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Federal Register
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Doc. No. AMS–SC–23–0038]

Raisins Produced From Grapes Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This final rule implements a recommendation from the Raisin Administrative Committee (Committee) to increase the assessment rate established for the 2023–2024 and subsequent crop years. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective May 8, 2024.

FOR FURTHER INFORMATION CONTACT: Jeremy Sasselli, Marketing Specialist, or Barry Broadbent, Acting Chief, West Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487–5901 or Email: *Jeremy.Sasselli@usda.gov* or *Barry.Broadbent@usda.gov*.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 202500237; Telephone: (202) 720–8085, or Email: *Richard.Lower@usda.gov*.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This final rule is issued under Marketing Agreement and Order No. 989, as amended (7 CFR part 989), regulating the handling of raisins produced from grapes grown in California. Part 989 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the Order and is comprised of producers and handlers of raisins operating within the area of production, and a public member.

The Agricultural Marketing Service (AMS) is issuing this final rule in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, 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 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This final rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined that this final rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, California raisin handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate will be applicable to all assessable raisins beginning on August 1, 2023, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the U.S. Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Section 989.79 provides authority for the Committee, with the approval of AMS, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2018–2019 and subsequent crop years, an assessment rate of $22 per assessable ton of raisins handled (84 FR 2049) was in place. That rate continues in effect from crop year to crop year until modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other information available to AMS. This final rule increases the assessment rate from $22 per ton to $24 per ton of assessable raisins for the 2023–2024 and subsequent crop years.

Prior to arriving at this assessment rate, the Committee considered information from its Audit Subcommittee (Subcommittee), which met on June 21, 2023. The Subcommittee discussed alternative spending levels before making a recommendation to the full Committee. On June 28, 2023, the full Committee

discussed the recommendation of the Subcommittee and voted unanimously to recommend a budget of $5,241,000 and an assessment rate of $24 per ton as reasonable and necessary to properly administer the Order.

The Committee last amended the assessment rate in 2019 to $22 per ton, which continues to remain in effect; however, California raisin acreage and volume have steadily declined since 2019. The Committee determined the level of assessment revenue under the current rate is now insufficient to meet the rising costs of program operations given a production estimate of 192,000 tons of assessable raisins for the 2023–2024 crop year.

The assessment rate of $24 is $2 higher than the rate currently in effect and is expected to generate assessment income of approximately $4,608,000 ($24 per ton multiplied by 192,000 assessable tons) for the 2023–2024 crop year. This assessment revenue, combined with other Committee income and monetary reserves is sufficient to cover the budget balance of $633,000 ($5,241,000 minus $4,608,000).

The major expenditures recommended by the Committee for the 2023–2024 crop year include $3,303,000 for marketing promotion; $1,205,000 for salaries and employee related costs; $658,000 for administrative expenses; $55,000 for compliance activities; and $20,000 for research and studies. Budgeted expenditures for the 2022–2023 crop year were $3,592,000; $1,232,000; $703,900; $55,000; and $45,000, respectively. The assessment rate increase will cover the expenditures for the 2023–2024 crop year, while reducing the amount of money needing to be expended from reserves.

This assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or AMS. Committee meetings are open to the public and interested persons may express their views at these meetings. AMS will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's budget for subsequent crop years would be reviewed and, as appropriate, approved by AMS.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the AMS has considered the economic impact of this final rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 1,700 producers of California raisins and approximately 17 handlers subject to regulation under the marketing order. Small agricultural producers of raisins are defined by the Small Business Administration (SBA) as those having annual receipts equal to or less than $4.0 million (NAICS code 111332, Grape Vineyards) and small agricultural service firms are defined as those whose annual receipts are equal to or less than $34.0 million (NAICS code 115114, Postharvest Crop Activities) (13 CFR 121.201).

Using USDA National Agricultural Statistics Service (NASS) data, the 2022 season average value of utilized production of California processed raisin-type grapes (most of which are dried into raisins) is $376.618 million. Dividing that figure by 1,700 producers yields an annual average revenue per producer of $221,540, well below the SBA large farm size threshold of $4.0 million. Therefore, in terms of average annual sales of processed raisin-type grapes, the majority of California raisin producers may be classified as small entities.

To make a similar computation for handlers, the first step is to estimate a representative handler price received per pound for packaged raisins. Recent USDA purchases under the Commodity Procurement Program provide such an estimate. For the most recent raisin crop year used by the Committee (August 2022–July 2023), the average price paid for packaged raisins purchased by the USDA for food assistance programs was $1.56 per pound. For that time period, the Committee provided a list of quantities delivered by handlers. When multiplied by the $1.56 price per pound, the results showed that 5 handlers had annual raisin receipts greater than $34 million, the SBA threshold level for a large handler. The remaining 12 handlers out of 17 are small handlers, using the SBA criterion.

This final rule will increase the assessment rate collected from handlers for the 2023–2024 and subsequent crop years from $22 to $24 per ton of assessable raisins acquired by handlers. The Committee reviewed its ongoing activities and determined the expenses that would be reasonable and necessary to continue program operations for the 2023–2024 crop year. Additionally, the Committee considered that California raisin acreage and volume have steadily declined. Consequently, the revenue collected from assessments also decreased, while program operating costs have continued to increase. Ultimately, the Committee recommended budget totals $5,241,000 for the 2023–2024 crop year. With the current assessment of $22 per ton, and an operating budget of $5,241,000, the Committee would face a deficit of over $1 million. At the rate of $24 per ton, the anticipated assessment income would be $4,608,000 and will reduce the estimated deficit by approximately $384,000.

The major expenditures recommended by the Committee for the 2023–2024 crop year include $3,303,000 for marketing promotion; $1,205,000 for salaries and employee related costs; $658,000 for administrative expenses; $55,000 for compliance activities; and $20,000 for research and studies. Budgeted expenditures for the 2022–2023 crop year were $3,592,000; $1,232,000; $703,900; $55,000; and $45,000, respectively. The increased assessment rate is necessary to help cover the expenditures for the 2023–2024 crop year, while reducing the amount of money needing to be expended from reserves.

The Order provides authority for the Committee to formulate an annual budget of expenses and an assessment rate to cover such expenses is authorized by AMS. Prior to arriving at this budget and assessment rate, the Committee considered alternative spending levels at its June 28, 2023, meeting but ultimately decided that the recommended budget and assessment rate were reasonable and necessary to properly administer the Order.

This final rule increases the assessment obligation imposed on handlers. While the increased assessment rate will impose some additional costs on handlers, the costs are minimal and applied uniformly on all handlers. Some of the additional costs may be passed on to producers.

However, these costs will be offset by the benefits derived by the industry from the operation of the Order.

The Committee's meetings were widely publicized throughout the production area. The raisin industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the June 28, 2023, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. In addition, interested persons were invited to submit comments on this rule, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0178, Vegetable and Specialty Crops. No changes in those requirements are necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule will not impose any additional reporting or recordkeeping requirements on either small or large California raisin handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

A proposed rule concerning this action was published in the **Federal Register** on November 16, 2023 (88 FR 78679). Copies of the proposed rule were provided to all raisin handlers. The proposal was also made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending December 18, 2023, was provided for interested persons to respond to the proposal.

Three comments in opposition to the proposed assessment rate change were received. Of the three, two comments are attributed to the same person. The first commenter described the proposal as undermining farmers economically by forcing them to impart a substantial portion of their crop earnings to pay assessments. As stated in the proposal, California raisin handlers, not farmers, are subject to assessments. Essentially, these assessments help to cover the costs of administering the Order. Such costs may be passed on to farmers from handlers; however, continuous support for the Order from California raisin growers suggests the benefits of orderly marketing outweigh these costs. The comment further states that raisin farmers no longer enjoy the right to sell their own produce and that the Committee gives or sells raisins to Federal agencies and foreign governments because they are often the lowest bidders. First, the Order regulates the handling of raisins, not raisin growers, and by no means prevents raisin growers from packing, processing, or selling their own fruit. Finally, Order provisions do not provide the Committee with authority to acquire, give or sell raisins either domestically or internationally.

The other commenter suggested USDA redirect assessment funds from other non-specialty crops to fund the Order due to decreases in raisin acreage and growth. The Committee collects assessments, not USDA, and such funds may only be collected and used in accordance with the Act and the terms and provisions specified in the Order. Further, Federal marketing orders are issued pursuant to the Act, and the rules issued thereunder are unique and brought about through group action of essentially small entities acting on their own behalf. Both commenters suggested a concern for the welfare of raisin farmers; however, each indicate a lack of understanding of the authority, operations, and funding of this Order. Accordingly, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *https://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, AMS has determined that this final rule is consistent with and will effectuate the purposes of the Act.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 989 as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Revise § 989.347 to read as follows:

§ 989.347 Assessment rate.

On and after August 1, 2023, an assessment rate of $24 per ton is established for assessable raisins produced from grapes in California.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2024–07330 Filed 4–5–24; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. APHIS–2016–0033]

RIN 0579–AE62

Import Regulations for Horses; Technical Amendments

AGENCY: Animal and Plant Health Inspection Service, Department of Agriculture (USDA).

ACTION: Final rule; technical amendments.

SUMMARY: In a final rule published in the **Federal Register** on September 14, 2023, and effective on October 16, 2023, we amended the regulations governing the importation of equines to better align our regulations with international standards, as well as to clarify existing policy or intent, and correct inconsistencies or outdated information. However, in amending the regulations for horses that are refused entry, we neglected to account for rare and specific situations in which an imported horse's death during travel can be determined to be unrelated to foreign animal disease risk. Additionally, in aiming to improve the readability of the regulations governing equines imported from Canada, we inadvertently changed the regulations to incorrectly read that certificates for horses from Canada must be issued and endorsed, rather than issued or endorsed, by a salaried veterinarian of the Canadian

Government. This document corrects those errors.

DATES: Effective April 8, 2024.

FOR FURTHER INFORMATION CONTACT: Dr. Iwona Tumelty, VS Strategy and Policy, Live Animal Imports, VS, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737–1231; 301–851–3300.

SUPPLEMENTARY INFORMATION: In a final rule that was published in the **Federal Register** on September 14, 2023 (88 FR 62993–63004, Docket No. APHIS–2016–0033), and effective on October 16, 2023, we amended the regulations in 9 CFR part 93 governing the importation of equines to better align our regulations with international standards, as well as to add a number of miscellaneous changes that clarified existing policy or intent, and corrected inconsistencies or outdated information.

One of these miscellaneous changes included amending § 93.306 to provide APHIS' policies in the rare instances that a horse arriving at the port of entry is dead upon presentation. In the final rule, we stated that cohort horses arriving in the same shipment as a horse dead upon presentation will also be refused entry. We explained that this change was necessary because diagnostic testing for these horses would not be feasible, as determining what additional testing and quarantine would be necessary to mitigate foreign animal disease risk would require a necropsy of the dead horse, and dead horses are refused entry.

During implementation of the final rule, it was brought to our attention that this neglected to account for situations in which the mortality could be directly attributed to a cause other than foreign animal disease, such as in the case of obvious physical trauma sustained during transport. In these situations, a necropsy of the dead horse would not be necessary because determining whether the cohort horses pose a risk of spreading foreign animal disease would be feasible through current policies for foreign animal disease testing and import quarantine.

We are therefore correcting § 93.306 to account for these situations and state that horses arriving in the same shipment as horses dead upon presentation will be refused entry unless the cause of death can be determined to be unrelated to foreign animal disease.

In the preamble to the final rule, we also stated that we were making non-substantive editorial changes to § 93.317(a), which addresses requirements for horses imported from Canada, to improve readability. During implementation of the final rule, the Competent Authority of Canada alerted us that we had changed this paragraph to read that certificates for horses from Canada must be issued *and* endorsed, rather than issued *or* endorsed, by a salaried veterinarian of the Canadian Government. This is incorrect and is not current practice; horses from Canada are accepted for entry into the United States with a certificate that is either issued or endorsed by a salaried veterinarian of the Canadian Government, and we did not propose nor intend to change this regulation. We are therefore correcting § 93.317(a) to read that certificates required for horses from Canada must be issued or endorsed by a salaried veterinarian of the Canadian Government.

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 93 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, FISH, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

■ 1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Amend § 93.306 by revising the second sentence to read as follows:

§ 93.306 Inspection at the port of entry.

* * * All horses found to be free from communicable disease and not to have been exposed thereto within 60 days prior to their exportation to the United States shall be admitted subject to the other provisions in this part; all other horses, to include horses dead upon presentation, and horses arriving in the same shipment as such horses unless the cause of death can be determined to be unrelated to foreign animal disease, shall be refused entry. * * *

§ 93.317 [Amended]

■ 3. Amend § 93.317, in paragraph (a), in the third sentence, by removing the word ''and'' after the words ''be issued'' and adding the word ''or'' in its place.

Done in Washington, DC, this 1st day of April 2024.

Michael Watson,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2024–07370 Filed 4–5–24; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2021–BT–STD–0003]

RIN 1904–AF13

Energy Conservation Program for Appliance Standards: Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy (EERE), Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (''DOE'' or the ''Department'') is revising its ''Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Certain Commercial/Industrial Equipment.'' The revisions are consistent with current DOE practice and will allow DOE to better meet its statutory obligations under the Energy Policy and Conservation Act (''EPCA'').

DATES: This rule is effective June 24, 2024.

ADDRESSES: The docket for this rulemaking, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure. The docket web page can be found at: *www.regulations.gov/docket/EERE-2021-BT-STD-0003.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT:

Mr. Lucas Adin, 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. Email:

ApplianceStandardsQuestions@ee.doe.gov.

Ms. Ani Esenyan, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (240) 961–8713. Email: *ani.esenyan@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

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I. Summary of the Final Rule

In July of 1996, the United States Department of Energy (''DOE'' or ''the Department'') issued a final rule that codified DOE's ''Procedures, Interpretations and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products'' at 10 CFR part 430, subpart C, appendix A (''appendix A''). 61 FR 36974 (July 15, 1996) (''July 1996 Final Rule''). The July 1996 Final Rule acknowledged that the guidance contained in appendix A would not apply to every rulemaking and that the circumstances of a particular rulemaking should dictate application of these generally applicable practices. 61 FR 36979.

On February 14, 2020, DOE published a final rule (''February 2020 Final Rule'') in the **Federal Register** that made significant revisions to appendix A. 85 FR 8626. DOE also published a companion final rule on August 19, 2020 (''August 2020 Final Rule''), that clarified how DOE would conduct a comparative analysis across all energy conservation standard ''trial standard levels'' (''TSLs'') when determining whether a particular TSL was economically justified. *See* 85 FR 50937. Contrary to the July 1996 Final Rule, the revisions made in the February 2020 Final Rule sought to create a standardized rulemaking process that was binding on the Department. 85 FR 8626, 8634. In creating this ''one-size-fits-all'' approach, the February 2020 Final Rule and the August 2020 Final Rule also added additional steps to the rulemaking process that are not required by any applicable statute.

Subsequent events have caused DOE to reconsider the merits of a one-size-fits-all rulemaking approach to establishing and amending energy conservations standards and test procedures. Two of these events are particularly salient. First, on October 30, 2020, a coalition of non-governmental organizations filed suit under EPCA alleging that DOE has failed to meet rulemaking deadlines for 25 different consumer products and commercial equipment.[1] On November 9, 2020, a coalition of States filed a virtually identical lawsuit.[2] In response to these lawsuits, DOE has reconsidered whether the benefits of a one-size-fits-all rulemaking approach outweigh the increased difficulty such an approach poses in meeting DOE's statutory deadlines and obligations under EPCA. As mentioned previously, the July 1996 Final Rule allowed for ''case-specific deviations and modifications of the generally applicable rule.'' 61 FR 36974, 36979. This allowed DOE to tailor rulemaking procedures to fit the specific circumstances of a particular rulemaking. For example, under the July 1996 Final Rule, minor modifications to a test procedure would not automatically result in a 180-day delay before DOE could issue a notice of proposed energy conservation standards. Eliminating these unnecessary delays would better enable DOE to clear this backlog of missed rulemaking deadlines in a timely manner and meet future obligations and deadlines under EPCA while not affecting the ability of any interested person, including small entities, to participate in DOE's rulemaking process. Further, the sooner new or amended energy conservation standards eliminate less-efficient covered products and equipment from the market, the greater the resulting energy savings and environmental benefits.

Second, on January 20, 2021, the White House issued Executive Order 13990, ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.'' 86 FR 7037 (Jan. 25, 2021). Section 1 of that order lists a number of policies related to the protection of public health and the environment, including reducing greenhouse gas emissions and bolstering the Nation's resilience to climate change. *Id.* at 86 FR 7037, 7041. Section 2 of the order instructs all agencies to review ''existing regulations, orders, guidance documents, policies, and any other similar agency actions (agency actions) promulgated, issued, or adopted between January 20, 2017, and January 20, 2021, that are or may be inconsistent with, or present obstacles to, [these policies].'' *Id.* Agencies are then directed, as appropriate and consistent with applicable law, to consider suspending, revising, or rescinding these agency actions and to immediately commence work to confront the climate crisis. *Id.* Under that same section, for certain explicitly enumerated agency actions, including the February 2020 and the August 2020 Final Rules, the order directs agencies to consider publishing for notice and comment a proposed rule suspending, revising, or rescinding the agency action within a specific time frame. Under this mandate, DOE was directed to propose any major revisions to these two rules by March 2021, with any remaining revisions to be proposed by June 2021. *Id.* at 86 FR 7038.

In light of these events, DOE has identified several aspects of the February 2020 and the August 2020 Final Rules that present obstacles to DOE's ability to expeditiously clear the backlog of missed rulemaking deadlines while meeting future obligations under EPCA. In accordance with E.O. 13990, DOE proposed major revisions to appendix A in a notice of proposed rulemaking (''NOPR'') that was published on April 12, 2021 (''April 2021 NOPR''). 86 FR 18901. DOE proposed additional revisions to appendix A in a second NOPR that was published on July 7, 2021 (''July 2021 NOPR''). 86 FR 35668. DOE finalized the major revisions from the April 2021 NOPR in a final rule published on December 13, 2021 (''December 2021 Final Rule''). 86 FR 70892.

In this document, DOE is finalizing the revisions listed in table I.1. As noted in the table, DOE is not finalizing any

[1] *Natural Resources Defense Council* v. *DOE,* Case No. 20–cv–9127 (S.D.N.Y. 2020).

[2] *State of New York* v. *DOE,* Case No. 20–cv–9362 (S.D.N.Y. 2020).

of the proposed revisions that would have updated the methodology sections in appendix A to reflect the Department's current rulemaking practice. Prior to issuing the July 2021 NOPR, DOE had entered into a contract with the National Academies of Sciences, Engineering, and Medicine (''NAS'') to conduct a peer review of the analytical methods used in the Department's energy conservation standards rulemakings. The peer review was originally scheduled to be completed in May of 2020. However, when DOE began to consider revisions to appendix A in early 2021, the NAS peer review process was still ongoing without a definitive completion date. At that point, DOE decided that the benefits of updating the analytical methodology in the July 1996 Final Rule to reflect the Department's current practice outweighed the potential inefficiency of having to amend these methods again in a subsequent proceeding. As a result, the July 2021 NOPR contained proposed revisions to the methodology sections in appendix A. DOE stated that if it made any revisions to its analytical methods based on the NAS peer review, the Department would propose any necessary corresponding revisions to appendix A in a subsequent proceeding. *Id.* at 86 FR 35677.

In response to the July 2021 NOPR, DOE received numerous comments from stakeholders that the Department should wait to revise its analytical methodologies until NAS had completed its peer review. (*See, e.g.,* Carrier, No. 54 at p. 4; Lutron, No. 64 at p. 4; GEA, No. 72 at p. 4; Joint Industry Commenters, No. 62 at pp. 10–11) [3] While DOE was in the process of considering those comments, NAS completed the peer review and transmitted to DOE its report, ''Review of Methods Used by the U.S. Department of Energy in Setting Appliance and Equipment Standards'' (''NAS Report''), on January 7, 2022.[4] In light of the publication of the NAS report and stakeholder comments in response to the July 2021 NOPR, DOE has decided not to finalize the proposed revisions to the methodology sections in appendix A in this rule. Instead, DOE will consider changes to its methodologies in a separate notice-and-comment process that is informed by the results of the NAS Report.

TABLE I.1—LIST OF REVISIONS IN THIS DOCUMENT

Section	Proposed revisions from the July 2021 NOPR	Final revisions
1. Objectives	No revisions proposed	No revisions.
2. Scope	No revisions proposed	No revisions.
3. Mandatory Application of the Process Rule.	No revisions proposed	No revisions.
4. Setting Priorities for Rulemaking Activity.	No revisions proposed	No revisions.
5. Coverage Determination Rulemakings.	Revise introductory text and paragraph (a) to eliminate the requirement that a coverage determination rulemaking begins with a notice of proposed determination and allow DOE to seek early stakeholder input through preliminary rulemaking documents; revise paragraphs (b) and (c) to eliminate the requirement that final coverage determinations be published prior to the initiation of any test procedure or energy conservation standard rulemaking and at least 180 days prior to publication of a test procedure NOPR; revise paragraph (d) to allow DOE to propose, if necessary, an amended coverage determination before proceeding with a test procedure or standards rulemaking.	Revised, as proposed, introductory text and paragraph (a) to eliminate the requirement that a coverage determination rulemaking begins with a notice of proposed determination and allow DOE to seek early stakeholder input through preliminary rulemaking documents; revise paragraphs (b) and (c) to eliminate the requirement that final coverage determinations be published prior to the initiation of any test procedure or energy conservation standard rulemaking and at least 180 days prior to publication of a test procedure NOPR; revise paragraph (d) to allow DOE to propose, if necessary, an amended coverage determination before proceeding with a test procedure or standards rulemaking.
6. Process for Developing Energy Conservation Standards.	Revise to modify these provisions to allow for a more expedited rulemaking process in appropriate cases, including but not limited to eliminating the requirement for a separate early assessment request for information (''RFI'') and clarify that DOE will issue one or more documents during the pre-NOPR stage of a rulemaking and revisions to clarify public comment periods for pre-NOPR and NOPR documents.	Revised, as proposed, to allow for a more expedited rulemaking process in appropriate cases, including but not limited to eliminating the requirement for a separate early assessment request for information (''RFI'') and clarify that DOE will issue one or more documents during the pre-NOPR stage of a rulemaking and revisions to clarify public comment periods for pre-NOPR and NOPR documents.
7. Policies on Selection of Standards.	No revisions proposed	No revisions.
8. Test Procedures	Revise paragraph (a) to eliminate the requirement for a separate early assessment RFI and clarify that DOE will issue one or more documents during the pre-NOPR stage of a rulemaking; revise paragraphs (a) and (b) to clarify public comment periods for pre-NOPR and NOPR documents and eliminate the requirement that DOE identify necessary modifications to a test procedure prior to initiating an associated energy conservation standard rulemaking.	Revised, as proposed, paragraph (a) to eliminate the requirement for a separate early assessment RFI and clarify that DOE will issue one or more documents during the pre-NOPR stage of a rulemaking; paragraphs (a) and (b) to clarify public comment periods for pre-NOPR and NOPR documents and eliminate the requirement that DOE identify necessary modifications to a test procedure prior to initiating an associated energy conservation standard rulemaking.
9. ASHRAE Equipment	Revise section to follow ASHRAE rulemaking requirements in EPCA.	Revised section to follow ASHRAE rulemaking requirements in EPCA.
10. Direct Final Rules	No revisions proposed	No revisions.
11. Principles for Distinguishing Between Effective and Compliance Dates.	No revisions proposed	No revisions.
12. Principles for the Conduct of the Engineering Analysis.	Revise to reflect current DOE rulemaking practice	No revisions.
13. Principles for the Analysis of Impacts on Manufacturers.	Revise to reflect current DOE rulemaking practice	No revisions.

[3] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to revise appendix A. (Docket No. EERE–2021–BT–STD–0003, which is maintained at *www.regulations.gov*) The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

[4] The NAS Report is available at *www.nap.edu/catalog/25992/review-of-methods-used-by-the-us-department-of-energy-in-setting-appliance-and-equipment-standards.*

TABLE I.1—LIST OF REVISIONS IN THIS DOCUMENT—Continued

Section	Proposed revisions from the July 2021 NOPR	Final revisions
14. Principles for the Analysis of Impacts on Consumers.	Revise to reflect current DOE rulemaking practice	No revisions.
15. Consideration of Non-Regulatory Approaches.	Revise to reflect current DOE rulemaking practice	No revisions.
16. Cross-Cutting Analytical Assumptions.	Revise to reflect current DOE rulemaking practice; move discussion of emissions analysis into new section 17.	No revisions.

* As part of the proposed revisions, DOE will reorganize and redesignate sections and paragraphs as required.

II. Authority and Background

A. Authority

Title III, Parts B [5] and C [6] of the Energy Policy and Conservation Act, as amended, (''EPCA'' or ''the Act''), Public Law 94–163 (42 U.S.C. 6291–6317, as codified), established the Energy Conservation Program for Consumer Products and Certain Industrial Equipment.[7] Under EPCA, DOE's energy conservation program for covered products consists essentially of four parts: (1) testing; (2) certification and enforcement procedures; (3) establishment of Federal energy conservation standards; and (4) labeling. Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, water use (as applicable), or estimated annual operating cost of each covered product and covered equipment during a representative average use cycle or period of use. (42 U.S.C. 6293; 42 U.S.C. 6314) Manufacturers of covered products and covered equipment must use the prescribed DOE test procedure when certifying to DOE that their products and equipment comply with the applicable energy conservation standards adopted under EPCA and when making any other representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c); 42 U.S.C. 6295(s); 42 U.S.C. 6314(a); and 42 U.S.C. 6316(a)) Similarly, DOE must use these test procedures to determine whether the products comply with energy conservation standards adopted pursuant to EPCA. (42 U.S.C. 6295(s); 42 U.S.C. 6316(a))

In addition, pursuant to EPCA, any new or amended energy conservation standard for covered products (and at least certain types of equipment) must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A); 42 U.S.C. 6316(a)) In determining whether a standard is economically justified, EPCA requires DOE, to the greatest extent practicable, to consider the following seven factors: (1) the economic impact of the standard on the manufacturers and consumers; (2) the savings in operating costs, throughout the estimated average life of the products (*i.e.,* life-cycle costs), compared with any increase in the price of, or in the initial charges for, or operating and maintaining expenses of, the products which are likely to result from the imposition of the standard; (3) the total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard; (4) any lessening of the utility or the performance of the products likely to result from the imposition of 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 imposition of the standard; (6) the need for national energy and water conservation; and (7) other factors DOE finds relevant. (42 U.S.C. 6295(o)(2)(B)(i)) Furthermore, the new or amended standard must result in a significant conservation of energy (42 U.S.C. 6295(o)(3)(B); 42 U.S.C. 6313(a)(6); and 42 U.S.C. 6316(a)) and comply with any other applicable statutory provisions.

B. Background

DOE conducted an effort between 1995 and 1996 to improve the process it follows to develop energy conservation standards for covered appliance products. As part of this effort, DOE reached out to many different stakeholders, including manufacturers, energy-efficiency advocates, trade associations, State agencies, utilities, and other interested parties for input on the procedures, interpretations, and policies used by DOE in considering whether to issue new or amended energy conservation standards. This process resulted in publication of the July 1996 Final Rule which codified these procedures, interpretations, and policies in appendix A. The goal of the July 1996 Final Rule was to elaborate on the procedures, interpretations, and policies that would guide the Department in establishing new or revised energy conservation standards for consumer products. The rule was issued without notice and comment under the Administrative Procedure Act's (''APA'') exception for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.'' (5 U.S.C. 553(b)(A))

On December 18, 2017, DOE issued a request for information (''RFI'') on potential revisions to appendix A. 82 FR 59992. DOE subsequently published a NOPR regarding appendix A in the **Federal Register** on February 13, 2019. 84 FR 3910. On July 26, 2019, DOE subsequently issued a notice of data availability (''NODA'') in the **Federal Register**. 84 FR 36037 (''July 2019 NODA''). After considering the comments it received DOE then published a final rule in the **Federal Register** on February 14, 2020, which significantly revised appendix A. 85 FR 8626.

While DOE issued the July 1996 Final Rule without notice and comment as an interpretative rule, general statement of policy, or rule of agency organization, procedure, or practice, the February 2020 Final Rule was issued with notice and comment. As discussed in the December 2021 Final Rule, DOE believes appendix A is best described and utilized not as a legislative rule but instead as generally applicable guidance that may guide, but not bind, the Department's rulemaking process. In accordance with Executive Order 13990, DOE used a notice and comment process to revise appendix A. 86 FR 7037. DOE held a public webinar for the July 2021 NOPR on August 10, 2021.

[5] For editorial reasons, upon codification in the U.S. Code, part B was redesignated part A.

[6] Part C was added by Public Law 95–619, title IV, section 441(a). For editorial reasons, upon codification in the U.S. Code, part C was redesignated part A–1.

[7] All references to EPCA in this document refer to the statute as amended through Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020).

In response to the July 2021 NOPR and public webinar, DOE received comments from the following parties:

TABLE II.1—LIST OF COMMENTERS

Commenter(s)	Affiliation	Acronym, identifier
Air-Conditioning, Heating, and Refrigeration Institute	Manufacturer Trade Group.	AHRI.
Air-Conditioning, Heating, and Refrigeration Institute (AHRI), AMCA International (AMCA), American Lighting Association (ALA), Association of Home Appliance Manufacturers (AHAM), Consumer Technology Association (CTA), Hearth, Patio & Barbecue Association (HPBA), Heating, Air-conditioning & Refrigeration Distributors International (HARDI), Information Technology Industry Council (ITI), International Sign Association (ISA), Manufactured Housing Institute (MHI), National Association of Manufacturers (NAM), National Electrical Manufacturers Association (NEMA), North American Association of Food Equipment Manufacturers (NAFEM), Power Tool institute, Inc. (PTI), and Plumbing Manufacturers International (PMI).	Manufacturer Trade Groups.	Joint Industry Commenters.
American Boiler Manufacturers Association	Manufacturer Trade Group.	ABMA.
American Gas Association, American Public Gas Association, Spire, Inc., and Spire Missouri, Inc	Utility Trade Group	AGA.
Appliance Standards Awareness Project (Joint Comments filed with the American Council for an Energy-Efficient Economy, Consumer Federation of America, and National Consumer Law Center).	Advocacy Group	Joint Advocacy Commenters.
Attorneys General of California, Colorado, Connecticut, Illinois, Maine, Maryland, Michigan, Minnesota, Nevada, New Jersey, New York, Oregon, Pennsylvania, Vermont, Washington, the Commonwealth of Massachusetts, the District of Columbia, and the City of New York.	State, Local Governments.	State Commenters.
Bradford White Corporation	Manufacturer	BWC.
California Energy Commission	State	CEC.
California Investor-Owned Utilities	Utilities	Cal-IOUs.
Carrier Corporation	Manufacturer	Carrier.
Crown Boiler Company	Manufacturer	Crown Boiler.
Edison Electric Institute	Utility Trade Group	EEI.
GE Appliances	Manufacturer	GEA.
Goodman Manufacturing Company, L.P	Manufacturer	Goodman.
Grundfos Americas Corporation	Manufacturer	Grundfos.
Ahmed Ahmed Hamdi	Individual.	
Hoshizaki America, Inc	Manufacturer	Hoshizaki.
Hussmann Corporation	Manufacturer	Hussmann.
Hydraulic Institute	Manufacturer Trade Group.	HI.
Hydronic Industry Alliance—Commercial	Manufacturer Trade Group.	HIA.
Institute for Policy Integrity—New York University School of Law	Academic Institution	IPR.
Lennox International	Manufacturer	Lennox.
Lutron	Manufacturer	Lutron.
Manufactured Housing Institute	Manufacturer Trade Group.	MHI.
New Yorker Boiler Company, Inc	Manufacturer	New Yorker Boiler.
North American Association of Food Equipment Manufacturers	Manufacturer Trade Group.	NAFEM.
National Propane Gas Association	Utility Trade Group	NPGA.
Natural Resources Defense Council, Earthjustice & Sierra Club	Advocacy Groups	Joint Environmentalist Commenters.
Nortek Global HVAC, LLC	Manufacturer	Nortek.
Northwest Power and Conservation Council	Advocacy Group	NPCC.
Northwest Energy Efficiency Alliance	Advocacy Group	NEEA.
Signify	Manufacturer	Signify.
Small Business Administration (SBA) Office of Advocacy	Federal Government Agency.	SBA Office of Advocacy.
Southern Company	Utility	Southern.
Sullivan-Palatek, Inc	Manufacturer	Sullivan-Palatek.
Sara Taylor	Individual.	
Trane Technologies	Manufacturer	Trane.
Unico, Inc	Manufacturer	Unico.
U.S. Boiler Company	Manufacturer	U.S. Boiler.
Weil-McLain Company	Manufacturer	Weil-McLain.
Westinghouse Lighting Corporation	Manufacturer	Westinghouse.
Whirlpool Corporation	Manufacturer	Whirlpool.
Zero Zone, Inc	Manufacturer	Zero Zone.

III. Discussion of Specific Revisions to Appendix A

A. Coverage Determinations

In addition to specifying a list of covered products and equipment, EPCA contains provisions that enable the Secretary of Energy to classify additional types of consumer products and commercial/industrial equipment as ''covered'' within the meaning of EPCA. (42 U.S.C. 6292(b); 42 U.S.C. 6312(b)) This authority allows DOE to consider regulating additional products and equipment to further the goals of EPCA, *i.e.,* to conserve energy, as long as certain statutory requirements are met. Under 42 U.S.C. 6312(b), DOE is required to include commercial/industrial equipment as covered equipment ''by rule.'' While there is no corresponding requirement to include consumer products as covered products by rule,[8] DOE conducts coverage determination rulemakings for both

[8] Under 42 U.S.C. 6292(b), DOE is authorized to ''classify'' a consumer product as a covered product if certain conditions are met. But there is no mention of DOE having to make such classifications by rule.

commercial/industrial equipment and consumer products.

In the February 2020 Final Rule, DOE added a section on coverage determination rulemakings. Among other things, the new section provided that DOE will: (1) initiate a coverage determination rulemaking with a notice of proposed determination; (2) publish final coverage determinations as separate notices prior to the initiation of any test procedure or energy conservation standard rulemaking and at least 180 days prior to publication of a test procedure NOPR; and (3) finalize any changes to an existing scope of coverage before proceeding with a test procedure or energy conservation standard rulemaking. 85 FR 8626, 8648–8653.

As discussed in the July 2021 NOPR, DOE has reconsidered whether the benefits of a one-size-fits-all rulemaking approach that lacks flexibility and includes extra procedural steps not required by EPCA outweigh the increased difficulty such an approach poses in achieving EPCA's goal of increased energy conservation. First, with respect to the requirement that DOE initiate a coverage determination rulemaking with a notice of proposed determination, DOE noted in the July 2021 NOPR that in some cases it may be necessary to gather information about a consumer product or commercial/industrial equipment before issuing a proposed determination of coverage. DOE went on to state that it may only classify a consumer product as a covered product if it is necessary or appropriate to carry out the purposes of EPCA and the average annual per-household energy use of the consumer product is likely to exceed 100 kilowatt-hours per year. As such, DOE explained that it may be beneficial to first issue an RFI or other document to solicit comment on whether a consumer product is likely to meet these requirements. Accordingly, DOE proposed to clarify that it may issue an RFI or other pre-rule document prior to a notice of proposed coverage determination. 86 FR 35668, 35672.

Second, regarding the requirements to finalize coverage determinations prior to the initiation of any test procedure or energy conservation standard rulemaking and at least 180 days prior to publication of a test procedure NOPR, DOE noted in the July 2021 NOPR that coverage determination, test procedure, and energy conservation standard rulemakings are interdependent. *Id.* A coverage determination defines the product/equipment scope for which DOE can establish test procedures and energy conservation standards. It also signals that inclusion of the consumer product or commercial/industrial equipment is necessary to carry out the purposes of EPCA, *i.e.,* to conserve energy and/or water. In order to make this determination, DOE needs to consider whether a test procedure and energy conservation standard can be established for the consumer product or commercial/industrial equipment. If DOE cannot develop a test procedure that measures energy use during a representative average use cycle and is not unduly burdensome to conduct (42 U.S.C. 6293(b)(3); 42 U.S.C. 6314(a)(2)) or prescribe energy conservation standards that result in significant energy savings (42 U.S.C. 6295(o); 42 U.S.C. 6316(a)), then making a coverage determination is not necessary as it will not result in the conservation of energy. Thus, DOE explained in the July 2021 NOPR that it was important that the Department be able to initiate test procedure and energy conservation standard rulemakings while considering whether to establish coverage for a new consumer product or commercial equipment. Accordingly, DOE proposed to eliminate the requirement that coverage determination rulemakings must be finalized prior to initiation of a test procedure or energy conservation standard rulemaking. 86 FR 35668, 35672.

As for the requirement that a coverage determination be finalized 180 days prior to publication of a test procedure NOPR, DOE explained in the July 2021 NOPR that there are significant differences between the benefits of finalizing a coverage determination prior to publishing a test procedure NOPR and the benefits of finalizing a test procedure prior to publishing an energy conservation standards NOPR. *Id.* As discussed in the December 2021 Final Rule, a delay between publication of a test procedure final rule and an energy conservation standards NOPR may be beneficial in some cases as it could allow stakeholders to gain greater familiarity with complex test procedure amendments before providing comment on a proposal to amend standards. 86 FR 70892, 70911. But DOE does not see a corresponding potential benefit for delaying publication of a test procedure NOPR after a coverage determination, which establishes the scope of coverage, *i.e.,* a definition, for the newly covered product or equipment, is finalized. Accordingly, DOE proposed to eliminate the 180-day period and require that coverage determination rulemakings be finalized prior to publication of a test procedure NOPR. 86 FR 35668, 35672.

Finally, the February 2020 Final Rule also stated that, if DOE finds it necessary and appropriate to expand or reduce the scope of a finalized coverage determination during a test procedure or standards rulemaking, the Department will initiate a new coverage determination process prior to moving forward with the test procedure or standards rulemaking. As DOE would be expanding or reducing the scope of an existing coverage determination, DOE proposed in the July 2021 NOPR to clarify that in instances where DOE needed to modify the scope of a coverage determination, DOE would simply amend that determination, as opposed to initiating an entirely new coverage determination. 86 FR 35668, 35670.

Comments Supporting DOE's Proposal on Coverage Determination Rulemakings

A number of commenters supported DOE's proposal to allow for early stakeholder input prior to issuing a notice of proposed coverage determination. (*See, e.g.,* ASAP, No. 53 at p. 14; Carrier, No. 54 at p. 2; Lutron, No. 64 at p. 2; NEEA, No. 71 at p. 2; Advocacy Groups, No. 70 at p. 2; State Commenters, No. 67 at p. 6) For example, State Commenters noted that DOE's proposal would allow the Department to collect necessary information prior to issuing a proposed coverage determination. (State Commenters, No. 67 at p. 6) Similarly, Lutron also favored allowing DOE to obtain public input before issuing a proposed coverage determination. (Lutron, No. 64 at p. 2)

Several commenters also supported DOE's proposal to remove the requirement that coverage determinations be finalized before initiating test procedure and standards rulemakings. (*See, e.g.,* ASAP, No. 53 at p. 14; Carrier, No. 54 at p. 2; Lutron, No. 64 at p. 2; CA IOUs, No. 69 at p. 2; NEEA, No. 71 at p. 2; CEC, No. 55 at p. 2; State Commenters, No. 67 at p. 6; Advocacy Groups, No. 70 at p. 2) Appliance Standards Awareness Project (ASAP), in expressing its support, noted that information learned during test procedure and standards rulemakings can help inform the coverage determination and avoid potential delays resulting from DOE having to amend a coverage determination after it was initially finalized. (ASAP, No. 53 at p. 14) The California Investor-Owned Utilities (CA IOUs) also cited several successful negotiated rulemakings where standards, test procedures, and scope were considered simultaneously as evidence of the potential benefits of DOE's proposal. (CA IOUs, No. 69 at p. 2) While recognizing that information

obtained during a test procedure rulemaking may help inform a coverage determination, Carrier and Lutron emphasized that test procedure and NOPRs should not be issued before a coverage determination is finalized. (Carrier, No. 54 at p. 2; Lutron, No. 64 at p. 2)

DOE also received support for its proposal to eliminate the 180-day required period between finalization of a coverage determination and publication of a test procedure NOPR. (*See, e.g.,* NEEA, No. 71 at p. 2; CEC, No. 55 at p. 2; State Commenters, No. 67 at p. 5) In particular, Northwest Energy Efficiency Alliance (NEEA) supported removal of the 180-day requirement between a finalized coverage determination and a test procedure NOPR as there are times when completing these rulemakings in parallel would be the most efficient use of DOE's and stakeholders' time. NEEA stated that DOE should consider the appropriate timeline between a coverage determination and a test procedure NOPR on a case-by-case basis, as there are many circumstances when a 6-month delay may be unnecessary. (NEEA, No. 71 at p. 2) State Commenters also agreed with DOE that a mandatory delay between finalization of a coverage determination and issuance of a test procedure NOPR did not offer the same benefits as a delay between finalization of a test procedure and issuance of a standards NOPR. (State Commenters, No. 67 at p. 5)

Comments Opposing DOE's Proposal on Coverage Determination Rulemakings

While many commenters expressed support for most, if not all, of DOE's proposals, some commenters expressed concerns with and/or alternatives to DOE's proposed revisions to its coverage determination rulemaking process. These concerns and alternative proposals were centered around DOE's proposed elimination of the 180-day period between finalization of a coverage determination and publication of a test procedure NOPR. (*See, e.g.,* ASAP, No. 53 at p. 14; Grundfos, No. 53 at p. 16; Carrier, No. 54 at p. 2; ABMA, No. 61 at p. 2; Lutron, No. 64 at p. 2)

Several of these commenters stated that some period of time between finalization of a coverage determination and publication of a test procedure NOPR is necessary. For example, the American Boiler Manufacturers Association (ABMA) stated that although it supported the 180-day delay between finalization of a coverage determination and publication of a test procedure NOPR, it is also sensitive to DOE's concerns about delays to the rulemaking process that jeopardize its ability to meet statutory deadlines. Consequently, ABMA suggested a compromise approach of shortening the required spacing from 180 days to 90 days. (ABMA, No. 61 at p. 2) Lutron and the Joint Industry Commenters stated that there could be a number of reasons why adequate time is needed between those two events, so DOE should consider whether such time is necessary in each case and seek stakeholder feedback on that matter during the coverage determination process. (Lutron, No. 64 at p. 2; Joint Industry Commenters, No. 62 at p. 4) The Joint Industry Commenters specifically mentioned a scenario where a standards development organization is developing a test procedure as a reason for having some period of time between finalization of a coverage determination and publication of a test procedure NOPR. Similarly, Carrier recommended that DOE should make it a standard practice to seek early public input through an RFI (or other appropriate mechanism) to obtain input on the appropriate time needed between a coverage final rule and a test procedure NOPR. (Carrier, No. 54 at p. 2)

In contrast to these comments requesting some period of time between finalization of a coverage determination and publication of a test procedure NOPR, DOE also received comments to eliminate the requirement altogether that DOE finalize coverage determinations prior to publishing test procedure NOPRs. ASAP suggested that DOE should be able to finalize a coverage determination concurrent with finalization of any energy conservations standards. ASAP contended that allowing the Department to incorporate information learned during the rulemaking process into the coverage determination would avoid any potential delays associated with having to amend the coverage determination after it was initially finalized. (ASAP, No. 53 at p. 14) Similarly, the Advocacy Groups encouraged DOE to adopt an approach allowing for concurrent coverage and standards finalizations. They noted that the proposed regulatory text would still require DOE to finalize a coverage determination prior to publishing a proposed test procedure and, in their view, this requirement would limit DOE's ability to incorporate information learned during the related test procedure and standards rulemakings into the coverage determination, which could result in unnecessary delays if DOE is required to pause the rulemaking process to amend the coverage determination. (Advocacy Groups, No. 70 at p. 2)

DOE's Response to Comments

In response to comments, DOE first notes a large majority of commenters, representing a wide variety of stakeholders, supported both the elimination of the requirement to begin a coverage determination rulemaking with a notice of proposed determination and the requirement that a coverage determination be finalized prior to initiation of a test procedure or standards rulemaking. In both cases, commenters recognized that allowing for more early stakeholder input, including information on prospective test procedures and standards, will help make for a better, more-informed coverage determination rulemaking process. Accordingly, for the reasons discussed in the July 2021 NOPR and this document, DOE is removing the requirements from section 5 of appendix A that a coverage determination begin with a notice of proposed determination and be finalized prior to initiation of a test procedure or standards rulemaking.

Additionally, DOE did not receive any comments regarding its proposed clarification that, if DOE finds it necessary and appropriate to expand or reduce the scope of a finalized coverage determination during a test procedure or standards rulemaking, the Department will amend the existing coverage determination prior to moving forward with the test procedure or standards rulemaking. Accordingly, for the reasons discussed in the July 2021 NOPR and this document, DOE is revising section 5(d) of appendix A to clarify that, if necessary and appropriate, the Department will amend the existing coverage determination prior to moving forward with a test procedure or standards rulemaking.

As for the comments regarding the 180-day period and sequencing of the coverage determination, test procedure, and standards rulemakings, DOE first notes that several commenters stated there could be potential benefits of having a period of time between finalization of a coverage determination and publication of a test procedure NOPR. Specifically, the Joint Industry Commenters gave an example of where a delay between finalization of a coverage determination and publication of a test procedure may allow a standards development organization more time to develop an industry test procedure. DOE does not disagree with these commenters in that a delay between finalization of a coverage determination and publication of a test procedure NOPR may offer some

benefits in certain cases. But, as stated throughout this rulemaking process, DOE has reconsidered whether the benefits of a one-size-fits-all rulemaking approach that lacks flexibility and includes extra procedural steps not required by EPCA outweigh the increased difficulty such an approach poses in accomplishing the purposes of EPCA, *i.e.,* to conserve energy. So, while a 180-day period in between finalization of a coverage determination and publication may offer benefits in certain situations, in other cases it will simply result in a 180-day delay in implementing energy conservation standards without benefiting the rulemaking process. Thus, DOE is declining to adopt a specific time frame associated with the sequencing of a coverage determination and test procedure rulemaking.

As for those comments suggesting DOE allow concurrent finalization of coverage determinations and energy conservation standards, the Department believes any benefits from concurrent finalization of coverage determinations and energy conservation standards are more than outweighed by the uncertainty this would add to the rulemaking process. The commenters argued that concurrent determinations could avoid potential delays by incorporating information learned during the standards rulemaking process into the final coverage determination. But DOE's proposal already allows for coverage determination rulemakings to be informed by the preliminary stages of test procedure and standards rulemakings. Further, DOE notes that the negotiated rulemaking process allows stakeholders to simultaneously consider scope of coverage, test procedures, and energy conservation standards.[9]

Accordingly, for the reasons discussed in the July 2021 NOPR and this document, DOE is revising section 5 of appendix A to eliminate the 180-day required period between finalization of a coverage determination and publication of a test procedure and, instead, provide that coverage determinations be finalized prior to publication of a test procedure NOPR.

[9] DOE, through its Appliance Standards Rulemaking Federal Advisory Committee (''ASRAC''), established a working group to negotiate energy conservation standards for commercial and industrial fans and blowers. 80 FR 17359 (Apr. 1, 2015). The working group submitted a term sheet containing recommendations on scope of coverage, test procedures, and energy conservation standards analysis methodology. The term sheet is available at *https://www.regulations.gov/document/EERE-2013-BT-STD-0006-0179.*

B. Process for Developing Energy Conservation Standards

As part of the February 2020 Final Rule, DOE made a number of changes to its process for developing energy conservation standards. The February 2020 Final Rule, among other changes: (1) required that DOE initiate a standards rulemaking with an early assessment RFI; (2) required that the preliminary stages of a standards rulemaking include either a framework document/preliminary analysis or an advance notice of proposed rulemaking (''ANOPR''); and (3) set minimum comment periods for NOPR and pre-NOPR documents. 85 FR 8626, 8704–8706.

As discussed throughout this rulemaking process, DOE has reconsidered whether the benefits of a one-size-fits-all rulemaking approach that lacks flexibility and includes extra procedural steps not required by EPCA outweigh the increased difficulty such an approach poses in meeting DOE's statutory deadlines and obligations under EPCA. As such, DOE proposed additional revisions to the process for developing energy conservation standards in the July 2021 NOPR. First, DOE proposed to eliminate the requirement for an early assessment RFI. DOE reasoned that because stakeholders can comment on whether a new or amended standard would meet the relevant statutory criteria at any stage of the rulemaking process, a separate rulemaking document limited to only that topic (*i.e.,* the early assessment RFI) may delay the overall process without adding an appreciable benefit. Instead, DOE noted that it would welcome the same type of information in the context of an RFI, preliminary analysis, ANOPR, or some other pre-NOPR document, while at the same time asking other relevant questions and gathering information in the event that the Department decides to proceed with an energy conservation standards rulemaking. 86 FR 35668, 35673.

Second, in conjunction with the proposal to eliminate the early assessment RFI, DOE also proposed to eliminate the requirement that the pre-NOPR stage of a standards rulemaking include either a framework document/preliminary analysis or an ANOPR. DOE tentatively concluded that one round of pre-NOPR input may be sufficient for some rulemakings. For instance, DOE is required to revisit final determinations that energy conservation standards do not need to be amended within three years. (42 U.S.C. 6295(m)(3)(B)) In such cases, it may not be necessary to issue a framework document/preliminary analysis or an ANOPR, as an RFI or NODA may be sufficient to update DOE's rulemaking analysis in preparation for proposing amended standards or a determination that standards do not need to be amended. Another example for which a single round of pre-NOPR input may be sufficient would be if a product has been subject to multiple rounds of rulemaking, relies on mature technologies, and for which the market is well-understood. As such, DOE proposed to publish one or more documents in the **Federal Register** during the pre-NOPR stage of a rulemaking to gather information on key issues. Such document(s) could take several forms depending upon the specific proceeding, including a framework document, RFI, NODA, preliminary analysis, or ANOPR. 86 FR 35668, 35673.

Finally, DOE proposed revisions to the comment periods for pre-NOPR and NOPR rulemaking documents. For pre-NOPR documents, which do not have a statutorily required minimum comment period, DOE proposed to eliminate the 75-day minimum public comment period and, instead, determine the appropriate comment period for these documents on a case-by-case basis. This would allow DOE to establish comment periods that are commensurate with the nature and complexity of the issues presented in a pre-NOPR document, while also allowing DOE to proceed more expeditiously with its rulemaking process. *Id.* DOE also proposed to eliminate the 75-day minimum public comment period for standards NOPRs and revert to the Department's prior practice, consistent with EPCA, of requiring a 60-day minimum public comment period. DOE stated that 60 days offers an adequate amount of time for comment in most standards rulemakings, while helping to streamline the rulemaking process. And, for those rulemakings involving more complex issues, DOE noted that 60 days is the minimum comment period, and the Department may extend comment periods as appropriate. 86 FR 35668, 35673–35674.

Comments Supporting DOE's Proposal on Energy Conservation Standards Rulemakings

Several commenters supported DOE's proposal to eliminate the requirement for an early assessment RFI and instead clarify that DOE will issue one or more pre-NOPR documents intended to gather information on key issues, including whether new or amended standards would satisfy the relevant statutory criteria. (*See, e.g.,* ABMA, No. 61 at p.

3; Grundfos, No. 53 at pp. 24–25; ASAP, No. 53 at p. 24; CA IOUs, No. 69 at pp. 1–2; NEEA, No. 71 at p. 2) In expressing their support, the CA IOUs stated that the decision of whether a rulemaking should move forward can be made through a normal RFI, rather than through a formal, mandatory early assessment stage. (CA IOUs, No. 69 at pp. 1–2) Similarly, ASAP supported DOE's proposal to eliminate the requirement for an early assessment RFI because the Department can elicit the same type of information through other types of pre-NOPR documents, and DOE should be allowed the flexibility to determine the specific rulemaking documents that are appropriate in each case. (ASAP, No. 53 at p. 24) Grundfos and ABMA supported eliminating the early assessment RFI as long as DOE continued to provide opportunities for early stakeholder input. The Advocacy Groups supported DOE's proposal because it would provide DOE with the flexibility to determine the specific rulemaking steps that are appropriate in individual cases, thereby avoiding unnecessary delays while continuing to provide an opportunity for early stakeholder input. (Advocacy Groups, No. 70 at p. 4)

Several commenters also expressed their support for DOE's proposal to determine comment periods for pre-NOPR documents on a case-by-case basis and revise the minimum comment period for standard NOPRs to be consistent with EPCA. (*See* ASAP, No. 53 at p. 24; NEEA, No. 71 at pp. 2–3; Advocacy Groups, No. 70 at p. 3; NPCC, No. 52 at p. 2) The Advocacy Groups noted that the proposal would avoid unnecessary delays by allowing DOE to select appropriate comment periods for pre-NOPR documents, while continuing to provide an opportunity for early stakeholder input. (Advocacy Groups, No. 70 at p. 4) In expressing their support for the proposal, ASAP also noted that the requirements are for minimum comment periods and DOE is free to set longer comment periods where merited. (ASAP, No. 53 at p. 24)

Comments Opposing DOE's Proposal on Energy Conservation Standards Rulemakings

Several commenters opposed DOE's proposal to eliminate the requirement for an early assessment RFI and instead clarify that DOE will issue one or more pre-NOPR documents intended to gather information on key issues, including whether new or amended standards would satisfy the relevant statutory criteria. (*See, e.g.,* AHAM, No. 53 at p. 27; Lutron, No. 64 at p. 3; Mercatus, No. 48 (Attachment) at pp. 3–4; Lennox, No. 60 at p. 6; Joint Industry Commenters, No. 62 at p. 5; GEA, No. 72 at p. 3) In expressing their support for the early assessment process laid out in the February 2020 Final Rule, AHAM stated that the early assessment procedure could help DOE streamline its process by prioritizing rules that satisfy EPCA's requirements, thereby conserving DOE and stakeholder resources and allowing DOE to meet its deadlines more often. (AHAM, No. 53 at p. 27) Similarly, Lutron stated that the early assessment process will help prevent time and resources being invested in standards rulemakings that cannot meet the applicable statutory criteria. (Lutron, No. 64 at p. 3) Mercatus argued in favor of retaining the early assessment process as it would ensure that a wide variety of viewpoints are considered by DOE prior to a regulation being formally proposed. In its view, once a regulation has been proposed, an agency has already made up its mind about what it wants to do, and public input comes too late to matter. (Mercatus, No. 48 (Attachment) at pp. 3–4)

In addition to opposing the elimination of the early assessment RFI, the Joint Industry Commenters offered their own proposal on what an early assessment process should entail. They first suggested that DOE issue a pre-rulemaking document of its choice aimed at obtaining comment on whether a standard should be amended using the criteria in 42 U.S.C. 6295(n)(2). They added that the pre-rulemaking document used by DOE should also: (1) present data and information DOE has gathered during informal, pre-rulemaking stakeholder engagement; (2) identify and seek comment on design options; (3) identify and seek comment on the existence of or opportunity for voluntary, nonregulatory action; (4) seek comment on cumulative regulatory burden; (5) identify significant subgroups of consumers and manufacturers that merit analysis; and (6) seek comment on whether, if DOE moves forward with rulemaking, DOE should pursue negotiated rulemaking. The Joint Industry Commenters remarked that their suggested approach did not differ dramatically from DOE's proposal but would include a NODA/Preliminary Analysis step after the initial pre-NOPR document. In their view, the inclusion of a pre-Technical Support Document (''TSD'') as part of this process is important in initiating a vital exchange of information early in the rulemaking process. (Joint Industry Commenters, No. 62 at p. 6)

Several commenters also opposed DOE's proposal to determine comment periods for pre-NOPR documents on a case-by-case basis and revise the minimum comment period for standards NOPRs to be consistent with EPCA. (*See, e.g.,* Grundfos, No. 53 at pp. 25–26; Carrier, No. 54 at pp. 3, 4; BWC, No. 63 at p. 2; Joint Industry Commenters, No. 62 at pp. 7–8; Lennox, No. 60 at p. 3) For example, Lennox stated that at least 60 days should be provided for comment for pre-NOPR documents as DOE regulations are typically complex, often may involve significant market and manufacturing changes, and pre-NOPR documents by definition are early in the regulatory process, so the timing of their release is generally unpredictable and stakeholder personnel are not necessarily immediately available to assess them. (Lennox, No. 60 at p. 3) BWC opposed shortening the standards NOPR comment period from 75 days to 60 days, noting that manufacturers and all other stakeholders are expected to read, analyze, and investigate substantial documentation between a NOPR itself and an associated TSD. BWC argued that these documents take DOE and its consultants' months to prepare, and to expect a complete and thorough analysis by stakeholders in 60 calendar days is unreasonable, especially when considering the necessary effort in managing other regulatory activities that currently impact it. (BWC, No. 63 at p. 2)

DOE's Response to Comments

In response to these comments, DOE first notes that commenters raised several valid points about the benefits of the early assessment process and longer comment periods. For instance, DOE agrees that early stakeholder input is essential in the rulemaking process. It would also be beneficial, from an allocation of resources standpoint, to determine as early as possible whether a new or amended standard would satisfy the applicable statutory criteria. And that is why DOE did not propose to eliminate the early assessment process in the July 2021 NOPR. Instead, DOE proposed to eliminate the requirement that the Department solicit information on whether a new or amended standard would meet the applicable statutory criteria in a rulemaking document limited to only that topic, *i.e.,* the early assessment RFI. 86 FR 35668, 35673. DOE stated it would issue one or more pre-NOPR rulemaking documents and made it clear that the Department would welcome the same type of early assessment information in these documents, while at the same time asking other relevant questions. *Id.* With respect to the early assessment proposal

from the Joint Industry Commenters, DOE notes that the commenters remarked on the similarities with DOE's own proposal, with the only notable difference being the requirement to issue a NODA or preliminary analysis after the initial pre-NOPR document. While DOE acknowledges that many rulemakings may involve an RFI followed by a NODA or preliminary analysis, that certainly is not the case for all rulemakings. For example, if DOE is revisiting a decision not to amend standards within the 3-year period specified under 42 U.S.C. 6295(m)(3), a pre-NOPR RFI requesting any information relevant to the previous analysis may be sufficient to proceed with a proposed determination that standards do not need to be amended. As such, a requirement to issue a NODA or preliminary analysis would consume time and resources without providing an appreciable benefit to DOE or the public.

Finally, regarding the benefits of early stakeholder input, DOE strongly disagrees with the assertion from Mercatus that DOE does not properly consider stakeholder input received in response to NOPRs. DOE values stakeholder input at every stage of the rulemaking process and has made changes to proposed test procedures and standards in response to stakeholder comments. For example, in an energy conservation standards rulemaking for dishwashers in which DOE initially proposed more stringent standards, DOE determined, in part, based on comments received raising concerns with potential impacts on consumer utility that more stringent standards were not justified. 81 FR 90072, 90114 (Dec. 13, 2016). In the January 10, 2020, final rule establishing energy conservation standards for portable air conditioners DOE updated its equation for calculating the combined energy efficiency ratio from that presented in the proposed rule based on information and data submitted by stakeholders. 85 FR 1378, 1398.

DOE also recognizes that the standards rulemaking process is necessarily complex. And stakeholders need sufficient time to comment on rulemaking documents. But there are also instances where DOE issues rulemaking documents of limited scope and a 30-day comment period, or even less, is more than sufficient. For example, as discussed previously, DOE is required to revisit a determination not to amend standards within three years. In such cases, DOE may issue an RFI on whether there have been any material changes to the market that would affect the analysis conducted in the previous determination not to amend standards. As the scope of the RFI is limited, a 30-day comment period may be more than sufficient to allow stakeholders a meaningful opportunity to comment. With respect to NOPRs, EPCA requires at least a 60-day comment period. (42 U.S.C. 6295(p)(2)) Similarly, Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), states that in most cases a comment period should not be less than 60 days. As stated previously, DOE's main purpose in revising appendix A is to minimize the inefficiencies and unnecessary delays that come with a one-size-fits-all rulemaking approach. DOE sees no reason to establish a longer minimum comment period than required by EPCA or recommended under E.O. 12866, which applies to other Federal agencies that conduct rulemaking analyses of comparable complexity.

Accordingly, for the reasons discussed in the July 2021 NOPR and this document, DOE is revising section 6 of appendix A to specify that the Department will issue one or more pre-NOPR rulemaking documents and comment periods for standards rulemaking documents will be determined on a case-by-case basis with a minimum 60-day comment period for NOPRs.

C. Process for Developing Test Procedures

As part of the February 2020 Final Rule, DOE made a number of changes to its process for developing test procedures. The February 2020 Final Rule, among other changes: (1) required that DOE initiate a test procedure rulemaking with an early assessment RFI; and (2) required that DOE identify any necessary modifications to established test procedures prior to initiating the standards development process. 85 FR 8626, 8653–8654, 8676–8682, 8707–8708.

As discussed throughout this rulemaking process, DOE has reconsidered whether the benefits of a one-size-fits-all rulemaking approach that lacks flexibility and includes extra procedural steps not required by EPCA outweigh the increased difficulty such an approach poses in meeting DOE's statutory deadlines and obligations under EPCA. As such, DOE proposed additional revisions to the process for developing test procedures in the July 2021 NOPR. First, DOE proposed to eliminate the requirement for an early assessment RFI. Because interested parties are free to raise the matter of the need for an amended test procedure at any preliminary stage of the rulemaking, DOE tentatively concluded that a separate rulemaking document limited to only that topic (*i.e.,* the early assessment RFI) unnecessarily delays the overall process without appreciable benefit. Consequently, DOE proposed to issue one or more pre-NOPR documents that would welcome the same type of early assessment information, while at the same time asking relevant questions and gathering information about other test procedure issues, such as the applicability of any industry test procedure. 86 FR 35668, 35674.

Second, for pre-NOPR documents for which there is no statutorily required comment period, DOE proposed to clarify that the Department would determine an appropriate comment period for pre-NOPR documents on a case-by-case basis. This would allow DOE to account for the nature and complexity of the test procedure rulemaking at issue. *Id.* at 86 FR 35675. DOE also proposed to clarify that it will provide a minimum 60-day public comment period with at least one public hearing or workshop for test procedure NOPR documents. *Id.* DOE has historically provided a 75-day comment period for test procedure NOPRs, consistent with the comment period requirement for technical regulations in the North American Free Trade Agreement, U.S.-Canada-Mexico (''NAFTA''), Dec. 17, 1992, 32 I.L.M. 289 (1993); the North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057 (1993) (codified as amended at 10 U.S.C.A. 2576) (1993) (''NAFTA Implementation Act''); and Executive Order 12889, ''Implementation of the North American Free Trade Agreement,'' 58 FR 69681 (Dec. 30, 1993). However, Congress repealed the NAFTA Implementation Act and has replaced NAFTA with the Agreement between the United States of America, the United Mexican States, and the United Canadian States (''USMCA''), Nov. 30, 2018, 134 Stat. 11, thereby rendering E.O. 12889 inoperable. Consequently, since USMCA is consistent with EPCA's public comment period requirements and normally requires a minimum comment period of 60 days for technical regulations, DOE proposed to provide a minimum 60-day public comment period for test procedure NOPRs. 86 FR 35668, 35675.

Finally, DOE proposed to eliminate the requirement that the Department identify any necessary test procedure modifications prior to initiating the standards development process. *Id.* As DOE recognized in the December 2021 Final Rule, it is important that test procedures be finalized prior to

proposing standards so stakeholders can properly evaluate and provide comment on the proposed standards. 86 FR 70892, 70911. But this reasoning does not extend to requiring DOE to identify test procedure modifications prior to initiating a standards rulemaking. Conducting preliminary standards-related work and information gathering in concert with the test procedure proceeding can lead to a more-efficient rulemaking process without sacrificing the quality of DOE's analyses or the opportunity for public input.

Comments Supporting DOE's Proposal on Test Procedure Rulemakings

Several commenters expressed their support for DOE's proposal to eliminate the requirement for an early assessment RFI and instead clarify that DOE will issue one or more pre-NOPR documents intended to gather information on key issues, including whether a new or amended test procedure would satisfy the relevant statutory criteria. (*See, e.g.,* NEEA, No. 71 at p. 2; Advocacy Groups, No. 70 at p. 4; State Commenters, No. 67 at p. 6; Grundfos, No. 53 at p. 33; CA IOUs, No. 69 at pp. 1–2) In expressing their support, the CA IOUs stated that the decision of whether a rulemaking should move forward can be made through a normal RFI, rather than through a formal, mandatory early assessment stage. (CA IOUs, No. 69 at pp. 1–2) The Advocacy Groups supported DOE's proposal because it would provide DOE with the flexibility to determine the specific rulemaking steps that are appropriate in individual cases, thereby avoiding unnecessary delays while continuing to provide an opportunity for early stakeholder input. (Advocacy Groups, No. 70 at p. 4) Similarly, the State Commenters noted that requiring DOE to commence test procedure rulemakings with an early assessment request for information unnecessarily imposes a one-size-fits-all approach on DOE's rulemaking course and constrains the agency's discretion to pursue rulemaking in the most expeditious manner possible. (State Commenters, No. 67 at p. 6)

Several commenters also supported DOE's proposal to determine comment periods for pre-NOPR documents on a case-by-case basis and revise the minimum commenter period for test procedure NOPRs to be consistent with EPCA and USMCA. (*See, e.g.,* NEEA, No. 71 at p. 3; CEC, No. 55 at p. 3; CA IOUs, No. 53 at p. 32) The Advocacy Groups noted that the proposal would avoid unnecessary delays by allowing DOE to select appropriate comment periods for pre-NOPR documents on a case-by-case basis, while continuing to provide an opportunity for early stakeholder input. (Advocacy Groups, No. 70 at p. 4)

Finally, DOE also received comments supporting its proposal to remove the requirement that the Department identify any necessary test procedure modifications prior to initiating the standards development process. For example, the Advocacy Groups supported DOE's proposal to clarify that it would not be precluded from issuing pre-rulemaking documents for standards prior to a test procedure final rule, asserting that this clarification would help avoid unnecessary delays to DOE's rulemaking process. In their view, test procedure and standards rulemakings inform each other and providing DOE with the ability to conduct the initial stages of a standards rulemaking prior to finalizing a test procedure will allow issues identified in the early phases of the standards rulemaking related to the test procedure to be addressed in the test procedure rulemaking. (Advocacy Groups, No. 70 at p. 4) Similarly, the CA IOUs supported DOE's proposed clarification that preliminary work may begin on energy conservation standards prior to completion of a test procedure rulemaking. The CA IOUs reasoned that this refinement would help DOE to expedite its rulemaking process and reduce its backlog of rulemakings. (CA IOUs, No. 69 at pp. 2–3)

Comments Opposing DOE's Proposal on Test Procedure Rulemakings

Several commenters opposed DOE's proposal to eliminate the requirement for an early assessment RFI. For example, Lutron argued that eliminating the early assessment RFI would negatively impact DOE's analysis and reduce commenters' ability to provide meaningful input. (Lutron, No. 64 at p. 3) The Gas Industry Joint Commenters urged that DOE retain appendix A's current early opportunities for providing public comment and input on potential standards and test procedure rulemakings. In their view, it would be better for DOE to take additional time needed to produce a good regulation rather than to take less time to produce a poorer regulation. (Gas Industry Joint Commenters, No. 57 at pp. 4–5) Similarly, the Joint Industry Commenters stated that the early assessment process offers DOE streamlining opportunities by helping it to identify potential test procedure issues prior to the initiation of a standards rulemaking proposal. (Joint Industry Commenters, No. 62 at p. 9)

Several commenters also opposed DOE's proposal to determine comment periods for pre-NOPR documents on a case-by-case basis and revise the minimum comment period for test procedure NOPRs to be consistent with EPCA and USMCA. (*See, e.g.,* Carrier, No. 54 at pp. 3, 4; AHAM, No. 53 at p. 5; Joint Industry Commenters, No. 62 at pp. 7–8; Lennox, No. 60 at p. 3) For example, Lennox stated that commenting on test procedures often involves testing personnel and lab time that typically do not have immediate availability and rulemaking activities compete with lab time and personnel for product development, regulatory and other demands for product testing and assessment. As such, Lennox opposed shortening the 75-day comment period for test procedure NOPRs and suggested a minimum 60-day comment period for pre-NOPR comment periods. (Lennox, No. 60 at p. 3) The Joint Industry Commenters made similar arguments regarding the complexity of issues involved in evaluating proposed test procedures. They stated that the evaluation process can—and often does—include conducting the proposed test procedure along with the collection and analysis of testing data to assist DOE in analyzing the proposed procedure's accuracy, repeatability, and reproducibility, all of which take time to complete. If DOE decides to shorten the comment period for test procedure proposals, the Joint Industry Commenters asked that DOE continue to freely grant reasonable requests for comment period extensions, which they expected to be more frequent with the shortening of the comment period. (Joint Industry Commenters, No. 62 at pp. 7–8) GEA stated that mandatory comment periods with sufficient time for in-depth analysis and commentary are necessary to provide predictability and fairness to stakeholders. (GEA, No. 72 at p. 3)

Finally, DOE also received comments opposing its proposal to remove the requirement that the Department identify any necessary test procedure modifications prior to initiating the standards development process. For example, the Joint Industry Commenters asserted that the test procedure process should be finalized before the standards rulemaking process begins. They stressed the relevance of the test procedure to the standards analysis, noting that responses on pre-NOPR energy conservation standards documents will often be highly dependent on the test procedure, particularly since knowing what the test procedure will measure will affect how the stringency of potential standards will be assessed. (Joint Industry Commenters, No. 62 at p. 9) Similarly, Lutron stated that eliminating the

required sequencing of test procedure and standards rulemakings would negatively impact DOE's analysis on both test procedures and standards and would reduce commenters' ability to provide meaningful input, especially during the early rulemaking phases for new or amended standards. (Lutron, No. 64 at p. 3)

DOE's Response to Comments

In response to these comments, DOE first notes that commenters raised several of the same issues about the benefits of an early assessment process and longer comment periods that were discussed in the preceding section on the process for developing energy conservation standards. And, as stated previously, DOE agrees that early stakeholder input is essential and that some rulemaking documents require a longer comment period in order to give stakeholders sufficient time to develop their comments. DOE again notes that it did not propose to eliminate the early assessment process in the July 2021 NOPR. Instead, DOE proposed to eliminate the requirement that the Department solicit information on whether an amended test procedure would meet the applicable statutory criteria in a rulemaking document limited to only that topic, *i.e.,* the early assessment RFI. 86 FR 35668, 35674. DOE proposed to issue one or more pre-NOPR rulemaking documents and made clear that the Department would welcome the same type of early assessment information in these documents, while at the same time asking other relevant questions. *Id.*

DOE also recognizes that test procedures are complex, and stakeholders need sufficient time to formulate comments. But, as noted previously, there are also instances where DOE issues rulemaking documents of limited scope and a 30-day comment period, or even less, is more than sufficient. For example, in evaluating the potential establishment of test procedures for portable air conditioners, DOE issued an RFI to provide information on investigative testing of existing industry test procedures that could be used to measure cooling capacity and energy use for portable air conditioners. 79 FR 26639 (May 9, 2014). Given that DOE was requesting information regarding existing industry test procedures, DOE provided a 30-day comment period. *Id.* With respect to test procedure NOPRs, EPCA requires at least a 60-day comment period for covered products (42 U.S.C. 6293(b)(2)) and at least a 45-day comment period for covered equipment (42 U.S.C. 6314(b)), while USMCA normally requires a minimum comment period of 60 days for technical regulations.[10] As stated previously, DOE's main purpose in revising appendix A is to minimize the inefficiencies and unnecessary delays that come with a one-size-fits-all rulemaking approach. DOE sees no reason to establish a longer minimum comment period than required by EPCA or USMCA, which applies to other Federal agencies that issue technical regulations of comparable complexity.

With respect to eliminating the requirement that DOE identify any necessary modifications to the test procedure prior to initiating a standards rulemaking, DOE agrees with the Advocacy Groups that test procedure and standards rulemakings inform each other and providing DOE with the ability to conduct the initial stages of a standards rulemaking prior to finalizing a test procedure will allow issues identified in the early phases of the standards rulemaking related to the test procedure to be addressed in the test procedure rulemaking. DOE also agrees with the CA IOUs that eliminating this requirement would lead to a more efficient rulemaking process.

Accordingly, for the reasons discussed in the July 2021 NOPR and this document, DOE is revising section 8 of appendix A to specify that the Department will issue one or more pre-NOPR rulemaking documents and comment periods for test procedure rulemaking documents will be determined on a case-by-case basis with a minimum 60-day comment period for NOPRs. DOE is also eliminating the requirement in section 8 that the Department identify any necessary modifications to a test procedure prior to initiating a standards rulemaking.

D. ASHRAE Equipment

In EPCA, Congress established a separate and unique regulatory scheme pertaining to DOE rulemakings of certain covered equipment addressed by ASHRAE Standard 90.1, *Energy Standard for Buildings Except Low-Rise Residential Buildings,* including specific requirements for both energy conservation standards and test procedures. *See* 42 U.S.C. 6313(a)(6) *and* 42 U.S.C. 6314(a)(4), respectively. In the February 2020 Final Rule, DOE added a section to appendix A specifically addressing ASHRAE equipment for the first time. 85 FR 8626, 8708. While DOE sees value in setting forth the statutory requirements and the Department's regulatory process for covered ASHRAE equipment, a subsequent review suggested that DOE's initial efforts to explain the applicable ASHRAE requirements could be improved, both in terms of better delineating the rulemaking process for covered ASHRAE equipment and removing constraints that are neither compelled by the statute nor consistent with DOE's past practice.

First, with respect to the rulemaking process for ASHRAE equipment laid out in EPCA, DOE proposed to separate out the statutory requirements for energy conservation standards and test procedures, as the February 2020 Final Rule erroneously applied EPCA's timelines for energy conservation standards to test procedures as well. *Id.* at 86 FR 35675–35676. DOE also proposed to clarify what type of action on the part of ASHRAE would trigger a DOE review for amended energy conservation standards and test procedures. With respect to amended energy conservation standards, DOE proposed to only consider ASHRAE to have acted in a manner triggering DOE review when an updated version of ASHRAE Standard 90.1 publishes (*i.e.,* not at the time that an addendum to ASHRAE Standard 90.1 is released or approved), and the updated version includes an increase in the stringency of standard levels or a new design requirement relative to the current Federal standards. With respect to test procedures, DOE proposed to only consider ASHRAE to have acted in a manner triggering DOE review when an updated version of ASHRAE Standard 90.1 publishes (*i.e.,* not at the time that an addendum to ASHRAE Standard 90.1 is released or approved), and that updated version adopts a new or amended test procedure that updates the technical methodology. This approach is consistent with the ASHRAE-specific provisions in EPCA and generally consistent with past DOE practice. *Id.* at 86 FR 35676. Finally, DOE also proposed to clarify that ASHRAE's review and reaffirmance (*i.e.,* not amending) of either a standard or test procedure does not trigger a DOE review or affect the timing of DOE's separate obligation under EPCA to periodically review standards and test procedures for each class of covered equipment. *Id.*

Additionally, DOE proposed to clarify that it has some flexibility in adopting an amended test procedure under ASHRAE Standard 90.1 as EPCA does not require DOE to adopt a test procedure identical to the industry test standard. *Id.* Instead, EPCA directs DOE

[10] *See* USMCA, Chapter 11, Technical Barriers to Trade, available at *https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/11_Technical_Barriers_to_Trade.pdf.*

to amend its test procedure ''to be consistent with the amended industry test procedure . . . unless the Secretary determines, by rule, published in the **Federal Register** and supported by clear and convincing evidence'' that the amended industry test standard would not be representative of the equipment's energy efficiency, energy use, or estimated operating cost during a representative average use cycle and not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(4)(B)) *Id.* DOE further clarified that in such cases, DOE may then develop its own test procedure which does meet these statutory requirements related to representativeness and burden, even if the test procedure is not consistent with the amended industry test standard. *Id.* DOE also noted that the statutory language ''consistent with'' itself provides some flexibility in adopting the amended industry test procedure, and that as EPCA does not require DOE to adopt a test procedure identical to applicable industry test standard, DOE may make modifications that are consistent with the applicable industry test standard. *Id.*

In addition, DOE proposed to clarify that it is not required to adopt or align with sections of the industry test standard that are not necessary for the method of test for metrics included in the DOE test procedure (*e.g.,* sections of the industry test procedure regarding the selection of models for testing under an industry certification program, verification of represented values and the associated tolerances, and operational requirements). These proposals were consistent with the Department's longstanding historic practice. 86 FR 35668, 35676.

In the July 2021 NOPR, DOE also proposed to remove the statement that DOE will adopt the revised ASHRAE levels or the industry test procedure, except in very limited circumstances. The circumstances under which DOE will adopt a more-stringent standard than the ASHRAE standard or a different test procedure are laid out in the statute. DOE will issue a more-stringent standard than the ASHRAE standard if DOE determines, supported by clear and convincing evidence, that the more-stringent standard 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)) ''Very limited circumstances'' is an ambiguous description for a process that is delineated in EPCA. As a result, DOE proposed to remove this description of the circumstances under which DOE will not adopt the amended ASHRAE standard or industry test procedure. 86 FR 35668, 35676. Similarly, DOE proposed to remove the discussion of what constitutes clear and convincing evidence. *Id.* As DOE previously noted in the February 2020 Final Rule, the clear and convincing evidence standard has a specific meaning that the courts have routinely addressed through case law. *See* 85 FR 8626, 8642 (discussing in detail the application of the ''clear and convincing'' evidentiary standard by courts and legal commentators); *see also Am. Pub. Gas Ass'n* v. *United States Dep't of Energy,* 22 F.4th 1018, 1025 (D.C. Cir. 2022) (''[C]lear and convincing evidence requires a factfinder (in this case the Secretary) to have an 'abiding conviction' that her findings (in this case that a more stringent standard would result in significant additional conservation of energy, would be technologically feasible, and is economically justified) are 'highly probable' to be true.''). DOE does not believe the discussion of clear and convincing evidence in appendix A adds anything to the already extensive case law pertaining to the clear and convincing evidence threshold.

DOE also proposed to remove the statement that DOE believes that ASHRAE not acting to amend Standard 90.1 is tantamount to a decision that the existing standard remain in place and clarify that ASHRAE reviewing and reaffirming a standard or test procedure does not have any effect on DOE's rulemaking obligations under EPCA. 86 FR 35668, 35676. As discussed previously, DOE initiates an ASHRAE rulemaking because: (1) Standard 90.1 is amended; or (2) it is required under the 6-year lookback review for standards or the 7-year lookback review for test procedures. Neither of these situations would be affected by a decision by ASHRAE to reaffirm an existing standard or test procedure.

Finally, DOE also proposed to make two clarifications regarding its ASHRAE review process consistent with longstanding DOE practice. First, DOE proposed to clarify that it assesses energy savings from amended ASHRAE Standard 90.1 levels as compared to the current Federal standard (or the market baseline in cases where ASHRAE adds new equipment classes or categories not previously subject to Federal standards) and will also assess energy savings from more-stringent standards as compared to the ASHRAE Standard 90.1 levels. *Id.* And, second, DOE proposed to clarify that it may review all metrics for the equipment category at issue, even though ASHRAE only amended DOE's regulated metric(s), and the Department may also consider changing regulated metrics (while assessing equivalent stringency between metrics). DOE also proposed to clarify that it may also consider changing metrics during a 6-year-lookback or 7-year-lookback review. *Id.* DOE believes this is consistent with EPCA's requirement that test procedures (and metrics) be representative of an average use cycle.

Comments Supporting DOE's Proposals on ASHRAE Rulemakings

Several commenters expressed general support for all of DOE's proposed revisions to the ASHRAE provisions in appendix A. (*See, e.g.,* NPCC, No. 52 at p. 2; NEEA, No.71 at pp. 3–4) With respect to DOE's proposal to create separate provisions for energy conservation standards and test procedures rulemakings because of different statutory requirements, the Joint Industry Commenters agreed that energy conservation standards and test procedure rulemakings are subject to different timelines under the statute. (Joint Industry Commenters, No. 62 at p. 19).

Several commenters supported DOE's proposal to provide clarity tying the triggering event to when ASHRAE publishes an updated version of ASHRAE Standard 90.1. (*See, e.g.,* BWC, No. 63 at pp. 2–3; NEEA, No. 71 at pp. 3–4; ASHRAE, No. 59 at p. 3) ASHRAE stated that the proposal provides for a regular three-year cadence of reviews and provides clarity. (ASHRAE, No. 59 at p. 3) NEEA recommend that DOE clarify in the regulatory text that addendums to ASHRAE 90.1 or updates to an industry test procedure (TP) that ASHRAE 90.1 references do not trigger a DOE review of energy conservation standard (ECS) and TP. (NEEA, No. 71 at pp. 3–4) BWC also agrees with DOE not triggering a review simply when ASHRAE reviews or affirms a standard. (BWC, No. 63 at pp. 2–3)

Several commenters supported DOE's proposal to remove the language stating that DOE would adopt ASHRAE levels or the industry test procedure, except in very limited circumstances. (*See, e.g.,* ASAP, No. 53 at pp. 41–42; Advocacy Groups, No. 70 at p. 5; State Commenters, No. 67 at pp. 7–8; NEEA, No. 71 at pp. 3–4) In supporting DOE's proposal, ASAP stated that the ''except in very limited circumstances'' language was an additional constraint that was inconsistent with the statute and would impede DOE's ability to achieve EPCA's energy conservation purposes. (ASAP, No. 53 at pp. 41–42)

Similarly, several commenters also supported DOE's proposal to remove the discussion of what constitutes clear and

convincing evidence from appendix A. (*See, e.g.,* ASAP, No. 53 at pp. 41–42; CEC, No. 55 at p. 3; Advocacy Groups, No. 70 at p. 5; State Commenters, No. 67 at pp. 7–8) State Commenters noted that further elaboration of the clear and convincing evidence standard either does not change the standard, in which case it is superfluous, or does change the standard, in which case it violates EPCA. (State Commenters, No. 67 at pp. 7–8) The California Energy Commission (CEC) stated that DOE's removal of the clear and convincing evidence discussion in light of the extensive case law covering this topic would ensure that an overly stringent interpretation of the evidentiary threshold does not inhibit the Department from adopting standards that would result in significant additional conservation of energy and are technologically feasible and economically justified. (CEC, No. 55 at p. 3)

Comments Opposing DOE's Proposals on ASHRAE Rulemakings

One commenter requested that DOE reconsider its proposal tying the triggering event to when ASHRAE publishes an updated version of ASHRAE Standard 90.1. Specifically, CA IOUs requested that DOE consider publication of an addendum to ASHRAE Standard 90.1 to trigger a review, noting that some valuable addenda miss the triannual update deadline but are published shortly afterward, and that DOE's proposed interpretation would result in a delay in compliance state for standards. (CA IOUs, No. 69 at p. 3) CA IOUs also requested that DOE clarify what is meant by updates to ASHRAE 90.1 that modify the referenced industry test procedure; specifically what degree of change is required to trigger DOE. *Id.* CA IOUs noted that historically ASHRAE has adopted the latest published version of industry test procedures, even if they include only minor changes and clarifications from the previous version, and that DOE typically does not update its test procedure to match ASHRAE in those cases. *Id.*

With respect to DOE's proposal to clarify that ASHRAE's review and reaffirmance (*i.e.,* not amending) of either a standard or test procedure does not trigger a DOE review or affect the timing of DOE's separate obligation under EPCA, the Joint Industry Commenters stated that if ASHRAE 90.1 is amended just with respect to the energy conservation standard for an ASHRAE equipment, they would still expect DOE to conduct a ''short test procedure rulemaking to simply acknowledge the continued applicability of the test procedure.'' (Joint Industry Commenters, No. 62 at p. 20)

Several commenters opposed DOE's proposal to remove the language stating that DOE would adopt ASHRAE levels or the industry test procedure, except in very limited circumstances. (*See, e.g.,* Carrier, No. 54 at pp. 3, 4; Lutron, No. 64 at pp. 4–5; Joint Industry Commenters, No. 62 at pp. 23–24; BWC, No. 63 at p. 3; ASHRAE, No. 59 at pp. 3–4) In urging DOE to retain this language, the Joint Industry Commenters stated that ASHRAE's open and collaborative process, which involves manufacturers, energy advocates, regulators, academia, and utilities, develops standards that are fair and representative of what are both economically and technologically feasible at the time of the revision. (Joint Industry Commenters, No. 62 at pp. 23–24) Similarly, Lutron stated that industry test procedures are developed by balanced committees and DOE should routinely adopt industry test procedures as a matter of best practice. (Lutron, No. 64 at pp. 4–5) GE Appliances stated that adopting consensus standards speeds up the test procedure rulemaking process, prepares all stakeholders to address standards rulemakings sooner, and reduces the likelihood of litigation or other action regarding test procedures. (GE Appliances, No. 72 at p. 3) Lennox stated that DOE should rarely deviate from industry test procedures metrics given the ''clear and convincing evidence'' threshold set for deviating from industry test procedures. *Id.* Lennox stated that the test procedure lookback section indicates that DOE may amend a test procedure ''in accordance with this section'' (42 U.S.C. 6314(a)(1)(i)), which thereby references the entire section 42 U.S.C. 6314, which includes the ASHRAE ''clear and convincing evidence'' standard for amending a test procedure in 6314(a)(4)(B). *Id.*

DOE received several comments opposing the Department's proposal to remove the discussion of what constitutes clear and convincing evidence. (*See, e.g.,* Spire, No. 53 at p. 43; Carrier, No. 54 at pp. 3, 4; Joint Industry Commenters, No. 62 at p. 24; ASHRAE, No. 59 at pp. 3–4) The Joint Industry Commenters urged DOE to retain the current text regarding what constitutes ''clear and convincing'' evidence with respect to adopting energy conservation standards more stringent than those adopted in ASHRAE 90.1. In their view, the explanatory text adopted as part of the February 2020 Final Rule clarified the meaning of this phrase in this context, which is to discourage the adoption of higher energy efficiency standards above those set by ASHRAE. (Joint Industry Commenters, No. 62 at p. 24) Spire stated that eliminating the discussion of what constitutes clear and convincing evidence would forgo an opportunity to potentially resolve issues without the need for litigation. (Spire, No. 53 at p. 43)

DOE's Response to Comments

First, DOE did not receive any comments opposing separate provisions for energy conservation standards and test procedure rulemakings. As noted by the Joint Industry Commenters, energy conservation standards and test procedure rulemakings are subject to different statutory requirements under the ASHRAE provisions in EPCA. Accordingly, for the reasons discussed in the July 2021 NOPR and this document, DOE is revising section 9 of appendix A to create separate provisions for energy conservation standards and test procedure rulemaking requirements.

With respect to DOE's proposal that the ASHRAE provisions are triggered when an updated version of ASHRAE Standard 90.1 is published, the CA IOUs commented that DOE should instead consider the publication of an addendum to ASHRAE Standard 90.1 as the triggering event. In response to the CA IOUs, DOE has determined that the benefit of a clear review cycle provides certainty to the public and does not impact DOE's separate obligation under EPCA to periodically review standards and test procedures, which should alleviate some of the CA IOUs concern over the possibility of extended compliance dates.

With respect to NEEA's request that DOE clarify in the regulatory text that addendums to ASHRAE 90.1 or updates to an industry TP that ASHRAE 90.1 references do not trigger a DOE review of ECS and TP, DOE notes that it was already articulated in the regulatory text with respect to standards, but DOE has included similar language in the regulatory text with respect to test procedures, consistent with the proposal in the NOPR preamble. With respect to the CA IOUs request that DOE clarify what degree of change to an industry test procedure would trigger DOE to act, DOE would only be triggered by ASHRAE updating its reference to an updated industry test procedure that contains modifications to sections of relevance to DOE metrics. Where the referenced industry test procedure makes minor modifications to

a section of relevance to DOE metrics, DOE would only consider itself triggered if such modifications make a substantive change to the DOE test procedure.

With respect to DOE's proposal to clarify that ASHRAE's review and reaffirmance (*i.e.,* not amending) of either a standard or test procedure does not trigger a DOE review or affect the timing of DOE's separate obligation under EPCA, the Joint Industry Commenters stated that if ASHRAE 90.1 is amended just with respect to the energy conservation standard for an ASHRAE equipment, they would still expect DOE to conduct a ''short test procedure rulemaking to simply acknowledge the continued applicability of the test procedure.'' DOE disagrees with the Joint Industry Commenters. DOE's rulemaking obligations under the ASHRAE provisions in EPCA are very clear. Further, as clarified in this final rule, the requirements for test procedure and standards rulemakings are separate. Being required to initiate an energy conservation standards rulemaking for ASHRAE equipment under either an ASHRAE trigger or a 6-year lookback review, does not, on its own, require DOE to also conduct a test procedure rulemaking. As such, for the reasons discussed in the July 2021 NOPR and this document, DOE is revising section 9 of appendix A to remove language that suggests that ASHRAE not acting to amend a standard is a decision affirming the current standard. However, DOE is not finalizing the language from the July 2021 NOPR that stated that DOE's obligations under the lookback provisions for standards and test procedures are not satisfied by any ASHRAE action, including reviewing, but not amending, a standard or test procedure. DOE believes the statute is already sufficiently clear on this point and the added text is unnecessary.

With respect to DOE's proposed elimination of the language characterizing the circumstances under which the Department would not adopt the ASHRAE levels or test procedure as being very limited, commenters, both in favor of and opposed to retaining this language, seem to think this language implies something more than what is written in the statute. EPCA specifies the circumstances under which DOE will adopt a more-stringent standard than the ASHRAE standard or a different test procedure. For example, DOE will issue a more-stringent standard than the ASHRAE standard if DOE determines, supported by clear and convincing evidence, that the more-stringent standard 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)) DOE agrees with commenters that adding a vague description to these circumstances only raises concerns that DOE may not be properly following a process that is clearly laid out in the statute.

Similarly, the discussion of what constitutes clear and convincing evidence that was added in the February 2020 Final Rule has led to some confusion over whether DOE is applying the clear and convincing evidence threshold required by EPCA or a modified version. Accordingly, for the reasons discussed in the July 2021 NOPR and this document, DOE is revising section 9 of appendix A to remove this language as proposed. DOE disagrees with Lennox's assertion that DOE should rarely deviate from industry test procedure metrics due to their view that the 7-year lookback requires ''clear and convincing evidence'' to deviate from industry test procedure. Lennox asserts that a reference in 42 U.S.C. 6314(a)(1)—the 7-year lookback provision—to ''in accordance with this section'' references the entirety of section 42 U.S.C. 6314, including the clear and convincing provision in 42 U.S.C. 6314(4)—the ASHRAE trigger provision. However, a plain language reading does not include this requirement; paragraph (a)(4) of section 6314 is very specific to the ASHRAE trigger; had it been intended for this paragraph to apply to the 7 year lookback as well, it would have been cited specifically, just as the 6 year lookback provision for energy conservation standards in 42 U.S.C. 6313(6)(C) refer back specifically to the ASHRAE trigger provisions in 42 U.S.C. 6313(6)(A) and (B).

During its 7-year lookback review, DOE is directed by EPCA to evaluate whether an amended test procedure would more accurately or fully comply with the representativeness and burden requirements in 42 U.S.C. 6314(a)(2), and if DOE determines an amended test procedure would do so, then DOE is required to prescribe such test procedures for the equipment class. (42 U.S.C. 6314(a)(1)(A)) There is no requirement that DOE's decision to amend a test procedure be supported by clear and convincing evidence. (*Id.*) DOE's 7-year-lookback review under EPCA ensures that DOE is not bound to an industry test procedure that has not been updated when more representative and/or less burdensome test methods are available.

DOE notes that in proposing modifications to the regulatory text for the ASHRAE Equipment section, DOE inadvertently introduced the ''clear and convincing'' language to the test procedure lookback rulemaking provision. Nowhere in the preamble did DOE state that it intended for this to be the requirement or that it was DOE's interpretation of EPCA. For the reasons discussed above, DOE has removed that clause in this final rule.

Finally, as noted in the July 2021 NOPR, application of the ASHRAE provisions in EPCA typically involve nuances that are not best addressed in appendix A, which contains generally applicable procedures, interpretations, and policies for energy conservation standard and test procedure rulemakings. 86 FR 35668, 35675. DOE received several comments in response to the July 2021 NOPR that further reinforce the need for additional, more-specific guidance on DOE's implementation of the ASHRAE provisions. DOE believes this is best accomplished outside the confines of appendix A in a separate process. As such, DOE is not finalizing proposed revisions from the July 2021 NOPR dealing with regulated metrics, the baseline for energy conservation standards analysis, adoption of industry test procedure sections not relevant to the DOE test procedure, and consistency with the industry TP in this final rule. DOE will further consider these proposals and other ASHRAE-related issues in a separate process.

E. Analytical Methodology

In late 2019, DOE contracted with the National Academy of Sciences (''NAS'') to conduct a peer review of the Department's methods for setting building and equipment performance standards.[11] As such, in the February 2020 Process Rule, DOE stated that it would consider changes to sections of the Process Rule involving its analytical methodologies in a subsequent proceeding after completion of a peer review. 85 FR 8686–8687. As such, these sections remained largely unchanged from the July 1996 Final Rule. However, when DOE began to consider revisions to appendix A in early 2021, the NAS peer review process was still ongoing without a definitive completion date. At that point, DOE decided that the benefits of updating the analytical methodology in the July 1996 Final Rule to reflect the Department's current practice, which incorporates lessons learned from an additional 25

[11] More information on the NAS peer review, including the final report, is available at *https://www.nationalacademies.org/our-work/review-of-methods-for-setting-building-and-equipment-performance-standards.*

years of rulemakings, outweighed the potential inefficiency of having to amend these methods again in a subsequent proceeding. As a result, in the July 2021 NOPR, DOE proposed to revise appendix A to reflect the current state of DOE's analytical methodologies. DOE also stated that if it makes any revisions to its analytical methods based on the NAS peer review, the Department will propose any necessary corresponding revisions to the Process Rule in a subsequent proceeding. 86 FR 35668, 35677.

DOE has since had cause to reconsider this position. First, in response to the July 2021 NOPR, DOE received numerous comments from stakeholders that the Department should wait to revise its analytical methodologies until the NAS has completed its peer review. (*See, e.g.,* Carrier, No. 54 at p. 4; Lutron, No. 64 at p. 4; GEA, No. 72 at p. 4; Joint Industry Commenters, No. 62 at pp. 10–11) Second, the NAS completed the peer review and published their report on January 7, 2022.[12] In light of these two factors, DOE has decided not to finalize any revisions to its analytical methodologies in this document. Instead, DOE will consider changes to its methodologies in a separate notice-and-comment process that is informed by the results of the NAS Report.

F. Other Topics

In addition to the topics covered in this document, DOE also received a number of other comments on topics not covered in the July 2021 NOPR. For instance, DOE received a number of comments on issues discussed in the April 2021 NOPR, *e.g.,* whether appendix A should be binding. DOE is not addressing these comments in this document as those proposals were finalized in the December 2021 Final Rule.

DOE also received comment on its adherence to EPCA's directive that any new or amended energy conservation standard prescribed by the DOE must be designed to achieve the maximum improvement in energy efficiency, which the Secretary determines is technologically feasible and economically justified, and DOE's application of the associated statutory factors. (*See* 42 U.S.C. 6295(o)(2)(A) and (B)(i)(I)–(IV); 42 U.S.C. 6316(a))

The Joint Commenters urged DOE to retain its current practices of analyzing all relevant statutory factors when selecting a final standard rather than focusing sequentially on any one or any specific set of factors. They also suggested that when analyzing whether a potential standard level is economically justified, DOE should continue to use only the economic results to end consumers since, in their view, this is the clear intent of the relevant statutes and end consumer economics should be the sole criterion in determining economic justification. The commenters noted that DOE's national economic and related impact analyses are not measures of end consumer economics and should never be used as a substitute (or supersede) the end customer analysis. (Joint Industry Commenters, No. 62 at p. 13)

The Joint Industry Commenters stated that they would object to DOE's use of the Social Cost of Carbon and other calculations of the monetary value of avoided greenhouse gas emissions being included in DOE's analysis of the factors under EPCA. The commenters asserted that such an approach would be inappropriate under EPCA since the scientific and economic knowledge continues to evolve rapidly as to the contribution of carbon dioxide and other greenhouse gases to changes in the future global climate. They argued that while it may be acceptable for DOE to examine these values as informational (so long as the underlying interagency analysis is transparent and vigorous), the emissions reductions analysis should not impact the trial standard level that DOE selects as a new or amended standard. (Joint Industry Commenters, No. 62 at pp. 13–14)

AHRI asserted that EPCA was intended to focus on energy efficiency, energy costs, and energy savings in the United States. It argued that none of the seven factors [13] that DOE must consider when evaluating whether a potential standard is economically justified focuses on the monetary value of the avoided emissions of greenhouse gases or other air pollutants. It added that Congress' inclusion of the first six factors individually was evidence of its view that these first six factors were significantly important and drive the energy standards analysis. AHRI further asserted that in spite of numerous amendments to EPCA, Congress never included greenhouse gas emissions as a pertinent factor for DOE to consider. AHRI stated that the monetary impacts of avoided greenhouse gas emissions should only be used for informational purposes rather than given any weight as part of DOE's cost-benefit analysis—and DOE should not use its limited resources to conduct an analysis of avoiding these emissions (or the social cost of carbon) when setting efficiency levels. (AHRI, No. 56 at 2–3)

Specifically with respect to ASHRAE equipment, ASHRAE cautioned DOE from going beyond the efficiency standards in Standard 90.1 by overly depending upon factors not explicitly named in the so-called ''7 Factor Test'', stating that ASHRAE supports greenhouse gas reductions but noting that almost any higher standard could be ''economically justified'' by using factors such as monetizing avoided emissions. ASHRAE stated that such monetization should be produced but not overly relied upon in its determination of whether a standard is economically justified. (ASHRAE, No. 59 at p. 5)

AHRI also argued that to the extent DOE calculates greenhouse gas emissions associated with potential standards for informational purposes, the emission increases from other social equity factors must also be considered. AHRI asserted that these other factors have significant impacts on greenhouse gas emissions because new standards that increase the cost of covered equipment result in underserved rural and urban households and small businesses to continue using old, inefficient, and leaky equipment—thereby allowing high global warming potential refrigerants to be released into the atmosphere. (AHRI, No. 56 at p. 3)

IPI commented that DOE should revise its rulemaking approach to ensure the consistent and meaningful consideration of all important effects to the environment, public health, consumers, and energy security,

[12] *Review of Methods Used by the U.S. Department of Energy in Setting Appliance and Equipment Standards.* The National Academies Press (2021). Available at *www.nap.edu/catalog/25992/review-of-methods-used-by-the-us-department-of-energy-in-setting-appliance-and-equipment-standards.*

[13] EPCA states that in determining whether a standard is economically justified, the Secretary shall, after receiving views and comments furnished with respect to the proposed standard, determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering—(I) the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard; (II) the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard; (III) the total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard; (IV) any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard; (V) the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard; (VI) the need for national energy and water conservation; and (VII) other factors the Secretary considers relevant. (42 U.S.C. 6295(o)(2(B)(i)(I)–(VII); 42 U.S.C. 6316(a))

including indoor air quality and toxic air and water pollution. Such significant impacts, including both upstream and downstream emissions, should be considered during—not after—the evaluation of whether standards are economically justified. (IPI, No. 68 (Attachment at pp. 1 and 7–8))

As noted, under EPCA, any new or amended standard must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A); 42 U.S.C. 6316(a)) To ensure that DOE meets this statutory mandate, DOE employs a walk-down process to select energy conservation standard levels. As a first step in the process, DOE screens out technologies for improving energy efficiency that are not feasible. DOE then uses the remaining technologies to create a range of TSLs. Beginning with the max-tech TSL, DOE then determines whether a specific TSL is economically justified. In making that determination, DOE determines, after reviewing public comments and data, whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the seven factors described in 42 U.S.C. 6295(o)(2)(B)(i). (*See also* 42 U.S.C. 6313(a)(6)(B)(ii) (applying the seven factors to ASHRAE equipment); 42 U.S.C. 6316(a) (applying the seven factors to non-ASHRAE equipment))

If DOE determines that the max-tech TSL is economically justified, the analysis ends, and DOE adopts the max-tech TSL as the new or amended standard. However, if DOE determines that the max-tech TSL is not economically justified, DOE walks down to consider the next-most-stringent TSL. This walkdown process continues until DOE determines that a TSL is economically justified or that none of the TSLs are economically justified.

