the unit's sensible capacity, factoring in operation of redundant CRAC units, oversizing, and the diversity in server loads.

In the September 2019 NODA/RFI, DOE estimated future CRAC shipments in the no-new standards case (*i.e.,* shipments in the absence of an amended standard) by estimating future cooling demand for CRAC-cooled data centers using projected trends in data center growth. DOE used two variables to change the future server stock: (1) A 10-percent reduction in the number of servers in small data centers in 2050 (the final year of the shipments period for that analysis) and (2) a doubling of the power per server by 2050. DOE then calculated the stock using the same approach used to calculate stock in 2012. DOE then used model counts from the CCMS database to determine market shares by equipment class. 84 FR 48006, 48028 (Sept. 11, 2019).

AHRI commented that DOE's total shipments estimates for 2012 were reasonable. (AHRI, No.7 at p. 6) However, AHRI argued that DOE estimates based on model counts in the CCMS database significantly overestimated shipments of the water-cooled and glycol-cooled equipment classes. (AHRI, No 7 at p. 3).

In this analysis, DOE used the confidential shipments data provided by AHRI to calibrate its shipment model to produce a revised breakdown by equipment class. DOE then used a stock turnover model to project shipments over the shipments analysis period assuming a constant annual growth in stock, calibrated using confidential shipments data provided by AHRI,

[35] Rasmussen, N., *Calculating Total Cooling Requirements for Data Centers—White paper 25. Schneider Electric* (Available at: *https://www.apcdistributors.com/white-papers/Cooling/WP-25%20Calculating%20Total%20Cooling%20Requirements%20for%20Data%20Centers.pdf*) (Last accessed June 6, 2019).

[36] Rasmussen, N., *Calculating Total Cooling Requirements for Data Centers—White paper 25. Schneider Electric* (Available at: *https://www.apcdistributors.com/white-papers/Cooling/WP-25%20Calculating%20Total%20Cooling%20Requirements%20for%20Data%20Centers.pdf*) (Last accessed June 6, 2019).

[37] Shehabi, A., Smith, S.J., Horner, N., Azevedo, I., Brown, R., Koomey, J., Masanet, E., Sartor, D., Herrlin, M. and Lintner, W., *United States data center energy usage report* (2016) Lawrence Berkeley National Laboratory, LBNL–1005775 (Available at: *https://datacenters.lbl.gov/sites/all/files/DataCenterEnergyReport2016_0.pdf*) (Last accessed June 6, 2019).

within a given cooling capacity equipment size. Total shipments are projected to grow slightly over the analysis period as shown in Table III–3.

TABLE III–3—ESTIMATED CRAC SHIPMENTS BY SCOP NET SENSIBLE COOLING CAPACITY

	<65,000 Btu/h	≥65,000 Btu/h and <240,000 Btu/h	≥240,000 Btu/h and <760,000 Btu/h	Total shipments
2020 Shipments	3,208	2,132	3,190	8,530
2052 Shipments	2,634	3,650	3,178	9,462

The AHRI market share data provided to DOE was broken out by the 30 currently defined Federal equipment classes. DOE assumed upflow market share would be evenly split between the upflow ducted and upflow non-ducted equipment classes. As the AHRI data does not include market share for horizontal-flow, ceiling-mounted, and air-cooled with fluid economizer CRAC equipment classes, DOE was unable to disaggregate savings for these classes.

CRAC Issue 5: DOE requests shipments data on horizontal-flow, ceiling-mounted, and air-cooled with fluid economizer CRAC equipment classes.

2. Air-Cooled, Three-Phase, Small Commercial Package AC and HP (<65 K) Equipment

DOE based shipments estimates for air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment on the model developed for the July 2015 final rule. 80 FR 42614, 42629–42630 (July 17, 2015). As explained more fully in that document, shipments projections in the July 2015 final rule relied on four data sources: A 1999 estimate of shipments from the 2000 Screening Analysis for EPACT-Covered Commercial HVAC and Water-Heating Equipment (EERE–2006–STD–0098–0015), data from the U.S. Census Bureau for central AC and HP shipments (for both single-phase and three-phase equipment),[38] data from AHRI[39] (for both single-phase and three-phase equipment), and commercial floor space projections from the 2014 *Annual Energy Outlook* (*AEO 2014*).[40] The shipments model began with the 1999 estimates and projected shipments within 2000–2010 using the year-over-year growth rate from U.S. Census data. Shipments in 2011 shipments were estimated using the AHRI shipments data. From 2012 through 2049 (the end of the analysis period) shipments were based on the growth rate of commercial floor space from *AEO 2014.*

In the current analysis, DOE updated the shipments model in two ways: (1) The shipments estimates from 2012–2018 were updated using the growth rates from the most recent AHRI data,[41] and (2) the projections from 2019 through 2054 were based on the commercial floor space projections from *AEO 2020.*[42] The shipments estimates for the compliance year, end year, and select years in-between can be found in Table III–4.

TABLE III–4—SHIPMENTS OF SPLIT-SYSTEM, AIR-COOLED, THREE-PHASE, AIR CONDITIONERS AND HEAT PUMPS <65,000 BTU/H

Year	AC	HP
2025	116,300	35,045
2030	122,300	36,853
2035	128,503	38,721
2040	134,418	40,504
2045	140,464	42,326
2050	146,648	44,189
2054	151,704	45,713

Three-Phase CAC/HP Issue 3: DOE requests comment on it approach to estimate the shipments of air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment.