DOE maintains that climate and health benefits associated with the more efficient use of energy are important to take into account when considering the need for national energy and water conservation, which is one of the factors to consider under EPCA. (42 U.S.C. 6295(o)(2)(B)(i)(VI); *Zero Zone, Inc.* v. *United States* DOE, 832 F.3d 654, 677 (7th Cir. 2016) (holding that, under 42 U.S.C. (o)(2)(B)(i)(VI), DOE has ''the authority under EPCA to consider the reduction in'' the social cost of greenhouse gasses)).

The Advocacy Groups provided comment on certain apparent inconsistencies and inaccuracies in sections 6 and 7. The Advocacy Groups noted that the text of section 6(a)(4)(ii) indicates that DOE and its contractors will perform engineering and life-cycle cost analyses of the design options and section 6(a)(4)(v) similarly refers to life-cycle cost analysis of design options. The Advocacy Groups commented that DOE does not perform life-cycle cost analyses of design option but of efficiency levels. Similarly, they also noted that section 7(c)(1) refers to the analysis of design options, which they emphasized DOE does not perform—rather, DOE's analysis is performed on efficiency levels. The Advocacy Group suggested that DOE make changes to reflect this practice. The Advocacy Groups also stated that the current text of section 7(b)(1), which notes that technologies not incorporated into commercial products or in commercially viable, existing prototypes will not be considered further, is inconsistent with DOE's practice of screening out design options which are not incorporated in commercial products or in working prototypes. They commented that DOE evaluates a ''max-tech'' level (maximum technologically feasible level) regardless of cost and that DOE cannot screen out a design option on the basis of cost, which are separately considered as part of the selection of standard levels. The Advocacy Groups further added that while section 7(c)(3) says that efficiency levels will be identified in pre-NOPR documents, DOE does not always identify efficiency levels in its pre-NOPR documents. (Advocacy Groups, No. 70 at pp. 5–6)

Regarding the Advocacy Groups' comments, DOE will address them as part of the separate notice-and-comment process addressing DOE's rulemaking methodology.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866,13563, and 14094

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011) and E.O. 14094, ''Modernizing Regulatory Review,'' 88 FR 21879 (April 11, 2023), requires agencies, to the extent permitted by law, to: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in this preamble, this final regulatory action is consistent with these principles.

This regulatory action is a significant regulatory action under section 3(f)(4) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993). Accordingly, this regulatory action was subject to review under the Executive order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

The revisions contained in this regulatory action are procedural changes designed to improve DOE's ability to meet its rulemaking obligations and deadlines under EPCA. These revisions would not impose any regulatory costs or burdens on stakeholders, nor would they limit public participation in DOE's rulemaking process. Instead, these revisions would allow DOE to tailor its rulemaking processes to fit the facts and circumstances of a particular rulemaking for a covered product or equipment.

DOE currently has energy conservation standards and test procedures in place for more than 60 categories of covered products and equipment and is typically working on anywhere from 50 to 100 rulemakings (for both energy conservation standards and test procedures) at any one time.

Further, these rulemakings are all subject to statutory or other deadlines. Typically, review cycles for energy conservation standards and test procedures for covered products are 6 and 7 years, respectively. (42 U.S.C. 6295(m)(1); 42 U.S.C 6293(b)(1)) Additionally, if DOE decides not to amend an energy conservation standard for a covered product, the subsequent review cycle is shortened to 3 years. (42 U.S.C. 6295(m)(3)(B)) It is challenging to meet these cyclical deadlines for more than 60 categories of covered products and equipment. In fact, as previously discussed, DOE is faced two lawsuits that allege DOE has failed to meet rulemaking deadlines for 25 different consumer products and commercial equipment.[14]

In order to meet these rulemaking deadlines, DOE cannot afford the inefficiencies that come with a one-size-fits-all rulemaking approach. For example, having to issue an early assessment RFI followed by an ANOPR to collect early stakeholder input when a NODA or other pre-rule document would accomplish the same purpose unnecessarily lengthens the rulemaking process and wastes limited DOE resources. Similarly, having to identify any necessary modifications to a test procedure prior to initiating an energy conservation standard rulemaking makes it more difficult for DOE to meet rulemaking deadlines, while offering little to no benefit to stakeholders.

The revisions in this document would allow DOE to eliminate these types of inefficiencies that lengthen the rulemaking process and waste DOE resources, while not affecting the ability of the public to participate in the rulemaking process. Eliminating inefficiencies that lengthen the rulemaking process allows DOE to more quickly develop energy conservation standards that deliver the environmental benefits, including reductions in greenhouse gas emissions, that DOE is directed to pursue under E.O. 13990. Further, the sooner new or amended energy conservation standards eliminate less-efficient covered products and equipment from the market, the greater the resulting energy savings and environmental benefits.

Finally, the revisions in this document would not dictate any particular rulemaking outcome in an energy conservation standard or test procedure rulemaking. DOE will continue to calculate the regulatory costs and benefits of new and amended energy conservation standards and test procedures issued under EPCA in future, individual rulemakings.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment and a final regulatory flexibility analysis (FRFA) for any such rule that an agency adopts as a final rule, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative effects. Also, as required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website at: *www.energy.gov/gc/office-general-counsel.*

This final rule details generally applicable guidance that may guide, but not bind, the Department's rulemaking process. The revisions in this rule are intended to improve DOE's ability to meet the obligations and deadlines outlined in EPCA by allowing DOE to tailor its rulemaking procedures to fit the specific facts and circumstances of a particular covered product or equipment, while not affecting the ability of any interested person, including small entities, to participate in DOE's rulemaking process. Because this rule imposes no regulatory obligations on the public, including small entities, and does not affect the ability of any interested person, including small entities, to participate in DOE's rulemaking process, DOE certifies that this final rule will not have a significant economic impact on a substantial number of small entities, and, therefore, no final regulatory flexibility analysis is required. *Mid-Tex Elec. Cooperative, Inc.* v. *F.E.R.C.,* 773 F.2d 327 (D.C. Cir. 1985).

C. Review Under the Paperwork Reduction Act of 1995

DOE is not amending its existing information collections through this rule. Under existing provisions, manufacturers of covered products/equipment must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for such products/equipment, including any amendments adopted for those test procedures, on the date that compliance is required. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment. 76 FR 12422 (March 7, 2011); 80 FR 5099 (Jan. 30, 2015). The collection-of-information requirement for certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

Specifically, this rule, in addressing clarifications to DOE's guidance regarding its process for amending and establishing energy conservation standards and related test procedures set out in 10 CFR part 430, subpart C, appendix A, does not contain any collection of information requirement that would trigger the PRA.

D. Review Under the National Environmental Policy Act of 1969

DOE has analyzed this regulation in accordance with the National Environmental Policy Act (NEPA) and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for rulemakings interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. 10 CFR part 1021, subpart D, appendix A, categorical exclusion A5. DOE's regulations include a categorical exclusion for rulemakings that are strictly procedural. 10 CFR part 1021, subpart D, appendix A, categorical exclusion A6. DOE has completed the necessary review under NEPA and has

[14] Consent Decree, *NRDC* v. *DOE,* No.: 20–cv–9127 (S.D.N.Y. Sept. 20, 2022).

determined that this rulemaking qualifies for categorical exclusion A5 and A6 because it is amending a rule and because it is a procedural rulemaking, it does not change the environmental effect of the rule and otherwise meets the requirements for application of a categorical exclusion. *See* 10 CFR 1021.410.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this rule and has determined that it 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. It will primarily affect the procedure by which DOE develops proposed rules to revise energy conservation standards and test procedures. EPCA governs and prescribes Federal preemption of State regulations that are the subject of DOE's regulations adopted pursuant to the statute. In such cases, States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) Therefore, Executive Order 13132 requires no further action.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that each Executive agency make every reasonable effort to ensure that when it issues a regulation, the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) specifies whether administrative proceedings are to be required before parties may file suit in court and, if so, describes those proceedings and requires the exhaustion of administrative remedies; (6) adequately defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and has determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. (Pub. L. 104–4, sec. 201 (codified at 2 U.S.C. 1531)) For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. (62 FR 12820) (This policy is also available at *www.energy.gov/gc/office-general-counsel* under ''Guidance & Opinions'' (Rulemaking)) DOE examined the rule according to UMRA and its statement of policy and has determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year. Accordingly, no further assessment or analysis is required under UMRA.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. When developing a Family Policymaking Assessment, agencies must assess whether: (1) the action strengthens or erodes the stability or safety of the family and, particularly, the marital commitment; (2) the action strengthens or erodes the authority and rights of parents in the education, nurture, and supervision of their children; (3) the action helps the family perform its functions, or substitutes governmental activity for the function; (4) the action increases or decreases disposable income or poverty of families and children; (5) the proposed benefits of the action justify the financial impact on the family; (6) the action may be carried out by State or local government or by the family; and whether (7) the action establishes an implicit or explicit policy concerning the relationship between the behavior and personal responsibility of youth, and the norms of society. In evaluating the above factors, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment as none of the above factors are implicated. Further, this rule would not have any impact on the autonomy or integrity of the family as an institution.

I. Review Under Executive Order 12630

Pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), DOE has determined that this rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with the applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has concluded that the regulatory action in this document, which makes clarifications to the Process Rule that guides the Department in proposing energy conservation standards is not a significant energy action because it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects for this final rule.

L. Review Consistent With OMB's Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions.'' *Id.* at 70 FR 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The ''Energy Conservation Standards Rulemaking Peer Review Report,'' dated February 2007, has been disseminated and is available at the following website: *www.energy.gov/eere/buildings/peer-review.* Because available data, models, and technological understanding have changed since 2007, DOE has engaged with the National Academy of Sciences to review DOE's analytical methodologies to ascertain whether modifications are needed to improve the Department's analyses. As discussed, DOE is in the process of evaluating the resulting report.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Small businesses, Test procedures.

Signing Authority

This document of the Department of Energy was signed on March 29, 2024, by Jeffrey Marootian, Principal Deputy Assistant Secretary for 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 March 29, 2024.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE amends part 430 of title 10 of the Code of Federal Regulations as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Amend appendix A to subpart C of part 430 by revising sections 5, 6, 8, and 9 to read as follows:

Appendix A to Subpart C of Part 430—Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Certain Commercial/Industrial Equipment

* * * * *

Coverage Determination Rulemakings

DOE has discretion to conduct proceedings to determine whether additional consumer

products and commercial/industrial equipment should be covered under EPCA if certain statutory criteria are met. (42 U.S.C. 6292(b) and 42 U.S.C. 6295(l) for consumer products; 42 U.S.C. 6312(b) for commercial/industrial equipment). This section describes the process to be used in establishing coverage for consumer products and commercial/industrial equipment.

(a) *Pre-notice of proposed rulemaking (''NOPR'') stage.* In determining whether to consider establishing coverage for a consumer product or commercial/industrial equipment, DOE may publish one or more preliminary documents in the **Federal Register** intended to gather information on key issues. Such document(s) will be published in the **Federal Register**, with accompanying documents referenced and posted in the appropriate docket.

(b) *NOPR stage.* If DOE determines to proceed with a coverage determination process, the Department will publish a notice of proposed determination, providing an opportunity for public comment of not less than 60 days, in which DOE will explain how such products/equipment that it seeks to designate as ''covered'' meet the statutory criteria for coverage and why such coverage is ''necessary or appropriate'' to carry out the purposes of EPCA. In the case of commercial equipment, DOE will follow the same process, except that the Department must demonstrate that coverage of the equipment type is ''necessary'' to carry out the purposes of EPCA.

(c) *Final rule.* DOE will publish a final rule in the **Federal Register** that establishes the scope of coverage for the product/equipment, responds to public comments received on the NOPR, and explains how inclusion of the newly covered product/equipment meets the statutory criteria for coverage and why such coverage is necessary or appropriate to carry out the purposes of EPCA. DOE will finalize coverage for a product/equipment prior to publication of a proposed rule to establish a test procedure.

(d) *Scope of coverage revisions.* If, during the substantive rulemaking proceedings to establish test procedures or energy conservation standards after completing a coverage determination, DOE finds it necessary and appropriate to amend the scope of coverage, DOE will propose an amended coverage determination and finalize coverage prior to moving forward with the test procedure or standards rulemaking.

6. Process for Developing Energy Conservation Standards

This section describes the process to be used in developing energy conservation standards for covered products and equipment other than those covered equipment subject to ASHRAE/IES Standard 90.1.

(a) *Pre-NOPR stage*—(1) *General.* In determining whether to consider establishing or amending any energy conservation standard, DOE will publish one or more preliminary, pre-NOPR documents in the **Federal Register** intended to gather information on key issues. Such document(s) could take several forms depending upon the specific proceeding, including a framework document, request for information (RFI), notice of data availability (NODA), preliminary analysis, or advance notice of proposed rulemaking (ANOPR). Such document(s) will be published in the **Federal Register**, with any accompanying documents referenced and posted in the appropriate docket.

(2) *Satisfaction of statutory criteria.* As part of such pre-NOPR-stage document(s), DOE will solicit submission of comments, data, and information on whether DOE should proceed with the rulemaking, including whether any new or amended rule would satisfy the relevant statutory criteria to be cost-effective, economically justified, technologically feasible, and result in a significant savings of energy. Based on the information received in response to such request and its own analysis, DOE will determine whether to proceed with a rulemaking for a new or amended energy conservation standard. If DOE determines at any point in the pre-NOPR stage that no candidate standard level for a new or amended standard is likely to satisfy all of the applicable statutory criteria (*i.e.,* to be technologically feasible and economically justified and result in significant energy savings), DOE will announce that conclusion in the **Federal Register** and proceed with notice-and-comment rulemaking that proposes a determination not to adopt new or amended standards. DOE notes that it will, consistent with its statutory obligations, consider both cost effectiveness and economic justification when issuing a determination not to amend a standard. If DOE receives sufficient information suggesting it could justify a new or amended standard or the information received is inconclusive with regard to the statutory criteria, DOE will move forward with the rulemaking to issue or amend an energy conservation standard. In those instances where the available information either suggested that a new or amended energy conservation standard might be justified or in which the information was inconclusive on this point, and DOE undertakes a rulemaking to establish or amend an energy conservation standard, DOE may still ultimately determine that such a standard is not economically justified, technologically feasible or would not result in a significant savings of energy at a later stage of the rulemaking.

(3) *Design options*—(i) *General.* Once the Department has initiated a rulemaking for a specific product/equipment but before publishing a proposed rule to establish or amend standards, DOE will typically identify the product/equipment categories and design options to be analyzed in detail, as well as those design options to be eliminated from further consideration. During the pre-NOPR stage of the rulemaking, interested parties may be consulted to provide information on key issues, including potential design options, through a variety of rulemaking documents.

(ii) *Identification and screening of design options.* During the pre-NOPR phase of the rulemaking process, the Department will typically develop a list of design options for consideration. Initially, the candidate design options will encompass all those technologies considered to be technologically feasible. Following the development of this initial list of design options, DOE will review each design option based on the factors described in paragraph (a)(3)(iii) of this section and the policies stated in section 7 of this appendix (*i.e.,* Policies on Selection of Standards). The reasons for eliminating or retaining any design option at this stage of the process will be fully documented and published as part of the NOPR and as appropriate for a given rule, in the pre-NOPR document(s). The technologically feasible design options that are not eliminated in this screening analysis will be considered further in the Engineering Analysis described in paragraph (a)(4) of this section.

(iii) *Factors for screening of design options.* The factors for screening design options include:

(A) *Technological feasibility.* Technologies incorporated in commercial products (or equipment) or in working prototypes will be considered technologically feasible.

(B) *Practicability to manufacture, install and service.* If mass production of a technology under consideration for use in commercially-available products (or equipment) and reliable installation and servicing of the technology could be achieved on the scale necessary to serve the relevant market at the time of the effective date of the standard, then that technology will be considered practicable to manufacture, install, and service.

(C) Adverse impacts on product utility or product availability.

(D) Adverse impacts on health or safety.

(E) *Unique-pathway proprietary technologies.* If a design option utilizes proprietary technology that represents a unique pathway to achieving a given efficiency level, that technology will not be considered further.

(4) *Engineering analysis of design options and selection of candidate standard levels.* After design options are identified and screened, DOE will perform the engineering analysis and the benefit/cost analysis and select the candidate standard levels based on these analyses. The results of the analyses will be published in a Technical Support Document (TSD) to accompany the appropriate rulemaking documents.

(i) *Identification of engineering analytical methods and tools.* DOE will select the specific engineering analysis tools (or multiple tools, if necessary, to address uncertainty) to be used in the analysis of the design options identified as a result of the screening analysis.

(ii) *Engineering and life-cycle cost analysis of design options.* DOE and its contractors will perform engineering and life-cycle cost analyses of the design options.

(iii) *Review by stakeholders.* Interested parties will have the opportunity to review the results of the engineering and life-cycle cost analyses. If appropriate, a public workshop will be conducted to review these results. The analyses will be revised as appropriate on the basis of this input.

(iv) *New information relating to the factors used for screening design options.* If further information or analysis leads to a determination that a design option, or a

combination of design options, has unacceptable impacts, that design option or combination of design options will not be included in a candidate standard level.

(v) *Selection of candidate standard levels.* Based on the results of the engineering and life-cycle cost analysis of design options and the policies stated in paragraph (a)(3)(iii) of this section, DOE will select the candidate standard levels for further analysis.

(5) *Analysis of impacts and selection of proposed standard level.* If DOE has determined preliminarily that a candidate standard level is likely to produce the maximum improvement in energy efficiency that is both technologically feasible and economically justified and constitutes significant energy savings, economic analyses of the impacts of the candidate standard levels will be conducted. The Department will propose new or amended standards in a subsequent NOPR based on the results of the impact analysis.

(i) *Identification of issues for analysis.* The Department, in consideration of comments received, will identify issues that will be examined in the impacts analysis.

(ii) *Identification of analytical methods and tools.* DOE will select the specific economic analysis tools (or multiple tools, if necessary, to address uncertainty) to be used in the analysis of the candidate standard levels.

(iii) *Analysis of impacts.* DOE will conduct the analysis of the impacts of candidate standard levels.

(iv) *Factors to be considered in selecting a proposed standard.* The factors to be considered in selection of a proposed standard include:

(A) *Impacts on manufacturers.* The analysis of manufacturer impacts will include: Estimated impacts on cash flow; assessment of impacts on manufacturers of specific categories of products/equipment and small manufacturers; assessment of impacts on manufacturers of multiple product-specific Federal regulatory requirements, including efficiency standards for other products and regulations of other agencies; and impacts on manufacturing capacity, employment, and capital investment.

(B) *Private impacts on consumers.* The analysis of consumer impacts will include: Estimated private energy savings impacts on consumers based on regional average energy prices and energy usage; assessments of the variability of impacts on subgroups of consumers based on major regional differences in usage or energy prices and significant variations in installation costs or performance; consideration of changes to product utility, changes to purchase rate and/or costs of products, and other impacts of likely concern to all or some consumers, based to the extent practicable on direct input from consumers; estimated life-cycle cost with sensitivity analysis; and consideration of the increased first cost to consumers and the time required for energy cost savings to pay back these first costs.

(C) Impacts on competition, including industry concentration analysis.

(D) *Impacts on utilities.* The analysis of utility impacts will include estimated marginal impacts on electric and gas utility generation and capacity.

(E) *National energy, economic, and employment impacts.* The analysis of national energy, economic, and employment impacts will include: estimated energy savings by fuel type; estimated net present value of benefits to all consumers; sensitivity analyses using high and low discount rates reflecting both private transactions and social discount rates and high and low energy price forecasts; and estimates of the direct and indirect impacts on employment by appliance manufacturers, relevant service industries, energy suppliers, suppliers of complementary and substitution products, and the economy in general.

(F) *Impacts on the environment.* The analysis of environmental impacts will include estimated impacts on emissions of carbon and relevant criteria pollutants.

(G) *Impacts of non-regulatory approaches.* The analysis of energy savings and consumer impacts will incorporate an assessment of the impacts of market forces and existing voluntary programs in promoting product/equipment efficiency, usage, and related characteristics in the absence of updated efficiency standards.

(H) New information relating to the factors used for screening design options.

(6) *Public comment and hearing.* The length of the public comment period for pre-NOPR rulemaking documents will be determined on a case-by-case basis and may vary depending upon the circumstances of the particular rulemaking. For pre-NOPR documents, DOE will determine whether a public hearing is appropriate.

(7) *Revisions based on comments.* Based on consideration of the comments received, any necessary changes to the engineering analysis, life-cycle cost analysis, or the candidate standard levels will be made.

(b) *NOPR stage*—(1) *Documentation of decisions on proposed standard selection.* The Department will publish a NOPR in the **Federal Register** that proposes standard levels and explains the basis for the selection of those proposed levels, and DOE will post on its website a draft TSD documenting the analysis of impacts. The draft TSD will also be posted in the appropriate docket at *www.regulations.gov.* As required by 42 U.S.C. 6295(p)(1) of EPCA, the NOPR also will describe the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible and, if the proposed standards would not achieve these levels, the reasons for proposing different standards.

(2) *Public comment and hearing.* There will be not less than 60 days for public comment on the NOPR, with at least one public hearing or workshop. (42 U.S.C. 6295(p)(2) and 42 U.S.C. 6306)

(3) *Revisions to impact analyses and selection of final standard.* Based on the public comments received, DOE will review the proposed standard and impact analyses, and make modifications as necessary. If major changes to the analyses are required at this stage, DOE will publish a supplemental notice of proposed rulemaking (SNOPR), when required. DOE may also publish a NODA or RFI, where appropriate.

(c) *Final rule stage.* The Department will publish a final rule in the **Federal Register** that promulgates standard levels, responds to public comments received on the NOPR (and SNOPR if applicable), and explains how the selection of those standards meets the statutory requirement that any new or amended energy conservation standard produces the maximum improvement in energy efficiency that is both technologically feasible and economically justified and constitutes significant energy savings, accompanied by a final TSD.

* * * * *

Test Procedures

(a) *Pre-NOPR stage*—(1) *General.* In determining whether to consider establishing or amending any test procedure, DOE will publish one or more preliminary documents in the **Federal Register** (*e.g.,* an RFI or NODA) intended to gather information on key issues.

(2) *Satisfaction of statutory criteria.* As part of such document(s), DOE will solicit submission of comments, data, and information on whether DOE should proceed with the rulemaking, including whether: a new test procedure would satisfy the relevant statutory criteria that test procedures be reasonably designed to produce test results which measure energy efficiency, energy use, water use (in the case of showerheads, faucets, water closets and urinals), or estimated annual operating cost of a covered product during a representative average use cycle or period of use, as determined by the Secretary, and shall not be unduly burdensome to conduct; or an amended test procedure would more fully or accurately comply with the aforementioned statutory criteria. Based on the information received in response to such request and its own analysis, DOE will determine whether to proceed with a rulemaking for a new or amended test procedure.

(3) If DOE determines that a new or amended test procedure would not satisfy the applicable statutory criteria, DOE will engage in notice-and-comment rulemaking to issue a determination that a new or amended test procedure is not warranted.

(4) If DOE receives sufficient information suggesting a new or amended test procedure may satisfy the applicable statutory criteria or the information received is inconclusive with regard to the statutory criteria, DOE will move forward with the rulemaking to issue or amend a test procedure.

(5) In those instances where the available information either suggested that a new or amended test procedure might be warranted or in which the information was inconclusive on this point, and DOE undertakes a rulemaking to establish or amend a test procedure, DOE may still ultimately determine that such a test procedure does not satisfy the applicable statutory criteria at a later stage of the rulemaking.

(6) *Public comment and hearing.* The length of the public comment period for pre-NOPR rulemaking documents will be determined on a case-by-case basis and may vary depending upon the circumstances of the particular rulemaking. For pre-NOPR documents, DOE will determine whether a public hearing is appropriate.

(b) *NOPR stage*—(1) *Documentation of decisions on proposed test procedure.* The Department will publish a NOPR in the **Federal Register** that proposes a new or amended test procedure and explains how the test procedure satisfies the applicable statutory criteria.

(2) *Public comment and hearing.* There will be not less than 60 days for public comment on the NOPR, with at least one public hearing or workshop. (42 U.S.C. 6293(b)(2) and 42 U.S.C. 6306)

(3) *Revisions to the analyses and establishment of a final test procedure.* Based on the public comments received, DOE will review the proposed test procedure, and make modifications as necessary. As part of this process, DOE may issue an RFI, NODA, SNOPR, or other rulemaking document, as appropriate.

(c) *Final rule stage.* The Department will publish a final rule in the **Federal Register** that establishes or amends a test procedure, responds to public comments received on the NOPR (and any subsequent rulemaking documents), and explains how the new or amended test procedure meets the applicable statutory requirements.

(d) *Adoption of industry test methods.* DOE will adopt industry test procedure standards as DOE test procedures for covered products and equipment, but only if DOE determines that such procedures would not be unduly burdensome to conduct and would produce test results that reflect the energy efficiency, energy use, water use (as specified in EPCA) or estimated operating costs of that equipment during a representative average use cycle. DOE may also adopt industry test procedure standards with modifications or craft its own procedures as necessary to ensure compatibility with the relevant statutory requirements, as well as DOE's compliance, certification, and enforcement requirements.

(e) *Issuing final test procedure*—(1) *Process.* Test procedure rulemakings establishing methodologies used to evaluate proposed energy conservation standards will be finalized prior to publication of a NOPR proposing new or amended energy conservation standards. Except as provided in paragraph (e)(2) of this section, new test procedures and amended test procedures that impact measured energy use or efficiency will be finalized at least 180 days prior to the close of the comment period for:

(i) A NOPR proposing new or amended energy conservation standards; or

(ii) A notice of proposed determination that standards do not need to be amended. With regards to amended test procedures, DOE will state in the test procedure final rule whether the amendments impact measured energy use or efficiency.

(2) *Exceptions.* The 180-day period for new test procedures and amended test procedures that impact measured energy use or efficiency specified in paragraph (e)(1) of this section is not applicable to:

(i) Test procedures developed in accordance with the Negotiated Rulemaking Act or by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates), as determined by the Secretary; or

(ii) Test procedure amendments limited to calculation changes (*e.g.,* use factor or adder). Parties submitting a consensus recommendation in accordance with paragraph (e)(2)(i) of this section may specify a time period between finalization of the test procedure and the close of the comment for a NOPR proposing new or amended energy conservation standards or a notice of proposed determination that standards do not need to be amended.

(f) *Effective date of test procedures.* If required only for the evaluation and issuance of updated efficiency standards, use of the modified test procedures typically will not be required until the implementation date of updated standards.

9. ASHRAE Equipment

EPCA provides unique statutory requirements and a specific set of timelines for certain enumerated types of commercial and industrial equipment (generally, commercial water heaters, commercial packaged boilers, commercial air-conditioning and heating equipment, and packaged terminal air conditioners and heat pumps (*i.e.,* ''ASHRAE equipment'')).

(a) *ASHRAE trigger rulemakings for energy conservation standards.* Pursuant to EPCA's statutory scheme for covered ASHRAE equipment, DOE is required to consider amending the existing Federal energy conservation standards for ASHRAE equipment when ASHRAE Standard 90.1 is amended with respect to standards or design requirements applicable to such equipment.

(1) Not later than 180 days after the amendment of ASHRAE Standard 90.1, DOE will publish in the **Federal Register** for public comment an analysis of the energy savings potential of amended energy efficiency standards for the affected equipment.

(2) Not later than 18 months after the amendment of ASHRAE Standard 90.1, DOE must adopt amended energy conservation standards at the new efficiency level in ASHRAE Standard 90.1 as the uniform national standard for the affected equipment, unless DOE determines by rule, and supported by clear and convincing evidence, that a more-stringent standard would result in significant additional conservation of energy and is technologically feasible and economically justified. In such case, DOE must adopt the more-stringent standard for the affected equipment not later than 30 months after amendment of ASHRAE Standard 90.1.

(3) Regarding amendments to ASHRAE Standard 90.1 involving energy conservation standards, DOE considers an amendment of a standard level to occur when an updated version of ASHRAE Standard 90.1 publishes (*i.e.,* not at the time that an addendum to ASHRAE Standard 90.1 is released or approved). In addition, DOE considers an amendment of standard levels in ASHRAE Standard 90.1 to be only those changes resulting in an increase in stringency of standard levels relative to the current Federal standards or the adoption of a design requirement.

(b) *ASHRAE trigger rulemakings for test procedures.* Pursuant to EPCA's statutory scheme for covered ASHRAE equipment, DOE is required to consider amending the existing Federal test procedures for such equipment when ASHRAE Standard 90.1 is amended with respect to test procedures applicable to such equipment.

(1) DOE shall amend the test procedure for ASHRAE equipment, as necessary, to be consistent with the amended ASHRAE Standard 90.1, unless DOE determines by rule, and supported by clear and convincing evidence, that to do so would not meet the requirements in 42 U.S.C. 6314(a)(2)–(3), which generally provide that the test procedure must produce results which reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle and not be unduly burdensome to conduct. If DOE makes such a determination, DOE may establish an amended test procedure for such equipment that meets the requirements in 42 U.S.C. 6314(a)(2)–(3).

(2) With regard to test procedures for ASHRAE equipment, EPCA requires DOE to adopt test procedures consistent with applicable industry test standards.

(c) *ASHRAE lookback rulemakings for standards.* EPCA also requires that DOE periodically consider amending energy conservation standards for ASHRAE equipment.

(1) Every 6 years, DOE shall conduct an evaluation of each class of covered equipment. DOE shall publish either a notice of determination that standards do not need to be amended (because they would not result in significant additional conservation of energy and/or would not be technologically feasible and/or economically justified) or a notice of proposed rulemaking including new proposed standards (based on the criteria and procedures in 42 U.S.C. 6313(a)(6)(B) and supported by clear and convincing evidence).

(2) If DOE issues a notice of proposed rulemaking, it shall publish a final rule no more than 2 years later.

(3) If DOE determines that a standard does not need to be amended, not later than 3 years after such a determination, DOE must publish either a notice of determination that standards do not need to be amended (because they would not result in significant additional conservation of energy and/or would not be technologically feasible and/or economically justified) or a notice of proposed rulemaking including new proposed standards (based on the criteria and procedures in 42 U.S.C. 6313(a)(6)(B) and supported by clear and convincing evidence).

(d) *ASHRAE lookback rulemakings for test procedures.* EPCA also requires that DOE periodically consider amending test procedures for ASHRAE equipment. At least once every 7 years, DOE shall conduct an evaluation, and if DOE determines, that amended test procedures would more accurately or fully comply with the requirements in 42 U.S.C. 6314(a)(2)–(3), it shall prescribe test procedures for the applicable equipment. Otherwise, DOE shall

publish a notice of determination not to amend a test procedure.

* * * * *

[FR Doc. 2024–07114 Filed 4–5–24; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0774; Project Identifier AD–2024–00197–E,R; Amendment 39–22723; AD 2024–06–51]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Engines, and Various Restricted Category Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding airworthiness directive (AD) 2024–05–51, which applied to certain General Electric Company (GE) Model CT7–2E1, CT7–2F1, CT7–8A, CT7–8E, and CT7–8F5 engines, and various restricted category helicopters with GE Model T700–GE–700, –701A, –701C, –701D/CC, –701D, –401, –401C, CT7–2D, or CT7–2D1 engines installed. AD 2024–05–51 required a phase array ultrasonic inspection of the torque reference tube magnetic insert braze joint of the power turbine (PT) drive shaft assembly for inadequate braze coverage, and repair or replacement of the PT drive shaft assembly if necessary. This AD was prompted by at least four reports of failures of the torque reference tube magnetic insert braze joint of the PT drive shaft assembly within the last several months. This AD retains the requirements of AD 2024–05–51 and expands the applicability to include a PT drive shaft assembly part number that was inadvertently omitted. The FAA previously sent an emergency AD to all known U.S. owners and operators of these engines and helicopters and is now issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 23, 2024. Emergency AD 2024–06–51, issued on March 22, 2024, which contained the requirements of this amendment, was effective with actual notice.

The Director of the Federal Register approved the incorporation by reference of a certain publication identified in this AD as of April 23, 2024.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of April 1, 2024 (89 FR 18771, March 15, 2024).

The FAA must receive comments on this AD by May 23, 2024.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–0774; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For GE service information, contact General Electric Company, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552–3272; email: *aviation.fleetsupport@ge.com;* website: *ge.com.*
- For Sikorsky Aircraft Corporation service information, contact Sikorsky Field Representative or Sikorsky's Service Engineering Group at Sikorsky Aircraft Corporation, Mailstop K100, 124 Quarry Road, Trumbull, CT 06611; phone: 1 (800) 946–4337 (1–800-Winged-S); email: *wcs_cust_service_eng.gr-sik@lmco.com;* website: *sikorsky360.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2024–0774.

FOR FURTHER INFORMATION CONTACT: Barbara Caufield, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7146; email: *barbara.caufield@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2024–0774; Project Identifier AD–2024–00197–E,R'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

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

Background

The FAA issued AD 2024–05–51, Amendment 39–22702 (89 FR 18771, March 15, 2024) (AD 2024–05–51), for certain GE Model CT7–2E1, CT7–2F1, CT7–8A, CT7–8E, and CT7–8F5 engines, and various restricted category helicopters with GE Model T700–GE–700, –701A, –701C, –701D/CC, –701D, –401, –401C, CT7–2D, or CT7–2D1 engines installed. That AD was issued as Emergency AD 2024–05–51 on February 28, 2024, and distributed to all known U.S. owners and operators of these engines and helicopters. AD 2024–05–51 required a phase array ultrasonic

inspection of the torque reference tube magnetic insert braze joint of the PT drive shaft assembly for inadequate braze coverage, and repair or replacement of the PT drive shaft assembly if necessary. AD 2024–05–51 was prompted by at least four reports of failures of the torque reference tube magnetic insert braze joint of the PT drive shaft assembly within the last several months. This condition, if not addressed, could result in improper torque and engine speed indications, which, in combination with specific phases of flight, could create an unacceptably high flight crew workload in maintaining control of the aircraft, and result in consequent loss of control of the aircraft.

Actions Since Issuance of AD 2024–05–51

Since the issuance of AD 2024–05–51, the FAA determined that PT drive shaft assembly part number (P/N) 5125T92G01 was inadvertently omitted from the applicability. Therefore, the FAA is superseding AD 2024–05–51 to revise the applicability to include engines with PT drive shaft assembly P/N 5125T92G01 installed. The FAA also revised the applicability of this AD to consolidate paragraphs (c)(2)(iii) through (viii) into paragraph (c)(2)(iii) of this AD and revised the required actions of this AD to reference service information that was published since Emergency AD 2024–05–51 was issued.

This AD was sent previously to all known U.S. owners and operators of these engines and helicopters as Emergency AD 2024–06–51, dated March 22, 2024, which superseded AD 2024–05–51.

FAA's Determination

The FAA is issuing this AD because the agency has determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Sikorsky Aircraft Corporation S–70/H–60 Helicopter Alert Service Bulletin (ASB) 70–04–17, dated February 28, 2024, which specifies procedures for a phase array ultrasonic inspection of the torque reference tube magnetic insert braze joint of the PT drive shaft assembly for inadequate braze coverage.

This AD also requires the following service information, which the Director of the Federal Register approved for incorporation by reference as of April 1, 2024 (89 FR 18771, March 15, 2024).

- GE ASB CT7–2E1 S/B 72–A0034, dated February 26, 2024.
- GE ASB CT7–8 S/B 72–A0118, Revision 01, dated February 26, 2024.

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

AD Requirements

This AD requires a phase array ultrasonic inspection of the torque reference tube magnetic insert braze joint of the PT drive shaft assembly for inadequate braze coverage, and repair or replacement of the PT drive shaft assembly if necessary.

Interim Action

The FAA considers this AD to be an interim action. The manufacturer is currently investigating the root cause of the unsafe condition identified in this AD. If final action is later identified, the FAA might consider further rulemaking.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that required the immediate adoption of Emergency AD 2024–06–51, issued on March 22, 2024, to all known U.S. owners and operators of these engines. The FAA found that the risk to the flying public justified forgoing notice and comment prior to adoption of this rule because failure of the torque reference tube magnetic insert braze joint of the PT drive shaft assembly could result in improper torque and engine speed indications, which, in combination with specific phases of flight, could create an unacceptably high flight crew workload in maintaining control of the aircraft, and result in consequent loss of control of the aircraft. Since this condition happens rapidly and without warning, the inspection and any necessary repair or replacement must be accomplished before further flight. Thus, the FAA has determined that the affected torque reference tube magnetic insert braze joint of the PT drive shaft assembly must be inspected, and repaired or replaced if necessary, before further flight. This condition still exists; therefore, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forgo notice and comment.

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects 100 engines installed on aircraft of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Phase array ultrasonic inspection	1 work-hour × $85 per hour = $85	$0	$85	$8,500

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair or replacement of the PT drive shaft assembly	8 work-hours × $85 per hour = $680	$50,000	$50,680

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2024–05–51, Amendment 39–22702 (89 FR 18771, March 15, 2024); and

■ b. Adding the following new airworthiness directive:

2024–06–51 General Electric Company, and Various Restricted Category Helicopters: Amendment 39–22723; Docket No. FAA–2024–0774; Project Identifier AD–2024–00197–E,R.

(a) Effective Date

The FAA issued Emergency Airworthiness Directive (AD) 2024–06–51 on March 22, 2024, directly to affected owners and operators. As a result of such actual notice, that AD was effective for those owners and operators on the date it was received. This AD contains the same requirements as that emergency AD and, for those who did not receive actual notice, is effective on April 23, 2024.

(b) Affected ADs

This AD replaces AD 2024–05–51, Amendment 39–22702 (89 FR 18771, March 15, 2024).

(c) Applicability

This AD applies to the following products:

(1) General Electric Company (GE) Model CT7–2E1, CT7–2F1, CT7–8A, CT7–8E, and CT7–8F5 engines, with any power turbine (PT) drive shaft assembly part number 5123T91G01, 5123T91G02, 5125T92G01, and 5128T51G01 installed, and the following conditions:

(i) A PT drive shaft assembly with less than 100 hours-time since new (TSN) or 100 hours-time since replacement (TSR) of the torque reference tube, as applicable, as of the effective date of this AD; and

(ii) An engine serial number, PT module serial number, or PT drive shaft assembly serial number listed in GE Alert Service Bulletin (ASB) CT7–2E1 S/B 72–A0034, dated February 26, 2024 (CT7–2E1 S/B 72–A0034); or GE ASB CT7–8 S/B 72–A0118, Revision 01, dated February 26, 2024 (CT7–8 S/B 72–A0118, Revision 01).

(2) Restricted category helicopters specified in paragraphs (c)(2)(i) through (iv) of this AD, with GE Model T700–GE–700, –701A, –701C, –701D/CC, –701D, –401, –401C, CT7–2D or CT7–2D1 engines installed, with a PT drive shaft assembly that was installed in the engine after January 1, 2020, and has less than 100 hours-TSN or 100 hours-TSR, as applicable. PT drive shaft assemblies manufactured or repaired after January 1, 2024, are not affected by this AD.

(i) Model EH–60A helicopters; current type certificate holders include, but are not limited to, Delta Enterprise; Heliqwest International Inc.; Pickering Aviation, Inc.; and Sixtyhawk TC, LLC.

(ii) Model HH–60L helicopters; current type certificate holders include, but are not limited to, Capitol Helicopters Inc.; Central Copters Inc.; and Sixtyhawk TC, LLC.

(iii) Sikorsky Aircraft Corporation Model S–70, S–70A, S–70C, S–70C(M), S–70C(M1), and S–70M helicopters.

(iv) Model UH–60A helicopters; current type certificate holders include, but are not limited to, ACE Aeronautics LLC; Billings Flying Service, Inc.; Blackhawk Mission Equipment; Capitol Helicopters Inc.; Carson Helicopters; Delta Enterprise; Heliqwest International Inc.; High Performance Helicopters Corp.; Northwest Rotorcraft, LLC; Pickering Aviation, Inc.; PJ Helicopters Inc.; Reeder Flying Service Inc.; Sixtyhawk TC, LLC; Skydance Blackhawk Operations LLC; Timberline Helicopters, Inc.; and Unical Air Inc.

(d) Subject

Joint Aircraft System Component (JASC) Code 7200, Engine (Turbine/Turboprop); 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by at least four reports of failures of the torque reference tube magnetic insert braze joint of the PT drive shaft assembly within the last several months. The FAA is issuing this AD to prevent failure of the PT drive shaft reference torque tube magnetic insert braze joint. The unsafe condition, if not addressed, could result in improper torque and engine speed indications, which, in combination with specific phases of flight, could create an unacceptably high flight crew workload in maintaining control of the aircraft, and result in consequent loss of control of the aircraft.

(f) Compliance

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

(g) Required Actions

(1) For GE Model CT7–2E1, CT7–2F1, CT7–8A, CT7–8E, and CT7–8F5 engines: Before further flight, do a phase array ultrasonic inspection of the torque reference tube magnetic insert braze joint of the PT drive shaft assembly for inadequate braze coverage in accordance with the Accomplishment Instructions, paragraph 3.A.(2), of CT7–2E1 S/B 72–A0034, or CT7–8 S/B 72–A0118, Revision 01, as applicable.

(2) For engines installed on the restricted category aircraft specified in paragraphs (c)(2)(i) through (iv) of this AD: Before further flight, do a phase array ultrasonic inspection of the torque reference tube magnetic insert braze joint of the PT drive shaft assembly for inadequate braze coverage in accordance with the Accomplishment Instructions,

paragraphs 3.B. through 3.D., of Sikorsky Aircraft Corporation S–70/H–60 Helicopter ASB 70–04–17, dated February 28, 2024 (Sikorsky ASB 70–04–17), or using a method approved by the Manager, AIR–520 Continued Operational Safety Branch, FAA.

(3) If during any inspection required by paragraphs (g)(1) or (2) of this AD, any braze coverage of the torque reference tube magnetic insert braze joint is found to be less than 42 percent, before further flight, repair or replace the PT drive shaft assembly.

(h) No Reporting Requirement

Although the service information referenced in Sikorsky ASB 70–04–17 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(i) Special Flight Permit

A special flight permit may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the aircraft to a location where the phase array ultrasonic inspection can be performed, provided no passengers are onboard.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(3) Approved methods of compliance (MOCs) or other AMOCs approved for paragraph (g) of AD 2024–05–51 are approved as MOCs or AMOCs for paragraph (g) of this AD.

(k) Additional Information

For further information about this AD, contact Barbara Caufield, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7146; email: *barbara.caufield@faa.gov.*

(l) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on April 23, 2024.

(i) Sikorsky Aircraft Corporation S–70/H–60 Helicopter Alert Service Bulletin 70–04–17, dated February 28, 2024.

(ii) [Reserved]

(4) The following service information was approved for IBR on April 1, 2024 (89 FR 18771, March 15, 2024).

(i) General Electric Company (GE) Alert Service Bulletin (ASB) CT7–2E1 S/B 72–A0034, dated February 26, 2024.

(ii) GE ASB CT7–8 S/B 72–A0118, Revision 01, dated February 26, 2024.

(5) For GE service information, contact General Electric Company, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552–3272; email: *aviation.fleetsupport@ge.com;* website: *ge.com.*

(6) For Sikorsky Aircraft Corporation service information, contact Sikorsky Field Representative or Sikorsky's Service Engineering Group at Sikorsky Aircraft Corporation, Mailstop K100, 124 Quarry Road, Trumbull, CT 06611; phone: 1 (800) 946–4337 (1–800-Winged-S); email: *wcs_cust_service_eng.gr-sik@lmco.com;* website: *sikorsky360.com.*

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

(8) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.*

Issued on March 27, 2024.

Victor Wicklund,

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

[FR Doc. 2024–07438 Filed 4–4–24; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–2204; Airspace Docket No. 23–AEA–20]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; Wallops Island, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace, Class E surface airspace, and Class E airspace extending upward from 700 feet above the surface for Wallops Flight Facility, Wallops Island, VA. This action eliminates the Snow Hill VORTAC from the airspace descriptions for this airport, as well as updating the airport name, geographic coordinates, and description headers.

DATES: Effective 0901 UTC, July 11, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it amends Class D and Class E airspace for Wallops Island, VA. An airspace evaluation determined that this update is necessary to support IFR operations in the area.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA 2023–2204 in the **Federal Register** (88 FR 87382; December 18, 2023), proposing to amend Class D airspace, Class E surface airspace, and Class E airspace extending upward from 700 feet above the surface for Wallops Flight Facility, Wallops Island, VA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class D and E airspace designations are published in Paragraphs 5000, 6002, and 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

The Rule

This action amends 14 CFR part 71 by amending Class D airspace and Class E surface airspace by removing Snow Hill VORTAC from the descriptions as it is unnecessary in describing the airspace, as well as updating the airport's geographic coordinates to coincide with the FAA's database. In addition, this action updates the airport name to Wallops Flight Facility (formerly NASA Wallops Flight Facility). This action also replaces the terms Notice to Airmen with Notice to Air Missions and Airport/Facility Directory with Chart Supplement in the airspace descriptions. In addition, the Class E airspace extending upward from 700 feet above the surface is updated by replacing the city name under the header with Wallops Island (formerly Chincoteague) and removing the city name from the next line of the description, identifying the airport. Also, the geographic coordinates of this airspace are updated to coincide with the FAA's database. Finally, this action clarifies the Class D description by adding the words 'and including' referring to the airspace ceiling. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a.

This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant the preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

AEA VA D Wallops Island, VA [Amended]

Wallops Flight Facility, VA
(Lat 37°56′25″ N, long 75°27′59″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.4-mile radius of Wallops Flight Facility and within 1.8 miles each side of the 001° bearing of the airport, extending from the 4.4-mile radius to 4.7 miles north of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be published continuously in the Chart Supplement.

* * * * *

Paragraph 6002 Class E Surface Airspace.

* * * * *

AEA VA E2 Wallops Island, VA [Amended]

Wallops Flight Facility, VA
(Lat 37°56′25″ N, long 75°27′59″ W)

That airspace extending upward from the surface within a 4.4-mile radius of Wallops Flight Facility and within 1.8 miles each side of the 001° bearing of the airport, extending from the 4.4-mile radius to 4.7 miles north of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be published continuously in the Chart Supplement.

* * * * *

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

* * * * *

AEA VA E5 Wallops Island, VA [Amended]

Wallops Flight Facility, VA
(Lat 37°56′25″ N, long 75°27′59″ W)

That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of the Wallops Flight Facility.

* * * * *

Issued in College Park, Georgia, on April 2, 2024.

Patrick Young,

Manager, Airspace & Procedures Team North, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2024–07243 Filed 4–5–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–2275; Airspace Docket No. 23–AEA–22]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; Lewisburg, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace, Class E airspace designated as an extension to a Class D surface area, and Class E airspace extending upward from 700 feet above the surface area for Greenbrier Valley Airport, Lewisburg, WV, as the BUSHI non-directional beacon (NDB) is removed from the airspace descriptions. This action amends verbiage in the descriptions, as well as adding additional extensions to the northeast and southwest of the airport.

DATES: Effective 0901 UTC, July 11, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking for Docket No. FAA 2023–2275 in the **Federal Register** (88 FR 85860; December 11, 2023), proposing to amend Class D airspace, Class E airspace designated as an extension to a Class D surface area, and Class E airspace extending upward from 700 feet above the surface area for Greenbrier Valley Airport, Lewisburg, WV. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class D and Class E airspace designations are published in Paragraphs 5000, 6004, and 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

The Rule

This action amends 14 CFR part 71 by amending Class D airspace and Class E airspace designated as an extension to a Class D surface area by:

- Removing the city name from the airport header.
- Replacing the terms Notice to Airmen with Notice to Air Missions and Airport/Facility Directory with Chart Supplement.
- Removing the BUSHI NDB from the description, as it is unnecessary in describing the airspace.
- Adding a northeast extension and amending the southwest extension.

This action amends 14 CFR part 71 to amend Class E airspace extending upward from 700 feet above the surface area by removing the BUSHI NDB from the description, as it is unnecessary to describe the airspace.

Differences From the NPRM

Subsequent to publication, the FAA found an error in the NPRM. The geographic coordinates of the airport were listed as (Lat 37°51′33″ N, long 80°23′58″ W). The correct coordinates are (Lat 37°51′30″ N, long 80°23′58″ W). This action corrects this error.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

AEA WV D Lewisburg, WV [Amended]

Greenbrier Valley Airport, WV
(Lat 37°51′30″ N, long 80°23′58″ W)

That airspace extending upward from the surface to and including 4,000 feet MSL within a 4-mile radius of Greenbrier Valley Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be published continuously in the Chart Supplement.

* * * * *

Paragraph 6004 Class E Airspace Designated as an Extension to Class D or E Surface Area.

* * * * *

AEA WV E4 Lewisburg, WV [Amended]

Greenbrier Valley Airport, WV
(Lat 37°51′30″ N, long 80°23′58″ W)

That airspace extending upward from the surface within 2 miles each side of the 216° bearing of Greenbrier Valley Airport, extending from the 4 mile radius of the airport to 6.8 miles southwest of the airport and from the 009° bearing of the airport to the 044° bearing of the airport, extending from the 4 mile radius to 6.8 miles northeast of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be published continuously in the Chart Supplement.

* * * * *

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

* * * * *

AEA WV E5 Lewisburg, WV [Amended]

Greenbrier Valley Airport, WV
(Lat 37°51′30″ N, long 80°23′58″ W)

That airspace extending upward from 700 feet above the surface within a 12-mile radius of Greenbrier Valley Airport and within 4.4 miles each side of the 216° bearing of the airport, extending from the 12-mile radius to 16 miles southwest of the airport.

* * * * *

Issued in College Park, Georgia, on April 2, 2024.

Patrick Young,

Manager, Airspace & Procedures Team North, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2024–07245 Filed 4–5–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31540; Amdt. No. 4108]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective April 8, 2024. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 8, 2024.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov*.

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., STB Annex, Bldg. 26, Room 217, Oklahoma City, OK 73099. Telephone: (405) 954–1139.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Air Missions (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, pilots do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of

immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on March 29, 2024.

Thomas J. Nichols,

Manager, Aviation Safety, Flight Standards Service, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, 14 CFR part 97 is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * *Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
16–May–24 ..	WA	Moses Lake	Grant County Intl	4/0223	2/1/2024	RNAV RNP Z RWY 22, Orig-B.
16–May–24 ..	WA	Moses Lake	Grant County Intl	4/0224	2/1/2024	RNAV (RNP) Z RWY 4, Orig-B.
16–May–24 ..	NY	New York	Laguardia	4/1761	3/5/2024	RNAV (GPS) Y RWY 13, Orig.
16–May–24 ..	MS	Poplarville	Poplarville/Pearl River County	4/1930	2/20/2024	RNAV (GPS)-B, Orig.
16–May–24 ..	TX	Longview	East Texas Rgnl	4/3831	3/8/2024	RNAV (GPS) RWY 13, Amdt 1C.
16–May–24 ..	TX	Longview	East Texas Rgnl	4/3833	3/8/2024	RNAV (GPS) RWY 31, Amdt 1A.
16–May–24 ..	TX	Longview	East Texas Rgnl	4/3834	3/8/2024	RNAV (GPS) RWY 36, Amdt 1A.
16–May–24 ..	TX	Longview	East Texas Rgnl	4/3837	3/8/2024	VOR–A, Orig-B.
16–May–24 ..	TX	Longview	East Texas Rgnl	4/3841	3/8/2024	VOR/DME OR TACAN RWY 13, Amdt 2A.
16–May–24 ..	AR	Melbourne	Melbourne Muni—John E Miller Fld.	4/3977	2/13/2024	RNAV (GPS) RWY 3, Amdt 2.
16–May–24 ..	AR	Melbourne	Melbourne Muni—John E Miller Fld.	4/3978	2/13/2024	RNAV (GPS) RWY 21, Amdt 2.
16–May–24 ..	FL	St Petersburg-Clearwater.	St Pete-Clearwater Intl	4/5205	3/11/2024	RNAV (GPS) RWY 36, Amdt 1.
16–May–24 ..	CA	Mountain View	Moffett Federal Airfield	4/6866	1/24/2024	RNAV (GPS) RWY 32L, Amdt 1.
16–May–24 ..	VA	Stafford	Stafford Rgnl	4/7194	3/14/2024	VOR RWY 33, Amdt 1A.
16–May–24 ..	MO	Cape Girardeau	Cape Girardeau Rgnl	4/7284	3/15/2024	RNAV (GPS) RWY 10, Amdt 1A.
16–May–24 ..	NC	Edenton	Northeastern Rgnl	4/7816	3/15/2024	ILS OR LOC RWY 19, Orig-D.
16–May–24 ..	NC	Edenton	Northeastern Rgnl	4/7817	3/15/2024	RNAV (GPS) RWY 19, Amdt 2C.
16–May–24 ..	CT	Plainville	Robertson Fld	4/8430	1/26/2024	RNAV (GPS) RWY 2, Amdt 1.
16–May–24 ..	TX	Navasota	Navasota Muni	4/8600	2/23/2024	RNAV (GPS) RWY 17, Orig-C.
16–May–24 ..	TX	Navasota	Navasota Muni	4/8601	2/23/2024	RNAV (GPS) RWY 35, Orig-C.
16–May–24 ..	TX	Navasota	Navasota Muni	4/8602	2/23/2024	VOR–A, Amdt 2C.
16–May–24 ..	DC	Washington	Washington Dulles Intl	4/8822	2/23/2024	ILS OR LOC/DME RWY 12, Amdt 9C.
16–May–24 ..	DC	Washington	Washington Dulles Intl	4/8823	2/23/2024	RNAV (GPS) RWY 12, Amdt 1D.
16–May–24 ..	DC	Washington	Washington Dulles Intl	4/8825	2/23/2024	VOR/DME RWY 12, Amdt 9D.
16–May–24 ..	PA	Allentown	Lehigh Valley Intl	4/9042	1/29/2024	RNAV (GPS) RWY 6, Amdt 1C.
16–May–24 ..	PA	Allentown	Lehigh Valley Intl	4/9043	1/29/2024	RNAV (GPS) RWY 13, Amdt 2.
16–May–24 ..	PA	Allentown	Lehigh Valley Intl	4/9044	1/29/2024	RNAV (GPS) RWY 31, Amdt 2B.
16–May–24 ..	PA	Allentown	Lehigh Valley Intl	4/9045	1/29/2024	RNAV (GPS) RWY 24, Amdt 1B.
16–May–24 ..	AK	Anchorage	Ted Stevens Anchorage Intl ...	4/9627	2/26/2024	ILS RWY 15, Amdt 7.
16–May–24 ..	CO	Hayden	Yampa Valley	4/9729	2/27/2024	ILS OR LOC RWY 10, Amdt 1.

[FR Doc. 2024–07242 Filed 4–5–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31539; Amdt. No. 4107]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPS) and associated Takeoff Minimums and Obstacle Departure procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective April 8, 2024. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 8, 2024.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30. 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov*.

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., STB Annex, Bldg. 26, Room 217, Oklahoma City, OK 73099. Telephone (405) 954–1139.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The applicable FAA Forms are 8260–3, 8260–4, 8260–5, 8260–15A, 8260–15B, when required by an entry on 8260–15A, and 8260–15C.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, pilots do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers or aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPS, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Air Missions (NOTAM) as an emergency action of immediate flights safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

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

Lists of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on March 29, 2024.

Thomas J. Nichols,

Manager, Aviation Safety, Flight Standards Service, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, 14 CFR part 97 is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 16 May 2024

Tucson, AZ, TUS, RNAV (RNP) Y RWY 11L, Orig-B, CANCELED
Tucson, AZ, TUS, RNAV (RNP) Y RWY 29R, Orig-E, CANCELED
Grand Junction, CO, GJT, ILS OR LOC RWY 11, Amdt 17
Grand Junction, CO, GJT, LDA RWY 29, Amdt 1
Grand Junction, CO, KGJT, MONUMENT THREE, Graphic DP
Grand Junction, CO, GJT, RNAV (GPS) RWY 29, Amdt 2
Grand Junction, CO, GJT, RNAV (GPS) Y RWY 11, Admt 2
Grand Junction, CO, GJT, RNAV (RNP) Z RWY 11, Amdt 1
Grand Junction, CO, KGJT, Takeoff Minimums and Obstacle DP, Amdt 12
Washington, DC, IAD, ILS OR LOC RWY 1R, ILS RWY 1R (CAT II), ILS RWY 1R (CAT III), Amdt 25
Washington, DC, IAD, RNAV (GPS) Y RWY 1R, Amdt 2
Griffith, IN, 05C, RNAV (GPS) RWY 8, Orig-C
South Bend, IN, SBN, RNAV (GPS) RWY 9R, Amdt 1D
South Bend, IN, SBN, RNAV (GPS) RWY 36, Amdt 1D
New Bedford, MA, EWB, RNAV (GPS) RWY 14, Orig-F
Glencoe, MN, GYL, RNAV (GPS) RWY 13, Orig-B
Glencoe, MN, GYL, RNAV (GPS) RWY 31, Amdt 1A
Glencoe, MN, KGYL, Takeoff Minimums and Obstacle DP, Orig-A
Grand Marais, MN, CKC, NDB RWY 28, Amdt 1B, CANCELED
Sauk Centre, MN, D39, RNAV (GPS) RWY 32, Amdt 1D
Manchester, NH, MHT, ILS OR LOC RWY 6, Amdt 3B
Manchester, NH, MHT, ILS OR LOC RWY 17, Amdt 4
Harrison, OH, I67, VOR RWY 19, Amdt 4A, CANCELED
Hillsboro, OH, HOC, RNAV (GPS) RWY 23, Orig-C
Lancaster, OH, LHQ, VOR–A, Amdt 11
Charlottesville, VA, KCHO, Takeoff Minimums and Obstacle DP, Amdt 11

Rescinded: On March 18, 2024 (89 FR 19236), the FAA published an Amendment in Docket No. 31535, Amdt No. 4103, to part 97 of the Federal Aviation Regulations under § 97.33. The following entry for Albany, NY, effective May 16, 2024, is hereby rescinded in its entirety:

Albany, NY, ALB, RNAV (GPS) RWY 28, Amdt 1

[FR Doc. 2024–07241 Filed 4–5–24; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 232, 240, 249, and 274

[Release Nos. 34–99778; IC–35157; File No. S7–21–21]

Share Repurchase Disclosure Modernization

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; technical amendments.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting technical amendments to various rules and forms under the Securities Exchange Act of 1934 (''Exchange Act'') and the Investment Company Act of 1940 (''Investment Company Act'') to reflect a Federal court's vacatur of rule amendments that the Commission adopted on May 3, 2023, to modernize and improve disclosure about repurchases of an issuer's equity securities that are registered under the Exchange Act (''Repurchase Rule''). The court's vacatur of the Repurchase Rule was effective as of December 19, 2023, and had the legal effect of reverting to the rules and forms that existed prior to the effective date of the Repurchase Rule. These technical amendments revise the Code of Federal Regulations (''CFR'') to reflect the court's vacatur of the Repurchase Rule.

DATES: This rule is effective April 8, 2024. The Federal court's vacatur of the rule amendments was applicable as of December 19, 2023.

FOR FURTHER INFORMATION CONTACT: Brian D. Sims, Special Counsel, Office of Rulemaking, at (202) 551–3430, Division of Corporation Finance; and, with respect to the application to investment companies, Andrew Deglin, Counsel, at (202) 551–6792, Investment Company Regulation Office, Division of Investment Management; U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting technical amendments to the following rules and forms:

Commission reference	CFR citation (17 CFR)
Regulation S–K:	
Items 10 through 1305	§§ 229.10 through 229.1305.
Item 408	§ 229.408.
Item 601	§ 229.601.
Item 703	§ 229.703.
Regulation S–T:	
Rules 10 through 903	§§ 232.10 through 232.903.
Rule 405	§ 232.405.
Exchange Act: [1]	
Rule 13a–21	§ 240.13a–21.
Form F–SR	§ 249.333.
Form 20–F	§ 249.220f.
Form 10–Q	§ 249.308a.
Form 10–K	§ 249.310.
Form N–CSR	§§ 249.331 and 274.128.

I. Background

On May 3, 2023, the Commission adopted the Repurchase Rule, which modernized and improved disclosures about repurchases of an issuer's equity securities that are registered under the Exchange Act, and it became effective on July 31, 2023.[2] On December 19, 2023, the U.S. Court of Appeals for the Fifth Circuit vacated the Repurchase Rule.[3] The court's vacatur of the Repurchase Rule was effective as of December 19, 2023 and had the legal effect of reverting to the rules and forms that existed prior to the effective date of the Repurchase Rule. These technical amendments reflect the vacatur in the CFR by rescinding the changes to the rules and forms promulgated under the Exchange Act and the Investment Company Act, including the addition of new Form F–SR, that were implemented under the now vacated Repurchase Rule. The text of Forms 20–F, 10–Q, 10–K, and N–CSR do not appear in the CFR.[4]

II. Procedural and Other Matters

The Administrative Procedure Act (''APA'') generally requires an agency to publish notice of a rulemaking in the **Federal Register** and provide an opportunity for public comment. This requirement does not apply, however, if the agency ''for good cause finds . . . that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.'' [5]

The technical amendments do not impose any new substantive regulatory requirements on any person and merely reflect the vacatur of the Repurchase Rule. For these reasons, for good cause, the Commission finds that notice and public comment are unnecessary.[6]

For similar reasons, although the APA generally requires publication of a rule at least 30 days before its effective date, the Commission finds there is good cause for the amendments to take effect on April 8, 2024.[7]

Pursuant to the Congressional Review Act, the Office of Information and Regulatory Affairs has designated these amendments not a ''major rule,'' as defined by 5 U.S.C. 804(2).

Statutory Authority

The amendments contained in this release are being adopted under the authority set forth in sections 12, 13, 15, and 23(a) of the Exchange Act, and Sections 8, 23, 24(a), 30, 31, and 38 of the Investment Company Act.

List of Subjects in 17 CFR Parts 229, 232, 240, 249, and 274

Reporting and record keeping requirements, Securities.

Text of Amendments

For the reasons set forth in the preamble, the Commission amends title 17, chapter II of the Code of Federal Regulations as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j–3, 78l, 78m, 78n, 78n–1, 78o, 78u–5, 78w, 78ll, 78 mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11 and 7201 *et seq.;* 18 U.S.C. 1350; sec. 953(b), Pub. L. 111–203, 124 Stat. 1904 (2010); and sec. 102(c), Pub. L. 112–106, 126 Stat. 310 (2012).

§ 229.408 [Amended]

■ 2. Amend § 229.408 by removing and reserving paragraph (d).

§ 229.601 [Amended]

■ 3. Amend § 229.601 by:

■ a. In the exhibit table in paragraph (a), removing and reserving entry (26); and

■ b. Removing and reserving paragraph (b)(26).

■ 4. Revise § 229.703 to read as follows:

§ 229.703 (Item 703) Purchases of equity securities by the issuer and affiliated purchasers.

(a) In the following tabular format, provide the information specified in paragraph (b) of this Item with respect to any purchase made by or on behalf of the issuer or any ''affiliated purchaser,'' as defined in § 240.10b–18(a)(3) of this chapter of shares or other units of any class of the issuer's equity securities that is registered by the issuer pursuant to section 12 of the Exchange Act (15 U.S.C. 78*l*).

ISSUER PURCHASES OF EQUITY SECURITIES

Period	(a) Total number of shares (or units) purchased	(b) Average price paid per share (or unit)	(c) Total number of shares (or units) purchased as part of publicly announced plans or programs	(d) Maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs
Month #1 (identify beginning and ending dates).				
Month #2 (identify beginning and ending dates).				
Month #3 (identify beginning and ending dates).				
Total				

[1] 15 U.S.C. 78a *et seq.*

[2] *Share Repurchase Disclosure Modernization,* Release No. 34–97424 (May 3, 2023) [88 FR 36002 (June 1, 2023)].

[3] *Chamber of Com. of the USA* v. *SEC,* 88 F.4th 1115 (5th Cir. 2023).

[4] Forms 20–F, 10–Q and 10–K can be found at: *https://www.sec.gov/divisions/corpfin/forms/exchange.shtml* and Form N–CSR can be found at: *https://www.sec.gov/files/formn-csr.pdf.* The court's order vacated new Form F–SR.

[5] 5 U.S.C. 553(b)(3)(B).

[6] This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the amendments to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a federal agency finds that notice and public comment are impractical, unnecessary or contrary to the public interest, a rule shall take effect at such time as the federal agency promulgating the rule determines). The amendments also do not require analysis under the Regulatory Flexibility Act. *See* 5 U.S.C. 604(a) (requiring a final regulatory flexibility analysis only for rules required by the APA or other law to undergo notice and comment).

[7] *See* 5 U.S.C. 553(d)(3).

(b) The table shall include the following information for each class or series of securities for each month included in the period covered by the report:

(1) The total number of shares (or units) purchased (column (a));

Instruction to paragraph (b)(1) of Item 703: Include in this column all issuer repurchases, including those made pursuant to publicly announced plans or programs and those not made pursuant to publicly announced plans or programs. Briefly disclose, by footnote to the table, the number of shares purchased other than through a publicly announced plan or program and the nature of the transaction (*e.g.,* whether the purchases were made in open-market transactions, tender offers, in satisfaction of the company's obligations upon exercise of outstanding put options issued by the company, or other transactions).

(2) The average price paid per share (or unit) (column (b));

(3) The total number of shares (or units) purchased as part of publicly announced repurchase plans or programs (column (c)); and

(4) The maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs (column (d)).

Instructions to paragraphs (b)(3) and (b)(4) of Item 703:

1. In the table, disclose this information in the aggregate for all plans or programs publicly announced.

2. By footnote to the table, indicate:

a. The date each plan or program was announced;

b. The dollar amount (or share or unit amount) approved;

c. The expiration date (if any) of each plan or program;

d. Each plan or program that has expired during the period covered by the table; and

e. Each plan or program the issuer has determined to terminate prior to expiration, or under which the issuer does not intend to make further purchases.

Instruction to Item 703: Disclose all purchases covered by this Item, including purchases that do not satisfy the conditions of the safe harbor of § 240.10b–18 of this chapter.

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 5. The general authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll, 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 80b–4, 80b–6a, 80b–10, 80b–11, 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 6. Amend § 232.405 by:

■ a. Revising the introductory text and paragraphs (a)(2) and (4) and (b)(4)(iii);

■ b. Removing and reserving paragraph (b)(4)(iv); and

■ c. Revising Note 1 to § 232.405.

The revisions read as follows:

§ 232.405 Interactive Data File submissions.

This section applies to electronic filers that submit Interactive Data Files. Section 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K), General Instruction F of § 249.311 (Form 11–K), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), § 240.17Ad–27(d) of this chapter (Rule 17Ad–27(d) under the Exchange Act), Note D.5 of § 240.14a–101 of this chapter (Rule 14a–101 under the Exchange Act), Item 1 of § 240.14c–101 of this chapter (Rule 14c–101 under the Exchange Act), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter), General Instruction 2.(l) of Form N–8B–2 (§ 274.12 of this chapter), General Instruction 5 of Form S–6 (§ 239.16 of this chapter), General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter), §§ 242.829 and 831 of this chapter (Rules 829 and 831 of Regulation SE), and the Registration Instructions to Form SBSEF (§ 249.1701 of this chapter) specify when electronic filers are required or permitted to submit an Interactive Data File (§ 232.11), as further described in note 1 to this section. This section imposes content, format, and submission requirements for an Interactive Data File, but does not change the substantive content requirements for the financial and other disclosures in the Related Official Filing (§ 232.11).

(a) * * *

(2) Be submitted only by an electronic filer either required or permitted to submit an Interactive Data File as specified by § 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K), Instruction F of Form 11–K (§ 249.311 of this chapter), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), § 240.17Ad–27(d) of this chapter (Rule 17Ad–27(d) under the Exchange Act), Note D.5 of § 240.14a–101 of this chapter (Rule 14a–101 under the Exchange Act), Item 1 of § 240.14c–101 of this chapter (Rule 14c–101 under the Exchange Act), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter), General Instruction 2.(l) of Form N–8B–2 (§ 274.12 of this chapter), General Instruction 5 of Form S–6 (§ 239.16 of this chapter), General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter), §§ 242.829 and 242.831 of this chapter (Rules 829 and 831 of Regulation SE), and the Registration Instructions to Form SBSEF (§ 249.1701 of this chapter), as applicable;

* * * * *

(4) Be submitted in accordance with the EDGAR Filer Manual and, as applicable, Item 601(b)(101) of § 229.601(b)(101) of this chapter (Regulation S–K), General Instruction F of Form 11–K (§ 249.311 of this chapter), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), § 240.17Ad–27(d) of this chapter (Rule 17Ad–27(d) under the Exchange Act), Note D.5 of § 240.14a–101 of this chapter (Rule 14a–101 under the Exchange Act), Item 1 of § 240.14c–101 of this chapter (Rule 14c–

101 under the Exchange Act), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter), Instruction 2.(l) of Form N–8B–2 (§ 274.12 of this chapter); General Instruction 5 of Form S–6 (§ 239.16 of this chapter); General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter), §§ 242.829 and 831 of this chapter.

(b) * * *

(4) * * *

(iii) Any disclosure provided in response to: § 229.402(x) of this chapter (Item 402(x) of Regulation S–K); § 229.408(a)(1) and (2) of this chapter (Item 408(a)(1) and (2) of Regulation S–K); § 229.408(b)(1) of this chapter (Item 408(b)(1) of Regulation S–K); and Item 16J(a) of Form 20–F (§ 249.220f of this chapter).

* * * * *

Note 1 to § 232.405: Section 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to § 239.11 of this chapter (Form S–1), § 239.13 of this chapter (Form S–3), § 239.25 of this chapter (Form S–4), § 239.18 of this chapter (Form S–11), § 239.31 of this chapter (Form F–1), § 239.33 of this chapter (Form F–3), § 239.34 of this chapter (Form F–4), § 249.310 of this chapter (Form 10–K), § 249.308a of this chapter (Form 10–Q), and § 249.308 of this chapter (Form 8–K). General Instruction F of § 249.311 of this chapter (Form 11–K) specifies the circumstances under which an Interactive Data File must be submitted, and the circumstances under which it is permitted to be submitted, with respect to Form 11–K. Paragraph (101) of Part II—Information not Required to be Delivered to Offerees or Purchasers of § 239.40 of this chapter (Form F–10) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to Form F–10. Paragraph 101 of the Instructions as to Exhibits of § 249.220f of this chapter (Form 20–F) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to Form 20–F. Paragraph B.(15) of the General Instructions to § 249.240f of this chapter (Form 40–F) and Paragraph C.(6) of the General Instructions to § 249.306 of this chapter (Form 6–K) specify the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to § 249.240f of this chapter (Form 40–F) and § 249.306 of this chapter (Form 6–K). Section 240.17Ad–27(d) of this chapter (Rule 17Ad–27(d) under the Exchange Act) specifies the circumstances under which an Interactive Data File must be submitted with respect the reports required under Rule 17Ad–27. Note D.5 of § 240.14a–101 of this chapter (Schedule 14A) and Item 1 of § 240.14c–101 of this chapter (Schedule 14C) specify the circumstances under which an Interactive Data File must be submitted with respect to Schedules 14A and 14C. §§ 242.829 and 242.831 of this chapter (Rules 829 and 831 of Regulation SE) and the Registration Instructions to § 249.1701 of this chapter (Form SBSEF), as applicable, specify the circumstances under which an Interactive Data File must be submitted with respect to filings made under Regulation SE. Item 601(b)(101) of Regulation S–K, paragraph (101) of Part II—Information not Required to be Delivered to Offerees or Purchasers of Form F–10, paragraph 101 of the Instructions as to Exhibits of Form 20–F, paragraph B.(15) of the General Instructions to Form 40–F, and paragraph C.(6) of the General Instructions to Form 6–K all prohibit submission of an Interactive Data File by an issuer that prepares its financial statements in accordance with §§ 210.6–01 through 210.6–10 of this chapter (Article 6 of Regulation S–X). For an issuer that is a management investment company or separate account registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter), General Instruction 2.(l) of § 274.12 of this chapter (Form N–8B–2), General Instruction 5 of § 239.16 of this chapter (Form S–6), and General Instruction C.4 of §§ 249.331 and 274.128 of this chapter (Form N–CSR) specify when electronic filers are required or permitted to submit an Interactive Data File (§ 232.11), as further described in note 1 to this section and General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter), as applicable, specifies the circumstances under which an Interactive Data File must be submitted.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 7. The general authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78j–4, 78k, 78k–1, 78l, 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78ll, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

§ 240.13a–21 [Removed and Reserved]

■ 8. Remove and reserve § 240.13a–21.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 9. The authority citation for part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* 18 U.S.C. 1350; Sec. 953(b) Pub. L. 111–203, 124 Stat. 1904; Sec. 102(a)(3) Pub. L. 112–106, 126 Stat. 309 (2012), Sec. 107 Pub. L. 112–106, 126 Stat. 313 (2012), Sec. 72001 Pub. L. 114–94, 129 Stat. 1312 (2015), and secs. 2 and 3 Pub. L. 116–222, 134 Stat. 1063 (2020), unless otherwise noted.

Section 249.220f is also issued under secs. 3(a), 202, 208, 302, 306(a), 401(a), 401(b), 406 and 407, Pub. L. 107–204, 116 Stat. 745, and secs. 2 and 3, Pub. L. 116–222, 134 Stat. 1063.

* * * * *

Section 249.308a is also issued under secs. 3(a) and 302, Pub. L. 107–204, 116 Stat. 745.

* * * * *

Section 249.310 is also issued under secs. 3(a), 202, 208, 302, 406 and 407, Pub. L. 107–204, 116 Stat. 745.

* * * * *

■ 10. Amend Form 20–F (referenced in § 249.220f) by revising Part II, Item 16E.

Note: Form 20–F is attached as appendix A to this document. Form 20–F will not appear in the Code of Federal Regulations.

■ 11. Amend Form 10–Q (referenced in § 249.308a) by revising the heading of Item 2 in Part II, paragraph (c) to Item 2 in Part II, and paragraph (c) to Item 5 in Part II.

Note: Form 10–Q is attached as appendix B to this document. Form 10–Q will not appear in the Code of Federal Regulations.

■ 12. Amend Form 10–K (referenced in § 249.310) by revising General Instruction J(1)(*l*), paragraph (c) to Item 5 in Part II and Item 9B in Part II.

Note: Form 10–K is attached as appendix C to this document. Form 10–K will not appear in the Code of Federal Regulations.

§ 249.333 [Removed and Reserved]

■ 13. Remove and reserve § 249.333.

■ 14. Remove Form F–SR (referenced in § 249.333).

Note: Form F–SR did not appear in the Code of Federal Regulations.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 15. The general authority citation for part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, 80a–29, and 80a–37 unless otherwise noted.

* * * * *

■ 16. Amend Form N–CSR (referenced in §§ 249.331 and 274.128) by revising Item 14.

Note: Form N–CSR is attached as appendix D to this document. Form N–CSR will not appear in the Code of Federal Regulations.

By the Commission.

Dated: March 19, 2024.

Vanessa A. Countryman,

Secretary.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix A—Form 20–F

Form 20–F

* * * * *

Part II

* * * * *

Item 16E Purchases of Equity Securities by the Issuer and Affiliated Purchasers

(a) In the following tabular format, provide the information specified in paragraph (b) of this Item with respect to any purchase made by or on behalf of the issuer or any ''affiliated purchaser,'' as defined in § 240.10b–18(a)(3), of shares or other units of any class of the issuer's equity securities that is registered by the issuer pursuant to section 12 of the Exchange Act (15 U.S.C. 78l).

ISSUER PURCHASES OF EQUITY SECURITIES

Period	(a) Total number of shares (or units) purchased	(b) Average price paid per share (or unit)	(c) Total number of shares (or units) purchased as part of publicly announced plans or programs	(d) Maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs
Month #1 (identify beginning and ending dates).				
Month #2 (identify beginning and ending dates).				
Month #3 (identify beginning and ending dates).				
Month #4 (identify beginning and ending dates).				
Month #5 (identify beginning and ending dates).				
Month #6 (identify beginning and ending dates).				
Month #7 (identify beginning and ending dates).				
Month #8 (identify beginning and ending dates).				
Month #9 (identify beginning and ending dates).				
Month #10 (identify beginning and ending dates).				
Month #11 (identify beginning and ending dates).				
Month #12 (identify beginning and ending dates).				
Total				

(b) The table shall include the following information for each class or series of securities for each month included in the period covered by the report:

(1) The total number of shares (or units) purchased (column (a)).

Instruction to Paragraph (b)(1) of Item 16E

Include in this column all issuer repurchases, including those made pursuant to publicly announced plans or programs and those not made pursuant to publicly announced plans or programs. Briefly disclose, by footnote to the table, the number of shares purchased other than through a publicly announced plan or program and the nature of the transaction (*e.g.,* whether the purchases were made in open-market transactions, tender offers, in satisfaction of the company's obligations upon exercise of outstanding put options issued by the company, or other transactions).

(2) The average price paid per share (or unit) (column (b)).

(3) The number of shares (or units) purchased as part of a publicly announced repurchase plan or program (column (c)).

(4) The maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs (column (d)).

Instructions to Paragraphs (b)(3) and (b)(4) of Item 16E

1. In the table, disclose this information in the aggregate for all plans or programs publicly announced.

2. By footnote to the table, indicate:

a. The date each plan or program was announced;

b. The dollar amount (or share or unit amount) approved;

c. The expiration date (if any) of each plan or program;

d. Each plan or program that has expired during the period covered by the table; and

e. Each plan or program the issuer has determined to terminate prior to expiration, or under which the issuer does not intend to make further purchases.

Instruction to Item 16E

Disclose all purchases covered by this item, including purchases that do not satisfy the conditions of the safe harbor of § 240.10b–18. Price data and other data should be stated in the same currency used in the issuer's primary financial statements provided in Item 8 of this Form.

* * * * *

Appendix B—Form 10–Q

Form 10–Q

* * * * *

Part II—Other Information

* * * * *

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

* * * * *

(c) Furnish the information required by Item 703 of Regulation S–K (§ 229.703 of this chapter) for any repurchase made in the quarter covered by the report. Provide disclosures covering repurchases made on a monthly basis. For example, if the quarter began on January 16 and ended on April 15, the chart would show repurchases for the months from January 16 through February 15, February 16 through March 15, and March 16 through April 15.

* * * * *

Item 5. Other Information.

* * * * *

(c) Furnish the information required by Items 408(a) of Regulation S–K (§ 229.408(a)).

* * * * *

Appendix C—Form 10–K

Form 10–K

* * * * *

General Instructions

* * * * *

J. Use of This Form by Asset-Backed Issuers

* * * * *

(1) * * *

* * * * *

(*l*) Item 9A, Controls and Procedures;

* * * * *

Part II

* * * * *

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

* * * * *

(c) Furnish the information required by Item 703 of Regulation S–K (§ 229.703 of this chapter) for any repurchase made in a month within the fourth quarter of the fiscal year covered by the report. Provide disclosures covering repurchases made on a monthly basis. For example, if the fourth quarter began on January 16 and ended on April 15, the chart would show repurchases for the months from January 16 through February 15, February 16 through March 15, and March 16 through April 15.

* * * * *

Item 9B. Other Information

(a) The registrant must disclose under this item any information required to be disclosed in a report on Form 8–K during the fourth quarter of the year covered by this Form 10–K, but not reported, whether or not otherwise required by this Form 10–K. If disclosure of such information is made under this item, it need not be repeated in a report on Form 8–K which would otherwise be required to be filed with respect to such information or in a subsequent report on Form 10–K.

(b) Furnish the information required by Item 408(a) of Regulation S–K (§ 229.408(a) of this chapter).

* * * * *

Appendix D—Form N–CSR

Form N–CSR

* * * * *

Item 14. Purchases of Equity Securities by Closed-End Management Investment Company and Affiliated Purchasers

(a) If the registrant is a closed-end management investment company, in the following tabular format, provide the information specified in paragraph (b) of this Item with respect to any purchase made by or on behalf of the registrant or any ''affiliated purchaser,'' as defined in Rule 10b–18(a)(3) under the Exchange Act (17 CFR 240.10b–18(a)(3)), of shares or other units of any class of the registrant's equity securities that is registered by the registrant pursuant to Section 12 of the Exchange Act (15 U.S.C. 781).

Instruction to paragraph (a).

Disclose all purchases covered by this Item, including purchases that do not satisfy the conditions of the safe harbor of Rule 10b–18 under the Exchange Act (17 CFR 240.10b–18), made in the period covered by the report. Provide disclosures covering repurchases made on a monthly basis. For example, if the reporting period began on January 16 and ended on July 15, the chart would show repurchases for the months from January 16 through February 15, February 16 through March 15, March 16 through April 15, April 16 through May 15, May 16 through June 15, and June 16 through July 15.

REGISTRANT PURCHASES OF EQUITY SECURITIES

Period	(a) Total number of shares (or units) purchased	(b) Average price paid per share (or unit)	(c) Total number of shares (or units) purchased as part of publicly announced plans or programs	(d) Maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs
Month #1 (identify beginning and ending dates).				
Month #2 (identify beginning and ending dates).				
Month #3 (identify beginning and ending dates).				
Month #4 (identify beginning and ending dates).				
Month #5 (identify beginning and ending dates).				
Month #6 (identify beginning and ending dates).				
Total				

(b) The table shall include the following information for each class or series of securities for each month included in the period covered by the report:

(1) The total number of shares (or units) purchased (column (a));

Instruction to paragraph (b)(1).

Include in this column all repurchases by the registrant, including those made pursuant to publicly announced plans or programs and those not made pursuant to publicly

announced plans or programs. Briefly disclose, by footnote to the table, the number of shares purchased other than through a publicly announced plan or program and the nature of the transaction (*e.g.,* whether the purchases were made in open-market transactions, tender offers, in satisfaction of the registrant's obligations upon exercise of outstanding put options issued by the registrant, or other transactions).

(2) The average price paid per share (or unit) (column (b));

(3) The number of shares (or units) purchased as part of publicly announced repurchase plans or programs (column (c)); and

(4) The maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs (column (d)).

Instructions to paragraphs (b)(3) and (b)(4).

1. In the table, disclose this information in the aggregate for all plans or programs publicly announced.

2. By footnote to the table, indicate:

a. The date each plan or program was announced;

b. The dollar amount (or share or unit amount) approved;

c. The expiration date (if any) of each plan or program;

d. Each plan or program that has expired during the period covered by the table; and

e. Each plan or program the registrant has determined to terminate prior to expiration, or under which the registrant does not intend to make further purchases.

[FR Doc. 2024–06187 Filed 4–5–24; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2023–0003; T.D. TTB–192; Ref: Notice No. 222]

RIN 1513–AC77

Establishment of the Comptche 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 1,421.8-acre ''Comptche'' American viticultural area (AVA) in Mendocino County, California. The Comptche AVA is excluded from the surrounding North Coast AVA due to significant differences in distinguishing features. 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 May 8, 2024.

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). In addition, the Secretary of the Treasury has delegated certain administration and enforcement authorities to TTB through Treasury Order 120–01.

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 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, once approved, a name and a delineated boundary codified 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 allows any interested party to 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 to establish or modify 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;
- 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;
- 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; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

If a smaller proposed AVA is to be established within an existing AVA, the petitioner may request, and TTB may determine, that the proposed AVA should not be part of the larger AVA because the proposed AVA has features that clearly distinguish it from the surrounding AVA. In such instances, wine produced from grapes grown within the proposed AVA would not be entitled to use the name of the larger AVA as an appellation of origin or in a brand name if the proposed AVA is established.

Petition To Establish the Comptche AVA

TTB received a petition on behalf of local vineyard owners proposing the establishment of the ''Comptche'' AVA. The proposed Comptche AVA is in Mendocino County, California, and

covers 1,421.8 acres. There are currently three commercial vineyards covering a total of over 30 acres within the proposed AVA. Although there are no wineries within the proposed AVA, grapes are sold to nearby wineries.

According to the petition, the distinguishing features of the proposed Comptche AVA are its topography, soils, and climate. The proposed Comptche AVA is within a low-elevation valley, a natural opening that is surrounded by heavily forested lands and short, steep ridges. Elevations within the proposed AVA range from 187 to 400 feet, and all vineyards are planted at elevations between 220 and 250 feet. According to the USGS map included with the petition, elevations are higher in each direction outside of the proposed AVA. Further, the petition notes temperature and viticulture in the proposed AVA is affected by the relationship between the low elevations within the proposed AVA and the higher elevations of the areas surrounding the AVA. The petition notes that at night, cool air sinks from the higher surrounding elevations into the proposed AVA and increases the risk of frosts that can damage vines or delay ripening of the grapes.

According to the petition, the two main soil types within the proposed Comptche AVA are Bearwallow–Wolfey and Perrygulch Loam. Bearwallow–Wolfey soils are described in the petition as well-drained, shallow, and relatively infertile soils over fractured sandstone. These soils are prone to erosion due to their thinness and the fact that they frequently occur on slopes. Therefore, mowing is the preferred method of controlling weeds in the vineyards instead of tilling, which disturbs the soil. Perrygulch Loam is a deep, rich, bottomland soil series that contains a large amount of clay and is not as well drained as Bearwallow–Wolfey soils. According to the petition, vineyard owners who plant on Perrygulch Loam soils prefer to use herbicides to control weeds because the high clay content within the soil is easily compacted by heavy machinery. By contrast, the most common soils surrounding the proposed Comptche AVA are Ornbaun and Zeni soils, which are found in each direction outside the proposed AVA. These soils are described as moderately deep to deep soils that formed from sandstone and typically have a surface that is covered with a mat of leaves and twigs that is one-half inch deep.

The proposed Comptche AVA is generally cooler than other established AVAs within Mendocino County. The average annual temperature and average growing season temperature within the proposed AVA are 67.9 and 74.2 degrees Fahrenheit (F), respectively. By contrast, the temperatures in the established Mendocino AVA (27 CFR 9.93), located to the east and south of the proposed AVA, and the established Mendocino Ridge (27 CFR 9.158) and Anderson Valley (27 CFR 9.86) AVAs, both located south of the proposed AVA, are warmer. The petition did not include climate data from the regions to the north and west of the proposed AVA.

To further demonstrate the cooler climate of the proposed Comptche AVA, the petition provided information on the average annual growing degree days (GDD) accumulations,[1] Huglin Index numbers,[2] and Biologically Effective Degree Days (BEDD) [3] for the proposed AVA and the established Mendocino, Mendocino Ridge, and Anderson Valley AVAs. The proposed AVA had the lowest numbers of each of the regions, with 2,258.85 GDDs, a Huglin Index number of 1,835.81, and 1,395.05 BEDDs. The petition states that due to its significantly cooler climate, the proposed Comptche AVA is a ''borderline'' region for growing wine grapes, and that only the most cold-hardy varietals will ripen successfully. Currently, Pinot Noir is the only grape varietal grown for commercial purposes in the proposed AVA.

The proposed AVA is further distinguishable because it is one of the few places in the coastal section of Mendocino County where non-timber related agricultural activity, including viticulture, is permitted. The proposed AVA is surrounded by land designated as a Timberland Production Zone. Such land is zoned only for the growing and harvesting of timber for a period of at least ten years from the time it was so designated.[4]

Although the proposed Comptche AVA is physically located within the established North Coast AVA (27 CFR 9.30), the petitioner asked that the proposed AVA be excluded from the established AVA because the climate and soils of the two regions are so different. The petition includes data showing that the proposed AVA has average annual BEDD and GDD accumulations, Huglin Index numbers, and average growing season and annual temperatures that are lower than those of the North Coast AVA as a whole. Although the established North Coast AVA is a large, multi-county AVA and variations in climate exist within it due to its large size, the proposed Comptche AVA is, as discussed earlier, also cooler than the three closest neighboring AVAs within the North Coast AVA: Mendocino, Mendocino Ridge, and Anderson Valley.

Furthermore, the petition notes that the two main soil series of the proposed Comptche AVA—Bearwallow–Wolfey and Perrygulch Loam—are unique and relatively scarce within the North Coast AVA and within the State of California as a whole. The Bearwallow–Wolfey series is comprised of two soil types: Bearwallow and Wolfey. Bearwallow soils cover a total of 30,050 acres within the State, while Wolfey and Perrygulch Loam cover 4,709 and 580 acres of the State, respectively. By contrast, the two most common soils directly outside the proposed AVA, Zeni and Ornbaun series, cover 96,612 and 115,774 acres of the State, respectively, indicating that they are more commonly found.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 222 in the **Federal Register** on March 29, 2023 (88 FR 18481), proposing to establish the Comptche AVA. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed viticultural area. The notice also compared the distinguishing features of the proposed viticultural area to the surrounding areas. For a description of the evidence relating to the name, boundary, and distinguishing features of the proposed viticultural area, and for a comparison of the distinguishing features of the proposed viticultural area to the surrounding areas, see Notice No. 222.

In Notice No. 222, TTB solicited comments on the accuracy of the name, boundary, topography, and other required information submitted in support of the petition. In addition, TTB asked for comments on whether the features of the proposed viticultural area are so distinguishable from the surrounding North Coast AVA that proposed Comptche AVA should not be part of this surrounding, existing

[1] *See* Albert J. Winkler et al., General Viticulture (Berkeley: University of California Press), pp. 61–64 (1974). In the Winkler climate classification system, annual heat accumulation during the growing season, measured in annual GDDs, defines climatic regions. One GDD accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees F, the minimum temperature required for grapevine growth.

[2] According to the petition, this method uses the period from April 1 through September 30 and sums the mean of the daily mean temperatures above 10 degrees Celsius, multiplied by a coefficient indicative of the latitude to account for increasing day lengths.

[3] The BEDD method calculates the growing degree days between April 1 and October 31 and also accounts for day length and diurnal temperature range.

[4] *See* Ca. Gov. Code § 51114.

viticultural area. The comment period on Notice No. 222 closed on May 30, 2023. TTB received no comments on the proposed AVA.

TTB Determination

After careful review of the petition, TTB finds that the evidence provided by the petitioner supports the establishment of the 1,421.8-acre Comptche AVA. 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 ''Comptche'' AVA in Mendocino County, California.

Furthermore, TTB finds that the evidence provided by the petitioner, as described in Notice No. 222, shows that the features of the North Coast AVA are so distinctive from those of the North Coast AVA that the Comptche AVA should be separate from, and not considered a part of, the North Coast AVA. As a result, TTB establishes the Comptche AVA as separate from, and not within, the North Coast AVA, and wines made primarily from grapes grown within the Comptche AVA will not be eligible to be labeled with ''North Coast'' as an appellation of origin.

Boundary Description

See the narrative boundary description of the Comptche AVA in the regulatory text published at the end of this final rule.

Maps

The petitioner provided the required maps, and they are listed below in the regulatory text. The Comptche 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 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 27 CFR 4.39(i)(2) for details.

With the establishment of the Comptche AVA, its name, ''Comptche,'' 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 ''Comptche'' in a brand name, including a trademark, or in another label reference 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 Comptche AVA will allow vintners to use ''Comptche'' as an appellation of origin for wines made primarily from grapes grown within the Comptche AVA if the wines meet the eligibility requirements for the appellation. The exclusion of the Comptche AVA from the North Coast AVA will also mean that vintners will not be able to use ''North Coast'' as an appellation of origin for wines made primarily from grapes grown anywhere in the Comptche AVA.

Bottlers who wish to label their wines with ''Comptche'' as an appellation of origin must obtain a new Certificate of Label Approval (COLA) for the label to do so. (Note that TTB cannot approve a COLA using ''Comptche'' as an appellation of origin before the effective date shown in the **DATES** section of this document, and TTB must reject such COLA applications if submitted prior to that date.) Additionally, after April 8, 2026, bottlers who use ''North Coast'' as an appellation of origin on wines made primarily from grapes grown in the Comptche AVA will no longer be able to use ''North Coast'' and would only be eligible to use ''Comptche,'' ''Mendocino County,'' or ''California,'' or a combination of these appellations, as appellations of origin on those wines.

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.

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. Add § 9.292 to read as follows:

§ 9.292 Comptche.

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

(b) *Approved maps.* The one United States Geological Survey (USGS) 1:24,000 scale topographic map used to determine the boundary of the viticultural area is titled Comptche, California (provisional edition 1991).

(c) *Boundary.* The Comptche viticultural area is located in Mendocino County, California. The boundary of the Comptche viticultural area is as described as follows:

(1) The beginning point is on the Comptche map at the intersection of a north-south tributary of the Albion River and an unnamed improved road known locally as Comptche Ukiah Road, section 12, T16N/R16W. From the beginning point, proceed northwest in a straight line, crossing an unnamed, unimproved road known locally as Surprise Valley Road, to the 400-foot elevation contour, section 12, T16N/R16W; then

(2) Proceed north, then easterly along the 400-foot elevation contour to its intersection with an unnamed, unimproved road southeast of the marked 517-foot peak in section 1, T16N/R16W; then

(3) Proceed southeasterly along the unnamed, unimproved road to its intersection with an unnamed, unimproved road known locally as Surprise Valley Road, section 1, T16N/R16W; then

(4) Proceed northeasterly along Surprise Valley Road to its intersection with an unnamed, unimproved road known locally as North Fork Road, section 1, T16N/R16 W; then

(5) Proceed northwesterly along North Fork Road to its intersection with an unnamed, unimproved road known locally as Docker Hill Road in section 36, T17N/R16W; then

(6) Proceed north along Docker Hill Road to its intersection with the 400-foot elevation contour, section 36, T17N/R16W; then

(7) Proceed easterly along the 400-foot elevation contour to its intersection with the North Fork of the Albion River in section 37, T17N/R15W; then

(8) Continue in a generally southerly direction along the 400-foot elevation contour to its intersection with an unnamed intermittent creek in section 6, T16N/R15W; then

(9) Proceed south in a straight line to the 400-foot elevation contour, section 6, T16N/R15W; then

(10) Proceed southeasterly, then north, then southeasterly along the meandering 400-foot elevation contour to its intersection with the Albion River in section 8, T16N/R15W; then

(11) Proceed westerly along the Albion River to its intersection with a north-south tributary in section 12, T16N/R16W; then

(12) Proceed northeasterly along the tributary, returning to the beginning point.

(d) *Exclusion.* The Comptche viticultural area as described in this section is not included within the North Coast viticultural area as described in § 9.30.

Signed: April 2, 2024.

Mary G. Ryan,

Administrator.

Approved: April 3, 2024.

Aviva R. Aron-Dine,

Acting Assistant Secretary for Tax Policy.

[FR Doc. 2024–07395 Filed 4–5–24; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2023–0187]

RIN 1625–AA09

Drawbridge Operation Regulation; Black River, Lorain, OH

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Final rule.

SUMMARY: The Coast Guard is altering the operating schedule that governs the Charles Berry Bridge, mile 0.6, and the Norfolk Southern Railroad Bridge, mile 1.2, both over the Black River. The regulation has remained primarily unchanged since 1986 and needs to be updated to ensure the needs of all modes of transportation are being met.

DATES: This rule is effective May 8, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov.* Type the docket number (USCG–2023–0187) in the ''SEARCH'' box and click ''SEARCH''. In the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this final rule, call or email Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216–902–6085, email *Lee.D.Soule@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
CRSTF Cuyahoga River Safety Task Force
DHS Department of Homeland Security
FR Federal Register
IGLD International Great Lakes Datum of 1985
LWD Low Water Datum based on IGLD85
ODOT Ohio Department of Transportation
OMB Office of Management and Budget
PAWSA Ports And Waterway Safety Assessment
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On May 4, 2023, the Coast Guard published a notice of proposed rulemaking entitled ''Drawbridge Operation Regulation; Black River, Lorain, OH,'' in the **Federal Register** (88 FR 28442). There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to this regulatory change. During the comment period that ended on July 3, 2023, we received 4 comments, and those comments are addressed in section IV of this final rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499.

Three bridges cross the river at Lorain. The Charles Berry Bridge, mile 0.6, is a double leaf bascule bridge that provides a horizontal clearance of 148-feet and a vertical clearance of 33-feet at center above LWD in the closed position and an unlimited clearance in the open position.

The Norfolk Southern Railroad Bridge, mile 1.2, is a vertical lift bridge that provides a horizontal clearance of 205-feet and a vertical clearance of 35-feet in the closed position above LWD and 123-feet in the open position above LWD.

The Lofton Henderson Memorial Bridge, mile 2, is a fixed bridge that provides a horizontal clearance of 256-feet and a vertical clearance of 97-feet based on LWD.

The drawtender logs provided quarterly summaries of bridge lifts and provided a rough picture of the type of vessels passing through the bridge. Currently, the bridge opens frequently for commercial vessels and very infrequently for recreational vessels. The logs also indicated seasonal surges of recreational vessels transiting from the marina in the outer harbor to the boat yard upriver of the bridge. These surges occurred during the winter haul out, which occurs each fall, and again each spring as vessels return from the boat yard to the outer marina.

IV. Discussion of Comments, Changes, and the Final Rule

The City of Lorain commented they were concerned with bridge openings between 3 p.m. and 5 p.m. and did not provide any data to support that request. We did ask for traffic data from ODOT to clarify the city's concerns, and we only received very general data that showed there was a small 300 vehicle increase in traffic during those hours, but, without detailed drawtender logs showing the actual problem is with recreational vessels it is difficult to adjust the schedule to address the concerns. The Charles Berry Bridge, mile 0.6, has a vertical clearance of 33 feet in the closed positions that allows most recreational vessels to pass under the bridge safely without an opening. Even under the prior regulations, commercial traffic was provided an opening on signal without restrictions. As such, there was no guarantee that the bridge would be open between 3 p.m. and 5 p.m., and despite the recent dredging activity and break wall repair activity along the Black River over the past three years, the Coast Guard has not received any complaints arising from increased unrestricted vessel traffic requiring on demand bridge openings.

Terminal Ready Mix provided comments concerned with delays to vessels delivering materials to the docks in the winter and that their trucks crossing the Charles Berry Bridge, mile 0.6, would have to stop frequently for recreational vessels. However, the

winter regulations have been in effect since 1986, and the Coast Guard has not received any complaints from commercial docks or the freighters that visit Lorain regarding the winter hours. Additionally, almost all the bridge openings were for the passage of freighters or tugs performing harbor maintenance. The Coast Guard has no record of delay from commercial vessels related to bridge openings, and there have been very limited recreational vessel requests for bridge openings. Concerns that road surface maintenance may delay cement trucks crossing the Lofton Henderson Memorial Bridge, mile 2, a fixed bridge, should be addressed to the Federal Highway Administration for consideration.

The ODOT submitted two comments and did not object to removal of opening restrictions for recreational vessels at various hours of the day, but expressed a desire to maintain the hourly and half hour openings for recreational vessels, even though the quarterly drawtender logs show very limited openings for any recreational vessels, except for the spring and fall migration of recreational vessels heading to and from the local boat storage yard. Additional drawtender logs submitted by ODOT listed several openings for commercial vessels, and only sporadic openings for recreational vessels.

Bridges across the navigable waters of the United State are considered obstructions to vessel navigation and are permitted only when they serve the needs of land transportation. While the public right of navigation is paramount to land transportation, it is not absolute. This right may be diminished to benefit land transportation, provided that the reasonable needs of navigation are not impaired. The documentation available indicates there is very little recreational traffic that requires the Charles Berry Bridge, mile 0.6, to open, and most of the openings that occur are for commercial vessels that are not subject to opening restrictions, therefore there is little disparity between the modes of transportation.

Special events, like July 4th Fireworks and local homecoming parades, could temporarily increase vehicle traffic. In those circumstances the city may request the Coast Guard District Commander to grant a special deviation to the regulations to allow the bridge to remain closed while traffic clears from such events.

During our review, we discovered a clause allowing for the bridge to operate with a 1-hour advance notice. Because the clause has not been utilized since 1995, all commenters that addressed the provision agreed it was unnecessary to remain. As such, we have deleted it from the final rule.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the ability that vessels can still transit the bridge given advanced notice.

B. Impact on Small Entities

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 businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard did not receive any comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Government

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

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

We did not receive any comments from Indian Tribes.

E. Unfunded Mandates Reform Act

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

we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges and is categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; and DHS Delegation No. 00170.1, Revision No. 01.3.

■ 2. Revise § 117.850 to read as follows:

§ 117.850 Black River.

(a) The Charles Berry Bridge, mile 0.6, will open on signal, except from January 1 through March 31 when the bridge will open if a 12-hour advance notice is given. The bridge will operate and maintain a VHF–FM Marine Radio and a telephone number.

(b) The Norfolk Southern Railroad Bridge, mile 1.2, will open on signal, except from January 1 through March 31 when the bridge will open if a 12-hour advance notice is given. The bridge will operate and maintain a VHF–FM Marine Radio and a telephone number.

Jonathan Hickey,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 2024–07368 Filed 4–5–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2023–0184]

RIN 1625–AA09

Drawbridge Operation Regulation; Maumee River, Toledo, OH

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule that governs the CSX Railroad Bridge, mile 1.07, the Wheeling and Lake Erie Railroad Bridge, mile 1.80, the Craig Memorial Bridge, mile 3.30, the Martin Luther King Jr. Memorial Bridge, mile 4.30, and the Norfolk Southern Railroad Bridge, mile 5.76, all over the Maumee River at Toledo, Ohio. The original regulation was published in 1986 and was amended over the years. The new operating schedule simplifies and clarifies operations and will reduce confusion for recreational vessels and drawtenders.

DATES: This rule is effective May 8, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov.* Type the docket number (USCG–2023–0184) in the ''SEARCH'' box and click ''SEARCH''. In the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this final rule, call or email Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216–902–6085, email *Lee.D.Soule@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
CRSTF Cuyahoga River Safety Task Force
DHS Department of Homeland Security
FR Federal Register
IGLD International Great Lakes Datum of 1985
LWD Low Water Datum based on IGLD85
OMB Office of Management and Budget
ODOT Ohio Department of Transportation
PAWSA Ports and Waterway Safety Assessment
TMMS Traffic Monitoring Management System
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On April 27, 2023, the Coast Guard published a NPRM, with a request for comments, entitled ''Drawbridge Operation Regulation; Maumee River, Toledo, OH,'' in the **Federal Register** (88 FR 25572), to seek public comments on whether the Coast Guard should consider modifying the current operating schedules of the bridges.

The Maumee River from the head of navigation to the mouth of the river is crossed by ten bridges, four of which are movable. The vertical clearance of all bridges on the Maumee River are based on LWD.

The CSX Railroad Bridge, mile 1.07, is a swing bridge with a horizontal clearance of 143-feet in both left and right draws and a vertical clearance of 22-feet in the closed position and an unlimited clearance in the open position.

The Wheeling and Lake Erie Railroad Bridge, mile 1.80, is a swing bridge with a horizontal clearance of 134-feet in both left and right draws and a vertical clearance of 20-feet in the closed position and an unlimited clearance in the open position.

The Craig Memorial Bridge, mile 3.30, is a double leaf bascule bridge, that provides a horizontal clearance of 200-feet with a minimum vertical clearance of 34-feet with a vertical clearance of 44-feet available in the center 31-feet while in the closed position and an unlimited clearance in the open position.

The Martin Luther King Jr. Memorial Bridge (prior to 1989, the Cherry Street Bridge), mile 4.30, is a double leaf bascule bridge, that provides a horizontal clearance of 200-feet with a minimum vertical clearance of 34-feet with a vertical clearance of 44-feet available in the center 31-feet while in the closed position and an unlimited clearance in the open position.

The Norfolk Southern Railroad Bridge, mile 5.76, is a swing bridge with a horizontal clearance of 115-feet in both left and right draws and a vertical clearance of 17-feet in the closed position and an unlimited clearance in the open position.

The CSX Railroad Bridge, mile 11.38, was a swing bridge with a horizontal clearance of 110-feet in both left and right draws and a vertical clearance of 53-feet in the closed position and an unlimited clearance in the open position. The bridge was allowed to remain closed by regulation when the upriver ship building facility closed. The bridge was removed in its entirety and at the District Commander's satisfaction in 2019.

On November 3, 1986, we published in the **Federal Register** (51 FR 39858) regulations for the Maumee River's movable bridges under 33 CFR 117.855 (Maumee River) that included several schedules for the bridges. The schedules were intended to ease the travel of motorists across the bridges while still allowing recreational and commercial commerce to travel the river.

During the comment period that ended June 26, 2023, we received two comments, and those comments are addressed in section IV.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. We will require a 12-hour advance notice from December 15 through March 31. Each bridge owner will be responsible to provide to the District Commander an appropriate phone number to be advertised to the mariners in the Local Notice to Mariners and would be required to be included in the requirements of 33 CFR 117.55.

In 2004, a new multilane fixed bridge was built at mile 3.25 that alleviated vehicle traffic congesting at the two double leaf highway bridges, significantly reducing the annual average vehicle counts at each bridge. The hourly restrictions imposed on recreational vessels will be eliminated due to the reduction in vehicle crossing numbers reported by the ODOT's Transportation Information Management System. Additionally, the reduction in recreational vessels with air drafts requiring bridge openings at either bridge crossing similarly renders the existing rush hour regulatory unnecessary.

In the past three years, we have received sixty-six complaints of delays at three of the drawbridges over the Maumee River. These complaints include: three written complaints against the Craig memorial Bridge, mile 3.30; thirty-one written complaints against the CSX Railroad Bridge, mile 1.07; and thirty-two written complaints against the Norfolk Southern Railroad Bridge, mile 5.76. Most of the complaints against the two railroad bridges have been about a lack of communications between the vessels and the drawtender. Often the miscommunications have been between the drawtender and the railroad dispatchers. To improve communications, we will require all drawbridges over the Maumee River to maintain and operate a VHF–FM Marine Radio and in addition to the Marine Radio the Railroad Bridges at mile 1.07 and mile 5.76 will maintain and operate a telephone with a correct number to be placed on signage at the bridge.

IV. Discussion of Comments, Changes, and the Final Rule

We received two comments on this regulation that supported the proposed changes as improving communications and the flow of vessels transiting the river. We did not make any changes in response to these supportive comments.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the ability that vessels can still transit the bridge given advanced notice.

B. Impact on Small Entities

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 businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard did not receive any comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Government

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

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of

$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges and is categorically excluded from further review, under paragraph L49, of Chapter 3, Table3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; and DHS Delegation No. 00170.1, Revision No. 01.3.

■ 2. Revise § 117.855 to read as follows:

§ 117.855 Maumee River.

(a) The draw of the CSX Railroad Bridge, mile 1.07, will open on signal, except that from December 15 through March 31 the bridge will require at least 12-hours advance notice. The bridge will operate and maintain a VHF–FM Marine Radio and a telephone number.

(b) The draw of the Wheeling and Lake Erie Railroad Bridge, mile 1.80, will open on signal, except that from December 15 through March 31 the bridge will require at least 12-hours advance notice. The bridge will operate and maintain a VHF–FM Marine Radio.

(c) The draw of the Craig Memorial Bridge, mile 3.30, will open on signal, except that from December 15 through March 31 the bridge will require at least 12-hours advance notice. The bridge will operate and maintain a VHF–FM Marine Radio.

(d) The draw of the Martin Luther King Jr Memorial Bridge, mile 4.30, will open on signal, except that from December 15 through March 31 the bridge will require at least 12-hours advance notice. The bridge will operate and maintain a VHF–FM Marine Radio.

(e) The draw of the Norfolk Southern Railroad Bridge, mile 5.76, will open on signal, except that from December 15 through March 31 the bridge will require at least 12-hours advance notice. The bridge will operate and maintain a VHF–FM Marine Radio and a telephone number.

Jonathan Hickey,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 2024–07367 Filed 4–5–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0292]

RIN 1625–AA00

Safety Zone; Chesapeake Bay, Approaches to Baltimore Harbor, MD

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 2000-yard radius of the center span of the Francis Scott Key Bridge, in Baltimore, MD. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards associated with salvage work on the bridge, which partially collapsed when it was hit by the M/V DALI, and on the M/V DALI itself. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Maryland-National Capital Region.

DATES: This rule is effective without actual notice from April 8, 2024, through June 4, 2024. For the purposes of enforcement, actual notice will be used from April 3, 2024, until April 8, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2024–0292 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call, or email LCDR Kate Newkirk, Waterways Management Division, Sector Maryland-National Capital Region, U.S. Coast Guard; (410) 365–8141, *Kate.M.Newkirk@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port, Sector Maryland-National Capital Region
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

At approximately 2 a.m. local time on March 26, 2024, the Captain of the Port, Maryland-National Capital Region was notified that a container ship, the Singapore-flagged M/V DALI, had allided with the Francis Scott Key Bridge in the Chesapeake Bay, in position latitude 39°13′0.12″ N longitude 076°31′47.27″ W, causing partial collapse of the bridge. Due to the need for vessel control during a damage assessment and salvage operation, maritime traffic will be temporarily restricted to provide for the safety of transiting vessels and persons conducting salvage work on the bridge and on the ship.

The Coast Guard is issuing this temporary rule under authority in 5 U.S.C. 553(b)(B). This statutory provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. Immediate action is needed to respond to the potential safety hazards associated with the presence of collapsed bridge parts and the M/V DALI, and with the conduct of damage assessment and salvage operations on the M/V DALI and the Francis Scott Key bridge that must occur within the Federal navigation channel. Due to the nature of the event, it is impracticable to provide notice to ensure the safety of life and property.

Also, under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause

exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with damage assessment and salvage operations of the M/V DALI to be conducted within the federal channel.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The COTP has determined that potential hazards associated with damage assessment and salvage operations starting March 26, 2024, will be a safety concern for anyone within a 2000-yard radius of the center navigation span of the Francis Scott Key bridge, in Baltimore, MD. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the bridge is being repaired.

IV. Discussion of the Rule

This rule establishes a safety zone from April 3, 2024, through June 4, 2024. The safety zone will cover all navigable waters within 2000 yards of the center navigation span of the Francis Scott Key Bridge in Baltimore MD. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the damage assessment and salvage operations are being conducted. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zone. Vessel traffic will not be able to transit in vicinity of the safety zone, which will impact vessel traffic required to transit certain navigation channels of the Chesapeake Bay. The duration of the period during which the safety zone will be subject to enforcement will be kept to a minimum. If circumstances which may create a hazard to navigation or to salvage workers abate before June 4 (as determined by the COTP), the Coast Guard will provide notice that the safety zone will no longer be subject to enforcement. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a

temporary safety zone lasting 14 total days that will prohibit entry within 2000 yards of the center navigation span of the Francis Scott Key Bridge. It is categorically excluded from further review under paragraph L60(d) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0263 to read as follows:

§ 165.T05–0263 Safety Zone; Chesapeake Bay, Approaches to Baltimore Harbor, MD.

(a) *Location.* The following area is a safety zone: All navigable waters of the Chesapeake Bay, within a 2000-yard radius of the center span of the Francis Scott Key bridge during damage assessment and salvage operations.

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

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

Designated representative means any Coast Guard commissioned, warrant, or petty officer, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the COTP in the enforcement of the safety zone.

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone number 410–576–2525 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

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

(e) *Enforcement period.* This section will be subject to enforcement from April 3, 2024, through June 4, 2024. If, as determined by the COTP, circumstances which may create a hazard to navigation or to salvage workers abate before June 4, 2024, the Coast Guard will provide notice that the safety zone will no longer be subject to enforcement.

Dated: April 3, 2024.

David E. O'Connell,

Captain, U.S. Coast Guard, Captain of the Port Sector Maryland-NCR.

[FR Doc. 2024–07454 Filed 4–5–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0031]

RIN 1625–AA00

Safety Zone; Cape Fear River, Wilmington, NC

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of the Cape Fear River. This action is necessary for the safety of life on these navigable waters, in Wilmington, NC, during a fireworks display to be executed by Zambelli Fireworks. This rulemaking will prohibit persons and vessel from being in the safety zone (which is near downtown Wilmington, adjacent to the USS North Carolina) unless authorized by the Captain of the Port, Sector North Carolina, or a designated representative.

DATES: This rule is effective on April 13, 2024, from 7 p.m. to 8 p.m.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2024–0031 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email MSTC Elvin Rodriguez, U.S. Coast Guard Sector, North Carolina; (910) 772–2239, *ncmarineevents@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

COTP Captain of the Port, Sector North Carolina
CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule under authority in 5 U.S.C. 553(b)(B). This statutory provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would not allow sufficient time to issue the rule before the safety zone needs to take effect. The event sponsor notified the Coast Guard on February 27, 2024, that they will be conducting the fireworks show April 13, 2024.

The area that will be restricted comprises the waters directly in front of and adjacent to the USS North Carolina, in downtown Wilmington, NC. The Captain of the Port Sector North Carolina (COTP) has determined that potential hazards associated with the fireworks display show necessitate these navigational restrictions on marine traffic.

Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because there are fewer days than 30 days remaining before the dates the safety zone will be needed.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The safety zone is intended to ensure the

safety of vessels, spectators and these navigable waters before, during and after the scheduled fireworks display show.

IV. Discussion of the Rule

This rule establishes a safety zone which will be in effect from 7 p.m. on April 13, 2024, through 8 p.m. on April 13, 2024. The safety zone will cover all navigable waters within 200 yards, due to the fireworks fallout zone, of the USS North Carolina, in downtown Wilmington, NC. The safety zone is intended to ensure the safety of vessels, spectators, and these navigable waters before, during and after the schedule fireworks display show. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the short duration of the fireworks display show, the seasonal traffic patterns, and timely broadcasting of restrictions for local mariners.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 1 hour that will prohibit entry within 200 yards of the USS North Carolina, downtown Wilmington, NC. It is categorically excluded from further review under paragraph L 60(a) off Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACESS AREAS

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

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

■ 2. Add § 165.T05–0031 to read as follows:

§ 165.T05–0031 Safety Zone, Cape Fear River, Wilmington, NC.

(a) *Location.* The following area is a safety zone: All waters, shore to shore on the Cape Fear River, within 200 yards of the USS North Carolina in downtown Wilmington, NC.

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

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by calling COTP North Carolina Command Center at 910–343–3880 or the on-scene representative on VHF Channel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be in effect and enforced from 7 p.m. to 8 p.m. on April 13, 2024.

Timothy J. List,

Captain, U.S. Coast Guard, Captain of the Port, Sector North Carolina.

[FR Doc. 2024–07369 Filed 4–5–24; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2022–0790; FRL–9915–02–R3]

Air Plan Approval; District of Columbia; Removal of Stage II Gasoline Vapor Recovery Program Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the District of Columbia. This SIP revision removes requirements for gasoline vapor recovery systems (VRS) installed on gasoline dispensers, the purpose of which are to capture emissions from vehicle refueling operations, otherwise known as vacuum-assist Stage II vapor recovery. Specifically, this action would remove from the approved SIP the prior-approved Stage II requirements applicable to new and existing gasoline dispensing facilities (GDFs). The District of Columbia SIP revision includes a demonstration that removal of Stage II requirements is consistent with the Clean Air Act (CAA) and meets all relevant EPA guidance.

DATES: This final rule is effective on May 8, 2024.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2022–0790. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *www.regulations.gov, o*r please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Adam Lewis, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F Kennedy Boulevard, Philadelphia, PA 19103. The telephone number is (215) 814–2026. Mr. Adam Lewis can also be reached via electronic mail at *Lewis.Adam@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On January 10, 2024 (89 FR 1479), EPA published a notice of proposed rulemaking (NPRM) for the District of Columbia (the District). In the NPRM, EPA proposed approval of the District's request to revise its requirements for Stage II vapor recovery for new and existing GDFs located within the District. The formal SIP revision was submitted by the Department of Energy and Environment (DOEE) of the District of Columbia on May 18, 2022.

II. Summary of SIP Revision and EPA Analysis

The details of the District's May 18, 2022, SIP submittal and the rationale for EPA's proposed action are explained in the NPRM and will not be restated in this final rule. For this detailed information, the reader is referred to the EPA's January 10, 2024, proposed rulemaking (89 FR 1479). The NPRM also contained a detailed analysis showing that the District's removal of the Stage II requirements would not interfere with any of the District's ability to attain or maintain any national ambient air quality standard (NAAQS), or any other applicable requirement of the CAA. The public comment period for the NPRM closed on February 9, 2024.

III. EPA's Response to Comments Received

EPA received two comments from private citizen commentors which can be found in the docket. Both comments, which were adverse, are discussed below.

Comments: Both private citizen commenters disagree with the proposed approval to allow the District to remove from the currently approved SIP the prior-approved Stage II requirements applicable to new and existing GDFs. The commentors' similarly stated reason for disagreeing with the proposed approval is that the removal of Stage II VRS may be cost effective but would lead to poorer air quality and adversely impact public health. One commenter asserted that the ''proposal states that this removal of requirements is necessary due to conflicts with other systems, but did not explicitly explain how these other systems will be regulated to make up for it.'' [1]

Response: Both commenters misunderstand the latest science that EPA has relied on in its decision. Based on DOEE's analysis, on-board refueling vapor recovery (ORVR) alone is more effective at reducing volatile organic compound (VOC) emissions in the District, than the use of ORVR in conjunction with vacuum-assist Stage II VRS. In other words, since the use of ORVR alone (which is in widespread use) in the District achieves more VOC emissions control and reduction than does using ORVR plus vacuum-assist

[1] Comment On EPA–R03–OAR–2022–0790–0001 Air Quality State Implementation Plans; Approvals and Promulgations: District of Columbia; Removal of Stage II Gasoline Vapor Recovery Program Requirements, *www.regulations.gov/comment/EPA-R03-OAR-2022-0790-0009.*

Stage II VRS, in removing the Stage II VRS requirement there is no loss of emissions control to be made up for. Furthermore, EPA's approval does not consider the relative cost effectiveness of ORVR versus Stage II VRS, but was rather based in large part on the DOEE study that showed that continued use of the two incompatible systems would lead to less reduction in VOC than the use of ORVR alone.

Specifically, EPA acknowledges that one of the commenters referenced an article,[2] indicating that Stage II VRS was an effective tool in reducing VOCs of the time that article was published. However, the article's estimate of ''81% and 93% relative to a conventional station'' for the efficiency of Stage II VRS is no longer accurate due to the widespread adoption of ORVR technology, which captures gasoline vapor when gasoline-powered vehicles are refueled. EPA adopted the ORVR regulations for passenger vehicles in 1994, and new passenger cars built in model year 1998 and later were required to be equipped with ORVR systems, followed by model year 2001 and later light-duty trucks. ORVR equipment has been installed on nearly all new gasoline-powered light-duty cars, light-duty trucks, and heavy-duty vehicles manufactured since 2006. ORVR systems have been considered to be in widespread use since 2012 (see the proposed approval for a full discussion of the 2012 widespread use finding). Per the 2012 EPA guidance on removing Stage II VRS, the in-use control efficiency for ORVR systems is estimated to be 98%.[3]

The DOEE analysis discussed in the proposed approval demonstrates that within the District the continued operation of the vacuum-assist Stage II VRS when coupled with the prevalence of ORVR-equipped vehicles results in increased, not decreased, VOC emissions, due to the incompatibility between the vacuum-assist type Stage II VRS equipment and ORVR. The DOEE analysis further demonstrates that allowing the decommissioning of Stage II VRS equipment on or after January 1, 2022, will result in additional emissions decreases, especially when combined with the increasing prevalence of ORVR-equipped vehicles. The associated costs or cost effectiveness of either retaining or decommissioning existing Stage II VRS was not a factor in EPA's proposed approval.

As indicated in the NPRM, EPA ensured that: (1) in accordance with CAA section 110(l)'s non-interference requirement, this SIP revision demonstrated that the proposed action would not interfere with attainment of the NAAQS or reasonable further progress towards attainment of any NAAQS; (2) in accordance with CAA section 184(b)(2)'s ''comparable measures'' requirement, that this SIP revision would achieve comparable or greater emission reductions than the gasoline vapor recovery requirements contained in CAA section 182(b)(3); and (3) that this SIP revision satisfies the anti-backsliding requirements of CAA section 193. EPA also found that in its submittal, DOEE demonstrated that there is widespread use of ORVR systems throughout the motor vehicle fleet in the District, and that implementation of the rule in the proposed SIP revision would comply with CAA sections 110(l), 184(b)(2), and 193. The submittal sufficiently demonstrates that the District followed current EPA guidance and demonstrated that the removal of Stage II VRS will not interfere with any requirements concerning attainment or reasonable progress of any NAAQS, or any other applicable requirement of the CAA.

IV. Final Action

EPA is approving the District's May 18, 2022, SIP revision that incorporates revisions to Title 20 of the District of Columbia Municipal Regulations (DCMR) Chapter 7 Section 705 Stage II Vapor Recovery, with an effective date of April 8, 2022. The approved changes to Section 705 Stage II Vapor Recovery consist of revisions to subsections 705.1 through 705.14 as well as the addition of subsections 705.15 through 705.17. EPA is approving this SIP revision because it meets all applicable requirements of the Clean Air Act and EPA guidance, and it will not interfere with attainment or maintenance of the ozone NAAQS or any other CAA applicable requirement.

V. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of District of Columbia's revised Title 20 DCMR Chapter 7 Section 705 Stage II Vapor Recovery regulation described in 40 CFR part 52 as described in Sections I, II and IV. of this preamble. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[4]

VI. Statutory and Executive Order Reviews

A. General Requirements

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);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and

[2] David L. MacIntosh, Dee A. Hull, Howard S. Brightman, Yukio Yanagisawa, P. Barry Ryan, A method for determining in-use efficiency of stage II vapor recovery systems, Environment International, Volume 20, Issue 2, 1994, Pages 201–207, ISSN 0160–4120, *doi.org/10.1016/0160-4120(94)90137-6*.

[3] EPA Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures (August 7, 2012).

[4] 62 FR 27968 (May 22, 1997).

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act;

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

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

The DOEE did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 7, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to remove Stage II requirements for the District of Columbia may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Adam Ortiz,

Regional Administrator, Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart J—District of Columbia

■ 2. Amend § 52.470, paragraph (c) by:
■ a. Revising the entries ''Section 705.1 through 705.3'' and ''Section 705.4 through 705.14''; and
■ b. Adding the entry ''Section 705.15 through 705.17'' immediately after the entry ''Section 705.4 through 705.14''.

The revisions and addition read as follows:

§ 52.470 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS AND STATUTES IN THE DISTRICT OF COLUMBIA SIP

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
Chapter 7 Volatile Organic Compounds				
*	*	*	*	*
Section 705.1 through 705.3.	Stage II Vapor Recovery.	04/08/2022	04/08/2024, [Insert **Federal Register** citation].	Includes revisions removing requirements for gasoline vapor recovery systems installed on gasoline dispensers.
Section 705.4 through 705.14.	Stage II Vapor Recovery.	04/08/2022	04/08/2024, [Insert **Federal Register** citation].	Includes revisions removing requirements for gasoline vapor recovery systems installed on gasoline dispensers.
Section 705.15 through 705.17.	Stage II Vapor Recovery.	04/08/2022	04/08/2024, [Insert **Federal Register** citation].	Includes additions removing requirements for gasoline vapor recovery systems installed on gasoline dispensers.

EPA-APPROVED REGULATIONS AND STATUTES IN THE DISTRICT OF COLUMBIA SIP—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	* * *

* * * * *

[FR Doc. 2024–07349 Filed 4–5–24; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 89, No. 68
Monday, April 8, 2024

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Doc. No. AMS–SC–23–0040]

Onions Grown in South Texas; Redistricting and Reapportionment of Committee Membership

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on implementing a recommendation from the South Texas Onion Committee (Committee) to reestablish the districts in the production area and reapportion representation on the Committee. This rulemaking would reduce the number of districts from two to one and reapportion membership to reflect changes in the industry, provide equitable representation on the Committee, and create the opportunity for more producers and handlers to serve on the Committee.

DATES: Comments must be received by May 8, 2024.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments can be sent to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237. Comments can also be sent to the Docket Clerk electronically by Email: *MarketingOrderComment@usda.gov* or via the internet at: *https://www.regulations.gov.* Comments should reference the document number and the date and page number of this issue of the **Federal Register**. Comments submitted in response to this proposed rule will be included in the record, will be made available to the public, and can be viewed at: *https://www.regulations.gov.* Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Delaney Fuhrmeister, Marketing Specialist, or Christian D. Nissen, Chief, Southeast Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: *Delaney.Fuhrmeister@usda.gov* or *Christian.Nissen@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085, Fax: (202) 720–8938, or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes to amend regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Order No. 959, as amended (7 CFR part 959), regulating the handling of onions in south Texas. Part 959 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the Order and is comprised of producers and handlers of onions operating within the production area.

The Agricultural Marketing Service (AMS) is issuing this proposed rule in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866, 13563, and 14094 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. This proposed action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This proposed rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined that this proposed rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This proposed rule has been reviewed under Executive Order 12988—Civil Justice Reform. This proposed rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the United States Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule would redistrict and reapportion the membership of the Committee as prescribed under the Order. This proposal would consolidate the current two districts into a single district and reapportion all membership on the Committee to the single district. These actions reflect changes in the industry and would help provide equitable representation on the Committee and create opportunity for more producers and handlers to serve on the Committee. Further, these changes would better enable Committee staff to conduct nominations and ensure

the appointment of a full Committee, allowing for an easier achievement of quorum at assembled meetings. The Committee unanimously recommended these changes when meeting on June 8, 2023.

Section 959.22 provides for the establishment of membership on the Committee and states that the Committee shall consist of thirteen members, eight of whom shall be producers and five of whom shall be handlers. Each member shall have an alternate. Section 959.24 currently defines the counties in Texas that make up District No. 1 and District No. 2 for the purpose of selecting Committee members. Section 959.26 specifies that District No. 1 is represented by five producer members and alternates and three handler members and alternates, and District No. 2 is represented by three producer members and alternates and two handler members and alternates.

Section 959.25 provides the authority for the Committee to recommend, with the approval of the Secretary, reapportionment of members among districts, and the reestablishment of districts within the production area. This section also provides that, in making such recommendations, the Committee shall consider shifts in onion acreage or production within the districts, the importance of new production in relation to existing districts, the equitable relationship of Committee membership in districts, economies to result for producers in promoting efficient administration due to redistricting or reapportionment, and other relevant factors.

This proposed rule would add two new sections to the rules and regulations under the Order using the authority in § 959.25. Section 959.110 would reestablish the districts currently identified in the Order from two districts to one single district, and § 959.111 would reapportion the eight producer seats and five handler seats and their alternates to the new single district.

In 2017, the Committee recommended reducing the Committee size from 34 members to 26 members by removing one producer and one handler from each district. The Committee recommended this change due to the decrease in the number of onion handlers and producers, and believed having a smaller Committee would help fulfill membership and quorum requirements. The final rule reducing the Committee size published in the **Federal Register** on March 22, 2019 (84 FR 10665).

Despite reducing the Committee size in 2019, the Committee continued to face difficulty filling member and alternate seats and meeting quorum. Consequently, at its meeting on June 8, 2023, the Committee reviewed the need to reapportion the membership and/or redistrict the production area. In its discussion, the Committee considered the distribution of production between the two districts and the ongoing difficulty with finding candidates to fill membership positions, with Committee staff reporting that this was a particularly difficult task in District 2. Given the current state of the industry, discussion focused on combining the current two districts into a single district representing the entire production area.

The 2022–2023 fiscal period saw a 39-percent increase in acreage planted from the previous year. However, from 2018–2019 to 2022–2023, industry production decreased by 28 percent. During this time, the percentage of industry acreage has remained stable between the two districts, with District 1 accounting for around 85 percent of industry acreage and District 2 accounting for around 15 percent. Production totals between the two districts also reflect a similar distribution as the percentages for acreage.

Since the reduction in Committee size in 2019, the industry has also experienced some additional consolidation, with the number of producers and handlers continuing to decline. As with acreage and production, there is also a disparity in the number of producers and handlers between the districts, with District 1 having considerably more producers and handlers (71) than District 2 (9). Consequently, District 2 currently has more representation on the Committee than is supported by either the volume of production or by the numbers of producers and handlers represented.

In addition, because of the limited number of producers and handlers in District 2, it has been difficult to find qualified nominees to fill the available member and alternate seats on the Committee. In its discussion, the Committee recognized this would continue to be a problem, and one that could become more difficult should there be any further consolidation in District 2. The Committee found that this, when combined with the disparity in volume and industry numbers, supports the need to adjust the current membership structure to make the Committee more reflective of the industry.

At the June meeting, there was little interest expressed in considering another reduction in the size of the Committee, or for further reapportioning the membership between the two districts to increase the number of seats available in District 1. Neither of these options received a motion. Committee members discussed that, historically, onion production in South Texas was separated by two distinct seasons with District 1 operating from May to July and District 2 from March to May; however, the Committee recognized the industry has been experiencing a shift, with District 1 and District 2 now aligning as a consolidated industry operationally with a single season from March to July.

Considering this shift in the industry, the distribution of production, and current Committee representation, the Committee recommended combining current Districts 1 and 2 into a new single district representing the entire production area. The Committee also recommended that all member and alternate seats be reapportioned to the reestablished district. By combining both District 1 and District 2 into a single district, the Committee believes it should enable the Committee to fulfill membership and quorum requirements and make the Committee more reflective of the industry.

These changes should also make the representation on the Committee more equitable and create the opportunity for more industry members to serve. Currently, producers and handlers in District 1 that may be interested in serving are not eligible to serve in the seats available in District 2. By combining the two districts, the Committee is addressing the issue of the limited number of producers and handlers in District 2, opening the available seats to all producers and handlers within the production area. In considering these changes, Committee members agreed producers and handlers in District 2 would still have an opportunity to be nominated and elected to serve following this action.

Accordingly, the Committee voted unanimously to reduce the number of districts from two to one, and to reapportion the producer and handler membership to the single district. The Committee believes these changes would make the representation on the Committee more reflective of the South Texas Onion industry and create opportunity for other producers and handlers to serve on the Committee.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this proposed

rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are 23 handlers of South Texas onions subject to regulation under the marketing order and approximately 55 producers of South Texas onions in the production area. At the time this analysis was prepared, the Small Business Administration (SBA) defined small agricultural service firms as those having annual receipts of less than $34,000,000 (North American Industry Classification System (NAICS) code 115114, Postharvest Crop Activities), and small agricultural producers are defined as those having annual receipts of less than $3,750,000 (NAICS code 111219, Other Vegetable and Melon Farming) (13 CFR 121.201).

Based on data from Market News and production records from the Committee, the average price for South Texas onions during the 2023 season was approximately $23.25 per 50-pound equivalent with total shipments of around 3.02 million 50-pound equivalents shipped. Using the average price and shipment data, handlers have average annual receipts below $34 million and could be considered small businesses under SBA's definition ($23.25 multiplied by 3.02 million 50-pound equivalents equals $70,215,000, divided by 23 equals $3.05 million).

In addition, based on data from the National Agricultural Statistics Service and the Committee, the average price producers received for South Texas onions during the 2022–2023 season was approximately $17 per 50-pound equivalent, with total shipments of around 3.02 million 50-pound equivalents. Using the average price producers received and shipment information, the number of producers, and assuming a normal distribution, the majority of producers have estimated average annual receipts significantly less than $3.75 million ($17 multiplied by 3.02 million 50-pound equivalents equals $51,340,000, divided by 55 producers equals $933,455 per producer). Therefore, the majority of handlers and producers of South Texas onions may be classified as small entities.

This proposed rule would reduce the number of districts under the Order from two districts to one and reapportion the producer and handler member and alternate seats to the single district. The Committee believes these changes would realign the Committee to reflect the composition of the industry, provide for equitable representation, and create the opportunity for more producers and handlers to serve on the Committee. This rulemaking would establish §§ 959.110 and 959.111 in the rules and regulations under the Order to establish the single district and to allot the members and alternates to the single district. The authority for this proposed action is provided in § 959.25. These proposed changes were unanimously recommended by the Committee at a meeting on June 8, 2023.

It is not anticipated that this action would impose any additional costs on the industry. Given the division of production, the distribution of producers and handlers across the industry, and the difficulty in filling member and alternate seats on the Committee, this action would have a beneficial impact as it would more accurately align the Committee membership to reflect the industry. Redistricting and reapportionment of the membership would also make it easier for Committee staff to conduct nominations, provide nominees for all seats, and readily achieve a quorum when meetings are assembled. These changes would save time and operating resources by making it easier to find candidates to serve on the Committee, improving the efficiency of operations. This would also help avoid the cost associated with travel and assembly of a meeting where a quorum is not achieved.

These changes should also provide for more equitable representation on the Committee and increase diversity by allowing more producers and handlers the opportunity to serve. These proposed changes are intended to make the Committee more representative of the current industry. The effects of this rulemaking would not be disproportionately greater or less for small entities than for larger entities.

The Committee discussed alternatives to these changes, including making no changes, reapportioning the Committee membership, and further reducing the size of the Committee. The Committee recognized there is a disparity in the volume of onions produced and the number of producers and handlers between the districts. The Committee determined changes were needed to make the districts and the apportionment of members more reflective of the current industry. Members agreed further reducing the Committee size could negatively affect industry participation, and that combining the districts rather than reducing the number of seats would allow for a wider participation from candidates who would want to serve on the Committee. Therefore, for the reasons above, these alternatives were rejected.

The Committee's meetings are widely publicized throughout the South Texas onion industry and all interested persons are invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the June meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0178, Vegetable and Specialty Crops. No changes in those requirements would be necessary as a result of this proposed rule. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large South Texas onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *https://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to comment

on this proposed rule. All written comments timely received will be considered before a final determination is made on this rulemaking.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agriculture Marketing Service proposes to amend 7 CFR part 959 as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

■ 1. The authority citation for part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Add § 959.110 to read as follows:

§ 959.110 Reestablishment of districts.

Pursuant to § 959.25, a single district is reestablished to include all counties in the production area as follows: the counties of Aransas, Atascosa, Bee, Brooks, Calhoun, Cameron, DeWitt, Dimmit, Duval, Frio, Goliad, Hidalgo, Jim Hogg, Jim Wells, Karnes, Val Verde, Kenedy, Kinney, Kleberg, La Salle, Live Oak, Maverick, McMullen, Medina, Nueces, Refugio, San Patricio, Starr, Uvalde, Victoria, Webb, Willacy, Wilson, Zavala and Zapata in the State of Texas.

■ 3. Add § 959.111 to read as follows:

§ 959.111 Reapportionment of Committee membership.

Pursuant to § 959.25, the Committee membership of eight producer members and five handler members and the respective alternates is reapportioned to a single district made up of all counties in the production area.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2024–07329 Filed 4–5–24; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–101552–24]

RIN 1545–BR09

Election To Exclude Certain Unincorporated Organizations Owned by Applicable Entities From Application of the Rules on Partners and Partnerships; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects a notice of proposed rulemaking (REG–101552–24) published in the **Federal Register** on March 11, 2024, containing proposed regulations that would modify existing regulations to allow certain unincorporated organizations that are organized exclusively to produce electricity from certain property to be excluded from the application of partnership tax rules.

DATES: Written or electronic comments are still being accepted and must be received by May 10, 2024.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–101552–24) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS's public docket.

Send paper submissions to: CC:PA:01:PR (REG–101552–24), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, contact Cameron Williamson at (202) 317–6684 (not a toll-free number); concerning submissions of comments or the public hearing, Vivian Hayes, (202) 317–6901 (not toll-free number) or by email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG–101552–24) that is the subject of this correction is under sections 761(a) of the Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–101552–24) contains errors that need to be corrected.

Correction of Publication

Accordingly, the notice of proposed rulemaking (REG–101552–24) that is the subject of FR Doc. 2024–04606, published on March 11, 2024, is corrected as follows:

1. On page 17614, in the second column, the twelfth line of the third paragraph is corrected to read, ''elections under section 6417, provided''.

2. On page 17615, in the first column, the seventh line from the top of the column is corrected to read, ''extracted, or used, and any associated''.

3. On page 17615, in the first column, in the seventh line of the last paragraph, the language ''contacts'' is corrected to read ''contracts''.

§ 1.761–2 [Corrected]

4. On page 17617, in the third column, the sixth line of paragraph (a)(4)(ii)(B) is corrected to read, ''extracted, or used, and any associated''.

Oluwafunmilayo A. Taylor,

Section Chief, Publications and Regulations Section, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2024–07307 Filed 4–5–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2024–0018]

RIN 1625–AA09

Drawbridge Operation Regulation; Milwaukee, Menomonee, and Kinnikinnic Rivers, and South Menomonee and Burnham Canals

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily modify the operating schedule that governs the Cherry Street Bridge, mile 2.29, over the Milwaukee River. The City of Milwaukee has requested this temporary deviation to

allow contractors to complete an extensive rehabilitation of the bridge. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must reach the Coast Guard on or before June 7, 2024.

The Coast Guard anticipates that this proposed rule will be effective from July 22, 2024, through November 1, 2025.

ADDRESSES: You may submit comments identified by docket number USCG–2024–0018 using Federal Decision-Making Portal at *https://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments. This notice of proposed rulemaking with its plain-language, 100-word-or-less proposed rule summary will be available in this same docket.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216–902–6085, email *Lee.D.Soule@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
IGLD85 International Great Lakes Datum of 1985
LWD Low Water Datum based on IGLD85
OMB Office of Management and Budget
NPRM Notice of Proposed Rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose and Legal Basis

The Milwaukee River is 104 miles long with the lower 3.22 miles considered navigable by vessels coming from Lake Michigan. The Milwaukee River is crossed by twenty-two bridges, fifteen of which are movable bridges. The river is used by commercial and recreational vessels, including both powered and unpowered vessels. The primary commercial vessels are passenger vessels whose regular routes travel from Lake Michigan to the Knapp Street Bridge, mile 2.14, over the Milwaukee River. The head of navigation for the Milwaukee River is just upriver of the Humbolt Avenue Bridge, mile 3.22, over the Milwaukee River.

The Cherry Street Bridge, mile 2.29, over the Milwaukee River, is a double leaf bascule bridge that provides a horizontal clearance of 80-feet and a vertical clearance of 14-feet in the closed position and an unlimited clearance in the open position based on LWD.

III. Discussion of Proposed Rule

The Cherry Street Bridge requires extensive electrical rehabilitation, including a new submarine cable to be installed under the river bottom that will prevent the bridge from opening. This type of work is typically completed during the winter months when vessel traffic is at its lowest. However, Milwaukee is hosting a national convention of nationwide significance in July 2024, and construction can not start until the convention concludes.

The vessels that normally transit the river are less than 40-feet wide but are over 14-feet in height. In order to accommodate their passage, one leaf of the bridge would remain open, except from November 1 through April 1, when both leaves would be secured and unable to open for any vessels.

The local DOT and City Offices provided a public information meeting in June 2023 and the proceedings can be viewed by visiting the City of Milwaukee Department of Public Works web page, available at *https://city.milwaukee.gov/dpw.*

The U.S. Army Corps of Engineers will approve the installment of the submarine cable.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders.

A. Regulatory Planning and Review

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

This regulatory action determination is based on the continuing ability of vessels to transit the bridge through the one open leaf during the summer and that the closure of both leaves will occur during a period when ice historically prevents vessel navigation.

B. Impact on Small Entities

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 businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

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

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

V. Public Participation and Request for Comments

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

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2024–0018 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. Also, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted, or a final rule is published of any posting or updates to the docket.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

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

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; DHS Delegation No. 00170.1. Revision No. 01.3.

■ 2. In § 117.1093 effective 8 a.m. on July 22, 2024, through 11:59 p.m. on November 1, 2025, add paragraph (a)(6) to read as follows:

§ 117.1093 Milwaukee, Menomonee, and Kinnikinnic Rivers, and South Menomonee and Burnham Canals.

(a) * * *

(6) The draw of the Cherry Street Bridge, mile 2.29, over the Milwaukee River, will, from July 22, 2024, through October 31, 2024, secure one bridge leaf in the down position and operate the other bridge leaf normally for the passage of vessels. From November 1, 2024, through April 1, 2025, both leaves will be secured in the down position and the bridge will not open for the passage of vessels.

* * * * *

Jonathan Hickey,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 2024–07366 Filed 4–5–24; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2021–0228; FRL–11762–01–OCSPP]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances (21–4.F)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for chemical substances that were the subject of premanufacture notices (PMNs). The chemical substances received ''not likely to present an unreasonable risk'' determinations pursuant to TSCA. The SNURs require persons who intend to manufacture (defined by statute to include import) or process any of these chemical substances for an activity that is proposed as a significant new use by this rulemaking to notify EPA at least 90 days before commencing that activity. The required notification initiates EPA's evaluation of the use, under the conditions of use for that chemical substance. In addition, the manufacture or processing for the significant new use may not commence until EPA has

conducted a review of the required notification, made an appropriate determination regarding that notification, and taken such actions as required by that determination.

DATES: Comments must be received on or before May 8, 2024.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2021–0228, through the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: William Wysong, New Chemicals Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–4163; email address: *wysong.william@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 is the Agency's authority for taking this action?

TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including the factors in TSCA section 5(a)(2) (see also the discussion in Unit II.).

B. What action is the Agency taking?

EPA is proposing SNURs for chemical substances that were the subject of PMNs as discussed in Unit III. These SNURs, if finalized as proposed, would require persons who intend to manufacture or process any of these chemical substances for an activity that is designated as a significant new use to notify EPA at least 90 days before commencing that activity.

C. Does this action apply to me?

1. General Applicability

This action applies to you if you manufacture, process, or use the chemical substances contained in this proposed rule. 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:

- Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

2. Applicability to Importers and Exporters

This action may also apply to certain entities through pre-existing import certification and export notification rules under TSCA (*https://www.epa.gov/tsca-import-export-requirements*).

Chemical importers are subject to the import provisions in TSCA section 13 (15 U.S.C. 2612), the requirements promulgated at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28, and the EPA policy in support of import certification at 40 CFR part 707, subpart B. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA, including regulations issued under TSCA sections 5, 6, 7 and title IV.

Pursuant to 40 CFR 721.20, any persons who export or intend to export a chemical substance that is the subject of this proposed rule on or after May 8, 2024 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) and must comply with the export notification requirements in 40 CFR part 707, subpart D.

D. What are the incremental economic impacts of this action?

EPA has evaluated the potential costs of establishing significant new use notice (SNUN) reporting requirements for potential manufacturers (including importers) and processors of the chemical substances subject to these proposed SNURs. This analysis, which is available in the docket, is briefly summarized here.

1. Estimated Costs for SNUN Submissions

If a SNUN is submitted, costs are an estimated $26,700 per SNUN submission for large business submitters and $11,000 for small business submitters. These estimates include the cost to prepare and submit the SNUN (including registration for EPA's Central Data Exchange (CDX)), and the payment of a user fee. Businesses that submit a SNUN would be subject to either a $19,020 user fee required by 40 CFR 700.45(c)(2)(ii) and (d), or, if they are a small business as defined at 13 CFR 121.201, a reduced user fee of $3,300 (40 CFR 700.45(c)(1)(ii) and (d)) per fiscal year 2022. The costs of submission for SNUNs will not be incurred by any company unless a company decides to pursue a significant new use as defined in these SNURs. Additionally, these estimates reflect the costs and fees as they are known at the time of this rulemaking.

2. Estimated Costs for Export Notifications

EPA has also evaluated the potential costs associated with the export notification requirements under TSCA section 12(b) and the implementing regulations at 40 CFR part 707, subpart D. For persons exporting a substance that is the subject of a SNUR, a one-time notice to EPA must be provided for the first export or intended export to a particular country. The total costs of export notification will vary by chemical, depending on the number of required notifications (*i.e.,* the number of countries to which the chemical is exported). While EPA is unable to make any estimate of the likely number of export notifications for the chemical substances covered by these SNURs, as stated in the accompanying economic analysis, the estimated cost of the export notification requirement on a per unit basis is approximately $106.

E. What should I consider as I prepare my comments for EPA?

1. Submitting CBI

Do not submit CBI to EPA through email or *https://www.regulations.gov.* If you wish to include CBI in your comment, please follow the applicable instructions at *https://www.epa.gov/dockets/commenting-epa-dockets#rules* and clearly mark the information that you claim to be CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR parts 2 and 704.

2. Tips for Preparing Your Comments

When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov//epa-dockets.*

II. Background

This unit provides general information about SNURs. For

additional information about EPA's new chemical program go to *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca.*

A. Significant New Use Determination Factors

TSCA section 5(a)(2) states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In determining what would constitute a significant new use for the chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, and potential human exposures and environmental releases that may be associated with the substances, in the context of the four bulleted TSCA section 5(a)(2) factors listed in this unit and discussed in Unit III.

These proposed SNURs include PMN substances that received a ''not likely to present an unreasonable risk'' determination in TSCA section 5(a)(3)(c). During its review of these chemicals, EPA identified certain conditions of use that are not intended by the submitters, but reasonably foreseen to occur. EPA is proposing to designate those reasonably foreseen conditions of use as well as certain other circumstances of use as significant new uses.

B. Rationale and Objectives of the SNURs

1. Rationale

Under TSCA, no person may manufacture a new chemical substance or manufacture or process a chemical substance for a significant new use until EPA makes a determination as described in TSCA section 5(a) and takes any required action. The issuance of a SNUR is not a risk determination itself, only a notification requirement for ''significant new uses,'' so that the Agency has the opportunity to review the SNUN for the significant new use and make a TSCA section 5(a)(3) risk determination.

During review of the PMNs submitted for the chemical substances that are the subject of these proposed SNURs and as further discussed in Unit III., EPA identified certain other conditions of use, in addition to those conditions of use intended by the submitter. EPA has determined that the chemical under the conditions of use is not likely to present an unreasonable risk. However, EPA has not assessed risks associated with certain conditions of use. EPA is proposing to designate these other circumstances of use as significant new uses. As a result, those significant new uses cannot occur without going through a separate, subsequent EPA review and determination process associated with a SNUN.

2. Objectives

EPA is proposing these SNURs because the Agency wants:

- To be able to complete its review and determination on each of the PMN substances, while deferring analysis on the significant new uses proposed in these rules unless and until the Agency receives a SNUN.
- To have an opportunity to review and evaluate data submitted in a SNUN before the submitter begins manufacturing or processing a listed chemical substance for the described significant new use.
- To be obligated to make a determination under TSCA section 5(a)(3) regarding the use described in the SNUN, under the conditions of use. The Agency will either determine under TSCA section 5(a)(3)(C) that the significant new use is not likely to present an unreasonable risk, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use, or make a determination under TSCA section 5(a)(3)(A) or (B) and take the required regulatory action associated with the determination, before manufacture or processing for the significant new use of the chemical substance can occur.

Issuance of a proposed SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Chemical Substance Inventory (TSCA Inventory). Guidance on how to determine if a chemical substance is on the TSCA Inventory is available at *https://www.epa.gov/*tsca-inventory.

C. Significant New Uses Claimed as CBI

EPA is proposing to establish certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 720, subpart E. Absent a final determination or other disposition of the confidentiality claim under 40 CFR part 2 procedures, EPA is required to keep this information confidential. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI, at 40 CFR 721.1725(b)(1) and has referenced it to apply to other SNURs.

Under these procedures a manufacturer or processor may request EPA to determine whether a specific use would be a significant new use under the rule. The manufacturer or processor must show that it has a *bona fide* intent to manufacture or process the chemical substance and must identify the specific use for which it intends to manufacture or process the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or process the chemical substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the chemical substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in 40 CFR 721.1725(b)(1) with that under 40 CFR 721.11 into a single step.

If EPA determines that the use identified in the *bona fide* submission would not be a significant new use, *i.e.,* the use does not meet the criteria specified in the rule for a significant new use, that person can manufacture or process the chemical substance so long as the significant new use trigger is not met. In the case of a production volume trigger, this means that the aggregate annual production volume does not exceed that identified in the *bona fide* submission to EPA. Because of confidentiality concerns, EPA does not typically disclose the actual production volume that constitutes the use trigger. Thus, if the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use.

D. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to SNURs, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Pursuant to 40 CFR 721.1(c), persons subject to SNURs must comply with the same requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include

the information submission requirements of TSCA sections 5(b) and 5(d)(1), the exemptions authorized by TSCA sections 5(h)(1), 5(h)(2), 5(h)(3), and 5(h)(5) and the regulations at 40 CFR part 720. In addition, provisions relating to user fees appear at 40 CFR part 700.

Once EPA receives a SNUN, EPA must either determine that the intended use is not likely to present an unreasonable risk of injury under the conditions of use for the chemical substance or take such regulatory action as is associated with an alternative determination under TSCA section 5 before the manufacture (including import) or processing for the significant new use can commence. If EPA determines that the intended use of the chemical substance is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's findings.

As discussed in Unit I.C.2., persons who export or intend to export a chemical substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b), and persons who import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements. See also *https://www.epa.gov/*tsca-import-export-requirements.

E. Applicability of the Proposed SNURs to Uses Occurring Before the Effective Date of the Final Rule

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this proposed rule have undergone premanufacture review. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for chemical substances for which an NOC has not been submitted, EPA concludes that the designated significant new uses are not ongoing. The identities of many of the chemical substances subject to this proposed rule have been claimed as confidential per 40 CFR 720.85 and the PMN submitter did not intend to engage in the other circumstances of use that are designated as significant new uses for the chemical substances subject to the proposed rule. Based on this, the Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this proposed rule are ongoing.

When the chemical substances identified in this proposed rule are added to the TSCA Inventory, EPA recognizes that, before the rule is effective, other persons might engage in a use that has been identified as a significant new use. Persons who begin manufacture or processing of the chemical substances for a significant new use identified on or after the designated cutoff date specified in Unit III.A. would have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons would have to first comply with all applicable SNUR notification requirements and EPA would have to take action under TSCA section 5 allowing manufacture or processing to proceed.

F. Important Information About SNUN Submissions

1. SNUN Submissions

SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40 and 721.25. E–PMN software is available electronically at *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca.*

2. Development and Submission of Information

EPA recognizes that TSCA section 5 does not require development of any particular new information (*e.g.,* generating test data) before submission of a SNUN. There is an exception: If a person is required to submit information for a chemical substance pursuant to a rule, order or consent agreement under TSCA section 4, then TSCA section 5(b)(1)(A) requires such information to be submitted to EPA at the time of submission of the SNUN.

In the absence of a rule, TSCA order, or consent agreement under TSCA section 4 covering the chemical substance, persons are required only to submit information in their possession or control and to describe any other information known to or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. Unit IV. lists potentially useful information for all SNURs listed here. Descriptions are provided for informational purposes. The potentially useful information identified in Unit IV. will be useful to EPA's evaluation in the event that someone submits a SNUN for the significant new use. Companies who are considering submitting a SNUN are encouraged, but not required, to develop the information on the substance, which may assist with EPA's analysis of the SNUN.

EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. Furthermore, pursuant to TSCA section 4(h), which pertains to reduction of testing in vertebrate animals, EPA encourages consultation with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs), if available, to generate the recommended test data. EPA encourages dialog with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h). For more information on alternative test methods and strategies to reduce vertebrate animal testing, visit *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/alternative-test-methods-and-strategies-reduce.*

The potentially useful information described in Unit III. may not be the only means of providing information to evaluate the chemical substance associated with the significant new uses. However, submitting a SNUN without any test data may increase the likelihood that EPA will take action under TSCA sections 5(e) or 5(f). EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.

III. Chemical Substances Subject to These Proposed SNURs

A. What is the designated cutoff date for determining whether the new use is ongoing for these chemical substances?

EPA designates April 8, 2024 as the cutoff date for determining whether the new use is ongoing. This designation is explained in more detail in Unit II.D.

B. What information is provided for each chemical substance?

For each chemical substance identified in Unit III.C., EPA provides the following information:

- PMN number (the proposed CFR citation assigned in the regulatory text section of this document).
- Chemical name (generic name if the specific name is claimed as CBI).

• Chemical Abstracts Service Registry Number (CASRN) (if assigned for non-confidential chemical identities).
• Basis for the SNUR.
• Potentially useful information.

The regulatory text section of this document specifies the activities designated as significant new uses. Certain new uses, including production volume limits and other uses designated in the proposed rules, may be claimed as CBI.

The chemical substances that are the subject of these proposed SNURs have undergone premanufacture review. In addition to those conditions of use intended by the submitter, EPA has identified certain other circumstances of use. EPA has preliminarily determined that the chemicals under their conditions of use are not likely to present an unreasonable risk. However, EPA has not assessed risks associated with the other circumstances of use for these chemicals. EPA is proposing to designate these other circumstances of use as significant new uses. As a result, those significant new uses cannot occur without first going through a separate, subsequent EPA review and determination process associated with a SNUN.

C. Which chemical substances are subject to this proposed rule?

The substances subject to the proposed rules in this document are as follows:

PMN Number (Proposed CFR Citation): P–16–449 (40 CFR 721.11799)

Chemical Name: 2,7-Decadienal, (2E,7Z)-.

CASRN: 52711–52–1.

Basis for action: The PMN states that the use of the PMN substance will be in cosmetics and as a fragrance for scented papers, detergents, candles, etc. Based on estimated physical/chemical properties of the PMN substance, submitted test data on the new chemical substance, comparison to analogous aldehydes, and comparison to structurally analogous chemical substances, EPA has identified concerns for systemic and developmental effects, skin sensitization, skin irritation, eye irritation, severe respiratory tract irritation, and aquatic toxicity if the chemical substance is not used following the limitations noted. The conditions of use of the PMN substance as described in the PMN include the following protective measures:

• No processing of the PMN substance to a concentration of greater than or equal to 1.0% in the final end use formulation; and
• No release of the PMN substance resulting in surface water concentrations that exceed 1 ppb.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful to characterize the human health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ toxicity, reproductive toxicity, and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance.

PMN Number (Proposed CFR Citation): P–16–512 (40 CFR 721.11800)

Chemical Name: Fatty acid dimers, polymer with acrylic acid and pentaerythritol reaction products (generic).

CASRN: Not available.

Basis for action: The PMN states that the use of the PMN substance will be as a component of UV curable printing inks. Based on estimated physical/chemical properties of the PMN substance, test data on a component of the new chemical substance and a potential metabolite, and comparison to structurally analogous chemical substances, EPA has identified concerns for skin and eye corrosion, skin and respiratory tract sensitization, systemic effects, nasal effects, and reproductive and developmental toxicity if the chemical substance is not used following the limitations noted. The conditions of use of the PMN substance as described in the PMN include the following protective measures:

• Use of the PMN substance only as a component of UV curable printing inks; and
• Use of a National Institute for Occupational Safety and Health (NIOSH)-certified respirator with an Assigned Protection Factor (APF) of at least 50, or 1,000 in spray applications, where there is a potential for inhalation exposure.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful to characterize the human health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of eye damage, reproductive toxicity (developmental effects), skin sensitization, and specific target organ toxicity testing may be potentially useful to characterize the health effects of the PMN substance.

PMN Number (Proposed CFR Citation): P–17–115 (40 CFR 721.11801)

Chemical Name: Aminoalkyl alkoxysilane (generic).

CASRN: Not available.

Basis for action: The PMN states that the use of the PMN substance will be as an adhesion promoter for coating formulations. Based on the estimated physical/chemical properties of the PMN substance and comparison to analogous chemical substances, EPA has identified concerns for eye and respiratory tract irritation, developmental toxicity, and lung toxicity if the chemical substance is not used following the limitations noted. The condition of use of the PMN substance as described in the PMN includes the following protective measure:

• No consumer use of the PMN substance.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

Potentially Useful Information: EPA has determined that certain information may be potentially useful to characterize the human health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ toxicity and reproductive/developmental toxicity testing may be potentially useful to characterize the health effects of the PMN substance.

PMN Number (Proposed CFR Citation): P–18–36 (40 CFR 721.11802)

Chemical Name: Siloxanes and Silicones, di-Me, 3-[3-carboxy-2(or 3)-(octenyl)-1-oxopropoxy]propyl group-terminated.

CASRN: 403616–34–2.

Basis for action: The PMN states that the generic (non-confidential) use of the PMN substance will be as a water repellant. Based on estimated physical/chemical properties of the PMN substance and comparison to structurally analogous chemical substances, EPA has identified concerns for lung effects, systemic effects, and skin irritation if the chemical substance is not used following the limitations noted. The condition of use of the PMN substance as described in the PMN

includes the following protective measure:

• No manufacturing, processing, or use of the PMN substance in a manner that results in inhalation exposure.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

Potentially Useful Information: EPA has determined that certain information may be potentially useful to characterize the human health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ toxicity and skin irritation testing may be potentially useful to characterize the health effects of the PMN substance.

PMN Number (Proposed CFR Citation): P–18–263 (40 CFR 721.11803)

Chemical Name: Mixed alkyl esters-, polymer with N1-(2-aminoethyl)- l,2-ethanediamine, aziridine, N-acetyl derivs., acetates (salts) (generic).

CASRN: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the PMN substance will be as a solution additive. Based on estimated physical/chemical properties of the PMN substance, comparison to structurally analogous chemical substances, and comparison to analogous polycationic polymers, EPA has identified concerns for lung effects, irritation to the skin, eyes, and respiratory tract, and aquatic toxicity if the new chemical substance is not used following the limitation noted. The condition of use of the PMN substance as described in the PMN includes the following protective measure:

• No release of the PMN substance resulting in surface water concentrations that exceed 5 ppb.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

Potentially Useful Information: EPA has determined that certain information may be potentially useful to characterize the human health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ toxicity, pulmonary effects, and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance.

PMN Number (Proposed CFR Citation): P–18–336 (40 CFR 721.11804)

Chemical Name: Propanedioic acid, 2,2-bis(hydroxymethyl)-, 1,3-dihexyl ester.

CASRN: 2222732–45–6.

Basis for action: The PMN states that the use of the PMN substance will be as an intermediate. Based on estimated physical/chemical properties of the PMN substance, comparison to analogous chemical substances, and comparison to analogous esters, EPA has identified concerns for systemic effects, eye irritation, and aquatic toxicity if the new chemical substance is not used following the limitations noted. The condition of use of the PMN substance as described in the PMN includes the following protective measure:

• No release of the PMN substance resulting in surface water concentrations that exceed 54 ppb.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

Potentially Useful Information: EPA has determined that certain information may be potentially useful to characterize the human health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of eye irritation, specific target organ toxicity, and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance.

PMN Number (Proposed CFR Citation): P–18–355 (40 CFR 721.11805)

Chemical Name: Alkanediol, substituted alkyl, polymer with carbomonocyle, alkanedioate substituted carbomonocycle, ester with substituted alkanoate (generic).

CASRN: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the PMN substance will be as paint. Based on the estimated physical/chemical properties of the PMN substance and comparison to analogous chemical substances, EPA has identified concerns for irritation to the skin, eyes, and respiratory tract, and lung effects if the chemical substance is not used following the limitations noted. The condition of use of the PMN substance as described in the PMN includes the following protective measure:

• No consumer use of the PMN substance.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

Potentially Useful Information: EPA has determined that certain information may be potentially useful to characterize the human health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of skin irritation, eye irritation, and pulmonary effects testing may be potentially useful to characterize the health effects of the PMN substance.

PMN Number (Proposed CFR Citation): P–18–359 (40 CFR 721.11806)

Chemical Name: Ethene, 1-[difluoro(trifluoromethoxy)methoxy]-1,2,2-trifluoro-, polymer with 1,1-difluoroethene.

CASRN: 874290–13–8.

Basis for action: The PMN states that the generic (non-confidential) use of the PMN substance will be for molded or extruded items. Based on estimated physical/chemical properties of the PMN substance and comparison to structurally analogous chemical substances, EPA has identified concerns for lung overload, lung waterproofing, systemic effects, neurotoxicity, and aquatic toxicity if the chemical substance is not used following the limitations noted. The conditions of use of the PMN substance as described in the PMN include the following protective measures:

• No manufacturing, processing, or use of the PMN substance in a manner that results in inhalation exposure; and

• No disposal of the PMN substance to media other than landfill.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful to characterize the human health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ toxicity and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance.

PMN Number (Proposed CFR Citation): P–18–369 (40 CFR 721.11807)

Chemical Name: Maleic anhydride—substituted alkene copolymer (generic).

CASRN: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the PMN substance will be as a processing aid. Based on estimated physical/chemical properties of the PMN substance and comparison to structurally analogous chemical substances, EPA has identified concerns for corrosion to all tissues and aquatic toxicity if the chemical substance is not used following the limitations noted. The condition of use of the PMN substance as described in the PMN includes the following protective measure:

• No manufacturing, processing, or use of the PMN substance in a manner that results in inhalation exposure.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

Potentially Useful Information: EPA has determined that certain information may be potentially useful to characterize the human health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of skin irritation and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance.

PMN Number (Proposed CFR Citation): P–18–382 (40 CFR 721.11808)

Chemical Name: Xanthylium, bis[dicarboxycyclic]sulfonylamino-alkylcyclicamino-disulfo-sulfocyclic-, inner salt, monocationic salt (generic).

CASRN: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the PMN substance will be as a dye for printing ink. Based on estimated physical/chemical properties of the PMN substance, submitted test data on the new chemical substance, comparison to structurally analogous chemical substances, and comparison to analogous acid dyes and amphoteric dyes, EPA has identified concerns for systemic effects and aquatic toxicity if the chemical substance is not used following the limitations noted. The condition of use of the PMN substance as described in the PMN includes the following protective measure:

• No manufacturing, processing, or use of the PMN substance in a manner that results in inhalation exposure.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

Potentially Useful Information: EPA has determined that certain information may be potentially useful to characterize the human health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ toxicity and aquatic toxicity may be potentially useful to characterize the health and environmental effects of the PMN substance.

PMN Number (Proposed CFR Citation): P–19–147 (40 CFR 721.11809)

Chemical Name: Alkoxylated butyl alkyl ester (generic).

CASRN: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the PMN substance will be as a cleaning additive. Based on estimated physical/chemical properties of the PMN substance, submitted test data on the new chemical substance, comparison to structurally analogous chemical substances, and comparison to analogous esters, EPA has identified concerns for systemic, reproductive, and developmental effects, and aquatic toxicity if the chemical substance is not used following the limitations noted. The conditions of use of the PMN substance as described in the PMN include the following protective measures:

• Use of the PMN substance only for the confidential use described in the PMN;

• No use of the PMN substance in formulations at a higher percentage than the confidential percentage stated in the PMN; and

• No release of the PMN substance resulting in surface water concentrations that exceed 16 ppb.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful to characterize the human health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ toxicity, reproductive/developmental toxicity, and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance.

PMN Number (Proposed CFR Citation): P–19–162 (40 CFR 721.11810)

Chemical Name: Fatty acid alkyl amide, (dialkyl) amino alkyl, alkyl quaternized, salts (generic).

CASRN: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the PMN substance will be as a component in oil production. Based on estimated physical/chemical properties of the PMN substance, comparison to structurally analogous chemical substances, and comparison to analogous cationic surfactants, EPA has identified concerns for lung effects (surfactancy), irritation to all tissues, skin sensitization, neurological, systemic, reproductive, and developmental effects, corrosion to skin and eyes, and aquatic toxicity if the chemical substance is not used following the limitations noted. The conditions of use of the PMN substance as described in the PMN include the following protective measures:

• No manufacturing, processing, or use of the PMN substance in a manner that results in inhalation exposure;

• No release of the PMN substance resulting in freshwater surface water concentrations that exceed 1 ppb; and

• No release of the PMN substance resulting in marine surface water concentrations that exceed 17 ppb.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful to characterize the human health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ toxicity, reproductive toxicity, skin irritation, skin corrosion, eye irritation, skin sensitization, and freshwater aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance.

PMN Number (Proposed CFR Citation): P–20–11 (40 CFR 721.11811)

Chemical Name: Tetraoxaspiro[5.5]alkyl-3,9-diylbis(alkyl-2,1-diyl) bis(2-cyano-3-(3,4-dimethoxyphenyl)acrylate) (generic).

CASRN: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the PMN substance will be as a light stabilizer. Based on estimated physical/

chemical properties of the PMN substance, submitted test data on the new chemical substance, comparison to analogous esters and vinyl nitriles, and comparison to structurally analogous chemical substances, EPA has identified concerns for neurotoxicity, developmental effects, and aquatic toxicity if the chemical substance is not used following the limitations noted. The conditions of use of the PMN substance as described in the PMN include the following protective measures:

- Use of the PMN substance only for the confidential use described in the PMN; and
- No exceedance of the confidential production volume described in the PMN.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful to characterize the human health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of neurotoxicity, reproductive toxicity (developmental effects for potential metabolite), and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance.

PMN Numbers (Proposed CFR Citations): P–20–48 and P–20–49 (40 CFR 721.11812 and 721.11813)

Chemical Names: Reaction products of alkyl-terminated alkylaluminoxanes and dihalogeno(alkylcyclopentadienyl)(tetraalkylcyclopentadienyl)transition metal coordination compound (generic) (P–20–48) and Reaction products of alkyl-aluminoxanes and bis(alkylcyclodialkylene) dihalogenozirconium (generic) (P–20–49).

CASRN: Not available.

Basis for action: The PMNs state that the generic (non-confidential) use of the PMN substances will be as catalysts. Based on the estimated physical/chemical properties of the PMN substances, comparison to analogous aluminum and other structurally analogous chemical substances, EPA has identified concerns for lung effects, skin sensitization, acute toxicity, developmental effects, systemic effects, neurotoxicity, corrosion to skin, eyes, and respiratory tract, lung toxicity, kidney toxicity, and aquatic toxicity if the new chemical substances are not used following the limitations noted. The conditions of use of the PMN substances as described in the PMNs include the following protective measures:

- No release of PMN substance P–20–48 resulting in surface water concentrations that exceed 6 ppb;
- No release of PMN substance P–20–49 resulting in surface water concentrations that exceed 3 ppb; and
- No manufacturing, processing, or use of the PMN substances other than in an enclosed process.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful to characterize the human health and environmental effects of the PMN substances if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ toxicity, skin corrosion, skin irritation, skin sensitization, eye damage, and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substances.

PMN Number (Proposed CFR Citation): P–20–61 (40 CFR 721.11814)

Chemical Name: Formaldehyde, polymer with alkylphenols, alkyl ether (generic).

CASRN: Not available.

Basis for action: The PMN states that the use of the PMN substance will be as a coating resin crosslinking agent. Based on estimated physical/chemical properties of the PMN substance, comparison to structurally analogous chemical substances, and comparison to analogous phenols, EPA has identified concerns for irritation, sensitization, reproductive toxicity, and systemic effects if the new chemical substance is not used following the limitation noted. The condition of use of the PMN substance as described in the PMN includes the following protective measure:

- No release of the PMN substance resulting in surface water concentrations that exceed 330 ppb.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

Potentially Useful Information: EPA has determined that certain information may be potentially useful to characterize the human health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ toxicity, reproductive/developmental toxicity, skin sensitization, endocrine effects, skin irritation, and eye damage testing may be potentially useful to characterize the health effects of the PMN substance.

PMN Number (Proposed CFR Citation): P–20–66 (40 CFR 721.11815)

Chemical Name: 2-Propenoic acid, 2-hydroxyethyl ester, reaction products with dialkyl hydrogen heterosubstituted phosphate and dimethyl phosphonate (generic).

CASRN: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the PMN substance will be as an antiwear additive for lubricants. Based on estimated physical/chemical properties of the PMN substance, submitted test data on the new chemical substance, and comparison to structurally analogous chemical substances, EPA has identified concerns for skin and eye irritation, systemic toxicity, reproductive/developmental toxicity, and aquatic toxicity if the chemical substance is not used following the limitations noted. The conditions of use of the PMN substance as described in the PMN include the following protective measures:

- Use of the PMN substance only for the confidential use described in the PMN;
- No manufacture or processing of the PMN substance in consumer products at a concentration greater than 3% (by weight); and
- No release of the PMN substance from manufacturing or processing sites resulting in surface water concentrations that exceed 6 ppb.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful to characterize the human health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ toxicity, reproductive/developmental toxicity, and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance.

PMN Number (Proposed CFR Citation): P–20–86 (40 CFR 721.11816)

Chemical Name: 2-Oxepanone, homopolymer, ester with hydroxyalkyl trioxo heteromonocyclic (3:1) (generic).

CASRN: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the PMN substance will be as a component of polymers. Based on estimated physical/chemical properties of the PMN substance, comparison to structurally analogous chemical substances, and comparison to analogous esters, EPA has identified concerns for aquatic toxicity if the new chemical substance is not used following the limitation noted. The condition of use of the PMN substance as described in the PMN includes the following protective measure:

- No release of the PMN substance resulting in surface water concentrations that exceed 92 ppb.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

Potentially Useful Information: EPA has determined that certain information may be potentially useful to characterize the environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of aquatic toxicity testing may be potentially useful to characterize the environmental effects of the PMN substance.

PMN Number (Proposed CFR Citation): P–20–90 (40 CFR 721.11817)

Chemical Name: Poly(oxy-1,2-ethanediyl), .alpha.-(alkyl-hydroxyalkyl)-.omega.-hydroxy-, .omega.-alkyl ethers (generic).

CASRN: Not available.

Basis for action: The PMN states that the use of the PMN substance will be as a surfactant for use in dishwashing detergents. Based on estimated physical/chemical properties of the PMN substance, submitted test data on the new chemical substance, comparison to structurally analogous chemical substances, and comparison to analogous nonionic surfactants, EPA has identified concerns for lung effects (surfactancy), irritation to the eyes and respiratory tract, and aquatic toxicity if the new chemical substance is not used following the limitation noted. The condition of use of the PMN substance as described in the PMN includes the following protective measure:

- No release of the PMN substance resulting in surface water concentrations that exceed 77 ppb.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

Potentially Useful Information: EPA has determined that certain information may be potentially useful to characterize the human health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ toxicity, pulmonary effects, and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance.

PMN Number (Proposed CFR Citation): P–20–97 (40 CFR 721.11818)

Chemical Name: Butanedioic acid, monopolyisobutylene derivs, mixed dihydroxyalkyl and hydroxyalkoxyalkyl diesters (generic).

CASRN: Not available.

Basis for action: The PMN states that the use of the PMN substance will be as an emulsifier for applications in explosives. Based on estimated physical/chemical properties of the PMN substance, comparison to structurally analogous chemical substances, and comparison to analogous esters, EPA has identified concerns for lung effects (surfactancy), irritation to the skin, eyes, and respiratory tract, systemic toxicity, developmental toxicity, and aquatic toxicity if the chemical substance is not used following the limitations noted. The conditions of use of the PMN substance as described in the PMN include the following protective measures:

- No manufacturing, processing, or use of the PMN substance in a manner that results in inhalation exposure to workers; and
- No release of the PMN substance resulting in surface water concentrations that exceed 6 ppb.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful to characterize the human health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of metabolism or pharmacokinetics, skin irritation/corrosion, eye irritation/corrosion, specific target organ and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance.

PMN Number (Proposed CFR Citation): P–20–99 (40 CFR 721.11819)

Chemical Name: Mixed metal oxide (generic).

CASRN: Not available.

Basis for action: The PMN states that the use of the PMN substance will be as a material used for the production of lithium ion conductive separators for rechargeable batteries. Based on the estimated physical/chemical properties of the PMN substance and comparison to analogous chemical substances, EPA has identified concerns for lung effects including lung cancer, neurotoxicity, reproductive and development effects, and systemic effects if the chemical substance is not used following the limitations noted. The condition of use of the PMN substance as described in the PMN includes the following protective measure:

- No manufacture of the PMN substance with greater than 1% of particles less than 10 microns.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

Potentially Useful Information: EPA has determined that certain information may be potentially useful to characterize the human health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ toxicity testing may be potentially useful to characterize the health effects of the PMN substance.

PMN Number (Proposed CFR Citation): P–20–102 (40 CFR 721.11820)

Chemical Name: Coal, brown, ammoxidized.

CASRN: 2413186–32–8.

Basis for action: The PMN states that the use of the PMN substance will be as a fertilizer/soil amendment. Based on estimated physical/chemical properties of the PMN substance and comparison to structurally analogous chemical substances, EPA has identified concerns for systemic effects, reproductive/developmental effects, lung toxicity, and carcinogenicity if the chemical substance is not used following the limitations noted. The conditions of use of the PMN substance as described in the PMN include the following protective measures:

- No domestic manufacture (*i.e.,* import only); and
- Use of the PMN substance only as a fertilizer/soil amendment.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful to characterize the human health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of reproductive/developmental, carcinogenicity and specific target organ toxicity testing may be potentially useful to characterize the health effects of the PMN substance.

PMN Number (Proposed CFR Citation): P–20–103 (40 CFR 721.11821)

Chemical Name: Cycloalphatic amine formate (generic).

CASRN: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the PMN substance will be as an onsite intermediate for the production of finished goods. Based on estimated physical/chemical properties of the PMN substance, comparison to structurally analogous chemical substances, and comparison to analogous aliphatic amines, EPA has identified concerns for irritation/corrosion to the skin, eyes, and respiratory tract, potential lung and respiratory tract toxicity, acute toxicity (mortality), systemic effects, neurotoxicity, reproductive/developmental effects and aquatic toxicity if the chemical substance is not used following the limitations noted. The conditions of use of the PMN substance as described in the PMN include the following protective measures:

- No manufacturing, processing, or use of the PMN substance in a manner that results in inhalation exposure; and
- No release of the PMN substance resulting in surface water concentrations that exceed 66 ppb.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful to characterize the human health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ, reproductive/developmental, and aquatic toxicity testing may be potentially useful to characterize the environmental effects of the PMN substance.

PMN Number (Proposed CFR Citation): P–20–107 (40 CFR 721.11822)

Chemical Name: Carbimide, polyalkylenepolyarylene ester, polymer with 1,2-alkanediol, 2-alkoxyalkyl methacrylate- and 3-(2-alkoxyalkyl)-2-heterocycle-blocked (generic).

CASRN: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the PMN substance will be as a crosslinking polymer. Based on estimated physical/chemical properties of the PMN substance, comparison to analogous acrylates/methacrylates, and comparison to structurally analogous chemical substances, EPA has identified concerns for skin and respiratory sensitization and skin, eye, and respiratory tract irritation if the chemical substance is not used following the limitations noted. The conditions of use of the PMN substance as described in the PMN include the following protective measures:

- No manufacturing, processing, or use of the PMN substance in a manner that results in inhalation exposure; and
- No consumer use of the PMN substance.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful to characterize the human health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of skin irritation, eye irritation/corrosion, and sensitization testing may be potentially useful to characterize the health effects of the PMN substance.

PMN Number (Proposed CFR Citation): P–20–132 (40 CFR 721.11823)

Chemical Name: 1H-Pyrrole-2,5-dione, 3-methyl-, 1,1′-C36-alkylenebis.

CASRN: 2414071–06–8.

Basis for action: The PMN states that the generic (non-confidential) use of the PMN substance will be as an adhesive component. Based on estimated physical/chemical properties of the PMN substance, comparison to analogous imides, and comparison to structurally analogous chemical substances, EPA has identified concerns for acute toxicity, liver, and kidney effects, genotoxicity, skin and respiratory sensitization, skin and eye irritation, systemic effects, and reproductive/developmental effects if the chemical substance is not used following the limitations noted. The conditions of use of the PMN substance as described in the PMN include the following protective measures:

- No manufacturing, processing, or use of the PMN substance in a manner that results in inhalation exposure; and
- No consumer use of the PMN substance.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful to characterize the human health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ, reproductive/developmental, and genetic toxicity testing may be potentially useful to characterize the health effects of the PMN substance.

PMN Number (Proposed CFR Citation): P–20–136 (40 CFR 721.11824)

Chemical Name: Arylcarboxylic acid, alkyl ester, polymer with alkanediol, ester with methyloxirane polymer with oxirane alkyl ether (generic).

CASRN: Not available.

Basis for action: The PMN states that the use of the PMN substance will be as a surface treatment compound for textiles. Based on estimated physical/chemical properties of the PMN substance and comparison to structurally analogous chemical substances, EPA has identified concerns for lung surfactancy, cardiovascular effects, systemic effects, and neurotoxicity if the chemical substance is not used following the limitations noted. The condition of use of the PMN substance as described in the PMN includes the following protective measure:

- No manufacturing or processing of the PMN substance in a manner that results in inhalation exposures to workers.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

Potentially Useful Information: EPA has determined that certain information may be potentially useful to characterize the human health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ toxicity, neurotoxicity, and pulmonary effects testing may be

potentially useful to characterize the health effects of the PMN substance.

PMN Number (Proposed CFR Citation): P–20–143 (40 CFR 721.11825)

Chemical Name: 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].

CASRN: 2417925–50–7.

Basis for action: The PMN states that the use of the PMN substance will be as a binder for thermoplastic coatings and inks/adhesives. Based on the estimated physical/chemical properties of the PMN substance and comparison to analogous polycationic polymers, EPA has identified concerns for irritation to the eyes, skin, and respiratory tract if the chemical substance is not used following the limitations noted. The condition of use of the PMN substance as described in the PMN includes the following protective measure:

- No consumer use of the PMN substance.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

Potentially Useful Information: EPA has determined that certain information may be potentially useful to characterize the human health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of skin irritation and eye damage testing may be potentially useful to characterize the health effects of the PMN substance.

PMN Number (Proposed CFR Citation): P–20–146 (40 CFR 721.11826)

Chemical Name: Alkanoic acid, alkyl, carbopolycyclic alkyl ester (generic).

CASRN: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the PMN substance will be as an insulating material for electrical parts. Based on estimated physical/chemical properties of the PMN substance, comparison to structurally analogous chemical substances EPA has identified concerns for corrosion, skin, eye, respiratory tract irritation, skin sensitization, and aquatic toxicity if the chemical substance is not used following the limitations noted. The conditions of use of the PMN substance as described in the PMN include the following protective measures:

- No manufacturing, processing, or use of the PMN substance in a manner that results in worker inhalation exposure; and
- No release of the PMN substance resulting in surface water concentrations that exceed 13 ppb.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful to characterize the human health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of skin sensitization and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance.

PMN Number (Proposed CFR Citation): P–20–161 (40 CFR 721.11827)

Chemical Name: Propanedioic acid, 2-methylene-, 1,3-diethyl ester, polymer with 1,4-butanediol.

CASRN: 2364431–09–2.

Basis for action: The PMN states that the use of the PMN substance will be as a crosslinker additive used in waterborne emulsions and as a film former or crosslinker additive used in coatings and adhesives. Based on the estimated physical/chemical properties of the PMN substance, comparison to analogous chemical substances, and comparison to analogous acrylates/methacrylates, EPA has identified concerns skin, respiratory tract, and eye irritation, skin sensitization, local stomach effects, and acute inhalation toxicity if the chemical substance is not used following the limitations noted. The condition of use of the PMN substance as described in the PMN includes the following protective measure:

- No consumer use of the PMN substance.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

Potentially Useful Information: EPA has determined that certain information may be potentially useful to characterize the human health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of skin irritation, sensitization, and eye damage testing may be potentially useful to characterize the health effects of the PMN substance.

PMN Number (Proposed CFR Citation): P–21–12 (40 CFR 721.11828)

Chemical Name: Multialkylbicycloalkenyl substituted propanenitrile (generic).

CASRN: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the PMN substance will be as a fragrance ingredient. Based on estimated physical/chemical properties of the PMN substance, submitted test data on the new chemical substance, comparison to analogous neutral organics, and comparison to structurally analogous chemical substances, EPA has identified concerns for eye irritation, acute toxicity, liver effects, and aquatic toxicity if the chemical substance is not used following the limitations noted. The condition of use of the PMN substance as described in the PMN includes the following protective measure:

- No manufacture for any use greater than 10,000 kilograms per year of the PMN substance.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

Potentially Useful Information: EPA has determined that certain information may be potentially useful to characterize the human health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of acute toxicity, specific target organ toxicity, and chronic aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *https://www.epa.gov/laws-regulations-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action proposes to establish SNURs for new chemical substances that were the subject of PMNs. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866 (58 FR 51735, October 4, 1993), as amended by Executive Order 14094 (88 FR 21879, April 11, 2023).

B. Paperwork Reduction Act (PRA)

According to the PRA (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

The information collection requirements related to SNURs have already been approved by OMB pursuant to PRA under OMB control number 2070–0038 (EPA ICR No. 1188). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per submission. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

EPA always welcomes your feedback on the burden estimates. Send any comments about the accuracy of the burden estimate, and any suggested methods for improving the collection instruments or instruction or minimizing respondent burden, including through the use of automated collection techniques.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a ''significant new use.'' Because these uses are ''new,'' based on all information currently available to EPA, EPA has concluded that no small or large entities presently engage in such activities.

A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. Although some small entities may decide to pursue a significant new use in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemicals, the Agency receives only a small number of notices per year. For example, the number of SNUNs received was 16 in Federal fiscal year (FY) FY2018, five in FY2019, seven in FY2020, and 13 in FY2021, 11 in FY2022, and 15 in FY2023, and only a fraction of these submissions were from small businesses.

In addition, the Agency currently offers relief to qualifying small businesses by reducing the SNUN submission fee from $19,020 to $3,330. This lower fee reduces the total reporting and recordkeeping cost of submitting a SNUN to about $11,164 per SNUN submission for qualifying small firms. Therefore, the potential economic impacts of complying with these proposed SNURs are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this action. As such, EPA has determined that this action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1531–1538 *et seq.*).

E. Executive Order 13132: Federalism

This action will not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it is not expected to have a substantial direct effect on 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. Accordingly, the requirements of Executive Order 13132 do not apply to this action.

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

This action will not have Tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because it is not expected to have substantial direct effects on Indian Tribes, significantly or uniquely affect the communities of Indian Tribal governments and does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175 do not apply to this action.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it does not concern an environmental health or safety risk. Since this action does not concern human health, EPA's 2021 Policy on Children's Health also does not apply. Although the establishment of these SNURs do not address an existing children's environmental health concern because the chemical uses involved are not ongoing uses, SNURs require that persons notify EPA at least 90 days before commencing manufacture (defined by statute to include import) or processing of any of these chemical substances for an activity that is designated as a significant new use by this rulemaking. This notification allows EPA to assess the intended uses to identify potential risks and take appropriate actions before the activities commence.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve any technical standards subject to NTTAA section 12(d) (15 U.S.C. 272 note).

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All

This action does not concern human health or environmental conditions and therefore cannot be evaluated with respect to the potential for disproportionate impacts on non-white and low-income populations in accordance with Executive Order 12898 (59 FR 7629, February 16, 1994) and

Executive Order 14096 (88 FR 25251, April 26, 2023). Although this action does not concern human health or environmental conditions, the premanufacture notifications required by these SNURs allows EPA to assess the intended uses to identify potential disproportionate risks and take appropriate actions before the activities commence.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: April 1, 2024.

Mary Elissa Reaves,

Director, Office of Pollution Prevention and Toxics.

Therefore, for the reasons stated in the preamble, EPA proposes to amend 40 CFR chapter I as follows:

PART 721—SIGNIFICANT NEW USES OF CHEMICAL SUBSTANCES

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 2. Add §§ 721.11799 through 721.11828 to subpart E to read as follows:

Subpart E—Significant New Uses for Specific Chemical Substances

§ 721.11799 2,7-Decadienal, (2E,7Z)-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2,7-decadienal, (2E,7Z)- (PMN P–16–449; CASRN 52711–52–1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to process the PMN substance to a concentration of greater than or equal to 1.0% in the final end use formulation.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=1.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11800 Fatty acid dimers, polymer with acrylic acid and pentaerythritol reaction products (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as fatty acid dimers, polymer with acrylic acid and pentaerythritol reaction products (PMN P–16–512) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4) and (5), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (*e.g.,* enclosure of confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50, or 1,000 when spray-applied.

(ii) *Industrial, commercial, and consumer activities.* It is a significant new use to use the PMN substance other than as a component of UV curable printing inks.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (d), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11801 Aminoalkyl alkoxysilane (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as aminoalkyl alkoxysilane (PMN P–17–115) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11802 Siloxanes and Silicones, di-Me, 3-[3-carboxy-2(or 3)-(octenyl)-1-oxopropoxy]propyl group-terminated.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as siloxanes and silicones, di-Me, 3-[3-carboxy-2(or 3)-(octenyl)-1-oxopropoxy]propyl group-terminated (PMN P–18–36; CASRN 403616–34–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the PMN substance in a manner that results in inhalation exposure.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11803 Mixed alkyl esters-, polymer with N1-(2-aminoethyl)- l,2-ethanediamine, aziridine, N-acetyl derivs., acetates (salts) (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as mixed alkyl esters-, polymer with N1-(2-aminoethyl)- l,2-ethanediamine, aziridine, N-acetyl derivs., acetates (salts) (PMN P–18–263) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=5.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (k) are

applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11804 Propanedioic acid, 2,2-bis(hydroxymethyl)-, 1,3-dihexyl ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as propanedioic acid, 2,2-bis(hydroxymethyl)-, 1,3-dihexyl ester (PMN P–18–336; CASRN 2222732–45–6) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=54.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11805 Alkanediol, substituted alkyl, polymer with carbomonocyle, alkanedioate substituted carbomonocycle, ester with substituted alkanoate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as alkanediol, substituted alkyl, polymer with carbomonocyle, alkanedioate substituted carbomonocycle, ester with substituted alkanoate (PMN P–18–355) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11806 Ethene, 1-[difluoro(trifluoromethoxy)methoxy]-1,2,2-trifluoro-, polymer with 1,1-difluoroethene.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as Ethene, 1-[difluoro(trifluoromethoxy)methoxy]-1,2,2-trifluoro-, polymer with 1,1-difluoroethene (PMN P–18–359; CASRN 874290–13–8) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the PMN substance in a manner that results in inhalation exposure.

(ii) *Disposal.* Requirements as specified in § 721.85(a)(2), (b)(2), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), (k), and (j) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11807 Maleic anhydride—substituted alkene copolymer (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as maleic anhydride—substituted alkene copolymer (PMN P–18–369) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the PMN substance in a manner that results in inhalation exposure.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11808 Xanthylium, bis[dicarboxycyclic]sulfonylamino-alkylcyclicamino-disulfo-sulfocyclic-, inner salt, monocationic salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as xanthylium, bis[dicarboxycyclic]sulfonylamino-alkylcyclicamino-disulfo-sulfocyclic-, inner salt, monocationic salt (PMN P–18–382) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the PMN substance in a manner that results in inhalation exposure.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11809 Alkoxylated butyl alkyl ester (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as alkoxylated butyl alkyl ester (PMN P–19–147) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j). It is a significant new use to use the PMN substance in formulation at a higher percentage than the confidential percentage stated in the PMN.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=16.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11810 Fatty acid alkyl amide, (dialkyl) amino alkyl, alkyl quaternized, salts (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as fatty acid alkyl amide, (dialkyl) amino alkyl, alkyl quaternized, salts (PMN P–19–162) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the PMN substance in a manner that results in inhalation exposure.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=1 (freshwater) and N=17 (marine).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11811 Tetraoxaspiro[5.5]alkyl-3,9-diylbis(alkyl-2,1-diyl) bis(2-cyano-3-(3,4-dimethoxyphenyl)acrylate) (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as tetraoxaspiro[5.5]alkyl-3,9-diylbis(alkyl-2,1-diyl) bis(2-cyano-3-(3,4-dimethoxyphenyl)acrylate) (PMN P–20–11) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j). It is a significant new use to exceed the confidential production volume stated in the PMN.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11812 Reaction products of alkyl-terminated alkylaluminoxanes and dihalogeno (alkylcyclopentadienyl) (tetraalkylcyclopentadienyl) transition metal coordination compound (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as reaction products of alkyl-terminated alkylaluminoxanes and dihalogeno (alkylcyclopentadienyl) (tetraalkylcyclopentadienyl) transition metal coordination compound (generic) (PMN P–20–48) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(a), (b), and (c).

(ii) *Releases to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=6.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11813 Reaction products of alkyl-aluminoxanes and bis(alkylcyclodialkylene) dihalogenozirconium (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as reaction products of alkyl-aluminoxanes and bis(alkylcyclodialkylene) dihalogenozirconium (generic) (PMN P–20–49) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(a), (b), and (c).

(ii) *Releases to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=3.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11814 Formaldehyde, polymer with alkylphenols, alkyl ether (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as formaldehyde, polymer with alkylphenols, alkyl ether (PMN P–20–61) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=330.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11815 2-Propenoic acid, 2-hydroxyethyl ester, reaction products with dialkyl hydrogen heterosubstituted phosphate and dimethyl phosphonate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as 2-propenoic acid, 2-hydroxyethyl ester, reaction products with dialkyl hydrogen heterosubstituted phosphate and dimethyl phosphonate (PMN P–20–66) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j). It is a significant new use to manufacture or process the PMN substance in consumer products at a concentration greater than 3% (by weight).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4) and (b)(4), where N=6.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11816 2-Oxepanone, homopolymer, ester with hydroxyalkyl trioxo heteromonocyclic (3:1) (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as 2-oxepanone, homopolymer, ester with hydroxyalkyl trioxo heteromonocyclic (3:1) (PMN P–20–86) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=92.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11817 Poly(oxy-1,2-ethanediyl), .alpha.- (alkyl-hydroxyalkyl)- .omega.-hydroxy-, .omega.-alkyl ethers (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as poly(oxy-1,2-ethanediyl), .alpha.- (alkyl-hydroxyalkyl)- .omega.-hydroxy-, .omega.-alkyl ethers (PMN P–20–90) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=77.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11818 Butanedioic acid, monopolyisobutylene derivs., mixed dihydroxyalkyl and hydroxyalkoxyalkyl diesters (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as alkyl oil, polymer with butanedioic acid, monopolyisobutylene derivs., mixed dihydroxyalkyl and hydroxyalkoxyalkyl diesters (PMN P–20–97) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the PMN substance in a manner that results in inhalation exposure to workers.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=6.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11819 Mixed metal oxide (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as a mixed metal oxide (PMN P–20–99) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture the PMN substance with greater than 1% of particles less than 10 microns.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11820 Coal, brown, ammoxidized.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as coal, brown, ammoxidized (PMN P–20–102; CASRN 2413186–32–8) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f). It is a significant new use to use the PMN substance other than as a fertilizer/soil amendment.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11821 Cycloalphatic amine formate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as cycloalphatic amine formate (PMN P–20–103) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the PMN substance in a manner that results in inhalation exposure.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=66.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11822 Carbimide, polyalkylenepolyarylene ester, polymer with 1,2-alkanediol, 2-alkoxyalkyl methacrylate- and 3-(2-alkoxyalkyl)-2-heterocycle-blocked (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as carbimide, polyalkylenepolyarylene ester, polymer with 1,2-alkanediol, 2-alkoxyalkyl methacrylate- and 3-(2-alkoxyalkyl)-2-heterocycle-blocked (PMN P–20–107) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to manufacture, process, or use the PMN substance in a manner that results in inhalation exposure.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11823 1H-Pyrrole-2,5-dione, 3-methyl-, 1,1′-C36-alkylenebis-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1H-pyrrole-2,5-dione, 3-methyl-, 1,1′-C36-alkylenebis- (PMN P–20–132; CASRN 2414071–06–8) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to manufacture, process, or use the PMN substance in a manner that results in inhalation exposure.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11824 Arylcarboxylic acid, alkyl ester, polymer with alkanediol, ester with methyloxirane polymer with oxirane alkyl ether (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as arylcarboxylic acid, alkyl ester, polymer with alkanediol, ester with methyloxirane polymer with oxirane alkyl ether (PMN P–20–136) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture or process the PMN substance in a manner that results in inhalation exposures to workers.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11825 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].

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 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] (PMN P–20–143; CASRN 2417925–50–7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11826 Alkanoic acid, alkyl, carbopolycyclic alkyl ester (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as alkanoic acid, alkyl, carbopolycyclic alkyl ester (PMN P–20–146) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the PMN substance in a manner that results in worker inhalation exposure.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=13.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11827 Propanedioic acid, 2-methylene-, 1,3-diethyl ester, polymer with 1,4-butanediol.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as propanedioic acid, 2-methylene-, 1,3-diethyl ester, polymer with 1,4-butanediol (PMN P–20–161; CASRN 2364431–09–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The

provisions of § 721.185 apply to this section.

§ 721.11828 Multialkylbicycloalkenyl substituted propanenitrile (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as multialkylbicycloalkenyl substituted propanenitrile (PMN P–21–12) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture more than 10,000 kilograms per year for any use.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain modification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 2024–07262 Filed 4–5–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 61

[Docket ID FEMA–2024–0004]

RIN 1660–AB06

National Flood Insurance Program: Standard Flood Insurance Policy, Homeowner Flood Form; Extension of Comment Period

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: The Federal Emergency Management Agency (FEMA) is extending the public comment period for its notice of proposed rulemaking published February 6, 2024. The proposed rule would revise the Standard Flood Insurance Policy by adding a new Homeowner Flood Form and five accompanying endorsements. The new Homeowner Flood Form would replace the Dwelling Form as a source of coverage for homeowners of one-to-four family residences. Together, the new Homeowner Flood Form and endorsements would more closely align with property and casualty homeowners insurance and provide increased options and coverage in a more user-friendly and comprehensible format.

DATES: Written comments on the notice of proposed rulemaking published at 89 FR 8282 (Feb. 6, 2024) may be submitted until 11:59 p.m. Eastern Time (ET) on Friday, May 31, 2024.

ADDRESSES: You may submit comments, identified by Docket ID FEMA–2024–0004, via the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Kelly Bronowicz, Product and Policy Development Division Director, Federal Insurance Directorate, Resilience, (202) 646–2559, *FEMA-NFIP-Federal-Insurance-Policy@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: On February 6, 2024, FEMA published a notice of proposed rulemaking that would revise the Standard Flood Insurance Policy (SFIP) by adding a new Homeowner Flood Form and five accompanying endorsements. This new form would replace the Dwelling Form as a source of coverage for homeowners of one-to-four family residences and would more closely align with property and casualty homeowners insurance, as well as provide increased options and coverage in a more user-friendly and comprehensible format.[1] FEMA has not substantively updated its flood insurance products—the Dwelling Form, the General Property Form, and the Residential Condominium Building Association Policy (RCBAP)—since 2000. While these products have performed ably over two decades of service, they are overdue for revision. FEMA seeks to update the SFIP to better serve a growing percentage of the public looking for ways to manage their risk through insurance. Consistent with the National Flood Insurance Act (NFIA) of 1968, FEMA must provide by regulation the general terms and conditions of insurability for properties eligible for flood insurance coverage. 42 U.S.C. 4013(a). The proposed new Homeowner Flood Form would update the general terms and conditions of insurability under the NFIP while also modifying the existing regulations and policy to make the program more effective and less burdensome for homeowner policyholders. Overall, FEMA aims to improve the homeowner policyholder experience with the NFIP through the proposed Homeowner Flood Form by simplifying coverage terms, reducing complexity, and resolving key challenges faced by homeowner policyholders.

Authority: 42 U.S.C. 4001 *et seq.;* 6 U.S.C. 101 *et seq.*

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–07388 Filed 4–5–24; 8:45 am]

BILLING CODE 9111–52–P

[1] 89 FR 8282. Commenters may reference the notice of proposed rulemaking for a more fulsome description of proposed changes.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2023–0220; FXES1111090FEDR–245–FF09E21000]

RIN 1018–BG92

Endangered and Threatened Wildlife and Plants; Threatened Species Status for Coal Darter With Section 4(d) Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are reopening the comment period on our December 21, 2023, proposed rule to list the coal darter (*Percina brevicauda*), a benthic freshwater fish native to the Mobile River Basin in Alabama, as a threatened species under the Endangered Species Act of 1973, as amended (Act). We are reopening the proposed rule's comment period for 30 days to give all interested parties an additional opportunity to comment on the proposed rule. Comments previously submitted will be fully considered in our final determination and do not need to be resubmitted.