C. No-New-Standards-Case Efficiency Distribution

The no-new-standards case efficiency distribution is used to establish the market share of each efficiency level in the case where there is no new or amended standard. DOE is unaware of available market data that reports CRAC efficiency in terms of NSenCOP that can be used to determine the no-new-standards case efficiency distribution. For this analysis, DOE relied on DOE's Compliance Certification Database for CRACs which reports efficiency in terms of SCOP. DOE applied the crosswalk methodology discussed in section II.A.1 of this document to translate each model's reported SCOP into NSenCOP.

DOE estimated the no-new-standards case efficiency distribution for each CRAC equipment class using model counts from DOE's Compliance Certification Database.[43] DOE calculated the fraction of models that are above the current Federal baseline and below the ASHRAE Standard 90.1–2019 level and assigned this to the Federal baseline. All models that are at or above that ASHRAE Standard 90.1–2019 are assigned to the ASHRAE level. The no-new-standard case distribution for CRACs can be found in Table III–5.

[38] U.S. Census Bureau, Current Industrial Reports for Refrigeration, Air Conditioning, and Warm Air Heating Equipment, MA333M (Available at: *http://www.census.gov/manufacturing/cir/historical_data/ma333m/index.html*).

[39] AHRI, HVACR & Water Heating Industry Statistical Profile (2012) (Available at: *http://www.ari.org/site/883/Resources/Statistics/AHRIIndustry-Statistical-Profile*). See also AHRI Monthly Shipments: *http://www.ari.org/site/498/Resources/Statistics/Monthly-Shipments;* especially December 2013 release: *http://www.ari.org/App_Content/ahri/files/Statistics/Monthly%20Shipments/2013/December2013.pdf;* May 2014 release: *http://www.ari.org/App_Content/ahri/files/Statistics/Monthly%20Shipments/2014/May2014.pdf.*

[40] 2014 *Annual Energy Outlook,* Energy Information Administration, Commercial Sector Key Indicators (Available at: *https://www.eia.gov/outlooks/aeo/data/browser/#/?id=5-AEO2014&cases=ref2014&region=0-0*).

[41] AHRI Historical Data: Central Air Conditioners and Heat Pumps (Available at: *http://ahrinet.org/Resources/Statistics/Historical-Data/Central-Air-Conditioners-and-Air-Source-Heat-Pumps*) (Last accessed July 9, 2020).

[42] 2020 *Annual Energy Outlook,* Energy Information Administration, Commercial Sector Key Indicators (Available at: *https://www.eia.gov/outlooks/aeo/data/browser/#/?id=5-AEO2020&cases=ref2020&sourcekey=0*).

[43] Available at: *https://www.regulations.doe.gov/certification-data/CCMS-4-Air_Conditioners_and_Heat_Pumps_-_Computer_Room_Air_Conditioners.html#q=Product_Group_s%3A%22Air%20Conditioners%20and%20Heat%20Pumps%20-%20Computer%20Room%20Air%20Conditioners%22.*

TABLE III–5—NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTION FOR CRACS [1]

Condenser system type	Airflow configuration	Current net sensible cooling capacity	Federal baseline (%)	ASHRAE 90.1–2019 level (%)
Air-cooled	Downflow	<65,000 Btu/h	2	98
		≥65,000 Btu/h and <240,000 Btu/h	22	78
		≥240,000 Btu/h and <760,000 Btu/h	20	80
	Upflow, ducted	<65,000 Btu/h	0	100
		≥240,000 Btu/h and <760,000 Btu/h	4	96
	Upflow, non-ducted	<65,000 Btu/h	4	96
		≥65,000 Btu/h and <240,000 Btu/h	11	89
		≥240,000 Btu/h and <760,000 Btu/h	23	77
Water-cooled	Downflow	<65,000 Btu/h	11	89
		≥65,000 Btu/h and <240,000 Btu/h	15	85
		≥240,000 Btu/h and <760,000 Btu/h	24	76
	Upflow, ducted	<65,000 Btu/h	0	100
		≥240,000 Btu/h and <760,000 Btu/h	13	87
	Upflow, non-ducted	<65,000 Btu/h	11	89
		≥65,000 Btu/h and <240,000 Btu/h	21	79
		≥240,000 Btu/h and <760,000 Btu/h	27	73
Water-cooled with fluid economizer	Downflow	<65,000 Btu/h	2	98
		≥65,000 Btu/h and <240,000 Btu/h	13	87
		≥240,000 Btu/h and <760,000 Btu/h	38	62
	Upflow, ducted	<65,000 Btu/h	2	98
		≥240,000 Btu/h and <760,000 Btu/h	13	87
	Upflow, non-ducted	<65,000 Btu/h	8	92
		≥65,000 Btu/h and <240,000 Btu/h	16	84
		≥240,000 Btu/h and <760,000 Btu/h	20	80
Glycol-cooled	Downflow	<65,000 Btu/h	57	43
		≥65,000 Btu/h and <240,000 Btu/h	31	69
		≥240,000 Btu/h and <760,000 Btu/h	36	64
	Upflow, ducted	<65,000 Btu/h	20	80
		≥65,000 Btu/h and <240,000 Btu/h	6	94
		≥240,000 Btu/h and <760,000 Btu/h	30	70
	Upflow, non-ducted	<65,000 Btu/h	20	80
		≥65,000 Btu/h and <240,000 Btu/h	38	62
		≥240,000 Btu/h and <760,000 Btu/h	30	70
Glycol-cooled with fluid economizer	Downflow	<65,000 Btu/h	57	43
		≥65,000 Btu/h and <240,000 Btu/h	31	69
		≥240,000 Btu/h and <760,000 Btu/h	31	69
	Upflow, ducted	<65,000 Btu/h	10	90
		≥65,000 Btu/h and <240,000 Btu/h	8	92
		≥240,000 Btu/h and <760,000 Btu/h	33	67
	Upflow, non-ducted	<65,000 Btu/h	2	98
		≥65,000 Btu/h and <240,000 Btu/h	30	70
		≥240,000 Btu/h and <760,000 Btu/h	27	73