DATES: The comment period on the proposed rule published on December 21, 2023, at 88 FR 88338, is reopened. We will accept comments received or postmarked on or before May 8, 2024. Comments submitted using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box,

enter FWS–R4–ES–2023–0220, which is the docket number for the December 21, 2023, proposed rule and this document. Then click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rule box to locate the correct document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R4–ES–2023–0220, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Public Comments, below, for more information).

FOR FURTHER INFORMATION CONTACT: William Pearson, Field Supervisor, U.S. Fish and Wildlife Service, Alabama Ecological Services Field Office, 1208 Main Street, Daphne, AL 36526; telephone 251–441–5181. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. Please see Docket No. FWS–R4–ES–2023–0220 on *https://www.regulations.gov* for a document that summarizes the December 21, 2023, proposed rule.

SUPPLEMENTARY INFORMATION:

Background

On December 21, 2023, we published a proposed rule (88 FR 88338) to list the coal darter as a threatened species under the Act (16 U.S.C. 1531 *et seq.*). The proposed rule opened a 60-day comment period, ending February 20, 2024. Between February 2, and February 16, 2024, we received several requests to extend the public comment period that could not be accommodated before the comment period ended. With this document, we reopen the public comment period for an additional 30 days, as specified above in **DATES**. For a description of previous Federal actions concerning the coal darter and information on the types of comments that would be helpful to us in making a final determination on our proposal, please refer to the December 21, 2023, proposed rule (88 FR 88338).

Public Comments

We will accept written comments and information during the reopened comment period on our December 21, 2023, proposed rule to list the coal darter. We will consider information and recommendations from all interested parties. We intend that any final action resulting from the proposed rule will be based on the best scientific and commercial data available and will be as accurate and as effective as possible. Our final determination will take into consideration all comments and any additional information we receive during both comment periods on the proposed rule.

Because we will consider all comments and information we receive during both open comment periods, our final determination may differ from our December 21, 2023, proposed rule (88 FR 88338). Based on the new information we receive (and, if relevant, any comments on that new information), we may conclude that the coal darter is endangered instead of threatened, or we may conclude that the species does not warrant listing as either an endangered species or a threatened species. In addition, we may change the parameters of the prohibitions or the exceptions to those prohibitions in the proposed rule issued under section 4(d) of the Act if we conclude it is appropriate in light of comments and new information received. For example, we may expand the prohibitions to include prohibiting take resulting from additional activities if we conclude that those additional activities are not compatible with the conservation of the species. Conversely, we may establish additional exceptions to the prohibitions in the final rule if we conclude that the activities would facilitate or are compatible with the conservation and recovery of the species. In our final rule, we will clearly explain our rationale and the basis for our final decision, including why we made changes, if any, that differ from the December 21, 2023, proposed rule.

If you already submitted comments or information on the December 21, 2023, proposed rule, please do not resubmit them. Any such comments are incorporated as part of the public record of the rulemaking proceeding, and we will fully consider them in the preparation of our final determination.

Comments should be as specific as possible. Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you assert. Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered species or a threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

We request that you send comments only by the methods described in **ADDRESSES**. If you submit information via *https://www.regulations.gov,* your entire submission—including your personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *https://www.regulations.gov.* Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection on *https://www.regulations.gov* at FWS–R4–ES–2023–0220.

Authors

The primary authors of this document are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Alabama Ecological Services Field Office.

Authority

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), is the authority for this action.

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2024–07331 Filed 4–5–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 240329–0093]

RIN 0648–BK89

Atlantic Highly Migratory Species; Updates Regarding Sea Turtle Careful Release Equipment and Techniques

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would update the Atlantic highly migratory species (HMS) regulations regarding the sea turtle safe handling and release requirements and equipment in the HMS pelagic and bottom longline fisheries. These proposed updates are based on two technical memoranda published by NMFS' Southeast Fisheries Science Center (SEFSC) in order to replace some of the more technical terms with those that are more commonly used, add more detail to make the regulations more understandable, and add additional tools or options for fishermen to use to safely handle and release sea turtles. In addition, this proposed rule would simplify the regulations by removing redundancies, making minor changes in formatting, and revising wording to clarify responsibility of implementation.

DATES: Written comments must be received by May 8, 2024.

ADDRESSES: A plain language summary of this proposed rule is available at *https://www.regulations.gov/docket/NOAA-NMFS-2024-0046.* You may submit comments on this document, identified by NOAA–NMFS–2024–0046, by electronic submission. Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2024–0046 in the search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

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

Documents related to HMS fisheries management, such as the 2006 Consolidated Atlantic HMS Fishery Management Plan (2006 Consolidated HMS FMP) and its amendments, and the referenced technical memoranda, are available from the HMS Management Division website at *https://www.fisheries.noaa.gov/resource/outreach-materials/atlantic-highly-migratory-species-safe-handling-release-and.* These documents are also available upon request from the HMS Management Division by phone at 301–427–8503.

FOR FURTHER INFORMATION CONTACT: Becky Curtis, *becky.curtis@noaa.gov,* or Steve Durkee, *steve.durkee@noaa.gov;* 301–427–8503.

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries are managed under the 2006 Consolidated HMS FMP and its amendments, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) and consistent with the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*). HMS implementing regulations are at 50 CFR part 635. The sea turtle handling and release requirements and equipment are located at § 635.21(b), (c), and (d).

Background

The original safe handling and release gear requirements were implemented in an interim final rule on March 30, 2001 (66 FR 17370). New sea turtle bycatch and bycatch mortality mitigation measures for all Atlantic vessels that have pelagic longline gear on board were published in a final rule on July 6, 2004 (69 FR 40734). Two technical memoranda (TM) were published by the Southeast Fisheries Science Center (SEFSC) in 2019: NMFS–SEFSC TM735: ''Careful Release Protocols for Sea Turtle Release with Minimal Injury,'' and NMFS–SEFSC TM738: ''Design Standards and Equipment for Careful Release of Sea Turtles Caught in Hook-and-Line Fisheries.'' The SEFSC developed these memoranda based upon field-testing of equipment, user feedback, feedback from observers, and product design updates resulting from experiments and observations subsequent to experiments in the Northeast Distant (NED) statistical reporting area that informed the 2004 regulations. NMFS believes that it would be helpful to revise the existing regulations in light of the 2019 technical memoranda. Based on those memoranda, this proposed rule would modify the regulations at 50 CFR 635.21(c) by: (1) adding additional options for tools and procedures for fishermen to use to safely handle and release sea turtles; (2) replacing some of the more technical terms with those that are more commonly used; (3) adding more detail to make the regulations more understandable; and (4) simplifying the regulations by removing redundancies.

Under the proposed rule, fishermen would be able to continue using existing, approved sea turtle bycatch mitigation equipment. The proposed rule would also provide alternative tools or approaches for safe handling and release of sea turtles. For example, § 635.21(c)(5)(i)(E) currently requires that a dipnet meeting minimum design standards be carried on board pelagic longline vessels. Proposed § 635.21(c)(5)(i)(E) provides that either the dipnet or a collapsible hoop net or turtle hoists can be used to meet the regulatory requirement and provides specifications for these devices. As another example, § 635.21(c)(5)(i)(L)(*1*) currently describes how fishermen can use a block of hard wood to keep a turtle's mouth open and provide an example of a wire shoe brush with the wires removed as something fishermen could use. Proposed § 635.21(c)(5)(i)(L)(*1*) explains that the block of wood could be a wooden hammer handle (without the head attached) as long as the wood does not splinter under pressure. Similarly, § 635.21(c)(5)(i)(L)(*5*) currently require using a hank of braided nylon rope to gag open a sea turtle's mouth. This rule would remove the requirement that the hank of rope be nylon and instead only requires the rope to be soft and braided.

To clarify the relevant regulations, NMFS would replace or add descriptions for some of the technical terms throughout § 635.21(c). For example, at § 635.21(c)(5)(i)(B), the regulations currently use the words ''ingested'' and ''barb'' in regard to hooks. This proposed rule would replace those words with ''internal'' and ''point.'' NMFS believes this change would make the regulations more understandable and explain the intent more clearly. Specifically, the current paragraph is titled ''Long-handled dehooker for ingested hooks.'' The proposed modification would revise the title to be ''Long-handled dehooker for internal hooks.'' Similarly, further in the paragraph, the regulations state ''. . . The design must shield the barb of the hook and prevent it from re-engaging during the removal process . . .'' (50 CFR 635.21(c)(5)(i)(B)). With the change, that same sentence would read ''. . . The design must shield the point of the hook and prevent it from re-engaging during the removal process . . .''.

At § 635.21(c)(5)(i)(H), the heading of ''external hooks'' would be replaced with ''Short-handled dehooker for external hooks'' to fully describe what is referred to in that section. Similarly, at § 635.21(c)(5)(i)(K), the regulations describe how line cutters must be used to remove fishing line. This proposed rule would clarify that fishing line includes netting and entangling line.

This proposed rule would simplify the regulations by removing redundancies. For example, paragraphs § 635.21(c)(2)(iv)(C) through (G) refer to and repeat many of the requirements that are in paragraph (c)(5). This rule would remove redundant language and instead refers directly to paragraph (c)(5). This rule would make minor changes to create consistency between paragraph headings by formatting paragraph headings to be italicized. Lastly, this rule would modify some instances of the word ''operator'' to the phrase ''owner and operator'' to clarify the responsibility of implementation.

This proposed rule would amend a number of regulations at 50 CFR part 635.21 paragraphs (b), (c), and (d) regarding sea turtle safe handling and release requirements for HMS pelagic longline and bottom longline fisheries according to the technical memoranda. In summary, as described above, fishermen would be able to continue using existing, approved sea turtle bycatch mitigation equipment. This proposed rule replaces some of the more technical terms with those that are more commonly used, adds more detail to make the regulations more understandable, and adds additional tools or options for fishermen to use to safely handle and release sea turtles. This proposed rule would also simplify the regulations by removing redundancies, making minor changes in formatting, and revising wording to clarify responsibility of implementation.

The needed regulatory changes are minor, and existing requirements would remain substantively unchanged. All previously authorized tools and gear removal protocols are still approved for use.

Request for Comments

NMFS is requesting comments on this proposed rule which may be submitted via *https://www.regulations.gov.* NMFS solicits comments on this action by May 8, 2024 (see **DATES** and **ADDRESSES**).

Classification

Pursuant to section 304(g) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, ATCA, and other applicable law, subject to further consideration after public comment.

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

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. NMFS established a small business size standard of $11 million in annual gross receipts for all businesses in the commercial fishing industry (North American Industry Classification System 11411) for Regulatory Flexibility Act (RFA) compliance purposes. NMFS considers all HMS permit holders to be small entities because they had average annual receipts of less than their respective sector's standard of $11 million and $14 million. Regarding those entities that would be directly affected by the proposed measures, the average revenue for the entire Atlantic shark commercial fishery from 2017 through 2021 is $2,579,228, which is well below the NMFS small business size standard for commercial fishing businesses of $11 million. The average annual revenue per active pelagic longline vessel is estimated to be $222,000, also well below the small business size standard. While the entire pelagic longline fishery (approximately 82 active vessels) produced an estimated $18.2 million in revenue in 2020, no single pelagic longline vessel has exceeded $11 million in revenue in recent years. Additionally, HMS bottom longline commercial fishing vessels typically earn less revenue than pelagic longline vessels and, thus, would also be considered small entities.

Under this proposed rule, all previously-authorized tools and gear removal protocols would remain approved for use. The proposed rule merely provides other options for complying with sea turtle safe handling and release requirements. Fishermen do not need to change existing gear or practices. If they opted to do so, the costs of some new equipment would be the same or similar to what is currently required and in use. In some cases, the costs of new equipment may be more than what is currently in use (*e.g.,* turtle hoist versus dipnet), but fishermen have the option of continuing to use the previously approved equipment. Thus, the affected entities would not experience any negative, direct economic impacts as a result of this rule. Accordingly, no initial regulatory flexibility analysis is required, and none has been prepared. NMFS invites comment from the public on the information in this certification and the determination that the impact on entities affected by the proposed rule will not be significant.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: April 1, 2024.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 635 to read as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.21:
■ a. Revise paragraphs (b)(3) and (c)(2)(iv)(C);
■ b. Remove paragraphs (c)(2)(iv)(D) through (G);
■ c. Revise paragraphs (c)(5) introductory paragraph, (c)(5)(i)(B) through (L), (c)(5)(i)(M)(*1*) and (*2*), (c)(5)(ii), (c)(5)(iii) introductory text, and (d)(2) introductory text.

The revisions read as follows.

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(b) * * *

(3) When a marine mammal or sea turtle is hooked or entangled by pelagic or bottom longline gear, the owner and operator of the vessel must immediately release the animal, retrieve the pelagic or bottom longline gear, and move at least 1 nmi (2 km) from the location of the incident before resuming fishing. Similarly, when a smalltooth sawfish is hooked or entangled by bottom longline gear, the operator of the vessel must immediately release the animal, retrieve the bottom longline gear, and move at least 1 nmi (2 km) from the location of the incident before resuming fishing. Reports of marine mammal entanglements must be submitted to NMFS consistent with regulations in § 229.6 of this title.

* * * * *

(c) * * *

(2) * * *

(iv) * * *

(C) All sea turtle bycatch mitigation measures specified in paragraph (c)(5) of this section, except for the mitigation measures specified in paragraphs (c)(5)(iii)(B) and (C) of this section, as

these paragraphs specify bait, hook size, and hook type requirements for vessels fishing outside the NED as defined in § 635.2. Instead, persons on board the vessel must comply with hook size and type requirements in paragraph (c)(2)(iv)(A) of this section and bait restrictions in paragraph (c)(2)(iv)(B) of this section.

* * * * *

(5) The owner and operator of a vessel permitted or required to be permitted under this part and that has pelagic longline gear on board must undertake the following sea turtle bycatch mitigation measures:

(i) * * *

(B) *Long-handled dehooker for internal hooks.* A long-handled dehooking device is intended to remove internal hooks from sea turtles that cannot be boated. It should also be used to engage a loose hook when a turtle is entangled but not hooked, and line is being removed. The design must shield the point of the hook and prevent the hook from re-engaging during the removal process. One long-handled device, meeting the minimum design standards as described below, is required on board to remove internal hooks. The minimum design standards are as follows:

(*1*) *Hook removal device.* Marine-grade stainless steel (316 L or 304 L) or similar (*i.e.,* designed to resist corrosion during exposure to saltwater) must be used for all components. The hook removal device must be constructed of three-sixteenths to five-sixteenths of an inch (4.76–7.94 mm) marine-grade stainless steel and have a dehooking end no larger than 1⅞-inch (4.76-cm) outside diameter. The device must securely engage and control the leader while shielding the point of the hook to prevent the hook from re-engaging during removal. The hook removal device must not have any unprotected points (including blunt ones), as these could cause injury to the mouth and esophagus during hook removal. The device must be of a size appropriate to secure the range of hook sizes and styles used in the pelagic longline fishery targeting swordfish and tuna.

(*2*) *Extended reach handle.* The dehooking end must be securely fastened to an extended reach handle or pole with a minimum length equal to or greater than 150 percent of the height of the vessel's freeboard, or 6 ft (1.83 m), whichever is greater. It is recommended, but not required, that the handle break down into sections. The handle must be sturdy and strong enough to facilitate the secure attachment of the hook removal device.

(C) *Long-handled dehooker for external hooks.* A long-handled dehooker, meeting the minimum design standards, is required on board for use on externally hooked sea turtles that cannot be boated. The long-handled dehooker for internal hooks described in paragraph (c)(5)(i)(B) of this section meets this requirement. The minimum design standards are as follows:

(*1*) *Hook removal device.* Marine-grade stainless steel (316 L or 304 L) or similar (*i.e.,* designed to resist corrosion during exposure to saltwater) must be used for all components on any style of long-handled dehooker. If utilizing a wire-style dehooker (*e.g.,* a pigtail or J-style dehooker), the long-handled dehooker must be constructed of three-sixteenths to five-sixteenths of an inch (4.76–7.94 mm) marine-grade stainless steel. All long-handled dehookers must have a dehooking end no larger than 1⅞-inch (4.76-cm) outside diameter. Smaller dehooking ends may be appropriate when encountering small turtles. A 5-inch (12.7-cm) tube T-handle of 1-inch (2.54-cm) outside diameter is recommended, but not required. The design must be such that a fish hook can be rotated out, without pulling it out at an angle, as described in paragraphs (c)(5)(ii)(B) and (C) of this section, and in the NMFS–SEFSC TM–735 Careful Release Protocols. The dehooking end must be blunt with all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used in the pelagic longline fishery targeting swordfish and tuna.

(*2*) *Extended reach handle.* The dehooking end must be securely fastened to an extended reach handle or pole. The handle must be a minimum length equal to or greater than 150 percent of the height of the vessel's freeboard or 6 ft (1.83 m), whichever is greater.

(D) *Long-handled device to pull an ''inverted V.''* This tool is used to pull a ''V'' in the fishing line when implementing the ''inverted V'' dehooking technique, as described in paragraph (c)(5)(ii)(C) of this section and in the NMFS–SEFSC TM–735 Careful Release Protocols, for disentangling and dehooking entangled sea turtles. One long-handled device to pull an ''inverted V'', meeting the minimum design standards, is required on board. If a 6 ft (1.83 m) or longer J-style dehooker is used to comply with paragraph (c)(5)(i)(C) of this section, it will also satisfy this requirement. Minimum design standards are as follows:

(*1*) *Hook end.* This device, such as a standard boat hook, gaff, or long-handled J-style dehooker must be constructed of stainless steel or aluminum. A sharp point, such as on a gaff hook, is to be used only for holding the monofilament fishing line and must never contact the sea turtle.

(*2*) *Extended reach handle.* The handle must have a minimum length equal to or greater than 150 percent of the height of the vessel's freeboard, or 6 ft (1.83 m), whichever is greater. The handle must be sturdy and strong enough to facilitate the secure attachment of the gaff hook.

(E) *Boating the turtle.* A device to bring incidentally caught sea turtles aboard the vessel must be carried on board the vessel to facilitate safe handling of sea turtles by allowing them to be brought on board for fishing gear removal without causing further injury to the animal. Sea turtles must never be brought on board without a net or hoist. Using the involved fishing gear to raise the turtle can result in serious injury. The following devices are options to meet this requirement.

(*1*) *Dipnet.* The dipnet must have a sturdy net hoop of at least 31 inches (78.74 cm) of inside diameter and a bag depth of at least 38 inches (96.52 cm) to accommodate turtles below 3 ft (91.44 cm) carapace length. The bag mesh openings may not exceed 3 inches (7.62 cm) bar measure, defined as the non-stretched distance between a side knot and a bottom knot of a net mesh (also known as the square mesh measurement). There must be no sharp edges or burrs on the hoop, or where the hoop is attached to the handle. The dipnet hoop must be securely fastened to an extended reach handle or pole with a minimum length equal to, or greater than, 150 percent of the height of the vessel's freeboard, or at least 6 ft (1.83 m), whichever is greater. The handle must be made of a rigid material strong enough to facilitate the sturdy attachment of the net hoop and able to support a minimum of 100 lb (45.36 kg) without breaking or significant bending or distortion. It is recommended, but not required, that the extended reach handle break down into sections.

(*2*) *Collapsible hoop net.* The collapsible hoop net frame must be constructed of stiff wire cable that coils to compress the size for storage. This device must have a minimum 31-inch (78.74-cm) inside diameter and a bag depth of at least 38 inches (96.52 cm) to accommodate turtles up to 3 ft (91.44 cm) in straight carapace length. The bag mesh openings may not exceed 3 inches (7.62 cm) bar measure, defined as the non-stretched distance between a side knot and a bottom knot of a net mesh (also known as the square mesh

measurement). There must be no sharp edges or burrs on the hoop. The device must be capable of lifting at least 100 lb (45.36 kg). No extended reach handle is needed on this type of net, although the rope handle length must be 6 ft (1.83 m) or 150 percent of freeboard height, whichever is greater.

(*3*) *Turtle hoist.* A turtle hoist consists of a supportive frame with mesh netting. A turtle hoist can be used to bring turtles on board that cannot be boated using a dipnet or collapsible hoop net. The two sizes that meet the design standards are described in paragraphs (c)(5)(ii)(E)(*3*)(*i*) and (*ii*) of this section. The size of the turtle hoist used should match the size of turtles encountered.

(*i*) *Small turtle hoist.* The frame must be capable of supporting at least 100 lb (45.36 kg), with a minimum inside diameter of 31 inches (78.74 cm) to accommodate turtles up to 3 ft (91.44 cm) straight carapace length. This frame can be hinged or otherwise designed so that it can be folded for ease of storage as long as it can be quickly reassembled. If the frame is designed to fold or break down for storage, the hardware must be self-contained (*e.g.,* barrel bolts on both sides to lock down frame with no loose pieces like through bolts and nuts), and there must be no sharp edges. The shape of the frame does not matter (*e.g.,* round, square, rectangular, or a ''U-shaped'' or ''J-shaped'' basket) as long as it meets the required specifications and securely contains the turtle. The frame may be constructed of heavy-duty stainless steel tubing welded into shape or polyvinyl chloride (PVC) pipe (recommended 2-inch (5.08-cm) diameter with a required minimum strength of Schedule 40) connected and glued at the corners using 90° elbow fittings. PVC pipes can be drilled to facilitate water drainage for ease of hauling. A shallow bag net with mesh openings not to exceed 3 x 3 inches (7.62 x 7.62 cm) (bar measure) must be securely affixed to the frame, and lines (*e.g.,* polypropylene, nylon, polyester) must be securely attached to each corner to control and retrieve the frame and net. The lines can be operated using a pulley system if available on the vessel. No rigid extended reach handle is needed on this type of net, although the rope handle length must be 6 ft (1.83 m) or 150 percent of freeboard height, whichever is greater.

(*ii*) *Large turtle hoist.* The large turtle hoist should be capable of lifting a minimum of half a ton. The structure of the hoist should consist of three circular aluminum bar rings (top, middle, and bottom) connected with mesh and spokes. The hoist should be designed so that when on board, the turtle is suspended above the deck on a platform of mesh netting (8 mm, 6.5 inches (16.51 cm) stretch knotless 600-ply polyethylene netting) stretched across the middle ring. The turtle should be contained within a webbing fence (at least 18 inches (45.72 cm) high) which is supported by the top and middle rings and made of 3 mm, 4.7 inches (11.94 cm) stretch mesh braided polyethylene webbing, and wrapped along the top ring with half-inch (1.27-cm) polypropylene rope. The top and middle rings (1¾ inch (4.45 cm) 50 series aluminum round bar) should be 7 ft and 6 inches (2.29 m) in diameter. The bottom ring (1½ inches (3.81 cm) 50 series aluminum round bar) should be 4 ft (1.22 m) in diameter. The middle and bottom rings are connected using 12 spoke braces (~23 inches (58.42 cm) long, 1 inch (2.54 cm) round 50 series aluminum round bar or 6061 T6 1 inch (2.54 cm) Schedule 40 pipe) angled at ~25° and welded in place with an appropriate welding wire (5052, 6061 or 3003 wire). Rubber cookies (8 x 2½ inches (20.32 x 6.35 cm), 4 per each of 12 sections) may be used on the middle ring to facilitate rolling the hoist up the side of the vessel and to cushion impact of the hoist against the side of the vessel. When deployed in rough seas, the hoist should be held to the side of the vessel to prevent swinging and collision with the vessel hull. A 3- or 4-point bridle is attached to the top ring using pair links and three-quarter-inch (1.91-cm) nylon 3-strand line, and a hydraulic lift is used to bring hoist aboard.

(F) *Cushion/support device for boated turtles.* Each vessel is required to carry a device that effectively cushions and supports a sea turtle while it is on board. The device used must be appropriately sized to support the sea turtle encountered. The device must be puncture proof (*e.g.,* no inner tubes, pool toys) and cannot be a primary safety device (*e.g.,* primary life ring or life jacket dedicated to personnel on board). Examples that meet current design standards include:

(*1*) *A standard automobile tire.* A standard (not from a truck or heavy equipment) passenger vehicle tire not mounted on a rim and free of exposed steel belts, is effective for supporting a turtle in an upright orientation while it is on board. An assortment of sizes is recommended to accommodate a range of turtle sizes. If the turtle is too large for the tire, it must be contained and supported on an alternative cushioned surface.

(*2*) *Boat cushion.* A standard boat cushion can effectively support smaller turtles.

(*3*) *Large turtle hoist.* This style is recommended for supporting large turtles such as leatherbacks, which need a supportive platform while on board. The large turtle hoist described in paragraph (c)(5)(i)(E)(*3*)(*ii*) of this section satisfies this requirement.

(G) *Short-handled dehooker for internal hooks.* One short-handled device, meeting the minimum design standards, is required on board for removing hooks that are internal or ingested. This dehooker is designed to remove internal hooks from boated sea turtles. It can also be used on external hooks or hooks in the front of the mouth. Minimum design standards are as follows:

(*1*) *Hook removal device.* Unless otherwise noted, all components must be made of marine-grade stainless steel (316 L or 304 L). If utilizing a wire-style dehooker (*e.g.,* a pigtail or J-style dehooker), the hook removal device must be constructed of three-sixteenths to five-sixteenths of an inch (4.76–7.94 mm) marine-grade stainless steel (316 L or 304 L) rod and have a dehooking end no wider than 1⅞ inches (4.76 cm) total width. The end must allow the hook to be secured and the point to be shielded without re-engaging during the removal process. It may not have any unprotected terminal points or sharp edges, as this could cause injury to the esophagus during hook removal. A sliding PVC bite block must be used to protect the beak and facilitate hook removal if the turtle bites down on the dehooking device. The bite block should be constructed of a three-quarter- to 1-inch (1.91–2.54 cm) inside diameter high-impact plastic cylinder (*e.g.,* Schedule 80 PVC) that is 4–6 in (10.16–15.24 cm) long to allow for at least 5 inches (12.7 cm) of slide along the shaft. The device must be of a size appropriate to secure the range of hook sizes and styles used in the pelagic longline fishery targeting swordfish and tuna.

(*2*) *Handle length.* The handle must be 16–24 inches (40.64–60.96 cm) in length, with a tube T-handle, wire loop handle, or similar type of handle that is approximately 4–6 inches (10.16–15.24 cm) long.

(H) *Short-handled dehooker for external hooks.* One short-handled dehooker for external hooks, meeting the minimum design standards, is required on board. The short-handled dehooker for internal hooks required to comply with paragraph (c)(5)(i)(G) of this section will also satisfy this requirement. Minimum design standards are as follows:

(*1*) *Hook removal device.* Marine-grade stainless steel (316 L or 304 L) must be used for all components. If

utilizing a wire-style dehooker (*e.g.,* a pigtail or J-style dehooker), the dehooker must be constructed of three-sixteenths to five-sixteenths of an inch (4.76–7.94 mm) marine-grade stainless steel (316 L or 304 L) and have a dehooking end no wider than 1⅞ inches (4.76 cm) total width. The design must be such that a hook can be rotated out without pulling it out at an angle. The dehooking end must be blunt, and all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used in the pelagic longline fishery targeting swordfish and tuna.

(*2*) *Handle length.* The handle must be 16–24 inches (40.64–60.96 cm) long with a tube T-handle, wire loop handle, or similar type of handle that is approximately 4–6 inches (10.16–15.24 cm) long.

(I) *Long-nose or needle-nose pliers.* One pair of long-nose or needle-nose pliers is required to be on board. Such pliers must be a minimum of 11 inches (27.94 cm) in length, and should be constructed of stainless steel material or other material designed to resist corrosion during exposure to saltwater. The pliers can be used to remove embedded hooks from the turtle's flesh or hooks in the front of the mouth. The pliers are also useful for holding PVC splice couplings in place as mouth openers.

(J) *Bolt cutters.* One pair of bolt cutters is required on board. Such bolt cutters must be a minimum of 14 inches (35.56 cm) in total length, with a minimum of 4 inches (10.16 cm) long blades that are a minimum of 2¼ inches (5.72 cm) wide, when closed, and with 10- to 13-inch (25.40- to 33.02-cm) long handles. Such bolt cutters must be able to cut hard metals, such as stainless or carbon steel hooks, up to a quarter inch (6.35 mm) in diameter, and they must be capable of cutting through the hooks used on a vessel. The required bolt cutters may be used to cut hooks to facilitate their removal. They should be used to cut off the eye or point of a hook, so that it can safely be pushed through a sea turtle without causing further injury. They should also be used to cut off as much of the hook as possible, when the remainder of the hook cannot be removed.

(K) *Monofilament line cutters.* One pair of monofilament line cutters is required on board. Such monofilament line cutters must be a minimum of 6 inches (15.24 cm) in overall length. The blades must be 1 inch (2.54 cm) in length and five-eighths inch (1.59 cm) wide, when closed, and are recommended to be coated with Teflon (a trademark owned by E.I. DuPont de Nemours and Company Corp.). The line cutters must be used to remove netting, entangling line, or fishing line as close to the eye of the hook as possible, if the hook is swallowed or cannot be removed safely.

(L) *Mouth openers/mouth gags.* Required mouth openers and mouth gags are used to open sea turtle mouths, and to keep them open when removing internal hooks from boated turtles. They must allow access to the hook or line without causing further injury to the turtle. Design standards are included in the item descriptions. At least two of the seven different types of mouth openers/gags described below are required on board the vessel:

(*1*) *A block of hard wood.* Placed in the corner of the jaw, a block of hard wood may be used to gag open a turtle's mouth. A smooth block of hard wood of a type that does not splinter (*e.g.,* maple) with rounded edges must be sanded smooth. The dimensions should be appropriately sized for the size of turtles that may be caught or approximately 10 x 0.75 x 0.75 inches (25.40 x 1.91 x 1.91 cm). A long-handled, wire shoe brush with a wooden handle, and with the wires removed, is an inexpensive, effective and practical mouth-opening device that meets these requirements. A wooden hammer handle (without the head attached) may also be suitable, provided it is made from wood that does not splinter under pressure (*e.g.,* ash, maple).

(*2*) *A set of three canine mouth gags.* Canine mouth gags are highly recommended to hold a turtle's mouth open, because the gag locks into an open position to allow for hands-free operation after it is in place. A set of canine mouth gags must include one of each of the following sizes: small (5 in; 12.7 cm), medium (6 in; 15.24 cm), and large (7 in; 17.78 cm). They must be constructed of stainless steel.

(*3*) *A set of two sturdy dog chew bones.* Placed in the corner of a turtle's jaw, canine chew bones are used to gag open a sea turtle's mouth. Required canine chews must be constructed of durable nylon, zylene resin, or thermoplastic polymer, and strong enough to withstand biting without splintering. To accommodate a variety of turtle beak sizes, a set must include one large (5.5–8 inches (13.97–20.32 cm) in length) and one small (3.5–4.5 inches (8.89–11.43 cm) in length) canine chew bone.

(*4*) *A set of two rope loops covered with hose.* A set of two rope loops covered with a piece of hose or flexible tubing can be used as a mouth opener, and to keep a turtle's mouth open during hook and/or line removal. A required set consists of two 3-ft (91.44-cm) lengths of poly braid rope (three-eighths of an inch (9.53 mm) in diameter is suggested), each covered with an 8-inch (20.32-cm) section of half-inch (1.27-cm) or three-quarter-inch (1.91-cm) light-duty garden hose or flexible tubing, and each tied into a loop. The upper loop of rope covered with hose is secured on the upper beak to give control with one hand, and the second piece of rope covered with hose is secured on the lower beak to give control with the user's foot.

(*5*) *A hank of rope.* Placed in the corner of a turtle's jaw, a hank of rope can be used to gag open a sea turtle's mouth. A 6-ft (1.83-m) lanyard with a minimum of three-sixteenths-inch (4.76-mm) braided soft rope may be folded to create a hank, (or a coiled or looped bundle), of rope. Any size braided soft rope is allowed; however, it must create a hank of approximately 2–4 inches (5.08–10.16 cm) in thickness.

(*6*) *A set of four PVC splice couplings.* PVC splice couplings can be positioned inside a turtle's mouth to allow access to the back of the mouth for hook and line removal. They are to be held in place with the needle-nose pliers. To ensure proper fit and access, a required set must consist of the following Schedule 40 PVC splice coupling sizes: 1 inch (2.54 cm), 1¼ inches (3.18 cm), 1½ inches (3.81 cm), and 2 inches (5.08 cm).

(*7*) *A large avian oral speculum.* A large avian oral speculum provides the ability to hold a turtle's mouth open and to control the head with one hand, while removing a hook with the other hand. The avian oral speculum must be 9 inches (22.86 cm) long and constructed of three-sixteenths-inch (4.76-mm) wire diameter surgical stainless steel (Type 304). It must be covered with 8 inches (20.32 cm) of clear vinyl tubing (five-sixteenths-inch (7.94-mm) outside diameter, three-sixteenths-inch (4.76-mm) inside diameter), friction tape, or similar material to pad the surface.

(M) * * *

(*1*) *Turtle tether and extended reach handle.* Approximately 15–20 ft (4.57–6.10 m) of half-inch (1.27 cm) hard lay negative buoyancy line or similar is used to make an approximately 30-inch (76.2-cm) loop to slip over the flipper. The line is fed through a three-quarter-inch (1.91-cm) inside diameter fair lead, eyelet, or eyebolt at the working end of a pole and through a three-quarter-inch (1.91-cm) eyelet or eyebolt in the midsection. A half-inch (1.27-cm) quick release cleat holds the line in place near the end of the pole. A final three-

quarter-inch (1.91-cm) eyelet or eyebolt should be positioned approximately 7 inches (17.78 cm) behind the cleat to secure the line, while allowing a safe working distance to avoid injury when releasing the line from the cleat. The line must be securely fastened to an extended reach handle or pole with a minimum length equal to, or greater than, 150 percent of the height of the vessel's freeboard, or a minimum of 6 ft (1.83 m), whichever is greater. There is no restriction on the type of material used to construct this handle, as long as it is sturdy. The handle must include a tag line to attach the tether to the vessel to prevent the turtle from breaking away with the tether still attached.

(*2*) *Ninja sticks and extended reach handles.* Approximately 30–35 ft (9.14–10.67 m) of one-half to five-eighths of an inch (1.27–1.59 cm) of soft lay polypropylene line, nylon line or similar line is fed through 2 PVC conduit, fiberglass, or similar sturdy poles and knotted using an overhand (recommended) knot at the end of both poles or otherwise secured. There should be approximately 18–24 inches (45.72–60.96 cm) of exposed rope between the poles to be used as a working surface to capture and secure the flipper. Knot the line at the ends of both poles to prevent line slippage if they are not otherwise secured. The remaining line is used to tether the apparatus to the boat unless an additional tag line is used. Two lengths of sunlight resistant three-quarter-inch (1.91-cm) schedule 40 PVC electrical conduit, fiberglass, aluminum, or similar material should be used to construct the apparatus with a minimum length equal to, or greater than, 150 percent of the height of the vessel's freeboard, or 6 ft (1.83 m), whichever is greater.

(ii) * * *

(A) *Sea turtle bycatch mitigation gear and protocols.* Sea turtle bycatch mitigation gear, as required by paragraphs (c)(5)(i)(A) through (D) of this section, must be used to disengage any hooked or entangled sea turtles that cannot be brought on board. Sea turtle bycatch mitigation gear, as required by paragraphs (c)(5)(i)(E) through (M) of this section, must be used to facilitate access, safe handling, disentanglement, and hook removal or hook cutting of sea turtles that can be brought on board, where feasible. Sea turtles must be handled, and bycatch mitigation gear must be used, in accordance with the careful release protocols and handling/release guidelines specified in paragraphs (c)(5)(ii)(B) and (C) of this section, and in accordance with the onboard handling and resuscitation requirements specified in 50 CFR 223.206(d)(1).

(B) *Boated turtles.* When practicable, active and comatose sea turtles must be brought on board, with a minimum of injury, using a dipnet, collapsible hoop net, or turtle hoist, as required by paragraph (c)(5)(i)(E) of this section. All turtles less than 3 ft (91.44 cm) carapace length must be boated, if sea conditions permit. Turtles must be lifted and carried by holding the front and back of the carapace (shell) or by holding the shell by both sides. A turtle must be cradled while holding the shell and base of the flippers. A turtle must never be lifted or dragged by the flippers when it is brought on board, handled on deck, or released.

(*1*) A boated turtle must be placed on a device that effectively cushions and supports a sea turtle while it is on board, as described in paragraph (c)(5)(i)(F) of this section. The turtle must be in an upright orientation to immobilize it and facilitate gear removal. Then, it should be determined if the hook can be removed without causing further injury.

(*2*) All externally embedded hooks must be removed, unless hook removal would result in further injury to the turtle. No attempt to remove a hook should be made if it has been swallowed and the insertion point is not visible, or if it is determined that removal would result in further injury.

(*3*) If a hook cannot be removed, as much line as possible must be removed from the turtle using monofilament cutters as required by paragraph (c)(5)(i)(K) of this section, and the hook should be cut as close as possible to the insertion point before releasing the turtle, using bolt cutters as required by paragraph (c)(5)(i)(J) of this section.

(*4*) If a hook can be removed, an effective technique may be to cut off either the barb, or the eye, of the hook using bolt cutters, and then to slide the hook out. When the hook is visible in the front of the mouth, a mouth-opener, as required by paragraph (c)(5)(i)(L) of this section, may facilitate opening the turtle's mouth and a gag may facilitate keeping the mouth open. Short-handled dehookers for internal hooks, long-nose pliers, or needle-nose pliers, as required by paragraphs (c)(5)(i)(H) and (I) of this section, should be used to remove visible hooks from the mouth that have not been swallowed, as appropriate.

(*5*) As much gear as possible must be removed from the turtle without causing further injury prior to its release. Refer to the careful release protocols and handling/release guidelines required in this paragraph (c)(5)(ii)(B), and the handling and resuscitation requirements specified in 50 CFR 223.206(d)(1), for additional information.

(C) *Non-boated turtles.* If a sea turtle is too large, or hooked in a manner that precludes safe boating without causing further damage or injury to the turtle, sea turtle bycatch mitigation gear required by paragraphs (c)(5)(i)(A) through (D) of this section must be used to disentangle sea turtles from fishing gear and disengage any hooks, or to clip the line and remove as much line as possible from a hook that cannot be removed, prior to releasing the turtle, in accordance with the protocols specified in this paragraph.

(*1*) Non-boated turtles should be brought close to the boat and provided with time to calm down. Then, it must be determined whether the hook can be removed without causing further injury. A front flipper or flippers of the turtle must be secured with an approved turtle control device from the list specified in paragraph (c)(5)(i)(M) of this section.

(*2*) All externally embedded hooks must be removed, unless hook removal would result in further injury to the turtle. No attempt should be made to remove a hook if it has been swallowed, or if it is determined that removal would result in further injury. If the hook cannot be removed and/or if the animal is entangled, as much line as possible must be removed prior to release, using a line cutter as required by paragraph (c)(5)(i)(K) of this section. If the hook can be removed, it must be removed using a long-handled dehooker as required by paragraph (c)(5)(i) of this section.

(*3*) Without causing further injury, as much gear and line as possible must be removed from the turtle prior to its release. Refer to the careful release protocols and handling/release guidelines required in this paragraph (c)(5)(ii)(C), and the handling and resuscitation requirements specified in 50 CFR 223.206(d)(1) for additional information.

(iii) *Gear modifications.* The following measures are required of vessel owners and operators to reduce the incidental capture and mortality of sea turtles:

* * * * *

(d) * * *

(2) The owner and operator of a vessel required to be permitted under this part and that has bottom longline gear on board must undertake the following bycatch mitigation measures:

* * * * *

[FR Doc. 2024–07140 Filed 4–5–24; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 89, No. 68
Monday, April 8, 2024

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

Food and Nutrition Service

Agency Information Collection Activities: Supplemental Nutrition Assistance Program: Demonstration Projects

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

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This is a new collection without an assigned OMB control number for the Supplemental Nutrition Assistance Program (SNAP). This information collection is for activities associated with SNAP demonstration projects and the SNAP State Options Report, respectively.

DATES: Written comments must be received on or before June 7, 2024.

ADDRESSES: Comments may be sent to: Program Design Branch, Program Development Division, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, 5th Floor, Alexandria, VA 22314. Comments may also be submitted via fax to the attention of Jessica Luna at 703–305–4391 or via email to *SNAPPDBRules@usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Jessica Luna at 703–305–4391.

SUPPLEMENTARY INFORMATION: Demonstration projects are pilot or experimental projects that waive requirements of the Food and Nutrition Act of 2008 (the Act) (7 U.S.C. 2011, *et seq.*) and SNAP regulations to test program changes to increase efficiency and improve the delivery of benefits to eligible households. Section 17(b) of the Act authorizes the Food and Nutrition Service (FNS) to approve demonstration projects. SNAP State agencies must request approval to operate demonstration projects and submit data reports to evaluate its impact. FNS may approve demonstration projects for a maximum five-year term and the projects must maintain cost neutrality and include an evaluation component. The SNAP State Options Report summarizes each State agency's policy choices concerning approximately 20 SNAP policy options and waivers. FNS produces the report on an annual basis and posts it on its public website.

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

Title: Supplemental Nutrition Assistance Program: Demonstration Projects.

Form Number: N/A.

OMB Control Number: 0584–NEW.

Expiration Date: Not yet determined.

Type of Request: This is a new information collection without an assigned OMB control number in the Supplemental Nutrition Assistance Program (SNAP).

Abstract: This information collection concerns activities associated with both SNAP demonstration projects and the SNAP State Options Report.

Demonstration projects allow State agencies to conduct approved pilot or experimental projects that waive requirements of the Food and Nutrition Act of 2008 (the Act) (7 U.S.C. 2011, *et seq.*) and SNAP regulations to test program changes to improve program administration, increase the self-sufficiency of SNAP recipients, and improve the delivery of benefits to eligible households. The Act limits the provisions that the Food and Nutrition Service (FNS) may waive. FNS may approve demonstration projects for a maximum five-year term, and they must maintain cost neutrality and include an evaluation component. Previously, this information has been collected without an OMB control number. This information collection seeks to come into compliance with the Paperwork Reduction Act for demonstration projects.

The SNAP State Options Report summarizes each State agency's policy choices concerning approximately 20 SNAP policy options and waivers. FNS produces the report on an annual basis and posts it on its public website. The most recent report, released in October 2023, is available via the following link: *https://www.fns.usda.gov/snap/waivers/state-options-report.* The report is designed for a wide range of audiences. Audiences include SNAP State agencies, State and federal policymakers, other social service programs, advocacy groups, and researchers. FNS currently develops the report using extant data maintained by FNS and information provided by State agencies through their State SNAP Plans of Operation. FNS seeks to improve the report through expanding the information included to better serve interested audiences. To do so, a limited amount of new information from State agencies needs to be collected. FNS seeks to account for the new burden these activities would place on State agencies through this information collection. Previously, this information has been collected without an OMB control number. This information collection seeks to come into compliance with the Paperwork Reduction Act for the State Options Report.

Demonstration Projects

FNS consulted with four State agencies to estimate the time State

agency staff spent initiating a demonstration project, fulfilling operational requirements, and requesting project renewals. Demonstration project waivers require State agencies to prepare and submit to FNS new project requests, project modifications, and project renewal requests. States must also prepare and submit data reports as part of an evaluation component to measure the project's intended outcomes and benefits.

FNS and State agencies use an electronic system—the SNAP Waiver Information Management System (WIMS)—to:

- Facilitate the request and response process between State agencies and FNS.
- Track pending waiver requests, active and expired waivers, and waiver-related data reports.
- Allow State agencies and FNS to communicate critical information about specific waivers in a central location.

Further, WIMS contains a virtual library which holds all the demonstration project request templates (*e.g.,* initial, modification and extension), data report templates, and guidance documents which State agencies use to request projects and submit data reports.

Preparing and Submitting a New Demonstration Project Request

Demonstration projects test novel ideas and program innovations. State agencies undergo a research phase to determine the type of demonstration project they would like to implement. FNS works to guide and assist State agencies in researching and providing technical assistance prior to any submission of a request.

Once the State agency determines the demonstration project they would like to implement, they must then submit a request to operate the project in WIMS. The State agency opens a demonstration project case and fills out and submits a request template available in WIMS' virtual library. The templates guide the State agencies to specify the following information in their request, including:

- The type of demonstration request (*e.g.,* Standard Medical Deduction (SMD), Elderly Simplified Application Project (ESAP), Community Partner Interview (CPI), Combined Application Project (CAP), non-merit projects, or novel projects, among others).
- The statutory and regulatory citations the demonstration project would waive.
- The justification for requesting the demonstration project (*e.g.,* lessen administrative burden and increase program access).
- The description of alternative procedures that differ from regular SNAP, like eligibility, verification, and evaluation components for the demonstration project, among others.
- An evaluation plan.

During this process, FNS engages with the State agency, providing technical assistance to identify and gain a mutual understanding of the terms and conditions of the waiver and the State's capacity to operate the demonstration project successfully. FNS may ask the State agency clarifying questions, as needed. If FNS approves the request, FNS will issue an approval letter and request an acknowledgement letter with the signature of the appropriate State official confirming the State agency can meet the terms and conditions of the approval.

To implement the demonstration project, State agencies often need to update their systems to appropriately administer demonstration projects. System updates may include, but are not limited to, updating the code to identify the intended project's population, applying alternative procedures, and enabling the State agency to pull cases and all relevant information for required data reports.

Additionally, demonstration projects may require alternative procedures that vary from the operation of SNAP under normal program rules. Therefore, implementing a demonstration project requires State agencies to update their policy manuals, develop training modules, and train their staff on the project's processes and requirements.

Preparing and Submitting Requests To Modify or Extend Demonstration Projects

If the State agency requires a modification to their demonstration project during the approval period, the State agency must complete and submit a modification request in WIMS. The State may need to answer clarifying questions from FNS to explain the proposed change to the current project approval and why it is needed. If approved, FNS issues a modification letter detailing the change and reasoning behind the modification and affirming that all other terms and conditions of the latest approval still apply to the demonstration project.

State agencies may also elect to extend approved projects by requesting to do so in WIMS. If the State agency wishes to extend their demonstration project under the previous approval's terms and conditions, the State agency does not need to submit a new request but inform FNS through WIMS. FNS will review the existing project's evaluation reports, ask clarification questions as needed and, if suitable, issue an approval. FNS will request the State agency submit acknowledgement of the extension via WIMS.

However, if the State agency wishes to propose different terms and conditions, or add a novel component to the project, the State agency must fill out and submit a new request in WIMS detailing the proposed changes. FNS will ask clarification questions as needed to gain understanding of the proposed changes or novel component. If FNS approves the extension request, FNS will issue an approval letter and request written confirmation in the form of an acknowledgement letter with the signature of the appropriate State official.

Preparing and Submitting Data Reports for Demonstration Projects

State agencies must submit data reports to FNS to assess the project's overall performance. The evaluation section of the demonstration project's approval detail the data report requirements. The evaluation section of the approval may include, but is not limited to, selecting a case sample, conducting case reviews, and validating the findings.

Data reports vary for each type of demonstration project. The most common types of reports are annual and cost-neutrality reports. Annual reports allow FNS to monitor demonstration project trends such as average caseload size, demographics data of the population in the demonstration (*e.g.,* older adults and people with disabilities), timeliness, and payment error rates. Cost neutrality reports ensure that the implementation of a demonstration project does not significantly increase SNAP benefit costs. FNS must analyze program costs associated with demonstration projects to determine if any offsets are needed to protect Federal spending and maintain cost neutrality.

SNAP State Options Report

FNS consulted with six State agencies to estimate the time State agency staff would spend providing information for inclusion in the SNAP State Options Report. FNS's planned process of providing information would entail FNS posing a set of no more than 30 specific questions to State agencies concerning their State's implementation of various existing SNAP policy options. The questions asked may change each year as new policies and options are introduced or discontinued. In turn,

State agencies would respond to FNS's set of questions with answers via an online form. FNS would solicit a response to the set of questions from each State agency once every 12-month period.

Total Reporting

Affected Public: State, Local and Tribal Government.

Respondent Type: SNAP State Agencies.

Estimated Number of Respondents: 53.

Estimated Number of Responses per Respondent: 1.8868.

Estimated Total Annual Responses: 100.

Estimated Time per Response: 130.370205.

Estimated Total Annual Burden on Respondents: 13037.0205.

Reference burden table below:

Respondent category	Type of respondent	Burden activity	Estimated number of respondents	Responses per respondent	Total annual responses	Estimated hours per response	Estimated total burden hours	Base hourly wage rate (see BLS)	Fully-loaded wage rate	Total Annualized cost of respondent burden
Reporting										
State Government	SNAP State Agencies.	Preparing and submitting a new demonstration project request.	10	1	10	1105.2308	11052.3080	$24.05	$31.99	$353,524.65
State Government	SNAP State Agencies.	Preparing and submitting modifications and extensions.	18	1	18	24.3000	437.4000	24.05	31.99	13,990.90
State Government	SNAP State Agencies.	Preparing and submitting data reports.	19	1	19	81.4375	1547.3125	24.05	31.99	49,493.11
State Government	SNAP State Agencies.	Responding to FNS question set.	53	1	53	2.0000	106.0000	24.05	31.99	3,390.57
Reporting Total Burden Estimates			53	1.886792453	100	130.3702	13037.0205	24.05	31.99	417,008.66

Tameka Owens,

Assistant Administrator, Food and Nutrition Service.

[FR Doc. 2024–07377 Filed 4–5–24; 8:45 am]

BILLING CODE 3410–30–P

INTERNATIONAL BROADCASTING ADVISORY BOARD

Sunshine Act Meetings

TIME AND DATE: April 8, 2024; 10:45 a.m.–11:15 a.m. ET.

PLACE: On April 8, 2024, the Board will meet virtually.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The International Broadcasting Advisory Board (Board) will conduct a meeting closed to the public at the time listed above. Board Members (membership includes Chair Kenneth Jarin, Luis Botello, Jamie Fly, Jeffrey Gedmin, Michelle Giuda, Kathleen Matthews, Under Secretary Elizabeth Allen (Secretary of State's Representative)), Counsel and acting Board Secretary to Board, the Secretariat to the Board, and recording secretaries will attend the closed meeting.

The acting Board Secretary (who also serves as U.S. Agency for Global Media's General Counsel) has certified that, in his opinion, exemptions set forth in the Government in the Sunshine Act, in particular 5 U.S.C. 552b(c)(2), (6) and (9)(B), permit closure of this meeting.

The Board approved the closing of this meeting by recorded vote. The Board also determined by recorded vote that shorter than usual notice for a meeting was required by official agency business and delayed availability of required information.

The purpose for closing the meeting is so that the IBAB may decide on hiring certain entity heads (personnel) [relates to (2), (6), and (9)]. Publicizing the deliberation would frustrate the implementation of the very item they will be proposing [relates to (9)].

In the event that the time, date, or location of this meeting changes, USAGM will post an announcement of the change, along with the new time, date, and/or place of the meeting on its website at *https://www.usagm.gov.*

Although a separate federal entity, USAGM prepared this notice and will continue to support the Board in accordance with 22 U.S.C. 6205(g).

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Oanh Tran at (202) 920–2583.

Authority: 5 U.S.C. 552b, 22 U.S.C. 6205(e)(3)(C).

Dated: April 4, 2024.

Meredith L. Meads,

Executive Assistant.

[FR Doc. 2024–07478 Filed 4–4–24; 11:15 am]

BILLING CODE 8610–01–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; Census Household Panel Topical 7, Topical 8, and Topical 9 Operations

On February 26, 2024, the Department of Commerce received clearance from the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 to conduct the fourth, fifth, and sixth Census Household Panel topical operations (OMB No. 0607–1025, Exp. 6/30/26). The Census Household Panel is designed to ensure availability of frequent data collection for nationwide estimates on a variety of topics for a variety of subgroups of the population. This notice serves to inform of the Department's intent to request clearance

from OMB to conduct topical operations 7, 8, and 9.

The Topical 7 (May) questionnaire will ask respondents about their opinions on government data collection and data use. The June survey (Topical 8) will test changes to the Current Population Survey's Annual Social and Economic Supplement (ASEC) interviewer administered questions for suitability in internet self-response mode. Specifically, the items tested include questions on health insurance, out-of-pocket medical costs, migration, and child care. Similarly, for the July topical questionnaire (Topical 9), interviewer administered ASEC questions will be tested for suitability in internet self-response mode. These items include pensions, retirement (withdrawals, interest, and contributions), and SNAP and school meal receipt, which are key income sources used to measure the level of poverty in the U.S. The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite 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. Public comments were previously requested via the **Federal Register** on February 6, 2023, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau, Department of Commerce.

Title: Census Household Panel Topical 7, Topical 8, and Topical 9 Operations.

OMB Control Number: 0607–1025.

Form Number(s): Not yet determined.

Type of Request: Request for a Revision of a Currently Approved Collection.

Number of Respondents: 10,367 panel members.

Average Hours per Response: 4 hours per year (20 minutes for monthly collection).

Burden Hours: 41,427.

Needs and Uses: The Census Household Panel is a probability-based nationwide nationally-representative survey panel designed to test the methods to collect data on a variety of topics of interest, and for conducting experimentation on alternative question wording and methodological approaches. The goal of the Census Household Panel is to ensure availability of frequent data collection for nationwide estimates on a variety of topics and a variety of subgroups of the population, meeting standards for transparent quality reporting of the Federal Statistical Agencies and the Office of Management and Budget (OMB).

Panelists and households selected for the Panel were recruited from the Census Bureau's gold standard Master Address File. This ensures the Panel is rooted in this rigorously developed and maintained frame and available for linkage to administrative records securely maintained and curated by the Census Bureau. Invitations to complete the monthly surveys will be sent via email and SMS messages. Questionnaires will be mainly internet self-response. The Panel will maintain representativeness by allowing respondents who do not use the internet to respond via computer-assisted telephone interviewing (CATI). All panelists will receive an incentive for each complete questionnaire. Periodic replenishment samples will maintain representativeness and panelists will be replaced after a period of three years.

Affected Public: Individuals or Households.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Sections 141, 182 and 193.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

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 and entering either the title of the collection or the OMB Control Number 0607–1025.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–07406 Filed 4–5–24; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Bureau of the Census Scientific Advisory Committee

AGENCY: Census Bureau, U.S. Department of Commerce.

ACTION: Renewal of the Bureau of the Census Scientific Advisory Committee.

SUMMARY: The Census Bureau is publishing this notice to announce the renewal of the Bureau of the Census Scientific Advisory Committee (CSAC or Committee). The purpose of the Committee is to provide advice to the Director of the Census Bureau on the full range of Census Bureau programs and activities including communications, decennial, demographic, economic, field operations, geography, information technology, and statistics. Additional information concerning the Committee can be found by visiting the Committee's website at: *https://www.census.gov/about/cac/sac.html.*

FOR FURTHER INFORMATION CONTACT: Shana J. Banks, Advisory Committee Branch Chief, Office of Program, Performance and Stakeholder Integration (PPSI), *shana.j.banks@census.gov,* Department of Commerce, Census Bureau, telephone 301–763–3815. For TTY callers, please use the Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the Federal Advisory Committee Act (FACA), the Secretary of the Department of Commerce (Secretary) renews the CSAC. The Secretary has determined that the work of the Committee is in the public interest and relevant to the duties of the Census Bureau. The CSAC will operate under the provisions of FACA and will report to the Director of the Census Bureau. The Bureau of the Census Scientific Advisory Committee will advise the Director of the Census Bureau on the full range of Census Bureau programs and activities.

Objectives and Duties

1. The Committee will provide advice and recommendations addressing census policies, research and methodology, tests, operations, communications/messaging, and other activities to ascertain needs and best practices to improve censuses, surveys, operations, and programs.

2. The Committee will provide advice and recommendations on internal and

external working papers, reports, and other documents related to the design and implementation of census programs and surveys.

3. The Committee will provide scientific and technical expertise from the following disciplines: demographics, economics, geography, psychology, statistics, survey methodology, social and behavioral sciences, information technology, computer science and engineering, marketing and other fields of expertise, as appropriate, to address Census Bureau program needs and objectives.

4. The Committee functions solely as an advisory body under the FACA.

Membership

1. The Committee consists of up to 21 members who serve at the discretion of the Director.

2. The Committee aims to have a balanced representation among its members, considering such factors as scientific expertise, geography, community involvement, and knowledge of census programs and/or activities.

3. The Committee aims to have a balanced representation among its members, considering such factors as geography, scientific expertise, community involvement, and knowledge of census programs and/or activities, and, where possible the Census Bureau will also consider the ethnic, racial, and gender diversity and various abilities of the United States population. Individuals will be selected based on their expertise in specific areas as needed by the Census Bureau.

4. Members will serve as Special Government Employees (SGEs) as defined in title 18 of the U.S. Code, section 202. SGEs are appointed for their individual expertise and experience and are subject to conflict of interest laws and regulations, including (but not limited to) the obligation to annually file a New Entrant Confidential Financial Disclosure Report (OGE Form 450) and complete ethics training. Members will be individually advised of the capacity in which they will serve through their appointment letters.

5. SGEs will be selected from academia, public and private enterprise, and nonprofit organizations, which are further diversified by business type or industry, geography, and other factors.

6. Membership is open to persons who are not seated on other Census Bureau stakeholder entities (*i.e.,* State Data Centers, Census Information Centers, Federal State Cooperative on Populations Estimates Program, other Census advisory committees, etc.). People who have already served one full-term on a Census Bureau advisory committee may not serve on any other Census Bureau advisory committee for three years from the termination of previous service. No full-time or permanent part-time officer or employee of the Federal Government can serve as a member of the Committee.

7. Members will serve an initial three-year term. All members will be evaluated at the conclusion of their initial term with the prospect of renewal, pending Committee needs. Active attendance and participation in meetings and activities (*e.g.,* conference calls and assignments) will be factors considered when determining term renewal or membership continuance. Members may be appointed for a second, three-year term at the discretion of the Director.

8. Members will be selected on a standardized basis, in accordance with applicable Department of Commerce guidance.

Miscellaneous

1. Members of the Committee serve without compensation but may receive reimbursement for Committee-related travel and lodging expenses.

2. The Census Bureau will convene approximately two CSAC meetings per year, budget and environmental conditions permitting, but additional meetings may be held as deemed necessary by the Census Bureau Director or Designated Federal Officer. Committee meetings are open to the public in accordance with FACA.

3. Members must be able to actively participate in the tasks of the Committee, including, but not limited to, regular meeting attendance, Committee meeting discussant responsibilities, review of materials, as well as participation in conference calls, webinars, working groups, and/or special committee activities.

Robert L. Santos, Director, Census Bureau, approved the publication of this notice in the **Federal Register**.

Dated: April 2, 2024.

Shannon Wink,

Program Analyst, Policy Coordination Office, U.S. Census Bureau.

[FR Doc. 2024–07383 Filed 4–5–24; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–60–2024]

Foreign-Trade Zone 7; Application for Subzone; Hardware Plus, Inc.; Caguas, Puerto Rico

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Puerto Rico Industrial Development Company, grantee of FTZ 7, requesting subzone status for the facility of Hardware Plus, Inc., located in Caguas, Puerto Rico. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on April 2, 2024.

The proposed subzone (3.1068 acres) is located at Road #1 Km. 29.2, Rio Cañas Ward, Caguas, Puerto Rico. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 7.

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is May 20, 2024. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 3, 2024.

A copy of the application will be available for public inspection in the ''Online FTZ Information Section'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Camille Evans at *Camille.Evans@trade.gov.*

Dated: April 2, 2024.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2024–07347 Filed 4–5–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–900]

Granular Polytetrafluoroethylene Resin From India: Preliminary Results and Partial Recission of the Countervailing Duty Administrative Review; 2021–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to Gujarat Fluorochemicals Limited (GFCL), a producer and exporter of granular polytetrafluoroethylene (PTFE) resin from India. The period of review (POR) is July 6, 2021, through December 31, 2022.

DATES: Applicable April 8, 2024.

FOR FURTHER INFORMATION CONTACT: Shane Subler or Robert Palmer, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6241 or (202) 482–9068, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 31, 2023, we received a timely request for an administrative review from GFCL.[1] On May 9, 2023, Commerce published a notice of initiation of an administrative review of the countervailing duty (CVD) order[2] on granular PTFE.[3] On May 15, 2023, Commerce released U.S. Customs and Border Protection (CBP) entry data and stated that because only one company (GFCL) was identified in the *Initiation Notice* and it had entries during the POR, we selected GFCL as the only mandatory respondent in this review.[4] On November 17, 2023, Commerce extended the deadline for the preliminary results of this review until March 28, 2024.[5]

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[6] A list of topics discussed in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The product covered by the *Order* is granular polytetrafluoroethylene resin from India. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this CVD administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[7] For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Preliminary Results of Review

As a result of this review, we preliminarily determine the following net countervailable subsidy rates for the period July 6, 2021, through December 31, 2022:

Company	Subsidy rate (percent *ad valorem*) 2021[8]	Subsidy rate (percent *ad valorem*) 2022[9]
Gujarat Fluorochemicals Limited[10]	4.89	4.70

Disclosure and Public Comment

Commerce intends to disclose its calculations performed to interested parties for these preliminary results within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b).

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance.[11] A timeline for the submission of case briefs and written comments will be notified to interested parties at a later date. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[12] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[13]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this review, we

[1] *See* GFCL's Letter, ''Request for Administrative Review,'' dated March 31, 2023.

[2] *See Granular Polytetrafluoroethylene Resin from India and the Russian Federation: Countervailing Duty Orders,* 87 FR 14509 (March 15, 2022) (*Order*), as amended in *Granular Polytetrafluoroethylene Resin from India: Notice of Court Decision Not in Harmony With the Final Determination of Countervailing Duty Investigation; Notice of Amended Final Determination and Amended Countervailing Duty Order,* 88 FR 74153 (October 30, 2023).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 29881, 29885 (May 9, 2023) (*Initiation Notice*).

[4] *See* Memorandum, ''Release of U.S. Customs Entry Data for Respondent Selection,'' dated May 15, 2023.

[5] *See* Memorandum, ''Extension of Deadline for the Preliminary Results of Countervailing Duty Administrative Review,'' dated November 17, 2023.

[6] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review; 2021–2022: Granular Polytetrafluoroethylene Resin from India,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[7] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[8] This subsidy rate applies to the period July 6, 2021, to December 31, 2021.

[9] This subsidy rate applies to the period January 1, 2022, to December 31, 2022.

[10] As discussed in the Preliminary Decision Memorandum, Commerce found Inox Leasing and Finance Limited to be cross-owned with GFCL.

[11] *See* 19 CFR 351.309(c)(1)(ii); *see also* 19 CFR 351.303 for general filing requirements.

[12] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[13] *See* 19 CFR 351.309(c)(2) and (d)(2).

instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[14] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[15]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. An electronically filed hearing request must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.

Final Results

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised by the parties in any written briefs, no later than 120 days after the date of publication of these preliminary results.

Assessment Rate

In accordance with 19 CFR 351.221(b)(4)(i), we preliminarily assigned a subsidy rate in the amount shown above for GFCL. Upon completion of the administrative review, consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review at the applicable *ad valorem* assessment rates listed for the corresponding time period (*i.e.,* July 6, 2021, to December 31, 2021, and January 1, 2022 to December 31, 2022).

For GFCL, we intend to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

In accordance with section 751(a)(1) of the Act, Commerce intends, upon publication of the final results, to instruct CBP to collect cash deposits of estimated countervailing duties in the amount shown for GFCL (and its cross-owned affiliate) listed above for 2022, the second year covered by the period of review, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits at the most recent company-specific, or all others rate (*i.e.,* 5.39 percent),[16] applicable to the company. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

These preliminary results are issued and published pursuant to sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: April 1, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2024–07348 Filed 4–5–24; 8:45 am]

BILLING CODE 3510–DS–P

[14] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[15] *See APO and Service Final Rule.*

[16] *See Order.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–870]

Certain Oil Country Tubular Goods From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2021–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that certain producers/exporters subject to this review made sales of oil country tubular goods (OCTG) from the Republic of Korea (Korea) at less than normal value (NV) during the period of review (POR) September 1, 2021, through August 31, 2022, and that HiSteel Co., Ltd. (HiSteel) had no shipments of subject merchandise to the United States during the POR.

DATES: Applicable April 8, 2024.

FOR FURTHER INFORMATION CONTACT: Mark Flessner or Mike Heaney, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6312 or (202) 482–4475, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 5, 2023, Commerce published the *Preliminary Results*.[1] We invited interested parties to comment on the *Preliminary Results.* Between November 6 and 13, 2023, Commerce received timely filed case and rebuttal briefs from various interested parties.[2] On December 13, 2023, we extended the deadline for issuing the final results of this administrative review, until April 2,

[1] *See Certain Oil Country Tubular Goods from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2021–2022*, 88 FR 69118 (October 5, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Vallourec Star L.P. and Welded Tube USA's (collectively, the domestic interested parties) Letter, ''Case Brief,'' dated November 6, 2023; SeAH Steel Corporation (SeAH)'s Letter, ''Case Brief,'' dated November 6, 2023; NEXTEEL Co., Ltd. (NEXTEEL)'s Letter, ''Letter in Lieu of Case Brief,'' dated November 6, 2023; Domestic Interested Parties' Letter, ''Rebuttal Brief,'' dated November 13, 2023; and SeAH's Letter, ''Rebuttal Brief,'' dated November 13, 2023; and Husteel Co., Ltd. (Husteel)'s Letter, ''Letter in Lieu of Rebuttal Brief,'' dated November 13, 2023.

2024.[3] These final results cover 16 companies.[4] Commerce conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

For a complete description of the events that followed the *Preliminary Results* of this administrative review, *see* the Issues and Decision Memorandum.[5] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* Additionally, a complete version of the Issues and Decision Memorandum can be accessed at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order[6]

The merchandise covered by the *Order* is certain OCTG. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs that were submitted by parties in this review are addressed in the Issues and Decision Memorandum and listed in the appendix to this notice.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we made no changes to the Preliminary Results.

Final Determination of No Shipments

In the *Preliminary Results,* Commerce found that HiSteel did not have shipments of subject merchandise to the United States during the POR. No parties commented on this determination. Accordingly, for the final results of review, we continue to find that HiSteel made no shipments of subject merchandise to the United States during the POR. Consistent with Commerce's practice,[7] we intend to instruct U.S. Customs and Border Protection (CBP) to liquidate any existing entries of subject merchandise produced by HiSteel, but exported by other parties, at the rate for the intermediate reseller, if available, or at the all-others rate of 5.24 percent.[8]

Final Results of Review

For these final results, Commerce determines that the following weighted-average dumping margins exist for the period September 1, 2021, through August 31, 2022:

Producer/exporter	Weighted-average dumping margin (percent)
Hyundai Steel Company	0.00
SeAH Steel Corporation	1.18
Non-examined companies[9]	1.18

Rate for Non-Examined Companies

For the rate for non-selected respondents in an administrative review, generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.'' For these final results, we calculated a dumping margin of 1.18 percent for SeAH and a zero dumping margin for Hyundai Steel Company, the mandatory respondents in this review. Consistent with our normal methodology, we have assigned to the companies not individually examined (*see* Appendix II for a full list of these companies) a margin of 1.18 percent, which is the margin calculated for SeAH.

Disclosure

Because no changes were made to the *Preliminary Results,* no disclosure of calculations is necessary for these final results.

Assessment

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

Where the respondent reported reliable entered values, we calculated importer- (or customer-) specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer).[10] Where Commerce calculated a weighted-average dumping margin by dividing the total amount of dumping for reviewed sales to that party by the total sales quantity associated with those transactions, Commerce will direct CBP to assess importer- (or customer-) specific assessment rates based on the resulting per-unit rates.[11] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is greater than *de minimis* (*i.e.,* 0.50 percent), Commerce will instruct CBP to collect the appropriate duties at the time of liquidation.[12] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[13]

For the companies which were not selected for individual review, we will assign an assessment rate based on the methodology described in the ''Rates for Non-Examined Companies'' section, above.

Consistent with Commerce's assessment practice, for entries of subject merchandise during the POR produced by Hyundai Steel Company, SeAH, or the non-examined companies for which the producer did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate established in the original less-than-fair-value (LTFV) investigation (*i.e.,* 5.24 percent)[14] if there is no rate

[3] *See* Memorandum, ''Extension of Deadline for Final Results of Antidumping Duty Administrative Review, 2021–2022,'' dated December 13, 2023.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 66275 (November 3, 2022). The 16 companies consist of two mandatory respondents, 13 companies not individually examined, and one company that had no shipments.

[5] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2021–2022 Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[6] *See Certain Oil Country Tubular Goods from India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Antidumping Duty Orders; and Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value,* 79 FR 53691 (September 10, 2014) (*Order*).

[7] *See, e.g., Certain Corrosion-Resistant Steel Products from Taiwan: Final Results of the Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018–2019,* 86 FR 28554 (May 27, 2021).

[8] *See Certain Oil Country Tubular Goods from the Republic of Korea: Notice of Court Decision Not in Harmony with Final Determination,* 81 FR 59603 (August 30, 2016).

[9] *See* Appendix II for a full list of these companies.

[10] *See* 19 CFR 351.212(b)(1).

[11] *Id.*

[12] *Id.*

[13] *See* 19 CFR 351.106(c)(2).

[14] *See Certain Oil Country Tubular Goods from the Republic of Korea: Notice of Court Decision Not in Harmony with Final Determination,* 81 FR 59603,

for the intermediate company(ies) involved in the transaction.[15]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**.[16] If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rates for the companies listed in these final results will be equal to the weighted-average dumping margins established in the final results of this review; (2) for merchandise exported by producers or exporters 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 in which the company was reviewed; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the producer is, 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 5.24 percent,[17] the all-others rate established in the LTFV 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 and/or countervailing 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 and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of countervailing duties.

Administrative Protective Order

This notice also serves as the only reminder to 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(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 sanctionable violation.

Notification to Interested Parties

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h) and 19 CFR 351.221(b)(5).

Dated: April 2, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

Appendix II

List of Companies Not Individually Examined

1. AJU Besteel Co., Ltd.
2. Dong-A Steel Co., Ltd.
3. Husteel Co., Ltd.
4. ILJIN Steel Corporation
5. K Steel Corporation
6. Keonwoo Metals Co., Ltd.
7. Kukje Steel
8. MSTEEL Co., Ltd.
9. NEXTEEL Co., Ltd.
10. Nissei Trading Co., Ltd.
11. POSCO International Corporation
12. Sungwon Steel Co., Ltd.
13. TGS Pipe

[FR Doc. 2024–07409 Filed 4–5–24; 8:45 am]

BILLING CODE 3510–DS–P

59604 (August 30, 2016) (*OCTG Korea Timken Notice*).

[15] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[16] *See Notice of Discontinuation Policy to Issue Liquidation Instructions After 15 Days in Applicable Antidumping and Countervailing Duty Administrative Proceedings,* 86 FR 3995 (January 15, 2021).

[17] *See OCTG Korea Timken Notice,* 81 FR at 59604.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–160, A–533–922, C–570–161, C–533–923]

Notice of Extension of the Deadline for Determining the Adequacy of the Antidumping and Countervailing Duty Petitions: 2,4-Dichlorophenoxyacetic Acid From the People's Republic of China and India

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

DATES: Applicable April 3, 2024.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3208.

Extension of Initiation of Investigations

The Petitions

On March 14, 2024, the U.S. Department of Commerce (Commerce) received antidumping and countervailing duty petitions on imports of 2,4-dichlorophenoxyacetic acid (2,4-D) from the People's Republic of China and India, filed by Corteva Agriscience LLC (the petitioner) on behalf of the domestic industry producing 2,4-D.[1]

Determination of Industry Support for the Petitions

Sections 702(b)(1) and 732(b)(1) of the Tariff Act of 1930, as amended (the Act), require that a petition be filed by or on behalf of the domestic industry. To determine that the petition has been filed by or on behalf of the industry, sections 702(c)(4)(A) and 732(c)(4)(A) of the Act require that the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the

[1] *See* Petitioner's Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties: 2,4-Dichlorophenoxyacetic Acid (''2,4-D'') from the People's Republic of China and India,'' dated March 14, 2024 (the Petitions).

domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, sections 702(c)(4)(D) and 732(c)(4)(D) of the Act provide that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) if there is a large number of producers, determine industry support using a statistically valid sampling method to poll the industry.

Extension of Time

Sections 702(c)(1)(A) and 732(c)(1)(A) of the Act provide that within 20 days of the filing of an antidumping or countervailing duty petition, Commerce will determine, *inter alia,* whether the petition has been filed by or on behalf of the U.S. industry producing the domestic like product. Sections 702(c)(1)(B) and 732(c)(1)(B) of the Act provide that the deadline for the initiation determination, in exceptional circumstances, may be extended by 20 days in any case in which Commerce must ''poll or otherwise determine support for the petition by the industry.'' Because it is not clear from the Petitions whether the industry support criteria have been met, Commerce has determined it should extend the time period for determining whether to initiate the investigations in order to further examine the issue of industry support.

Commerce will need additional time to gather and analyze additional information regarding industry support. Therefore, it is necessary to extend the deadline for determining the adequacy of the Petitions for a period not to exceed 40 days from the filing of the Petitions. As a result, Commerce's initiation determination will now be due no later than April 23, 2024.

International Trade Commission Notification

Commerce will contact the U.S. International Trade Commission (ITC) and will make this extension notice available to the ITC.

Dated: April 3, 2024.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2024–07408 Filed 4–5–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–874]

Certain Hot-Rolled Steel Flat Products From Japan: Notice of Court Decision Not in Harmony With the Final Results of the Antidumping Duty Administrative Review; Notice of Amended Final Results

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

SUMMARY: On March 26, 2024, the U.S. Court of International Trade (CIT) issued its final judgment in *Optima Steel International, LLC* v. *United States,* Court No. 1:23–cv–00108 (CIT March 26, 2024), sustaining the U.S. Department of Commerce's (Commerce) final remand results pertaining to the antidumping duty administrative review on certain hot-rolled steel flat products from Japan, covering the period of review (POR) October 1, 2020, through September 30, 2021. Commerce is notifying the public that the CIT's final judgment is not in harmony with the final results of the administrative review, and that Commerce is amending its final results.

DATES: Applicable April 6, 2024.

FOR FURTHER INFORMATION CONTACT: Myrna Lobo, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2371.

SUPPLEMENTARY INFORMATION:

Background

On November 29, 2021, Commerce initiated an administrative review with respect to two producers/exporters of subject merchandise, Nippon Steel Corporation/Nippon Steel Nisshin Co., Ltd./Nippon Steel Trading Corporation (collectively, NSC) and Tokyo Steel Manufacturing Co., Ltd. (Tokyo Steel).[1] On February 23, 2022, we selected NSC, the producer/exporter accounting for the largest volume of subject merchandise entered during the POR, as the mandatory respondent.[2] On March 4, 2022, Tokyo Steel requested that Commerce reconsider the respondent selection and treat Tokyo Steel as a voluntary respondent.[3] Thereafter, we issued a memorandum in which we determined that Commerce is unable to individually examine Tokyo Steel as a voluntary respondent in this administrative review.[4] On March 18, 2022, Tokyo Steel submitted its section A questionnaire response as a voluntary respondent.[5] On April 15 and 18, 2022 Tokyo Steel submitted its sections B, C, and D questionnaire responses.[6] On May 4, 2023, Commerce published its final results for the 2020–2021 review.[7]

On August 9, 2023, Optima Steel International LLC (Optima), an importer of Tokyo Steel, challenged Commerce's *Final Results* for Commerce's failure to treat Tokyo Steel as a second mandatory respondent. Commerce requested a remand to conduct a review of Tokyo Steel's entries for the 2020–2021 review period, which the CIT granted on August 11, 2023. On March 12, 2024, Commerce issued its final results of redetermination calculating an estimated weighted-average dumping margin of 5.20 percent for Tokyo Steel.[8] On March 26, 2024, the CIT sustained Commerce's *Final Redetermination.*[9]

Timken Notice

In its decision in *Timken,*[10] as clarified by *Diamond Sawblades,*[11] the U.S. Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not ''in harmony'' with a Commerce determination and must suspend

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 67685 (November 29, 2021).

[2] *See* Memorandum ''Respondent Selection for the 2020–2021 Antidumping Duty Administrative Review of Certain Hot-Rolled Steel Flat Products from Japan,'' dated February 23, 2022.

[3] *See* Tokyo Steel's Letter, ''Tokyo Steel's Request for Reconsideration of Respondent Selection and Request for Voluntary Respondent Treatment in the Alternative; Certain Hot-Rolled Steel Flat Products from Japan,'' dated March 4, 2022.

[4] *See* Memorandum ''Respondent Selection for the 2020–2021 Antidumping Duty Administrative Review of Certain Hot-Rolled Steel Flat Products from Japan,'' dated April 6, 2022.

[5] *See* Tokyo Steel's Letter, ''Tokyo Steel's Section A Questionnaire Response,'' dated March 18, 2022.

[6] *See* Tokyo Steel's Letters, ''Tokyo Steel's Section B Questionnaire Response,'' dated April 15, 2022; ''Tokyo Steel's Section C Questionnaire Response,'' dated April 15, 2022; and ''Tokyo Steel's Section D Questionnaire Response,'' dated April 18, 2022.

[7] *See Certain Hot-Rolled Steel Flat Products from Japan: Final Results of Antidumping Duty Administrative Review; 2020–2021,* 88 FR 28500 (May 4, 2023) (*Final Results*), and accompanying Issues and Decision Memorandum.

[8] *See Final Results of Redetermination Pursuant to Court Remand, Optima Steel International, LLC* v. *United States,* Court No. 1:23–cv–00108 (CIT August 11, 2023), dated March 12, 2024 (*Final Redetermination*).

[9] *See Optima Steel International* v. *United States,* Court No. 1:23–cv–00108 (CIT March 26, 2024).

[10] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[11] *See Diamond Sawblades Mfrs. Coal.* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

liquidation of entries pending a ''conclusive'' court decision. The CIT's March 26, 2024, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Results.* This notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Results

Because there is now a final court judgment, Commerce is amending its *Final Results* with respect to Tokyo Steel's weighted-average dumping margin as follows:

Producer/exporter	Weighted average dumping margin (percent)
Tokyo Steel Manufacturing Co., Ltd	5.20

Cash Deposit Requirements

Because Tokyo Steel has a superseding cash deposit rate, *i.e.,* there have been final results published in a subsequent administrative review, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rate.

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries that were produced by Tokyo Steel and imported by Optima Steel International, LLC and were entered, or withdrawn from warehouse, for consumption during the period October 1, 2020, through September 30, 2021. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess antidumping duties on unliquidated entries of subject merchandise produced by Tokyo Steel and imported by Optima Steel International, LLC in accordance with 19 CFR 351.212(b), where appropriate.

Commerce intends to instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate is not zero or *de minimis.* Where an importer-specific *ad valorem* assessment rate is zero or *de minimis,* Commerce intends to instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e), and 777(i)(1) of the Act.

Dated: April 2, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–07379 Filed 4–5–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–157]

Aluminum Lithographic Printing Plates From the People's Republic of China: Preliminary Determination of Critical Circumstances, in Part, in the Countervailing Duty Investigation

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that critical circumstances exist, in part, with respect to imports of aluminum lithographic printing plates (printing plates) from certain producers and exporters from the People's Republic of China (China).

DATES: Applicable April 8, 2024.

FOR FURTHER INFORMATION CONTACT: Ajay Menon, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0208.

SUPPLEMENTARY INFORMATION:

Background

In response to a countervailing duty (CVD) petition filed on September 28, 2023, Commerce published the initiation of a CVD investigation on printing plates from China.[1] Further, on March 1, 2024, Commerce published its affirmative Preliminary Determination.[2] In the Preliminary Determination, we examined one participating mandatory respondent, Fujifilm Printing Plate (China) Co., Ltd. (FFPS), and assigned a second respondent which failed to participate, Shanghai National Ink Co. Ltd. (Shanghai National), a rate based on adverse facts available (AFA).[3]

On March 8, 2024, the petitioner, Eastman Kodak Company, filed a timely allegation, pursuant to section 703(e)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.206, that critical circumstances exist with respect to imports of printing plates from China.[4] On March 14, 2024, FFPS filed comments on the petitioner's critical circumstances allegation,[5] to which the petitioner responded on March 18, 2024.[6]

In accordance with section 703(e)(1) of the Act and 19 CFR 351.206(c)(1) and (2)(ii), because the petitioner submitted its critical circumstances allegation more than 30 days before the scheduled date of the final determination, Commerce will make a preliminary finding as to whether there is a reasonable basis to believe or suspect that critical circumstances exist and will issue a preliminary critical circumstances determination within 30 days after the allegation is filed.

Critical Circumstances Allegation

The petitioner alleges that there was a massive increase of imports of printing plates from China and provided monthly import data comparing a base period of May 2023 through September 2023 to a comparison period of October 2023 through February 2024.[7] The petitioner asserts that this comparison shows that imports of printing plates from China increased by 56.10 percent,[8] which is ''massive'' under 19 CFR 351.206(h)(2). The petitioner also alleges that there is a reasonable basis to believe that there are subsidies in this investigation which are inconsistent with the World Trade Organization's Agreement on Subsidies and Countervailing Measures Agreement (SCM Agreement).[9]

Critical Circumstances Analysis

Section 703(e)(1) of the Act provides that Commerce will preliminarily

[1] *See Aluminum Lithographic Printing Plates from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 88 FR 73313 (October 25, 2023) (*Initiation Notice*).

[2] *See Aluminum Lithographic Printing Plates from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination,* 89 FR 15134 (March 1, 2024) (*Preliminary Determination*), and accompanying Preliminary Determination Memorandum (PDM).

[3] *Id.*

[4] *See* Petitioner's Letter, ''Petitioner's Allegation of Critical Circumstances,'' dated March 8, 2024 (Critical Circumstances Allegation).

[5] *See* FFPS' Letter, ''FFPS Response to Critical Circumstances Allegation,'' dated March 14, 2024 (FFPS' Critical Circumstances Response).

[6] *See* Petitioner's Letter, ''Petitioner's Comments on FUJIFILM Printing Plate (China) Co., Ltd.'s Response to Critical Circumstances Allegation,'' dated March 18, 2024 (Petitioner's Critical Circumstances Rebuttal Comments).

[7] See Critical Circumstances Allegation at Attachment 1.

[8] Id. at 7.

[9] Id. at 4.

determine that critical circumstances exist in a CVD investigation if there is a reasonable basis to believe or suspect that: (A) the alleged countervailable subsidy is inconsistent with the SCM Agreement; [10] and (B) there have been massive imports of the subject merchandise over a relatively short period. Pursuant to 19 CFR 351.206(h)(2), imports must increase by at least 15 percent during the ''relatively short period'' to be considered ''massive,'' and 19 CFR 351.206(i) defines a ''relatively short period'' as normally being the period beginning on the date the proceeding begins (*i.e.,* the date the petition is filed) and ending at least three months later.[11] However, the regulations also provide that if Commerce finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, Commerce may consider a period of not less than three months from the earlier time.[12]

Alleged Countervailable Subsidies Are Inconsistent With the SCM Agreement

To determine whether an alleged countervailable subsidy is inconsistent with the SCM Agreement, in accordance with section 703(e)(1)(A) of the Act, Commerce considered the evidence currently on the record of this investigation. As discussed in the *Preliminary Determination*, we applied AFA to find that the non-cooperating mandatory respondent Shanghai National received countervailable subsidies under the following programs which the record indicates are export-contingent, rendering them inconsistent with the SCM Agreement: Export Buyer's Credit from China Export-Import (Ex-Im) Bank, Export Loans from State-Owned Banks, Export Seller's Credit from China Ex-Im Bank, Development of Famous Brands and China World Top Brands, Foreign Trade Development Fund Grants, and Export Assistance Grants.[13]

In the *Preliminary Determination*, we found that FFPS' unaffiliated producer JRT received countervailable subsidies under the Foreign Trade Development Fund Grants program during the POI and average useful life period.[14] As discussed in the *Preliminary Determination*, because the Government of China failed to cooperate by not acting to the best of its ability to respond to our requests for information regarding the Foreign Trade Development Fund Grants program, we relied on sections 776(a)(1), (a)(2)(A)–(C), and 776(b) of the Act to find that this program constitutes a financial contribution and meets the specificity requirements of the Act.[15] However, information from the petition indicates that this program is export contingent.[16] Thus, because we find that the Foreign Trade Development Fund Grants program is export contingent, we primarily find that the criterion under section 703(e)(1)(A) of the Act has been met for FFPS.[17]

Therefore, Commerce preliminarily determines for purposes of this critical circumstances determination that there are subsidies in this investigation that are inconsistent with the SCM Agreement.

Massive Imports

In determining whether there have been ''massive imports'' over a ''relatively short period,'' pursuant to section 703(e)(1)(B) of the Act, Commerce normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.,* the ''base period'') to a comparable period of at least three months following the filing of the petition (*i.e.,* the ''comparison period''). In this case, Commerce compared the import volumes of subject merchandise, as provided by the cooperating mandatory respondent FFPS, for the four months immediately preceding and four months following the filing of the petition. Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.[18]

Because the petition was filed on September 28, 2023, to determine whether there was a massive surge in imports for FFPS, Commerce compared the total volume of shipments during the period of June 2023 through September 2023 with the volume of shipments during the period of October 2023 through January 2024.[19] Based on this analysis, we primarily determine that there was a massive surge in imports between the base and comparison periods for FFPS.[20]

For all other exporters and producers, in accordance with our practice,[21] we examined monthly shipment data for the same time periods noted above using import data from Global Trade Atlas (GTA), adjusted to remove FFPS' shipment data.[22] After subtracting FFPS' shipment data from the GTA data, we analyzed the overall shipment data by comparing the base and comparison periods, respectively. Based on this analysis, we find that there were no massive imports for all other exporters and producers from China.[23]

Finally, as explained in the *Preliminary Determination*,we preliminarily applied AFA to Shanghai National because it failed to cooperate in this proceeding.[24] Therefore, for Shanghai National, we preliminarily determine, in accordance with section 776(b) of the Act, that there was a massive surge in imports between the base and comparison periods.

Conclusion

Based on the criteria and findings discussed above, we preliminarily determine that critical circumstances exist with respect to imports of printing plates from China produced or exported by FFPS and Shanghai National. We preliminarily determine that critical circumstances do not exist with respect to imports of printing plates from China with respect to all other exporters and producers.

[10] Commerce limits its critical circumstances findings to those subsidies contingent upon export performance or use of domestic over imported goods (*i.e.,* those prohibited under Article 3 of the SCM Agreement). *See, e.g., Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire from Germany,* 67 FR 55808, 55809–10 (August 30, 2002).

[11] See 19 CFR 351.206.

[12] See 19 CFR 351.206(i).

[13] *See Preliminary Determination* PDM at Appendix I.

[14] As discussed in the PDM, FFPS provided responses from Huangshan Jinruitai Technology Co., Ltd., an unaffiliated producer of subject merchandise and the parent of Zhejiang Jinruitai New Material Co., Ltd., a trading company and producer of subject merchandise (collectively, JRT). See *Preliminary Determination* PDM at 2–3.

[15] *See Preliminary Determination* PDM at 6–7.

[16] *Id.* at 48; *see also* Checklist, ''Countervailing Duty Investigation Initiation Checklist,'' dated October 18, 2023, at 16.

[17] We disagree with FFPS that there is an error in Commerce's attribution of the benefit JRT received under this program. *See* FFPS' Critical Circumstances Response; *see also* Petitioner's Critical Circumstances Rebuttal Comments. Commerce attributed the benefit JRT received under this program in the manner intended; thus, our attribution of JRT's benefits is a methodological decision, not an error that would lead us to determine that the benefits attributed to FFPS under this program are not measurable.

[18] *See* 19 CFR 351.206(h)(2).

[19] *See* FFPS's Letter, ''Fujifilm's Response to Request for Quantity & Value Data,'' dated March 19, 2024.

[20] *See* Memorandum, ''Critical Circumstances Analysis,'' dated concurrently with this memorandum at Attachment 1 (Critical Circumstances Analysis Memo).

[21] *See Countervailing Duty Investigation of Tin Mill Products from the People's Republic of China: Preliminary Determination of Critical Circumstances, in Part,* 88 FR 46738 (July 20, 2023).

[22] *Id.*

[23] *Id.*

[24] See *Preliminary Determination* PDM at 7.

Final Critical Circumstances Determination

We will make a final critical circumstances determination in the final CVD determination, which is currently scheduled for July 9, 2024.

Public Comment

Case briefs or other written comments related to this preliminary determination of critical circumstances may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[25] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[26]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[27] Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the public executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[28]

Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time on the due dates established.[29]

[25] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[26] *See* 19 CFR 351.309(c)(2) and (d)(2).

[27] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[28] *See APO and Service Final Rule,* 88 FR at 67069.

[29] *See* 19 CFR 351.303(b)(1).

Suspension of Liquidation

In accordance with section 703(e)(2)(A) of the Act, for FFPS and Shanghai National, we intend to direct U.S. Customs and Border Protection (CBP) to suspend liquidation of any unliquidated entries of subject merchandise from the China entered, or withdrawn from warehouse for consumption, on or after December 1, 2023, which is 90 days prior to the date of publication of the *Preliminary Determination* in the **Federal Register**. For such entries, CBP shall require a cash deposit equal to the estimated preliminary subsidy rates established in the *Preliminary Determination*. This suspension of liquidation will remain in effect until further notice.

U.S. International Trade Commission (ITC) Notification

In accordance with section 703(f) of the Act, we intend to notify the ITC of this preliminary determination of critical circumstances.

This determination is issued and published pursuant to sections 703(f) and 777(i)(1) of the Act.

Dated: April 1, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–07346 Filed 4–5–24; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD830]

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

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC) Ecosystem and Ocean Planning Advisory Panel and Committee will hold a meeting. See **SUPPLEMENTARY INFORMATION** for agenda details.

DATES: The meeting will take place via webinar on Friday, April 26, 2024, from 9 a.m. to 12 p.m.

ADDRESSES: The meeting will take place over webinar with a telephone-only connection option. Details on how to connect to the meeting will be posted at: *www.mafmc.org.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; website: *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: During this meeting, the Ecosystem and Ocean Planning Advisory Panel and Committee will discuss the unmanaged commercial landings reports which are provided to the Mid-Atlantic Fishery Management Council (Council) by NOAA Fisheries each year. The goal of these reports is to monitor for signs of developing unmanaged commercial fisheries in the Mid-Atlantic. This year, the Council will consider defining threshold levels of unmanaged landings that would trigger further evaluation for consideration of a management response. During this webinar meeting, the Ecosystem and Ocean Planning Committee and Advisory Panel will review the information provided in prior years' reports and provide input to the Council on considerations for defining landings thresholds or other metrics to trigger further evaluation for a potential management response. An agenda and background materials will be posted on the Council's website (*www.mafmc.org*) prior to the meeting.

Special Accommodations

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

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

Dated: April 3, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–07422 Filed 4–5–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD824]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Terminal 4 Expansion and Redevelopment Project at the Port of Grays Harbor, Washington

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from Ag Processing Inc. (AGP) for authorization to take marine mammals incidental to the Terminal 4 (T4) Expansion and Redevelopment Project (Project) at the Port of Grays Harbor (Port) in both the City of Aberdeen and City of Hoquiam, Grays Harbor County, Washington. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, 1-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than May 8, 2024.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, NMFS and should be submitted via email to *ITP.Pauline@noaa.gov.* 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/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed below.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS, (301) 427–8401.

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 proposed or, if the taking is limited to harassment, a notice of a proposed IHA is 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. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 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 preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review. We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On May 12, 2023, NMFS received a request from AGP for an IHA to take marine mammals incidental to construction activities in the City of Aberdeen and City of Hoquiam, Grays Harbor County, Washington. Following NMFS' review of the application, AGP submitted a revised version on August 4, 2023. The application was deemed adequate and complete on February 20, 2024. AGP's request is for take of harbor seal, California sea lion, Steller sea lion and harbor porpoise by Level B harassment and, for harbor seal and harbor porpoise, by Level A harassment. Neither AGP nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

AGP would work in partnership with the Port to construct a new export terminal at T4. AGP and the Port would each undertake separate stages of the construction; however, the IHA, if issued, would be held by AGP as the responsible party, and would authorize take associated with the combined specified activity, with AGP acting on behalf of the Port for that portion. The activity includes removal of existing piles and the installation of both temporary and permanent piles of various sizes. The construction would occur for 105 days, which would occur intermittently over the in-water work window (discussed below). Takes of marine mammals by Level A and Level B harassment would occur due to both

impact and vibratory pile driving and vibratory removal. The purpose of the project is to expand T4 and redevelop adjacent parcels to increase rail and shipping capacity at the Port in order to accommodate growth of dry bulk, breakbulk, and roll-on/roll-off cargos.

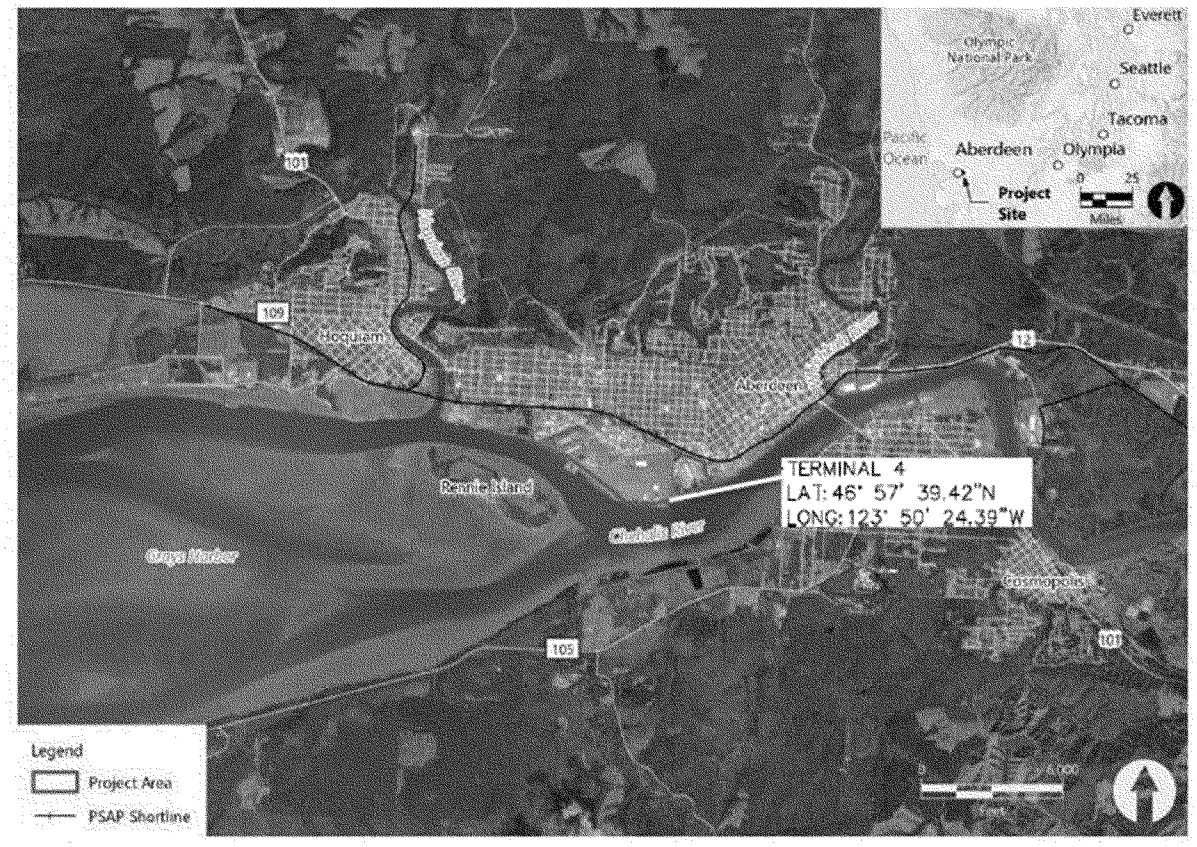
Dates and Duration

This IHA would be valid for one year from July 16, 2024 through July 15, 2025. Due to in-water work timing restrictions to protect Endangered Species Act (ESA)-listed salmonids, all planned in-water construction including pile removal and installation is limited to a work window from July 16 through February 15. Pile driving would be completed intermittently throughout the daylight hours. All pile driving is expected to be completed during one season of construction.

Specific Geographic Region

The Project site is situated in both the City of Aberdeen and City of Hoquiam, Grays Harbor County, Washington in Township 17 North, Range 9 West, section 17, near where the Chehalis River enters Grays Harbor (figure 1). Land use in the Aberdeen area is a mix of residential, commercial, industrial, and open space and/or undeveloped lands.

Figure 1 -- Project Location in Grays Harbor, WA



Detailed Description of the Specified Activity

The T4 Project in-water work will include upgrades to the fender system on the T4 dock and the installation of a ship loader facility. The existing timber-piled fender system at the Terminal 4 Berth A (T4A) will be replaced with a modern pile-supported panel system and a modern suspended panel system at Berth B (T4B). Terminal 4's Berths A and B have distinctly different structural systems, necessitating piles to support the fender system at Berth A but not at Berth B. The new fender system will consist of a series of steel fender panels, each supported by one or more steel pipe piles at each fender location along T4A and supported by the existing deck only along T4B.

The proposed Project consists of vibratory pile driving installation and removal and impact pile installation. Existing piles will be removed from the substrate using the direct pull method. If direct pulling is unsuccessful, vibratory extraction will be used. Vibratory extractors are commonly used to remove steel pile where sediments allow. The vibratory hammer is mounted to the top of the pile, and the pile is then vibrated between 1,200 and 2,400 vibrations per minute. The vibrations liquefy and loosen the sediment surrounding the pile, allowing it to be removed with an upward lift from the crane. Broken or damaged piles that cannot be removed by either the vibratory hammer or direct pull will be cut off at or below the mudline. Based on the substrate conditions at the site, it is anticipated that most of the existing timber piles will be removed by direct pull. However, for the purposes of estimating take it is assumed they would all be subject to vibratory removal. The Project will include the removal of up to:

- 50, 18-inch timber piles
- 6, 12-inch steel H-piles
- 27, 16.5-inch pre-stressed concrete octagonal sections

New and replacement piles will be installed with a vibratory hammer or combination of a vibratory hammer and impact hammer. Impact pile driving would be avoided to the extent feasible. Piles will be aligned with steel templates to ensure the correct position of the piles relative to each other. The proposed Project will also include installation of up to:

- 50, 36-inch steel pipe piles
- 24, 24-inch steel pipe piles
- 6, 12-inch steel H-sections
- 15, 18-inch steel pipe piles,
- 24, 24 to 30-inch steel pipe piles.

Additionally, a total of up to 24 temporary 24-inch steel piles may be installed for temporary construction use or to address unforeseen conditions. The temporary piles will be placed and removed as necessary. A summary of the proposed pile removal and installation methods for the dock upgrades and the ship loader facility are presented below in table 1 and table 2.

TABLE 1—PLANNED IN-WATER PILE REMOVAL AND INSTALLATION FOR T4 DOCK UPGRADES

Location	Pile type and size	Activity	Removal/install method	Number of piles	Total days of operation	Piles per day	Hours vib install	Impact strikes per pile
Permanent Piles								
Terminal 4A and 4B.	Up to 18-inch timber piles.	Removal ...	Vibratory hammer, direct pull.	Up to 50 ...	Up to 12 ...	Up to 10 ...	Up to 5.0/day or ~0.5/pile.	None.
Terminal 4B	18-inch steel pipe pile	Installation	Vibratory hammer	Up to 15 ...	Up to 6	Up to 6	Up to 3.0/day or ~0.5/pile.	None.
Terminal 4A	24- to 30-inch steel pipe pile.	Installation	Vibratory hammer	Up to 24 ...	Up to 18 ...	Up to 6	Up to 6.0/day or ~1.0/pile.	None.

TABLE 2—IN-WATER PILE REMOVAL AND INSTALLATION FOR NEW AGP EXPORT TERMINAL, SHIPLOADER

Location	Pile type and size	Activity	Install/removal method	Number of piles	Total days of operation	Piles per day	Avg. hours vibratory per pile	Impact strikes per pile
Permanent Piles								
Terminal 4B	12-inch steel H sections	Removal ...	Vibratory hammer or direct pull.	Up to 6	Up to 3	Up to 3	Up to 1.5/day or ~0.5/pile.	None.
Terminal 4B	16.5-inch concrete octagonal pile.	Removal ...	Vibratory hammer, direct pull.	Up to 27 ...	Up to 9	Up to 8	Up to 8/day or ~1.0/pile.	None.
Terminal 4B	36-inch-diameter steel pipe pile.	Install	Vibratory and impact hammer.	Up to 50 ...	Up to 30 ...	Up to 4	Up to 8/day or ~2/pile.	Up to 2,400/day or ~600/pile.
Terminal 4B	New 24-inch steel pipe pile.	Install	Vibratory and impact hammer.	Up to 24 ...	Up to 12 ...	Up to 4	Up to 6/day or ~1.5/pile.	Up to 2,000/day or ~500/pile.
Terminal 4B	12-inch steel H-piles	Install	Vibratory hammer	Up to 6	Up to 3	Up to 3	Up to 1.5/day or ~0.5/pile.	None.
Temporary Piles								
Terminal 4B	24-inch steel pipe pile	Install	Vibratory hammer	Up to 24 ...	Up to 6	Up to 8	Up to 4/day or ~0.5/pile.	None.
Terminal 4B	24-inch steel pipe pile	Removal ...	Vibratory hammer	Up to 24 ...	Up to 6	Up to 8	Up to 4/day or ~0.5/pile.	None.

Above water construction would include rail upgrades and T4 cargo yard relocation and expansion which would all occur landward of the Grays Harbor shoreline.

This above-water work is not expected to result in any take of marine mammals. Noise generated above the water would not be transmitted into the water to the degree that resulting underwater noise would be expected to cause disturbance and, none of the pinniped haulouts are located close enough to the project area to cause disturbance. Therefore, airborne noise is not considered further in this document.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

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. NMFS fully considered all of this information, and we refer the reader to these descriptions, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' 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' website (*https://www.fisheries.noaa.gov/find-species*).

Table 3 lists all species or stocks for which take is expected and proposed to be authorized for this activity and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. 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' SARs). While no serious injury or mortality is anticipated or proposed to be authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks 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' 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' Alaska and Pacific SARs. All values presented in table 3 are the most recent available at the time of publication (including from the draft 2023 SARs) and are available online at: (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports*).

TABLE 3—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES [1]

Common name	Scientific name	Stock	ESA/ MMPA status; Strategic (Y/N) [2]	Stock abundance (CV, N_{min}, most recent abundance survey) [3]	PBR	Annual M/SI [4]
Odontoceti (toothed whales, dolphins, and porpoises)						
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Northern Oregon/, Washington Coast.	-,-; N	22,074 (0.391, 16,068, 2022)	161	3.2
Order Carnivora—Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California Sea Lion	*Zalophus californianus*	U.S	-,-; N	257,606 (N/A, 233,515, 2014)	14,011	>321
Steller Sea Lion	*Eumetopias jubatus*	Eastern	-,-; N	36,308 (N/A, 36,308, 2022)	2,178	93.2
Family Phocidae (earless seals):						
Harbor Seal	*Phoca vitulina*	Oregon/Washington Coastal Stock.	-, -, N	24,731 [5] (1999)	UNK	10.6

[1] Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (*https://www.marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/*).

[2] 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 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.

[3] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[4] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, vessel strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range.

[5] There is no current estimate of abundance available for this stock. Value presented is the most recent available and based on 1999 data.

As indicated above, all four species (with four managed stocks) in table 3 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. While killer whales (*Orcincus orca*), humpback whales (*Megaptera novaeangilae*), gray whales (*Eschrichtius robustus*), and minke whales (*Balaenoptera acutorostrada*) have been sighted in Grays Harbor, the temporal and/or spatial occurrence of these species is such that take is not expected to occur. Furthermore, if any of these species are sighted approaching Level B harassment zones, construction activities would be shut down in order to avoid harassment. Therefore, take is not expected for these species and they are not discussed further in this document.

Harbor Porpoise

In the eastern North Pacific Ocean, harbor porpoise are found in coastal and inland waters from Point Barrow, along the Alaskan coast, and down the west coast of North America to Point Conception, California (Gaskin, 1984). Harbor porpoise are known to occur year-round in the inland trans-boundary waters of Washington and British Columbia, Canada (Osborne *et al.,* 1988), and along the Oregon/Washington coast (Barlow, 1988; Barlow *et al.,* 1988, Green *et al,.* 1992). Little information exists on harbor porpoise movements and stock structure in Grays Harbor. Hall (2004) found that the frequency of sightings of harbor porpoises decreased with increasing depths beyond 150 meters, with the highest numbers observed at water depths ranging from 61 to 100 meters. Although harbor porpoises have been spotted in deep water, they tend to remain in shallower shelf waters (less than 150 meters), where they are most often observed in small groups of few individuals (Baird, 2003). Stranding incidents in the area have been rare.

California Sea Lion

California sea lions are found from Vancouver Island, British Columbia, to the southern tip of Baja, California. California Sea lions breed on the offshore islands of southern and central California from May through July (Heath and Perrin, 2008). The California sea lion is the most frequently sighted pinniped found in Washington waters and uses haulout sites located on jetties, offshore rocks and islands, log booms, marina docks, and navigation buoys. Only male California sea lions migrate into Pacific Northwest waters, with females remaining in waters near their breeding rookeries off the coast of California and Mexico. The California sea lion was considered rare in Washington waters prior to the 1950s.

The nearest documented California sea lion haulout sites to the Project site are at the Westport Docks, approximately 13 miles west of the Project site near the entrance to Grays Harbor (Jeffries *et al.* 2015), and another haulout observed in 1997 referred to as the mid-harbor flats located approximately 5.65 miles west of the Project site (Washinton Department of Fish and Wildlife (WDFW), 2022). During six aerial surveys conducted in 2014 and 2015, a total of 113 California sea lions were observed in Grays Harbor on the Westport docks (Jeffries *et al.,* 2015). Occurrences of California sea lion strandings have been rare near the project area.

Steller Sea Lion

Steller sea lions range from southeast Alaska to central California, including

Washington. The species prefers beaches, ledges, and rocky reefs for breeding and hauling out (NMFS 2023c). In Washington, Steller sea lions occur mainly along the outer coast from the Columbia River to Cape Flattery (Jeffries *et al.,* 2000). Smaller numbers use the Strait of Juan de Fuca, the San Juan Islands, and Puget Sound south to about the Nisqually River mouth in Thurston and Pierce counties (Wiles, 2015). The Eastern Depleted Population Segment (DPS) of Steller sea lions has historically bred on rookeries located in Southeast Alaska, British Columbia, Oregon, and California. However, within the last several years, a new rookery has become established on the outer Washington coast at the Carroll Island and Sea Lion Rock complex (M.M. Muto *et al.,* 2021). Most pups (86 percent) are born in rookeries in southeast Alaska and British Columbia (Wiles, 2015). Steller sea lions occupy 22 haulouts in Washington, the largest of which are on the outer Olympic coast (Wiles, 2015).

WDFW Priority Habitat and Species Data does not indicate any observances of Steller sea lions in Grays Harbor (WDFW, 2022). The nearest documented Steller sea lion haulout sites to the Project site are at Split Rock, 35 miles north of the entrance to Grays Harbor, and at the mouth of the Columbia River, 46 miles south of the entrance to Grays Harbor (Jeffries *et al.,* 2000). A few Steller sea lions may haul out on buoys near the Westport marina, located 13 miles west of the Project site, or at Westport docks, similar to California sea lions. Steller sea lion strandings have been rare near the project area.) No other confirmed Steller sea lion observations have been located specific to Grays Harbor.

Harbor Seal

Harbor seals inhabit coastal and estuarine waters off Baja California, north along the western coasts of the continental U.S., British Columbia, and southeast Alaska, west through the Gulf of Alaska and Aleutian Islands, and in the Bering Sea north to Cape Newenham and the Pribilof Islands (Carretta *et al.,* 2014). They haul out on rocks, reefs, beaches, and drifting glacial ice and feed in marine, estuarine, and occasionally fresh waters. Harbor seals generally are non-migratory, with local movements associated with such factors as tides, weather, season, food availability, and reproduction (Fisher, 1952; Bigg 1969, 1981). Harbor seals are the only pinniped species that occurs year-round and breeds in Washington waters. Pupping seasons vary by geographic region, with pups born in coastal estuaries (Columbia River, Willapa Bay, and Grays Harbor) from mid-April through June (Jeffries *et al.,* 2000). According to WDFW's atlas of seal and sea lion haulout sites (Jeffries *et al.,* 2000), all haulouts in Grays Harbor are associated with tidal flats; at high tide it is assumed that these animals are foraging elsewhere in the estuary. The nearest documented harbor seal haulout site to the Project site is a low-tide haulout located 6 miles to the west.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in table 4.

TABLE 4—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth *et al.,* 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The Estimated Take of Marine Mammals section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take of Marine Mammals section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship

of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Description of Sounds Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far. The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10 to 20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include impact pile driving, vibratory pile driving, and vibratory pile removal. The sounds produced by these activities fall into one of two general sound types: impulsive and non-impulsive. Impulsive sounds (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI, 1986; NIOSH, 1998; ANSI, 2005; NMFS, 2018). Non-impulsive sounds (*e.g.,* aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with raid rise/decay time that impulsive sounds do (ANSI, 1995; NIOSH, 1998; NMFS, 2018). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Southall *et al.,* 2007).

Two types of pile hammers would be used on this project: impact and vibratory. Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak sound pressure levels (SPLs) may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.,* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson, *et al.,* 2005).

The likely or possible impacts of the AGP's proposed activity on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors include the physical presence of the equipment and personnel; however, any impacts to marine mammals are expected to primarily be acoustic in nature.

Auditory Effects

The introduction of anthropogenic noise into the aquatic environment from pile driving and removal is the primary means by which marine mammals may be harassed from AGP's specified activity. In general, animals exposed to natural or anthropogenic sound may experience physical and behavioral effects, ranging in magnitude from none to severe (Southall *et al.,* 2007, 2021). Exposure to pile driving noise has the potential to result in auditory threshold shifts (TS) and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses such an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), the species, age and sex class (*e.g.,* adult male vs. mom with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.,* 2004; Southall *et al.,* 2007). Here we discuss physical auditory effects (TSs) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced TS as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.,* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (Ward *et al.,* 1958, 1959; Ward, 1960; Kryter *et al.,* 1966; Miller, 1974; Ahroon *et al.,* 1996; Henderson *et al.,* 2008). PTS levels for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.,* 2008), there are no empirical data measuring PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS

are not typically pursued or authorized (NMFS, 2018).

Temporary Threshold Shift (TTS)—A temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Based on data from cetacean TTS measurements (Southall *et al.,* 2007), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.,* 2000; Finneran *et al.,* 2000, 2002). As described in Finneran (2015), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SELcum) in an accelerating fashion: At low exposures with lower SELcum, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SELcum, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and five species of pinnipeds exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.,* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. No data are available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and table 5 in NMFS (2018).

Installing piles requires a combination of impact pile driving and vibratory pile driving. For the project, these activities would not occur at the same time and there would likely be pauses in activities producing the sound during each day. Given these pauses and that many marine mammals are likely moving through the action area and not remaining for extended periods of time, the potential for TS declines.

Behavioral Harassment—Exposure to noise from pile driving and removal also has the potential to behaviorally disturb marine mammals. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005, Southall *et al.,* 2021).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007, 2021; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within exposures of an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012, Southall *et al.,* 2021), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. For a review of studies involving marine mammal behavioral responses to sound, see Southall *et al.,* 2007; Gomez *et al.,* 2016; and Southall *et al.,* 2021 reviews.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* pile driving, shipping, sonar, seismic

exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (*e.g.,* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked. Grays Harbor is home to a busy industrial port as well as large numbers small private vessels that transit the area on a regular basis; therefore, background sound levels in the bay are likely already elevated.

Marine Mammal Habitat Effects

AGP's construction activities could have localized, temporary impacts on marine mammal habitat by increasing in-water SPLs and slightly decreasing water quality. Construction activities are of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater sound. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project area (see discussion below). During pile driving, elevated levels of underwater noise would ensonify the Port where both fish and mammals may occur and could affect foraging success.

In-water pile driving and pile removal would also cause short-term effects on water quality due to increased turbidity. Local currents are anticipated to disburse suspended sediments produced by project activities at moderate to rapid rates depending on tidal stage. AGP would employ standard construction best management practices, thereby reducing any impacts. Considering the nature and duration of the effects, combined with the measures to reduce turbidity, the impact from increased turbidity levels is expected to be discountable.

Pile installation and removal may temporarily increase turbidity resulting from suspended sediments. Any increases would be temporary, localized, and minimal. AGP must comply with state water quality standards during these operations by limiting the extent of turbidity to the immediate project area. In general, turbidity associated with pile installation is localized to about a 25-feet (ft) radius around the pile (Everitt *et al.,* 1980). Cetaceans are not expected to enter the harbor and be close enough to the project pile driving areas to experience effects of turbidity, and any pinnipeds would likely be transiting the area and could avoid localized areas of turbidity. Therefore, the impact from increased turbidity levels is expected to be discountable to marine mammals. Furthermore, pile driving and removal at the project site would not obstruct movements or migration of marine mammals.

Effects on Prey

Construction activities would produce continuous (*i.e.,* vibratory pile driving) and impulsive (*i.e.,* impact driving) sounds. Fish react to sounds that are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Sound pulses at received levels may cause noticeable changes in behavior (Pearson *et al.,* 1992; Skalski *et al.,* 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality.

Impacts on marine mammal prey (*i.e.,* fish or invertebrates) of the immediate area due to the acoustic disturbance are possible. The duration of fish or invertebrate avoidance or other disruption of behavioral patterns in this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. Further, significantly large areas of fish and marine mammal foraging habitat are available in the nearby waters.

The duration of the construction activities is relatively short, with pile driving and removal activities expected to take only 105 days. Each day, construction would occur for no more than 12 hours during the day and pile driving activities would be restricted to daylight hours. The most likely impact to fish from pile driving activities at the project area would be temporary behavioral avoidance of the area. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe for the project.

Construction activities, in the form of increased turbidity, have the potential to adversely affect fish in the project area. Increased turbidity is expected to occur in the immediate vicinity (on the order of 10 ft (3 meters (m)) or less) of construction activities. However, suspended sediments and particulates are expected to dissipate quickly within a single tidal cycle. Given the limited area affected and high tidal dilution rates any effects on fish are expected to be minor or negligible. In addition, best management practices would be in effect, which would limit the extent of turbidity to the immediate project area.

In summary, given the relatively short daily duration of sound associated with individual pile driving and events and the relatively small areas being affected, pile driving activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Thus, we conclude that impacts of the specified activity are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes proposed for authorization through the IHA, which will inform NMFS' consideration of ''small numbers,'' the negligible impact determinations, and impacts on subsistence uses.

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 primarily be by Level B harassment, as use of the acoustic stressors (*i.e.,* pile driving) has the potential to result in disruption of behavioral patterns for individual

marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for high frequency species (harbor porpoise) and phocids (harbor seal). Auditory injury is unlikely to occur for other species due to PTS zone sizes. The proposed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, 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) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential 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 proposed take estimates.

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—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 or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021; Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μPa)) for continuous (*e.g.,* vibratory pile driving, drilling) and above RMS SPL 160 dB (re 1 μPa) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

AGP's proposed activity includes the use of continuous (vibratory driving and removal) and impulsive (impact pile driving) sources, and therefore the RMS SPL thresholds of 120 and 160 dB re 1 μPa are applicable.

Level A Harassment—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). AGP's proposed activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving and removal) sources.

These thresholds are provided in the table 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 5—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 1 μPa^2s. 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 are used in estimating the area ensonified above the acoustic thresholds, including source levels and TL coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* impact pile driving, vibratory pile driving and removal). Additionally, vessel traffic and other commercial and industrial activities in the project area may contribute to elevated background noise levels which may mask sounds produced by the project.

TL is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. *TL* parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater *TL* is:

$TL = B * \mathrm{Log}_{10} (R_1/R_2)$,

where

TL = transmission loss in dB
B = transmission loss coefficient
R_1 = the distance of the modeled SPL from the driven pile, and
R_2 = the distance from the driven pile of the initial measurement

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6-dB reduction in sound level for each doubling of distance from the source (20*log[range]). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10*log[range]). A practical spreading value of 15 is often used under conditions, such as the project site, where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions. Practical spreading loss is assumed here.

The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. In order to calculate the distances to the Level A harassment and the Level B harassment sound thresholds for the methods and piles being used in this project, NMFS used acoustic monitoring data from other locations to develop proxy source levels for the various pile types, sizes and methods. The project includes vibratory and impact pile installation of steel and vibratory removal of steel, timber piles, and concrete piles. Pile sizes range from 12-in to 36-in. Source levels for the various pile sizes and driving methods are presented in table 6. Bubble curtains would be employed during all impact driving, with an assumed 5 dB effective attenuation (Caltrans 2020).

TABLE 6—PROXY SOUND SOURCE LEVELS FOR PILE SIZES AND DRIVING METHODS

Method and pile type	Sound level at 10 m (dB rms)		
Vibratory hammer			
36-inch steel piles (installation) [1]	170		
30-inch steel pipe piles (installation) [2]	159		
24-inch steel piles (installation and removal) [3]	154		
18-inch steel pipe piles (installation) [4]	158		
12-inch steel H-piles (installation and removal) [5]	150		
18-inch creosote timber piles (removal) [6]	162		
16.5-inch concrete octagonal sections (removal) [6]	163		
Impact hammer	dBrms	dBSEL	dBpeak
24-inch steel piles (single strike) [7]	190 (185)	177 (172)	203 (198)
36-inch steel piles (single strike) [8]	193 (188)	183 (178)	210 (205)

[1] Laughlin 2012 as cited in WSDOT 2020.
[2] 2023 NMFS Calculations based on data from Denes *et al.* 2016 (Auke Bay, Ketchikan, Kake), Edmonds Ferry Terminal (Laughlin 2011, 2017), Colman Dock—Seattle Ferry Terminal (Laughlin 2012), Kodiak Pier 3 (PND Engineers, 2015).
[3] 2023 NMFS Calculations based on data from Naval Base Kitsap Bangor Test Pile (Navy (2012)) and EHW–2 (Navy (2013)), Gustavus (Miner, 2020).
[4] Caltrans 2020.
[5] From generic value recommended in the Caltrans 2015 summary table, as it was representative of the data and provided a citable data point and included projects from San Rafael, CA; Norfolk Naval Station, VA; Chevron Long Wharf, CA; JEB Little Creek, Norfolk, VA.
[6] Data not available, anticipated noise levels are based on available noise levels for the vibratory removal of 20-inch diameter concrete piles (Naval Facilities Engineering Systems Command Southwest 2022). Noise levels were back-calculated to a 10 meter measurement distance assuming a 15 log transmission loss. Based on prior coordination with NMFS for the Johnson Pier Expansion and Dock Replacement Project IHA Request (M&N 2022) this data source is an acceptable surrogate for timber piles (Pers. comm. Cara Hotchkin 2023).
[7] From Caltrans 2015, pooled and averaged from 20 to 24″ piles from Stockton WWTP, CA; Bradshaw Bridge, CA; Rodeo Dock, CA; Tongue Point Pier, OR; Cleer Creek WWTP, CA; SR 520 Test Pile, WA; Portland Light Rail, OR; Port of Coeyman, NY; Pritchard Lake, CA; Amorco Wharf, CA; 5th Street Bridge, CA; Schuyler Heim Bridge, CA; Tanana River, AK, NBK EHW2, WA; Crescent City, CA; Avon Wharf, CA; Orwood Bridge Replacement, CA; Tesoro Amorco Wharf, CA; USCG Floating Dock, CA; Norfolk, VA; Plains Terminal, CA. A 5dB attenuation applied in parenthesis for the use of a bubble curtain.
[8] Caltrans 2020, unattenuated data used as reference. A 5dB attenuation applied in parenthesis for the use of a bubble curtain.
Note: It is assumed that noise levels during vibratory pile installation and vibratory pile removal are similar.

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the

Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources such as impact or vibratory pile driving and removal, the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS. Inputs used for impact driving in the optional User Spreadsheet tool, and the resulting estimated isopleths, are reported below in table 7 and table 8 below.

TABLE 7—USER SPREADSHEET INPUTS FOR IMPACT DRIVING

Inputs	36-inch impact	24-inch impact
Spreadsheet Tab Used	E.1) Impact Pile Driving (STATIONARY SOURCE: Impulsive, Intermittent)	
Source Level (Single Strike/shot SEL)	183	177
Weighting Factor Adjustment (kHz)	2	2
Strikes per pile	600	500
Piles Per day	4	4
Propagation (xLogR)	15	15
Distance of source level measurement (meters)	10	10

TABLE 8—CALCULATED LEVEL A HARASSMENT ZONES, IMPACT INSTALLATION (m)

Pile type	Level A threshold		
	High-frequency cetaceans 155 dB SELcum	Phocid pinnipeds 185 dB SELcum	Otariid pinnipeds 203 db SELcum
36-inch steel piles (installation)	990	445	33
24-inch steel piles, permanent (installation)	349	157	12

Table 9 shows the User Spreadsheet Inputs for vibratory driving and the resulting Level A harassment zones are shown in table 10. Calculated Level B harassment isopleths are found in table 11.

TABLE 9—USER SPREADSHEET INPUTS FOR VIBRATORY DRIVING

Inputs	36-in steel (install)	24-to-30-in steel (install)	24-in steel perm. (install)	24-in steel temp. (install and removal)	18-in steel (install)	12-inch steel H-piles (install and removal)	18-in timber (removal)	16.5-inch concrete (removal)
Tab Used	A.1) Vibratory Pile Driving (STATIONARY: Non-impulsive, Continuous)							
Source Level (RMS)	170	159	154	154	158	150	162	163
Weighting Factor Adjustment (kHz)	2.5							
Duration (minutes)	120	60	90	30	30	30	30	60
Piles per day	4	6	4	8	6	3	10	8
Propagation (xLogR)	15							
Distance of source level (m)	10							

TABLE 10—CALCULATED LEVEL A HARASSMENT ZONES, VIBRATORY INSTALLATION AND REMOVAL (m)

Pile type	Level A threshold		
	High-frequency cetaceans 173 dB SELcum	Phocid pinnipeds 201 dB SELcum	Otariid pinnipeds 219 dB SELcum
36-inch steel piles (installation)	161	67	5
24-to-30-inch steel pipe piles (installation)	25	10	1
24-inch steel piles, permanent (installation)	12	5	1
24-inch steel piles, temporary (installation and removal)	9	4	1
18-inch steel pipe piles (installation)	13	6	1
12-inch steel H-piles (installation and removal)	3	1	1
18-inch creosote timber piles (removal)	35	15	1

TABLE 10—CALCULATED LEVEL A HARASSMENT ZONES, VIBRATORY INSTALLATION AND REMOVAL (m)—Continued

Pile type	Level A threshold		
	High-frequency cetaceans 173 dB SELcum	Phocid pinnipeds 201 dB SELcum	Otariid pinnipeds 219 dB SELcum
16.5-inch concrete octagonal sections (removal)	55	23	2

TABLE 11—LEVEL B HARASSMENT ZONES, VIBRATORY AND IMPACT DRIVING (m)

Pile type	Level B threshold all marine mammals 120 dBrms
120 dB threshold	
36-inch steel piles (installation)	21,545
24-to-30-inch steel pipe piles (installation)	3,981
24-inch steel piles (installation and removal)	1,847
18-inch steel pipe piles (installation)	3,415
12-inch steel H-piles (installation and removal)	1,000
18-inch creosote timber piles (removal)	6,310
16.5-inch concrete octagonal sections (removal)	7,365
160 dB threshold	
36-inch steel piles (Installation)	736
24-inch steel piles, permanent (Installation)	465

Marine Mammal Occurrence and Take Estimation

In this section we provide information about the occurrence of marine mammals, including density or other relevant information which will inform the take calculations. The primary source for density estimates is from the Navy Marine Species Density Database (NMSDD) Phase III for the Northwest Training and Testing Study Area (Navy, 2019) although density calculated from other aerial surveys was used for harbor seal. These density estimates will be used to calculate take due to the lack of site-specific data that is available.

To quantitatively assess potential exposure of marine mammals to noise levels from pile driving over the NMFS threshold guidance, the following equation was first used to provide an estimate of potential exposures within estimated harassment zones:

Exposure estimate = N × Level B harassment zone (km^2) × maximum days of pile driving

where

N = density estimate (animals per km^2) used for each species.

Harbor Seal

There are no harbor seal density estimates for Grays Harbor, but the Navy Marine Species Density Database (NMSDD 2020) estimates the density of harbor seals in the waters offshore of Grays Harbor as 0.3424 animals per square kilometer. However, harbor seals are anticipated to be more common within Grays Harbor than within offshore areas. Therefore, this density estimate may underestimate actual densities for the project site.

Two aerial surveys of Grays Harbor were conducted in June of 2014. The average count was multiplied by a regional correction factor of 1.43 (Huber *et al.,* 2001) to yield the estimated harbor seal abundance. A correction factor was used because aerial surveys of harbor seals on land only produce a minimum assessment of the population and animals in the water must be accounted for to estimate total abundance. The average survey count (7,495 seals/survey) was used to calculate density by dividing by the area of Grays Harbor (243 km^2) resulting in a calculated density of 30.85 animals per km^2). This value was used to calculate estimated take by both Level A harassment and Level B harassment during the driving of the various types of piles for the Project. Estimated takes by Level B harassment are shown in table 12 and takes by Level A harassment are shown in table 13.

The largest Level A harassment zone for phocid pinnipeds extends from 157 to 445 m from the source during impact driving. AGP and NMFS agreed on the implementation of a 100 m shutdown zone in order to shut down for those animals closest to the pile driving activity but allow for pile driving to continue for animals that are beyond 100 m (see Proposed Mitigation section). AGP is confident they can complete work in an efficient manner with the occurrence of harbor seals in the project area. AGP has requested authorization of 18,830 takes of harbor seals by Level B harassment as well as 73 harbor seal takes by Level A harassment. NMFS concurs with the requests and is proposing to authorize take of harbor seals at these levels.

TABLE 12—CALCULATED TAKE ESTIMATE OF HARBOR SEALS BY LEVEL B HARASSMENT

Pile type	Installation/removal method	Harbor seal density per km^2	Days of pile driving	Level B area (km^2)	Shutdown zone distance	Shutdown area (km^2)	Level B take estimate
36-inch steel piles (installation)	Vibratory	30.85	24	10.2	70	0.03	7,529.87
36-inch steel piles (installation)	Impact to proof	30.85	6	1.07	100	0.05	188.80
24-to-30-inch steel pipe piles (installation)	Vibratory	30.8	18	4.95	10	0.009	2,739.29

TABLE 12—CALCULATED TAKE ESTIMATE OF HARBOR SEALS BY LEVEL B HARASSMENT—Continued

Pile type	Installation/removal method	Harbor seal density per km²	Days of pile driving	Level B area (km²)	Shutdown zone distance	Shutdown area (km²)	Level B take estimate
24-inch steel piles, permanent (installation)	Vibratory	30.85	10	2.72	10	0.004	804.37
24-inch steel piles, permanent (installation)	Impact to proof	30.85	2	0.46	100	0.05	30.36
24-inch steel piles, temporary (installation and removal).	Vibratory	30.85	12	2.72	10	0.004	1,005.46
18-inch steel pipe piles (installation)	Vibratory	30.85	6	4.3	10	0.009	794.26
12-inch steel H-piles (installation and removal)	Vibratory	30.85	6	1.7	10	0.004	313.93
18-inch creosote timber piles (removal)	Vibratory	30.85	12	7.4	15	0.014	2,734.30
16.5-inch concrete octagonal sections (removal)	Vibratory	30.85	9	7.97	25	0.011	2,209.82
Total							18,350

TABLE 13—CALCULATED TAKE ESTIMATE OF HARBOR SEALS BY LEVEL A HARASSMENT

Pile type	installation/removal method	Harbor seal density per km²	Days of pile driving	Level A area (km²)	Shutdown zone distance	Shutdown area (km²)	Level A take estimate
36-inch steel piles (installation)	Vibratory	30.85	24	0.03	70	0.03	0.00
36-inch steel piles (installation)	Impact to proof	30.85	6	0.43	100	0.05	70.34
24-to-30-inch steel pipe piles (installation)	Vibratory	30.8	18	0.009	10	0.009	0.00
24-inch steel piles, permanent (installation)	Vibratory	30.85	10	0.002	10	0.004	0.00
24-inch steel piles, permanent (installation)	Impact to proof	30.85	2	0.084	100	0.05	2.52
24-inch steel piles, temporary (installation and removal).	Vibratory	30.85	12	0.0018	10	0.004	0.00
18-inch steel pipe piles (installation)	Vibratory	30.85	6	0.005	10	0.009	0.00
12-inch steel H-piles (installation and removal)	Vibratory	30.85	6	0.0009	10	0.004	0.00
18-inch creosote timber piles (removal)	Vibratory	30.85	12	0.014	15	0.014	0.00
16.5-inch concrete octagonal sections (removal)	Vibratory	30.85	9	0.01	25	0.011	0.00
Total							73

California Sea Lion

The NMSDD estimates the density of California sea lions in the waters offshore of Grays Harbor as 0.0288, 0.5573 and 0.66493 animals per km² in summer, fall and winter, respectively (Navy, 2019). AGP conservatively utilized the higher winter density value to calculate estimated take. Based on this density estimate, the number of California sea lions that may be taken by Level B harassment is presented in table 14. Take by Level A harassment is not anticipated since the nearest documented California sea lion haulout sites are at the Westport Docks, approximately 13 miles west of the Project site near the entrance to Grays Harbor (Jeffries *et al.,* 2015), and another haulout observed in 1997 referred to as the mid-harbor flats located approximately 5.65 miles west of the Project site (WDFW, 2022). Additionally, the largest Level A harassment zone is 33 m, with all the other zones for both impact and vibratory driving no more than 12 m.

AGP has requested and NMFS is proposing to authorize 387 California sea lion takes by Level B harassment as shown in table 14.

TABLE 14—LEVEL B HARASSMENT TAKE ESTIMATES FOR CALIFORNIA SEA LIONS

Pile type	Installation/removal method	California sea lion density per km²	Days of pile driving	Level B area (km²)	Shutdown zone distance	Shutdown area (km²)	Level B take estimate
36-inch steel piles (installation)	Vibratory	0.6493	24	10.2	10	0.03	158.48
36-inch steel piles (installation)	Impact to proof	0.6493	6	1.07	35	0.016	4.11
24-to-30-inch steel pipe piles (installation)	Vibratory	0.6493	18	4.95	10	0.009	57.75
24-inch steel piles, permanent (installation)	Vibratory	0.6493	10	2.72	10	0.004	16.93
24-inch steel piles, permanent (installation)	Impact to proof	0.6493	2	0.46	15	0.006	0.71
24-inch steel piles, temporary (installation and removal).	Vibratory	0.6493	12	2.72	10	0.004	21.16
18-inch steel pipe piles (installation)	Vibratory	0.6493	6	4.3	10	0.009	16.72
12-inch steel H-piles (installation and removal)	Vibratory	0.6493	6	1.7	10	0.004	6.61
18-inch creosote timber piles (removal)	Vibratory	0.6493	12	7.4	10	0.009	57.59
16.5-inch concrete octagonal sections (removal)	Vibratory	0.6493	9	7.97	10	0.004	46.55
Total							387

Steller Sea Lion

The NMSDD estimates the density of Steller sea lions in the waters offshore of Grays Harbor as 0.1993 animals per km² in the summer, 0.1678 animals per km² in the winter/spring, and 0.1390 animals per km² in the fall (Navy, 2020). The summer density estimate of 0.1993 per km² has been used as a conservative surrogate for Steller sea lion density within Grays Harbor.

WDFW Priority Habitat and Species Data does not indicate any observances of Steller sea lions in Grays Harbor (WDFW, 2022). The nearest documented Steller sea lion haulout sites to the Project site are at Split Rock, 35 miles

north of the entrance to Grays Harbor, and at the mouth of the Columbia River, 46 miles south of the entrance to Grays Harbor (Jeffries *et al.,* 2000). A few Steller sea lions may haul out on buoys near the Westport marina, located 13 miles west of the Project site, or at Westport docks, similar to California sea lions. Given that the Level A harassment zone varies from one (1) to five (5) meters during vibratory pile installation and 12 to 33 meters during impact installation, in addition to their uncommon appearances in Grays Harbor, no take by Level A harassment is anticipated or proposed by NMFS.

AGP has requested and NMFS is proposing to authorize 119 Steller sea lion takes by Level B harassment as shown in table 15.

TABLE 15—LEVEL B HARASSMENT TAKE ESTIMATES FOR STELLER SEA LIONS

Pile type	Installation/removal method	Stellar sea lion density per km²	Days of pile driving	Level B area (km²)	Shutdown zone distance	Shutdown area (km²)	Level B take estimate
36-inch steel piles (installation)	Vibratory	0.1993	24	10.2	10	0.03	48.65
36-inch steel piles (installation)	Impact to proof	0.1993	6	1.07	35	0.016	1.26
24-to-30-inch steel pipe piles (installation)	Vibratory	0.1993	18	4.95	10	0.009	17.73
24-inch steel piles, permanent (installation)	Vibratory	0.1993	10	2.72	10	0.004	5.20
24-inch steel piles, permanent (installation)	Impact to proof	0.1993	2	0.46	15	0.006	0.22
24-inch steel piles, temporary (installation and removal).	Vibratory	0.1993	12	2.72	10	0.004	6.50
18-inch steel pipe piles (installation)	Vibratory	0.1993	6	4.3	10	0.009	5.13
12-inch steel H-piles (installation and removal)	Vibratory	0.1993	6	1.7	10	0.004	2.03
18-inch creosote timber piles (removal)	Vibratory	0.1993	12	7.4	10	0.009	17.68
16.5-inch concrete octagonal sections (removal)	Vibratory	0.1993	9	7.97	10	0.004	14.29
Total							119

Harbor Porpoise

The Navy has estimated that density of harbor porpoises in the waters offshore of Grays Harbor is 0.467 animals per km² (Navy, 2019). AGP acknowledges that this value may be an overestimate since it is based on offshore observations. However, lacking additional survey or anecdotal evidence, this NMSDD value is used as a conservative estimate for the number of harbor porpoises that are expected to be within Grays Harbor. Estimated take by Level B harassment is shown in table 16.

During impact pile driving, the Level A harassment isopleths range from 349 to 990 m for high-frequency cetaceans and up to 161 m during vibratory driving. AGP has proposed to implement a maximum of 100-m shutdown zone. This leaves large areas where take of harbor porpoises by Level A harassment could occur. It would be challenging for protected species observers to effectively monitor out to the full extent of these zones given the cryptic nature of harbor porpoises. Therefore, take was estimated using porpoise density multiplied by the area of the Level A harassment zone beyond 100 m (in cases where the Level A harassment zone exceeded the shutdown zone) multiplied by the number of driving days as shown in table 17.

AGP has requested and NMFS is proposing to authorize 277 harbor porpoise takes by Level B harassment and 5 harbor porpoises by Level A harassment.

TABLE 16—CALCULATED TAKE ESTIMATE OF HARBOR PORPOISE BY LEVEL B HARASSMENT

Pile type	Installation/removal method	Harbor porpoise density per km²	Days of pile driving	Level B area (km²)	Shutdown zone distance	Shutdown area (km²)	Level B take estimate
36-inch steel piles (installation)	Vibratory	0.467	24	10.2	100	0.05	113.76
36-inch steel piles (installation)	Impact to proof	0.467	6	1.07	100	0.05	2.86
24-to-30-inch steel pipe piles (installation)	Vibratory	0.467	18	4.95	25	0.023	41.42
24-inch steel piles, permanent (installation)	Vibratory	0.467	10	2.72	10	0.004	12.18
24-inch steel piles, permanent (installation)	Impact to proof	0.467	2	0.46	100	0.05	0.46
24-inch steel piles, temporary (installation and removal).	Vibratory	0.467	12	2.72	10	0.004	15.22
18-inch steel pipe piles (installation)	Vibratory	0.467	6	4.3	15	0.014	12.01
12-inch steel H-piles (installation and removal)	Vibratory	0.467	6	1.7	10	0.004	4.75
18-inch creosote timber piles (removal)	Vibratory	0.467	12	7.4	35	0.034	41.28
16.5-inch concrete octagonal sections (removal)	Vibratory	0.467	9	7.97	55	0.025	33.39
Total							277

TABLE 17—CALCULATED TAKE ESTIMATE OF HARBOR PORPOISE BY LEVEL A HARASSMENT

Pile type	Installation/removal method	Harbor porpoise density per km²	Days of pile driving	Level A area (km²)	Shutdown zone distance	Shutdown area (km²)	Level A take estimate
36-inch steel piles (installation)	Vibratory	0.467	24	0.086	100	0.05	0.40
36-inch steel piles (installation)	Impact to proof	0.467	6	1.64	100	0.05	4.46
24-to-30-inch steel pipe piles (installation)	Vibratory	0.467	18	0.023	25	0.023	0.00
24-inch steel piles, permanent (installation)	Vibratory	0.467	10	0.005	10	0.004	0.00
24-inch steel piles, permanent (installation)	Impact to proof	0.467	2	0.28	100	0.05	0.26
24-inch steel piles, temporary (installation and removal).	Vibratory	0.467	12	0.004	10	0.004	0.00

TABLE 17—CALCULATED TAKE ESTIMATE OF HARBOR PORPOISE BY LEVEL A HARASSMENT—Continued

Pile type	Installation/removal method	Harbor porpoise density per km^2	Days of pile driving	Level A area (km^2)	Shutdown zone distance	Shutdown area (km^2)	Level A take estimate
18-inch steel pipe piles (installation)	Vibratory	0.467	6	0.012	15	0.014	0.00
12-inch steel H-piles (installation and removal)	Vibratory	0.467	6	0.001	10	0.004	0.00
18-inch creosote timber piles (removal)	Vibratory	0.467	12	0.034	35	0.034	0.00
16.5-inch concrete octagonal sections (removal)	Vibratory	0.467	9	0.025	55	0.025	0.00
Total							5

TABLE 18—ESTIMATED TAKE BY LEVEL A AND LEVEL B HARASSMENT, BY SPECIES AND STOCK

Common name	Stock	Stock abundance	Level A	Level B	Total proposed take	Proposed take as percentage of stock
Harbor porpoise	Northern Oregon/Washington Coast	22,074	5	277	282	1.3
Steller sea lion	Eastern U.S	36,308		119	119	0.3
California sea lion	U.S	257,606		387	387	0.2
Harbor seal	OR/WA coast stock	[a] 24,731	73	18,350	18,423	74.5

[a] There is no current estimate of abundance available for this stock. Value presented is the most recent available and based on 1999 data.

Proposed 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 (latter not applicable for this action). 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, NMFS considers 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 planned), the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

Pre-Activity Monitoring—Prior to the start of daily in-water construction activity, or whenever a break in pile driving/removal of 30 minutes or longer occurs, PSOs would observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone would be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 15 minutes. If the monitoring zone has been observed for 30 minutes and marine mammals are not present within the zone, soft-start procedures can commence and work can continue. Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine that the shutdown zones indicated in Table 19 are clear of marine mammals. Pile driving may commence following 30 minutes of observation when the determination is made that the shutdown zones are clear of marine mammals. If work ceases for more than 30 minutes, the pre-activity monitoring of both the monitoring zone and shutdown zone would commence.

Implementation of Shutdown Zones for Level A Harassment—For all pile driving/removal activities, AGP would implement shutdowns within designated zones. The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Implementation of shutdowns would be used to avoid or minimize takes by Level A harassment from vibratory and impact pile driving for all four species for which take may occur. Shutdown zones would be based upon the Level A harassment isopleth for each pile size/type and driving method where applicable. However, a maximum shutdown zone of 100 m was requested by AGP and is being proposed by NMFS. This is anticipated to reduce Level A harassment exposures without resulting in a substantial risk to the project schedule that could occur if marine mammals repeatedly enter into larger shutdown zones.

A minimum shutdown zone of 10 m would be required for all in-water construction activities to avoid physical interaction with marine mammals. Proposed shutdown zones for each activity type are shown in table 19.

TABLE 19—SHUTDOWN ZONES DURING PILE INSTALLATION AND REMOVAL (m)

Pile type	Shutdown zone			Level B harassment zone
	High-frequency cetaceans	Phocid pinnipeds	Otariid pinnipeds	
Impact				
36-inch steel piles (installation)	100	100	35	740
24-inch steel piles, permanent (installation)	100	100	15	465
Vibratory				
36-inch steel piles (installation)	100	70	10	21,550
24-to-30-inch steel pipe piles (installation)	25	10	10	3,985
24-inch steel piles, permanent (installation)	15	10	10	1,850
24-inch steel piles, temporary (installation and removal)	10	10	10	1,850
18-inch steel pipe piles (installation)	15	10	10	3,415
12-inch steel H-piles (installation and removal)	10	10	10	1,000
18-inch creosote timber piles (removal)	35	15	10	6,310
16.5-inch concrete octagonal sections (removal)	55	25	10	7,365

All marine mammals would be monitored in the Level B harassment zones and throughout the area as far as visual monitoring can take place. If a marine mammal enters the Level B harassment zone, in-water activities would continue and protected Species Observers (PSOs) would document the animal's presence within the estimated harassment zone.

If a species for which authorization has not been granted, or a species which has been granted but the authorized takes are met, is observed approaching or within the Level B harassment zone, pile driving activities will be shut down immediately. Activities will not resume until the animal has been confirmed to have left the area or 15 minutes has elapsed with no sighting of the animal.

Soft Start—The use of soft-start procedures are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors would be required to provide an initial set of strikes from the hammer at reduced energy, with each strike followed by a 30-second waiting period. This procedure would be conducted a total of three times before impact pile driving begins. Soft start would be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer. Soft start is not required during vibratory pile driving and removal activities.

Bubble Curtain—A bubble curtain would be employed during impact installation or proofing of steel piles. A noise attenuation device would not be required during vibratory pile driving. If a bubble curtain or similar measure is used, it would distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column. Any other attenuation measure would be required to provide 100 percent coverage in the water column for the full depth of the pile. The lowest bubble ring would be in contact with the mudline for the full circumference of the ring. The weights attached to the bottom ring would ensure 100 percent mudline contact. No parts of the ring or other objects would prevent full mudline contact. Air flow to the bubblers must be balanced around the circumference of the pile.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of 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.

Proposed 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 while conducting the activities. 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 activity; 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); and
- Mitigation and monitoring effectiveness.

Visual Monitoring

Monitoring shall be conducted by NMFS-approved observers in

accordance with sections 13.1 and 13.2 of the application. Trained observers shall be placed from the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator. Observer training must be provided prior to project start, and shall include instruction on species identification (sufficient to distinguish the species in the project area), description and categorization of observed behaviors and interpretation of behaviors that may be construed as being reactions to the specified activity, proper completion of data forms, and other basic components of biological monitoring, including tracking of observed animals or groups of animals such that repeat sound exposures may be attributed to individuals (to the extent possible).

Monitoring would be conducted 30 minutes before, during, and 30 minutes after pile driving/removal activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving/removal activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

A minimum of three PSOs would be on duty during all in-water pile driving activities. One observer will be stationed on the existing dock or similar location to monitor the Level A harassment zones, and two other observers will be stationed throughout the Level B harassment zones where best line of sight views would provide most complete coverage of the zone. PSOs would monitor for marine mammals entering the harassment zones; the position(s) may vary based on construction activity and location of piles or equipment.

PSOs would scan the waters using binoculars and would use a handheld range-finder device to verify the distance to each sighting from the project site. All PSOs would be trained in marine mammal identification and behaviors and are required to have no other project-related tasks while conducting monitoring. In addition, monitoring would be conducted by qualified observers, who would be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator via a radio. AGP would adhere to the following observer qualifications:

(i) PSOs must be independent of the activity contractor (for example, employed by a subcontractor) and have no other assigned tasks during monitoring periods.

(ii) At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.

(iii) Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training for prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.

(iv) Where a team of three or more PSOs is required, a lead observer or monitoring coordinator must be designated. The lead observer must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.

(v) PSOs must be approved by NMFS prior to beginning any activity subject to this IHA.

Additional standard observer qualifications include:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Reporting

A draft marine mammal monitoring report would be submitted to NMFS within 90 days after the completion of pile driving and removal activities. It would include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Dates and times (begin and end) of all marine mammal monitoring.
- Construction activities occurring during each daily observation period, including the number and type of piles driven or removed and by what method (*i.e.,* impact driving) and the total equipment duration for cutting for each pile or total number of strikes for each pile (impact driving).
- PSO locations during marine mammal monitoring.
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance.
- Upon observation of a marine mammal, the following information: Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting; Time of sighting; Identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species; Distance and bearing of each marine mammal observed relative to the pile being driven for each sighting (if pile driving was occurring at time of sighting); Estimated number of animals (min/max/best estimate); Estimated number of animals by cohort (adults, juveniles, neonates, group composition, *etc.*); Animal's closest point of approach and estimated time spent within the harassment zone; and Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching).
- Number of marine mammals detected within the harassment zones, by species.
- Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

If no comments are received from NMFS within 30 days, the draft final report would constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury, serious injury or mortality, AGP would immediately cease the specified activities and report the incident to the Office of Protected Resources, NMFS, and the West Coast Region regional stranding coordinator. The report would include the following information:

- Description of the incident;
- Environmental conditions (*e.g.,* Beaufort sea state, visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with AGP to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. AGP would not be able to resume their activities until notified by NMFS.

In the event that the AGP discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition as described in the next paragraph), AGP would immediately report the incident to the Office of Protected Resources (*PR.ITP.MonitoringReports@noaa.gov*), NMFS and to the West Coast Region regional stranding coordinator as soon as feasible. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with AGP to determine whether modifications in the activities are appropriate.

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 impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), 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' 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 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, the majority of our analysis applies to all the species listed in table 18, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are described independently in the analysis below.

Pile driving and removal activities associated with the project as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level A harassment and Level B harassment from underwater sounds generated from pile driving and removal. Potential takes could occur if individuals of these species are present in zones ensonified above the thresholds for Level A or Level B harassment identified above when these activities are underway.

Take by Level A and Level B harassment would be due to potential behavioral disturbance, TTS, and PTS. No serious injury or mortality is anticipated or proposed for authorization given the nature of the activity and measures designed to minimize the possibility of injury to marine mammals. Take by Level A harassment is only anticipated for harbor porpoise and harbor seal. The potential for harassment is minimized through the construction method and the implementation of the planned mitigation measures (see Proposed Mitigation section).

Based on reports in the literature as well as monitoring from other similar activities, behavioral disturbance (*i.e.,* Level B harassment) would likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff, 2006; HDR, Inc., 2012; Lerma, 2014). Most likely for pile driving, individuals would simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. The pile driving activities analyzed here are similar to, or less impactful than, numerous other construction activities conducted in Washington, which have taken place with no observed severe responses of any individuals or known long-term adverse consequences. Level B harassment would be reduced to the level of least practicable adverse impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring. While vibratory driving associated with the proposed project may produce sound at distances of many kilometers from the project site, thus overlapping with some likely less-disturbed habitat, the project site itself is located in a busy harbor and the majority of sound fields produced by the specified activities are close to the harbor. Animals disturbed by project sound would be expected to avoid the area and use nearby higher-quality habitats.

In addition to the expected effects resulting from authorized Level B harassment, we anticipate that harbor porpoises and harbor seals may sustain some limited Level A harassment in the form of auditory injury. However, animals in these locations that experience PTS would likely only receive slight PTS, *i.e.,* minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by pile driving, *i.e.,* the low-frequency region below 2 kHz, not severe hearing impairment or impairment in the regions of greatest hearing sensitivity. If hearing impairment occurs, it is most likely that the affected animal would

lose a few decibels in its hearing sensitivity, which in most cases is not likely to meaningfully affect its ability to forage and communicate with conspecifics. As described above, we expect that marine mammals would be likely to move away from a sound source that represents an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice through use of soft start.

The project also is not expected to have significant adverse effects on affected marine mammals' habitat. The project activities would not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish or invertebrates to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities, the relatively small area of the habitat that may be affected, and the availability of nearby habitat of similar or higher value, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences. While there are haulouts for pinnipeds in the area, these locations are some distance from the actual project site. According to WDFW's atlas of seal and sea lion haulout sites (Jeffries *et al.,* 2000), all haulouts in Grays Harbor are associated with tidal flats and at high tide it is assumed that these animals are foraging elsewhere in the estuary. The nearest documented harbor seal haulout site to the Project site is a low-tide haulout located 6 miles to the west of the project site. The nearest documented California sea lion haulout sites to the Project site are at the Westport Docks, approximately 13 miles west of the Project site near the entrance to Grays Harbor (Jeffries *et al.,* 2015), and another haulout observed in 1997 referred to as the mid-harbor flats located approximately 5.65 miles west of the Project site (WDFW, 2022). The nearest documented Steller sea lion haulout sites to the Project site are at Split Rock, 35 miles north of the entrance to Grays Harbor, and at the mouth of the Columbia River, 46 miles south of the entrance to Grays Harbor (Jeffries *et al.,* 2000). A few Steller sea lions may haul out on buoys near the Westport marina, located 13 miles west of the Project site, or at Westport docks, similar to California sea lions. While repeated exposures of individuals to this pile driving activity could cause limited Level A harassment in harbor seals and Level B harassment in seals and sea lions, they are unlikely to considerably disrupt foraging behavior or result in significant decrease in fitness, reproduction, or survival for the affected individuals.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- Any Level A harassment exposures (*i.e.,* to harbor porpoise and harbor seals, only) are anticipated to result in slight PTS (*i.e.,* of a few decibels), within the lower frequencies associated with pile driving;
- The anticipated incidents of Level B harassment would consist of, at worst, temporary modifications in behavior that would not result in fitness impacts to individuals;
- The ensonifed areas from the project is very small relative to the overall habitat ranges of all species and stocks;
- Repeated exposures of pinnipeds to this pile driving activity could cause slight Level A harassment in seals and Level B harassment in seals and sea lion species, but are unlikely to considerably disrupt foraging behavior or result in significant decrease in fitness, reproduction, or survival for the affected individuals. In all, there would be no adverse impacts to the stocks as a whole; and
- The proposed mitigation measures are expected to reduce the effects of the specified activity to the level of least practicable adverse impact.

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 proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals 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.

Table 18 demonstrates the number of instances in which individuals of a given species could be exposed to received noise levels that could cause take of marine mammals. Our analysis shows that less than 2 percent of all but one stock could be taken by harassment. While the percentage of stock taken from the Oregon/Washington coastal stock of harbor seal appears to be high (74.5 percent), in reality the number of individuals taken by harassment would be far less. Instead, it is more likely that there will be multiple takes of a smaller number of individuals over multiple days, lowering the number of individuals taken. The range of the Oregon/Washington coastal stock includes harbor seals from the California/Oregon border to Cape Flattery on the Olympic Peninsula of Washington, which is a distance of approximately 150 miles (240 km) (Carretta *et al.,* 2002). Additionally, there are over 150 Oregon/Washington coastal harbor seal stock haulouts along the outer Washington coast spanning from the Columbia River north to Tatoosh Island on the northwestern tip of the Olympic Peninsula (Scordino, 2010). This figure does not include many additional haulout sites found along the Oregon coast. Given the expansive range of the Oregon/Washington coastal stock along with the numerous haulouts that have been documented on the Washington coast, it is unlikely that the number of individuals taken, limited largely to the pool of seals present in Grays Harbor, would exceed ⅓ of the stock. In consideration of various factors described above, we have preliminarily determined that numbers of individuals taken would comprise less than one-third of the best available population abundance estimate of the Oregon/Washington coastal stock of harbor seal.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the 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 ESA of 1973 (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.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to AGP for conducting pile driving activities at the Port from July 16, 2024 through July 15, 2025, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed pile driving by AGP. We also request comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, one-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activity section of this notice is planned; or (2) the activities as described in the Description of Proposed Activity section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

1. An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

2. A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: April 1, 2024.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–07338 Filed 4–5–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket No. DARS–2024–0012]

Acquisition of Items for Which Federal Prison Industries Has a Significant Market Share

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: DoD is publishing the updated annual list of product categories for which the Federal Prison Industries' share of the DoD market is greater than five percent.

DATES: April 26, 2024.

FOR FURTHER INFORMATION CONTACT: Greg Snyder, 571–217–4920.

SUPPLEMENTARY INFORMATION: On November 19, 2009, a final rule was published in the **Federal Register** at 74 FR 59914, which amended the Defense Federal Acquisition Regulation Supplement (DFARS) subpart 208.6 to implement section 827 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181). Section 827 changed DoD competition requirements for purchases from Federal Prison Industries, Inc. (FPI) by requiring DoD to publish an annual list of product categories for which FPI's share of the DoD market was greater than five percent, based on the most recent fiscal year data available. Product categories on the current list, and the products within each identified product category, must be procured using competitive or fair opportunity procedures in accordance with DFARS 208.602–70.

The Principal Director, Defense Pricing and Contracting (DPC), issued a memorandum dated March 26, 2024, that provided the current list of product categories for which FPI's share of the DoD market is greater than five percent based on fiscal year 2023 data from the Federal Procurement Data System. The product categories to be competed effective April 26, 2024, are the following:

- 3990 (Miscellaneous Materials Handling Equipment)
- 7110 (Office Furniture)
- 7210 (Household Furnishings)
- 8105 (Bags and Sacks)
- 8410 (Outerwear, Women's)
- 8415 (Clothing, Special Purpose)
- 8420 (Underwear and Nightwear, Men's)

The DPC memorandum with the current list of product categories for which FPI has a significant market share is posted at *https://www.acq.osd.mil/dpap/policy/policyvault/USA000443-24-DPC.pdf.*

The statute, as implemented, also requires DoD to—

(1) Include FPI in the solicitation process for these items. A timely offer from FPI must be considered and award procedures must be followed in accordance with existing policy at Federal Acquisition Regulation (FAR) 8.602(a)(4)(ii) through (v);

(2) Continue to conduct acquisitions, in accordance with FAR subpart 8.6, for items from product categories for which FPI does not have a significant market

share. FAR 8.602 requires agencies to conduct market research and make a written comparability determination, at the discretion of the contracting officer. Competitive (or fair opportunity) procedures are appropriate if the FPI product is not comparable in terms of price, quality, or time of delivery; and

(3) Modify the published list if DoD subsequently determines that new data requires adding or omitting a product category from the list.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2024–07405 Filed 4–5–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Diversity and Inclusion; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Advisory Committee on Diversity and Inclusion (DACODAI) will occur.

DATES: DACODAI will hold an open-to-the-public meeting—Thursday, May 2, 2024, from 9:00 a.m. to 12:20 p.m. Eastern Daylight Time (EDT) and Friday, May 3, 2024, from 9:00 a.m. to 12:20 p.m. EDT.

ADDRESSES: The in-person meeting will be held at the Association of the United States Army Conference and Event Center, 2425 Wilson Blvd., Arlington, VA 22201. In addition, the meeting will be held via videoconference. Participant access information will be provided after registering.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Raguindin, (571) 645–6952 (voice), *osd.mc-alex.ousd-p-r.mbx.dacodai@mail.mil* (email). Additional information is also available at the DACODAI website: *https://www.dhra.mil/DACODAI.*

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of chapter 10 of title 5, United States Code (U.S.C.) (commonly known as the ''Federal Advisory Committee Act'' or ''FACA''), 5 U.S.C. 552b (commonly known as the ''Government in the Sunshine Act''), and 41 CFR 102–3.140 and 102–3.150.

Availability of Materials for the Meeting: Additional information, including the agenda or any updates to the agenda, is available on the DACODAI website: *https://www.dhra.mil/DACODAI/.* Materials presented in the meeting may also be obtained on the DACODAI website.

Purpose of the Meeting: The purpose of the meeting is for the DACODAI to receive briefings and have discussions on topics related to racial/ethnic diversity, inclusion, and equal opportunity within the Armed Forces of the United States.

Agenda: Thursday, May 2, 2024, from 9:00 a.m. to 12:20 p.m. EDT. The DACODAI will begin in an open session with opening remarks by Ms. Shirley Raguindin, the Designated Federal Officer (DFO) and the DACODAI's Chair, Gen. (Ret.) Lester Lyles. The DACODAI will receive the following briefings: (1) the Center for Naval Analysis by Dr. Elizabeth Clelan, Research Program Director, Navy Human Resources Program; (2) the Office of Force Resiliency (OFR), Violence Prevention Cell and Office of People Analytics—Command Climate Assessment and the Defense Organizational Climate Survey by Dr. Rachel Clare, Evaluation Specialist, OFR, and Dr. Ashlea Klahr, Acting Director, DoD OPA; and (3) the Department of Defense Talent Management by Mr. Brynt Parmeter, Chief Talent Management Officer, OUSD(P&R). Closing remarks will be provided by the Chair, Gen. (Ret.) Lyles, and Ms. Shirley Raguindin, DACODAI DFO, will adjourn the meeting.

Friday, May 3, 2024, from 9:00 a.m. to 12:20 p.m. EDT, the DACODAI will begin in an open session with opening remarks by Ms. Shirley Raguindin, the DFO and the DACODAI's Chair, Gen. (Ret.) Lester Lyles. The DACODAI will receive the following briefings: (1) the Central Intelligence Agency (CIA) Strategy by Mr. Jerry Laurienti, Chief Diversity and Inclusion Officer, CIA, Ms. Helene Diiorio, CIA Director's External Communications; (2) RAND Studies: (1) Impact of Eligibility Requirements and Propensity to Serve on Demographic Representation in the Department of the Air Force by Dr. Louse Mariano, Senior Statistician, RAND; and (2) Envisioning a New Racial Grievance Reporting and Redress System for the U.S. Military Focused Analysis on the Department of the Air Force by Dr. Dwayne Butler, Senior Management Scientist, Professor of Policy Analyses, Pardee RAND Graduate School; (3) DoD Inspector General (DoDIG) Military Leadership Diversity Commission Recap of Military Service Component's Progress by Ms. Aimee Hughes, Project Manager, Evaluations, DoDIG. Closing remarks will be provided by the Chair, Gen. (Ret.) Lyles, and Ms. Shirley Raguindin, DACODAI DFO, will adjourn the meeting.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 and 102–3.150, this meeting is open to the public from 9:00 a.m. to 12:20 p.m. EDT on May 2, 2024; and from 9:00 a.m. to 12:20 p.m. on May 3, 2024 EDT. The meeting will be held via videoconference. The number of participants is limited and is on a first-come basis. All members of the public who wish to participate must register by contacting DACODAI at *osd.mc-alex.ousd-p-r.mbx.dacodai@mail.mil* or by contacting Ms. Shirley Raguindin at (571) 645–6952 no later than Friday, April 26, 2024, (by 5:00 p.m. EDT). Once registered, the web address and/or audio number will be provided.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Ms. Shirley Raguindin at *osd.mc-alex.ousd-p-r.mbx.dacodai@mail.mil* or (571) 645–6952 no later than Friday, April 26, 2024, (by 5:00 p.m. EDT) so appropriate arrangements can be made.

Written Comments and Statements: Pursuant to 41 CFR 102–3.140(c) and 41 CFR 102–3.105(j) and section 10(a)(3) of the FACA, the public or interested parties may submit written statements to the DACODAI membership about the DACODAI's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meetings of the DACODAI. All written statements shall be submitted to the DFO, Ms. Shirley Raguindin, for the DACODAI, who will ensure that the written statements are provided to the membership for their consideration. All written statements will be submitted to mailing address, 4800 Mark Center Drive, Suite 06E22, Alexandria, VA 22350. Members of the public interested in making an oral statement must submit a written statement. If a statement is not received by Friday, April 26, 2024, it may not be provided to or considered by the DACODAI during this biannual business meeting. After reviewing the written statements, the Chair and the DFO will determine if the requesting person(s) can make an oral presentation. The DFO will review all timely submissions with the DACODAI Chair and ensure they are provided to the members of the DACODAI.

Members of the public may also email written statements to *osd.mc-alex.ousd-p-r.mbx.dacodai@mail.mil.* Written statements pertaining to the meeting agenda for the DACODAI's meeting on May 2, 2024, must be submitted no later than 5:00 p.m. EDT, Friday, April 26, 2024, to be considered by the DACODAI membership prior to its May 2, 2024, meeting.

Dated: April 2, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–07403 Filed 4–5–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2023–HQ–0007]

Submission for OMB Review; Comment Request

AGENCY: Department of the Navy (DON), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by May 8, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Reginald Lucas, (571) 372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: NAVSUP Enterprise Web Portal Vendor Registration and Modification Requests; OMB Control Number 0703–EPWP.

Type of Request: Existing collection in use without an OMB Control Number.

Naval Supply Systems Command (NAVSUP) Enterprise Web Registration

Number of Respondents: 200.
Responses per Respondent: 1.
Annual Responses: 200.
Average Burden per Response: 5 minutes.
Annual Burden Hours: 17.

NAVSUP Enterprise Web Modification Requests

Number of Respondents: 189.
Responses per Respondent: 67.
Annual Responses: 12,663.
Average Burden per Response: 15 minutes.
Annual Burden Hours: 3,166.

Total

Number of Respondents: 389.
Annual Responses: 12,863.
Annual Burden Hours: 3,183.

Needs and Uses: The NAVSUP Enterprise Web Portal is the combined Web Presence for the NAVSUP. NAVSUP Enterprise Web is used primarily by Military Service Members and DoD Civilian Employees. In limited circumstances, information is collected from members of the public for vendors based in the continental United States (CONUS) doing business with the Navy and Foreign National Employees at locations outside of the continental United States (OCONUS). Per DoD policy contained in DoD Instruction 8510.01 ''Risk Management Framework for DoD Systems'' and Navy policy from DON Chief Information Officer Memorandum of 20 May, 2014 ''Implementation of the Risk Management Framework for DoD Information Technology,'' NAVSUP is required to implement standard cybersecurity requirements and cyberspace operational risk management functions based on the National Institute of Standard Technology security controls. Access Control and Identification and Authorization controls require NAVSUP to collect information needed to identify users of NAVSUP Enterprise Web applications and ensure appropriate roles for use. The WorkFlow Pro Vendor application allows DON vendors, under a contract agreement, to submit their post award modification requests to NAVSUP Civilian or Military contracting officers. Foreign National employees OCONUS access the portal via their DoD standard Common Access Card (CAC) or by a User Token card. They must first register their CAC or User Token Card via an online form linked to a master repository maintained by NAVSUP and provide their name, work email address and phone number, Country of Citizenship, and organizational affiliation.

Affected Public: Business or other for-profit; individuals or households.

Frequency: As required.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Mr. Reginald Lucas.

Requests for copies of the information collection proposal should be sent to Mr. Lucas at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: April 3, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–07410 Filed 4–5–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an in-person/virtual hybrid meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES:

Tuesday, May 7, 2024; 9:00 a.m.–3:30 p.m. PDT.

Wednesday, May 8, 2024; 9:00 a.m.–3:30 p.m. PDT.

ADDRESSES: This hybrid meeting will be in-person at the Three Rivers Convention Center (address below) and virtually. To receive the virtual access information and call-in number, please contact the Deputy Designated Federal Officer, Lindsay Somers, at the telephone number or email listed below at least five days prior to the meeting. Three Rivers Convention Center, 7016 West Grandridge Boulevard, Kennewick, WA 99336.

FOR FURTHER INFORMATION CONTACT: Lindsay Somers, Deputy Designated

Federal Officer, U.S. Department of Energy, Hanford Office of Communications, Richland Operations Office, P.O. Box 550, Richland, WA 99354; Phone: (509) 376–0923; or Email: *lindsay.somers@rl.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to provide advice and recommendations concerning the following EM site-specific issues: clean-up activities and environmental restoration; waste and nuclear materials management and disposition; excess facilities; future land use and long-term stewardship. The Board may also be asked to provide advice and recommendations on any EM program components.

Tentative Agenda:

- Tri-Party Agreement Agencies' Updates
- Virtual Tour
- Consideration of Draft Transuranic Waste Management Advice
- Board Subcommittee Reports
- Board Round Robin
- Discussion of Board Business

Public Participation: The meeting is open to the public. The EM SSAB, Hanford, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Lindsay Somers at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or within five business days after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Lindsay Somers. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available at the following website: *http://www.hanford.gov/page.cfm/hab/FullBoardMeetingInformation.*

Signing Authority: This document of the Department of Energy was signed on April 3, 2024, by David Borak, Deputy Committee Management Officer, 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 April 3, 2024.

Treena V. Garrett,

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

[FR Doc. 2024–07378 Filed 4–5–24; 8:45 am]

BILLING CODE 6450–01–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:

Filings Instituting Proceedings

Docket Numbers: PR24–62–000.
Applicants: Delaware Link Ventures, LLC.
Description: 284.123(g) Rate Filing: Baseline new SOC to be effective 4/1/2024.
Filed Date: 4/1/24.
Accession Number: 20240401–5581.
Comment Date: 5 p.m. ET 4/22/24.
284.123(g) Protest: 5 p.m. ET 5/31/24.

Docket Numbers: RP24–630–000.
Applicants: Alliance Pipeline L.P.
Description: 4(d) Rate Filing: Negotiated Rates—Various Apr 1 2024 Releases to be effective 4/1/2024.
Filed Date: 4/1/24.
Accession Number: 20240401–5397.
Comment Date: 5 p.m. ET 4/15/24.

Docket Numbers: RP24–631–000.
Applicants: Texas Eastern Transmission, LP.
Description: 4(d) Rate Filing: Negotiated Rates—Sequent 911941 and 911942 eff 4–1–24 to be effective 4/1/2024.
Filed Date: 4/1/24.
Accession Number: 20240401–5444.
Comment Date: 5 p.m. ET 4/15/24.

Docket Numbers: RP24–632–000.
Applicants: Egan Hub Storage, LLC.
Description: 4(d) Rate Filing: Six One Commodities—contract 310845 to be effective 4/1/2024.
Filed Date: 4/1/24.
Accession Number: 20240401–5486.
Comment Date: 5 p.m. ET 4/15/24.

Docket Numbers: RP24–633–000.
Applicants: Texas Eastern Transmission, LP.
Description: 4(d) Rate Filing: Negotiated Rates—Hartree 911943 and 911944 to be effective 4/1/2024.
Filed Date: 4/1/24.
Accession Number: 20240401–5527.
Comment Date: 5 p.m. ET 4/15/24.

Docket Numbers: RP24–634–000.
Applicants: ANR Pipeline Company.
Description: 4(d) Rate Filing: ANR April 1 Negotiated Rate Agreements to be effective 4/1/2024.
Filed Date: 4/1/24.
Accession Number: 20240401–5534.
Comment Date: 5 p.m. ET 4/15/24.

Docket Numbers: RP24–635–000.
Applicants: Columbia Gulf Transmission, LLC.
Description: 4(d) Rate Filing: Neg Rate NC Amendment—Kaiser 174463–7 to be effective 4/1/2024.
Filed Date: 4/1/24.
Accession Number: 20240401–5557.
Comment Date: 5 p.m. ET 4/15/24.

Docket Numbers: RP24–636–000.
Applicants: Texas Gas Transmission, LLC.
Description: Compliance filing: Compliance Filing in CP21–467 (Henderson County Customer Lateral) to be effective 5/1/2024.
Filed Date: 4/1/24.
Accession Number: 20240401–5580.
Comment Date: 5 p.m. ET 4/15/24.

Docket Numbers: RP24–637–000.
Applicants: Columbia Gas Transmission, LLC.
Description: 4(d) Rate Filing: TCO Negotiated Rate Agreements Eff. 4.1.24 to be effective 4/1/2024.
Filed Date: 4/1/24.
Accession Number: 20240401–5584.
Comment Date: 5 p.m. ET 4/15/24.

Docket Numbers: RP24–638–000.
Applicants: Texas Gas Transmission, LLC.
Description: 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Jay-Bee 34446 to Spotlight 57844) to be effective 4/1/2024.
Filed Date: 4/1/24.
Accession Number: 20240401–5594.
Comment Date: 5 p.m. ET 4/15/24.

Docket Numbers: RP24–639–000.
Applicants: Texas Gas Transmission, LLC.
Description: 4(d) Rate Filing: Amendment to Neg Rate Agmt (LGE 34951) to be effective 4/1/2024.
Filed Date: 4/1/24.
Accession Number: 20240401–5597.
Comment Date: 5 p.m. ET 4/15/24.

Docket Numbers: RP24–640–000.
Applicants: Texas Gas Transmission, LLC.
Description: 4(d) Rate Filing: Amendment to Neg Rate Agmt (Midwest 35495) to be effective 4/1/2024.

Filed Date: 4/1/24.
Accession Number: 20240401–5600.
Comment Date: 5 p.m. ET 4/15/24.
Docket Numbers: RP24–641–000.
Applicants: Texas Gas Transmission, LLC.
Description: 4(d) Rate Filing: Amendment to Neg Rate Agmt (PEAK 34950) to be effective 4/1/2024.
Filed Date: 4/1/24.
Accession Number: 20240401–5606.
Comment Date: 5 p.m. ET 4/15/24.
Docket Numbers: RP24–642–000.
Applicants: Texas Gas Transmission, LLC.
Description: 4(d) Rate Filing: Amendment to Neg Rate Agmt (Sabine 35030) to be effective 4/1/2024.
Filed Date: 4/1/24.
Accession Number: 20240401–5609.
Comment Date: 5 p.m. ET 4/15/24.
Docket Numbers: RP24–643–000.
Applicants: Texas Gas Transmission, LLC.
Description: 4(d) Rate Filing: Cap Rel Neg Rate Agmt (SIGECO 26787 to Tenaska 58004) to be effective 4/1/2024.
Filed Date: 4/1/24.
Accession Number: 20240401–5611.
Comment Date: 5 p.m. ET 4/15/24.
Docket Numbers: RP24–644–000.
Applicants: Texas Gas Transmission, LLC.
Description: 4(d) Rate Filing: Amendment to Neg Rate Agmt (SIGECO 35496) to be effective 4/1/2024.
Filed Date: 4/1/24.
Accession Number: 20240401–5614.
Comment Date: 5 p.m. ET 4/15/24.
Docket Numbers: RP24–645–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: 4(d) Rate Filing: Re-submission of Devon 51759 to be effective 4/1/2024.
Filed Date: 4/1/24.
Accession Number: 20240401–5619.
Comment Date: 5 p.m. ET 4/15/24.
Docket Numbers: RP24–646–000.
Applicants: Rager Mountain Storage Company LLC.
Description: 4(d) Rate Filing: ILPS FOSA Update to be effective 5/1/2024.
Filed Date: 4/1/24.
Accession Number: 20240401–5622.
Comment Date: 5 p.m. ET 4/15/24.
Docket Numbers: RP24–647–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: 4(d) Rate Filing: Cap Rel Neg Rate Agmts (FPL 41618, 41619 to Scona 57949, 57948) to be effective 4/1/2024.
Filed Date: 4/1/24.
Accession Number: 20240401–5623.
Comment Date: 5 p.m. ET 4/15/24.
Docket Numbers: RP24–648–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Osaka 46426 to Texla 58054) to be effective 4/1/2024.
Filed Date: 4/1/24.
Accession Number: 20240401–5624.
Comment Date: 5 p.m. ET 4/15/24.
Docket Numbers: RP24–649–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: 4(d) Rate Filing: Cap Rel Neg Rate Agmts (WSGP to Tenaska) to be effective 4/1/2024.
Filed Date: 4/1/24.
Accession Number: 20240401–5628.
Comment Date: 5 p.m. ET 4/15/24.
Docket Numbers: RP24–650–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: 4(d) Rate Filing: Cap Rel Neg Rate Agmts (JERA 46434, 46435 to EDF 57972, 57975) to be effective 4/1/2024.
Filed Date: 4/2/24.
Accession Number: 20240402–5003.
Comment Date: 5 p.m. ET 4/15/24.
Docket Numbers: RP24–651–000.
Applicants: Alliance Pipeline L.P.
Description: 4(d) Rate Filing: Alliance Housekeeping Filing to be effective 4/1/2024.
Filed Date: 4/2/24.
Accession Number: 20240402–5093.
Comment Date: 5 p.m. ET 4/15/24.
Docket Numbers: RP24–652–000.
Applicants: Rover Pipeline LLC.
Description: 4(d) Rate Filing: Summary of Negotiated Rate Capacity Release Agreements 4–2–2024 to be effective 4/1/2024.
Filed Date: 4/2/24.
Accession Number: 20240402–5101.
Comment Date: 5 p.m. ET 4/15/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP24–363–001.
Applicants: Equitrans, L.P.
Description: Compliance filing: Crediting of Revenue Penalty Threshold—Compliance Filing to be effective 3/1/2024.
Filed Date: 4/2/24.
Accession Number: 20240402–5129.
Comment Date: 5 p.m. ET 4/15/24.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: April 2, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07419 Filed 4–5–24; 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 Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL24–95–000; QF16–365–004; QF16–379–004; QF16–381–003; QF16–382–003; QF16–369–004; QF21–661–001; QF16–366–003; QF24–367–001; QF24–368–001.
Applicants: Maple Road Solar LLC, Clear Lake Solar LLC, Windham Solar LLC, Windham Solar LLC, Windham Solar LLC, Windham Solar LLC, Windham Solar LLC, Windham Solar LLC, ALLCO FINANCE LIMITED.
Description: Petition for Enforcement of ALLCO Finance Limited.
Filed Date: 3/27/24.
Accession Number: 20240327–5313.
Comment Date: 5 p.m. ET 4/17/24.
Docket Numbers: EL24–96–000.
Applicants: NATURAL RESOURCES DEFENSE COUNCIL, Sierra Club,

Sustainable FERC Project, Sierra Club; Natural Resources Defense Council, Inc.; and *Sustainable FERC Project* v. *Southwest Power Pool, Inc.*

Description: Complaint of Sierra Club, et al. v. *Southwest Power Pool, Inc.*

Filed Date: 4/1/24.

Accession Number: 20240401–5239.

Comment Date: 5 p.m. ET 4/22/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–1863–008.

Applicants: Ingenco Wholesale Power, L.L.C.

Description: Compliance filing: Informational Filing on Reactive Tariff ER20–1863 and Request for Waiver to be effective N/A.

Filed Date: 4/1/24.

Accession Number: 20240401–5001.

Comment Date: 5 p.m. ET 4/22/24.

Docket Numbers: ER24–800–001.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.17(b): Horus Alabama 1 (Alawest 1 Solar) LGIA Deficiency Response to be effective 12/15/2023.

Filed Date: 4/1/24.

Accession Number: 20240401–5389.

Comment Date: 5 p.m. ET 4/22/24.

Docket Numbers: ER24–801–001.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.17(b): Horus Alabama 1 (Alawest 2 Solar) LGIA Deficiency Response to be effective 12/15/2023.

Filed Date: 4/1/24.

Accession Number: 20240401–5395.

Comment Date: 5 p.m. ET 4/22/24.

Docket Numbers: ER24–802–001.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.17(b): Yellow Creek Solar LGIA Deficiency Response to be effective 12/15/2023.

Filed Date: 4/1/24.

Accession Number: 20240401–5418.

Comment Date: 5 p.m. ET 4/22/24.

Docket Numbers: ER24–994–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Response to Deficiency Letter to be effective 3/25/2024.

Filed Date: 3/29/24.

Accession Number: 20240329–5443.

Comment Date: 5 p.m. ET 4/19/24.

Docket Numbers: ER24–995–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Response to Deficiency Letter to be effective 3/26/2024.

Filed Date: 3/29/24.

Accession Number: 20240329–5431.

Comment Date: 5 p.m. ET 4/19/24.

Docket Numbers: ER24–1001–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Response to Deficiency Letter to be effective 3/26/2024.

Filed Date: 3/29/24.

Accession Number: 20240329–5424.

Comment Date: 5 p.m. ET 4/19/24.

Docket Numbers: ER24–1035–001.

Applicants: 20SD 8me LLC.

Description: Tariff Amendment: 20SD 8me LLC Supplement to MBR Application to be effective 2/1/2024.

Filed Date: 4/1/24.

Accession Number: 20240401–5356.

Comment Date: 5 p.m. ET 4/11/24.

Docket Numbers: ER24–1170–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: AMD of Amended ISA, SA No. 3634; S14 in Docket ER24–1170 to be effective 4/2/2024.

Filed Date: 4/1/24.

Accession Number: 20240401–5320.

Comment Date: 5 p.m. ET 4/22/24.

Docket Numbers: ER24–1660–000.

Applicants: Oak Leaf Solar XVIII LLC.

Description: Baseline eTariff Filing: Oak Leaf Solar XVIII LLC (DIA 7) MBR Tariff to be effective 5/29/2024.

Filed Date: 3/29/24.

Accession Number: 20240329–5379.

Comment Date: 5 p.m. ET 4/19/24.

Docket Numbers: ER24–1661–000.

Applicants: Oak Leaf Solar XXII LLC.

Description: Baseline eTariff Filing: Oak Leaf Solar XXII LLC (DIA 1) MBR Tariff to be effective 5/29/2024.

Filed Date: 3/29/24.

Accession Number: 20240329–5381.

Comment Date: 5 p.m. ET 4/19/24.

Docket Numbers: ER24–1662–000.

Applicants: Oak Leaf Solar XXVI LLC.

Description: Baseline eTariff Filing: Oak Leaf Solar XXVI LLC (DIA 2) MBR Tariff to be effective 5/29/2024.

Filed Date: 3/29/24.

Accession Number: 20240329–5387.

Comment Date: 5 p.m. ET 4/19/24.

Docket Numbers: ER24–1663–000.

Applicants: Oak Leaf Solar 100 LLC.

Description: Baseline eTariff Filing: Oak Leaf Solar 100 LLC MBR Tariff to be effective 5/29/2024.

Filed Date: 3/29/24.

Accession Number: 20240329–5391.

Comment Date: 5 p.m. ET 4/19/24.

Docket Numbers: ER24–1664–000.

Applicants: Airport Solar I, LLC.

Description: Baseline eTariff Filing: Airport Solar I, LLC MBR Tariff to be effective 5/29/2024.

Filed Date: 3/29/24.

Accession Number: 20240329–5396.

Comment Date: 5 p.m. ET 4/19/24.

Docket Numbers: ER24–1665–000.

Applicants: Oak Leaf Solar 56 LLC.

Description: Baseline eTariff Filing: Oak Leaf Solar 56 LLC MBR Tariff to be effective 5/29/2024.

Filed Date: 3/29/24.

Accession Number: 20240329–5398.

Comment Date: 5 p.m. ET 4/19/24.

Docket Numbers: ER24–1666–000.

Applicants: Basin Electric Power Cooperative.

Description: § 205(d) Rate Filing: Submission of Revised Wholesale Power Contract FERC Rate Schedule No. 17 to be effective 12/31/9998.

Filed Date: 3/29/24.

Accession Number: 20240329–5399.

Comment Date: 5 p.m. ET 4/19/24.

Docket Numbers: ER24–1667–000.

Applicants: Morris Ridge Solar Energy Center, LLC.

Description: Baseline eTariff Filing: 2024–03–29 Initial Market-Based Rate Petition—Morris Ridge Solar Energy Center to be effective 5/29/2024.

Filed Date: 3/29/24.

Accession Number: 20240329–5419.

Comment Date: 5 p.m. ET 4/19/24.

Docket Numbers: ER24–1668–000.

Applicants: NorthWestern Corporation.

Description: § 205(d) Rate Filing: Single-Issue Depreciation Filing to be effective 1/1/2024.

Filed Date: 3/29/24.

Accession Number: 20240329–5457.

Comment Date: 5 p.m. ET 4/19/24.

Docket Numbers: ER24–1669–000.

Applicants: Duke Energy Progress, LLC.

Description: § 205(d) Rate Filing: Ministerial Revisions to Rate Schedule No. 199 to be effective 6/1/2024.

Filed Date: 4/1/24.

Accession Number: 20240401–5250.

Comment Date: 5 p.m. ET 4/22/24.

Docket Numbers: ER24–1670–000.

Applicants: Dynasty Power Inc.

Description: Compliance filing: Cost Justification Regarding Certain WECC Spot Market Sales 2024 to be effective N/A.

Filed Date: 4/1/24.

Accession Number: 20240401–5294.

Comment Date: 5 p.m. ET 4/22/24.

Docket Numbers: ER24–1671–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: SCE 2024 TACBAA Update to be effective 6/1/2024.

Filed Date: 4/1/24.

Accession Number: 20240401–5327.

Comment Date: 5 p.m. ET 4/22/24.

Docket Numbers: ER24–1672–000.

Applicants: Duke Energy Carolinas, LLC.

Description: § 205(d) Rate Filing: Revisions to Joint OATT Formula Transmission Rates-Storm Reserve Due to 2020–23 to be effective 6/1/2024.

Filed Date: 4/1/24.

Accession Number: 20240401–5332.

Comment Date: 5 p.m. ET 4/22/24.

Docket Numbers: ER24–1674–000.

Applicants: Orange and Rockland Utilities, Inc.

Description: § 205(d) Rate Filing: O&R Undergrounding 2024 to be effective 4/1/2024.

Filed Date: 4/1/24.

Accession Number: 20240401–5392.

Comment Date: 5 p.m. ET 4/22/24.

Docket Numbers: ER24–1675–000.

Applicants: Public Service Company of New Mexico.

Description: § 205(d) Rate Filing: Annual Real Power Loss Factor Filing for 2024 to be effective 6/1/2024.

Filed Date: 4/1/24.

Accession Number: 20240401–5400.

Comment Date: 5 p.m. ET 4/22/24.

Docket Numbers: ER24–1676–000.

Applicants: MEMS Industrial Supply LLC.

Description: Baseline eTariff Filing: Baseline new to be effective 4/2/2024.

Filed Date: 4/1/24.

Accession Number: 20240401–5429.

Comment Date: 5 p.m. ET 4/22/24.

Docket Numbers: ER24–1677–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2024–04–01_SA 4271 NIPSCO-Ridgeway Power GIA (J1358) to be effective 6/1/2024.

Filed Date: 4/1/24.

Accession Number: 20240401–5470.

Comment Date: 5 p.m. ET 4/22/24.

Docket Numbers: ER24–1678–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of WMPA, SA No. 5826; AF2–215 re: Withdrawal to be effective 6/3/2024.

Filed Date: 4/1/24.

Accession Number: 20240401–5533.

Comment Date: 5 p.m. ET 4/22/24.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 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.

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Dated: April 1, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07322 Filed 4–5–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1641–000]

Fuse Energy NY LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Fuse Energy NY 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 April 22, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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contact OPP at (202) 502–6595 or *OPP@ferc.gov*.

Dated: April 1, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07319 Filed 4–5–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1657–000]

McNair Creek Hydro Limited Partnership; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of McNair Creek Hydro Limited Partnership'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 April 22, 2024.

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.

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Dated: April 1, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07315 Filed 4–5–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1662–000]

Oak Leaf Solar XXVI LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Oak Leaf Solar XXVI 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 April 22, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and

others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: April 1, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07312 Filed 4–5–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC24–65–000.
Applicants: Rockland Capital.
Description: Application for Authorization Under Section 203 of the Federal Power Act of Eagle Point Power Generation LLC.
Filed Date: 3/29/24.
Accession Number: 20240329–5501.
Comment Date: 5 p.m. ET 4/19/24.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24–157–000.
Applicants: AES Westwing II ES, LLC.
Description: AES Westwing II ES, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 4/2/24.
Accession Number: 20240402–5030.
Comment Date: 5 p.m. ET 4/23/24.

Docket Numbers: EG24–158–000.
Applicants: AES ES Alamitos 2, LLC.
Description: AES ES Alamitos 2, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 4/2/24.
Accession Number: 20240402–5033.
Comment Date: 5 p.m. ET 4/23/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER24–201–001.
Applicants: Karbone Energy LLC.
Description: Compliance filing: Karbone Energy Amended Tariff Filing to be effective 11/1/2023.
Filed Date: 4/2/24.
Accession Number: 20240402–5181.
Comment Date: 5 p.m. ET 4/23/24.

Docket Numbers: ER24–1183–000.
Applicants: Fanfare Energy, LLC.
Description: Supplement to February 2, 2024 Fanfare Energy, LLC tariff filing.
Filed Date: 3/29/24.
Accession Number: 20240329–5496.
Comment Date: 5 p.m. ET 4/19/24.

Docket Numbers: ER24–1469–001.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Amendment to 4Q 2023 Membership re: Metadata Correction to be effective 12/31/2023.
Filed Date: 4/2/24.
Accession Number: 20240402–5023.
Comment Date: 5 p.m. ET 4/23/24.

Docket Numbers: ER24–1679–000.
Applicants: Eden Solar LLC.
Description: Baseline eTariff Filing: Eden Solar, LLC MBR Tariff to be effective 4/2/2024.
Filed Date: 4/1/24.
Accession Number: 20240401–5573.
Comment Date: 5 p.m. ET 4/22/24.

Docket Numbers: ER24–1680–000.
Applicants: Public Service Company of New Mexico.
Description: 205(d) Rate Filing: Subentity Reserve Sharing Agreement to be effective 4/1/2024.
Filed Date: 4/1/24.
Accession Number: 20240401–5589.
Comment Date: 5 p.m. ET 4/22/24.

Docket Numbers: ER24–1681–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Notice of Cancellation of WMPA, SA No. 5826; AF2–215 re: Withdrawal to be effective 6/3/2024.
Filed Date: 4/2/24.
Accession Number: 20240402–5109.
Comment Date: 5 p.m. ET 4/23/24.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES24–29–000.
Applicants: Southern Indiana Gas and Electric Company, d/b/a CenterPoint Energy Indiana South CenterPoint Energy.
Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Southern Indiana Gas and Electric Company, Inc.
Filed Date: 3/29/24.
Accession Number: 20240329–5500.
Comment Date: 5 p.m. ET 4/19/24.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 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.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: April 2, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07420 Filed 4–5–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1653–000]

MRP Pacifica Marketing LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of MRP Pacifica Marketing 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 April 22, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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Dated: April 1, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07317 Filed 4–5–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1651–000]

Renew Home VPP, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Renew Home VPP, 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 April 22, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: April 1, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07318 Filed 4–5–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1888–043]

York Haven Power Company, LLC; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC) regulations, 18 CFR part 380, Commission staff reviewed York Haven Power Company, LLC's (licensee) application for a non-capacity amendment of the license for the York Haven Hydroelectric Project No. 1888 and have prepared an Environmental Assessment (EA). The licensee proposes to amend its project license to reflect a change in the design of the nature-like fishway required by Article 401 of the project license, Pennsylvania

Department of Environmental Protection's Water Quality Certificate, and U.S. Fish and Wildlife Service's fishway prescription. The proposed design change would result in the construction of an inland nature-like fishway rather than the in-river fishway currently required by the license. The York Haven project is located in York, Dauphin, and Lancaster counties in south central Pennsylvania. The project is not located on federal lands.

The EA contains Commission staff's analysis of the potential environmental effects of the proposed change in nature-like fishway design, alternatives to the proposed action, and concludes that the proposed amendment, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The EA may be viewed on the Commission's website at *http://www.ferc.gov* using the ''elibrary'' link. Enter the docket number (P–1888) in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

For further information, contact Joy Kurtz at 202–502–6760 or *joy.kurtz@ferc.gov.*

Dated: April 2, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07417 Filed 4–5–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2535–129]

Dominion Energy South Carolina, Inc; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License.

b. *Project No.:* 2535–129.

c. *Date Filed:* October 27, 2023.

d. *Submitted By:* Dominion Energy South Carolina, Inc.

e. *Name of Project:* Stevens Creek Hydroelectric Project.

f. *Location:* The project is located at the confluence of Stevens Creek and the Savannah River, in Edgefield and McCormick Counties, South Carolina, and Columbia County, Georgia. The project occupies approximately 104 acres of Federal land administered by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Amy Bresnahan, Dominion Energy South Carolina, Inc., 220 Operation Way, Mail Code A221, Cayce, SC 29033–3712; (803) 217–9965; email—*Amy.Bresnahan@dominionenergy.com.*

i. *FERC Contact:* Jeanne Edwards at (202) 502–6181; or email at *jeanne.edwards@ferc.gov.*

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests and requests for cooperating status using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Stevens Creek Hydroelectric Project (P–2535–129).

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted but is not ready for environmental analysis.

l. *The Stevens Creek Project consists of these existing facilities:* (1) a 2,400-acre reservoir with a storage capacity of 23,699-acre-feet at a full pond elevation of 187.5 feet National Geodetic Vertical Datum 1929 (NGVD 29); (2) a dam consisting of, from the southern (Georgia) shore to the northern (South Carolina) shore (a) a 388-foot-long powerhouse intake, integral with the dam, protected by trashracks with 3.75-inch clear bar spacing, (b) a 102.5-foot-long non-overflow section with a top elevation of 198.54 feet NGVD 29, (c) an 85-foot-wide, 165.5-foot-long inoperable concrete gravity navigation lock, with a lock chamber that is 30-feet-wide, 150-feet-long, and has a 29-foot-lift, located between the powerhouse intake and spillway section, (d) a 1,000-foot-long, 5-foot-high flashboard section from the lock to the center of the spillway with a top elevation of 188.5 feet with the flashboards installed, (e) a 1,000 foot-long, 4-foot-high flashboard section from the center of the spillway to the South Carolina abutment with a top elevation of 187.5 feet with the flashboards installed, and (f) a 97-foot-long non-overflow section; (3) a 388-foot-long, 52-foot-wide, 57-foot-high three-story brick powerhouse, integral with the dam, containing eight vertical Francis generating units, each rated at 3,125 horsepower, a total generating capacity of 17.28 megawatts, and a total hydraulic capacity of 8,300 cubic feet per second; (4) generator leads from the powerhouse to a switchyard located approximately 100 feet from the powerhouse; and (5) ancillary equipment.

The Stevens Creek Project operates as a re-regulating project, mitigating the downstream effects of the routinely wide-ranging discharges from the upstream U.S. Army Corps of Engineers J. Strom Thurmond hydroelectric project. The Stevens Creek reservoir normally fluctuates between an elevation of 183.0 feet NGVD and 187.5 feet NGVD, using available storage

capacity to re-regulate flows released from Thurmond Dam.

m. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document (P–2535). For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll-free) or (202) 502–8659 (TTY).

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595, or *OPP@ferc.gov.*

o. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

p. *Procedural schedule and final amendments:* the application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Issue Scoping Document 1 for comments	June 2024.
Request Additional Information (if necessary)	August 2024.
Issue Scoping Document 2 (if necessary)	August 2024.
Issue Notice of Ready for Environmental Analysis	September 2024.

Dated: April 2, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07416 Filed 4–5–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1656–000]

Furry Creek Power Ltd.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Furry Creek Power Ltd.'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 April 22, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to

contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: April 1, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07316 Filed 4–5–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1663–000]

Oak Leaf Solar 100 LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Oak Leaf Solar 100 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 April 22, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: April 1, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07311 Filed 4–5–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1664–000]

Airport Solar I, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Airport Solar I, 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 April 22, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: April 1, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07310 Filed 4–5–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1667–000]

Morris Ridge Solar Energy Center, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Morris Ridge Solar Energy Center, 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 April 22, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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Dated: April 1, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07308 Filed 4–5–24; 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:

Filings Instituting Proceedings

Docket Numbers: RP24–618–000.

Applicants: Rockies Express Pipeline LLC.

Description: § 4(d) Rate Filing: REX 2024–03–29 Negotiated Rate Agreements and Amendment to be effective 4/1/2024.

Filed Date: 3/29/24.

Accession Number: 20240329–5281.

Comment Date: 5 p.m. ET 4/10/24.

Docket Numbers: RP24–619–000.

Applicants: East Tennessee Natural Gas, LLC.

Description: § 4(d) Rate Filing: 2024 ETNG Fuel Filing to be effective 5/1/2024.

Filed Date: 3/29/24.

Accession Number: 20240329–5298.

Comment Date: 5 p.m. ET 4/10/24.

Docket Numbers: RP24–620–000.

Applicants: Trailblazer Pipeline Company LLC.

Description: § 4(d) Rate Filing: TPC 2024–03–29 Fuel and L&U Reimbursement and Power Cost Tracker to be effective 5/1/2024.

Filed Date: 3/29/24.

Accession Number: 20240329–5383.

Comment Date: 5 p.m. ET 4/10/24.

Docket Numbers: RP24–621–000.

Applicants: Trailblazer Pipeline Company LLC.

Description: § 4(d) Rate Filing: TPC 2024–03–29 Negotiated Rate Agreement and Amendment to be effective 3/29/2024.

Filed Date: 3/29/24.

Accession Number: 20240329–5401.

Comment Date: 5 p.m. ET 4/10/24.

Docket Numbers: RP24–622–000.

Applicants: Northern Natural Gas Company.

Description: § 4(d) Rate Filing: 20240329 Negotiated Rate to be effective 4/1/2024.

Filed Date: 3/29/24.

Accession Number: 20240329–5417.

Comment Date: 5 p.m. ET 4/10/24.

Docket Numbers: RP24–623–000.

Applicants: Maritimes & Northeast Pipeline, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rates—Various Releases eff 4–1–24 to be effective 4/1/2024.

Filed Date: 4/1/24.

Accession Number: 20240401–5237.

Comment Date: 5 p.m. ET 4/15/24.

Docket Numbers: RP24–624–000.

Applicants: NEXUS Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—Various Releases eff 4–1–2024 to be effective 4/1/2024.

Filed Date: 4/1/24.

Accession Number: 20240401–5247.

Comment Date: 5 p.m. ET 4/15/24.

Docket Numbers: RP24–625–000.

Applicants: Eastern Gas Transmission and Storage, Inc.

Description: § 4(d) Rate Filing: EGTS—April 1, 2024 Negotiated Rate Agreements to be effective 4/1/2024.

Filed Date: 4/1/24.

Accession Number: 20240401–5262.

Comment Date: 5 p.m. ET 4/15/24.

Docket Numbers: RP24–626–000.

Applicants: Equitrans, L.P.

Description: § 4(d) Rate Filing: Negotiated Rate Capacity Release Agreements—4/1/2024 to be effective 4/1/2024.

Filed Date: 4/1/24.

Accession Number: 20240401–5267.

Comment Date: 5 p.m. ET 4/15/24.

Docket Numbers: RP24–627–000.

Applicants: Portland Natural Gas Transmission System.

Description: § 4(d) Rate Filing: Twin Eagle Neg Rate Agreement #294683 to be effective 4/1/2024.

Filed Date: 4/1/24.

Accession Number: 20240401–5275.

Comment Date: 5 p.m. ET 4/15/24.

Docket Numbers: RP24–628–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—Various Releases eff 4–1–24 to be effective 4/1/2024.

Filed Date: 4/1/24.

Accession Number: 20240401–5278.

Comment Date: 5 p.m. ET 4/15/24.

Docket Numbers: RP24–629–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Negotiated Rates—Various Releases eff 4–1–24 to be effective 4/1/2024.

Filed Date: 4/1/24.

Accession Number: 20240401–5290.

Comment Date: 5 p.m. ET 4/15/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: April 1, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07321 Filed 4–5–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1665–000]

Oak Leaf Solar 56 LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Oak Leaf Solar 56 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 April 22, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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Dated: April 1, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07309 Filed 4–5–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1660–000]

Oak Leaf Solar XVIII LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Oak Leaf Solar XVIII 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 April 22, 2024.

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In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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Dated: April 1, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07314 Filed 4–5–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24–88–000]

Rover Pipeline LLC; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Rover-Bulger Delivery Meter Station Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document, that will discuss the environmental impacts of the Rover—Bulger Delivery Meter Station Project involving construction and operation of facilities by Rover Pipeline LLC (Rover) in Smith Township, Washington County, Pennsylvania. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on May 2, 2024. Comments may be submitted in written form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on March 8, 2024, you will need to file those comments in Docket No. CP24–88–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

Rover provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas, Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using

eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP24–88–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Additionally, the Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or *OPP@ferc.gov.*

Summary of the Proposed Project

Rover proposes to construct, own, and operate a new pipeline delivery point interconnection, the Rover-Bulger Delivery Meter Station, entirely within Rover's existing Bulger Compressor Station in Washington County, Pennsylvania. The Rover-Bulger Delivery Meter Station Project would allow for delivery of natural gas to ETC Northeast Pipeline LLC's (ETC Northeast) cryogenic processing facility for processing and re-injection of the processed natural gas into Rover's pipeline via the existing Rover-Revolution Receipt Meter Station. According to Rover, the project's interconnection would allow delivery of up to 400,000 dekatherms of natural gas assets per day to ETC Northeast.

The Rover-Bulger Delivery Meter Station Project would consist of the following facilities:

- one-16-inch-diameter hot tap;
- one tap valve;
- two Ultrasonic Meter Skids;
- two flow control valves;
- a gas quality/measurement building;
- satellite communications; and
- associated interconnect piping.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 4.98 acres of land for the proposed delivery point interconnection facilities. Rover would use construction workspaces within the existing Bulger Compressor Station, which is 4.27 acres, and an existing 0.24-acre gravel parking lot adjacent to the Bulger Compressor Station. Rover would use 0.47 acre of existing permanent access road for access to the meter station. No new easements or additional land would be required for construction or operation of the project.