[1] The air-cooled, upflow ducted, >65,000 Btu/h and <240,000 Btu/h; water-cooled, upflow ducted, >65,000 Btu/h and <240,000 Btu/h; and water-cooled with fluid economizer, upflow ducted, >65,000 Btu/h and <240,000 Btu/h equipment classes are not included in this table, as the ASHRAE Standard 90.1–2019 levels for these equipment classes are equivalent to the current Federal standard.

CRAC Issue 6: DOE requests efficiency data for CRACs in terms of NSenCOP that can be used to estimate the no-new-standards case efficiency distribution.

For air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment, DOE estimated the market share of equipment at the current Federal baseline and the ASHRAE efficiency level using DOE's Compliance Certification Database. Table III–6 and Table III–7 show the model counts and their percentage by the Federal or the ASHRAE Standard 90.1–2019 efficiency level. The fraction of the market that meets or exceeds the ASHRAE Standard 90.1–2019 level is attributed to the ASHRAE Standard 90.1–2019 level.

TABLE III–6—NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTION FOR SPLIT-SYSTEM AIR CONDITIONERS

EL	Model count	% by EL
Federal Baseline	10,268	23
ASHRAE 90.1–2019	34,580	77

TABLE III–7—NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTION FOR SPLIT-SYSTEM HEAT PUMPS

EL	Model count	% by EL
Federal Baseline	6,438	57

TABLE III–7—NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTION FOR SPLIT-SYSTEM HEAT PUMPS—Continued

EL	Model count	% by EL
ASHRAE 90.1–2019	4,858	43

For assessing the energy savings potential of adopting ASHRAE Standard 90.1–2019 levels, DOE assumed shipments at the Federal baseline efficiency would most likely roll up to the ASHRAE Standard 90.1–2019 level.

CRAC Issue 7: DOE seeks input on its determination of the no-new-standards case distribution of efficiencies for CRACs.

Three-Phase CAC/HP Issue 4: DOE seeks input on its determination of the no-new-standards case distribution of efficiencies for air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment.

D. Other Analytical Inputs

1. Equipment Lifetime

DOE defines ''equipment lifetime'' as the age at which a unit is retired from service. For the September 2019 NODA/RFI, DOE used a 15-year lifetime for all CRAC equipment classes based on the lifetime used in the May 2012 final rule. 84 FR 48006. 48030 (Sept. 11, 2019) (*citing* the May 2012 final rule at 77 FR 28928, 28958 (May 16, 2012)). In response to the September 2019 NODA/RFI, AHRI and Trane agreed that 15 years was a reasonable average lifetime. (AHRI, No. 7 at p.7; Trane, No. 5 at p. 2) Accordingly, DOE maintains an equipment lifetime of 15 years for this analysis.

For the other set of equipment under consideration, DOE based equipment lifetime on a retirement function in the form of a Weibull probability distribution in its analysis of air-cooled, three-phase, small commercial package AC and HP (<65 K). A Weibull distribution is a probability distribution function that is commonly used to measure failure rates. Its form is similar to an exponential distribution, which would model a fixed failure rate, except that it allows for a failure rate that changes over time. DOE used a mean lifetime of 19 years for air conditioners and 16.2 years for heat pumps. These are the same values that were used in the July 2015 final rule. 80 FR 42614, 42627 (July 17, 2015).

Three-Phase CAC/HP Issue 5: DOE seeks comment on the approach of using a Weibull probability distribution with an average lifetime of 19 years for air conditioners and 16.2 years for heat pumps. DOE also requests data or information which can be used to inform the equipment lifetime for air-cooled, three-phase, small commercial package AC and HP (<65 K).

2. Compliance Dates and Analysis Period

If DOE were to prescribe energy conservation standards at the efficiency levels contained in ASHRAE Standard 90.1–2019, EPCA states that any such standard shall become effective on or after a date that is two or three years (depending on the equipment type or size) after the effective date of the applicable minimum energy efficiency requirement in the amended ASHRAE standard. (42 U.S.C. 6313(a)(6)(D)).

ASHRAE Standard 90.1–2019 does not list an effective date for CRAC levels. For estimating the energy savings potential of adopting ASHRAE Standard 90.1-levels, DOE assumed a compliance date of an amended Federal standard relative to the publication of ASHRAE Standard 90.1–2019 (*i.e.,* October 23, 2019).

For air-cooled, three-phase, small commercial package AC and HP (<65 K), ASHRAE Standard 90.1–2019 maintains ASHRAE Standard 90.1–2016 levels, which are consistent with the current Federal standards, until January 1, 2023, after which levels are changed, triggering DOE's review. DOE assumed a compliance date of an amended Federal standard relative to the effective date of January 1, 2023.