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed project under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- environmental justice;
- air quality and noise; and
- reliability and safety.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/Notice of Schedule* will be issued, which will open up an additional comment period. Staff will then prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary[2] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary''. For instructions on connecting to eLibrary, refer to the last page of this notice. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Section 1501.8.

implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] The environmental document for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP24–88–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

OR

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: April 2, 2024.

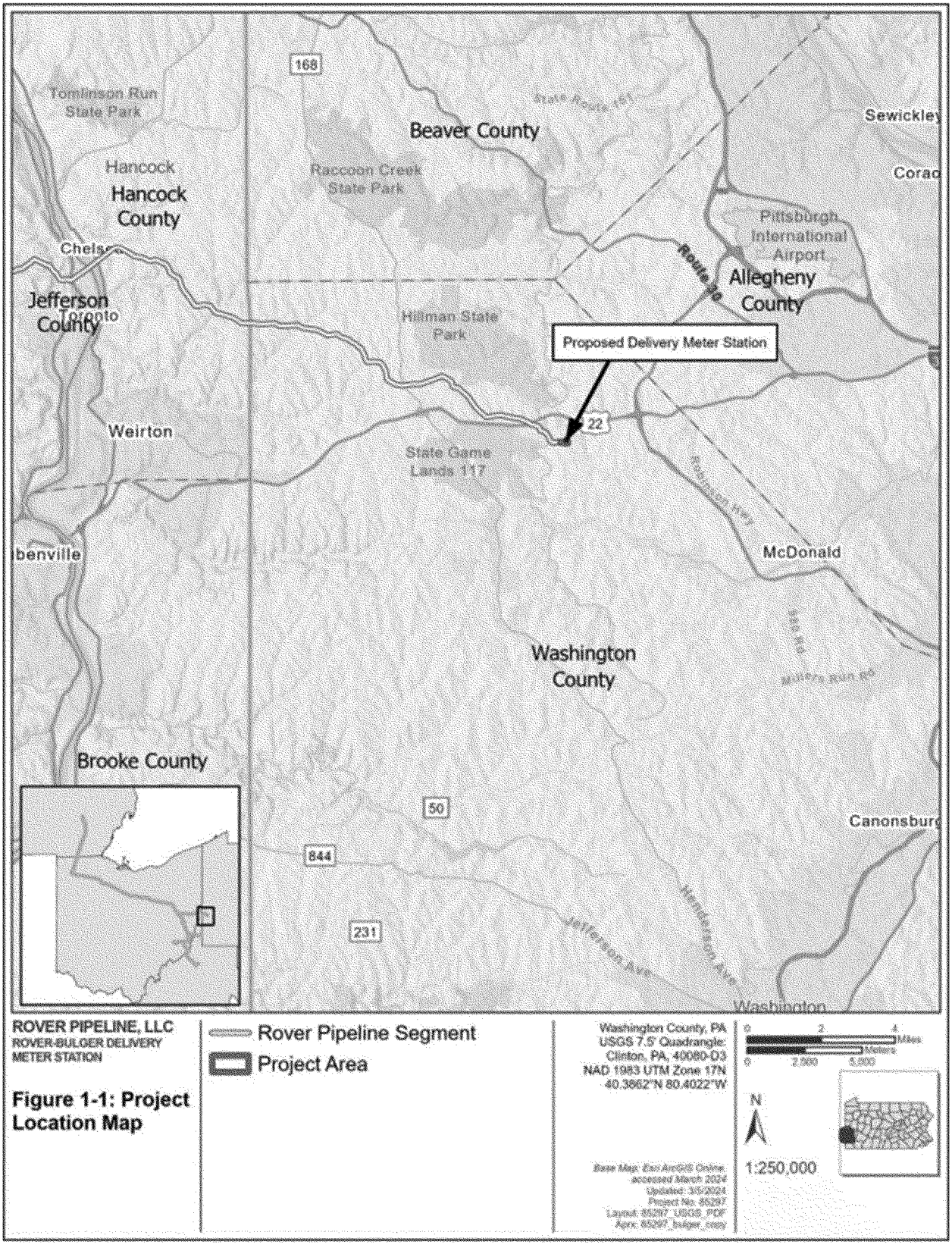
Debbie-Anne A. Reese,

Acting Secretary.

BILLING CODE 6717–01–P

Appendix 1

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.


Tomlinson Run State Park
168
Beaver County
State Route 151
Sewickley
Hancock
Hancock County
Raccoon Creek State Park
Corao
Pittsburgh International Airport
Route 30
Allegheny County
Jefferson County
Toronto
Hillman State Park
Proposed Delivery Meter Station
22
Weirton
State Game Lands 117
Robinson Hwy
McDonald
Washington County
Brooke County
50
844
231
Canonsburg
Jefferson Ave
Washington
ROVER PIPELINE, LLC
ROVER-BULGER DELIVERY METER STATION
Figure 1-1: Project Location Map
Rover Pipeline Segment
Project Area
Washington County, PA
USGS 7.5' Quadrangle:
Clinton, PA, 40080-D3
NAD 1983 UTM Zone 17N
40.3862°N 80.4022°W
Base Map: Esri ArcGIS Online, accessed March 2024
Updated: 3/5/2024
Project No. 85297
Layout: 85297_USGS_PDF
Aprx: 85297_bulger_copy
0 2 4 Miles
0 2,500 5,000 Meters
N
1:250,000

Appendix 2

MAILING LIST UPDATE FORM

Rover-Bulger Delivery Meter Station Project

Name_____

Agency_____

Address_____

City_____ **State**_____ **Zip Code**_____

☐ **Please update the mailing list**

☐ **Please remove my name from the mailing list**

FROM_____

_____

_____

_____

ATTN: OEP - Gas 5, PJ - 11.5
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

CP24-88-000 Rover-Bulger Delivery Meter Station Project

Staple or Tape Here

[FR Doc. 2024–07418 Filed 4–5–24; 8:45 am]
BILLING CODE 6717–01–C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1608–000]

Hardin Solar Energy III, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Hardin Solar Energy III, 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 April 22, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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Dated: April 1, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07320 Filed 4–5–24; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1661–000]

Oak Leaf Solar XXII LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Oak Leaf Solar XXII 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 April 22, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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Dated: April 1, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07313 Filed 4–5–24; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0295, OMB 3060–0281; FR ID 212141]

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before June 7, 2024. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0295.

Title: Section 90.607, Supplemental Information to be Furnished by Applicants for Facilities Under Subpart S.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions and state, local or tribal government.

Number of Respondents and Responses: 870 respondents; 870 responses.

Estimated Time per Response: .25 hours.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 308(b).

Total Annual Burden: 218 hours.

Total Annual Cost: No cost.

Needs and Uses: The information collection requirements contained in Section 90.607 require the affected applicants to submit a list of any radio facilities they hold within 40 miles of the base station transmitter site being applied for.

This information is used to determine if an applicant's proposed system is necessary in light of communications facilities it already owns. Such a determination helps the Commission to equitably distribute limited spectrum and prevents spectrum warehousing.

OMB Control Number: 3060–0281.

Title: Section 90.651, Supplemental Reports Required of Licensees Authorized Under this Subpart.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions and State, local or Tribal government.

Number of Respondents and Responses: 122 respondents; 203 responses.

Estimated Time per Response: .166 hours (10 minutes).

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

Total Annual Burden: 34 hours.

Total Annual Cost: No cost.

Needs and Uses: In a Report and Order (FCC 99–9, released February 19, 1999) in WT Docket 97–153, the Commission, under section 90.651, adopted a revised time frame for reporting the number of mobile units placed in operation from eight months to 12 months of the grant date of their license. The radio facilities addressed in this subpart of the rules are allocated on and governed by regulations designed to award facilities on a need basis determined by the number of mobile units served by each base station. This is necessary to avoid frequency hoarding by applicants. This rule section requires licensees to report the number of mobile units served via FCC Form 601. The Commission is extending this reporting requirement for a period of three years in the Office of the Management and Budget's (OMB) inventory.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2024–07396 Filed 4–5–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID: 212234]

Privacy Act of 1974; Matching Program

AGENCY: Federal Communications Commission.

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (''Privacy Act''), this document announces a new computer matching program the Federal Communications Commission (''FCC'' or ''Commission'' or ''Agency'') and the Universal Service Administrative Company (USAC) will conduct with the Georgia Department of Human Services, Department of Family and Children Services. The purpose of this matching program is to verify the eligibility of applicants to and subscribers of Lifeline, and the Affordable Connectivity Program (ACP), both of which are administered by USAC under the direction of the FCC. More information about these programs is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Written comments are due on or before May 8, 2024. This computer matching program will commence on May 8, 2024, and will conclude 18 months after the effective date.

ADDRESSES: Send comments to Elliot S. Tarloff, FCC, 45 L Street NE, Washington, DC 20554, or to *Privacy@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Elliot S. Tarloff at 202–418–0886 or *Privacy@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Lifeline program provides support for discounted broadband and voice services to low-income consumers. Lifeline is administered by the Universal Service Administrative Company (USAC) under FCC direction. Consumers qualify for Lifeline through proof of income or participation in a qualifying program, such as Medicaid, the Supplemental Nutritional Assistance Program (SNAP), Federal Public Housing Assistance, Supplemental Security Income (SSI), Veterans and Survivors Pension Benefit, or various Tribal-specific federal assistance programs.

In the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat. 1182, 2129–36 (2020), Congress created the Emergency Broadband Benefit Program, and directed use of the National Verifier to determine eligibility based on various criteria, including the qualifications for Lifeline (Medicaid, SNAP, etc.). EBBP provided $3.2 billion in monthly consumer discounts for broadband service and one-time provider reimbursement for a connected device (laptop, desktop computer or tablet). In the Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429, 1238–44 (2021) (codified at 47 U.S.C. 1751–52), Congress modified and extended EBBP, provided an additional $14.2 billion, and renamed it the Affordable Connectivity Program (ACP). A household may qualify for the ACP benefit under various criteria, including an individual qualifying for the FCC's Lifeline program.

In a Report and Order adopted on March 31, 2016, (81 FR 33026, May 24, 2016) (*2016 Lifeline Modernization Order*), the Commission ordered USAC to create a National Lifeline Eligibility Verifier (''National Verifier''), including the National Lifeline Eligibility Database (LED), that would match data about Lifeline applicants and subscribers with other data sources to verify the eligibility of an applicant or subscriber. The Commission found that the National Verifier would reduce compliance costs for Lifeline service providers, improve service for Lifeline subscribers, and reduce waste, fraud, and abuse in the program.

The Consolidated Appropriations Act of 2021 directs the FCC to leverage the National Verifier to verify applicants' eligibility for ACP. The purpose of this matching program is to verify the eligibility of Lifeline and ACP applicants and subscribers by determining whether they receive SNAP benefits administered by the Georgia Department of Human Services, Department of Family and Children Services.

Participating Agencies

Georgia Department of Human Services, Department of Family and Children Services (source agency); Federal Communications Commission (recipient agency) and Universal Service Administrative Company.

Authority for Conducting the Matching Program

The authority to conduct the matching program for the FCC's ACP is 47 U.S.C. 1752(a)–(b). The authority to conduct the matching program for the FCC's Lifeline program is 47 U.S.C. 254(a)–(c), (j).

Purpose(s)

The purpose of this new matching agreement is to verify the eligibility of applicants and subscribers to Lifeline, as well as to ACP and other Federal programs that use qualification for Lifeline as an eligibility criterion. This new agreement will permit eligibility verification for the Lifeline program and ACP by checking an applicant's/subscriber's participation in SNAP in Georgia. Under FCC rules, consumers receiving these benefits qualify for Lifeline discounts and also for ACP benefits.

Categories of Individuals

The categories of individuals whose information is involved in the matching program include, but are not limited to, those individuals who have applied for Lifeline and/or ACP benefits; are currently receiving Lifeline and/or ACP benefits; are individuals who enable another individual in their household to qualify for Lifeline and/or ACP benefits; are minors whose status qualifies a parent or guardian for Lifeline and/or ACP benefits; or are individuals who have received Lifeline and/or ACP benefits.

Categories of Records

The categories of records involved in the matching program include, but are not limited to, the last four digits of the applicant's Social Security Number, date of birth, and first and last name. The National Verifier will transfer these data elements to the Georgia Department of Human Services, Department of Family and Children Services which will respond either ''yes'' or ''no'' that the individual is enrolled in a qualifying assistance program: SNAP administered by the Georgia Department of Human Services, Department of Family and Children Services.

System(s) of Records

The records shared as part of this matching program reside in the Lifeline system of records, FCC/WCB–1, Lifeline, which was published in the **Federal Register** at 86 FR 11526 (Feb. 25, 2021).

The records shared as part of this matching program reside in the ACP system of records, FCC/WCB–3, Affordable Connectivity Program, which was published in the **Federal Register** at 86 FR 71494 (Dec. 16, 2021).

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2024–07400 Filed 4–5–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination of Receiverships

The Federal Deposit Insurance Corporation (FDIC or Receiver), as Receiver for each of the following insured depository institutions, was charged with the duty of winding up the affairs of the former institutions and liquidating all related assets. The Receiver has fulfilled its obligations and made all dividend distributions required by law.

NOTICE OF TERMINATION OF RECEIVERSHIPS

Fund	Receivership name	City	State	Termination date
10029	Bank of Clark County	Vancouver	WA	04/01/2024
10048	Omni National Bank	Atlanta	GA	04/01/2024
10538	Almena State Bank	Almena	KS	04/01/2024

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary, including but not limited to releases, discharges, satisfactions, endorsements, assignments, and deeds. Effective on the termination dates listed above, the Receiverships have been terminated, the Receiver has been discharged, and the Receiverships have ceased to exist as legal entities.

(Authority: 12 U.S.C. 1819)

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on April 3, 2024.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2024–07371 Filed 4–5–24; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0142; Docket No. 2024–0053; Sequence No. 9]

Information Collection; Past Performance Information

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on an extension concerning past performance information. DoD, GSA, and NASA invite comments on: whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. OMB has approved this information collection for use through July 31, 2024. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by June 7, 2024.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection through *https://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

Instructions: All items submitted must cite OMB Control No. 9000–0142, Past Performance Information. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0142, Past Performance Information.

B. Need and Uses

This clearance covers the information that offerors and contractors must submit to comply with the following Federal Acquisition Regulation (FAR) requirements:

Preaward. For responses during source selection.

- FAR 15.305(a)(2)(ii). This section requires solicitations to describe the approach for evaluating past performance, including evaluating offerors with no relevant performance history, and providing offerors an opportunity to identify past or current contracts (including Federal, State, and local government and private) for efforts similar to the Government requirement. Solicitations also must authorize offerors to provide information on problems encountered on their identified contracts and the offeror corrective actions. Per FAR 15.304(c)(3), past performance must be evaluated in all source selections for negotiated competitive acquisitions expected to exceed the simplified acquisition threshold (SAT) unless the contracting officer documents the reason past performance is not an appropriate evaluation factor for the acquisition.
- FAR 52.212–1, Instructions to Offerors—Commercial Products and Commercial Services. This provision requires offerors, per paragraph (b)(10), to submit past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information).

Postaward. For responses in the Contractor Performance Assessment Reporting System (CPARS).

- FAR 42.1503(d). Requires contractors be afforded up to 14 calendar days from the notification date that a past performance evaluation has been entered into CPARS to submit comments, rebutting statements, or additional information. Past performance information is relevant information regarding a contractor's actions under previously awarded contracts or orders, for future source selection purposes. Source selection officials may obtain past performance information from a variety of sources.

Contracting officers use the information to support future source selection decisions.

C. Annual Burden

Respondents: 60,669.

Total Annual Responses: 74,641.

Total Burden Hours: 149,283.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 9000–0142, Past Performance Information.

William Clark,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2024–07372 Filed 4–5–24; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10549]

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 May 8, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Generic Clearance for Questionnaire Testing and Methodological Research for the Medicare Current Beneficiary Survey (MCBS); *Use:* The purpose of this OMB clearance package is to extend the approval of the current generic clearance for the Medicare Current Beneficiary Survey (MCBS). The MCBS Questionnaire Testing and Methodological Research encompasses development and testing of MCBS questionnaires, instrumentation, and data collection protocols, as well as a mechanism for conducting methodological experiments. The current clearance includes six types of potential research activities: (1) cognitive interviewing, (2) focus groups, (3) usability testing, (4a) field testing within the MCBS production environment, (4b) field testing as a separate data collection effort outside of the MCBS production environment, (5) respondent debriefings, and (6) research about incentives.

The MCBS is a continuous, multipurpose survey of a nationally representative sample of aged, disabled, and institutionalized Medicare beneficiaries. The MCBS, which is sponsored by the Centers for Medicare & Medicaid Services (CMS), is the only comprehensive source of information on the health status, health care use and expenditures, health insurance coverage, and socioeconomic and demographic characteristics of the entire spectrum of Medicare beneficiaries. The core of the MCBS is a series of interviews with a stratified random sample of the Medicare population, including aged and disabled enrollees, residing in the community or in institutions. Questions are asked about enrollees' patterns of health care use, charges, insurance coverage, and payments over time. Respondents are asked about their sources of health care coverage and payment, their demographic characteristics, their health and work history, and their family living circumstances. In addition to collecting information through the core questionnaire, the MCBS collects information on special topics. *Form Number:* CMS–10549 (OMB control number: 0938–1275); *Frequency:* Occasionally; *Affected Public:* Individuals or Households; *Number of Respondents:* 11,655; *Total Annual Responses:* 11,655; *Total Annual Hours:* 3,947. (For policy questions regarding this collection contact William Long at 410–786–7927.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–07415 Filed 4–5–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–368/R–144 and CMS–10215]

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 May 8, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicaid Drug Rebate Program State Reporting Forms; *Use:* Form CMS 368 is a report of contact for the State to name the individuals involved in the Medicaid Drug Rebate Program (MDRP) and is required only in those instances where a change to the originally submitted data is necessary. The ability to require the reporting of any changes to these data is necessary to the efficient operation of these programs. Form CMS–R–144 is required from States quarterly to report utilization for any drugs paid for during that quarter. *Form Number:* CMS–368 and –R–144 (OMB control number: 0938–0582); *Frequency:* Quarterly and on occasion; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 290; *Total Annual Hours:* 13,669. (For policy questions regarding this collection contact Robert Giles at 667–290–8626.)

2. *Type of Information Collection Request:* Extension of currently approved collection; *Title of Information Collection:* Identifying Medicaid Payment for Physician Administered Drugs; *Use:* States are required to provide for the collection and submission of utilization data for certain physician-administered drugs in order to receive Federal financial participation for these drugs. Physicians, serving as respondents to states, submit National Drug Code numbers and utilization information for ''J'' code physician-administered drugs so that the states will have sufficient information to collect drug rebate dollars. *Form Number:* CMS–10215 (OMB control number: 0938–1026); *Frequency:* Weekly; *Affected Public:* Business or other for-profits and Not-for-profit institutions); *Number of Respondents:* 26,000; *Total Annual Responses:* 39,053,932; *Total Annual Hours:* 162,074. (For policy questions regarding this collection contact Michael Forman at 410–786–2666.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–07393 Filed 4–5–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10887 and CMS–10394]

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 May 8, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* The Medicare Advantage and Prescription Drug Programs: Part C and Part D Medicare Advantage Prescription Drug (MARx) System Updates for the Medicare Prescription Payment Plan Program; *Use:* The IRA amended the Act by adding section 1860D–2(b)(2)(E) which, beginning January 1, 2025, establishes the Medicare Prescription Payment Plan program (hereinafter referred to as the ''program''). Under this program, MA Organizations offering Part D coverage and Part D sponsors (collectively ''Part D plans'' or ''Plans'') are required to offer enrollees the option to pay their Part D cost sharing in monthly amounts spread out over the plan year based on the formulae described in section 1860D–2(b)(2)(E)(iv) of the Act.

To effectively monitor the program, Part D plans will be required to report data elements related to the program at the beneficiary, contract, and Plan Benefit Package (PBP)1 levels beginning in Contract Year (CY) 2025. In this information collection package, CMS addresses the proposal to require Part D plans to submit beneficiary-level data elements into the MARx system via a program-specific transaction (separate from the enrollment file). In accordance with the Plan Communication User Guide (PCUG), plans may submit multiple transaction files during any CMS business day, Monday through Friday. Plan transactions are processed as received; there is no minimum or maximum limit to the number of files that Plans may submit in a day. In general, transaction and processing occur throughout the Current Calendar Month (CCM). For CY 2025, CMS will not require independent data validation for this new MARx reporting requirement. *Form Number:* CMS–10887 (OMB control number: 0938–New); *Frequency:* Monthly; *Affected Public:* Private, Federal Government, Business or other for profits, Not-for-profits institutions; *Number of Respondents:* 856; *Total Annual Responses:* 3,200,856; *Total Annual Hours:* 59,958. (For policy questions regarding this collection contact Michael Brown at (872) 287–1370 or *michael.brown3@cms.hhs.gov.*)

2. *Type of Information Collection Request:* Revision with change of a currently approved collection; *Title of Information Collection:* Application to be a Qualified Entity to Receive Medicare Data for Performance Measurement/Reapplication/Annual Report Worksheet; *Use:* The Patient Protection and Affordable Care Act (ACA) was enacted on March 23, 2010 (Pub. L. 111–148). ACA amends section 1874 of the Social Security Act by adding a new subsection (e) to make standardized extracts of Medicare claims data under Parts A, B, and D available to QEs to evaluate the performance of providers of services and suppliers. This is the Application, Reapplication, and ARW which provides CMS with the information it needs to determine whether an organization earns approval and continues as a QE.

CMS established the Qualified Entity Certification Program (QECP) to evaluate an organization's eligibility across three areas: (1) organizational and governance capabilities, (2) addition of claims data from other sources (as required in the statute), and (3) data privacy and security. QE certification lasts for 3 years. Organizations that are interested in remaining in the QE program must submit a Reapplication that is reviewed and approved by QECP. In addition, each year QEs must submit an annual report to QECP that provides information required by statute. *Form Number:* CMS–10394 (OMB control number: 0938–1144); *Frequency:* Yearly; *Affected Public:* Business or other for-profits; *Number of Respondents:* 40; *Total Annual Responses:* 210; *Total Annual Hours:* 17,400. (For policy questions regarding this collection contact Kari Gaare at *kari.gaare@cms.hhs.gov.*)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–07429 Filed 4–5–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 1009 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 Heart, Lung, and Blood Institute Special Emphasis Panel; Genetics and Biology of von Willebrand Disease.

Date: May 8, 2024.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Manoj Kumar Valiyaveettil, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–R, Bethesda, MD 20817, (301) 402–1616, *manoj.valiyaveettil@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 3, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–07376 Filed 4–5–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[OMB Control Number 1651–0NEW]

Agency Information Collection Activities; New Collection; Forced Labor Portal/Forced Labor Case Management System (CMS)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) 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 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than June 7, 2024) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0NEW in the subject line and the agency name. Please submit written comments and/or suggestions in English. Please use the following method to submit comments:

Email. Submit comments to: *CBP_PRA@cbp.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Forced Labor Portal/Forced Labor Case Management System (CMS).

OMB Number: 1651–0NEW.

Form Number: N/A.

Current Actions: New Collection.

Type of Review: New Collection.

Affected Public: Businesses, Individuals.

Abstract: U.S. Customs and Borders Protection (CBP) has created a new Forced Labor Portal/Forced Labor Case Management System (CMS). Currently, information regarding potential forced labor and trade violations are electronically submitted via the e-Allegations website at: *https://www.cbp.gov/trade/e-allegations/.*

Submissions from petitioners for revocation and modification requests are submitted by email to *ForcedLabor@cbp.dhs.gov* (and through the BOX program and the Case Management System—CMS). Exception review information is sent to *UFLPAInquiry@cbp.dhs.gov* mailbox via email with multiple zip files.

Applicability review information is sent to various ports of entry or any of the ten Centers of Excellence and Expertise via email with multiple zip files or shared secured folders.

The new Forced Labor Portal/Forced Labor CMS will consolidate the various above-mentioned methods of submission into one centralized location, increasing efficiency and reducing the burden of collection to both CBP and the public.

U.S. Customs and Border Protection (CBP) enforces section 307 of the Tariff Act of 1930 (19 U.S.C. 1307), which states that ''all goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited. . .''

In addition, the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) (Pub. L. 114–125), signed into law on February 24, 2016, removed the ''consumptive demand clause'' for the enforcement of 19 U.S.C. 1307, and mandated CBP to create a division to oversee forced labor enforcement and create a process for the investigation of allegations.

CBP also enforces the Countering America's Adversaries Through Sanctions Act (CAATSA) (Pub. L. 115–44 (August 2, 2017), (22 U.S.C. 9241a)) where goods produced by North Korean nationals or citizens are presumed to be produced under forced labor and are prohibited from entering the U.S. commerce under 19 U.S.C. 1307.

Recently, the Uyghur Forced Labor Prevention Act (UFLPA) (Pub. L. 117–78 (December 23, 2021)) established that any goods produced wholly or in part in the Xinjiang Uyghur Autonomous Region (XUAR) of China, or by entities on the UFLPA Entity List are presumed to be made with forced labor and thus prohibited from importation into the U.S. under 19 U.S.C. 1307. This law allows for the collection of supply chain documentation to substantiate that forced labor was not used in the production of imported goods under an exception review or UFLPA does not apply to the detained shipment under an applicability review.

Sections 12.42 through12.45 of title 19 of the Code of Federal Regulations (CFR) contain methods for CBP to collect information on forced labor, conduct investigations, and initiate withhold release orders (WRO) or findings to enforce 19 U.S.C. 1307 as well as allow for the collection of information from importers on detained shipments for admissibility review under a WRO.

Individuals, companies (domestic and international), civil society organizations, and nongovernmental organizations may submit allegations of forced labor, request for admissibility, applicability, and exception reviews with CBP under these laws and regulations.

Type of Information Collection: Allegations.

Estimated Number of Respondents: 200.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 200.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 34.

Type of Information Collection: WRO Admissibility Reviews.

Estimated Number of Respondents: 1900.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 1900.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 950.

Type of Information Collection: Modifications/Revocations.

Estimated Number of Respondents: 25.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 25.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 4.

Type of Information Collection: UFLPA Exception Requests.

Estimated Number of Respondents: 4.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 4.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 2.

Type of Information Collection: UFLPA Applicability Reviews.

Estimated Number of Respondents: 1500.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 1500.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 750.

Type of Information Collection: CAATSA Exception Reviews.

Estimated Number of Respondents: 2.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 2

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 0.33.

Dated: April 3, 2024.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2024–07381 Filed 4–5–24; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2007–0008]

National Advisory Council

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Committee Management; Request for applicants for appointment to the National Advisory Council.

SUMMARY: The Federal Emergency Management Agency (FEMA) requests that qualified individuals interested in serving on the FEMA National Advisory Council (NAC) apply for appointment as identified in this notice. Pursuant to the Homeland Security Act of 2002, the NAC advises the FEMA Administrator on all aspects of emergency management, incorporating input from and ensuring coordination with tribal, state, territorial and local governments, and the non-governmental and private sectors. FEMA seeks to appoint or reappoint individuals to nine (9) discipline-specific positions on the NAC and up to two (2) members as Administrator Selections.

DATES: FEMA will accept applications until 11:59 p.m. Eastern Time on Sunday, May 12, 2024.

ADDRESSES: The preferred method for application package submission is by email. Application packages by U.S. Mail may not be considered. Please submit using the following method:

- *Email: FEMA-NAC@fema.dhs.gov.* Save materials in one file using the naming convention, ''(Last Name)_(First Name)_NAC Application'' and attach to the email.

The Office of the NAC will send you an email that confirms receipt of your application and will notify you of the final status of your application once FEMA selects members.

FOR FURTHER INFORMATION CONTACT: Rob Long, Designated Federal Officer, Office of the National Advisory Council, Federal Emergency Management Agency; *FEMA-NAC@fema.dhs.gov,* 202.646.2700. For more information on the NAC, visit *https://www.fema.gov/about/offices/national-advisory-council.*

SUPPLEMENTARY INFORMATION: The NAC consists of up to 40 members, all of whom are experts and leaders in their respective fields. The NAC is an advisory committee established in accordance with the provisions of the *Federal Advisory Committee Act* (FACA), 5 U.S.C. ch. 10. As required by the Homeland Security Act, the Secretary of Homeland Security established the NAC to ensure effective and ongoing coordination of federal preparedness, protection, response, recovery, and mitigation for natural disasters, acts of terrorism, and other man-made disasters. Appointees may be designated as a Special Government Employee (SGE) as defined in section 202(a) of Title 18, U.S.C., or as a Representative (Rep.) member. SGEs speak in a personal capacity as experts in their field and Representative members speak for the stakeholder group they represent.

FEMA is requesting that individuals who are interested in and qualified to serve on the NAC apply for appointment to an open position in one of the following six discipline areas: Climate Change SGE, Communications SGE, Elected Government Official Rep., Emergency Management Rep., Emergency Response Provider Rep., and In-Patient Medical Provider SGE. The Administrator may appoint up to two (2) additional candidates to serve as FEMA Administrator Selections (as SGE appointments). Please visit *https://www.fema.gov/sites/default/files/documents/fema_nac-charter_2022.pdf* for further information on expertise required to fill these positions. Appointments will begin December 2024, for 3-year terms or for the remainder of an existing term that is open. If other positions open during the application and selection period, FEMA may select qualified candidates from the pool of applications.

If you are interested, qualified, and want FEMA to consider appointing you to fill an open position on the NAC, please submit an application package to the Office of the NAC as listed in the **ADDRESSES** section of this notice. There is no application form; however, each application package MUST include the following information:

- Cover letter, addressed to the Office of the NAC, that includes current position title and employer or organization you represent, home and work mailing addresses, preferred telephone number, and email address; the discipline area position(s) for which you would like consideration; why you are interested in serving on the NAC; and how you heard about the solicitation for NAC members.

• A summary of the most important accomplishments that qualify you to serve on the NAC, in the form of three to five (3–5) bullets in fewer than 75 words total.

• Three (3) peer or supervisor references including full name, position title, employer or organization, preferred telephone number and email address. References must be able to attest to the qualifications and accomplishments you have listed.

• Resume or Curriculum Vitae (CV).

Your application package must be fewer than eight (8) total pages to be considered by FEMA. Information contained in your application package should clearly indicate your qualifications to serve on the NAC and fill one of the current open positions. FEMA will not consider incomplete applications. FEMA will review the information contained in application packages and make selections based on: (1) leadership attributes; (2) emergency management experience; (3) expert knowledge in identified discipline area; and (4) ability to meet NAC member expectations. FEMA will also consider overall NAC composition, including diversity (including, but not limited to geographic, demographic, and experience, consistent with applicable law) and mix of officials, emergency managers, and emergency response providers from state, local, tribal, and territorial governments, when selecting members.

In order for DHS to fully leverage broad-ranging experience and education, the NAC must be diverse with regard to professional and technical expertise. DHS is committed to pursuing opportunities, consistent with applicable law, to compose a committee that reflects the diversity of the nation's people. If there are aspects of diversity that you wish to describe or emphasize in support of your candidacy, please do so within your cover letter.

DHS does not discriminate based on race, color, religion, sex, national origin, sexual orientation, gender identity, marital status, political affiliation, disability and genetic information, age, membership in an employee organization, or other non-merit factor. DHS strives to achieve a widely diverse candidate pool for all its recruitment actions. Current DHS and FEMA employees, including FEMA Reservists, are not eligible for membership. Federally registered lobbyists may not apply. Candidates selected for appointment as SGEs are required to complete a new entrant Confidential Financial Disclosure Report (Office of Government Ethics (OGE) Form 450). You can find this form at the Office of Government Ethics website (*http://www.oge.gov*). However, please do not submit this form with your application.

Expectations: Appointees to this volunteer service opportunity are expected to fully participate in NAC activities, work with fellow members as a team, and maintain a high degree of integrity. The NAC Bylaws contain more information and can be found at: *https://www.fema.gov/sites/default/files/documents/fema_nac-bylaws-041223.pdf.* NAC members must serve on one of the NAC subcommittees, which meet regularly through virtual means. FEMA estimates a six (6) hour minimum time commitment per month for regular communications, special activities, and subcommittee participation. Selected NAC members serve in leadership roles and participate in additional meetings and activities. Additionally, all NAC members are expected to meet in-person up to twice per year, typically three (3) days for each meeting, plus a travel day before and after. FEMA does not pay NAC members for their time, but may reimburse travel expenses such as airfare, lodging, meals, incidentals, and other transportation costs within the Federal Travel Regulation when pre-approved by the Designated Federal Officer.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–07387 Filed 4–5–24; 8:45 am]

BILLING CODE 9111–48–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6457–N–01]

Tribal Intergovernmental Advisory Committee; Request for Members Nominations

AGENCY: Office of Assistant Secretary for Public and Indian Housing, U.S. Department of Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: This notice seeks nominations for HUD's Tribal Intergovernmental Advisory Committee (TIAC).

DATES: Nominations for potential representatives of the TIAC are due on or before: June 7, 2024.

ADDRESSES: Interested persons are invited to submit nominations for potential representatives of the TIAC. Nominations may be submitted to HUD electronically. All submissions must refer to the above docket number and title.

Electronic Submission of Nominations. Interested persons may submit nominations electronically through the Federal eRulemaking Portal at *www.regulations.gov.* Electronic submission allows the maximum time to prepare and submit nominations, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Nominations submitted electronically through the *www.regulations.gov* website can be viewed by interested members of the public. Individuals should follow the instructions provided on that website to submit nominations. *Note:* To receive consideration, nominations must be submitted electronically through *www.regulations.gov* and refer to the above docket number and title. Nominations should not be submitted by mail.

No Facsimile Comments. Facsimile (FAX) comments will not be accepted.

Public Inspection of Nominations. All properly submitted nominations and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the submissions must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible call, please visit *https://www.fcc.gov/consumers/guides/telecomunicationsrelay-service-trs.*

FOR FURTHER INFORMATION CONTACT: Heidi J. Frechette, Deputy Assistant Secretary for Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 4108, Washington, DC 20410–5000, telephone (202) 402–7598 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible call, please visit *https://www.fcc.gov/consumers/guides/telecomunicationsrelay-service-trs.*

SUPPLEMENTARY INFORMATION:

I. Background

To further enhance consultation and collaboration with Tribal governments,

HUD established the TIAC in 2022. It has provided critical support to the Department as it formulates policies having a direct impact on Tribes/Tribally Designated Housing Entities (TDHEs). The Tribal members serve two-year terms. At the end of 2024, eight (8) of the representatives' terms will end.

II. Nominations for TIAC Membership

HUD is requesting nominations for Tribal representatives to serve on the TIAC, starting in January 2025 for two-year terms. Nominations are due on or before: June 7, 2024. Nominations are encouraged from all regions of the continental United States and Alaska. If you are interested in serving as a member of the Committee or in nominating another person to serve as a member of the Committee, you may submit a nomination to HUD in accordance with the Electronic Submission of Nominations section of this notice. Your nomination for membership on the Committee must include:

1. The name of the nominee, a description of the interests the nominee would represent, and a description of the nominee's experience and interest in American Indian and Alaska Native (AIAN) housing and community development matters;

2. Evidence that the nominee is a duly elected or appointed Tribal leader and is authorized to represent a federally recognized tribal government or Alaska Native Corporation; and

3. A written commitment from the nominee that she or he will actively engage and participate in the Committee meetings.

HUD will appoint the members of the TIAC from the pool of nominees submitted in response to this notice. HUD will announce the final selections for TIAC membership in a future **Federal Register** notice. Members will be selected based on proven experience and interest in AIAN housing and community development matters, and whether the interest of the proposed member could be represented adequately by other members. In addition to the criteria above, at large members will be selected based on their ability to represent specific interests that might not be represented by the selected regional members. Only elected officers of a tribal government acting in their official capacities with authority to act on behalf of the tribal government may serve as TIAC delegates or alternate delegates of the TIAC.

Tribal employees are eligible to serve if appointed by a duly elected tribal leader of a federally recognized tribe and are authorized to officially act on the Tribal government's behalf.

Elected officials representing Alaska Native Corporations, or designated employees, may also serve on TIAC at HUD's discretion provided they demonstrate that they meet the criteria specified in the statutory exemption to the Federal Advisory Committee Act (FACA) found in the Unfunded Mandates Reform Act (UMRA) at 2 U.S.C. 1534(b).

Because the TIAC will operate under the Tribal government statutory exemption of FACA found in the UMRA, HUD will not consider nominees solely representing Tribally Designated Housing Entities, state recognized Tribes, or national or regional organizations. However, HUD will consider nominations from associations that represent elected officials of Tribes who have been designated by an elected Tribal leader to participate in TIAC.

III. Purpose of the TIAC and Meetings

A. Purpose and Role of the TIAC

The purposes of the TIAC are:

(1) To further facilitate intergovernmental communication between HUD and Tribal leaders of federally recognized Tribes on all HUD programs;

(2) To make recommendations to HUD regarding current program regulations that may require revision, as well as suggest rulemaking methods to develop such changes. The TIAC will not, however, negotiate any changes to regulations that are subject to negotiated rulemaking under Section 106 of the Native American Housing Assistance and Self-Determination Act (NAHASDA) and will not serve in place of any future negotiated rulemaking committee established by HUD; and

(3) To advise in the development of HUD's AIAN housing priorities.

The role of the TIAC is to provide recommendations and input to HUD, and to provide a vehicle for regular, meaningful consultation and collaboration with Tribal officials. It will not replace other means of Tribal consultations, but, rather, will supplement them. HUD will maintain the responsibility to exercise program management, including the drafting of HUD notices, guidance documents, and regulations.

B. Meetings and Participation

Subject to availability of Federal funding, the TIAC plans to meet in-person twice a year (one meeting at HUD Headquarters in Washington, DC, and the other at some location elsewhere in the country) to discuss agency policies and activities with HUD, set shared priorities, and facilitate further consultation with Tribal leaders. HUD will pay for these meetings, including the member's cost to travel to these meetings. The TIAC may meet on a more frequent basis virtually, via conference calls, videoconferences, or through other forms of communication. Additional in-person meetings may be scheduled at HUD's discretion in the future. Participation at TIAC meetings will be limited to TIAC members or their alternates. Alternates must be designated in writing by the member's Tribal government to officially act on their behalf. TIAC members may bring one technical advisor to the meeting at their expense. The technical advisor can advise the member but cannot speak in the member's place. Meeting summaries may be available on the HUD website.

C. TIAC Membership

The TIAC is comprised of HUD representatives and Tribal delegates from across the country, representing small, medium, and large tribes. The TIAC is composed of HUD officials (including the Secretary or his or her designee, as well as the Assistant Secretaries for the Office of Public and Indian Housing (PIH), Office of Policy, Development, and Research (PD&R), Office of Fair Housing and Equal Opportunity (FHEO), Office of Field Policy Management (FPM), Office of Housing (FHA), Government National Mortgage Association (Ginnie Mae), and Office of Community Planning and Development (CPD) or their designees) and fifteen Tribal delegates. Two Tribal delegates represent each of the six HUD ONAP regions, while three remaining Tribal delegates serve at-large. Only elected officers of a tribal government acting in their official capacities or designated employees of tribal governments with authority to act on behalf of the tribal government may serve as TIAC delegates or alternates of the TIAC. Elected officials representing Alaska Native Corporations, or designated employees, may also serve on TIAC at HUD's discretion provided they demonstrate that they meet the criteria specified in the statutory exemption to (FACA) found in the UMRA). The Secretary of HUD will appoint the HUD representatives of the TIAC. TIAC Tribal delegates will serve a term of two years. To ensure consistency between Tribal terms, delegates serve a staggered term of appointment. Should a delegate's tenure as a Tribal leader come to an end during their appointment to the TIAC, the delegate's Tribe will nominate a

replacement, if not the already nominated alternate.

Richard Monocchio,

Principal Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 2024–07305 Filed 4–5–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[FR–6452–N–02]

Exhibitors Sought for Innovative Housing Showcase 2024: Extension of Proposal Submission Deadline

AGENCY: Office of the Assistant Secretary for Policy Development and Research, Department of Housing and Urban Development (HUD).

ACTION: Notice; extension of proposal submission deadline.

SUMMARY: On February 28, 2024, the Department of Housing and Urban Development (HUD) published in the **Federal Register** a document entitled, ''Exhibitors Sought for Innovative Housing Showcase 2024.'' The document sought proposals for exhibits at the 2024 Innovative Housing Showcase, a public event to raise awareness of innovative housing designs and technologies that have the potential to increase housing supply, lower the cost of construction, and/or reduce housing expenses for owners and renters. The original notice provided for a 30-day period during which proposals would be accepted, which ended on March 29, 2024. HUD has determined that an extension of the proposal submission period until April 15, 2024, is appropriate to allow additional interested exhibitors to submit proposals.

DATES: All proposals must be received no later than April 15, 2024. Proposals will be accepted and reviewed on a rolling basis until April 15, 2024, or until HUD reaches capacity for exhibitor space on the National Mall, whichever comes sooner. HUD encourages early submission of proposals.

ADDRESSES: Proposals must be in writing and submitted via email to *housingshowcase@hud.gov.* Individuals who do not have internet access may submit proposals to the Office of Policy Development and Research, Affordable Housing Research and Technology, U.S. Department of Housing and Urban Development, 451 7th Street SW, Room 8134, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Michael Blanford, Research Engineer, U.S. Department of Housing and Urban Development, Office of Policy Development and Research, 451 7th St. SW, Washington, DC 20410, telephone number 202–402–5728 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Individuals with questions may also email *housingshowcase@hud.gov* and in the subject line write ''2024 Showcase Questions.''

SUPPLEMENTARY INFORMATION: On February 28, 2024, the Department of Housing and Urban Development (HUD) published in the **Federal Register** a document entitled, ''Exhibitors Sought for Innovative Housing Showcase 2024.'' 89 FR 14677. That notice solicited proposals for exhibits at HUD's 2024 Innovative Housing Showcase, a public event to raise awareness of innovative housing designs and technologies that have the potential to increase housing supply, lower the cost of construction, and/or reduce housing expenses for owners and renters. That notice provided for a deadline of March 29, 2024, for potential exhibitors to submit their proposals to HUD. HUD has determined that additional time is appropriate for additional interested exhibitors to submit proposals. Through this notice, HUD is extending the deadline to submit proposals to April 15, 2024. For information on the Showcase, the venue for the showcase (the National Mall), and exhibit and proposal requirements, please refer to the originally published notice at 89 FR 14677.

Proposals should be limited to 1–2 pages.

In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number. The information collection described above to collect proposals for the Showcase has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2528–0346.

Todd M. Richardson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 2024–07424 Filed 4–4–24; 11:15 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[COCO105863290; COC–080815]

Public Land Order No. 7939; Thompson Divide Withdrawal, Colorado

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Public Land Order.

SUMMARY: This Public Land Order (PLO) withdraws 221,898.23 acres, including approximately 197,744.66 acres of National Forest System lands, approximately 15,464.99 acres of BLM-managed public lands, and approximately 8,688.58 acres of reserved Federal mineral interest, from all forms of entry, appropriation, and disposal under the public land laws; location and entry under the mining laws; and operation of the mineral leasing, mineral materials, and geothermal leasing laws, subject to valid existing rights, for a period of 20 years.

DATES: This PLO takes effect on April 8, 2024.

FOR FURTHER INFORMATION CONTACT: Jennifer Jardine, Bureau of Land Management, Colorado State Office, telephone: 970–385–1224, email: *jjardine@blm.gov* or *BLM_CO_Thompson_Divide@blm.gov;* or Elysia Retzlaff, United States Department of Agriculture Forest Service, Rocky Mountain Regional Office, telephone: 541–777–1355, email: *elysia.retzlaff@usda.gov,* during regular business hours, 8 a.m. to 4:30 p.m. Monday through Friday, except holidays. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The purpose of this withdrawal is to ensure the retention of the contiguous landscape, resulting in more efficient and effective administration of National Forest System and BLM-administered lands, and to protect the agricultural, ranching, wildlife, air quality, recreation, ecological, and scenic values of the Thompson Divide Area from further mineral development that could adversely impact these values and the local economies that depend on these values.

This PLO does not apply to the approximately 35,541.70 acres of non-

Federal lands with no Federal interest within the boundaries of the area described herein. If the non-Federal lands within the area described in this Order are subsequently acquired by the United States, those lands will become subject to this withdrawal.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(c), it is ordered as follows:

1. Subject to valid existing rights, the following described Federal lands and all non-Federal lands that are subsequently acquired by the Federal government, are hereby withdrawn from all forms of entry, appropriation, and disposal under the public land laws; location and entry under the United States mining laws; and operation of the mineral leasing, mineral materials, and geothermal leasing laws, for a 20-year term to ensure the retention of the contiguous landscape, resulting in more efficient and effective administration of National Forest System and BLM-administered lands, and to maintain, protect, and conserve agricultural, ranching, wildlife, air quality, recreation, ecological, and scenic values of the area from further mineral development that could adversely impact these values and the local economies that depend on these values.

National Forest System Lands

New Mexico Principal Meridian, Colorado

T. 51 N., R. 5 W.,
Secs. 7 and 18, unsurveyed;
Sec. 19, unsurveyed, that portion lying southwesterly of the South Smith Fork subwatershed boundary and westerly of the Crystal Creek subwatershed boundary;
Sec. 30, unsurveyed, that portion lying westerly of the Crystal Creek subwatershed boundary.
T. 50 N., R. 5½ W.,
Secs. 1, 2, and 11, those portions lying westerly of the Crystal Creek subwatershed boundary.
T. 51 N., R. 5½ W.,
Secs. 11 thru 14 and sec. 24;
Secs. 25 and 36, those portions lying westerly of the Crystal Creek subwatershed boundary.
T. 50 N., R. 6 W.,
Sec. 1;
Sec. 11, that portion lying easterly of the Gunnison/Montrose County boundary;
Secs. 12 and 13, those portions lying westerly of the Crystal Creek subwatershed boundary;
Sec. 14, that portion lying easterly of the Gunnison/Montrose County boundary and northerly of the Crystal Creek subwatershed boundary.

Sixth Principal Meridian, Colorado

T. 13 S., R. 86 W.,
Sec. 19, that portion lying easterly of the Raggeds Wilderness Area boundary;
Sec. 29, W½;
Sec. 30, excepting lot 21 and M.S. Nos. 3831, 3832, 4243, 4469, 4472, 4767, 4768, 5600, 7129, 8496, and 12805;
Sec. 32, N½.
T. 14 S., R. 86 W.,
Sec. 6, lots 4 thru 7;
Sec. 18, lots 3 and 4, E½SW¼, and SE¼;
Secs. 19 and 20;
Sec. 21, W½;
Sec. 26, SW¼;
Sec. 27;
Sec. 28, lots 1 thru 4, W½NE¼, E½NW¼, NW¼NW¼, E½SW¼, SW¼SW¼, and W½SE¼;
Sec. 29, NE¼NE¼, W½NE¼, W½, W½SE¼, and SE¼SE¼;
Sec. 30, lots 5 and 6, lots 11 thru 14, and lots 19 and 20;
Sec. 32, N½;
Sec. 33, lots 1 and 2, W½NE¼, and NW¼;
Sec. 34, N½;
Sec. 35, N½;
T. 13 S., R. 87 W.,
Sec. 20, unsurveyed, that portion lying southeasterly of the Raggeds Wilderness Area;
Sec. 21, unsurveyed, that portion lying southeasterly of the Raggeds Wilderness Area boundary, excepting M.S. Nos. 14344, 15668, 17918, and 17919;
Sec. 22, unsurveyed, that portion lying southwesterly of the Raggeds Wilderness Area boundary, excepting M.S. No. 2694;
Sec. 24, unsurveyed, those portions lying easterly of the Raggeds Wilderness Area boundary;
Sec. 25, unsurveyed, that portion lying easterly and southerly of the Raggeds Wilderness Area boundary, excepting M.S. Nos. 3831, 3832, and 4124;
Sec. 26, unsurveyed, that portion lying southerly of the Raggeds Wilderness Area boundary, excepting M.S. Nos. 1286 and 2721;
Sec. 27, unsurveyed, that portion lying southwesterly of the Raggeds Wilderness Area boundary, excepting M.S. Nos. 2701, 2703, 2813, 2814, 2867, 3440, 3466, 3728, 3729, 3804, 4149, 4421, 5146, 5322, 5511, 14392, and 17240;
Sec. 28, unsurveyed, that portion lying easterly of the Raggeds Wilderness Area boundary, excepting M.S. Nos. 1109, 1110, 1112, 2754, 2935, 3082, 3440, 3511, 3804, M.S. Nos. 4446 thru 4449, and M.S. Nos. 5146, 5147, 6382, 14344, 14392, 17240, 17919, and 20024;
Sec. 29, unsurveyed, that portion lying easterly and southerly of the Raggeds Wilderness Area boundary;
Secs. 30 thru 32, unsurveyed, those portions lying southerly of the Raggeds Wilderness Area boundary;
Sec. 33, unsurveyed, excepting M.S. Nos. 1156, 2731, 2935, 3470 A&B, 3471 A&B, 3716, 3804, 4445, 5146, 5147, 5870, and 20023, and S.T.A. No. 0441;
Sec. 34, unsurveyed, excepting M.S. Nos. 1156, 2702, 2703, 2731, 2786, 2801, 2814, 3466, 3467, 3716, 3737, 4421, 5146, 5342, 5511, 7123, the Irwin Townsite, and S.T.A. Nos. 0440, 0441, and 0442;
Sec. 35, unsurveyed, excepting M.S. Nos. 745, 1286, and 2693, M.S. Nos. 2695 thru 2700, and M.S. Nos. 2709, 2724, 3386, 3768, 4005, 4236, 4257, 4258, 4955, 5342, 5343, 5520, 7123, 8067, and 17714;
Sec. 36, unsurveyed, excepting Tract 37 and M.S. Nos. 2693, 2697, 2724, 2829, 2863, 3386, 3390, 4124, 7856, 17714, and 20926;
T. 14 S., R. 87 W.,
Sec. 1;
Sec. 2, excepting M.S. Nos. 745 and 1209, M.S. Nos. 2695 thru 2700, and M.S. Nos. 2989, 3137, 3768, 3801, 3802, 4257, 4955, 15096, and 19527;
Sec. 3, excepting M.S. Nos. 745, 1209, 1348, 3542, 3736 A, 3737, 4401, and 4955, and the Irwin Townsite;
Secs. 4 thru 8;
Sec. 9, N½;
Sec. 10, N½, N½SW¼, and SE¼;
Sec. 11, excepting M.S. Nos. 2989, 3801, and 15096;
Secs. 12 and 13;
Sec. 14, that portion lying northerly of the Coal Creek subwatershed boundary and that portion lying westerly of the Ruby Anthracite Creek subwatershed boundary and northerly of the West Elk Wilderness Area boundary;
Sec. 15, that portion lying northeasterly of the West Elk Wilderness Area boundary;
Sec. 23, that portion lying northerly of the Coal Creek subwatershed boundary;
Sec. 24.
T. 9 S., R. 88 W.,
Sec. 4, lot 2, W½, SW¼SE¼, and W½SE¼SE¼, partly unsurveyed;
Secs. 5 and 6, unsurveyed;
Sec. 7, unsurveyed, except H.E.S. No. 370;
Sec. 8, unsurveyed;
Sec. 9, NE¼, W½, and W½SE¼, partly unsurveyed, those portions lying westerly of the easterly ordinary high-water mark, an ambulatory line, of the Crystal River;
Sec. 16, NW¼, W½SW¼, and NW¼NW¼SE¼, partly unsurveyed, those portions lying westerly of the easterly ordinary high-water mark, an ambulatory line, of the Crystal River;
Sec. 17, unsurveyed;
Sec. 18, unsurveyed, excepting H.E.S. No. 370;
Sec. 19, unsurveyed;
Sec. 20, partly unsurveyed, that portion lying westerly of the easterly ordinary high-water mark, an ambulatory line, of the Crystal River;
Sec. 21, NW¼NW¼, and SW¼SW¼, those portions lying westerly of the easterly ordinary high-water mark, an ambulatory line, of the Crystal River, and a parcel of land as described in book 518, page 282, recorded on September 5, 1986, Pitkin County, Colorado; lying westerly of easterly ordinary high-water mark, an ambulatory line, of the Crystal River;
Sec. 29, N½NE¼ and W½, partly unsurveyed, those portions lying westerly of the easterly ordinary high-water mark, an ambulatory line, of the Crystal River;

Secs. 30 and 31, unsurveyed;
Sec. 32, S½NE¼, W½, and SE¼, partly unsurveyed, those portions lying westerly of easterly ordinary high-water mark, an ambulatory line, of the Crystal River;
Sec. 33, lots 12, 20, and 23, those portions lying westerly of easterly ordinary high-water mark, an ambulatory line, of the Crystal River.

T. 10 S., R. 88 W.,
Sec. 4, lot 5, SW¼NW¼, and W½SW¼;
Secs. 5 thru 7;
Sec. 8, that portion lying westerly of the easterly ordinary high-water mark, an ambulatory line, of the Crystal River;
Sec. 9, W½SW¼, that portion lying westerly of the easterly ordinary high-water mark, an ambulatory line, of the Crystal River;
Sec. 17, NW¼NE¼ and NW¼;
Sec. 18, lots 5 thru 10, NE¼, and E½NW¼;
Sec. 19, lots 1 thru 4, W½NE¼, SE1/NE¼, E½NW¼, E½SW¼, and SE¼;
Secs. 30 and 31, those portions lying westerly of easterly ordinary high-water mark, an ambulatory line, of the Crystal River.

T. 11 S., R. 88 W.,
Sec. 6, lots 1 thru 8, lots 10 thru 15, and lots 17 and 18, E½SW¼, and NW¼SE¼, those portions lying westerly of the easterly ordinary high-water mark, an ambulatory line, of the Crystal River, excepting those portions of lots 2, 7, and 10 not conveyed to the United States as described in special warranty deed in book 788, page 29, recorded on July 24, 1995, Pitkin County, Colorado;

T. 12 S., R. 88 W.,
Sec. 19, that portion lying southerly of the Raggeds Wilderness Area boundary;
Sec. 20, that portion lying southerly and westerly of the Raggeds Wilderness Area boundary;
Sec. 27, that portion lying westerly of the Raggeds Wilderness Area boundary;
Sec. 28, excepting the Raggeds Wilderness Area;
Sec. 29, that portion lying southerly and westerly of the Raggeds Wilderness Area boundary;
Sec. 30, lots 1 thru 4, NW¼NE¼, S½NE¼, E½NW¼, E½SW¼, and SE¼;
Sec. 31;
Secs. 32 and 33, those portions lying northwesterly of the Raggeds Wilderness Area boundary.

T. 13 S., R. 88 W.,
Sec. 6, lots 1 thru 5, lots 7 thru 14, and lots 16 thru 23, SE¼, E.S. No. 366 Tract A, and a parcel of land donated to the United States as described in book 259, page 348, recorded on December 1, 1936, Gunnison County, Colorado;
Sec. 7;
Sec. 17, partly unsurveyed, that portion lying southwesterly of the Raggeds Wilderness Area boundary;
Sec. 18;
Sec. 19, lot 7 and lots 9 thru 12, N½NE¼, N½SW¼NE¼, N½SE¼NE¼, SW¼SE¼, and W½SE¼SE¼;
Sec. 20, N½, E½SW¼, E½NE¼SW¼SW¼, E½SE¼SW¼SW¼, and SE¼, those portions lying southwesterly of the Raggeds Wilderness Area boundary;
Secs. 21, 22, 25, 26, and 27, those portions lying southerly of the Raggeds Wilderness Area boundary;
Sec. 28;
Sec. 29, E½, E½NW¼, E½NE¼NW¼NW¼, E½SW¼NW¼NW¼, SW¼SW¼NW¼NW¼, SE¼NW¼NW¼, SW¼NW¼, and SW¼;
Sec. 30, lots 1 thru 9 and lots 12, 13, and 14, W½NE¼NE¼, W½SE¼NE¼NE¼, SE¼SE¼NE¼NE¼, W½NE¼, SE¼NE¼, and SE¼;
Secs. 31 thru 34;
Sec. 35; that portion lying southwesterly of the Raggeds Wilderness Area boundary;
Sec. 36, that portion lying southerly of the Raggeds Wilderness Area boundary.

T. 14 S., R. 88 W.,
Secs. 1 thru 5, unsurveyed;
Sec. 6, unsurveyed, that portion lying northerly of the West Elk Wilderness Area boundary;
Secs. 7 and 8, unsurveyed, those portions lying northeasterly of the West Elk Wilderness Area boundary;
Secs. 9 and 10, unsurveyed, those portions lying northerly of the West Elk Wilderness Area boundary;
Secs. 11 and 12, unsurveyed;
Sec. 13, unsurveyed, that portion lying northeasterly of the West Elk Wilderness Area boundary;
Secs. 14 and 15, unsurveyed, those portions lying northerly of the West Elk Wilderness Area boundary;
Sec. 16, unsurveyed, that portion lying northeasterly of the West Elk Wilderness Area boundary.

T. 7 S., R. 89 W.,
Sec. 17, that portion lying easterly of the Fourmile Creek subwatershed boundary;
Sec. 19, those portions lying southerly of the Fourmile Creek subwatershed boundary;
Sec. 20, that portion lying southeasterly of the Fourmile Creek subwatershed boundary;
Sec. 21, N½NE¼, W½, and W½SE¼;
Sec. 28, N½, SW¼, N½SE¼, and SW¼SE¼;
Sec. 29;
Sec. 30, that portion lying southerly of the Fourmile Creek subwatershed boundary;
Sec. 31, lots 4, 5, 8, and 9, N½NE¼, N½SW¼NE¼, SE¼NE¼, N½NE¼NW¼, N½SW¼NE¼NW¼, SE¼SW¼NE¼NW¼, SE¼NE¼NW¼, N½NE¼SE¼NW¼, SE¼NE¼SE¼NW¼, E½NW¼SW¼, E½SW¼, and SE¼;
Sec. 32, NE¼NE¼, NE¼NW¼, W½NW¼, W½SW¼, SE¼SW¼, and SE¼;
Sec. 33, NW¼NE¼, NW¼NW¼, and SE¼SW¼.

T. 8 S., R. 89 W.,
Sec. 3, lots 1 and 2, S½NE¼, NW¼SW¼, and NE¼SE¼;
Sec. 4, lots 2, 3, and 4, SW¼NE¼, S½NW¼, and S½;
Secs. 5 thru 8;
Sec. 9, SE¼NE¼, NE¼NW¼, W½NW¼, and S½;
Sec. 10, W½NW¼ and NW¼SW¼;
Sec. 15, S½NW¼, N½SW¼, and SW¼SW¼;
Sec. 16, W½NE¼, SE¼NE¼, W½, and SE¼;
Sec. 17, NE¼, W½, and SW¼SE¼;
Secs. 18 and 19;
Sec. 20, W½NE¼, SE¼NE¼, W½, and SE¼;
Sec. 21;
Sec. 22, NW¼NW¼, S½NW¼, and SW¼;
Sec. 27, W½;
Sec. 28, E½ and S½SW¼;
Sec. 29, N½NE¼, N½SW¼NE¼, NW¼, S½NE¼SW¼SW¼, S½NW¼SW¼SW¼, S½SW¼SW¼, S½NE¼SE¼SW¼, S½NW¼SE¼SW¼, and S½SE¼SW¼;
Sec. 30, lots 1 thru 4, N½NE¼, E½NW¼, E½SW¼, and S½SE¼;
Secs. 31, 32, and 33;
Sec. 34, W½NW¼ and SW¼.

T. 9 S., R. 89 W.,
Sec. 1, lots 1 thru 4, S½NW¼, NW¼SW¼, S½SW¼, NE¼SE¼, and SW¼SE¼;
Sec. 2, lots 1 and 2, S½NE¼, and SE¼;
Sec. 3, lots 3 and 4, S½NW¼, and SW¼;
Secs. 4 thru 9;
Sec. 10, W½ and SE¼SE¼;
Sec. 11, NE¼, N½SE¼, and SE¼SE¼;
Sec. 12, W½NE¼, NW¼, and W½SE¼;
Sec. 13;
Sec. 14, E½NE¼, W½NW¼, W½SW¼, and E½SE¼;
Sec. 15, NE¼NE¼, S½NE¼, NW¼, and S½;
Secs. 16 and 17;
Sec. 18, that portion lying easterly of the Mesa/Pitkin County boundary;
Secs. 19 thru 22;
Sec. 23, E½NE¼, W½NW¼, and E½SE¼;
Secs. 24 and 25;
Sec. 26, E½NE¼ and SE¼;
Sec. 27, N½, N½SW¼, SW¼SW¼, and SE¼;
Secs. 28 thru 33;
Sec. 34, N½NE¼, W½NW¼, W½SW¼, SE¼SW¼, and NE¼SE¼;
Sec. 35, E½ and W½SW¼;
Sec. 36.

T. 10 S., R. 89 W.,
Sec. 1;
Sec. 2, lots 1 and 2, S½NE¼, SE¼NW¼, and S½;
Sec. 3, lots 3 and 4, S½NE¼, S½NW¼, and S½;
Sec. 4, lots 1 thru 4, SW¼NE¼, S½NW¼, SW¼, and SW¼SE¼;
Sec. 5 thru 9;
Sec. 10, N½, N½SW¼, N½SW¼SW¼, N½SW¼SW¼SW¼, N½SE¼SW¼SW¼, N½SE¼SW¼, N½SW¼SE¼SW¼, N½SE¼SE¼SW¼, N½NE¼SE¼, SW¼NE¼SE¼, W½SE¼NE¼SE¼, NE¼SE¼NE¼SE¼, NW¼SE¼, N½SW¼SE¼, N½SW¼SW¼SE¼, and N½SE¼SW¼SE¼;
Sec. 11, lots 1 thru 8, NW¼, N½SW¼, and a parcel of land as described in special warranty deed recorded under document No. 405835 on June 30, 1997, Pitkin County, Colorado;

Secs. 12, 13, and 14;
Sec. 15, SE¼NE¼NE¼, S½SW¼NE¼NE¼, S½SW¼NW¼NE¼, S½SE¼NW¼NE¼, S½NE¼, S½SW¼NW¼NW¼, S½SE¼NW¼NW¼, S½NW¼, and S½;
Secs. 16 thru 36.

T. 11 S., R. 89 W.,
Secs. 1 thru 6;
Sec. 9, N½NE¼NE¼, NW¼NE¼, N½SW¼NE¼, SW¼SW¼NE¼, SE¼SE¼NE¼, NW¼, W½NE¼SW¼, NW¼SW¼, S½SW¼, E½SE¼, and SW¼SE¼;
Sec. 10, E½, E½NW¼, SW¼NW¼, and SW¼;
Sec. 11;
Sec. 12, that portion lying westerly of the Grand Mesa, Uncompahgre, and Gunnison National Forests boundary and that portion lying northerly of the Gunnison/Pitkin County boundary;
Sec. 13, that portion lying westerly of the Grand Mesa, Uncompahgre, and Gunnison National Forests boundary;
Secs. 14, 15, 16, and 21;
Sec. 22, NE¼, W½, and N½SE¼;
Sec. 23, N½;
Sec. 24, NW¼;
Sec. 26, S½, unsurveyed, that portion lying westerly of Raggeds Wilderness Area boundary;
Sec. 27, NW¼, S½SW¼, and S½SE¼;
Secs. 28 and 33;
Sec. 34, that portion lying northwesterly of the Raggeds Wilderness Area boundary;
Sec. 35, unsurveyed, that portion lying westerly of the Raggeds Wilderness Area boundary.

T. 12 S., R. 89 W.,
Secs. 2 and 3, those portions lying westerly of the Raggeds Wilderness Area boundary;
Sec. 10;
Secs. 11, 12, and 13, those portions lying westerly of the Raggeds Wilderness Area boundary;
Secs. 14 and 23;
Sec. 24, that portion lying southwesterly and westerly of the Raggeds Wilderness Area boundary;
Sec. 25;
Sec. 26, E½.

T. 13 S., R. 89 W.,
Sec. 7, SE¼;
Sec. 8, lot 7, that portion lying southerly of Anthracite Creek, lots 11 thru 14, and W½SW¼;
Sec. 9, lot 9 and NW¼SW¼, those portions lying southerly of Anthracite Creek;
Secs. 13, 14, and 15;
Sec. 16, lots 1 thru 6 and S½;
Sec. 17, that portion lying easterly of the Anthracite Creek subwatershed boundary and that portion lying northwesterly of the Bear Creek-North Fork subwatershed boundary;
Sec. 18, that portion lying northeasterly of the Bear Creek-North Fork Gunnison River subwatershed boundary;
Secs. 20 and 21, those portions lying northeasterly of the Raven Gulch subwatershed boundary;
Secs. 22 and 23;
Sec. 24, W½NE¼, N½NW¼, NW¼NE¼SE¼, S½NE¼SE¼, and SE¼SE¼;
Sec. 25, NE¼NE¼, N½SE¼NE¼, SW¼SE¼NE¼, W½NW¼, N½SW¼, E½SW¼SW¼, SE¼SW¼, W½SE¼, N½NW¼NE¼SE¼, and SW¼NW¼NE¼SE¼, and SE¼SE¼SE¼, excepting H.E.S. No. 81;
Sec. 26, N½, SW¼, N½SE¼, and W½SW¼SE¼, excepting H.E.S. No. 81;
Sec. 27;
Sec. 28, that portion lying easterly of the Raven Gulch subwatershed;
Sec. 33, that portion lying easterly of the Raven Gulch subwatershed boundary;
Sec. 34;
Sec. 35, W½NW¼NE¼, S½NE¼, W½, and SE¼;
Sec. 36, E½, NE¼NW¼, E½NW¼NW¼, S½NW¼, and SW¼.

T. 14 S., R. 89 W.,
Sec. 1, that portion lying northerly of the West Elk Wilderness Area boundary;
Sec. 2;
Sec. 3, that portion lying northerly of the West Elk Wilderness Area boundary;
Sec. 4, lots 5, 6, and 7, S½NE¼, SE¼NW¼, E½SW¼, and SE¼, those portions lying easterly of the Raven Gulch subwatershed and northwesterly of the West Elk Wilderness Area boundary;
Sec. 9, N½NE¼, that portion lying northerly of the West Elk Wilderness Area boundary;
Sec. 10, lots 1, 2, 3, and 4, those portions lying easterly of the West Elk Wilderness Area boundary;
Sec. 11, lots 1 thru 4 and NE¼, those portions lying northwesterly of the West Elk Wilderness Area boundary;
Sec. 12, that portion lying northerly of the West Elk Wilderness Area boundary;
Sec. 14, lot 3, SW¼NW¼, and W½SW¼, those portions lying westerly of the West Elk Wilderness Area boundary;
Sec. 15, lot 1, SE¼NE¼, and E½SE¼, those portions lying easterly of the West Elk Wilderness Area boundary;
Sec. 22, that portion lying easterly of the West Elk Wilderness Area boundary;
Sec. 23, excepting the West Elk Wilderness Area;
Sec. 24, that portion lying southwesterly of the West Elk Wilderness Area boundary;
Sec. 25, excepting H.E.S. No. 266 and the West Elk Wilderness Area;
Sec. 26, that portion lying northerly of the West Elk Wilderness Area boundary;
Sec. 36, NE¼ and E½NW¼, excepting H.E.S. No. 266.

T. 8 S., R. 90 W.,
Secs. 1 and 2, unsurveyed;
Secs. 3 and 10, unsurveyed, those portions lying easterly of the Fourmile Creek subwatershed boundary;
Secs. 11 thru 14, unsurveyed;
Secs. 15, unsurveyed, that portion lying easterly of the Mesa/Pitkin County boundary and southerly of the Garfield/Pitkin County boundary, and that portion lying northerly of the Garfield/Pitkin County boundary and easterly of the Fourmile Creek subwatershed boundary;
Secs. 21, unsurveyed, that portion lying easterly of the Mesa/Pitkin County boundary;
Sec. 22, unsurveyed, that portion lying southeasterly of the Mesa/Pitkin County boundary;
Secs. 23 thru 27, unsurveyed;
Secs. 28 and 29, unsurveyed, those portions lying southeasterly of the Mesa/Pitkin County boundary;
Sec. 32, unsurveyed, that portion lying easterly of the Mesa/Pitkin County boundary;
Secs. 33 thru 36, unsurveyed.

T. 9 S., R. 90 W.,
Sec. 1, unsurveyed;
Secs. 2 thru 5 and Sec. 10, unsurveyed, those portions lying northerly of the Mesa/Pitkin County boundary;
Sec. 11, unsurveyed, those portions lying northerly and easterly of the Mesa/Pitkin County boundary;
Secs. 12 and 13, unsurveyed, those portions lying easterly of the Mesa County/Pitkin boundary;
Sec. 22, unsurveyed, that portion lying southeasterly of the Gunnison/Mesa County boundary;
Sec. 23, unsurveyed, that portion lying southerly of the Gunnison/Mesa County boundary;
Sec. 24, unsurveyed, that portion lying southeasterly of the Mesa/Pitkin County boundary and southeasterly of the Gunnison/Mesa County boundary;
Secs. 25 and 26, unsurveyed;
Secs. 27, 28, and 31, unsurveyed, those portions lying southeasterly of the Gunnison/Mesa County boundary;
Sec. 32, unsurveyed, that portion lying southerly of the Gunnison/Mesa County boundary;
Sec. 33, unsurveyed, that portion lying southeasterly of the Gunnison/Mesa County boundary;
Secs. 34, 35, and 36.

T. 10 S., R. 90 W.,
Secs. 1, 2, and 3;
Secs. 4 and 5, unsurveyed;
Sec. 6, unsurveyed, that portion lying southeasterly of the Gunnison/Mesa County boundary;
Secs. 7, 8, and 9, unsurveyed;
Secs. 10 thru 13;
Sec. 14, that portion lying northerly of the hydrographic divide between Rock Creek and Gooseberry Creek;
Sec. 15, that portion lying northerly of the hydrographic divide between Rock Creek and an unnamed tributary south of Rock Creek flowing in a northwesterly direction to Clear Fork;
Sec. 16, unsurveyed, that portion lying northwesterly of the Clear Fork Trail, closed National Forest System Road 844, and the hydrographic divide between Rock Creek and an unnamed tributary south of Rock Creek flowing in a northwesterly direction to Clear Fork;
Secs. 17 and 18, unsurveyed;
Sec. 19, unsurveyed, that portion lying northerly of the hydrographic divide between Baldy Creek and Battle Creek, and that portion lying northerly of the hydrographic divide between Baldy Creek and an unnamed tributary flowing in an easterly direction to Clear Fork;

Sec. 20, unsurveyed, that portion lying northerly of the hydrographic divide between Baldy Creek and an unnamed tributary flowing in an easterly direction to Clear Fork;
Sec. 21, unsurveyed, that portion lying northwesterly of closed National Forest System Road 844, excepting that portion lying southerly of the hydrographic divide between Baldy Creek and an unnamed tributary south of Baldy Creek flowing in an easterly direction to Clear Fork and said hydrographic divide's extension to closed National Forest Service Road 844;
Secs. 24, 25 and 36.
T. 11 S., R. 90 W.,
Sec. 1, lots 1, 2, 7, 8, 9, 10, 14, and 15 and W½SE¼;
T. 14 S., R. 90 W.,
Sec. 5, W½SW¼;
Sec. 6, lots 3, 4, and 5, and SE¼NW¼, excepting H.E.S. No. 204;
Sec. 8, W½ and S½SE¼, excepting H.E.S. Nos. 86, 87, and 104;
Sec. 9, S½SW¼;
Sec. 16, W½NE¼, W½, and SW¼SE¼;
Sec. 17, excepting H.E.S. Nos. 86 and 87;
Sec. 18, excepting H.E.S. Nos. 85 and 87;
Secs. 19 and 20;
Sec. 21, W½NE¼, W½, and SE¼;
Sec. 22, S½SW¼ and S½SE¼;
Sec. 27, that portion lying northerly and westerly of the West Elk Wilderness Area boundary;
Sec. 28;
Sec. 29, N½, N½SW¼, and SE¼;
Sec. 30, lot 1, N½NE¼, and NE¼NW¼.
T. 15 S., R. 90 W.,
Secs. 5 and 6, unsurveyed, those portions lying westerly of the West Elk Wilderness Area boundary;
Sec. 7, unsurveyed;
Secs. 8, unsurveyed, that portion lying westerly of the West Elk Wilderness Area boundary;
Sec. 16, unsurveyed, that portion lying southerly of the West Elk Wilderness Area boundary;
Sec. 17, unsurveyed, that portion lying westerly of the West Elk Wilderness Area boundary;
Secs. 18 and 19, unsurveyed;
Sec. 20, unsurveyed, that portion lying southwesterly of the West Elk Wilderness Area boundary, excepting H.E.S. No. 49;
Sec. 21, unsurveyed, that portion lying southerly of the West Elk Wilderness Area boundary;
Secs. 22 and 27, unsurveyed, those portions lying westerly of the West Elk Wilderness Area boundary;
Secs. 28 and 29, unsurveyed, excepting H.E.S. No. 49;
Sec. 30, unsurveyed, excepting H.E.S. No. 173;
Secs. 31, 32, and 33, unsurveyed;
Sec. 34, unsurveyed, that portion lying westerly of the West Elk Wilderness Area boundary.
T. 10 S., R. 91 W.,
Sec. 1, unsurveyed, that portion lying southerly of the Gunnison/Mesa County boundary and easterly of the of Gunnison/Delta County boundary;
Sec. 12, unsurveyed, that portion lying easterly of the Gunnison/Delta County boundary;
Secs. 13 and 24, unsurveyed, those portions lying easterly of the Gunnison/Delta County boundary and northeasterly of the hydrographic divide between Baldy Creek and the East Fork of Little Muddy Creek.
T. 14 S., R. 91 W.,
Secs. 13 and 24, those portions lying easterly of the Gunnison/Delta County boundary.
T. 15 S., R. 91 W.,
Secs. 1, 12, and 13, those portions lying easterly of the Gunnison/Delta County boundary;
Sec. 24, lots 1, 4, 5, and 13, those portions lying easterly of the Gunnison/Delta County boundary;
Sec. 25, S½SE¼NE¼NE¼, SE¼SE¼, E½SE¼, those portions lying easterly of the Gunnison/Delta County boundary;
Sec. 36, that portion lying easterly of the Gunnison/Delta County boundary.
The areas described aggregate 197,744.66 acres, more or less.

Public Lands

Sixth Principal Meridian, Colorado

T. 13 S., R. 86 W.,
Sec. 20, lots 1 thru 4 and SW¼.
T. 7 S., R. 88 W.,
Sec. 20, lot 3, that part lying westerly of the easterly ordinary high-water mark, an ambulatory line, of the Roaring Fork River;
Sec. 28, lot 29, that part lying southwesterly of the easterly ordinary high-water mark, an ambulatory line, of the Roaring Fork River.
T. 8 S., R. 88 W.,
Sec. 7;
Sec. 8, lots 3 thru 5, lots 8 thru 11, SW¼NE¼, SE¼NW¼, NE¼SW¼, and NW¼SE¼;
Sec. 9, E½SE¼;
Sec. 15, W½SW¼;
Sec. 16, S½;
Sec. 17, lots 2 thru 5 and lots 8 and 9, SE¼NW¼, E½SW¼;
Secs. 18 and 19;
Sec 20, lots 2 thru 8, SW¼NE¼, E½SW¼, and W½SE¼;
Sec. 21, lots 1 and 2 and NW¼;
Sec. 22, W½NW¼;
Sec. 28, W½NW¼, W½SW¼, and SE¼SW¼;
Secs. 29 thru 32;
Sec. 33, W½ and SE¼.
T. 6 S., R. 89 W.,
Sec. 28, SW¼SE¼, that part lying southerly of the Fourmile Creek subwatershed boundary
Sec. 33, W½NE¼, SE¼NE¼, and SE¼;
Sec. 34, SW¼SW¼.
T. 7 S., R. 89 W.,
Sec. 3, lot 1, SE¼NE¼, E½NW¼SE¼, E½W½NW¼SE¼, and E½SE¼;
Sec. 4, that part lying southerly and easterly of the Fourmile Creek subwatershed boundary;
Sec. 5, E½SE¼, that part lying southeasterly of the Fourmile Creek subwatershed boundary;
Sec. 9, NW¼NE¼, N½NW¼, E½SW¼, SW¼SE¼;
Sec. 11, W½NW¼NW¼ and SW¼NW¼;
Sec. 12, lot 22 and W½SW¼;
Sec. 13, NW¼;
Sec. 15, lots 16 and 17 and SW¼SW¼;
Sec. 16, NW¼NE¼, E½NW¼, NE¼SE¼, and S½SE¼;
Sec. 35, lot 7, SE¼NE¼, SE¼SW¼, and SE¼;
Sec. 36, S½NW¼ and SW¼.
T. 8 S., R. 89 W.,
Sec. 1, lots 1 thru 4, S½NE¼, S½SW¼, and SE¼;
Sec. 2, lots 1 thru 4, S½NE¼, S½NW¼, and N½SW¼;
Secs. 12, 13, and 24;
Sec. 25, N½, E½SW¼, and SE¼;
Sec. 26, E½NE¼ and SW¼NE¼;
Sec. 35, E½NE¼ and SE¼
Sec. 36.
T. 13 S., R. 89 W.,
Sec. 7, S½NE¼, that part lying southerly of the northerly ordinary high-water mark, an ambulatory line, of the North Fork of the Gunnison River;
Sec. 9, lot 10, that part lying southerly and easterly of the northwesterly ordinary highwater mark, an ambulatory line, of the Anthracite Creek;
Sec. 10, lots 11 thru 14.
T. 7 S., R. 90 W.,
Sec. 24, lot 3 and NW¼SE¼, those portions lying south of the Fourmile Creek subwatershed boundary;
Sec. 25, SE¼NW¼ and NE¼SW¼;
Sec. 26, E½SE¼, that part lying southeasterly of the Fourmile Creek subwatershed boundary;
Sec. 34, E½SE¼ and SW¼SE¼, that part lying south and east of the Fourmile Creek subwatershed boundary;
Sec. 35, E½, that part lying south and east of the Fourmile Creek subwatershed boundary;
Sec. 36, lot 4, W½SW¼, and SE¼SW¼.
T. 13 S., R. 90 W.,
Sec. 31, lots 5 thru 7 and lots 10 and 12.
T. 14 S., R. 90 W.,
Sec. 6, lots 1, 2, 6, and 7, S½NE¼, E½SW¼, and SE¼, except HES 104 and 204;
Sec. 7, except HES 87 and 104.
T. 13 S., R. 91 W.,
Sec. 25, lots 1, 9, and 16, those portions lying east of the Delta/Gunnison County line;
Sec. 36, lots 1, 8, and 9, those portions lying east of the Delta/Gunnison County line.
T. 14 S., R. 91 W.,
Sec. 1, E½SE¼, that portion lying east of the Delta/Gunnison County line;
Sec. 12, E½NE¼ and E½SE¼, those portions lying east of the Delta/Gunnison County line.
The areas described aggregate 15,464.99 acres, more or less.

Non-Federal Surface Lands, With Federal Subsurface Interest

New Mexico Principal Meridian, Colorado

T. 50 N., R. 6 W.,
Sec. 2, E½SE¼, that part lying east of the Montrose/Gunnison County boundary.
T. 51 N., R. 5.5 W.,
Sec. 26, lots 5 thru 8;
Sec. 35, lots 1 thru 8.

T. 51 N., R. 6 W.,
Sec. 11, lot 1, that part lying east of the Delta/Gunnison County boundary;
Sec. 12;
Sec. 13, N½NE¼, SW¼NE¼, E½NW¼;
Sec. 14, W½NE¼ and E½SE¼, those portions lying east of the Delta/Gunnison County boundary;
Sec. 23, E½NE¼, that part lying east of the Delta/Gunnison County boundary, and E½SE¼, that part lying east of the Delta and Montrose/Gunnison County boundary;
Sec. 24, SW¼NE¼ and NW¼;
Sec. 25, S½NE¼, S½NW¼, and S½;
Sec. 26, E½NE¼ and E½SE¼, those portions lying east of the Montrose/Gunnison County boundary;
Sec. 35, E½NE¼ and E½SE¼, those portions lying east of the Montrose/Gunnison County boundary;
Sec. 36.

Sixth Principal Meridian, Colorado

T. 8 S., R. 88 W.,
Sec. 8, lot 12;
Sec. 17, lots 1, 6, 7, and 10, SW¼NE¼, and W½SE¼;
Sec. 20, lot 1, NW¼NE¼, and E½NW¼;
Sec. 21, E½SW¼, W½SE¼, and NE¼SE¼;
Sec. 27, SW¼SE¼, that part lying westerly of the easterly ordinary high-water mark, an ambulatory line, of the Crystal River;
Sec. 28, W½NE¼, E½NW¼, NE¼SW¼, and W½SE¼;
Sec. 33, NE¼.
T. 6 S., R. 89 W.,
Sec. 34, SW¼SE¼;
T. 7 S., R. 89 W.,
Sec. 1, lots 26, 27, and 34, that part lying southwesterly of the northeasterly high-water mark, an ambulatory line, of the Roaring Fork River;
Sec. 2, lots 6, 7, and 17, NW¼SW¼, and S½SW¼;
Sec. 3, W½W½NW¼SE¼;
Sec. 11, NE¼, E½NW¼, E½NW¼NW¼, N½SW¼, SE¼SW¼, and SE¼;
Sec. 13, W½SW¼;
Sec. 14, E½, E½NW¼, and NW¼NW¼;
Sec. 15, lots 4 and 8 (other min.);
Sec. 23, lots 6, 7, 11, and 14 (other min.);
Sec. 24, NW¼SW¼ and S½SW¼;
Sec. 25, N½NW¼, SW¼NW¼, and W½SW¼;
Sec. 26 lot 14 and NE¼SE¼ (coal only);
Sec. 33, SW¼NE¼, E½NW¼, and NE¼SW¼;
Sec. 35, lots 1 and 2 (coal only);
Sec. 36, NW¼NW¼ (coal only).
T. 8 S., R. 89 W.,
Sec. 28, NE¼SW¼ (coal only).
T. 10 S., R. 89 W.,
Sec. 10, S½S½SW¼SW¼, S½S½SE¼SW¼, SE¼SE¼NE¼SE¼, S½S½SW¼SE¼, and SE¼SE¼;
Sec. 11, SW¼SW¼, except a parcel of land as described in special warranty deed recorded under document No. 405835 on June 30, 1997, Pitkin County, Colorado;
Sec. 15, N½NE¼NE¼, N½SW¼NE¼NE¼, N½NW¼NE¼, N½S½NW¼NE¼, NE¼NW¼, N½NW¼NW¼, and N½S½NW¼NW¼.
T. 11 S., R. 89 W.,
Sec. 9, S½NE¼NE¼, SE¼SW¼NE¼, N½SE¼NE¼, SW¼SE¼NE¼, E½NE¼SW¼, and NW¼SE¼ (coal only);
Sec. 10, NW¼NW¼ (coal only).
T. 13 S., R. 89 W.,
Sec. 2, lot 36, that part lying southerly and easterly of the northwesterly ordinary highwater mark, an ambulatory line, of the Anthracite Creek;
Sec. 8, lot 2, N½NW¼, and SW¼NW¼, those portions lying southerly and southeasterly of the northerly and northwesterly ordinary high-water mark, an ambulatory line, of the North Fork of the Gunnison River;
Sec. 11, lot 1, lot 2, that part lying southerly and easterly of the northwesterly ordinary high-water mark, an ambulatory line, of the Anthracite Creek, lots 5 thru 9, SE¼NE¼, SE¼SW¼, NE¼SE¼, and S½SE¼;
Sec. 12.
T. 7 S., R. 90 W.,
Sec. 24, lot 4, E½SW¼, and SW¼SE¼, those portions lying south and east of the Fourmile Creek subwatershed boundary;
Sec. 25, lots 1 thru 4, W½NE¼, N½NW¼, SW¼NW¼, W½SW¼, SE¼SW¼, and W½SE¼, those portions lying southeasterly of the Fourmile Creek subwatershed boundary;
Sec. 34, SE¼NE¼, that part lying easterly of the Fourmile Creek subwatershed boundary;
Sec. 35, W½, that part lying southerly of the Fourmile Creek subwatershed boundary;
Sec. 36, lots 1 and 2, W½NE¼, NW¼, NE¼SW¼, W½SE¼.
T. 13 S., R. 91 W.,
Sec. 24, E½NE¼ and E½SE¼, those portions lying east of the Delta/Gunnison County boundary;
Sec. 25, lot 8, that part lying east of the Delta/Gunnison County boundary.

The areas described aggregate 8,688.58 acres, more or less.

Non-Federal Lands With No Surface or Sub-Surface Interest

New Mexico Principal Meridian, Colorado

T. 50 N., R. 6 W.,
Sec. 2, lot 1 and SE¼NE¼, those portions lying east of the Montrose/Gunnison County boundary.

Sixth Principal Meridian, Colorado

T. 13 S., R. 86 W.,
M.S. Nos. 3831, 3832, 4243, 4469, 4472, 4767, 4768, 5600, 7129, 8496 and 12805, those portions lying within Sec. 30.
T. 14 S., R. 86 W.,
Sec. 28, SW¼NW¼ and NW¼SW¼;
Sec. 29, SE¼NE¼ and NE¼SE¼.
T. 13 S., R. 87 W.,
M.S. Nos. 2694, 2721, and 2867, those portions lying southerly of the Raggeds Wilderness Area; M.S. Nos. 745, 1109, 1110, 1112, 1156, 1286, 2693, M.S. Nos. 2695 thru 2703, M.S. Nos. 2709, 2724, 2731, 2754, 2786, 2801, 2813, 2814, 2829, 2863, 2935, 3082, 3299, 3386, 3390, 3440, 3466, 3467, 3470 A&B, 3471 A&B, 3511, 3716, 3728, 3729, 3737, 3768, 3804, 3831, 3831, 4005, 4124, 4149, 4236, 4257, 4258, 4421, M.S. Nos. 4445 thru 4449, and M.S. Nos. 4955, 5146, 5147, 5322, 5342, 5343, 5511, 5520, 5870, 6382, 7123, 7856, 8067, 14344, 14392, 15668, 17240, 17714, 17918, 17919, 20023, 20024, and 20926;
Irwin Townsite;
S.T.A. Nos. 0440 thru 0442.
T. 14 S., R. 87 W.,
Sec. 9, S½;
Sec. 10, S½SW¼;
Sec. 15, NW¼;
Secs. 16 thru 18;
Sec. 20, N½NE¼ and NE¼NW¼;
M.S. Nos. 745, 1209, 1384, M.S. Nos. 2695 thru 2700, and M.S. Nos. 2989, 3137, 3542, 3736 A, 3737, 3768, 3801, 3802, 4257, 4401, 4257, 4955, 15096, and 19527;
Irwin Townsite.
T. 7 S., R. 88 W.,
Secs. 18, and 19, those portions lying westerly of the easterly ordinary high-water mark, an ambulatory boundary, of the Roaring Fork River;
Sec. 20, lots 2, 8, 9, 10, 13, 14, and 15, those portions lying westerly of the easterly ordinary high-water mark, an ambulatory boundary, of the Roaring Fork River;
Sec. 28, lots 11 thru 14, those portions lying westerly of the easterly ordinary high-water mark, an ambulatory boundary, of the Crystal River, and lot 25, that part lying westerly of the easterly ordinary high-water mark, an ambulatory boundary, of the Crystal River, and the easterly ordinary high-water mark, an ambulatory boundary, of the Roaring Fork River;
Sec. 29, that part lying westerly of the easterly ordinary high-water mark, an ambulatory boundary, of the Roaring Fork River;
Secs. 30 thru 32;
Sec. 33, that part lying westerly of the easterly ordinary high-water mark, an ambulatory boundary, of the Crystal River.
T. 8 S., R. 88 W.,
Secs. 3 and 4, those portions lying westerly of the easterly ordinary high-water mark, an ambulatory boundary, of the Crystal River;
Secs. 5 and 6;
Sec. 8, lots 1, 2, 6, and 7;
Sec. 9, N½, SW¼, and W½SE¼;
Sec. 10, that part lying westerly of the easterly ordinary high-water mark, an ambulatory boundary, of the Crystal River;
Sec. 15, lots 1 thru 10, lots 12 thru 15, and W½NW¼, those portions lying westerly of the easterly ordinary high-water mark, an ambulatory boundary, of the Crystal River;
Sec. 16, N½;
Sec. 21, NE¼, and SE¼SE¼;
Sec. 22, that part lying westerly of the easterly ordinary high-water mark, an ambulatory boundary, of the Crystal River, except the W½NW¼;
Sec. 27, lots 2 thru 8 and lots 11 thru 15, those portions lying westerly of the easterly ordinary high-water mark, an ambulatory boundary, of the Crystal River;

Sec. 28, E½NE¼ and E½SE¼;
Sec. 34, NW¼NE¼ and W½, those portions lying westerly of the easterly ordinary high-water mark, an ambulatory boundary, of the Crystal River.

T. 9 S., R. 88 W.,
Sec. 3, lot 4 and SW¼SW¼, those portions lying westerly of the easterly ordinary high-water mark, an ambulatory boundary, of the Crystal River;
Sec. 4, lot 1 and E½SE¼SE¼;
Sec. 9, E½SE¼, that part lying westerly of the easterly ordinary high-water mark, an ambulatory boundary, of the Crystal River;
Sec. 10, NW¼NW¼, that part lying westerly of the easterly ordinary high-water mark, an ambulatory boundary, of the Crystal River;
Sec. 16, N½NE¼, SW¼NE¼, E½SW¼, SW¼NW¼SE¼, and SW¼SE¼, those portions lying westerly of the easterly ordinary high-water mark, an ambulatory boundary, of the Crystal River;
Sec. 21, NE¼NW¼, that part lying westerly of the easterly ordinary high-water mark, an ambulatory boundary, of the Crystal River, SW¼NW¼, and a parcel of land as described in book 713, page 309, recorded on May 27, 1993, Pitkin County, Colorado;
Sec. 29, S½NE¼ and SE¼, those portions lying westerly of the easterly ordinary high-water mark, an ambulatory boundary, of the Crystal River;
Sec. 32, N½NE¼, that part lying westerly of the easterly ordinary high-water mark, an ambulatory boundary, of the Crystal River;
Sec. 33, lots 11 and 14, those portions lying westerly of the easterly ordinary high-water mark, an ambulatory boundary, of the Crystal River;
M.S. Nos. 5443 A&B;
H.E.S. No. 370.

T. 10 S., R. 88 W.,
Sec. 4, lot 3, SE¼NW¼, and E½SW¼, those portions lying westerly of the easterly ordinary high-water mark, an ambulatory boundary, of the Crystal River;
Sec. 9, N½NW¼ and SW¼NW¼, those portions lying westerly of the easterly ordinary high-water mark, an ambulatory boundary, of the Crystal River;
Sec. 17, E½NE¼, SW¼NE¼, and S½, those portions lying westerly of the easterly ordinary high-water mark, an ambulatory boundary, of the Crystal River;
Sec. 18, SE¼;
Sec. 19, NE¼NE¼;
Sec. 20, that portion lying westerly of the easterly ordinary high-water mark, an ambulatory boundary, of the Crystal River;
Sec. 29, NW¼ and W½SW¼, those portions lying westerly of the easterly ordinary high-water mark, an ambulatory boundary, of the Crystal River;
M. S. No. 5443 A.

T. 11 S., R. 88 W.,
Sec. 6, lots 2, 7 and 10, those portions not reconveyed to the United States as described in special warranty deed in book 788, page 29, recorded July 24, 1995, Pitkin County, Colorado, and lot 9, all those portions lying westerly of the easterly ordinary high-water mark, an ambulatory boundary, of the Crystal River;
Sec. 7, lot 1 and NE¼NW¼, those portions lying westerly of the easterly ordinary high-water mark, an ambulatory boundary, of the Crystal River and north of the Pitkin/Gunnison County boundary.

T. 12 S., R. 88 W.,
Sec. 30, NE¼NE¼.

T. 6 S., R. 89 W.,
Sec. 27, SW¼SW¼, that part lying southwesterly of Fourmile Creek subwatershed boundary;
Sec. 28, SE¼SW¼ and SE¼SE¼, those portions lying easterly and southerly of Fourmile Creek subwatershed boundary;
Sec. 33, NE¼NE¼ and W½, that part lying easterly of Fourmile Creek subwatershed boundary;
Sec. 34, N½, N½SW¼, SE¼SW¼, N½SE¼, and SE¼SE¼, those portions lying southerly and westerly of Fourmile Creek subwatershed boundary;
Sec. 35, that part lying southerly of the northerly ordinary high-water mark, an ambulatory line, of the Roaring Fork River;
Sec. 36, that part lying southerly of the northerly ordinary high-water mark, an ambulatory line, of the Roaring Fork River.

T. 7 S., R. 89 W.,
Sec. 1, that part lying westerly of the easterly ordinary high-water mark, an ambulatory line, of the Roaring Fork River, except lots 26, 27, and 34;
Sec. 2, lots 1 thru 5, lots 8 thru 16, and lots 18 thru 22;
Sec. 3, lots 2 thru 4, SW¼NE¼, S½NW¼, SW¼, and SW¼SE¼;
Sec. 8, that part lying southerly and easterly of the Fourmile Creek subwatershed boundary;
Sec. 9, lots 1 thru 7, NE¼NE¼, SW¼NE¼, S½NW¼, W½SW¼, and NW¼SE¼;
Sec. 10;
Sec. 11, SW¼SW¼;
Sec. 12, that part lying westerly of the easterly ordinary high-water mark, an ambulatory line, of the Roaring Fork River, except lot 22 and W½SW¼;
Sec. 13, lots 1 thru 16 and E½SW¼;
Sec. 14, SW¼NW¼ and SW¼;
Sec. 15, lots 1 thru 3, lots 5 thru 7, lots 9 thru 15, lots 18 thru 23, N½NE¼, SE¼NE¼, and NE¼ SE¼;
Sec. 16, lots 1 and 2, S½NE¼, W½NW¼, SW¼, NW¼SE¼;
Sec. 21, S½NE¼ and E½SE¼;
Sec. 22;
Sec. 23, lots 1 thru 5, lots 8 thru 10, lots 12 and 13, E½, N½NW¼, and SE¼NW¼;
Sec. 24, lots 1 and 2, NW¼NE¼, S½NE¼, NW¼, NE¼SW¼, SE¼;
Sec. 25, NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 26, lots 1 thru 13, lots 15 thru 18, NE¼, SW¼SW¼, and NW¼SE¼;
Sec. 27;
Sec. 28, SE¼SE¼;
Sec. 31, lots 2, 6, and 7, S½SW¼NE¼, SW¼SW¼NE¼NW¼, SW¼NE¼SE¼NW¼, NW¼SE¼NW¼, and S½SE¼NW¼;
Sec. 32, NW¼NE¼, S½NE¼, SE¼NW¼, and NE¼SW¼;
Sec. 33, E½NE¼, SW¼NW¼, W½SW¼, and SE¼;
Sec. 34;
Sec. 35, lots 3 thru 6, W½NW¼, N½SW¼, and SW¼SW¼;
Sec. 36, NE¼, NE¼NW¼, and SE¼.

T. 8 S., R. 89 W.,
Sec. 1, S½NW¼ and N½SW¼;
Sec. 2, S½SW¼ and SE¼;
Sec 3, lots 3 and 4, S½NW¼, NE¼SW¼, S½SW¼, NW¼SE¼, and S½SE¼;
Sec 4, lot 1 and SE¼NE¼;
Sec. 9, N½NE¼, SW¼NE¼, and SE¼NW¼;
Sec. 10, E½, E½NW¼, NE¼SW¼, and S½SW¼;
Secs. 11 and 14;
Sec. 15, E½, N½NW¼, and SE¼SW¼;
Sec. 16, NE¼NE¼;
Sec. 17, N½SE¼ and SE¼SE¼;
Sec. 20, NE¼NE¼;
Sec. 22, E½ and NE¼NW¼;
Sec. 23;
Sec. 25, W½SW¼;
Sec. 26, NW¼NE¼, NW¼, S½;
Sec. 27, E½;
Sec. 28, NW¼ and NW¼SW¼;
Sec. 29, S½SW¼NE¼, SE¼NE¼, N½SW¼, N½N½SW¼SW¼, N½N½SE¼SW¼, and SE¼;
Sec. 30, S½NE¼ and N½SE¼;
Sec. 34, E½ and E½NW¼;
Sec. 35, W½NE¼ and W½.

T. 9 S., R. 89 W.,
Sec. 1, S½NE¼, NE¼SW¼, NW¼SE¼, and SE¼SE¼;
Sec. 2, W½;
Sec. 3, E½;
Sec. 10, NE¼, N½SE¼, and SW¼SE¼;
Sec. 11, W½ and SW¼SE¼;
Sec. 12, E½NE¼, SW¼, and E½SE¼;
Sec. 14, W½NE¼, E½NW¼, E½SW¼, and W½SE¼;
Sec. 15, NW¼NE¼;
Sec. 23, W½NE¼, E½NW¼, SW¼, and W½SE¼;
Sec. 26, W½NE¼ and W½;
Sec. 27, SE¼SW¼;
Sec. 34, S½NE¼, E½NW¼, NE¼SW¼, NW¼SE¼, and S½SE¼;
Sec. 35, NW¼ and E½SW¼.

T. 10 S., R. 89 W.,
Sec. 2, lots 3 and 4 and SW¼NW¼;
Sec. 3, lots 1 and 2;
Sec. 4, SE¼NE¼, N½SE¼, and SE¼SE¼.

T. 7 S., R. 90 W.,
Sec. 36, lot 3.

T. 13 S., R. 90 W.,
Sec. 31, lot 9.

The areas described aggregate 221,898.23 acres of Federal land.

The areas described, including both Federal and non-Federal lands, aggregate approximately 257,439.93 acres.

2. The withdrawal made by this order does not alter the applicability of laws governing the use of public lands or National Forest System lands other than the public land laws, the mining laws, mineral leasing, mineral materials, and geothermal leasing laws.

3. This withdrawal will expire 20 years from the effective date of this Order, unless, as a result of a review conducted prior to the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

(Authority: 43 U.S.C. 1714)

Dated: April 3, 2024.

Deb Haaland,

Secretary of the Interior.

[FR Doc. 2024–07384 Filed 4–5–24; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037664; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Museum of Us, San Diego, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Museum of Us has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after May 8, 2024.

ADDRESSES: Carmen Mosley, NAGPRA Repatriation Manager, Museum of Us, 1350 El Prado, Balboa Park, San Diego, CA 92101, telephone (619) 239–2001 Ext. 42, email *cmosley@museumofus.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Museum of Us, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual has been reasonably identified. No associated funerary objects are present. In August of 1908, Frank Dwight Austin found the human remains on a branch of the Tombigbee River, between Mobile and Jackson, Alabama. The human remains were donated to the Natural History Museum on May 18, 1932, and in turn donated to the San Diego Museum (now the Museum of Us) later in 1932.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains described in this notice.

Determinations

The Museum of Us has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a reasonable connection between the human remains described in this notice and the Poarch Band of Creek Indians and The Choctaw Nation of Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after May 8, 2024. If competing requests for repatriation are received, the Museum of Us must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Museum of Us is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: March 22, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–07351 Filed 4–5–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037669; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Florida Department of Transportation, Tallahassee, FL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Florida Department of Transportation has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after May 8, 2024.

ADDRESSES: Jennifer Marshall, Florida Department of Transportation, 605 Suwannee Street, Tallahassee, FL 32399, telephone (850) 414–4316, email *Jennifer.Marshall@dot.state.fl.us.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Florida Department of Transportation, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, three individuals have been reasonably identified. The 3,702 associated funerary objects are 3,352 ceramic sherds, 185 seed beads, 144 lithic flakes, 10 glass sherds, seven metal fragments, one shell, and three other objects. These remains were identified during a 1999 Phase II excavation project along SR 92 in Osceola County Florida. Due to the agricultural use of the land in more recent history, the remains are highly fragmented and therefore did not receive pathological analysis. It does not appear that any Chapter 872 FS case or repatriation effort was initiated for the remains collected.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

The Florida Department of Transportation has determined that:

- The human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- The 3,702 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Seminole Tribe of Florida.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after May 8, 2024. If competing requests for repatriation are received, the Florida Department of Transportation must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Florida Department of Transportation is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: March 22, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–07356 Filed 4–5–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–GATE–37548; PPNEGATEB0, PPMVSCS1Z.Y00000]

Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee Notice of Public Meeting

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, as amended, the National Park Service (NPS) is hereby giving notice that the Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee (Committee) will meet as indicated below.

DATES: The virtual meeting will take place on Monday, May 20, 2024. The meeting will begin at 9:00 a.m. until 2:00 p.m., with a public comment period at 11:30 a.m. to 12:00 p.m. (EASTERN), with advance registration required. Individuals that wish to participate must contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than May 15, 2024, to receive instructions for accessing the meeting.

FOR FURTHER INFORMATION CONTACT: This will be a virtual meeting. Anyone interested in attending should contact Daphne Yun, Acting Public Affairs Officer, Gateway National Recreation Area, 210 New York Avenue, Staten Island, New York 10305, by telephone (718) 815–3651, or by email *daphne_yun@nps.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Committee was established on April 18, 2012, by authority of the Secretary of the Interior (Secretary) under 54 U.S.C. 100906(a) and is regulated by the Federal Advisory Committee Act. The Committee provides advice to the Secretary, through the Director of the NPS, on matters relating to the Fort Hancock Historic District of Gateway National Recreation Area. All meetings are open to the public. Interested persons may present, either orally or through written comments, information for the Committee to consider during the public meeting. Written comments will be accepted prior to, during, or after the meeting. Members of the public may submit written comments by mailing them to the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Purpose of the Meeting: The Gateway National Recreation Area will discuss leasing updates, general park updates, and working group updates. The final agenda will be posted on the Committee's website at *https://www.forthancock21.org.* The website includes meeting minutes from all prior meetings.

Due to time constraints during the meeting, the Committee is not able to read written public comments submitted into the record. Individuals or groups requesting to make oral comments at the public Committee meeting will be limited to no more than three minutes per speaker. All comments will be made part of the public record and will be electronically distributed to all Committee members. Detailed minutes of the meeting will be available for public inspection within 90 days of the meeting.

Meeting Accessibility/Special Accommodations: The meeting is open to the public. Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your written comments, you should be aware that your entire comment including your personal identifying information will be publicly available. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. Ch. 10.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2024–07165 Filed 4–5–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037666; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Ohio History Connection, Columbus, OH

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Ohio History Connection has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after May 8, 2024.

ADDRESSES: Nekole Alligood, NAGPRA Specialist, Ohio History Connection, 800 E 17th Avenue, Columbus, OH 43211, telephone (614) 297–2300, email *nalligood@ohiohistory.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Ohio History Connection, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual has been reasonably identified. No associated funerary objects are present. The one individual is less than 20 years of age, of an unknown sex, from an unknown time during the pre-contact era. The individual was ''found in an excavation about 3 miles above (north?) of Bryan, Ohio''. The individual was transferred to Ohio History Connection by the Ohio Bureau of Criminal Investigation (BCI) in 2000.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains described in this notice.

Determinations

The Ohio History Connection has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a reasonable connection between the human remains and the Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Cayuga Nation; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana; Citizen Potawatomi Nation, Oklahoma; Eastern Shawnee Tribe of Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Kaw Nation, Oklahoma; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan; Omaha Tribe of Nebraska; Oneida Indian Nation; Oneida Nation; Onondaga Nation; Ottawa Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Prairie Band Potawatomi Nation; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Saint Regis Mohawk Tribe; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians; Seneca-Cayuga Nation; Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Tonawanda Band of Seneca; Turtle Mountain Band of Chippewa Indians of North Dakota; Tuscarora Nation; and the Wyandotte Nation.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after May 8, 2024. If competing requests for repatriation are received, the Ohio History Connection must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Ohio History Connection is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: March 22, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–07353 Filed 4–5–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037674; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: Memphis Museum of Science and History, Memphis, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Memphis Museum of Science and History (MoSH), intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after May 8, 2024.

ADDRESSES: Marilyn Masler, Memphis Museum of Science and History, 3550 Central Avenue, Memphis, TN 38111, telephone (901) 636–2334, email *733arilyn.masler@memphistn.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the MoSH, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of 253 cultural items have been requested for repatriation. The 253 unassociated funerary objects are whole and reconstructed ceramic vessels. They were removed from Belle Meade Site (3CT30) in Crittenden County, Arkansas, by Memphian McKinley Verne Highsmith (in the 1970s) who was a hunter and gunsmith. MoSH acquired these vessels in 2004 through the Community Foundation of Memphis, TN. In consultation with Dr. David Dye at the University of Memphis, they have been culturally affiliated to the Quapaw Nation.

Determinations

The MoSH has determined that:

- The 253 unassociated funerary objects described in this notice are reasonably believed to have been placed intentionally with or near human remains, and are connected, either at the time of death or later as part of the death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. The unassociated funerary objects have been identified by a preponderance of the evidence as related to human remains, specific individuals, or families, or removed from a specific burial site or burial area of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.
- There is a reasonable connection between the cultural items described in this notice and the Quapaw Nation.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after May 8, 2024. If competing requests for repatriation are received, the MoSH must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The MoSH is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: March 22, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–07360 Filed 4–5–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037675; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of California, Davis, Davis, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of California, Davis (UC Davis) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after May 8, 2024.

ADDRESSES: Megon Noble, NAGPRA Project Manager, University of California, Davis, 412 Mrak Hall, One Shields Avenue, Davis, CA 95616, telephone (530) 752–8501, email *mnoble@ucdavis.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of UC Davis and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, 16 individuals have been reasonably identified. The 2,388 lots associated funerary objects are 32 projectile points, 237 lots of soil samples, 73 lots of charcoal and ash, 230 lots of fired clay, 83 lots of historic items, 148 lots of modified shell, 105 lots of chipped stone (bifaces, cores, flake tools), 442 lots of unmodified animal bone, three lots of minerals (ochre and quartz), 260 lots of lithic debitage, 100 lots of fire cracked rock, six lots of ground stone, eight lots of miscellaneous stone, 452 lots of modified animal bone, nine lots of worked stone (pendants and pipes), 30 lots of seeds, and 170 lots of unmodified shell. The 181 currently missing associated funerary objects are five projectile points, two lots of charcoal and ash, 12 lots of fired clay, 21 lots of historic items, eight lots of modified shell, one lot of chipped stone, 53 lots of unmodified animal bone, 20 lots of lithic debitage, one lot of fire cracked rock, 11 lots of modified animal bone, one lot of worked stone, two lots of seeds, and 44 lots of unmodified shell. In February 2022, eight associated funerary objects from this collection were stolen from the UC Davis Anthropology Museum. The stolen items are one biface and seven projectile points. A 1968 UC Davis field school conducted an excavation at this site, CA–SAC–43 (UC Davis Accession 35), under the direction of Patricia Johnson and Jack Nance.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

The UC Davis has determined that:

- The human remains described in this notice represent the physical

remains of 16 individuals of Native American ancestry.

• The 2,388 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.

• There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Buena Vista Rancheria of Me-Wuk Indians California; Chicken Ranch Rancheria of Me-Wuk Indians of California; Ione Band of Miwok Indians of California; Jackson Band of Miwuk Indians; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; United Auburn Indian Community of the Auburn Rancheria of California; and the Wilton Rancheria, California.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after May 8, 2024. If competing requests for repatriation are received, the UC Davis must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The UC Davis is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: March 22, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–07361 Filed 4–5–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037678; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the American Museum of Natural History has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after May 8, 2024.

ADDRESSES: Nell Murphy, American Museum of Natural History, 200 Central Park West, New York, NY 10024, telephone (212) 769–5837, email *nmurphy@amnh.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the American Museum of Natural History, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, three individuals have been reasonably identified. No associated funerary objects are present. In 1875, human remains representing a minimum of one individual were removed from San Miguel Island, California, by Captain A.W. Chase. James Terry sold the human remains to the American Museum of Natural History in 1891, and they were accessioned that year. In 1924, human remains representing a minimum of two individuals were purchased from Felix von Luschan with funding from Felix Warburg and accessioned by the Museum. Handwritten notes on the crania of each individual indicate that they were removed from Santa Rosa Island, California. Biological information for the remains of one individual suggests they may date to the Mission Period. These remains from San Miguel Island and Santa Rosa Island are affiliated with the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation.

While it no longer does so, in the past, the Museum applied potentially hazardous pesticides to items in the collections. Museum records do not list specific objects treated or which of several chemicals used were applied to a particular item. Therefore, those handling this material should follow the advice of industrial hygienists or medical personnel with specialized training in occupational health or with potentially hazardous substances.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains described in this notice

Determinations

The American Museum of Natural History has determined that:

• The human remains described in this notice represent the physical remains of three individuals of Native American ancestry.

• There is a reasonable connection between the human remains described in this notice and the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after May 8, 2024. If competing requests for repatriation are received, the American Museum of Natural History must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The American Museum of Natural History is responsible for sending a copy of this

notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: March 22, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–07364 Filed 4–5–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037677; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Birmingham Museum of Art, Birmingham, AL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Birmingham Museum of Art has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after May 8, 2024.

ADDRESSES: Dr. Graham C. Boettcher, Director & CEO, Birmingham Museum of Art, 2000 Rev. Abraham Woods, Jr. Blvd., Birmingham, AL 35203, telephone (205) 297–8048, email *gboettcher@artsbma.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Birmingham Museum of Art and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, two individuals have been reasonably identified. No associated funerary objects are present. In 1969, Dr. Samuel Fischer, III of Birmingham, Alabama, donated to the Birmingham Museum of Art the skeletal remains of two individuals (partial skulls, accession numbers 1969.33.1 and 1969.33.2) believed to be Native American, which were found in Detroit, Lamar County, Alabama. In October 2018, the remains of these individuals were examined and tested by Dr. Keith Jacobi, biological anthropologist in the Dept. of Anthropology, University of Alabama, and their ancestry was confirmed to be Native American. The town of Detroit, Lamar County, Alabama was established on lands historically belonging to the Choctaw Nation, which were ceded to the United States of America in the treaty of Fort St. Stephens in 1816.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains described in this notice.

Determinations

The Birmingham Museum of Art has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- There is a reasonable connection between the human remains described in this notice and the Jena Band of Choctaw Indians; Mississippi Band of Choctaw Indians; and The Choctaw Nation of Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after May 8, 2024. If competing requests for repatriation are received, the Birmingham Museum of Art must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Birmingham Museum of Art is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: March 22, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–07363 Filed 4–5–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037672; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of California, Riverside, Riverside, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of California, Riverside (UCR) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after May 8, 2024.

ADDRESSES: Megan Murphy, University of California, Riverside, 900 University Avenue, Riverside, CA 92517–5900, telephone (951) 827–6349, email *megan.murphy@ucr.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of California, Riverside, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, four individuals have been reasonably identified. The 47 lots of associated funerary objects are eight lots of animal bone, four lots of ceramics, six lots of

glass objects, seven lots of lithic objects and debitage, four lots of shell beads, two lots of botanical materials, six lots of mineralogical objects, four lots of unmodified shell, four lots of metal, one lot of leather, and one lot of geological materials. Between 1989 and 1993, archaeologists associated with the University of California, Riverside's Archaeological Research Unit (UCR–ARU) excavated different areas of archaeological site CA–RIV–102 also known as the Lochmiller Site including CA–RIV–3757, CA–RIV–3758, CA–RIV–3759, CA–RIV–3760, CA–RIV–3761, CA–RIV–3788, and CA–RIV–3789. The Lochmiller Site is known to Cahuilla and Luiseno communities as the historic village of Pahsitnah and is situated in the Santa Rosa Hills in the town of Hemet. The site was first excavated by UCR–ARU in 1977, but continued excavations produced a total of eight separate archaeological collections at the University of California, Riverside. Human remains have been identified in five of the eight collections currently housed at UCR from Pahsitnah and are likely to be present in the other three collections. No known individuals have been identified.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

The University of California, Riverside has determined that:

- The human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- The 47 lots of objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California; Cahuilla Band of Indians; Los Coyotes Band of Cahuilla and Cupeno Indians, California; Pechanga Band of Indians (*previously* listed as Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California); Ramona Band of Cahuilla, California; Santa Rosa Band of Cahuilla Indians, California; and the Soboba Band of Luiseno Indians, California.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after May 8, 2024. If competing requests for repatriation are received, the University of California, Riverside must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The University of California, Riverside is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: March 22, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–07358 Filed 4–5–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037680; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the American Museum of Natural History has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after May 8, 2024.

ADDRESSES: Nell Murphy, American Museum of Natural History, 200 Central Park West, New York, NY 10024, telephone (212) 769–5837, email *nmurphy@amnh.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the American Museum of Natural History and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, four individuals have been reasonably identified. The one associated funerary object is a worked piece of bone. In 1895, human remains representing a minimum of three individuals were removed from Santa Catalina Island, California. They were excavated from a possible battlefield site by J.N. Plumb and party and described as prehistoric in age. G.W. Cotterill donated the remains in 1899 and the American Museum of Natural History accessioned them that same year. A piece of worked bone, which may represent a tool or hair pin, was found stored with one individual. In 1896, the Museum purchased human remains representing a minimum of one individual from the Giffort Brothers. A handwritten note on the cranium indicates that the individual was removed from San Nicolas Island, California. Based on available information and tribal consultation, these remains from Santa Catalina Island and San Nicolas Island representing a minimum of four individuals are affiliated with the La Jolla Band of Luiseno Indians, California; Pala Band of Mission Indians; Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; Pechanga Band of Indians (*previously* listed as Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California); Rincon Band of Luiseno Mission Indians of Rincon Reservation, California; Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California; and the Soboba Band of Luiseno Indians, California.

While it no longer does so, in the past, the Museum applied potentially hazardous pesticides to items in the collections. Museum records do not list specific objects treated or which of several chemicals used were applied to a particular item. Therefore, those handling this material should follow the advice of industrial hygienists or medical personnel with specialized training in occupational health or with potentially hazardous substances.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

The American Museum of Natural History has determined that:

- The human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- The one object described in this notice is reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and the La Jolla Band of Luiseno Indians, California; Pala Band of Mission Indians; Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; Pechanga Band of Indians (*previously* listed as Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California); Rincon Band of Luiseno Mission Indians of Rincon Reservation, California; Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California; and the Soboba Band of Luiseno Indians, California.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after May 8, 2024. If competing requests for repatriation are received, the American Museum of Natural History must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The American Museum of Natural History is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: March 22, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–07365 Filed 4–5–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037665; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Wisconsin Oshkosh, Oshkosh, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Wisconsin Oshkosh (UWO) has completed an inventory of associated funerary objects and has determined that there is a cultural affiliation between the associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the associated funerary objects in this notice may occur on or after May 8, 2024.

ADDRESSES: Adrienne Frie, University of Wisconsin Oshkosh, 800 Algoma Boulevard, Oshkosh, WI 54901, telephone (920) 424–1365, email *friea@uwosh.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of UWO, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, associated funerary objects have been identified from the Progressive Rod & Gun Club Site (47–GL–0186), Green Lake County, WI. John (Jack) Steinbring removed individuals and the associated funerary objects during a surface survey in 1954. After removal, John Steinbring kept them in his possession and did not report them to Wisconsin Historical Society. In the 1960s, John Steinbring began working at the University of Winnipeg in Canada and brought the individuals with him. In the early 1990s, John Steinbring retired from the University of Winnipeg and shipped the individuals and objects back to Wisconsin when he returned. In 1994, he donated the individuals and objects to UWO. In 2022, employees at UWO identified the presence of human remains while inventorying the site, and subsequently published a Notice of Inventory Completion describing the individuals and associated funerary objects in October 2023. In November 2023, additional associated funerary objects were identified. The 24 associated funerary objects are one medium canid left femur bone; one medium canid left ulna bone; one medium canid left humerus bone; one medium canid right ulna bone; one medium canid right humerus bone; six diagnostic grit tempered ceramic body sherds; seven undiagnostic grit tempered ceramic body sherds; one lot of diagnostic grit tempered rim sherds; three undiagnostic shell tempered ceramic body sherds; one lot of grit tempered ceramic body fragments; and one unidentifiable copper fragment.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location of the associated funerary objects described in this notice.

Determinations

UWO has determined that:

- The 24 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the associated funerary objects described in this notice and the

Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana; Citizen Potawatomi Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little Shell Tribe of Chippewa Indians of Montana; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan; Oglala Sioux Tribe; Otoe-Missouria Tribe of Indians, Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation; Prairie Island Indian Community in the State of Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Santee Sioux Nation, Nebraska; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Sokaogon Chippewa Community, Wisconsin; Spirit Lake Tribe, North Dakota; St. Croix Chippewa Indians of Wisconsin; Standing Rock Sioux Tribe of North & South Dakota; Turtle Mountain Band of Chippewa Indians of North Dakota; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; and the Yankton Sioux Tribe of South Dakota.

Requests for Repatriation

Written requests for repatriation of the associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the associated funerary objects in this notice to a requestor may occur on or after May 8, 2024. If competing requests for repatriation are received, UWO must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the associated funerary objects are considered a single request and not competing requests. UWO is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: March 22, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–07352 Filed 4–5–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#-0037735; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before March 30, 2024, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by April 23, 2024.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email, you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before March 30, 2024. Pursuant to section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

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.

Nominations submitted by State or Tribal Historic Preservation Officers

Key: State, County, Property Name, Multiple Name(if applicable), Address/Boundary, City, Vicinity, Reference Number.

ARIZONA

Pima County

St. Michael and All Angels Episcopal Church, 602 N. Wilmot Road, Tucson, SG100010265

NEW YORK

Albany County

Graceland Cemetery Receiving Vault, 680 Delaware Avenue, Albany, SG100010274

Delaware County

North Harpersfield Churches, 4289 and 4298 County Road 29, Jefferson, SG100010271

Dutchess County

Wallace Company Department Store, 331 Main Street, Poughkeepsie, SG100010269

Monroe County

Building at 216–222 South Avenue, 216–222 South Avenue, Rochester, SG100010273

New York County

Building at 821 Broadway, 821 Broadway, New York, SG100010272

Niagara County

Tatler Club, 6 Fourth Street, Niagara Falls, SG100010270

Rensselaer County

Miller, Hall & Hartwell Shirt Collar Factory, (Textile Factory Buildings in Troy, New York, 1880–1920 MPS), 547 and 558 River Street, Troy, MP100010268

Empire Stove Works, 285 Second Street, Troy, SG100010275

St. Lawrence County

St. Lawrence County Government Complex, 48 Court Street, Canton, SG100010267

Ulster County

St. Joseph's Parish Complex, Roughly bounded by Wall Street, Main Street, and Pearl Street, Kingston, SG100010266

OKLAHOMA

Creek County

St. George Episcopal Church, 148 West 7th Street, Bristow, SG100010278

PENNSYLVANIA

Luzerne County

Bell Telephone Company of Pennsylvania—Wilkes-Barre Central Office, 33 E. Northampton Street, Wilkes-Barre, SG100010258

TENNESSEE

Franklin County

Townsend School, 913 S. Shepherd Street, Winchester, SG100010260

TEXAS

Tarrant County

W.I. Cook Memorial Hospital, 1212 West Lancaster Avenue, Fort Worth, SG100010262

UTAH

Utah County

Kit Carson Cross, Address Restricted, Hooper, SG100010261

Additional documentation has been received for the following resource(s):

ARIZONA

Pima County

Winterhaven Historic District (Additional Documentation), 3335 North Christmas Avenue, Tucson, AD05001466

Broadmoor Historic District (Additional Documentation), 433 S. Stratford Dr., Tucson, AD100006151

Authority: Section 60.13 of 36 CFR part 60.

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2024–07380 Filed 4–5–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037668; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: St. Joseph Museums, Inc; St. Joseph, MO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the St. Joseph Museums, Inc. intends to repatriate certain cultural items that meet the definition of sacred objects and objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after May 8, 2024.

ADDRESSES: Tori Zieger, St. Joseph Museums, Inc., 3406 Frederick Avenue, St. Joseph, MO 64506, telephone (816) 752–2778 (cell); email *tori@stjosephmuseum.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the St. Joseph Museums, Inc. and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of two cultural items have been requested for repatriation. The two sacred objects/objects of cultural patrimony are sacred bundles, labeled as medicine bags in museum inventory. The first medicine bundle is labeled as belonging to Otter Lodge. This bundle was sold to Harry L. George approximately February of 1916 by Vern Thornburg of Lincoln, NE. The second bundle is labeled as belonging to Snake Lodge. It was sold to Harry L. George in the early 1900s.

Determinations

The St. Joseph Museums, Inc. has determined that:

- The two sacred objects/objects of cultural patrimony described in this notice are, according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization, specific ceremonial objects needed by a traditional Native American religious leader for present-day adherents to practice traditional Native American religion, and have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision).
- There is a reasonable connection between the cultural items described in this notice and the Iowa Tribe of Kansas and Nebraska.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after May 8, 2024. If competing requests for repatriation are received, the St. Joseph Museums, Inc. must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The St. Joseph Museums, Inc. is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: March 22, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–07355 Filed 4–5–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037667; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Field Museum, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Field Museum has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after May 8, 2024.

ADDRESSES: Helen Robbins, Repatriation Director, Field Museum, 1400 S Lake Shore Drive, Chicago, IL 60605, telephone (312) 665–7317, email *hrobbins@fieldmuseum.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Field Museum, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, three individuals have been reasonably identified. No associated funerary objects are present. The human remains are hair clippings belonging to three individuals, identified with the tribal designation ''Omaha'' (Field Museum catalog numbers 193207.6, 193207.7, and 193216.1). Field Museum staff believe they were collected under the direction of Franz Boas and Frederick Ward Putnam for the 1893 World's Columbian Exposition in Chicago. The hair clippings were accessioned into the Field Museum's collection in 1939. No information regarding the individual's name, sex, age, or geographic location has been found. There is no known presence of any potentially hazardous substances.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains described in this notice.

Determinations

The Field Museum has determined that:

- The human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- There is a reasonable connection between the human remains described in this notice and the Omaha Tribe of Nebraska.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after May 8, 2024. If competing requests for repatriation are received, the Field Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Field Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: March 22, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–07354 Filed 4–5–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037676; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: Gilcrease Museum, Tulsa, OK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Gilcrease Museum intends to repatriate certain cultural items that meet the definition of sacred objects and objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after May 8, 2024.

ADDRESSES: Laura Bryant, Gilcrease Museum, 800 S. Tucker Drive, Tulsa, OK 74104, telephone (918) 596–2747, email *laura-bryant@utulsa.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Gilcrease Museum, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of eight cultural items have been requested for repatriation. The eight sacred objects/objects of cultural patrimony are a ladle, a pipe, two necklaces, three beaded strips, and a beaded bag. These were collected likely in the early 20th century and then acquired by Thomas Gilcrease in the 1950s. Thomas Gilcrease transferred his collection to the City of Tulsa in 1955 and 1962.

A total of two cultural items have been requested for repatriation. The two sacred objects/objects of cultural patrimony are a beaded bag and gourd rattle. These are associated with the Native American Church and were purchased by Gilcrease Museum from James Cooley in 1995.

A total of five cultural items have been requested for repatriation. The five sacred objects/objects of cultural patrimony are a basket, medicine bag, doll, breechcloth, and sash with a needle. These were collected in the early and mid-20th century by Alice Marriot and Carol Rachlin. Carol Rachlin donated her collection to Gilcrease Museum in 2014.

Determinations

The Gilcrease Museum has determined that:

- The 15 sacred objects/objects of cultural patrimony described in this notice are, according to the Native

American traditional knowledge of an Indian Tribe or Native Hawaiian organization, specific ceremonial objects needed by a traditional Native American religious leader for present-day adherents to practice traditional Native American religion, and have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision).

- There is a reasonable connection between the cultural items described in this notice and the Winnebago Tribe of Nebraska.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after May 8, 2024. If competing requests for repatriation are received, the Gilcrease Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The Gilcrease Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: March 22, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–07362 Filed 4–5–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037670; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Florida Department of Transportation, Tallahassee, FL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Florida Department of Transportation has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after May 8, 2024.

ADDRESSES: Jennifer Marshall, Florida Department of Transportation, 605 Suwannee Street, Tallahassee, FL 32399, telephone (850) 414–4316, email *Jennifer.Marshall@dot.state.fl.us.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Florida Department of Transportation, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, six individuals have been reasonably identified. No associated funerary objects are present. Excavations were conducted in 1992 prior to a FDOT bridge replacement project along SR A1A on Matanzas Inlet in St. Johns County Florida. Fourteen burials were identified during the original project and pathological analysis was conducted by Dr. Lisa Hoshower from the University of Florida. It was believed that all of the associated remains had been repatriated in 1997, however an ongoing collections and curation project at FDOT has identified additional remains from six of the fourteen burials that were separated from the original collection and, therefore, not repatriated.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains described in this notice.

Determinations

The Florida Department of Transportation has determined that:

- The human remains described in this notice represent the physical remains of six individuals of Native American ancestry.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Seminole Tribe of Florida.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after May 8, 2024. If competing requests for repatriation are received, the Florida Department of Transportation must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Florida Department of Transportation is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: March 22, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–07357 Filed 4–5–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037673; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Tennessee, Department of Anthropology, Knoxville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Tennessee, Department of

Anthropology (UTK) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after May 8, 2024.

ADDRESSES: Dr. Ozlem Kilic, University of Tennessee, Office of the Provost, 527 Andy Holt Tower, Knoxville, TN 37996–0152, telephone (865) 974–2454, email *okilic@utk.edu* and *vpaa@utk.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of UTK, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual have been reasonably identified. No associated funerary objects are present. These remains were removed from Shawnee County, KS. There are no records for these remains on file at UTK, only a single note: ''Shawnee Co. KBI Sept 62''. This individual was likely found and turned over to law enforcement or confiscated by law enforcement. Based on a past pattern of practice, the individual was probably sent by the Kansas Bureau of Investigation to Dr. William Bass at the University of Kansas for examination. Bass likely kept the remains once he determined they were not of recent origin (*i.e.,* a missing person or crime victim), and brought them to Knoxville when he began working at UTK in 1971. These remains were housed at the UTK Forensic Anthropology Center (case 9–62A), until they were transferred to the UTK Office of Repatriation. No associated funerary objects are present at UTK. Shawnee County, KS, is part of the treaty lands of the Prairie Band Potawatomi Nation. An unknown substance/s may have been used to treat the human remains.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains described in this notice.

Determinations

UTK has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Prairie Band Potawatomi Nation.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after May 8, 2024. If competing requests for repatriation are received, UTK must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. UTK is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: March 22, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–07359 Filed 4–5–24; 8:45 am]

BILLING CODE 4312–52–P

JAPAN-U.S. FRIENDSHIP COMMISSION

Performance Review Board Members

ACTION: Notice of Senior Executive Service (SES) Performance Review Board (PRB) appointment.

SUMMARY: The Japan-U.S. Friendship Commission (JUSFC) announces the appointment of members to the JUSFC SES, fiscal year 2024–2026 PRB. The purpose of the PRB is to provide fair and impartial review of the annual SES performance appraisal prepared by the senior executive's immediate and second level supervisor; to make recommendations to appointing officials regarding acceptance or modification of the performance rating; and to make recommendations for performance-based bonuses and performance-based pay increases.

FOR FURTHER INFORMATION CONTACT: If you have any questions regarding this submission, please contact Johanna Ochoa, *jochoa@jusfc.gov,* (202) 653–9800.

SUPPLEMENTARY INFORMATION: JUSFC, as required by 5 U.S.C. 4314(c)(1) through (5), has established a Senior Executive Service PRB. Members of the PRB serve for a period of 24 months. In the case of an appraisal of a career appointee, more than half of the members shall consist of career appointees, pursuant to 5 U.S.C. 4314(c)(5). The names and titles of the PRB members are as follows:

Mr. Marcel Acosta, Executive Director, National Capital Planning Commission

Ms. Kimberly M. Zeich, Executive Director, Ability One Commission

Mr. Christopher Roscetti, Deputy Director for Environment, Health, and Safety, U.S. Department of Energy

Johanna Ochoa,

Administrative Support Specialist, Japan-U.S. Friendship Commission.

[FR Doc. 2024–07336 Filed 4–5–24; 8:45 am]

BILLING CODE 3110–01–01P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Third Amendment To Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act

On March 29, 2024, the Department of Justice lodged a proposed Third Amendment to a Consent Decree (''Amendment 3'') with the United States District Court for the Central District of California (''Court'') in the matter of *United States of America and State of California on behalf of the Department of Toxic Substances Control and Toxic Substances Control Account* vs. *Abex Aerospace, et al.,* Civil Action No. 2:16–cv–02696 (C.D. Cal.).

This Amendment 3 amends Appendix D of the Consent Decree previously approved by the Court on March 31, 2017 (for which the Court also approved amendments on April 5, 2018, and June 10, 2020). The Consent Decree pertains to environmental contamination at Operable Unit 2 (''OU2'') of the Omega

Chemical Corporation Superfund Site (''Site'') in Los Angeles County, California. Amendment 3 is for the purpose of adding additional settling parties to the Consent Decree and follows the mechanisms that the previously approved Consent Decree sets forth for adding additional settlors.

The Consent Decree resolves certain claims under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act and Section 7003 of the Resource Conservation and Recovery Act, as well as related state law claims, in connection with environmental contamination at OU2. Amendment 3 adds the following parties, each of which has owned or operated a facility within the commingled OU2 groundwater plume area, as Settling Cash Defendants:

1. Bodycote Thermal Processing, Inc.
2. Palmtree Acquisition Corporation
3. First Dice Road Company
4. Phibro-Tech, Inc.
5. Union Pacific Railroad Company

These parties are ''Certain Noticed Parties'' within the meaning of Paragraph 75 and Appendix G of the Consent Decree. This Amendment 3 requires the additional settling parties to pay $20,500,000 toward cleanup of the portion of the OU2 groundwater plume addressed by the Consent Decree.

The publication of this notice opens a period for public comment on the proposed Amendment 3, which is available for public review as described below. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America and State of California on behalf of the Department of Toxic Substances Control and Toxic Substances Control Account* vs. *Abex Aerospace, et al.,* D.J. Ref. No. 90–11–3–06529/15. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Under section 7003(d) of RCRA, a commenter may request an opportunity for a public meeting in the affected area. Any comments submitted in writing or at a public meeting may be filed by the United States in whole or in part on the public court docket without notice to the commenter.

During the public comment period, the lodged proposed Amendment 3 and the previously approved Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* If you require assistance accessing Amendment 3, you may request assistance by email or by mail to the addresses provided above for submitting comments.

Scott Bauer,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2024–07350 Filed 4–5–24; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

On April 2, 2024, the Department of Justice lodged a proposed consent decree with the United States District Court for the Southern District of Texas, Houston Division, in the lawsuit entitled *United States and the State of Texas* v. *Intercontinental Terminals Co., LLC.* Civil Action No. 4:24–cv–01207.

The United States and State of Texas asserted claims in this case under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607, seeking to recover natural resource damages (''NRD'') in response to releases of hundreds of thousands of barrels of a mixture of petrochemical products and firefighting foam and water into the environment as a result of a fire that ignited on March 17, 2019 at a terminal facility owned and operated by Intercontinental Terminals Co., LLC (''ITC'') located in Deer Park, Harris County, Texas. Hazardous substances were released from ITC's facility into the air and surrounding waterways, including Tucker Bayou, Buffalo Bayou, and the Houston Ship Channel. Natural resources were injured, and recreational use lost, as a result of these releases. The proposed Consent Decree resolves the Trustees' claims against ITC.

Under CERCLA, federal and state natural resource trustees have authority to seek compensation for natural resources harmed by hazardous substances released into the environment as a result of the March 2019 fire at ITC's facility. The natural resource trustees here include the U.S. Department of the Interior, acting through the U.S. Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, and the State of Texas on behalf of Texas Commission on Environmental Quality, the Texas Parks and Wildlife Department and Texas General Land Office (the ''Trustees'').

Under the proposed Consent Decree, ITC agrees to pay $6,645,000 to the DOI Natural Resource Damage Assessment and Restoration Fund to be used to restore, replace, rehabilitate, or acquire the equivalent of those resources injured by the releases, as well as to compensate for lost recreational services. The money will also be used for the Trustees' restoration planning costs and to reimburse the Trustees' past assessment costs. The United States and the State will grant a covenant not to sue or to take administrative action against ITC for NRD pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), section 1002(b)(2)(A) of the Oil Pollution Act, 33 U.S.C. 2702(b)(2)(A), section 311 of the Clean Water Act, 33 U.S.C. 1321, and applicable state law.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments on the proposed Consent Decree should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and the State of Texas* v. *Intercontinental Terminals Company,* LLC D.J. Ref. 90–11–3–12213. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Any comments submitted in writing may be filed in whole or in part on the public court docket without notice to the commenter.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* If you require assistance accessing the consent decree, you may request assistance by email or by mail to the

addresses provided above for submitting comments.

Thomas Carroll,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2024–07337 Filed 4–5–24; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Quarterly Census of Employment and Wages Business Supplement (QBS)

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Bureau of Labor Statistics (BLS)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before May 8, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Through the Quarterly Census of Employment and Wages Business Supplement (QBS), BLS can capture information on the impact of specific events on the U.S. economy in an efficient and cost-effective manner. Information collected by the QBS allows stakeholders and data users to better understand and evaluate the impact of these events on the economy in a timely manner, allowing policy makers to be able to make informed decisions. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on January 11, 2024 (89 FR 1944).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Agency: DOL–BLS.

Title of Collection: Quarterly Census of Employment and Wages Business Supplement (QBS).

OMB Control Number: 1220–0198.

Affected Public: Businesses or other for-profits.

Total Estimated Number of Respondents: 80,000.

Total Estimated Number of Responses: 80,000.

Total Estimated Annual Time Burden: 6,667 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2024–07327 Filed 4–5–24; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Local Area Unemployment Statistics Program

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Bureau of Labor Statistics (BLS)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before May 8, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: BLS has been charged by Congress with the responsibility of collecting and publishing monthly information on employment, the average wage received, and the hours worked by area and industry. The Local Area Unemployment Statistics Program develops residency-based employment and unemployment statistics through a cooperative Federal-State program that uses employment and unemployment inputs available in State agencies. Estimates are prepared monthly in the State agencies and transmitted to the BLS for validation and publication. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on January 18, 2024 (89 FRN 3432).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Agency: DOL–BLS.

Title of Collection: Local Area Unemployment Statistics Program.

OMB Control Number: 1220–0017.

Affected Public: State, Local and Tribal Governments.

Total Estimated Number of Respondents: 52.

Total Estimated Number of Responses: 630.

Total Estimated Annual Time Burden: 636 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2024–07326 Filed 4–5–24; 8:45 am]

BILLING CODE 4510–24–P

NUCLEAR REGULATORY COMMISSION

[NRC–2024–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of April 8, 15, 22, 29, and May 6, 13, 2024. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* Braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Betty.Thweatt@nrc.gov* or *Samantha.Miklaszewski@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of April 8, 2024

Tuesday, April 9, 2024

9:55 a.m. Affirmation Session (Public Meeting) (Tentative) Motion to Quash Subpoena in Missouri State Emergency Management Agency Investigation (Tentative) (Contact: Wesley Held: 301–287–3591)

Additional Information: The meeting will be held in the Commissioners' Hearing Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Tuesday, April 9, 2024

10:00 a.m. Meeting with Advisory Committee on the Medical Uses of Isotopes (Public Meeting) (Contact: Celimar Valentin-Rodriguez: 301–415–7124)

Additional Information: The meeting will be held in the Commissioners' Hearing Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Week of April 15, 2024—Tentative

There are no meetings scheduled for the week of April 15, 2024.

Week of April 22, 2024—Tentative

Tuesday, April 23, 2024

9:00 a.m. Strategic Programmatic Overview of the Fuel Facilities and the Spent Fuel Storage and Transportation Business Lines (Public Meeting) (Contact: Haile Lindsay: 301–415–0616)

Additional Information: The meeting will be held in the Commissioners' Hearing Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Week of April 29, 2024—Tentative

There are no meetings scheduled for the week of April 29, 2024.

Week of May 6, 2024—Tentative

There are no meetings scheduled for the week of May 6, 2024.

Week of May 13, 2024—Tentative

There are no meetings scheduled for the week of May 13, 2024.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: April 3, 2024.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2024–07453 Filed 4–4–24; 11:15 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–219 and CP2024–225]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 10, 2024.

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

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

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also

establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2024–219 and CP2024–225; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 53 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* April 2, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* April 10, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2024–07382 Filed 4–5–24; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99889; File No. SR–NYSEARCA–2024–31]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of the Bitwise Ethereum ETF

April 2, 2024.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 28, 2024, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the Bitwise Ethereum ETF (the ''Trust'') under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of the Trust[4] pursuant to NYSE Arca Rule 8.201–E, which governs the listing and trading of Commodity Based Trust Shares.[5]

According to the Registration Statement, the Trust will not be registered as an investment company under the Investment Company Act of 1940,[6] and is not required to register thereunder. The Trust is not a commodity pool for purposes of the Commodity Exchange Act.[7]

The Exchange represents that the Shares satisfy the requirements of NYSE Arca Rule 8.201–E and thereby qualify for listing on the Exchange.[8]

Operation of the Trust[9]

The Trust will issue the Shares which, according to the Registration Statement, represent units of undivided beneficial ownership of the Trust. The Trust is a Delaware statutory trust and will operate pursuant to a trust agreement (the ''Trust Agreement'') between Bitwise Investment Advisers, LLC (the ''Sponsor'' or ''Bitwise'') and Delaware Trust Company, as the Trust's trustee (the ''Trustee''). Coinbase Custody Trust Company, LLC will maintain custody of the Trust's ether (the ''Ether Custodian''). Bank of New York Mellon will be the custodian for the Trust's cash holdings (in such role, the ''Cash Custodian''), the administrator of the Trust (in such role, the ''Administrator''), and the transfer agent for the Trust (in such role, the ''Transfer Agent'').

According to the Registration Statement, the investment objective of the Trust is to seek to provide exposure to the value of ether held by the Trust, less the expenses of the Trust's operations. In seeking to achieve its investment objective, the Trust will hold ether and establish its Net Asset Value (''NAV'') at the end of every business day by reference to the CME CF Ether Reference Rate—New York Variant (the ''Pricing Index'').[10]

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Trust is a Delaware statutory trust. On March 28, 2024, the Trust filed with the Commission an initial registration statement (the ''Registration Statement'') on Form S–1 under the Securities Act of 1933 (15 U.S. C. 77a). The description of the operation of the Trust herein is based, in part, on the most recent Registration Statement. The Registration Statement is not yet effective, and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

[5] Commodity-Based Trust Shares are securities issued by a trust that represents investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the trust.

[6] 15 U.S.C. 80a–1.

[7] 17 U.S.C. 1.

[8] With respect to the application of Rule 10A–3 (17 CFR 240.10A–3) under the act, the trust relies on the exemption contained in Rule 10A–3(c)(7).

[9] The description of the operation of the Trust, the Shares, and the ether market contained herein is based, in part, on the Registration Statement. *See* note 4, *supra.*

[10] The Pricing Index is designed to provide a daily, 4:00 p.m. New York time reference rate of the U.S. dollar price of one ether that may be used to develop financial products. The Pricing Index uses the same methodology as the CME CF Ether Reference Rate (''ERR''), which was designed by the CME Group and CF Benchmarks Ltd. (the ''Benchmark Provider'') to facilitate the cash settlement of ether futures contracts traded on the Chicago Mercantile Exchange (''CME''). The only material difference between the Pricing Index and ERR is that the ERR measures the U.S. dollar price of one ether as 9f 4:00 p.m. Eastern time (''E.T.''). The CME Group also publishes the CME CF Ether Real Time Index (the ''CME Ether Real Time

Continued

The Trust's only assets will be ether and cash.[11] The Trust does not seek to hold any non-ether crypto assets and has expressly disclaimed ownership of any such assets in the event the Trust ever involuntarily comes into possession of such assets.[12] The Trust will not use derivatives that may subject the Trust to counterparty and credit risks. The Trust will process creations and redemptions in cash. The Trust's only recurring ordinary expense is expected to be the Sponsor's unitary management fee (the ''Sponsor Fee''), which will accrue daily and will be payable in ether monthly in arrears. The Administrator will calculate the Sponsor Fee on a daily basis by applying an annualized rate to the Trust's total ether holdings, and the amount of ether payable in respect of each daily accrual shall be determined by reference to the Pricing Index. Financial institutions authorized to create and redeem Shares (each, an ''Authorized Participant'') will deliver, or cause to be delivered, cash in exchange for Shares of the Trust, and the Trust will deliver cash to Authorized Participants when those Authorized Participants redeem Shares of the Trust.

Custody of the Trust's Ether

The Trust's Ether Custodian will maintain custody of all of the Trust's ether, other than that which is maintained in a trading account (the ''Trading Balance'') with Coinbase, Inc. (the ''Prime Execution Agent,'' which is an affiliate of the Ether Custodian), in the Trust Ether Account. The Trading Balance will only be used in the limited circumstances in which the Trust is using the Agent Execution Model to effectuate the purchases and sales of ether. The Ether Custodian provides safekeeping of ether using a multi-layer cold storage security platform designed to provide offline security of the ether held by the Ether Custodian.

Valuation of the Trust's Ether

The net assets of the Trust and its Shares are valued on a daily basis with reference to the Pricing Index, a standardized reference rate published by CF Benchmarks Ltd. (the ''Benchmark Provider'') that is designed to reflect the performance of ether in U.S. dollars. The Pricing Index was created to facilitate financial products based on ether. It serves as a once-a-day benchmark rate of the U.S. dollar price of ether (USD/ETH), calculated as of 4:00 p.m. ET. The Pricing Index aggregates the trade flow of several major ether trading venues, during an observation window between 3:00 p.m. and 4:00 p.m. ET into the U.S. dollar price of one ether at 4:00 p.m. ET. The Pricing Index currently uses substantially the same methodology as the ERR, including utilizing the same constituent ether exchanges, which is the underlying rate to determine settlement of CME ether futures contracts, except that the Pricing Index is calculated as of 4:00 p.m. ET, whereas the ERR is calculated as of 4:00 p.m. London time. The Pricing Index, which was introduced on February 28, 2022, is based on materially the same methodology (except calculation time) as the ERR, which was first introduced on June 4, 2018. The CME Group also publishes the CME CF Ether Real Time Index (the ''CME Ether Real Time Price''), which is a continuous measure of the U.S. dollar price of one ether calculated once per second. Each of the Pricing Index, ERR, and the CME Ether Real Time Price are representative of the ether trading activity on the Constituent Platforms,[13] which include, as of the date of this filing, Bitstamp, Coinbase, Gemini, itBit, LMAX, and Kraken.

The Pricing Index is designed based on the IOSCO Principals for Financial Benchmarks. The Trust uses the Pricing Index to calculate its NAV, which is the aggregate U.S. dollar value of ether in the Trust, based on the Pricing Index, less its liabilities and expenses. ''NAV per Share'' is calculated by dividing NAV by the number of Shares currently outstanding.

The Sponsor, in its sole discretion, may cause the Trust to price its portfolio based upon an index, benchmark, or standard other than the Pricing Index at any time, with prior notice to the shareholders, if investment conditions change or the Sponsor believes that another index, benchmark, or standard better aligns with the Trust's investment objective and strategy. The Sponsor may make this decision for a number of reasons, including, but not limited to, a determination that the Pricing Index price of ether differs materially from the global market price of ether and/or that third parties are able to purchase and sell ether on public or private markets not included among the Constituent Platforms, and such transactions may take place at prices materially higher or lower than the Pricing Index price. The Sponsor, however, is under no obligation whatsoever to make such changes in any circumstance. In the event that the Sponsor intends to establish the Trust's NAV by reference to an index, benchmark, or standard other than the Pricing Index, it will provide shareholders with notice in a prospectus supplement and/or through a current report on Form 8–K or in the Trust's annual or quarterly reports.

Net Asset Value

Under normal circumstances, the Trust's only asset will be ether and, under limited circumstances, cash. The Trust's NAV and NAV per Share will be determined by the Administrator once each Exchange trading day as of 4:00 p.m. E.T., or as soon thereafter as practicable. The Administrator will calculate the NAV by multiplying the number of ether held by the Trust by the Pricing Index for such day, adding any additional receivables and subtracting the accrued but unpaid liabilities of the Trust. The NAV per Share is calculated by dividing the NAV by the number of Shares then outstanding. The Administrator will determine the price of the Trust's ether by reference to the

Price''), which is a continuous measure of the U.S. dollar price of one ether calculated once per second.

[11] The Trust conducts creations and redemptions of its Shares for cash. Authorized Participants will deliver cash to the cash Custodian pursuant to creation orders for Shares and the Cash Custodian will hold such cash until such time as it can be converted to ether, which the Trust intends to do on the same business day in which such cash is received by the Cash Custodian. Additionally, the trust will sell ether in exchange for cash pursuant to redemption orders of its Shares. In connection with such sales, and approved Ether Trading Counterparty (defined below) will send cash to the Cash Custodian. The Cash custodian will hold such cash until it can be distributed to the redeeming Authorized Participant, which it intends to do on the same business day in which it is received. In connection with the purchases and sales of ether pursuant to its creation and redemption activity, it is possible that the Trust may retain de minimis amounts of cash as a result of rounding differences. The trust may also initially hold small amounts of cash to initiate Trust operations in the immediate aftermath of its Registration Statement being declared effective. Lastly, the Trust may also sell ether and temporarily hold cash as part of a liquidation of the trust or to pay certain extraordinary expenses not assumed by the Sponsor. Under the Trust Agreement, the sponsor has agreed to assume the normal operating expenses of the Trust, subject to certain limitations. For example, the Trust will bear any indemnification or litigation liabilities as extraordinary expenses. In any event, in the ongoing course of business, the amounts of cash retained by the Trust are not expected to constitute a material portion of the Trust's holdings.

[12] The Trust may, from time to time, passively receive, by virtue of holding ether, certain additional digital assets (''IR Assets'') or rights to receive IR Assets (''Incidental Rights'') through a fork of the Ethereum network or an airdrop of assets. The Trust will not seek to acquire such IR Assets or Incidental Rights. Pursuant to the terms of the Trust Agreement, the trust has disclaimed ownership in any such IR Assets and/or Incidental Rights to make clear that such assets are not and shall never be considered assets of the Trust and will not be taken into account for purposes of determining the trust's NAV or NAV per Share.

[13] The ''Constituent Platforms'' are the ether trading venues included in the Pricing Index.

Pricing Index, which is published and calculated as set forth above.

Intraday Trust Value

The Trust uses the CME Ether Real Time Price to calculate an Indicative Trust Value (''ITV''). One or more major market data vendors will disseminate the ITV, updated every 15 seconds each trading day as calculated by the Exchange or a third-party financial data provider during the Exchange's Core Trading Session (9:30 a.m. to 4:00 p.m., E.T.). The ITV will be calculated throughout the trading day by using the prior day's holdings at the close of business and the most recently reported price level of the CME Ether Real Time Price as reported by Bloomberg, L.P. or another reporting service. The ITV will be widely disseminated by one or more major market data vendors during the NYSE Arca Core Trading Session.

Creation and Redemption of Shares

The Trust creates and redeems Shares from time to time, but only in one or more Creation Units, which will initially consist of at least 10,000 Shares, but may be subject to change (''Creation Unit''). A Creation Unit is only made in exchange for delivery to the Trust or the distribution by the Trust of an amount of cash, equivalent to the amount of ether represented by the Creation Unit being created or redeemed, the amount of which is representative of the combined NAV of the number of Shares included in the Creation Units being created or redeemed determined as of 4:00 p.m. E.T. on the day the order to create or redeem Creation Units is properly received. Except when aggregated in Creation Units or under extraordinary circumstances permitted under the Trust Agreement, the Shares are not redeemable securities.

Authorized Participants are the only persons that may place orders to create and redeem Creation Units. Authorized Participants must be (1) registered broker-dealers or other securities market participants, such as banks and other financial institutions, that are not required to register as broker-dealers to engage in securities transactions described below, and (2) Depository Trust Company (''DTC'') participants. To become an Authorized Participant, a person must enter into an Authorized Participant Agreement with the Trust and/or the Trust's marketing agent (the ''Marketing Agent'').

According to the Registration Statement, when purchasing or selling ether in response to the purchase of Creation Units or the redemption of Creation Units, which will be processed in cash, the Trust would do so pursuant to either (1) a ''Trust-Directed Trade Model,'' or (2) an ''Agent Execution Model,'' which are each described in more detail below.

The Trust intends to utilize the Trust-Directed Trade Model for all purchases and sales of ether and would only utilize the Agent Execution Model in the event that no ether trading counterparty approved by the Sponsor (an ''Ether Trading Counterparty'') [14] is able to effectuate the Trust's purchase or sale of ether. Under the Trust-Directed Trade Model, in connection with receipt of a purchase order or redemption order, the Sponsor, on behalf of the Trust, would be responsible for acquiring ether from an approved Ether Trading Counterparty in an amount equal to the Basket Amount. When seeking to purchase ether on behalf of the Trust, the Sponsor will seek to purchase ether at commercially reasonable price and terms from any of the approved Ether Trading Counterparties.[15] Once agreed upon, the transaction will generally occur on an ''over-the-counter'' basis.

Whether utilizing the Trust-Directed Trade Model or the Agent Execution Model, the Authorized Participants will deliver only cash to create shares and will receive only cash when redeeming Shares. Further, Authorized Participants will not directly or indirectly purchase, hold, deliver, or receive ether as part of the creation or redemption process or otherwise direct the Trust or a third party with respect to purchasing, holding, delivering, or receiving ether as part of the creation or redemption process. Additionally, under either the Trust-Directed Trade Model or the Agent Execution Model, the Trust will create Shares by receiving ether from a third party that is not the Authorized Participant and is not affiliated with the Sponsor or the Trust, and the Trust—not the Authorized Participant—is responsible for selecting the third party to deliver the ether. The third party will not be acting as an agent of the Authorized Participant with respect to the delivery of the ether to the Trust or acting at the direction of the Authorized Participant with respect to the delivery of the ether to the Trust. Additionally, the Trust will redeem Shares by delivering ether to a third party that is not the Authorized Participant and is not affiliated with the Sponsor or the Trust, and the Trust—not the Authorized Participant—is responsible for selecting the third party to receive the ether. Finally, the third party will not be acting as an agent of the Authorized Participant with respect to the receipt of the ether from the Trust or acting at the direction of the Authorized Participant with respect to the receipt of the ether from the Trust.

Acquiring and Selling Ether Pursuant to Creation and Redemption of Shares Under the Trust-Directed Trade Model

Under the Trust-Directed Trade Model and as set forth in the Registration Statement, on any business day, an Authorized Participant may create Shares by placing an order to purchase one or more Creation Units with the Transfer Agent through the Marketing Agent. Such orders are subject to approval by the Marketing Agent and the Transfer Agent. For purposes of processing creation and redemption orders, a ''business day'' means any day other than a day when the Exchange is closed for regular trading (''Business Day''). To be processed on the date submitted, creation orders must be placed before 4:00 p.m. E.T. or the close of regular trading on the Exchange, whichever is earlier, but may be required to be placed earlier at the discretion of the Sponsor. A purchase order will be effective on the date it is received by the Transfer Agent and approved by the Marketing Agent (''Purchase Order Date'').

Creation Units are processed in cash. By placing a purchase order, an Authorized Participant agrees to deposit, or cause to be deposited, an amount of cash equal to the quantity of ether attributable to each Share of the Trust (net of accrued but unpaid expenses and liabilities) multiplied by the number of Shares (10,000) comprising a Creation Unit (the ''Basket Amount''). The Sponsor will cause to be published each Business Day, prior to the commencement of trading on the Exchange, the Basket Amount relating to a Creation Unit applicable for such Business Day. That amount is derived by multiplying the Basket Amount by the value of ether ascribed by the Pricing Index. However, the Authorized Participant is also responsible for any additional cash required to account for the price at which the Trust agrees to purchase the requisite amount of ether

[14] The Ether Trading Counterparties with which the Sponsor will engage in ether transactions are unaffiliated third-parties that are not acting as agents of the Trust, the Sponsor or the Authorized Participant, and all transactions will be done on an arms-length basis. There is no countractual relationship between the Trust, the sponsor or the Ether Trading Counterparty. When seeking to sell ether on behalf of the Trust, the Sponsor will seek to sell ether at commercially reasonable price and terms to any of the spproved Ether Trading Counterparties. Once agreed upon, the transaction will generally occur on an ''over-the-counter'' basis.

[15] The Sponsor will maintain ownership and control of ether in a manner consistent with good delivery requirements for spot commodity transactions.

from an Ether Trading Counterparty to the extent it is greater than the Pricing Index price on each Purchase Order Date.

Prior to the delivery of Creation Units, the Authorized Participant must also have wired to the Transfer Agent the nonrefundable transaction fee due for the creation order. Authorized Participants may not withdraw a creation request. If an Authorized Participant fails to consummate the foregoing, the order may be cancelled.

Following the acceptance of a purchase order, the Authorized Participant must wire the cash amount described above to the Cash Custodian, and the Ether Trading Counterparty must deposit the required amount of ether with the Ether Custodian by the end of the day E.T. on the Business Day following the Purchase Order Date. The ether will be purchased from Ether Trading Counterparties that are not acting as agents of the Trust or agents of the Authorized Participant. These transactions will be done on an arms-length basis, and there is no contractual relationship between the Trust, the Sponsor, or the Ether Trading Counterparty to acquire such ether. Prior to any movement of cash from the Cash Custodian to the Ether Trading Counterparty or movement of Shares from the Transfer Agent to the Authorized Participant's DTC account to settle the transaction, the ether must be deposited at the Ether Custodian.

The Ether Trading Counterparty must deposit the required amount of ether by end of day E.T. on the Business Day following the Purchase Order Date prior to any movement of cash from the Cash Custodian or Shares from the Transfer Agent. Upon receipt of the deposit amount of ether at the Ether Custodian from the Ether Trading Counterparty, the Ether Custodian will notify the Sponsor that the ether has been received. The Sponsor will then notify the Transfer Agent that the ether has been received, and the Transfer Agent will direct DTC to credit the number of Shares ordered to the Authorized Participant's DTC account and will wire the cash previously sent by the Authorized Participant to the Ether Trading Counterparty to complete settlement of the Purchase Order and the acquisition of the ether by the Trust, as described above.

As between the Trust and the Authorized Participant, the expense and risk of the difference between the value of ether calculated by the Administrator for daily valuation using the Pricing Index and the price at which the Trust acquires the ether will be borne solely by the Authorized Participant to the extent that the Trust pays more for ether than the price used by the Trust for daily valuation. Any such additional cash amount will be included in the amount of cash calculated by the Administrator on the Purchase Order Date, communicated to the Authorized Participant on the Purchase Order Date, and wired by the Authorized Participant to the Cash Custodian on the day following the Purchase Order Date. If the Ether Trading Counterparty fails to deliver the ether to the Ether Custodian, no cash is sent from the Cash Custodian to the Ether Trading Counterparty, no Shares are transferred to the Authorized Participant's DTC account, the cash is returned to the Authorized Participant, and the Purchase Order is cancelled.

Under the Trust-Directed Trade Model and according to the Registration Statement, the procedures by which an Authorized Participant can redeem one or more Creation Units mirror the procedures for the creation of Creation Units. On any Business Day, an Authorized Participant may place an order with the Transfer Agent through the Marketing Agent to redeem one or more Creation Units. To be processed on the date submitted, redemption orders must be placed before 4:00 p.m. E.T. or the close of regular trading on the Exchange, whichever is earlier, or earlier as determined by the Sponsor. A redemption order will be effective on the date it is received by the Transfer Agent and approved by the Marketing Agent (''Redemption Order Date''). The redemption procedures allow Authorized Participants to redeem Creation Units and do not entitle an individual shareholder to redeem any Shares in an amount less than a Creation Unit, or to redeem Creation Units other than through an Authorized Participant. In connection with receipt of a redemption order accepted by the Marketing Agent and Transfer Agent, the Sponsor, on behalf of the Trust, is responsible for selling the ether to an approved Ether Trading Counterparty in an amount equal to the Basket Amount.

The redemption distribution from the Trust will consist of a transfer to the redeeming Authorized Participant, or its agent, of the amount of cash the Trust received in connection with a sale of the Basket Amount of ether to an Ether Trading Counterparty made pursuant to the redemption order. The Sponsor will cause to be published each Business Day, prior to the commencement of trading on the Exchange, the redemption distribution amount relating to a Creation Unit applicable for such Business Day. The redemption distribution amount is derived by multiplying the Basket Amount by the value of ether ascribed by the Pricing Index. However, as between the Trust and the Authorized Participant, the expense and risk of the difference between the value of ether ascribed by the Pricing Index and the price at which the Trust sells the ether will be borne solely by the Authorized Participant to the extent that the Trust receives less for ether than the value ascribed by Pricing Index.

Prior to the delivery of Creation Units, the Authorized Participant must also have wired to the Transfer Agent the nonrefundable transaction fee due for the redemption order.

The redemption distribution due from the Trust will be delivered by the Transfer Agent to the Authorized Participant once the Cash Custodian has received the cash from the Ether Trading Counterparty. The Ether Custodian will not send the Basket Amount of ether to the Ether Trading Counterparty until the Cash Custodian has received the cash from the Ether Trading Counterparty and is instructed by the Sponsor to make such transfer. Once the Ether Trading Counterparty has sent the cash to the Cash Custodian in an agreed upon amount to settle the agreed upon sale of the Basket Amount of ether, the Transfer Agent will notify Sponsor. The Sponsor will then notify the Ether Custodian to transfer the ether to the Ether Trading Counterparty, and the Transfer Agent will wire the ether proceeds to the Authorized Participant once the Trust's DTC account has been credited with the Shares represented by the Creation Unit from the redeeming Authorized Participant. Once the Authorized Participant has delivered the Shares represented by the Creation Unit to be redeemed to the Trust's DTC account, the Cash Custodian will wire the requisite amount of cash to the Authorized Participant. If the Trust's DTC account has not been credited with all of the Shares of the Creation Unit to be redeemed, the redemption distribution will be delayed until such time as the Transfer Agent confirms receipt of all such Shares. If the Ether Trading Counterparty fails to deliver the cash to the Cash Custodian, the transaction will be cancelled, and no transfer of ether or Shares will occur.

Acquiring and Selling Ether Pursuant to Creation and Redemption of Shares Under the Agent Execution Model

Under the Agent Execution Model, Coinbase, Inc. (''Coinbase Inc.'' or the ''Prime Execution Agent,'' an affiliate of the Ether Custodian), acting in an agency capacity, would conduct ether purchases and sales on behalf of the Trust with third parties through its

Coinbase Prime service pursuant to the Prime Execution Agent Agreement. To utilize the Agent Execution Model, the Trust may maintain some ether or cash in a trading account (the ''Trading Balance'') with the Prime Execution Agent. The Prime Execution Agent Agreement provides that the Trust does not have an identifiable claim to any particular ether (and cash); rather, the Trust's Trading Balance represents an entitlement to a pro rata share of the ether (and cash) the Prime Execution Agent holds on behalf of customers who hold similar entitlements against the Prime Execution Agent. In this way, the Trust's Trading Balance represents an omnibus claim on the Prime Execution Agent's ether (and cash) held on behalf of the Prime Execution Agent's customers.

To avoid having to pre-fund purchases or sales of ether in connection with cash creations and redemptions and sales of ether to pay Trust expenses not assumed by the Sponsor, to the extent applicable, the Trust may borrow ether or cash as trade credit (''Trade Credit'') from Coinbase Credit, Inc. (the ''Trade Credit Lender'') on a short-term basis pursuant to the Coinbase Credit Committed Trade Financing Agreement (the ''Trade Financing Agreement'').

On the day of the Purchase Order Date, the Trust would enter into a transaction to buy ether through the Prime Execution Agent for cash. Because the Trust's Trading Balance may not be funded with cash on the Purchase Order Date for the purchase of ether in connection with the Purchase Order under the Agent Execution Model, the Trust may borrow Trade Credits in the form of cash from the Trade Credit Lender pursuant to the Trade Financing Agreement or may require the Authorized Participant to deliver the required cash for the Purchase Order on the Purchase Order Date. The extension of Trade Credits on the Purchase Order Date allows the Trust to purchase ether through the Prime Execution Agent on the Purchase Order Date, with such ether being deposited in the Trust's Trading Balance.

On the day following the Purchase Order Date (the ''Purchase Order Settlement Date''), the Trust would deliver Shares to the Authorized Participant in exchange for cash received from the Authorized Participant. Where applicable, the Trust would use the cash to repay the Trade Credits borrowed from the Trade Credit Lender. On the Purchase Order Settlement Date for a Purchase Order utilizing the Agent Execution Model, the ether associated with the Purchase Order and purchased on the Purchase Order Date is swept from the Trust's Trading Balance with the Prime Execution Agent to the Trust Ether Account with the Ether Custodian pursuant to a regular end-of-day sweep process. Transfers of ether into the Trust's Trading Balance are off-chain transactions and transfers from the Trust's Trading Balance to the Trust Ether Account are ''on-chain'' transactions represented on the ether blockchain. Any financing fee owed to the Trade Credit Lender is deemed part of trade execution costs and embedded in the trade price for each transaction.

For a Redemption Order utilizing the Agent Execution Model, on the day of the Redemption Order Date the Trust would enter into a transaction to sell ether through the Prime Execution Agent for cash. The Trust's Trading Balance with the Prime Execution Agent may not be funded with ether on trade date for the sale of ether in connection with the redemption order under the Agent Execution Model, when ether remains in the Trust Ether Account with the Ether Custodian at the point of intended execution of a sale of ether. In those circumstances the Trust may borrow Trade Credits in the form of ether from the Trade Credit Lender, which allows the Trust to sell ether through the Prime Execution Agent on the Redemption Order Date, and the cash proceeds are deposited in the Trust's Trading Balance with the Prime Execution Agent. On the business day following the Redemption Order Date (the ''Redemption Order Settlement Date'') for a redemption order utilizing the Agent Execution Model where Trade Credits were utilized, the Trust delivers cash to the Authorized Participant in exchange for Shares received from the Authorized Participant. In the event Trade Credits were used, the Trust will use the ether that is moved from the Trust Ether Account with the Ether Custodian to the Trading Balance with the Prime Execution Agent to repay the Trade Credits borrowed from the Trade Credit Lender.

For a redemption of Creation Units utilizing the Agent Execution Model, the Sponsor would instruct the Ether Custodian to prepare to transfer the ether associated with the redemption order from the Trust Ether Account with the Ether Custodian to the Trust's Trading Balance with the Prime Execution Agent. On the Redemption Order Settlement Date, the Trust would enter into a transaction to sell ether through the Prime Execution Agent for cash, and the Prime Execution Agent credits the Trust's Trading Balance with the cash. On the same day, the Authorized Participant would deliver the necessary Shares to the Trust and the Trust delivers cash to the Authorized Participant.

Fee Accrual

According to the Registration Statement, the Trust's only recurring ordinary expense is expected to be the Sponsor Fee, which will accrue daily and will be payable in ether monthly in arrears. The Administrator will calculate the Sponsor Fee on a daily basis by applying an annualized rate to the Trust's total ether holdings, and the amount of ether payable in respect of each daily accrual shall be determined by reference to the Pricing Index.

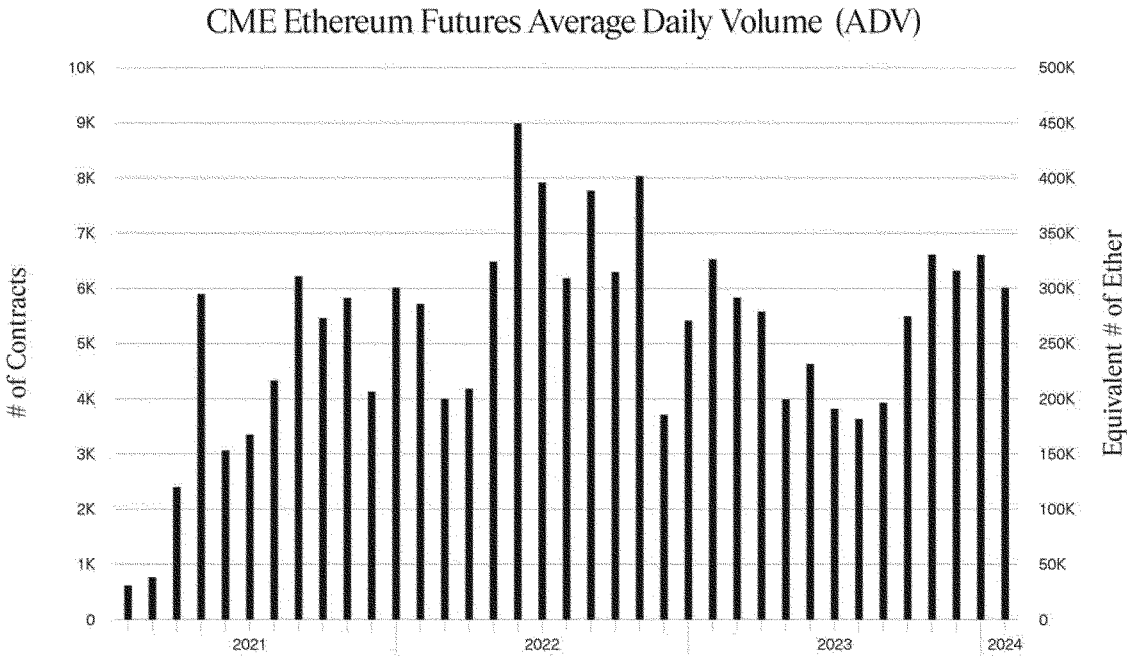
CME Ether Futures Market

CME began offering trading in ether futures on February 8, 2021.[16] Each contract represents fifty ether and is based on the ERR. The contracts trade and settle like other cash settled commodity futures contracts.

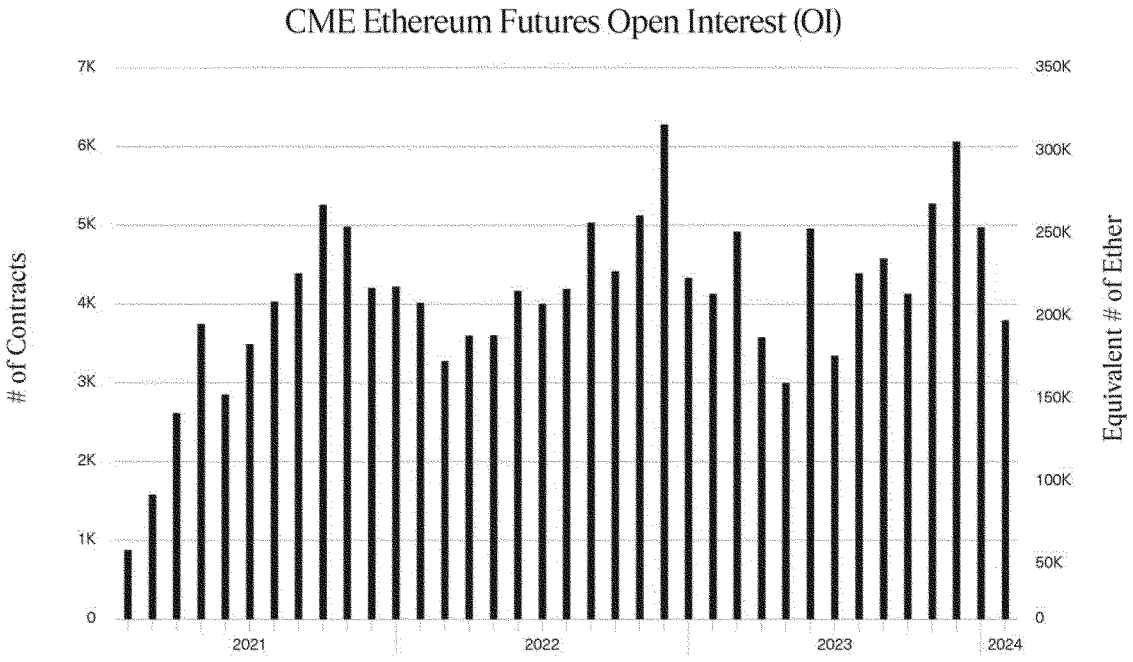
Most measurable metrics related to ether futures have trended up since launch. For example, there were 174,261 ether futures contracts traded in February 2024 (approximately $24.3 billion) compared to 182,631 contracts ($14.9 billion), 160,108 contracts ($23.1 billion), and 17,149 contracts ($1.5 billion) traded in February 2023, February 2022, and February 2021, respectively.[17]

[16] *See* ''CME Group Announces Launch of Ether Futures,'' February 8, 2021, available at *https://www.cmegroup.com/media-room/press-releases/2021/2/08/cme_group_announceslaunchofetherfutures.html.*

[17] Data from CME Volume and average dAily Volume Reports, available at https://www.cmegroup.com/market-data/volume-open-interest.html#volumeTotals.



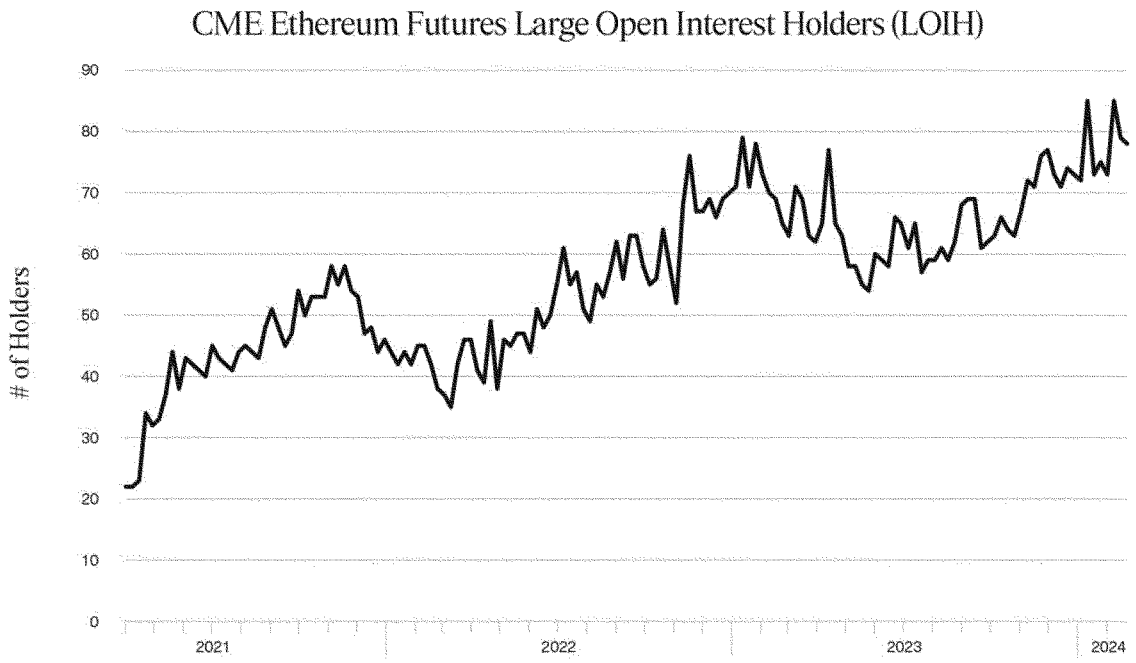
Open interest was 3792 ether futures contracts in February 2024 (approximately $529 million) compared to 4919 contracts ($337 million), 4014 contracts ($578 million), and 877 contracts ($77 million) in February 2023, February 2022, and February 2021 respectively.[18]



The number of large open interest holders has increased as well, as demonstrated in the figure that follows.[19]

[18] Data from CME Open Interest Reports, available at *https://www.cmegroup.com/market-data/volume-openinterest.gtml#openInterestTools.*

[19] A large open interest holder in ether futures is an entity that holds at least 25 contracts, which is the equivalent of 1250 ether. Data fromThe Block, available at *https://www.theblock.co/data/crypto-markets/cme-cots/large-open-interest-holders-of-cme-ether-futures.*



The Commodity Futures Trading Commission (''CFTC'') regulates the CME ether futures market, and both the Exchange and CME are members of the Intermarket Surveillance Group (''ISG'').[20]

Background

Ethereum is free software that is hosted on computers distributed throughout the globe. Ethereum employs an array of computer code-based logic, called a protocol, to create a unified understanding of ownership, commercial activity, and economic logic. This allows users to engage in commerce without the need to trust any of its participants or counterparties. Ethereum code creates verifiable and unambiguous rules that assign clear, strong property rights to create a platform for unrestrained business formation and free exchange. No single intermediary or entity operates or controls the Ethereum network, the transaction validation and recordkeeping infrastructure of which is collectively maintained by a disparate user base. The Ethereum network allows people to exchange tokens of value, or ether, which are recorded on a distributed, public recordkeeping system or ledger known as a blockchain, and which can be used to pay for goods and services, including computational power on the Ethereum network, or converted to fiat currencies, such as the U.S. dollar, at rates determined on spot trading platforms or in individual peer-to-peer transactions. By combining the recordkeeping system of the Ethereum blockchain with a flexible scripting language that can be used to implement a wide variety of instructions, the Ethereum network is intended to act as a public computational layer on top of which users can build their own public software programs, as an alternative to centralized web services. On the Ethereum network, ether is the unit of account that users pay for the computational resources consumed by running programs of their choice.

Previously, U.S. retail investors have lacked a U.S. regulated, U.S. exchange-traded vehicle to gain direct exposure to ether. Instead, current options include: (i) facing the counter-party risk, legal uncertainty, technical risk, and complexity associated with accessing spot ether directly, or (ii) over-the-counter ether funds (''OTC Ether Funds'') with high management fees and potentially volatile premiums and discounts. Meanwhile, investors in other countries, including Germany, Switzerland and France, are able to use more traditional exchange listed and traded products (including exchange-traded funds holding spot ether) to gain exposure to ether.[21]

To this point, the lack of an ETP that holds spot ether (a ''Spot Ether ETP'') exposes U.S. investor assets to significant risk because investors who would otherwise seek exposure through a Spot Ether ETP are forced to find alternative exposure through generally riskier means. For example, investors in OTC Ether Funds are not afforded the benefits and protections of regulated Spot Ether ETPs, resulting in retail investors potentially suffering losses due to drastic movements in the premium/discount of OTC Ether Funds. Additionally, many U.S. investors who held their digital assets in accounts at FTX,[22] Celsius Network LLC,[23] BlockFi Inc.,[24] and Voyager Digital Holdings, Inc.[25] have become unsecured creditors in the insolvencies of those entities. The Sponsor believes that, if a Spot Ether ETP had been available to U.S. investors, it is likely that at least a portion of the billions of dollars tied up in those proceedings would still reside in the brokerage accounts of U.S. investors, having instead been invested in the transparent, regulated, and well-understood structure of a Spot Ether ETP. The Sponsor thus believes that the approval of a Spot Ether ETP would represent a major step towards protection of U.S. investors.

Applicable Standard

The Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts, including spot, Commodity-Based Trust Shares, on the

[20] For a list of the current members and affiliate members of ISG, see *https://www.isgportal.com/*.

[21] The exchange notes that the list of countries above is not exhaustive and that securities regulators in a number of additional countries have either approved or otherwise allowd the listing and trading of Spot ETH ETPs.

[22] *See* FTX Trading Ltd., et al., Case No. 22–11068.

[23] *See* Celsius Network LLC, et al., Case No. 22–10964.

[24] *See* BlockFi Inc., Case No. 22–19361.

[25] *See* Voyager Digital Holdings, Inc., et al., Case No. 22–10943.

basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.[26] However, the Commission recently approved the listing and trading of shares of spot bitcoin exchange-traded products (''Spot Bitcoin ETP''), finding that there were ''other means'' of preventing fraud and manipulation sufficient to satisfy the requirements of section 6(b)(5) of the Exchange Act.[27] In the Spot Bitcoin ETP Approval Order, the Commission concluded, through a robust correlation analysis, that fraud or manipulation that impacts prices in spot bitcoin markets would likely similarly impact CME bitcoin futures prices.[28] The Commission further found that, because the CME's surveillance can assist in detecting those impacts on CME bitcoin futures prices, a listing exchange's comprehensive surveillance sharing agreement (''CSSA'') with the CME can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the Spot Bitcoin ETP.

In support of this proposed rule change to permit the listing and trading of a Spot Ether ETP, the Sponsor has conducted a similarly robust correlation analysis between the spot ether markets and the CME ether futures market to determine if fraud or manipulation that impacts prices in spot ether markets would be likely to similarly impact CME ether futures prices. The Sponsor used stationary time series of price returns data at hourly, five-minute, and one-minute intervals for the spot ETH/USD trading pair on Coinbase and Kraken, as well as for the closest-to-maturity CME ether futures contract, over a lengthy sample period from August 1, 2021 through March 20, 2024. Pearson correlation statistics were calculated for the full sample period, as well as for rolling three-month segments within the sample period. The Sponsor's correlation analysis utilized frequent intra-day trading data over the sample period on this subset of spot ether platforms and on the CME ether futures market as well.

The results of the Sponsor's analysis support that the CME ether futures market has been highly correlated with this subset of the spot ether platforms throughout the past two and a half years. The correlation between the CME ether futures market and this subset of spot ether platforms for the full sample period is no less than 98.6% using data at an hourly interval; 90.0% using data at a five-minute interval; and 70.9% using data at a one-minute interval. The rolling three-month correlation results are similar, ranging between 95.7 and 99.3% using data at an hourly interval; 86.8 and 92.9% using data at a five-minute interval; and 65.0 and 79.5% using data at a one-minute interval.

CORRELATIONS BETWEEN CERTAIN SPOT ETHER MARKETS AND THE CME ETHER FUTURES MARKET

	Coinbase			Kraken		
	Hourly	5 Minutes	1 Minute	Hourly	5 Minutes	1 Minute
Full Sample: 08/01/21 to 03/20/24	98.6	90.0	70.9	98.6	90.3	72.6
Rolling Three-Month Correlations Over the Full Sample Period:						
Maximum	99.3	92.7	78.7	99.3	92.9	79.5
Minimum	95.7	86.8	65.0	95.7	87.2	67.3

The Sponsor believes that the results of its robust correlation analysis constitute empirical evidence that prices generally move in close (although not perfect) alignment between the spot ether market and the CME ether futures market. As a result, the Sponsor believes that fraud or manipulation that impacts prices in spot ether markets would likely similarly impact CME ether futures prices, and therefore, because CME surveillance can assist in detecting those impacts on CME ether futures prices, the Exchange and CME's common membership in the ISG [29] can be reasonably expected to assist the Exchange in surveilling for fraudulent and manipulative acts and practices in the spot ether markets in satisfaction of the requirement of section 6(b)(5) of the Exchange Act that there are ''other means'' of preventing fraud and manipulation.

Availability of Information

The NAV per Share will be disseminated daily to all market participants at the same time. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The ITV will be calculated every 15 seconds throughout the core trading session each trading day.

[26] *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (SR–BatsBZX–2016–30) (Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, to List and Trade Shares of the Winklevoss Bitcoin Trust) (''Winklevoss Order''). In the Winklevoss Order, the commission set forth both the importance and definition of a surveilled, regulated market of significant size, explaining that, for approved commodity-trust ETPs, ''there has been in every case at least one significant, regulated market for trading futures on the underlying commodity—whether gold, silve, platinum, palladium, or copper—and the ETP listing exchange has entered into surveillance-sharing agreements with, or hel Intermarket Surveillance Group membership in common with, the market.'' Winklevoss Order, 83 FR at 37594.

[27] *See* Securities Exchange Act Release No. 34–99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (SR–NYSEARCA–2021–90; SR–NYSEARCA–2023–44; SR–NYSEARCA–2023–58; SR–NASDAQ–2023–016; SR–NASDAQ–2023–019; SR–CboeBZX–2023028; SR–CboeBZX–2023–038; SR–CboeBZX–2023–040; SR–CboeBZX–2023–042; SR–CboeBZX–2023–044; SR–CboeBZX–2023–072 (Order Granting Accelerated Appproval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units) (the ''Sopt Bitcoing ETP Approval Order'').

[28] In the Spot Bitcoin ETP Approval Order, the Commission noted that ''[t]he robustness of the Commissions's correlation analysis rests on the pre-requisites of (1) the correlations being calculated with repect to bitcoin futures that trade on the CME, a U.S. market regulated by the CFTC, (2) the lengthy sample period of price returns for both the CME bitcoin futures market and the spot bitcoin market, (3) the frequent intra-day trading data in both the CME bitcoin futures market and the spot bitcoin market over that lengthy sample period, and (4) the consistency of the correlation results throughout the lengthy sample period.'' Spot Bitcoin ETP Approval Order, 89 FR at 3010 n.38.

[29] The Commission has previously recognized that common membership between a listing exchange and a futures market such as the cME in the ISG functions as ''the equivalent of a comprehensive surveillance sharing agreement.'' *See* Securities Exchange Act Release No. 87267 (October 9, 2019), 84 FR 55382 (October 16, 2019) (SR–NYSEArca–2019–01) (Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the Bitwise Bitcoin ETF Trust Under NYSE Arca Rule 8.201–E).

The Sponsor will cause information about the Shares to be posted to the Trust's website (*https://www.bitwiseinvestments.com/*): (1) the NAV and NAV per Share for each Exchange trading day, posted at end of day; (2) the daily holdings of the Trust, before 9:30 a.m. E.T. on each Exchange trading day; (3) the Trust's effective prospectus, in a form available for download; and (4) the Shares' ticker and CUSIP information, along with additional quantitative information updated on a daily basis for the Trust. For example, the Trust's website will include (1) the prior Business Day's trading volume, the prior Business Day's reported NAV and closing price, and a calculation of the premium and discount of the closing price or mid-point of the bid/ask spread at the time of NAV calculation (''Bid/Ask Price'') against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters. The Trust's website will be publicly available prior to the public offering of Shares and accessible at no charge.

Investors may obtain on a 24-hour basis ether pricing information based on the Pricing Index, ERR, and CME Ether Real Time Price, spot ether market prices and ether futures price from various financial information service providers. Current ether spot market prices are also available with bid/ask spreads from ether trading platforms, including the Constituent Platforms of the Pricing Index.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services.

Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Trust.[30] Trading in Shares of the Trust will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

The Exchange may halt trading during the day in which an interruption to the dissemination of the ITV or the CME Ether Real Time Index occurs.[31] If the interruption to the dissemination of the ITV or the CME Ether Real Time Price persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. E.T. in accordance with NYSE Arca Rule 7.34–E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6–E, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.201–E. The trading of the Shares will be subject to NYSE Arca Rule 8.201–E(g), which sets forth certain restrictions on Equity Trading Permit (''ETP'') Holders acting as registered Market Makers in Commodity-Based Trust Shares to facilitate surveillance.[32] The Exchange represents that, for initial and continued listing, the Trust will be in compliance with Rule 10A–3 under the Act,[33] as provided by NYSE Arca Rule 5.3–E. A minimum of 100,000 Shares of the Trust will be outstanding at the commencement of trading on the Exchange.

Surveillance

The Exchange represents that trading in the Shares of the Trust will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[34] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. The Exchange is also able to obtain information regarding trading in the Shares in connection with ETP Holders'

[30] *See* NYSE Arca Rule 7.12–E.

[31] A limit up/limit down condition in the futures market would not be considered an interruption requiring the Trust to be halted.

[32] Under NYSE Arca Rule 8.201–E(g), and ETP Holder as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its accounts for trading in the underlying commodity, related futures or options on futures, or any other related derivatives. Commentary .04 of NYSE Arca Rule 11.3–E. requires an ETP Holder acting as a registered Market Maker, and its affiliates, in the Shares to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, an components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares). As a general matter, the Exchange has regulatory jurisdiction over its ETP Holder and their associated persons, which include any person or entity controlling an ETP Holder. To the extent the Exchange may be found to lack jurisdiction over a subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts, the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

[33] 17 CFR 240.10A–3. *See* note 8, *supra.*

[34] FINRA conducts cross-market surveillance on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

proprietary or customer trades on any relevant market.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolios of the Trust, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange.

The Sponsor has represented to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the continued listing requirements, and, pursuant to its obligations under section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an ''Information Bulletin'' of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) the procedures for creations of Shares in Creation Units; (2) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) information regarding how the value of the ITV and the Pricing Index is disseminated; (4) the possibility that trading spreads and the resulting premium or discount on the Shares may widen during the Opening and Late Trading Sessions, when an updated ITV will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction and (6) trading information.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses as described in the annual report. The Information Bulletin will disclose that information about the Shares of the Trust is publicly available on the Trust's website. The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding ether, that the Commission has no jurisdiction over the trading of ether as a commodity, and that the CFTC has regulatory jurisdiction over the trading of ether futures contracts and options on ether futures contracts.

The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5) [35] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.201–E. Further, the Exchange has demonstrated its ability to share information with the CME, pursuant to common ISG membership, can be reasonably expected to assist the Exchange in surveilling for fraudulent and manipulative acts and practices with respect to trading in the Shares, such that there are sufficient means of preventing fraud and manipulation sufficient to satisfy the requirements of section 6(b)(5) of the Exchange Act. As discussed above, the results of the Sponsor's comprehensive correlation analysis support that prices on the spot ether and CME ether futures markets generally move in close alignment; accordingly, it is likely that fraud or manipulation that impacts prices in spot ether markets would likely similarly impact CME ether futures prices.

The Exchange has in place surveillance procedures that are adequate to properly monitor Exchange trading in the Shares in all trading sessions and to deter and detect attempted manipulation of the Shares or other violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and ether futures with the CME and other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. The Exchange is also able to obtain information regarding trading in the Shares and ether futures or the underlying ether through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market.

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The Trust's website will also include a form of the prospectus for the Trust that may be downloaded. The website will include the Shares' ticker and CUSIP information, along with additional quantitative information updated on a daily basis for the Trust. The Trust's website will include (1) daily trading volume, the prior Business Day's reported NAV and closing price, and a calculation of the premium and discount of the closing price or mid-point of the Bid/Ask Price against the NAV; and (ii) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters. The Trust's website will be publicly available prior to the public offering of Shares and accessible at no charge.

Trading in Shares of the Trust will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of a new type of exchange-traded product based on the price of ether that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

[35] 15 U.S.C. 78f(b)(5).

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of a new type of Commodity-Based Trust Share based on the price of ether that would enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEARCA–2024–31 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEARCA–2024–31. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEARCA–2024–31 and should be submitted on or before April 29, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024–07335 Filed 4–5–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99888; File No. SR–CboeBZX–2023–095]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of Amendment No. 1 to a Proposed Rule Change To List and Trade Shares of the Fidelity Ethereum Fund Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

April 2, 2024.

On November 17, 2023, Cboe BZX Exchange, Inc. (''BZX'' or ''Exchange'') 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 list and trade shares of the Fidelity Ethereum Fund under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on December 6, 2023.[3]

On January 18, 2024, pursuant to section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On March 4, 2024, the Commission instituted proceedings under section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.[7] On March 15, 2024, the Exchange filed Amendment No. 1, which replaced and superseded the proposed rule change in its entirety. Amendment No. 1 to the proposed rule change is described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change to list and trade shares of the Fidelity Ethereum Fund (the ''Trust''),[8] under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

[36] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 99045 (Nov. 30, 2023), 88 FR 84840. Comments on the proposed rule change are available at: *https://www.sec.gov/comments/sr-cboebzx-2023-095/srcboebzx2023095.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 99390, 89 FR 4639 (Jan. 24, 2024).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 99667, 89 FR 16804 (Mar. 8, 2024).

[8] The Trust was formed as a Delaware statutory trust on October 31, 2023, and is operated as a grantor trust for U.S. federal tax purposes. The Trust has no fixed termination date.

proposed rule change. The text of these statements may be examined at the places specified in Item III 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

This Amendment No. 1 to SR–CboeBZX–2023–095 amends and replaces in its entirety the proposal as originally submitted on November 17, 2023. The Exchange submits this Amendment No. 1 in order to clarify certain points and add additional details to the proposal.

The Exchange proposes to list and trade the Shares under BZX Rule 14.11(e)(4),[9] which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.[10] FD Funds Management LLC is the sponsor of the Trust (''Sponsor''). The Shares will be registered with the Commission by means of the Trust's registration statement on Form S–1 (the ''Registration Statement'').[11]

The Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts, including spot-based Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.[12] With this in mind, the CME Ether Futures market, which launched in February 2021, is the proper market to consider in determining whether there is a related regulated market of significant size.

Recently, the Commission issued an order granting approval for proposals to list bitcoin-based commodity trust and bitcoin-based trust issued receipts (these proposed funds are nearly identical to the Trust, but proposed to hold bitcoin instead of ether) (''Spot Bitcoin ETPs'').[13] By way of background, in 2022 the Commission disapproved proposals[14] to list Spot Bitcoin ETPs, including the Grayscale Order.[15] Grayscale appealed the decision with the U.S. Court of Appeals for the D.C. Circuit, which held that the Commission had failed to adequately explain its reasoning that the proposing exchange had not established that the CME bitcoin futures market was a market of significant size related to spot bitcoin, or that the ''other means'' asserted were sufficient to satisfy the statutory standard. As a result, the court vacated the Grayscale Order and remanded the matter to the Commission.[16] In considering the remand of the Grayscale Order and Spot Bitcoin ETPs, the Commission determined in the Spot Bitcoin ETP Approval Order that the CME Bitcoin Futures market is a regulated market of significant size. Specifically, the Commission stated:

> [B]ased on the record before the Commission and the improved quality of the correlation analysis in the record . . . the Commission is able to conclude that fraud or manipulation that impacts prices in spot bitcoin markets would likely similarly impact CME bitcoin futures prices. And because the CME's surveillance can assist in detecting those impacts on CME bitcoin futures prices, the Exchanges' comprehensive surveillance-sharing agreement with the CME–a U.S. regulated market whose bitcoin futures market is consistently highly correlated to spot bitcoin, albeit not of ''significant size'' related to spot bitcoin–can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [p]roposals.[17]

As further discussed below, both the Exchange and the Sponsor believe that this proposal and the included analysis are sufficient to establish that the CME Ether Futures market represents a regulated market of significant size and that this proposal should be approved.

Background

Ethereum is a network of computers all over the world that follow a set of rules called the Ethereum protocol. The Ethereum protocol creates a unified understanding of ownership, commercial activity, and business logic. This allows users to engage in commerce without the need to trust any of their counterparties. Ethereum code creates verifiable and unambiguous rules that assign clear, strong property rights to create a platform for unrestrained application formation and free exchange. It is widely understood that no single person or entity operates or controls the Ethereum network (referred to as ''decentralization''), the transaction validation and

[9] The Commission approved BZX Rule 14.11(e)(4) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[10] Any of the statements or representations regarding the Benchmark composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, and intraday indicative values, or the applicability of Exchange listing rules specified in this filing to list a series of Other Securities (collectively, ''Continued Listing Representations'') shall constitute continued listing requirements for the Shares listed on the Exchange.

[11] The Trust will file with the Commission an initial registration statement (the ''Registration Statement'') on Form S–1 under the Securities Act of 1933 (15 U.S.C. 77a). The description of the operation of the Trust herein is based, in part, on the Registration Statement. The Registration Statement is not yet effective and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

[12] *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018). This proposal was subsequently disapproved by the Commission. *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the ''Winklevoss Order''). Prior orders from the Commission have pointed out that in every prior approval order for Commodity-Based Trust Shares, there has been a derivatives market that represents the regulated market of significant size, generally a Commodity Futures Trading Commission (the ''CFTC'') regulated futures market. Further to this point, the Commission's prior orders have noted that the spot commodities and currency markets for which it has previously approved spot ETPs are generally unregulated and that the Commission relied on the underlying futures market as the regulated market of significant size that formed the basis for approving the series of Currency and Commodity-Based Trust Shares, including gold, silver, platinum, palladium, copper, and other commodities and currencies. The Commission specifically noted in the Winklevoss Order that the approval order issued related to the first spot gold ETP ''was based on an assumption that the currency market and the spot gold market were largely unregulated.'' *See* Winklevoss Order at 37592. As such, the regulated market of significant size test does not require that the spot bitcoin market be regulated in order for the Commission to approve this proposal, and precedent makes clear that an underlying market for a spot commodity or currency being a regulated market would actually be an exception to the norm. These largely unregulated currency and commodity markets do not provide the same protections as the markets that are subject to the Commission's oversight, but the Commission has consistently looked to surveillance sharing agreements with the underlying futures market in order to determine whether such products were consistent with the Act.

[13] *See* Exchange Act Release No. 99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (Self-Regulatory Organizations; NYSE Arca, Inc.; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units) (the ''Spot Bitcoin ETP Approval Order'').

[14] *See* Order Disapproving a Proposed Rule Change To List and Trade Shares of the VanEck Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 97102 (Mar. 10, 2023), 88 FR 16055 (Mar. 15, 2023) (SR–CboeBZX–2022–035) (''VanEck Order II'') and n.11 therein for the complete list of previous proposals.

[15] *See* Securities Exchange Act Release No. 95180 (June 29, 2022) 87 FR 40299 (July 6, 2022) (SR–NYSEArca–2021–90) (Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Shares of Grayscale Bitcoin Trust Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares) (the ''Grayscale Order'').

[16] *See Grayscale Investments, LLC* v. *SEC*, 82 F.4th 1239 (D.C. Cir. 2023).

[17] *See* the Spot Bitcoin ETP Approval Order at 3011–3012.

recordkeeping infrastructure of which is collectively maintained by a disparate user base. The Ethereum network allows people to exchange tokens of value, including the native asset to the Ethereum network ''ETH'', which are recorded on a distributed public recordkeeping system or ledger known as a blockchain (the ''Ethereum Blockchain''), and which can be used to pay for goods and services, including data storage, trading, and launching applications. Furthermore, by combining the recordkeeping system of the Ethereum Blockchain with a flexible scripting language that is programmable and can be used to implement sophisticated logic and execute a wide variety of instructions, the Ethereum network is intended to act as a foundational infrastructure layer on top of which users can build their own custom software programs, as an alternative to centralized web servers. In theory, anyone can build their own custom software programs on the Ethereum network. In this way, the Ethereum network represents a project to expand blockchain deployment beyond a limited-purpose, peer-to-peer private money system into a flexible, distributed alternative computing infrastructure that is available to all. On the Ethereum network, ETH is the unit of account that users pay for the computational resources consumed by running their programs and 32 ETH serves as the minimum capital required to run validator software and participate in consensus to add new blocks to the blockchain.

Ether Futures ETFs

The Exchange and Sponsor applaud the Commission for allowing the launch of ETFs registered under the Investment Company Act of 1940, as amended (the ''1940 Act'') that provide exposure to ether primarily through CME Ether Futures (''Ether Futures ETFs''). Allowing such products to list and trade is a productive first step in providing U.S. investors and traders with transparent, exchange-listed tools for expressing a view on ether.

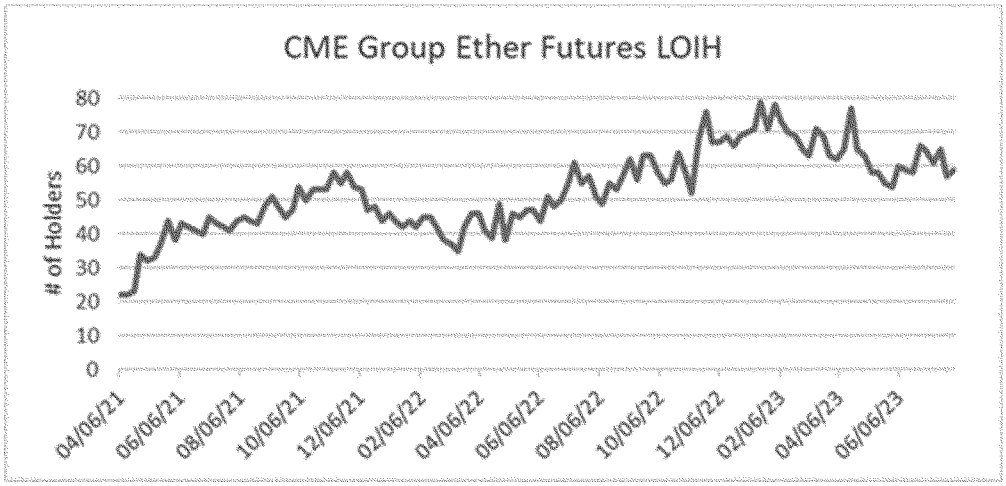
Based on the foregoing, the Exchange and Sponsor believe that any objective review of the proposals to list Spot Ether ETPs compared to the Ether Futures ETFs would lead to the conclusion that any concerns related to preventing fraudulent and manipulative acts and practices related to Spot Ether ETPs would apply equally to the spot markets underlying the futures contracts held by an Ether Futures ETF. Both the Exchange and Sponsor believe that the CME Ether Futures market is a regulated market of significant size and that such manipulation concerns are mitigated, as described extensively below. After allowing the listing and trading of Ether Futures ETFs that hold primarily CME Ether Futures, however, the only consistent outcome would be approving Spot Ether ETPs on the basis that the CME Ether Futures market is a regulated market of significant size.

Given the current landscape, approving this proposal (and others like it) and allowing Spot Ether ETPs to be listed and traded alongside Ether Futures ETFs and Spot Bitcoin ETPs would establish a consistent regulatory approach, provide U.S. investors with choice in product structures for ether exposure, and offer flexibility in the means of gaining exposure to ether through transparent, regulated, U.S. exchange-listed vehicles.