If DOE were to prescribe standards more stringent than the efficiency levels contained in ASHRAE Standard 90.1–2019, EPCA dictates that any such standard will become effective for equipment manufactured on or after a date which is four years after the date of publication of a final rule in the **Federal Register**. (42 U.S.C. 6313(a)(6)(D)) For equipment classes where DOE is acting under its 6-year lookback authority, if DOE were to adopt more-stringent standards, EPCA states that any such standard shall apply to equipment manufactured after a date that is the latter of the date three years after publication of the final rule establishing such standard or six years after the effective date for the current standard. (42 U.S.C. 6313(a)(6)(C)(iv)) However, as explained in sections III.F and IV of this document, DOE has tentatively concluded that it lacks the clear and convincing evidence that would be required to adopt more-stringent standard levels.

For purposes of calculating the national energy savings (NES) for the equipment in this evaluation, DOE used a 30-year analysis period starting with the assumed year of compliance listed in Table III–8 for equipment analyzed in this NODA/RFI. This is the standard analysis period of 30 years that DOE typically uses in its NES analysis. For equipment classes with a compliance date in the last six months of the year, DOE starts its analysis period in the first full year after compliance. For example, if CRACs less than 65,000 Btu/h were to have a compliance date of October 23, 2021, the analysis period for calculating NES would begin in 2022 and extend to 2051.

TABLE III–8—APPROXIMATE COMPLIANCE DATE OF AN AMENDED ENERGY CONSERVATION STANDARD FOR TRIGGERED EQUIPMENT CLASSES

Equipment class	Approximate compliance date for adopting the efficiency levels in ASHRAE Standard 90.1–2019
Computer Room Air Conditioners	
Equipment with current NSCC <65,000 Btu/h	10/23/2021
Equipment with current NSCC ≥65,000 and <240,000 Btu/h	10/23/2022

TABLE III–8—APPROXIMATE COMPLIANCE DATE OF AN AMENDED ENERGY CONSERVATION STANDARD FOR TRIGGERED EQUIPMENT CLASSES—Continued

Equipment class	Approximate compliance date for adopting the efficiency levels in ASHRAE Standard 90.1–2019
Equipment with current NSCC ≥240,000 Btu/h and <760,000 Btu/h	10/23/2022
Air-cooled, three-phase, small commercial package AC and HP (<65 K)	
All Equipment Classes	1/1/2025

E. Estimates of Potential Energy Savings

DOE estimated the potential site, primary, and full-fuel-cycle (FFC) energy savings in quads (*i.e.,* 10^{15} Btu) for adopting ASHRAE Standard 90.1–2019 within each equipment class analyzed. The potential energy savings of adopting ASHRAE Standard 90.1–2019 levels are measured relative to the current Federal standards. Table III–9 and Table III–10 show the potential energy savings resulting from the analyses conducted for CRACs and air-cooled, three-phase, small commercial package AC and HP (<65 K), respectively. The reported energy savings are cumulative over the period in which equipment shipped in the 30-year analysis continues to operate.

TABLE III–9—POTENTIAL ENERGY SAVINGS OF ADOPTING ASHRAE STANDARD 90.1–2019 FOR CRACS [1]

Condenser system type	Airflow configuration	Current net sensible cooling capacity	ASHRAE efficiency level	Site savings	Primary savings	FFC savings
			NSenCOP	quads	quads	quads
Air-cooled	Downflow	<65,000 Btu/h	2.70	0.0000	0.0000	0.0000
		≥65,000 Btu/h and <240,000 Btu/h.	2.58	0.0011	0.0029	0.0030
		≥240,000 Btu/h and <760,000 Btu/h.	2.36	0.0071	0.0185	0.0193
	Upflow, ducted	<65,000 Btu/h	2.67	0.0000	0.0000	0.0000
		≥240,000 Btu/h and <760,000 Btu/h.	2.33	0.0001	0.0003	0.0003
	Upflow, non-ducted	<65,000 Btu/h	2.16	0.0000	0.0001	0.0001
		≥65,000 Btu/h and <240,000 Btu/h.	2.04	0.0003	0.0007	0.0008
		≥240,000 Btu/h and <760,000 Btu/h.	1.89	0.0014	0.0037	0.0039
Water-cooled	Downflow	<65,000 Btu/h	2.82	0.0000	0.0000	0.0000
		≥65,000 Btu/h and <240,000 Btu/h.	2.73	0.0001	0.0003	0.0003
		≥240,000 Btu/h and <760,000 Btu/h.	2.67	0.0003	0.0007	0.0008
	Upflow, ducted	<65,000 Btu/h	2.79	0.0000	0.0000	0.0000
		≥240,000 Btu/h and <760,000 Btu/h.	2.64	0.0000	0.0001	0.0001
	Upflow, non-ducted	<65,000 Btu/h	2.43	0.0001	0.0004	0.0004
		≥65,000 Btu/h and <240,000 Btu/h.	2.32	0.0002	0.0005	0.0006
		≥240,000 Btu/h and <760,000 Btu/h.	2.20	0.0001	0.0003	0.0003
Water-cooled with fluid economizer.	Downflow	<65,000 Btu/h	2.77	0.0000	0.0000	0.0000
		≥65,000 Btu/h and <240,000 Btu/h.	2.68	0.0000	0.0000	0.0000
		≥240,000 Btu/h and <760,000 Btu/h.	2.61	0.0001	0.0002	0.0002
	Upflow, ducted	<65,000 Btu/h	2.74	0.0000	0.0000	0.0000
		≥240,000 Btu/h and <760,000 Btu/h.	2.58	0.0000	0.0000	0.0000
	Upflow, non-ducted	<65,000 Btu/h	2.35	0.0000	0.0000	0.0000
		≥65,000 Btu/h and <240,000 Btu/h.	2.24	0.0000	0.0000	0.0000
		≥240,000 Btu/h and <760,000 Btu/h.	2.12	0.0000	0.0000	0.0000
Glycol-cooled	Downflow	<65,000 Btu/h	2.56	0.0000	0.0000	0.0000
		≥65,000 Btu/h and <240,000 Btu/h.	2.24	0.0001	0.0002	0.0002
		≥240,000 Btu/h and <760,000 Btu/h.	2.21	0.0001	0.0003	0.0003
	Upflow, ducted	<65,000 Btu/h	2.53	0.0000	0.0000	0.0000
		≥65,000 Btu/h and <240,000 Btu/h.	2.21	0.0000	0.0000	0.0000
		≥240,000 Btu/h and <760,000 Btu/h.	2.18	0.0000	0.0000	0.0000
	Upflow, non-ducted	<65,000 Btu/h	2.08	0.0000	0.0000	0.0000

TABLE III–9—POTENTIAL ENERGY SAVINGS OF ADOPTING ASHRAE STANDARD 90.1–2019 FOR CRACS [1]—Continued

Condenser system type	Airflow configuration	Current net sensible cooling capacity	ASHRAE efficiency level	Site savings	Primary savings	FFC savings
			NSenCOP	quads	quads	quads
		≥65,000 Btu/h and <240,000 Btu/h.	1.90	0.0001	0.0003	0.0003
		≥240,000 Btu/h and <760,000 Btu/h.	1.81	0.0000	0.0001	0.0001
Glycol-cooled with fluid economizer.	Downflow	<65,000 Btu/h	2.51	0.0000	0.0001	0.0001
		≥65,000 Btu/h and <240,000 Btu/h.	2.19	≤0.0003	0.0007	0.0007
		≥240,000 Btu/h and <760,000 Btu/h.	2.15	0.0009	0.0022	0.0023
	Upflow, ducted	<65,000 Btu/h	2.48	0.0000	0.0000	0.0000
		≥65,000 Btu/h and <240,000 Btu/h.	2.16	0.0000	0.0000	0.0000
		≥240,000 Btu/h and <760,000 Btu/h.	2.12	0.0002	0.0004	0.0004
	Upflow, non-ducted	<65,000 Btu/h	2.00	0.0000	0.0000	0.0000
		≥65,000 Btu/h and <240,000 Btu/h.	1.82	0.0003	0.0007	0.0008
		≥240,000 Btu/h and <760,000 Btu/h.	1.73	0.0001	0.0003	0.0003

[1] The air-cooled, upflow ducted, >65,000 Btu/h and <240,000 Btu/h; water-cooled, upflow ducted, >65,000 Btu/h and <240,000 Btu/h; and water-cooled with fluid economizer, upflow ducted, >65,000 Btu/h and <240,000 Btu/h equipment classes are not included in this table, as the ASHRAE Standard 90.1–2019 levels for these equipment classes are equivalent to the current Federal standard.

TABLE III–10—POTENTIAL ENERGY SAVINGS FOR AIR-COOLED, THREE-PHASE, SMALL COMMERCIAL PACKAGED AC AND HP

[<65 K]

	Split-system, air conditioner		Split-system, heat pump	
	ASHRAE efficiency Level	quads	ASHRAE efficiency level	quads
Site Energy Savings Estimate				
Level 0—ASHRAE	13.4 SEER2	0.0007	14.3 SEER2, 7.5 HSPF2	0.0017
Primary Energy Savings Estimate				
Level 0—ASHRAE	13.4 SEER2	0.0017	14.3 SEER2, 7.5 HSPF2	0.0044
FFC Energy Savings Estimate				
Level 0—ASHRAE	13.4 SEER2	0.0018	14.3 SEER2, 7.5 HSPF2	0.0047

F. Consideration of More-Stringent Energy Efficiency Levels

EPCA requires DOE to establish an amended uniform national standard for equipment classes at the minimum level specified in the amended ASHRAE Standard 90.1 unless DOE determines, by rule published in the **Federal Register**, and supported by clear and convincing evidence, that adoption of a uniform national standard more stringent than the amended ASHRAE Standard 90.1 for the equipment class would result in significant additional conservation of energy and is technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)(I)–(II)) As discussed in the following paragraphs, because of uncertainty in estimated energy savings resulting from the change in energy efficiency metrics, DOE has tentatively determined that it lacks clear and convincing evidence that standards more stringent than the amended ASHRAE Standard 90.1 levels for either CRACs or air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment would result in significant additional energy savings.

For CRACs, further energy savings analysis would rely on market efficiency data in terms of the analyzed metric (*i.e.,* NSenCOP). In order to determine whether the adoption of an updated metric for CRACs in ASHRAE Standard 90.1 triggered DOE's obligation under EPCA, DOE was required to perform a crosswalk between the Federal energy conservation standards and the amended ASHRAE levels. (*See* 42 U.S.C. 6313(a)(6)(A)(i)) This crosswalk required only that DOE translate the efficiency levels between the metrics at the baseline levels, and not all efficiency levels currently represented in the market (*i.e.,* high efficiency levels). In addition, the analysis of the amended ASHRAE levels does not require analysis of higher efficiency models because DOE's analyses assume that a standards change only affects shipments with efficiency lower than the analyzed efficiency level (*i.e.,* ''roll-up'' shipments scenario). Additionally, as discussed in section II.A.3 of this document, DOE's crosswalk was used to confirm levels separately generated by AHRI for inclusion in ASHRAE Standard 90.1–2019 (*i.e.,* DOE was able to compare its crosswalk to the crosswalk conducted by industry).

An estimation of energy savings potentials of energy efficiency levels more stringent than the amended ASHRAE Standard 90.1 levels would require developing efficiency data for the entire market in terms of the NSenCOP metric. This much broader crosswalk would require DOE to translate the individual SCOP ratings to NSenCOP ratings for all models certified

in DOE's CCMS Database. As the range of model efficiencies increases, so does the number of different technologies used to achieve such efficiencies. With this increase in variation, there is an increase in the potential for variation in the crosswalk results from the actual performance under the new metric of the analyzed models. As noted, there is limited market data regarding the performance of CRACs as represented according to the updated metric, and there is not a comparable industry analysis (*i.e.,* translating ratings to the updated metric for all models on the market) for comparison.

For air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment, ASHRAE Standard 90.1–2019 amended the applicable metric, and the amended standards that rely on the updated metric are intended to apply in 2023. As with the amended CRAC standards, DOE was required to conduct a crosswalk to compare the stringency levels of the Federal standards and the amended ASHRAE Standard 90.1–2019 efficiency levels to determine whether its obligation under EPCA to adopt amended ASHRAE Standard 90.1 efficiency levels was triggered. (42 U.S.C. 6313(a)(6)(A)(i)).

As with an analysis of the CRAC standards amended by ASHRAE Standard 90.1–2019, an analysis of standard levels more stringent than the amended standards in ASHRAE Standard 90.1 for air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment) would require DOE to crosswalk the entire market for this equipment. As noted, the amended ASHRAE Standard 90.1–2019 levels for air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment rely on updated metrics (*i.e.,* SEER2 and HSPF2), and they have the added issue that the amended ASHRAE Standard 90.1 efficiency levels in terms of the new SEER2 and HSPF2 metrics are not applicable until 2023. This future applicability date compounds the problem of a lack of market data.

As discussed in the October 2018 TP RFI for air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment, such equipment is essentially identical to its single-phase residential counterparts, is manufactured on the same production lines, and is physically identical to their corresponding single-phase central air conditioner and heat pump models (with the exception of the electrical systems and compressors). 83 FR 49501, 49504 (Oct. 2, 2018). Single-phase central air conditioners are subject to new Federal standards based on SEER2 and HSPF2 beginning January 1, 2023. 10 CFR 430.32(c)(5)–(6). Currently, manufacturers are permitted to make representations under the SEER2 and HSPF2 representations metrics only if they certify to compliance to the 2023 standards. As a result, there is a lack of SEER2 and HSPF2 data available for single-phase central air conditioners and central air conditioning heat pumps, which if available may have provided for a certain level of assessment of the air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment market.

The market for air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment has not responded to the change in the metrics, particularly given that ASHRAE Standard 90.1–2019 does not specify use of SEER2 and HSPF2 until 2023. Likewise, the closely related single-phase market has not yet fully responded to the amended Federal metrics and standards, for which manufacturers are not required to comply until 2023. Given the change in metrics and the future compliance dates of the ASHRAE Standard 90.1–2019 amendments, and the comparable changes to the Federal requirements for the closely related single-phase market, determination of max-tech levels and projections of market distribution according to efficiency levels have an increased degree of uncertainty.

As noted previously, EPCA provides that in order to adopt a standard more stringent than an amended ASHRAE Standard 90.1, DOE must determine, by rule published in the **Federal Register**, and supported by clear and convincing evidence, that adoption of a uniform national standard more stringent than the amended ASHRAE Standard 90.1 would result in significant additional conservation of energy and is technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)(II)) In the updated Process Rule, DOE reiterated the existing statutory requirement stating that the statutory threshold of ''clear and convincing evidence'' is a very high bar. 85 FR 8626, 8708 (Feb. 14, 2020). Clear and convincing evidence would exist only where the specific facts and data made available to DOE regarding a particular ASHRAE amendment demonstrates that there is no substantial doubt that a standard more stringent than that contained in the ASHRAE Standard 90.1 amendment is permitted because it would result in a significant additional amount of energy savings, is technologically feasible and economically justified. *Id.*

The lack of market data and the uncertainties in the market and technology projections regarding energy efficiency levels under the new metrics for CRACs and air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment create substantial doubt in any analysis of energy savings that would result from efficiency levels more stringent than the amended ASHRAE Standard 90.1–2019 levels for this equipment. Regardless of the results of any such analysis, the degree of uncertainty would create substantial doubt as to whether a standard more stringent than the ASHRAE Standard 90.1–2019 amendment would result in a significant additional amount of energy savings as required for DOE to establish more-stringent standards. As a result, DOE did not conduct an analysis of any associated energy savings for more-stringent standards for the subject equipment in this document.

CRAC Issue 8: DOE is requesting data and information that could enable the agency to determine whether standards levels more stringent than the levels in ASHRAE Standard 90.1–2019 for CRACs would result in significant additional energy savings for classes for which DOE is triggered.

Three-Phase CAC/HP Issue 6: DOE is requesting data and information that could enable the agency to determine whether standards levels more stringent than the levels in ASHRAE Standard 90.1–2019 for air-cooled, three-phase, small commercial package ACs and HPs (<65 K) would result in significant additional energy savings for classes for which DOE is triggered.

IV. Review Under Six-Year-Lookback Provisions: Requested Information

As discussed, DOE is required to conduct an evaluation of each class of covered equipment in ASHRAE Standard 90.1 every 6 years. (42 U.S.C. 6313(a)(6)(C)(i)) Accordingly, DOE is also evaluating the remaining 6 CRAC equipment classes and 8 air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment classes for which ASHRAE Standard 90.1–2019 did not increase the stringency of the standards. As explained in the February 2020 final rule updating DOE's Process Rule, EPCA applies the ''clear and convincing'' evidentiary threshold to both ASHRAE ''trigger'' and 6-year-lookback rulemakings. 85 FR 8626, 8647 (Feb. 14, 2020). Thus, when conducting a six-year look-back review, DOE may establish a uniform national standard more stringent than the corresponding ASHRAE Standard 90.1 level only upon a determination, supported by clear and convincing evidence, that such an amended Federal standard would result in significant additional conservation of

energy and is technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(C)(i)(I) (*referencing* 42 U.S.C. 6313(a)(6)(B), which in turn references 42 U.S.C. 6313(a)(6)(A)(ii)(II)).

The 6 equipment classes of CRACs and 8 equipment classes of air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment suffer from the same lack of data and market uncertainties resulting from the metric changes and future compliance dates as with the equipment classes for which DOE was triggered, as discussed in section III.F of this document. As such, any analysis of energy efficiency standards more stringent than the current levels would be subject to a degree of uncertainty that would create substantial doubt as to whether a standard more stringent than the current Federal standard would result in a significant additional amount of energy savings as required for DOE to establish more-stringent standards. Because DOE does not have sufficient data to meet the ''clear and convincing'' threshold, DOE did not conduct an energy savings analysis of standard levels more stringent than the current Federal standard levels for CRACs and air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment that were not amended in ASHRAE Standard 90.1–2019. See section III.F of this notice for further discussion of the consideration of energy efficiency levels more stringent than the ASHRAE Standard 90.1–2019 levels.

CRAC Issue 9: DOE is requesting data and information that could enable the agency to determine whether standards levels more stringent than the levels in ASHRAE Standard 90.1–2019 for CRACs would result in significant additional energy savings for classes for which DOE is not triggered.

Three-Phase CAC/HP Issue 7: DOE is requesting data and information that could enable the agency to determine whether standards levels more stringent than the levels in ASHRAE Standard 90.1–2019 for air-cooled, three-phase, small commercial package ACs and HPs (<65 K) would result in significant additional energy savings for classes for which DOE is not triggered.

V. Public Participation

A. Submission of Comments

DOE invites all interested parties to submit in writing by the date specified previously in the **DATES** section of this document, comments, data, and information on matters addressed in this document and on other matters relevant to DOE's consideration of amended energy conservation standards for CRACs and air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via http://www.regulations.gov. The *http://www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Following such instructions, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *http://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *http://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *http://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *http://www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *http://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the

information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

DOE considers public participation to be a very important part of the process for developing energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of the rulemaking process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the rulemaking process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this process or would like to request a public meeting should contact Appliance and Equipment Standards Program staff at (202) 287–1445 or via email at *ApplianceStandardsQuestions@ee.doe.gov.*

B. Issues on Which DOE Seeks Comment

DOE welcomes comments on any aspect of this document for CRAC and air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment classes where ASHRAE Standard 90.1–2019 increased stringency (thereby triggering DOE's review of amended standards) and for CRAC and air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment classes undergoing 6-year-lookback review.

In the preceding sections, DOE has identified a variety of issues on which it seeks input to aid in the development of the technical and economic analyses regarding whether amended standards for CRACs and air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment may be warranted. DOE notes that under Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' Executive Branch agencies such as DOE are directed to manage the costs associated with the imposition of expenditures required to comply with Federal regulations. *See* 82 FR 9339 (Feb. 3, 2017). Consistent with that Executive Order, DOE encourages the public to provide input on measures DOE could take to lower the cost of its energy conservation standard rulemakings, recordkeeping and reporting requirements, and compliance and certification requirements applicable to CRACs and air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment while remaining consistent with the requirements of EPCA. Other general topics of interest include the following.

Market Failures

In the field of economics, a market failure is a situation in which the market outcome does not maximize societal welfare. Such an outcome would result in unrealized potential welfare. DOE welcomes comment on any aspect of market failures, especially those in the context of amended energy conservation standards for CRACs and air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment.

Network Mode/''Smart'' Equipment

DOE recently published an RFI on the emerging smart technology appliance and equipment market. 83 FR 46886 (Sept. 17, 2018). In that RFI, DOE sought information to better understand market trends and issues in the emerging market for appliances and commercial equipment that incorporate smart technology. DOE's intent in issuing the RFI was to ensure that DOE did not inadvertently impede such innovation in fulfilling its statutory obligations in setting efficiency standards for covered products and equipment. DOE seeks comments, data, and information on the issues presented in the NODA/RFI as they may be applicable to CRACs and air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment.

Other

In addition to the issues identified earlier in this document, DOE welcomes comment on any other aspect of energy conservation standards for CRACs and air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment not already addressed.

To summarize the specific issues identified in this NODA/RFI, DOE is particularly interested in receiving comments and views of interested parties concerning the following topics, listed by equipment category:

CRAC Issue 1: DOE requests comment on the methodology and results of the crosswalk analysis.

CRAC Issue 2: DOE seeks comment on its energy-use analysis methodology.

CRAC Issue 3: DOE seeks comment on its methodology for identifying data centers within CBECS 2012.

CRAC Issue 4: DOE requests comment on its server power consumption estimates and any information or data on expectations of future server stock and energy use in small data centers.

CRAC Issue 5: DOE requests shipments data on horizontal-flow, ceiling-mounted, and air-cooled with fluid economizer CRAC equipment classes.

CRAC Issue 6: DOE requests efficiency data for CRACs in terms of NSenCOP that can be used to estimate the no-new-standards case efficiency distribution.

CRAC Issue 7: DOE seeks input on its determination of the no-new-standards case distribution of efficiencies for CRACs.

CRAC Issue 8: DOE is requesting data and information that could enable the agency to determine whether standards levels more stringent than the levels in ASHRAE Standard 90.1–2019 for CRACs would result in significant additional energy savings for classes for which DOE is triggered.

CRAC Issue 9: DOE is requesting data and information that could enable the agency to determine whether standards levels more stringent than the levels in ASHRAE Standard 90.1–2019 for CRACs would result in significant additional energy savings for classes for which DOE is not triggered.

Three-Phase CAC/HP Issue 1: DOE requests feedback on its methodology for determining crosswalked SEER2 and HSPF2 values for three-phase equipment based on crosswalked values of single-phase residential central air conditioners.

Three-Phase CAC/HP Issue 2: DOE requests comment on its approach to estimate the energy use of air-cooled, three-phase, small commercial package AC and HP (<65 K).

Three-Phase CAC/HP Issue 3: DOE requests comment on it approach to estimate the shipments of air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment.

Three-Phase CAC/HP Issue 4: DOE seeks input on its determination of the no-new-standards case distribution of efficiencies for air-cooled, three-phase, small commercial package AC and HP (<65 K) equipment.

Three-Phase CAC/HP Issue 5: DOE seeks comment on the approach of using a Weibull probability distribution with an average lifetime of 19 years for air conditioners and 16.2 years for heat pumps. DOE also requests data or information which can be used to inform the equipment lifetime for air-

cooled, three-phase, small commercial package AC and HP (<65 K).

Three-Phase CAC/HP Issue 6: DOE is requesting data and information that could enable the agency to determine whether standards levels more stringent than the levels in ASHRAE Standard 90.1–2019 for air-cooled, three-phase, small commercial package ACs and HPs (<65 K) would result in significant additional energy savings for classes for which DOE is triggered.

Three-Phase CAC/HP Issue 7: DOE is requesting data and information that could enable the agency to determine whether standards levels more stringent than the levels in ASHRAE Standard 90.1–2019 for air-cooled, three-phase, small commercial package ACs and HPs (<65 K) would result in significant additional energy savings for classes for which DOE is not triggered.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of data availability and request for information.

Signing Authority

This document of the Department of Energy was signed on August 21, 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 August 21, 2020.

Treena V. Garrett,

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

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Part V

The President

Proclamation 10082—National Small Business Week, 2020

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Presidential Documents

Title 3—

The President

Proclamation 10082 of September 19, 2020

National Small Business Week, 2020

By the President of the United States of America

A Proclamation

During National Small Business Week, we celebrate the resolve and ingenuity of American businesses, entrepreneurs, and workers. America's small businesses are at the very core of our Nation's identity and prosperity, and this week we pay tribute to these patriots for their contributions to our Nation's economy and culture.

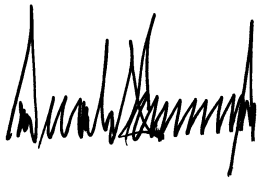
This year, as we collectively recover from an unprecedented pandemic, my Administration remains intensely focused on helping every American enterprise remain viable, recover, and once again, thrive at historic levels. Our Nation's more than 30 million small businesses, which employ nearly half the private-sector workforce and create two-thirds of all net new jobs, are the key to propelling our economy to the prosperity levels America has enjoyed over the past 3 years. That is why, as part of our extraordinary, whole-of-government economic response to the coronavirus, we have placed the small business sector front and center. We have delivered nearly three quarters of a trillion dollars in timely, economic relief to distressed small business entrepreneurs and their employees throughout the country, including $525 billion in Paycheck Protection Program (PPP) loans, $190 billion in COVID–19 Economic Injury Disaster Loans (EIDL), $20 billion in EIDL Advance grants, and additional healthcare funding.

Additionally, American small businesses have been critical in revitalizing economically distressed areas. That is why my Administration worked with Congress to designate thousands of Opportunity Zones in underserved communities, and as a result, we are creating unprecedented new economic opportunities. We have also made extraordinary strides in the cultivation of entrepreneurship among underrepresented groups, including women, minorities, and veterans. In fact, under my Administration, Latinos are the fastest-growing group of entrepreneurs. These numbers are an important reminder that in the United States anyone who is dedicated and hard-working is capable of achieving their own American Dream.

Across our country, small businesses are essential to their communities, creating jobs and giving back during times of prosperity and challenge. My Administration is committed to investing in small business owners, and therefore advancing solutions that make it easier for them to exceed their goals. During this National Small Business Week, we celebrate the success of our American entrepreneurs who have chartered their own courses to provide jobs and a bright future for millions of American workers.

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 20 through September 26, 2020, as National Small Business Week. I call upon all Americans to recognize the critical contributions of America's entrepreneurs and small business owners as they grow our Nation's economy.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth 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.



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