CME ETH Futures [18]

CME began offering trading in Ether Futures in February 2021. Each contract represents 50 ETH and is based on the CME CF Ether-Dollar Reference Rate.[19] The contracts trade and settle like other cash-settled commodity futures contracts. Most measurable metrics related to CME ETH Futures have generally trended up since launch, although some metrics have slowed recently. For example, there were 76,293 CME ETH Futures contracts traded in July 2023 (approximately $7.3 billion) compared to 70,305 ($11.1 billion) and 158,409 ($7.5 billion) contracts traded in July 2021, and July 2022 respectively.[20]

The number of large open interest holders [21] and unique accounts trading CME ETH Futures have both increased, even in the face of heightened Ether price volatility.

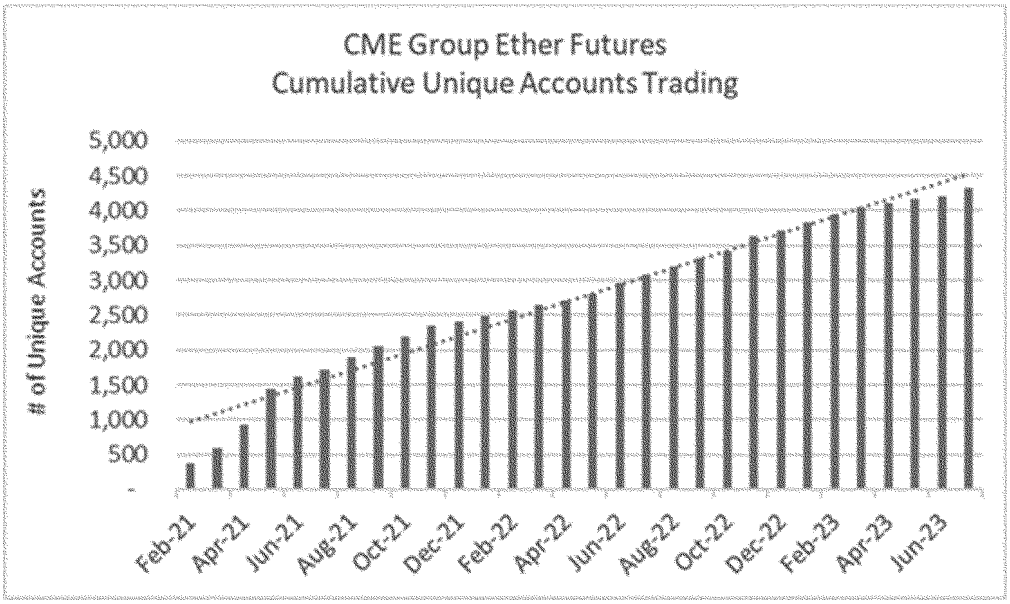


[18] Unless otherwise noted, all data and analysis presented in this section and referenced elsewhere in the filing has been provided by the Sponsor.

[19] The CME CF Ether-Dollar Reference Rate is based on a publicly available calculation methodology based on pricing sourced from several crypto trading platforms, including Bitstamp, Coinbase, Gemini, itBit, Kraken, and LMAX Digital.

[20] Source: CME, 7/31/23.

[21] A large open interest holder in CME ETH Futures is an entity that holds at least 25 contracts, which is the equivalent of 1250 ether. At a price of approximately $1,867 per ether on 7/31/2023, more than 59 firms had outstanding positions of greater than $2.3 million in CME ETH Futures.


CME Group Ether Futures
Cumulative Unique Accounts Trading
# of Unique Accounts
5,000
4,500
4,000
3,500
3,000
2,500
2,000
1,500
1,000
500
-
Feb-21
Apr-21
Jun-21
Aug-21
Oct-21
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Apr-22
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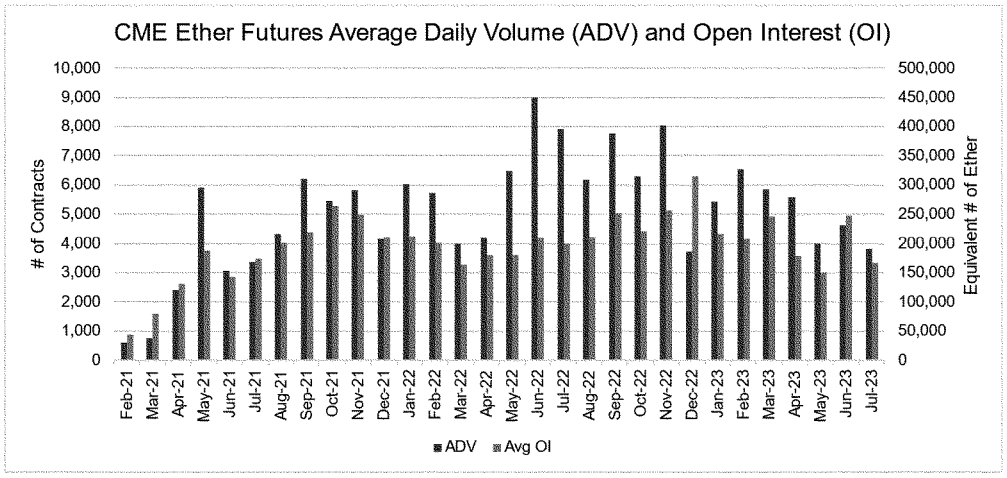
Apr-23
Jun-23


CME Ether Futures Average Daily Volume (ADV) and Open Interest (OI)
# of Contracts
Equivalent # of Ether
10,000
9,000
8,000
7,000
6,000
5,000
4,000
3,000
2,000
1,000
0
500,000
450,000
400,000
350,000
300,000
250,000
200,000
150,000
100,000
50,000
0
Feb-21
Mar-21
Apr-21
May-21
Jun-21
Jul-21
Aug-21
Sep-21
Oct-21
Nov-21
Dec-21
Jan-22
Feb-22
Mar-22
Apr-22
May-22
Jun-22
Jul-22
Aug-22
Sep-22
Oct-22
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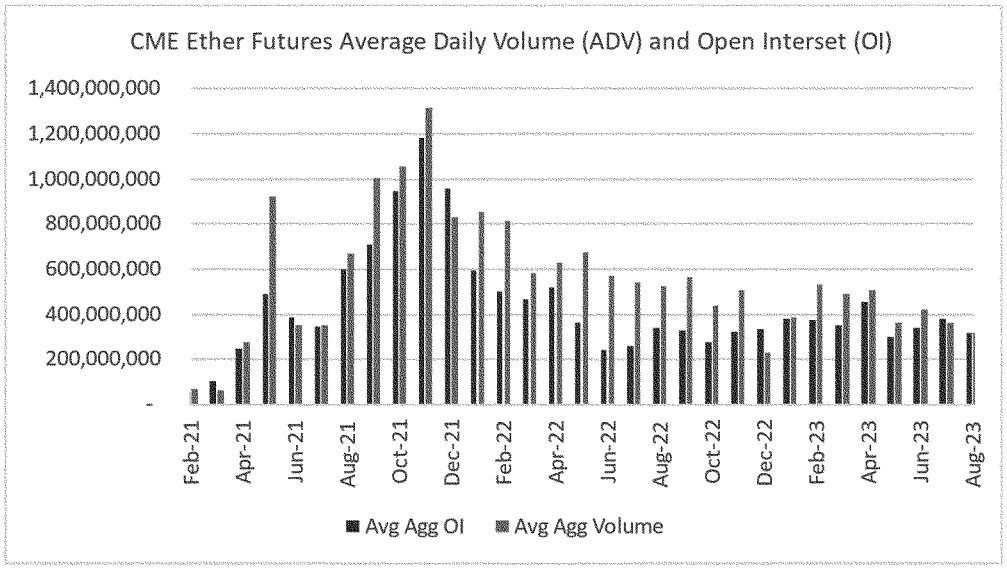
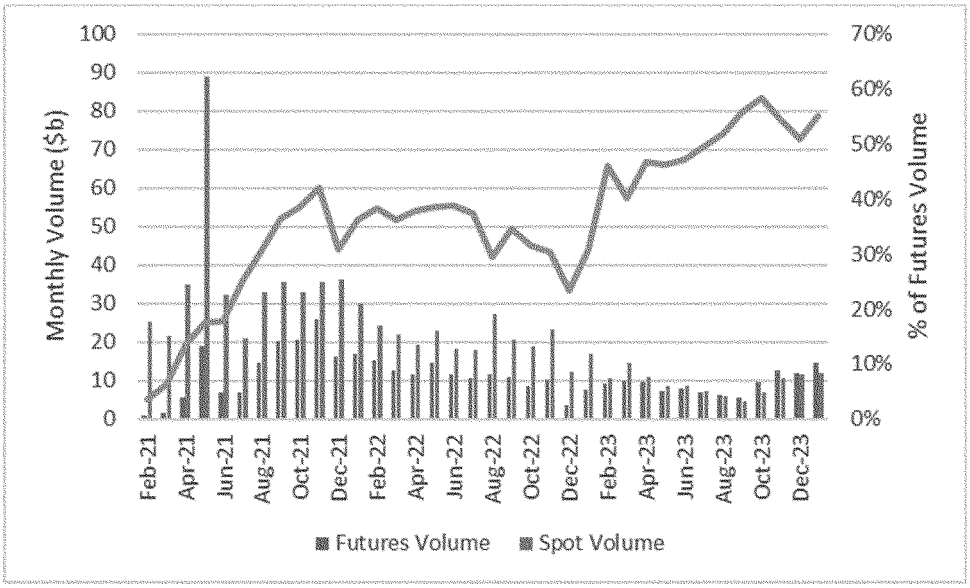
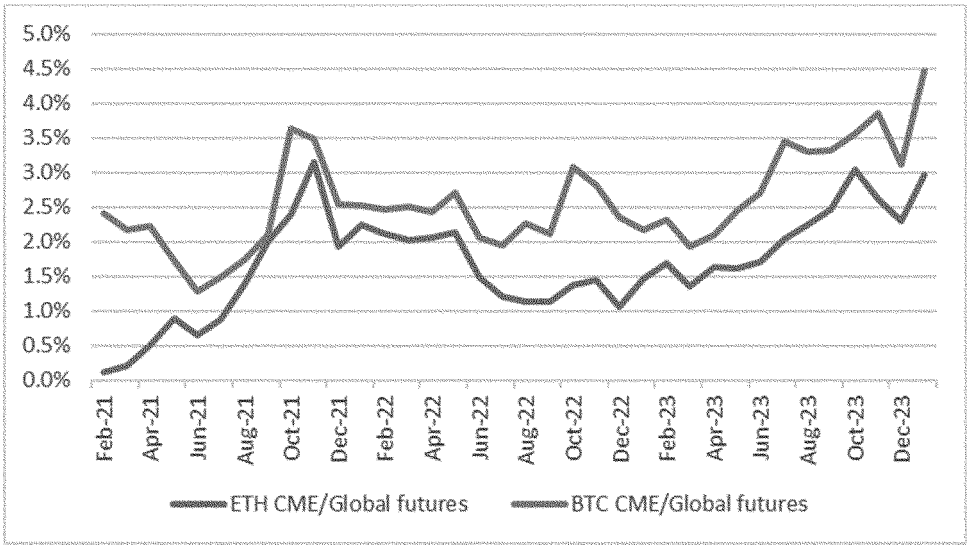
Feb-23
Mar-23
Apr-23
May-23
Jun-23
Jul-23
ADV
Avg OI


CME Ether Futures Average Daily Volume (ADV) and Open Interset (OI)
1,400,000,000
1,200,000,000
1,000,000,000
800,000,000
600,000,000
400,000,000
200,000,000
-
Feb-21
Apr-21
Jun-21
Aug-21
Oct-21
Dec-21
Feb-22
Apr-22
Jun-22
Aug-22
Oct-22
Dec-22
Feb-23
Apr-23
Jun-23
Aug-23
Avg Agg OI
Avg Agg Volume

The market for CFTC-regulated trading of Ether derivatives has developed substantially recently. From February 2021 to January 2024, CFTC regulated Ether futures notional trading volume on Chicago Mercantile Exchange increased from 0.94 to 14.68 USD billion on a monthly basis. At the same time, total Ether spot volume decreased from 25.31 USD billion to 11.98 USD billion on a monthly basis using the CME CF Ether-Dollar Reference Rate related spot exchanges.[22] As a result, CME futures represented an increasing amount of ETH/USD spot and futures volumes, up to 55% as of the end of January 2024.



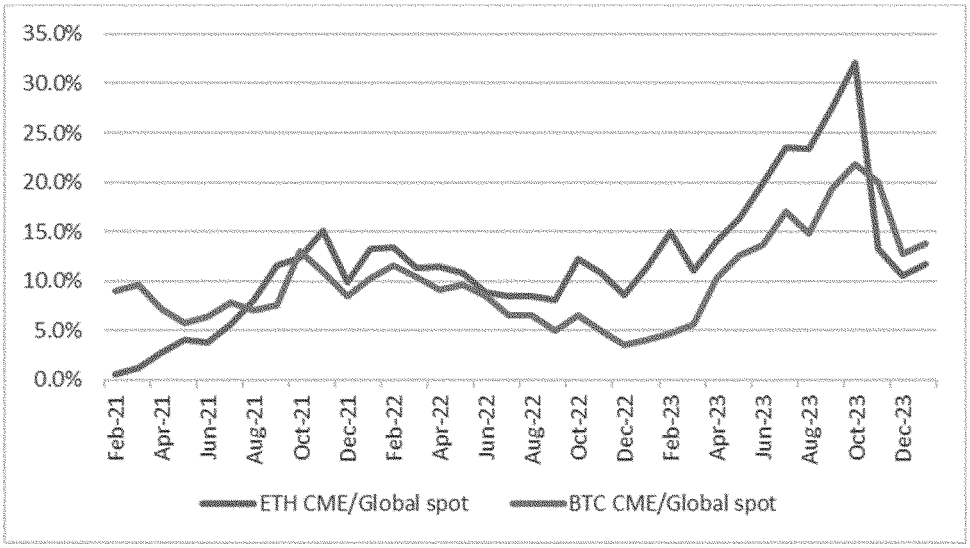
Furthermore, while ETH CME futures represent less than 3% of global ETH futures volumes[23] these same futures contracts represent greater than 10% of global ETH spot volumes,[24] and has been as high as 30% of global ETH spot volumes in October 2023. Since the start of 2023, both BTC and ETH CME futures volumes have trended higher in their overall volume share of global futures activity and ETH CME futures have often represented a larger percentage of global spot volumes compared to the BTC CME futures.



[22] The CME CF Ether-Dollar Reference Rate is based on a publicly available calculation methodology based on pricing sourced from several crypto trading platforms, including Bitstamp, Coinbase, Gemini, itBit, Kraken, and LMAX Digital.

[23] List of exchanges used to determine stated volume can be found here: *https://coverage.coinmetrics.io/exchange-metrics-v2/volume_reported_future_usd_1d.*

[24] List of exchanges used to determine the stated volumes can be found here: *https://coverage.coinmetrics.io/exchange-metrics-v2/volume_reported_spot_usd_1d.*



Section 6(b)(5) and the Applicable Standards

The Commission has approved numerous series of Trust Issued Receipts,[25] including Commodity-Based Trust Shares,[26] to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; [27] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act and that this filing sufficiently demonstrates that the CME ETH Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place [28] with a regulated market of significant size. Both the Exchange and CME are members of the Intermarket Surveillance Group (''ISG'').[29] The only remaining issue to be addressed is whether the ETH Futures market constitutes a market of significant size, which both the Exchange and the Sponsor believe that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[30]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying section 6(b)(5) of the act, specifically providing that a listing exchange could demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement.[31] [32]

[25] *See* Exchange Rule 14.11(f).

[26] Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

[27] The Exchange believes that ETH is resistant to price manipulation and that ''other means to prevent fraudulent and manipulative acts and practices'' exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of ETH trading render it difficult and prohibitively costly to manipulate the price of ETH. The fragmentation across ETH platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of ETH prices through continuous trading activity challenging. To the extent that there are ETH trading platforms engaged in or allowing wash trading or other activity intended to manipulate the price of ETH on other markets, such pricing does not normally impact prices on other trading platforms because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the ETH markets and the presence of arbitrageurs in those markets means that the manipulation of the price of ETH price on any single venue would require manipulation of the global ETH price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular ETH trading platform or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

[28] As previously articulated by the Commission, ''The standard requires such surveillance-sharing agreements since ''they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.'' The Commission has historically held that joint membership in the ISG constitutes such a surveillance sharing agreement. See Securities Exchange Act Release No. 88284 (February 26, 2020), 85 FR 12595 (March 3, 2020) (SR–NYSEArca–2019–39) (the ''Wilshire Phoenix Disapproval'').

[29] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.*

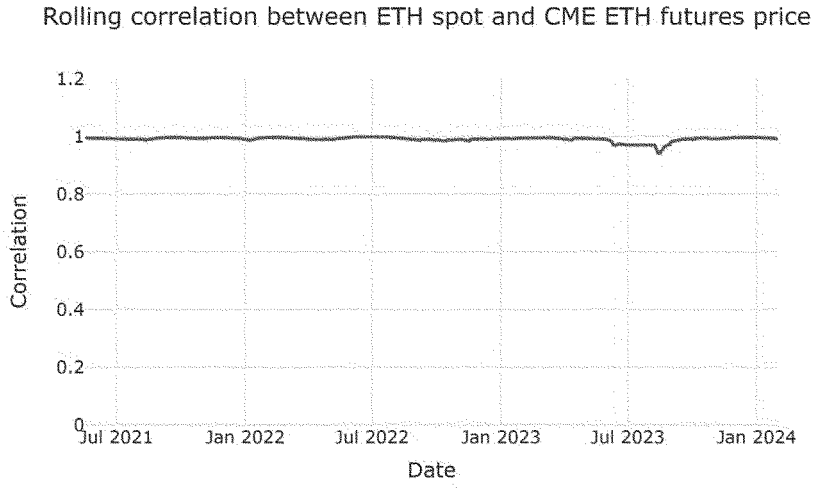
[30] *See* Wilshire Phoenix Disapproval.

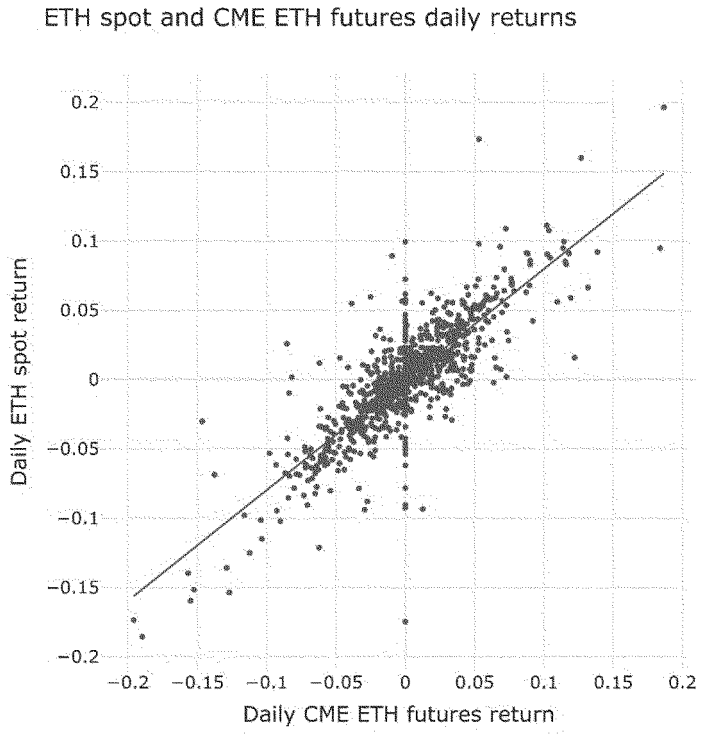
[31] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is

(a) Manipulation of the ETP

The significant market test requires that there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on the surveilled market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct.

The Sponsor examined the correlation between the ETH spot price and the CME ETH futures price. In this study, the price of the Futures front month contract, *i.e.,* the contract with the nearest expiration date, is compared to the ETH spot price. The rolling correlation between the assets with 90 days windows shows that the futures and spot prices are highly correlated and ranged between 0.94 and 0.998. In addition, the daily returns for ETH spot and CME ETH futures are highly correlated. The following charts evidence these relationships.





not applying a 'cannot be manipulated' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.'' *Id.* at 37582.

[32] According to reports, the Commission is poised to allow the launch of ETFs registered under the Investment Company Act of 1940, as amended (the ''1940 Act''), that provide exposure to ETH primarily through CME ETH Futures (''ETH Futures ETFs'') as early as October 2023. Allowing such products to list and trade is a productive first step in providing U.S. investors and traders with transparent, exchange-listed tools for expressing a view on ETH. *https://www.bloomberg.com/news/articles/2023-08-17/sec-said-to-be-poised-to-allow-us-debut-of-ether-futures-etfs-eth#xj4y7vzkg.*

Furthermore, the Sponsor examined intra-day correlations for both price and returns using historical pricing data every hour. This study further evidences the high correlation between the ETH/USD spot price and CME ETH futures across six the CME CF Ether-Dollar Reference Rate related spot exchanges [33] with hourly return correlations above 0.98.

ETH	Intraday price	Hourly returns	BTC	Intraday price	Hourly returns
Spot exchange	Sample	Sample	Spot exchange	Sample	Sample
Exchange 1	0.985	0.985	Exchange 1	0.999	0.989
Exchange 2	0.985	0.985	Exchange 2	0.999	0.988
Exchange 3	0.982	0.982	Exchange 3	0.999	0.986
Exchange 4	0.981	0.981	Exchange 4	0.999	0.986
Exchange 5	0.985	0.985	Exchange 5	0.999	0.986
Exchange 6	0.985	0.985	Exchange 6	0.999	0.987

The Sponsor also examined the distribution of hourly returns of spot ETH/USD to CME futures. One approach to detect potential price manipulation involves analyzing price movements on unregulated exchanges compared to the surveilled market. This comparison focuses on identifying abnormal activity such as sudden price spikes or repetitive trades on unregulated exchanges. A preliminary analysis of CME data compared to spot exchanges revealed little to no extreme deviation in hourly returns. The following table shows at least 97.9% cases the hourly returns of the spot exchanges from the regulated exchange are within 50 basis points. This suggests a high degree of similarity in price movements between the regulated exchange and the spot exchanges for most hours. Further analysis using Bitcoin data reveals a similar pattern to the Ethereum (ETH) spot exchanges. The Sponsor concludes that the manipulation in the ETP would require the manipulators to participate in the surveilled market.

Spot exchange	Hourly return within CME's for ETH			Hourly return within CME's for BTC		
	<200 bps (%)	<100 bps (%)	<50 bps (%)	<200 bps (%)	<100 bps (%)	<50 bps (%)
Exchange 1	99.98	99.92	98.63	99.96	99.94	99.46
Exchange 2	100.00	99.83	98.51	99.96	99.92	99.38
Exchange 3	99.96	99.69	97.89	99.96	99.85	98.99
Exchange 4	99.98	99.81	98.32	99.98	99.88	99.27
Exchange 5	99.92	99.71	98.32	99.94	99.85	99.25
Exchange 6	99.98	99.86	98.51	99.98	99.92	99.28

In light of the similarly high correlation between spot ETH/CME Ether Futures and spot bitcoin/CME Bitcoin Futures, applying the same rationale that the Commission applied to a Spot Bitcoin ETP in the Spot Bitcoin ETP Approval Order [34] also indicates that this test is satisfied for this proposal. As noted above, in the Spot Bitcoin ETP Approval Order, the SEC concluded that:

. . . fraud or manipulation that impacts prices in spot bitcoin markets would likely similarly impact CME bitcoin futures prices. And because the CME's surveillance can assist in detecting those impacts on CME bitcoin futures prices, the Exchanges' comprehensive surveillance-sharing agreement with the CME . . . can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [p]roposals.[35]

The assumptions from this statement are also true for CME Ether Futures. CME Ether Futures pricing is based on pricing from spot ether markets. The statement from the Spot Bitcoin ETP Approval Order that the surveillance-sharing agreement with the CME ''can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [p]roposals'' makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of CME Bitcoin Futures. This same logic would extend to CME Ether Futures markets where CME's surveillance would be able to capture the effects of trading on the relevant spot markets on the pricing of CME Ether Futures.

(b) Predominant Influence on Prices in Spot and ETH Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices in the CME ETH Futures market for a number of reasons. First, because the Trust would not hold CME ETH Futures contracts, the only way that it could be the predominant force on prices in that market is through the spot markets that CME ETH Futures contracts use for pricing.[36] The Sponsor notes that ETH total 24-hour spot trading volume has averaged $9.4 billion over the year ending September 1, 2023.[37] The Sponsor expects that the Trust would represent a very small percentage of this daily trading volume in the spot ETH

[33] The six exchanges are Bitstamp, Coinbase, Gemini, itBit, Kraken, and LMAX Digital.

[34] See Exchange Act Release No. 99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (Self-Regulatory Organizations; NYSE Arca, Inc.; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units) (the ''Spot Bitcoin ETP Approval Order'').

[35] See the Spot Bitcoin ETP Approval Order at 3011–3012.

[36] This logic is reflected by the court in the Grayscale Order at 17–18. Specifically, the court found that ''Because Grayscale owns no futures contracts, trading in Grayscale can affect the futures market only through the spot market . . . But Grayscale holds just 3.4 percent of outstanding bitcoin, and the Commission did not suggest Grayscale can dominate the price of bitcoin.''

[37] Source: TokenTerminal.

market even in its most aggressive projections for the Trust's assets and, thus, the Trust would not have an impact on the spot market and therefore could not be the predominant force on prices in the CME ETH Futures market. Second, much like the CME Bitcoin Futures market, the CME ETH Futures market has progressed and matured significantly. As the court found in the Grayscale Order ''Because the spot market is deeper and more liquid than the futures market, manipulation should be more difficult, not less.'' The Exchange and Sponsor agree with this sentiment and believe it applies equally to the spot ETH and CME ETH Futures markets.

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present.

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past several years, U.S. investor exposure to ether through OTC ETH Funds has grown into the tens of billions of dollars and more than a billion dollars of exposure through Ether Futures ETFs. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors through roll costs for Ether Futures ETFs and premium/discount volatility and management fees for OTC ETH Funds. The Exchange believes that the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, also believes that such concerns are now outweighed by these investor protection concerns. As such, the Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to ether in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks and costs associated with investing in Ether Futures ETFs and operating companies that are imperfect proxies for ether exposure; and (iv) providing an alternative to custodying spot ether.

Fidelity Ethereum Fund

The Registration Statement includes the following description of the Trust and its operations. The Trust will issue Shares that represent fractional undivided beneficial interests in and ownership of the Trust. The Trust is a Delaware statutory trust that operates pursuant to the Declaration of Trust and Trust Agreement (the ''Trust Agreement''), between Sponsor and Delaware Trust Company, the Delaware trustee of the Trust (the ''Trustee''). Sponsor manages the Trust and is responsible for the ongoing registration of the Shares. The Trust will engage Fidelity Service Company, Inc. (''FSC''), a Sponsor affiliate, to be the administrator (''Administrator''). The transfer agent and cash custodian (the ''Transfer Agent'' and ''Cash Custodian'') will facilitate the issuance and redemption of Shares of the Trust and respond to correspondence by Trust shareholders and others relating to its duties, maintain shareholder accounts, and make periodic reports to the Trust. Another affiliate of Sponsor, Fidelity Distributors Company LLC, will be the distributor (''Distributor'') in connection with the creation and redemption of ''Creation Baskets'' of Shares. The Sponsor will provide assistance in the marketing of the Shares. Fidelity Digital Asset Services, LLC (''FDAS''), another Sponsor affiliate, will serve as the Custodian.

According to the Registration Statement, each Share will represent a fractional undivided beneficial interest in the Trust. The Trust's assets will only consist of ether, cash, and cash equivalents.[38] Except for cash temporarily held to pay Trust expenses, facilitate redemption transactions, or received in creation transactions, the Trust will only invest in ETH.

According to the Registration Statement, the Trust is neither an investment company registered under the Investment Company Act of 1940, as amended (the ''1940 Act''),[39] nor a commodity pool for purposes of the Commodity Exchange Act (''CEA''), and neither the Trust nor the Sponsor is subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the Shares.

According to the Registration Statement, the Sponsor may, from time to time, stake a portion of the Fund's assets through one or more trusted staking providers, which may include an affiliate of the Sponsor (''Staking Providers''). In consideration for any staking activity in which the Fund may engage, the Fund would receive certain network rewards of ether tokens, which may be treated as income to the Fund as compensation for services provided.

Investment Objective

According to the Registration Statement, the investment objective of the Trust is to seek to track the performance of ETH, as measured by the performance of the Fidelity Ethereum Reference Rate (the ''Index''), less the Trust's expenses and other liabilities. In seeking to achieve its investment objective, the Trust will hold ETH, cash, and cash equivalents and will value its Shares daily as of 4:00 p.m. Eastern time using the Index price to value the ether and process all creations and redemptions in transactions in cash transactions with authorized participants. The Trust is not actively managed.

The Index

The Index is designed to reflect the performance of ETH in U.S. dollars. The current digital trading platform composition of the Index is Bitstamp, Coinbase, Gemini, itBit, Kraken, and LMAX Digital. The Index methodology was developed by Fidelity Product Services, LLC (the ''Index Provider'') and is administered by the Fidelity Index Committee. Coin Metrics, Inc. is the third-party calculation agent for the Index.[40]

The Index is constructed using ETH price feeds from eligible ETH spot markets and a volume-weighted median price (''VWMP'') methodology, calculated every 15 seconds based on VWMP spot market data over rolling sixty-minute increments to develop an ETH price composite. The Index market value is the volume-weighted median price of ETH in U.S. dollars over the previous sixty minutes, which is calculated by (1) ordering all individual transactions on eligible spot markets over the previous sixty minutes by price, and then (2) selecting the price associated with the 50th percentile of total volume. Using rolling sixty-minute segments means malicious actors would need to sustain efforts to manipulate the market over an extended period of time, or such malicious actors would need to replicate efforts multiple times across eligible ETH spot markets, potentially triggering review. This extended period also supports authorized participant activity by capturing volume over a longer time period, rather than forcing authorized participants to mark an

[38] Cash equivalents are short-term instruments with maturities of less than 3 months.

[39] 15 U.S.C. 80a–1.

[40] The Sponsor's affiliates have an ownership interest in Coin Metrics, Inc.

individual close or auction. The use of a median price reduces the ability of outlier prices to impact the NAV, as it systematically excludes those prices from the NAV calculation. The use of a volume-weighted median (as opposed to a traditional median) serves as an additional protection against attempts to manipulate the NAV by executing a large number of low-dollar trades, because any manipulation attempt would have to involve a majority of global spot ETH volume in a sixty-minute window to have any influence on the NAV.

Index data and the description of the Index are based on information made publicly available by the Index Provider on its website at *i.fidelity.com/indices.*

Net Asset Value

As described in the Registration Statement, for purposes of calculating the Trust's NAV per Share, the Trust's holdings of ETH will be valued using the Index value as of 4:00 p.m. Eastern time. NAV means the total assets of the Trust which will include only ETH, cash, and cash equivalents, if any, less total liabilities of the Trust, each determined on the basis of generally accepted accounting principles. The Administrator calculates the NAV of the Trust once each Exchange trading day. The NAV for a normal trading day will be released after 4:00 p.m. Eastern time. Trading during the core trading session on the Exchange typically closes at 4:00 p.m. Eastern time. However, NAVs are not officially struck until later in the day (often by 5:30 p.m. Eastern time and almost always by 8:00 p.m. Eastern time). The pause between 4:00 p.m. Eastern time and 5:30 p.m. Eastern time (or later) provides an opportunity to algorithmically detect, flag, investigate, and correct unusual pricing should it occur.

The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. If the Sponsor determines in good faith that the Index does not reflect an accurate ETH price, then the Trust will cause to be employed an alternative method to determine the fair value of the Trust's assets as reviewed and approved by the Sponsor's valuation committee.[41]

Availability of Information

In addition to the price transparency of the Index, the Trust will provide information regarding the Trust's ETH holdings as well as additional data regarding the Trust. The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price[42] in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and other applicable quantitative information. The Trust will also disseminate its holdings on a daily basis on its website. The aforementioned information will be published as of the close of business and available on the Sponsor's website at *www.fidelity.com,* or any successor thereto.

The Trust will provide an Intraday Indicative Value (''IIV'') per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. Eastern time). The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours through the facilities of the consolidated tape association (CTA) and Consolidated Quotation System (CQS) high speed lines. In addition, the IIV will be available through on-line information services such as Bloomberg and Reuters. The IIV calculation agent will use the Trust's ETH holdings and cash and cash equivalents expected to comprise that day's NAV calculation to calculate the IIV. The calculation agent currently uses the Blockstream Crypto Data Feed Streaming Level 1[43] as the pricing source for the spot ETH, which will be used to update the IIV. The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day.

The price of ETH will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours.

The value of the Index will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours.

As noted above, the Index is calculated every day and is constructed using ETH price feeds from eligible ETH spot markets and a VWMP methodology, calculated every 15 seconds based on VWMP spot market data over rolling sixty-minute increments. Information about the Index and Index value, including key elements of how the Index is calculated, will be publicly available at *i.fidelity.com/indices.*

Quotation and last sale information for ETH is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters. Information relating to trading, including price and volume information, in ETH is available from major market data vendors and from the trading platforms on which ETH are traded. Depth of book information is also available from ETH trading platforms. The normal trading hours for ETH trading platforms are 24 hours per day, 365 days per year.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA'').

The ETH Custodian

The Sponsor has selected FDAS to be the Trust's Custodian. FDAS is a New York state limited liability trust[44] that serves as ETH custodian to institutional and individual investors. The Custodian maintains a substantial portion of the private keys associated with the Trust's ETH in ''cold storage'' or similarly secure technology. Cold storage is a safeguarding method with multiple

[41] Such alternative method will only be employed on an ad hoc basis. Any permanent change to the calculation of the NAV would require a proposed rule change under Rule 19b–4.

[42] As defined in Rule 11.23(a)(3), the term ''BZX Official Closing Price'' shall mean the price disseminated to the consolidated tape as the market center closing trade.

[43] Blockstream provides cryptocurrency data feeds delivering real-time and historical trade data from the world's leading cryptocurrency venues. See *blockstream.com/cryptofeed.*

[44] New York state trust companies are subject to rigorous oversight similar to other types of entities, such as nationally chartered banking entities, that hold customer assets. Like national banks, they must obtain specific approval of their primary regulator for the exercise of their fiduciary powers. Moreover, limited purpose trust companies engaged in the custody of digital assets are subject to even more stringent requirements than national banks which, following initial approval of trust powers, generally can exercise those powers broadly without further approval of the OCC. In contrast, NYDFS requires in their approval orders that limited purpose trust companies obtain separate approval for all material changes in business.

layers of protections and protocols, by which the private key(s) corresponding to the Trust's ETH is (are) generated and stored in an offline manner. Private keys are generated in offline computers that are not connected to the internet so that they are resistant to being hacked. Cold storage of private keys may involve keeping such keys on a non-networked computer or electronic device or storing the public key and private keys on a storage device or printed medium and deleting the keys from all computers.

The Custodian may receive deposits of ETH but may not send ETH without use of the corresponding private keys. In order to send ETH when the private keys are kept in cold storage, either the private keys must be retrieved from cold storage and entered into a software program to sign the transaction, or the unsigned transaction must be sent to the ''cold'' server in which the private keys are held for signature by the private keys. At that point, the Custodian can transfer the ETH. The Trust's Transfer Agent will facilitate the settlement of Shares in response to the placement of creation orders and redemption orders from authorized participants. The Trust will only hold ETH, cash and cash equivalents. The Trust will enter into a cash custody agreement with the Cash Custodian as custodian of the Trust's cash and cash equivalents.

Creation and Redemption of Shares

When the Trust sells or redeems its Shares, it will do so in cash transactions in blocks of 25,000 Shares (a ''Creation Basket'') that are based on the amount of ETH held by the Trust on a per unit (*i.e.,* 25,000 Share) basis. According to the Registration Statement, on any business day, an authorized participant may place an order to create one or more Creation Baskets. Purchase orders must be placed by close of Regular Trading Hours on the Exchange or an earlier time as determined and communicated by the Sponsor and its agent. The day on which an order is received is considered the purchase order date. The total deposit of cash required is an amount of cash sufficient to purchase such amount of ETH, the amount of which is equal to the combined NAV of the number of Shares included in the Creation Baskets being created determined as of 4:00 p.m. ET on the date the order to purchase is properly received. The Administrator determines the required deposit for a given day by dividing the number of ETH held by the Trust as of the opening of business on that business day, adjusted for the amount of ETH constituting estimated accrued but unpaid fees and expenses of the Trust as of the opening of business on that business day, by the quotient of the number of Shares outstanding at the opening of business divided by the aggregation of Shares associated with a Creation Basket. The procedures by which an authorized participant can redeem one or more Creation Baskets mirror the procedures for the creation of Creation Baskets.

The authorized participants will deliver only cash to create shares and will receive only cash when redeeming shares. Further, authorized participants will not directly or indirectly purchase, hold, deliver, or receive ETH as part of the creation or redemption process or otherwise direct the Trust or a third party with respect to purchasing, holding, delivering, or receiving ETH as part of the creation or redemption process.

The Trust will create shares by receiving ETH from a third party that is not the authorized participant and the Trust—not the authorized participant—is responsible for selecting the third party to deliver the ETH. Further, the third party will not be acting as an agent of the authorized participant with respect to the delivery of the ETH to the Trust or acting at the direction of the authorized participant with respect to the delivery of the ETH to the Trust. The Trust will redeem shares by delivering ETH to a third party that is not the authorized participant and the Trust—not the authorized participant—is responsible for selecting the third party to receive the ETH. Further, the third party will not be acting as an agent of the authorized participant with respect to the receipt of the ETH from the Trust or acting at the direction of the authorized participant with respect to the receipt of the ETH from the Trust.

The procedures by which an authorized participant can redeem one or more Creation Baskets mirror the procedures for the creation of Creation Baskets. A third party, that is unaffiliated with the Trust and the Sponsor, will use cash to buy and deliver ETH to create Shares or withdraw and sell ETH for cash to redeem Shares, on behalf of the Trust.

The Sponsor will maintain ownership and control of ETH in a manner consistent with good delivery requirements for spot commodity transactions.

Rule 14.11(e)(4)—Commodity-Based Trust Shares

The Shares will be subject to BZX Rule 14.11(e)(4), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. The Exchange represents that, for initial and continued listing, the Trust must be in compliance with Rule 10A–3 under the Act. A minimum of 100,000 Shares will be outstanding at the commencement of listing on the Exchange. The Exchange will obtain a representation that the NAV will be calculated daily and that the NAV and information about the assets of the Trust will be made available to all market participants at the same time. The Exchange notes that, as defined in Rule 14.11(e)(4)(C)(i), the Shares will be: (a) issued by a trust that holds (1) a specified commodity [45] deposited with the trust, or (2) a specified commodity and, in addition to such specified commodity, cash; (b) issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity and/or cash; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity and/or cash.

Upon termination of the Trust, the Shares will be removed from listing. The Trustee, Delaware Trust Company, is a trust company having substantial capital and surplus and the experience and facilities for handling corporate trust business, as required under Rule 14.11(e)(4)(E)(iv)(a) and that no change will be made to the trustee without prior notice to and approval of the Exchange. The Exchange also notes that, pursuant to Rule 14.11(e)(4)(F), neither the Exchange nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions or delays in calculating or disseminating any underlying commodity value, the current value of the underlying commodity required to be deposited to the Trust in connection with issuance of Commodity-Based Trust Shares; resulting from any negligent act or omission by the Exchange, or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange, its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in an underlying commodity. Finally, as required in Rule 14.11(e)(4)(G), the Exchange notes that any registered market maker (''Market Maker'') in the

[45] For purposes of Rule 14.11(e)(4), the term commodity takes on the definition of the term as provided in the Commodity Exchange Act.

Shares must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule. In addition to the existing obligations under Exchange rules regarding the production of books and records (see, *e.g.,* Rule 4.2), the registered Market Maker in Commodity-Based Trust Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, as may be requested by the Exchange.

The Exchange is able to obtain information regarding trading in the Shares and the underlying ETH, ETH Futures contracts, options on ETH Futures, or any other ETH derivative through members acting as registered Market Makers, in connection with their proprietary or customer trades.

As a general matter, the Exchange has regulatory jurisdiction over its Members and their associated persons, which include any person or entity controlling a Member. To the extent the Exchange may be found to lack jurisdiction over a subsidiary or affiliate of a Member that does business only in commodities or futures contracts, the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the ETH underlying the Shares; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(e)(4)(E)(ii), which sets forth circumstances under which trading in the Shares may be halted.

If the IIV or the value of the Index is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the value of the Index occurs. If the interruption to the dissemination of the IIV or the value of the Index persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. BZX will allow trading in the Shares during all trading sessions on the Exchange. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a) the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01 where the price is greater than $1.00 per share or $0.0001 where the price is less than $1.00 per share. The Shares of the Trust will conform to the initial and continued listing criteria set forth in BZX Rule 14.11(e)(4).

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and ETH Futures with other markets and other entities that are members of the ISG, and the Exchange, or FINRA on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and ETH Futures from such markets and other entities.[46] The Exchange may obtain information regarding trading in the Shares and ETH Futures via ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (i) the procedures for the creation and redemption of Creation Baskets (and that the Shares are not individually redeemable); (ii) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (iii) how information regarding the IIV and the Trust's NAV are disseminated; (iv) the risks involved in trading the Shares outside of Regular Trading Hours[47] when an updated IIV will not be calculated or publicly disseminated; (v) the requirement that members deliver a

[46] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.*

[47] Regular Trading Hours is the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (vi) trading information. The Information Circular will also reference the fact that there is no regulated source of last sale information regarding ETH, that the Commission has no jurisdiction over the trading of ETH as a commodity, and that the CFTC has regulatory jurisdiction over the trading of ETH Futures contracts and options on ETH Futures contracts.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Shares. Members purchasing the Shares for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act [48] in general and section 6(b)(5) of the Act [49] in particular 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 mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission has approved numerous series of Trust Issued Receipts, including Commodity-Based Trust Shares, to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; [50] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the and, as described and discussed above, the Sponsor's analysis demonstrates that the Exchange has satisfied the requirements under the Act that the CME ETH Futures Market (i) is a regulated market, (ii) has a comprehensive surveillance-sharing agreement with the Exchange; and (iii) satisfies the Commission's ''significant market'' definition.'' In addition, the Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act because this filing sufficiently demonstrates that the standard that has previously been articulated by the Commission applicable to Commodity-Based Trust Shares has been met as outlined below.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place [51] with a regulated market of significant size. Both the Exchange and CME are members of ISG.[52] As such, the only remaining issue to be addressed is whether the ETH Futures market constitutes a market of significant size, which both the Exchange and the Sponsor believe that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[53]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying section 6(b)(5) of the act, specifically providing that a listing exchange could demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement.[54]

The significant market test requires that there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct. In light of the similarly high correlation between spot ETH/CME Ether Futures and spot bitcoin/CME Bitcoin Futures, applying the same rationale that the Commission applied to a Spot Bitcoin ETP in the Spot Bitcoin ETP Approval Order [55] also

[48] 15 U.S.C. 78f.

[49] 15 U.S.C. 78f(b)(5).

[50] The Exchange believes that ETH is resistant to price manipulation and that ''other means to prevent fraudulent and manipulative acts and practices'' exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of ETH trading render it difficult and prohibitively costly to manipulate the price of ETH. The fragmentation across ETH platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of ETH prices through continuous trading activity challenging. To the extent that there are ETH trading platforms engaged in or allowing wash trading or other activity intended to manipulate the price of ETH on other markets, such pricing does not normally impact prices on other trading platforms because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the ETH markets and the presence of arbitrageurs in those markets means that the manipulation of the price of ETH price on any single venue would require manipulation of the global ETH price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular ETH trading platform or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

[51] As previously articulated by the Commission, ''The standard requires such surveillance-sharing agreements since ''they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.'' The Commission has historically held that joint membership in ISG constitutes such a surveillance sharing agreement. *See* Wilshire Phoenix Disapproval.

[52] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.*

[53] *See* Wilshire Phoenix Disapproval.

[54] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a 'cannot be manipulated' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.'' *Id.* at 37582.

[55] *See* Exchange Act Release No. 99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (Self-

Continued

indicates that this test is satisfied for this proposal. As noted above, in the Spot Bitcoin ETP Approval Order, the SEC concluded that:

. . . fraud or manipulation that impacts prices in spot bitcoin markets would likely similarly impact CME bitcoin futures prices. And because the CME's surveillance can assist in detecting those impacts on CME bitcoin futures prices, the Exchanges' comprehensive surveillance-sharing agreement with the CME . . . can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [p]roposals.[56]

The assumptions from this statement are also true for CME Ether Futures. CME Ether Futures pricing is based on pricing from spot ether markets. The statement from the Spot Bitcoin ETP Approval Order that the surveillance-sharing agreement with the CME ''can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [p]roposals'' makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of CME Bitcoin Futures. This same logic would extend to CME Ether Futures markets where CME's surveillance would be able to capture the effects of trading on the relevant spot markets on the pricing of CME Ether Futures.

(b) Predominant Influence on Prices in Spot and ETH Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices in the CME Ether Futures market for a number of reasons. First, because the Trust would not hold CME Ether Futures contracts, the only way that it could be the predominant force on prices in that market is through the spot markets that CME Ether Futures contracts use for pricing.[57] The Sponsor notes that ether total 24-hour spot trading volume has averaged $9.4 billion over the year ending September 1, 2023.[58] The Sponsor expects that the Trust would represent a very small percentage of this daily trading volume in the spot ether market even in its most aggressive projections for the Trust's assets and, thus, the Trust would not have an impact on the spot market and therefore could not be the predominant force on prices in the CME Ether Futures market. Second, much like the CME Bitcoin Futures market, the CME Ether Futures market has progressed and matured significantly. As the court found in the Grayscale Order, ''Because the spot market is deeper and more liquid than the futures market, manipulation should be more difficult, not less.'' The Exchange and Sponsor agree with this sentiment and believe it applies equally to the spot ether and CME Ether Futures markets.

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present.

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past several years, U.S. investor exposure to ether through OTC ETH Funds has grown into the tens of billions of dollars and more than a billion dollars of exposure through Ether Futures ETFs. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors through roll costs for Ether Futures ETFs and premium/discount volatility and management fees for OTC ETH Funds. The Exchange believes that the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, also believes that such concerns are now outweighed by these investor protection concerns. As such, the Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to ether in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks and costs associated with investing in Ether Futures ETFs and operating companies that are imperfect proxies for ether exposure; and (iv) providing an alternative to custodying spot ether.

Commodity-Based Trust Shares—Rule 14.11(e)(4)

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in Exchange Rule 14.11(e)(4). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and listed ETH derivatives via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

Availability of Information

The Exchange also believes that the proposal promotes market transparency in that a large amount of information is currently available about ETH and will be available regarding the Trust and the Shares. In addition to the price transparency of the Index, the Trust will provide information regarding the Trust's ETH holdings as well as additional data regarding the Trust. The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX

Regulatory Organizations; NYSE Arca, Inc.; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units) (the ''Spot Bitcoin ETP Approval Order'').

[56] *See* the Spot Bitcoin ETP Approval Order at 3011–3012.

[57] This logic is reflected by the court in the Grayscale Order at 17–18. Specifically, the court found that ''Because Grayscale owns no futures contracts, trading in Grayscale can affect the futures market only through the spot market . . . But Grayscale holds just 3.4 percent of outstanding bitcoin, and the Commission did not suggest Grayscale can dominate the price of bitcoin.''

[58] Source: TokenTerminal.

Official Closing Price [59] in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and other applicable quantitative information. The Trust will also disseminate its holdings on a daily basis on its website. The aforementioned information will be published as of the close of business and available on the Sponsor's website at *www.fidelity.com,* or any successor thereto.

The Trust will provide an Intraday Indicative Value (''IIV'') per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. Eastern time). The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours through the facilities of the consolidated tape association (CTA) and Consolidated Quotation System (CQS) high speed lines. In addition, the IIV will be available through on-line information services such as Bloomberg and Reuters. The IIV calculation agent will use the Trust's ETH holdings and cash and cash equivalents expected to comprise that day's NAV calculation to calculate the IIV. The calculation agent currently uses the Blockstream Crypto Data Feed Streaming Level 1 [60] as the pricing source for the spot ETH, which will be used to update the IIV. The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day.

The price of ETH will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours.

The value of the Index will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours.

As noted above, the Index is calculated every day and is constructed using ETH price feeds from eligible ETH spot markets and a VWMP methodology, calculated every 15 seconds based on VWMP spot market data over rolling sixty-minute increments. Information about the Index and Index value, including key elements of how the Index is calculated, will be publicly available at *i.fidelity.com/indices.*

Quotation and last sale information for ETH is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters. Information relating to trading, including price and volume information, in ETH is available from major market data vendors and from the trading platforms on which ETH are traded. Depth of book information is also available from ETH trading platforms. The normal trading hours for ETH trading platforms are 24 hours per day, 365 days per year.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA'').

In sum, the Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act, that this filing sufficiently demonstrates that the CME ETH Futures market represents a regulated market of significant size, and that on the whole the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by investor protection issues that would be resolved by approving this proposal. For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the listing and trading of an additional exchange-traded product that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBZX–2023–095 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeBZX–2023–095. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number

[59] As defined in Rule 11.23(a)(3), the term ''BZX Official Closing Price'' shall mean the price disseminated to the consolidated tape as the market center closing trade.

[60] Blockstream provides cryptocurrency data feeds delivering real-time and historical trade data from the world's leading cryptocurrency venues. *See blockstream.com/cryptofeed.*

SR–CboeBZX–2023–095 and should be submitted on or before April 29, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[61]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024–07334 Filed 4–5–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99887; File No. SR–NYSEARCA–2023–70]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 to a Proposed Rule Change To List and Trade Shares of the Grayscale Ethereum Trust

April 2, 2024.

On October 10, 2023, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') 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 list and trade shares of the Grayscale Ethereum Trust under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares). The proposed rule change was published for comment in the **Federal Register** on October 27, 2023.[3]

On December 5, 2023, pursuant to section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On January 25, 2024, the Commission instituted proceedings under section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.[7] On March 15, 2024, the Exchange filed Amendment No. 1, which replaced and superseded the proposed rule change in its entirety. Amendment No. 1 to the proposed rule change is described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the following under NYSE Arca Rule 8.201–E: Grayscale Ethereum Trust (ETH) (the ''Trust'').[8] This Amendment No. 1 to SR–NYSEARCA–2023–70 replaces SR–NYSEARCA–2023–70 as originally filed and supersedes such filing in its entirety. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under NYSE Arca Rule 8.201–E, the Exchange may propose to list and/or trade pursuant to unlisted trading privileges ''Commodity-Based Trust Shares.''[9] The Exchange proposes to list and trade shares (''Shares'')[10] of the Trust pursuant to NYSE Arca Rule 8.201–E.[11]

The Trust is the world's largest Ethereum (''ETH'') investment fund by assets under management as of the date of this filing. The Trust has approximately $11.8 billion in assets under management[12] (representing 2.5% of all ETH in circulation), its

[61] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 98780 (Oct. 23, 2023), 88 FR 73892. Comments on the proposed rule change are available at: *https://www.sec.gov/comments/sr-nysearca-2023-70/srnysearca202370.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 99082, 88 FR 85962 (Dec. 11, 2023).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 99428, 89 FR 6155 (Jan. 31, 2024).

[8] The Trust was previously named Ethereum Investment Trust, whose name was changed pursuant to a Certificate of Amendment to the Certificate of Trust of Ethereum Investment Trust filed with the Delaware Secretary of State on January 11, 2019.

[9] Commodity-Based Trust Shares are securities issued by a trust that represent investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust.

[10] The Shares are expected to be listed under the ticker symbol ''ETH.''

[11] On April 17, 2020, the Trust confidentially filed its draft registration statement on Form 10 under the '34 Act) (File No. 377–03131) (the ''Draft Registration Statement on Form 10''). On June 16, 2020, the Trust confidentially filed Amendment No. 1 to the Draft Registration Statement on Form 10. The Jumpstart Our Business Startups Act (the ''JOBS Act''), enacted on April 5, 2012, added section 6(e) to the Securities Act of 1933 (the ''Securities Act'' or ''33 Act''). section 6(e) of the Securities Act provides that an ''emerging growth company'' may confidentially submit to the Commission a draft registration statement for confidential, non-public review by the Commission staff prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed not later than 21 days before the date on which the issuer conducts a road show, as such term is defined in Securities Act Rule 433(h)(4). An emerging growth company is defined in section 2(a)(19) of the Securities Act as an issuer with less than $1,000,000,000 total annual gross revenues during its most recently completed fiscal year. The Trust meets the definition of an emerging growth company and consequently submitted its Draft Registration Statement on Form 10 to the Commission on a confidential basis. On August 6, 2020, the Trust filed its registration statement on Form 10 under the Securities Act (File No. 000–56193) (the ''Registration Statement on Form 10''). On October 2, 2020, the Trust filed Amendment No. 1 to the Registration Statement on Form 10. On, October 5, 2020, the Registration Statement on Form 10 was automatically deemed effective. On March 5, 2021, February 25, 2022, March 1, 2023, and February 23, 2024, the Trust filed its annual report on Form 10–K under the Securities Act (File No. 000–56193) (the ''Annual Reports''). On November 6, 2020, May 7, 2021, August 6, 2021, November 5, 2021, May 6, 2022, August 5, 2022, November 4, 2022, May 5, 2023, August 4, 2023, and November 3, 2023, the Trust filed its quarterly reports on Form 10–Q under the Securities Act (File No. 000–56193) (the ''Quarterly Reports''). The descriptions of the Trust, the Shares, and ETH contained herein are based, in part, on the Annual Reports and Quarterly Reports. On January 17, 2019, the Trust submitted to the Commission an amended Form D as a business trust. Shares of the Trust have been quoted on OTC Market's OTCQX Best Marketplace under the symbol ''ETHE'' since June 20, 2019. On May 23, 2019 and March 20, 2020, the Trust published annual reports for ETHE for the periods ended December 31, 2018 and December 31, 2019, respectively. On May 23, 2019, August 8, 2019, November 11, 2019, May 8, 2020, and August 6, 2020, the Trust published quarterly reports for ETHE for the periods ended March 31, 2019, June 30, 2019, September 30, 2019, March 31, 2020, and June 30, 2020, respectively. Reports published before October 5, 2020, the date on which the Trust's Shares became registered pursuant to section 12(g) of the Act, can be found on OTC Market's website (*https://www.otcmarkets.com/stock/ETHE/disclosure*), and reports published on or after October 5, 2020 can be found on OTC Market's website and the Commission's website (*https://www.sec.gov/edgar/browse/?CIK=1725210&owner=exclude*). The Shares will be of the same class and will have the same rights as shares of ETHE. According to the Sponsor, freely tradeable shares of ETHE will remain freely tradeable Shares on the date of the listing of the Shares that are unregistered under the Securities Act. Restricted shares of ETHE will remain subject to private placement restrictions on such date, and the holders of such restricted shares will continue to hold those Shares subject to those restrictions until they become freely tradable Shares.

[12] As of March 13, 2024.

Shares trade millions of dollars in daily volume and are held by more than a quarter of a million American investor accounts seeking exposure to ETH without the cost and complexity of purchasing the asset directly.[13] However, because the Trust is not currently listed as an exchange-traded product (''ETP''), the value of the Shares has not been able to closely track the value of the Trust's underlying ETH. The Sponsor thus believes that allowing Shares of the Trust to list and trade on the Exchange as an ETP (*i.e.,* converting the Trust to a spot Ethereum ETP) would unlock over $1.73 billion of value [14] for the Trust's shareholders and provide other investors with a safe and secure way to invest in ETH on a regulated national securities exchange.

The sponsor of the Trust is Grayscale Investments, LLC (''Sponsor''), a Delaware limited liability company. The Sponsor is a wholly owned subsidiary of Digital Currency Group, Inc. (''Digital Currency Group''). The trustee for the Trust is Delaware Trust Company (''Trustee''). The custodian for the Trust is Coinbase Custody Trust Company, LLC (''Custodian'').[15] The administrator and transfer agent of the Trust is BNY Mellon Asset Servicing, a division of The Bank of New York Mellon (the ''Transfer Agent''). The distribution and marketing agent for the Trust will be Foreside Fund Services, LLC (the ''Marketing Agent''). The index provider for the Trust is CoinDesk Indices, Inc. (the ''Index Provider'').

The Trust is a Delaware statutory trust, formed on December 13, 2017, that operates pursuant to a trust agreement between the Sponsor and the Trustee (''Trust Agreement''). The Trust has no fixed termination date.

Operation of the Trust

According to the Annual Report, the Trust's assets consist solely of ETH.[16]

Each Share represents a proportional interest, based on the total number of Shares outstanding, in each of the Trust's assets as determined by reference to the Index Price,[17] less the Trust's expenses and other liabilities (which include accrued but unpaid fees and expenses). The Sponsor expects that the market price of the Shares will fluctuate over time in response to the market prices of ETH. In addition, because the Shares reflect the estimated accrued but unpaid expenses of the Trust, the number of ETH represented by a Share will gradually decrease over time as the Trust's ETH are used to pay the Trust's expenses.

The activities of the Trust are limited to (i) issuing ''Baskets'' (as defined below) in exchange for ETH transferred to the Trust as consideration in connection with creations, (ii) transferring or selling ETH or any other staking consideration as necessary to cover the ''Sponsor's Fee'' [18] and/or certain Trust expenses, (iii) transferring ETH in exchange for Baskets surrendered for redemption (subject to obtaining regulatory approval from the SEC and approval of the Sponsor), (iv) causing the Sponsor to sell ETH or any other staking consideration on the termination of the Trust, and (v) engaging in all administrative and security procedures necessary to accomplish such activities in accordance with the provisions of the Trust Agreement, the Custodian Agreement, the Index License Agreement, and the Participant Agreements (each as defined below).

The Trust will not be actively managed. It will not engage in any activities designed to obtain a profit from, or to ameliorate losses caused by, changes in the market prices of ETH.

Investment Objective

According to the Annual Report, and as further described below, the Trust's investment objective is for the value of the Shares (based on ETH per Share) to reflect the value of the ETH held by the Trust, determined by reference to the Index Price, less the Trust's expenses and other liabilities. While an investment in the Shares is not a direct investment in ETH, the Shares are designed to provide investors with a cost-effective and convenient way to gain investment exposure to ETH. Generally speaking, a substantial direct investment in ETH may require expensive and sometimes complicated arrangements in connection with the acquisition, security and safekeeping of the ETH and may involve the payment of substantial fees to acquire such ETH from third-party facilitators through cash payments of U.S. dollars. Because the value of the Shares is correlated with the value of ETH held by the Trust, it is important to understand the investment attributes of, and the market for, ETH.

The Trust uses the Index Price to calculate its ''NAV,'' which is the aggregate value, expressed in U.S. dollars, of the Trust's assets (other than U.S. dollars or other fiat currency), less the U.S. dollar value of the Trust's expenses and other liabilities calculated in the manner set forth under ''Valuation of ETH and Determination of NAV.'' ''NAV per Share'' is calculated by dividing NAV by the number of Shares then outstanding.

Valuation of ETH and Determination of NAV

The following is a description of the material terms of the Trust Agreement as they relate to valuation of the Trust's ETH and the NAV calculations.[19]

On each business day at 4:00 p.m., New York time, or as soon thereafter as practicable (the ''Evaluation Time''), the Sponsor will evaluate the ETH held by the Trust and calculate and publish the NAV of the Trust. To calculate the NAV, the Sponsor will:

1. Determine the Index Price as of such business day.

[13] As of the date of the initial filing of this proposed rule change. *See* Securities Exchange Act Release No. 98780 (October 23, 2023), 88 FR 73892 (October 27, 2023) (Notice of Filing of Proposed Rule Change To List and Trade Shares of the Grayscale Ethereum Trust Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares)).

[14] As of March 13, 2024.

[15] According to the Annual Report, Digital Currency Group owns a minority interest in Coinbase, Inc., which is the parent company of the Custodian, representing less than 1.0% of its equity.

[16] The Trust may from time to time come into possession of Incidental Rights and/or IR Virtual Currency by virtue of its ownership of Ethereum, generally through a fork in the Ethereum Blockchain, an airdrop offered to holders of Ethereum or other similar event. ''Incidental Rights'' are rights to acquire, or otherwise establish dominion and control over, any virtual currency or other asset or right, which rights are incident to the Trust's ownership of Ethereum and arise without any action of the Trust, or of the Sponsor or Trustee on behalf of the Trust. ''IR Virtual Currency'' is any virtual currency tokens, or other asset or right, acquired by the Trust through the exercise (subject to the applicable provisions of the Trust Agreement) of any Incidental Right. Although the Trust is permitted to take certain actions with respect to Incidental Rights and IR Virtual Currency in accordance with its Trust Agreement, at this time the Trust will prospectively irrevocably abandon any Incidental Rights and IR Virtual Currency. In the event the Trust seeks to change this position, the Exchange would file a subsequent proposed rule change with the Commission.

[17] The ''Index Price'' means the U.S. dollar value of an ETH derived from the Digital Asset Trading Platforms that are reflected in the CoinDesk Ether Price Index (ETX), calculated at 4:00 p.m., New York time, on each business day. For purposes of the Trust Agreement, the term ETH Index Price has the same meaning as the Index Price as defined herein.

[18] The Sponsor's Fee means a fee, payable in ETH, which accrues daily in U.S. dollars at an annual rate of currently 2.5%, but which will be lowered in connection with the Trust becoming an ETP, of the NAV Fee Basis Amount of the Trust as of 4:00 p.m., New York time, on each day, provided that for a day that is not a business day, the calculation of the Sponsor's Fee will be based on the NAV Fee Basis Amount from the most recent business day, reduced by the accrued and unpaid Sponsor's Fee for such most recent business day and for each day after such most recent business day and prior to the relevant calculation date. The ''NAV Fee Basis Amount'' is calculated in the manner set forth under ''Valuation of ETH and Determination of NAV'' below.

[19] While the Sponsor uses the terminology ''NAV'' in this filing, the term used in the Trust Agreement is ''Digital Asset Holdings.''

2. Multiply the Index Price by the Trust's aggregate number of ETH owned by the Trust as of 4:00 p.m., New York time, on the immediately preceding day, less the aggregate number of ETH payable as the accrued and unpaid Sponsor's Fee as of 4:00 p.m., New York time, on the immediately preceding day.

3. Add the U.S. dollar value of ETH, calculated using the Index Price, receivable under pending creation orders, if any, determined by multiplying the number of the Baskets represented by such creation orders by the Basket Amount and then multiplying such product by the Index Price.[20]

4. Subtract the U.S. dollar amount of accrued and unpaid Additional Trust Expenses, if any.[21]

5. Subtract the U.S. dollar value of the ETH, calculated using the Index Price, to be distributed under pending redemption orders, if any, determined by multiplying the number of Baskets to be redeemed represented by such redemption orders by the Basket Amount and then multiplying such product by the Index Price (the amount derived from steps 1 through 5 above, the ''NAV Fee Basis Amount'').

6. Subtract the U.S. dollar amount of the Sponsor's Fee that accrues for such business day, as calculated based on the NAV Fee Basis Amount for such business day.

In the event that the Sponsor determines that the primary methodology used to determine the Index Price is not an appropriate basis for valuation of the Trust's ETH, the Sponsor will utilize the cascading set of rules as described in ''Trust Valuation of ETH'' below.

[20] ''Baskets'' and ''Basket Amount'' have the meanings set forth in ''Creation and Redemption of Shares'' below.

[21] ''Additional Trust Expenses'' are any expenses incurred by the Trust in addition to the Sponsor's Fee that are not Sponsor-paid expenses, including, but not limited to, (i) taxes and governmental charges, (ii) expenses and costs of any extraordinary services performed by the Sponsor (or any other service provider) on behalf of the Trust to protect the Trust or the interests of shareholders, (iii) any indemnification of the Custodian or other agents, service providers or counterparties of the Trust, (iv) the fees and expenses related to the listing, quotation or trading of the Shares on any marketplace or other alternative trading system, as determined by the Sponsor, on which the Shares may then be listed, quoted or traded, including but not limited to, NYSE Arca, Inc. (including legal, marketing and audit fees and expenses) to the extent exceeding $600,000 in any given fiscal year and (v) extraordinary legal fees and expenses, including any legal fees and expenses incurred in connection with litigation, regulatory enforcement or investigation matters.

ETH and the Ethereum Network [22]

According to the Annual Report, Ethereum, or ETH, is a digital asset that is created and transmitted through the operations of the peer-to-peer ''Ethereum Network,'' a decentralized network of computers that operates on cryptographic protocols. No single entity owns or operates the Ethereum Network, the infrastructure of which is collectively maintained by a decentralized user base. The Ethereum Network allows people to exchange tokens of value, called Ether, which are recorded on a public transaction ledger known as a blockchain. ETH can be used to pay for goods and services, including computational power on the Ethereum network, or it can be converted to fiat currencies, such as the U.S. dollar, at rates determined on ''Digital Asset Markets'' [23] or in individual end-user-to-end-user transactions under a barter system.

Furthermore, the Ethereum Network also allows users to write and implement smart contracts—that is, general-purpose code that executes on every computer in the network and can instruct the transmission of information and value based on a sophisticated set of logical conditions. Using smart contracts, users can create markets, store registries of debts or promises, represent the ownership of property, move funds in accordance with conditional instructions and create digital assets other than ETH on the Ethereum Network. Smart contract operations are executed on the Ethereum Blockchain in exchange for payment of ETH. The Ethereum Network is one of a number of projects intended to expand blockchain use beyond just a peer-to-peer money system.

The Ethereum Network went live on July 30, 2015. Unlike other digital assets, such as Bitcoin, which are solely created through a progressive mining process, 72.0 million ETH were created in connection with the launch of the Ethereum Network. At the time of the network launch, a non-profit called the Ethereum Foundation was the sole organization dedicated to protocol development.

The Ethereum Network is decentralized in that it does not require governmental authorities or financial institution intermediaries to create, transmit, or determine the value of ETH. Rather, following the initial distribution of ETH, ETH is created, burned, and allocated by the Ethereum Network protocol through a process that is currently subject to an issuance and burn rate. The value of ETH is determined by the supply of and demand for ETH on the Digital Asset Trading Platforms or in private end-user-to-end-user transactions.

New ETH are created and rewarded to the validators of a block in the Ethereum Blockchain for verifying transactions. The Ethereum Blockchain is effectively a decentralized database that includes all blocks that have been validated, and it is updated to include new blocks as they are validated. Each ETH transaction is broadcast to the Ethereum Network and, when included in a block, recorded in the Ethereum Blockchain. As each new block records outstanding ETH transactions, and outstanding transactions are settled and validated through such recording, the Ethereum Blockchain represents a complete, transparent and unbroken history of all transactions of the Ethereum Network.

Among other things, ETH is used to pay for transaction fees and computational services (*i.e.,* smart contracts) on the Ethereum Network; users of the Ethereum Network pay for the computational power of the machines executing the requested operations with ETH. Requiring payment in ETH on the Ethereum Network incentivizes developers to write quality applications and increases the efficiency of the Ethereum Network because wasteful code costs more, while also ensuring that the Ethereum Network remains economically viable by compensating for contributed computational resources.

Smart Contracts and Development on the Ethereum Network

Smart contracts are programs that run on a blockchain that can execute automatically when certain conditions are met. Smart contracts facilitate the exchange of anything representative of value, such as money, information, property, or voting rights. Using smart contracts, users can send or receive digital assets, create markets, store registries of debts or promises, represent ownership of property or a company, move funds in accordance with

[22] The description of ETH and the Ethereum Network in this section was provided by the Sponsor and is based on the Annual Report.

[23] A ''Digital Asset Market'' is a ''Brokered Market,'' ''Dealer Market,'' ''Principal-to-Principal Market'' or ''Exchange Market,'' as each such term is defined in the Financial Accounting Standards Board Accounting Standards Codification Master Glossary. The ''Digital Asset Trading Platform Market'' is the global trading platform market for the trading of ETH, which consists of transactions on electronic Digital Asset Trading Platforms. A ''Digital Asset Trading Platform'' is an electronic marketplace where trading participants may trade, buy and sell ETH based on bid-ask trading. The largest Digital Asset Trading Platforms are online and typically trade on a 24-hour basis, publishing transaction price and volume data.

conditional instructions and create new digital assets.

Development on the Ethereum Network involves building more complex tools on top of smart contracts, such as decentralized apps (''DApps''); organizations that are autonomous, known as decentralized autonomous organizations (''DAOs''); and entirely new decentralized networks. For example, a company that distributes charitable donations on behalf of users could hold donated funds in smart contracts that are paid to charities only if the charity satisfies certain pre-defined conditions.

Moreover, the Ethereum Network has also been used as a platform for creating new digital assets and conducting their associated initial coin offerings. As of December 31, 2023, a majority of digital assets were built on the Ethereum Network, with such assets representing a significant amount of the total market value of all digital assets.

More recently, the Ethereum Network has been used for decentralized finance (''DeFi'') or open finance platforms, which seek to democratize access to financial services, such as borrowing, lending, custody, trading, derivatives and insurance, by removing third-party intermediaries. DeFi can allow users to lend and earn interest on their digital assets, exchange one digital asset for another and create derivative digital assets such as stablecoins, which are digital assets pegged to a reserve asset such as fiat currency. Over the course of 2023, between $20 billion and $30 billion worth of digital assets were locked up as collateral on DeFi platforms on the Ethereum Network.[24]

In addition, the Ethereum Network and other smart contract platforms have been used for creating non-fungible tokens, or ''NFTs.'' Unlike digital assets native to smart contract platforms which are fungible and enable the payment of fees for smart contract execution. Instead, NFTs allow for digital ownership of assets that convey certain rights to other digital or real-world assets. This new paradigm allows users to own rights to other assets through NFTs, which enable users to trade them with others on the Ethereum Network. For example, an NFT may convey rights to a digital asset that exists in an online game or a DApp, and users can trade their NFT in the DApp or game, and carry them to other digital experiences, creating an entirely new free-market, internet-native economy that can be monetized in the physical world.

[24] DeFiLlama, ''Ethereum Total Value Locked,'' *https://defillama.com/chain/Ethereum.*

Overview of the Ethereum Network's Operations

In order to own, transfer, or use ETH directly on the Ethereum Network (as opposed to through an intermediary, such as a custodian), a person generally must have internet access to connect to the Ethereum Network. ETH transactions may be made directly between end-users without the need for a third-party intermediary. To prevent the possibility of double-spending ETH, a user must notify the Ethereum Network of the transaction by broadcasting the transaction data to its network peers. The Ethereum Network provides confirmation against double-spending by memorializing every transaction in the Ethereum Blockchain, which is publicly accessible and transparent. This memorialization and verification against double-spending is accomplished through the Ethereum Network validation process, which adds ''blocks'' of data, including recent transaction information, to the Ethereum Blockchain.

Summary of an ETH Transaction

Prior to engaging in ETH transactions directly on the Ethereum Network, a user generally must first install on its computer or mobile device an Ethereum Network software program that will allow the user to generate a private and public key pair associated with an ETH address, commonly referred to as a ''wallet.'' The Ethereum Network software program and the ETH address also enable the user to connect to the Ethereum Network and transfer ETH to, and receive ETH from, other users.

Each Ethereum Network address, or wallet, is associated with a unique ''public key'' and ''private key'' pair. To receive ETH, the ETH recipient must provide its public key to the party initiating the transfer. This activity is analogous to a recipient for a transaction in U.S. dollars providing a routing address in wire instructions to the payor so that cash may be wired to the recipient's account. The payor approves the transfer to the address provided by the recipient by ''signing'' a transaction that consists of the recipient's public key with the private key of the address from where the payor is transferring the ETH. The recipient, however, does not make public or provide to the sender its related private key.

Neither the recipient nor the sender reveal their private keys in a transaction, because the private key authorizes transfer of the funds in that address to other users. Therefore, if a user loses his or her private key, the user may permanently lose access to the ETH contained in the associated address. Likewise, ETH is irretrievably lost if the private key associated with them is deleted and no backup has been made. When sending ETH, a user's Ethereum Network software program must validate the transaction with the associated private key. In addition, since every computation on the Ethereum Network requires processing power, there is a transaction fee involved with the transfer that is paid by the payor. The resulting digitally validated transaction is sent by the user's Ethereum Network software program to the Ethereum Network validators to allow transaction confirmation.

Ethereum Network validators record and confirm transactions when they validate and add blocks of information to the Ethereum Blockchain. In proof-of-stake, validators compete to be randomly selected to validate transactions. When a validator is selected to validate a block, it creates that block, which includes data relating to (i) the verification of newly submitted and accepted transactions and (ii) a reference to the prior block in the Ethereum Blockchain to which the new block is being added. The validator becomes aware of outstanding, unrecorded transactions through the data packet transmission and distribution discussed above.

Upon the addition of a block included in the Ethereum Blockchain, the Ethereum Network software program of both the spending party and the receiving party will show confirmation of the transaction on the Ethereum Blockchain and reflect an adjustment to the ETH balance in each party's Ethereum Network public key, completing the ETH transaction. Once a transaction is confirmed on the Ethereum Blockchain, it is irreversible.

Some ETH transactions are conducted ''off-blockchain'' and are therefore not recorded in the Ethereum Blockchain. These ''off-blockchain transactions'' involve the transfer of control over, or ownership of, a specific digital wallet holding ETH or the reallocation of ownership of certain ETH in a pooled-ownership digital wallet, such as a digital wallet owned by a Digital Asset Trading Platform. In contrast to on-blockchain transactions, which are publicly recorded on the Ethereum Blockchain, information and data regarding off-blockchain transactions are generally not publicly available. Therefore, off-blockchain transactions are not truly ETH transactions in that they do not involve the transfer of transaction data on the Ethereum Network and do not reflect a movement

of ETH between addresses recorded in the Ethereum Blockchain. For these reasons, off-blockchain transactions are subject to risks, as any such transfer of ETH ownership is not protected by the protocol behind the Ethereum Network or recorded in, and validated through, the blockchain mechanism.

Creation of New ETH

Initial Creation of ETH

Unlike other digital assets such as Bitcoin, which are solely created through a progressive mining process, 72.0 million ETH were created in connection with the launch of the Ethereum Network. The initial 72.0 million ETH were distributed as follows:

Initial Distribution: 60.0 million ETH, or 83.33% of the supply, was sold to the public in a crowd sale conducted between July and August 2014 that raised approximately $18 million.

Ethereum Foundation: 6.0 million ETH, or 8.33% of the supply, was distributed to the Ethereum Foundation for operational costs.

Ethereum Developers: 3.0 million ETH, or 4.17% of the supply, was distributed to developers who contributed to the Ethereum Network.

Developer Purchase Program: 3.0 million ETH, or 4.17% of the supply, was distributed to members of the Ethereum Foundation to purchase at the initial crowd sale price.

Following the launch of the Ethereum Network, ETH supply initially increased through a progressive mining process. Following the introduction of EIP–1559, described below, ETH supply and issuance rate varies based on factors such as recent use of the network.

Proof-of-Work Mining Process

Prior to September 2022, Ethereum operated using a proof-of-work consensus mechanism. Under proof-of-work, in order to incentivize those who incurred the computational costs of securing the network by validating transactions, there was a reward given to the computer that was able to create the latest block on the chain. Every 14 seconds, on average, a new block was added to the Ethereum Blockchain with the latest transactions processed by the network, and the computer that generated this block was awarded a variable amount of ETH, depending on use of the network at the time. In certain mining scenarios, ETH was sometimes sent to another miner if they were also able to find a solution, but their block was not included. This scenario is referred to as an uncle/aunt reward. Due to the nature of the algorithm for block generation, this process (generating a ''proof-of-work'') was guaranteed to be random. The process by which a digital asset was ''mined'' resulted in new blocks being added to such digital asset's blockchain and new digital assets being issued to the miners. Prior to the Merge upgrade, described below, computers on the Ethereum Network engaged in a set of prescribed complex mathematical calculations in order to add a block to the Ethereum Blockchain and thereby confirm ETH transactions included in that block's data.

Proof-of-Stake Process

In the second half of 2020, the Ethereum Network began the first of several stages of an upgrade that was initially known as ''Ethereum 2.0'' and eventually became known as the ''Merge'' to transition the Ethereum Network from a proof-of-work consensus mechanism to a proof-of-stake consensus mechanism. The Merge was completed on September 15, 2022, and the Ethereum Network has operated on a proof-of-stake model since such time.

Unlike proof-of-work, in which miners expend computational resources to compete to validate transactions and are rewarded coins in proportion to the amount of computational resources expended, in proof-of-stake, miners (sometimes called validators) risk or ''stake'' coins to compete to be randomly selected to validate transactions and are rewarded coins in proportion to the amount of coins staked. Any malicious activity, such as validating multiple blocks, disagreeing with the eventual consensus, or otherwise violating protocol rules, results in the forfeiture or ''slashing'' of a portion of the staked coins. Proof-of-stake is viewed as more energy efficient and scalable than proof-of-work and is sometimes referred to as ''virtual mining.'' As of December 31, 2023, every 12 seconds, approximately, a new block is added to the Ethereum Blockchain with the latest transactions processed by the network, and the validator that generated this block is awarded ETH.

Limits on ETH Supply

The rate at which new ETH are issued and put into circulation is expected to vary. As of December 31, 2023, following the Merge, approximately 2,400 ETH are issued per day, though the issuance rate varies based on the number of validators on the network. In addition, the issuance of new ETH could be partially or completely offset by the burn mechanism introduced by the EIP–1559 modification, under which ETH are removed from supply at a rate that varies with network usage. On occasion, the ETH supply has been deflationary over a 24-hour period as a result of the burn mechanism. The attributes of the new consensus algorithm are subject to change, but in sum, the new consensus algorithm and related modifications reduced total new ETH issuances and could turn the ETH supply deflationary over the long term.

As of December 31, 2023, approximately 120 million ETH were outstanding.[25]

Modifications to the ETH Protocol

The Ethereum Network is an open source project with no official developer or group of developers that controls it. However, the Ethereum Network's development has historically been overseen by the Ethereum Foundation and other core developers. The Ethereum Foundation and core developers are able to access and alter the Ethereum Network source code and, as a result, they are responsible for quasi-official releases of updates and other changes to the Ethereum Network's source code.

For example, in 2019, the Ethereum Network completed a network upgrade called Metropolis that was designed to enhance the usability of the Ethereum Network and was introduced in two stages. The first stage, called Byzantium, was implemented in October 2017. The purpose of Byzantium was to increase the network's privacy, security, and scalability and reduce the block reward from 5.0 ETH to 3.0 ETH. The second stage, called Constantinople, was implemented in February 2019, along with another upgrade, called St. Petersburg. Another network upgrade, called Istanbul, was implemented in December 2019. The purpose of Istanbul was to make the network more resistant to denial of service attacks, enable greater ETH and Zcash interoperability as well as other Equihash-based proof-of-work digital assets, and to increase the scalability and performance for solutions on zero-knowledge privacy technology like SNARKs and STARKs. The purpose of these upgrades was to prepare the Ethereum Network for the introduction of a proof-of-stake algorithm and reduce the block reward from 3.0 ETH to 2.0 ETH. In the second half of 2020, the Ethereum Network began the first of several stages of an upgrade culminating in the Merge. The Merge amended the Ethereum Network's consensus mechanism to include proof-of-stake. In April 2023,

[25] CoinMarketCap, ''Ethereum,'' *https://coinmarketcap.com/currencies/ethereum/.*

the Ethereum Network completed a network upgrade called Shapella, which enabled users to unstake their previously-staked ETH and remove it from the relevant smart contract. Forthcoming planned upgrades include Dencun, which will enable ''proto-danksharding.'' The purpose of proto-danksharding is to increase scalability of the Ethereum Network by allowing easy synchronization with Layer 2 networks capable of processing many more transactions than the Ethereum Blockchain alone. The intended effect would be to increase the rate of transactions that can be processed by the Ethereum Network.

In 2021, the Ethereum Network implemented the EIP–1559 upgrade. EIP–1559 changed the methodology used to calculate the fees paid to miners (now validators). This new methodology splits fees into two components: a base cost and priority fee. The base cost is now removed from circulation, or ''burnt'', and the priority fee is paid to validators. EIP–1559 has reduced the total net issuance of ETH fees to validators. The release of updates to the Ethereum Network's source code does not guarantee that the updates will be automatically adopted. Users and validators must accept any changes made to the Ethereum source code by downloading the proposed modification of the Ethereum Network's source code. A modification of the Ethereum Network's source code is effective only with respect to the Ethereum users and validators that download it. If a modification is accepted by only a percentage of users and validators, a division in the Ethereum Network will occur such that one network will run the pre-modification source code and the other network will run the modified source code. Such a division is known as a ''fork.'' Consequently, as a practical matter, a modification to the source code becomes part of the Ethereum Network only if accepted by participants collectively having most of the validation power on the Ethereum Network.

Core development of the Ethereum source code has increasingly focused on modifications of the Ethereum protocol to increase speed and scalability and also allow for financial and non-financial next generation uses. The Trust's activities will not directly relate to such projects, though such projects may utilize ETH as tokens for the facilitation of their non-financial uses, thereby potentially increasing demand for ETH and the utility of the Ethereum Network as a whole. Conversely, projects that operate and are built within the Ethereum Blockchain may increase the data flow on the Ethereum Network and could either ''bloat'' the size of the Ethereum Blockchain or slow confirmation times.

Custody of the Trust's ETH

Digital assets and digital asset transactions are recorded and validated on blockchains, the public transaction ledgers of a digital asset network. Each digital asset blockchain serves as a record of ownership for all of the units of such digital asset, even in the case of certain privacy-preserving digital assets, where the transactions themselves are not publicly viewable. All digital assets recorded on a blockchain are associated with a public blockchain address, also referred to as a digital wallet. Digital assets held at a particular public blockchain address may be accessed and transferred using a corresponding private key.

Key Generation

Public addresses and their corresponding private keys are generated by the Custodian in secret key generation ceremonies at secure locations inside faraday cages, which are enclosures used to block electromagnetic fields and thus mitigate against attacks. The Custodian uses quantum random number generators to generate the public and private key pairs.

Once generated, private keys are encrypted, separated into ''shards,'' and then further encrypted. After the key generation ceremony, all materials used to generate private keys, including computers, are destroyed. All key generation ceremonies are performed offline. No party other than the Custodian has access to the private key shards of the Trust, including the Trust itself.

Key Storage

Private key shards are distributed geographically in secure vaults around the world, including in the United States. The locations of the secure vaults may change regularly and are kept confidential by the Custodian for security purposes.

The ''Digital Asset Account'' is a segregated custody account controlled and secured by the Custodian to store private keys, which allows for the transfer of ownership or control of the Trust's ETH on the Trust's behalf. The Digital Asset Account uses offline storage, or ''cold,'' mechanisms to secure the Trust's private keys. The term cold storage refers to a safeguarding method by which the private keys corresponding to digital assets are disconnected and/or deleted entirely from the internet. Cold storage of private keys may involve keeping such keys on a non-networked (or ''air-gapped'') computer or electronic device or storing the private keys on a storage device (for example, a USB thumb drive) or printed medium (for example, papyrus, paper, or a metallic object). A digital wallet may receive deposits of digital assets but may not send digital assets without use of the digital assets' corresponding private keys. In order to send digital assets from a digital wallet in which the private keys are kept in cold storage, either the private keys must be retrieved from cold storage and entered into an online, or ''hot,'' digital asset software program to sign the transaction, or the unsigned transaction must be transferred to the cold server in which the private keys are held for signature by the private keys and then transferred back to the online digital asset software program. At that point, the user of the digital wallet can transfer its digital assets.

Security Procedures

The Custodian is the custodian of the Trust's private keys (which, as noted above, facilitate the transfer of ownership or control of the Trust's ETH) in accordance with the terms and provisions of the custodian agreement by and between the Custodian, the Sponsor and the Trust (the ''Custodian Agreement''). Transfers from the Digital Asset Account require certain security procedures, including, but not limited to, multiple encrypted private key shards, usernames, passwords and 2-step verification. Multiple private key shards held by the Custodian must be combined to reconstitute the private key to sign any transaction in order to transfer the Trust's assets. Private key shards are distributed geographically in secure vaults around the world, including in the United States.

As a result, if any one secure vault is ever compromised, this event will have no impact on the ability of the Trust to access its assets, other than a possible delay in operations, while one or more of the other secure vaults is used instead. These security procedures are intended to remove single points of failure in the protection of the Trust's assets.

Transfers of ETH to the Digital Asset Account will be available to the Trust once processed on the Blockchain.

Subject to obtaining regulatory approval to operate a redemption program and authorization of the Sponsor, the process of accessing and withdrawing ETH from the Trust to redeem a Basket by an Authorized

Participant [26] will follow the same general procedure as transferring ETH to the Trust to create a Basket by an Authorized Participant, only in reverse.

The Sponsor will maintain ownership and control of the Trust's ETH in a manner consistent with good delivery requirements for spot commodity transactions.

ETH Value

Digital Asset Trading Platform Valuation

According to the Annual Report, the value of ETH is determined by the value that various market participants place on ETH through their transactions. The most common means of determining the value of an ETH is by surveying one or more Digital Asset Trading Platforms where ETH is traded publicly and transparently (*e.g.,* Coinbase, Kraken, LMAX Digital, and *Crypto.com*). Additionally, there are over-the-counter dealers or market makers that transact in ETH.

Digital Asset Trading Platform Public Market Data

On each online Digital Asset Trading Platform, ETH is traded with publicly disclosed valuations for each executed trade, measured by one or more fiat currencies such as the U.S. dollar or euro, or by the widely used cryptocurrency Bitcoin. Over-the-counter dealers or market makers do not typically disclose their trade data.

As of December 31, 2023, the Digital Asset Trading Platforms included in the Index were Coinbase, Kraken, LMAX Digital, and *Crypto.com*. As further described below, the Sponsor and the Trust reasonably believe each of these Digital Asset Trading Platforms are in material compliance with applicable U.S. federal and state licensing requirements and maintain practices and policies designed to comply with know-your-customer (''KYC'') and anti-money-laundering (''AML'') regulations.

Coinbase: A U.S.-based trading platform registered as a money services business (''MSB'') with the U.S. Department of the Treasury's Financial Crimes Enforcement Network (''FinCEN'') and licensed as a virtual currency business under the New York State Department of Financial Services (''NYDFS'') BitLicense, as well as a money transmitter in various U.S. states.

Crypto.com: A Singapore-based trading platform registered as an MSB with FinCEN and licensed as a money transmitter in various U.S. states. *Crypto.com* does not hold a BitLicense.

Kraken: A U.S.-based trading platform registered as an MSB with FinCEN and licensed as a money transmitter in various U.S. states. Kraken does not hold a BitLicense.

LMAX Digital: A U.K.-based trading platform registered as a broker with the Financial Conduct Authority. LMAX Digital does not hold a BitLicense.

Currently, there are several Digital Asset Trading Platforms operating worldwide, and online Digital Asset Trading Platforms represent a substantial percentage of ETH buying and selling activity and provide the most data with respect to prevailing valuations of ETH. These trading platforms include established trading platforms such as those included in the Index, which provide a number of options for buying and selling ETH. The below table reflects the trading volume in ETH and market share [27] of the ETH–U.S. dollar trading pairs of each of the Digital Asset Trading Platforms included in the Index as of December 31, 2023 (collectively, ''Constituent Trading Platforms''),[28] using data reported by the Index Provider from December 14, 2017 to December 31, 2023:

Digital Asset Trading Platforms included in the Index as of December 31, 2023	Volume (ETH)	Market share (%)
Coinbase	416,006,668	34.75
Kraken	135,358,403	11.31
LMAX Digital	69,287,707	5.79
Crypto.com	14,750,030	1.23
Total ETH–U.S. Dollar trading pair	635,402,808	53.08

The domicile, regulation, and legal compliance of the Digital Asset Trading Platforms included in the Index varies. Information regarding each Digital Asset Trading Platform may be found, where available, on the websites for such Digital Asset Trading Platforms, among other places.

The Index and the Index Price

The Index is a U.S. dollar-denominated composite reference rate for the price of ETH. The Index is designed to (i) mitigate the effects of fraud, manipulation and other anomalous trading activity from impacting the ETH reference rate, (ii) provide a real-time, volume-weighted fair value of ETH and (iii) appropriately

[26] ''Authorized Participant'' has the meaning set forth in ''Creation and Redemption of Shares'' below.

[27] Market share is calculated using trading volume (in ETH) for certain Digital Asset Trading Platforms, including Coinbase, Kraken, LMAX Digital and *Crypto.com*, as well as certain other large U.S.-dollar denominated Digital Asset Trading Platforms that were not included in the Index as of December 31, 2023, including Bitstamp, Binance.US (data included from April 1, 2020), Bittrex (data included from July 31, 2018), Bitfinex, Bitflyer (data included from November 13, 2022), Cboe Digital (data included from October 1, 2020), Gemini, HitBTC (data included from June 13, 2019 through March 31, 2020), itBit (data included from December 27, 2018), OKCoin (data included from December 25, 2018) and FTX.US (data included from July 1, 2021 through November 12, 2022).

[28] On January 19, 2020, the Index Provider removed itBit due to a lack of trading volume and added LMAX Digital to the Index based on the trading platform meeting the liquidity thresholds as part of its scheduled quarterly review. On July 23, 2022, the Index Provider removed Bitstamp from the Index due to the trading platform's failure to meet the minimum liquidity requirement, and added FTX.US as a Constituent Trading Platform based on its satisfaction of the minimum liquidity requirement as part of its scheduled quarterly review. On November 10, 2022, the Index Provider removed FTX.US from the Index due to the trading platform's announcement that trading on the trading platform would be halted, which would impact FTX.US's ability to reliably publish trade prices and volume on a real-time basis through APIs, and did not add any Constituent Trading Platforms as part of its review. On January 28, 2023, the Index Provider added Binance.US to the Index due to the trading platform meeting the minimum liquidity requirement, and did not remove any Constituent Trading Platforms as part of its quarterly review. On June 17, 2023, the Index Provider removed Binance.US from the Index due to Binance.US's announcement that the trading platform was suspending U.S. dollar (''USD'') deposits and withdrawals and planned to delist its USD trading pairs, and did not add any Constituent Trading Platforms as part of its review. On October 28, 2023, the Index Provider added *Crypto.com* to the Index due to the trading platform meeting the minimum liquidity requirement, and did not remove any Constituent Trading Platforms as part of its scheduled quarterly review.

handle and adjust for non-market related events.

The Index Price is determined by the Index Provider through a process in which trade data is cleansed and compiled in such a manner as to algorithmically reduce the impact of anomalistic or manipulative trading. This is accomplished by adjusting the weight of each data input based on price deviation relative to the observable set, as well as recent and long-term trading volume at each venue relative to the observable set.

The value of the Index is calculated and disseminated on a 24-hour basis and will be available on a continuous basis at *https://www.coindesk.com/indices.*

Constituent Trading Platform Selection

According to the Annual Report, the Digital Asset Trading Platforms that are included in the Index are selected by the Index Provider utilizing a methodology that is guided by the International Organization of Securities Commissions (''IOSCO'') principles for financial benchmarks. For a trading platform to become a Constituent Trading Platform, it must satisfy the criteria listed below (the ''Inclusion Criteria''):

- Sufficient USD liquidity relative to the size of the listed assets;
- No evidence in the past 12 months of trading restrictions on individuals or entities that would otherwise meet the trading platform's eligibility requirements to trade;
- No evidence in the past 12 months of undisclosed restrictions on deposits or withdrawals from user accounts;
- Real-time price discovery;
- Limited or no capital controls; [29]
- Transparent ownership including a publicly-owned ownership entity;
- Publicly available language and policies addressing legal and regulatory compliance in the U.S., including KYC (Know Your Customer), AML (Anti-Money Laundering) and other policies designed to comply with relevant regulations that might apply to it;
- Be a U.S.-domiciled trading platform or a non-U.S. domiciled trading platform that is able to service U.S. investors; and
- Offer programmatic spot trading of the trading pair [30] and reliably publish trade prices and volumes on a real-time basis through Rest and Websocket APIs.

A Digital Asset Trading Platform is removed as a Constituent Trading Platform when it no longer satisfies the Inclusion Criteria. The Index Provider does not currently include data from over-the-counter markets or derivatives platforms among the Constituent Trading Platforms. According to the Annual Report, over-the-counter data is not currently included because of the potential for trades to include a significant premium or discount paid for larger liquidity, which creates an uneven comparison relative to more active markets. There is also a higher potential for over-the-counter transactions to not be arms-length, and thus not be representative of a true market price. ETH derivative markets data, including ETH futures markets and perpetuals markets data, are also not currently included. While the Index Provider has no plans to include data from over-the-counter markets or derivative platforms at this time, the Index Provider will consider IOSCO principles for financial benchmarks, the management of trading venues of ETH derivatives and the aforementioned Inclusion Criteria when considering whether to include over-the-counter or derivative platform data in the future.

The Index Provider and the Sponsor have entered into the index license agreement, dated as of February 1, 2022 (as amended, the ''Index License Agreement''), governing the Sponsor's use of the Index Price.[31] Pursuant to the terms of the Index License Agreement, the Index Provider may adjust the calculation methodology for the Index Price without notice to, or consent of, the Trust or its shareholders. The Index Provider may decide to change the calculation methodology to maintain the integrity of the Index Price calculation should it identify or become aware of previously unknown variables or issues with the existing methodology that it believes could materially impact its performance and/or reliability. The Index Provider has sole discretion over the determination of Index Price and may change the methodologies for determining the Index Price from time to time. Shareholders will be notified of any material changes to the calculation methodology or the Index Price in the Trust's current reports and will be notified of all other changes that the Sponsor considers significant in the Trust's periodic or current reports. The Sponsor will determine the materiality of any changes to the Index Price on a case-by-case basis, in consultation with external counsel.

The Index Provider may change the trading venues that are used to calculate the Index or otherwise change the way in which the Index is calculated at any time. For example, the Index Provider has scheduled quarterly reviews in which it may add or remove Constituent Trading Platforms that satisfy or fail the Inclusion Criteria. The Index Provider does not have any obligation to consider the interests of the Sponsor, the Trust, the shareholders, or anyone else in connection with such changes. While the Index Provider is not required to publicize or explain the changes or to alert the Sponsor to such changes, it has historically notified the Trust (and other subscribers to the Index) of any material changes to the Constituent Trading Platforms, including any additions or removals, contemporaneous with its issuance of press releases in connection with the same. The Sponsor will notify investors of any such material event by filing a current report on Form 8–K. Although the Index methodology is designed to operate without any manual intervention, rare events would justify manual intervention. Intervention of this kind would be in response to non-market-related events, such as the halting of deposits or withdrawals of funds on a Digital Asset Trading Platform, the unannounced closure of operations on a Digital Asset Trading Platform, insolvency or the compromise of user funds. In the event that such an intervention is necessary, the Index Provider would issue a public announcement through its website, API and other established communication channels with its clients.

Determination of the Index Price

The Index applies an algorithm to the price of ETH on the Constituent Trading Platforms calculated on a per second basis over a 24-hour period. The Index's algorithm is expected to reflect a four-pronged methodology to calculate the Index Price from the Constituent Trading Platforms:

Volume Weighting: Constituent Trading Platforms with greater liquidity receive a higher weighting in the Index, increasing the ability to execute against (*i.e.,* replicate) the Index in the underlying spot markets.

Price-Variance Weighting: The Index Price reflects data points that are discretely weighted in proportion to their variance from the rest of the Constituent Trading Platforms. As the price at a particular trading platform diverges from the prices at the rest of

[29] ''Capital controls'' in this context means governmental sanctions that would limit the movement of capital into, or out of, the jurisdiction in which such Digital Asset Trading Platforms operate.

[30] Trading platforms with programmatic trading offer traders an application programming interface that permits trading by sending programmed commands to the trading platform.

[31] Upon entering into the Index License Agreement, the Sponsor and the Index Provider terminated the license agreement between the parties dated as of February 28, 2019.

the Constituent Trading Platforms, its weight in the Index Price consequently decreases.

Inactivity Adjustment: The Index Price algorithm penalizes stale activity from any given Constituent Trading Platform. When a Constituent Trading Platform does not have recent trading data, its weighting in the Index Price is gradually reduced until it is de-weighted entirely. Similarly, once trading activity at a Constituent Trading Platform resumes, the corresponding weighting for that Constituent Trading Platform is gradually increased until it reaches the appropriate level.

Manipulation Resistance: In order to mitigate the effects of wash trading and order book spoofing, the Index only includes executed trades in its calculation. Additionally, the Index only includes Constituent Trading Platforms that charge trading fees to its users in order to attach a real, quantifiable cost to any manipulation attempts.

The Index Provider re-evaluates the weighting algorithm on a periodic basis, but maintains discretion to change the way in which an Index Price is calculated based on its periodic review or in extreme circumstances and does not make the exact methodology to calculate the Index Price publicly available. Nonetheless, the Sponsor believes that the Index is designed to limit exposure to trading or price distortion of any individual Digital Asset Trading Platform that experiences periods of unusual activity or limited liquidity by discounting, in real-time, anomalous price movements at individual Digital Asset Trading Platforms.

The Sponsor believes the Index Provider's selection process for Constituent Trading Platforms as well as the methodology of the Index Price's algorithm provides a more accurate picture of ETH price movements than a simple average of Digital Asset Trading Platform spot prices, and that the weighting of ETH prices on the Constituent Trading Platforms limits the inclusion of data that is influenced by temporary price dislocations that may result from technical problems, limited liquidity or fraudulent activity elsewhere in the ETH spot market. By referencing multiple trading venues and weighting them based on trade activity, the Sponsor believes that the impact of any potential fraud, manipulation or anomalous trading activity occurring on any single venue is reduced.

If the Index Price becomes unavailable, or if the Sponsor determines in good faith that such Index Price does not reflect an accurate price for ETH, then the Sponsor will, on a best efforts basis, contact the Index Provider to obtain the Index Price directly from the Index Provider. If after such contact such Index Price remains unavailable or the Sponsor continues to believe in good faith that such Index Price does not reflect an accurate price for ETH, then the Sponsor will employ a cascading set of rules to determine the Index Price, as described below in ''Determination of the Index Price When Index Price is Unavailable.''

The Trust values its ETH for operational purposes by reference to the Index Price. The Index Price is the value of an ETH as represented by the Index, calculated at 4:00 p.m., New York time, on each business day.

Illustrative Example

For the purposes of illustration, outlined below are examples of how the attributes that impact weighting and adjustments in the aforementioned methodology may be utilized to generate the Index Price for a digital asset. For example, Constituent Trading Platforms used to calculate the Index Price of the digital asset may include trading platforms such as Coinbase, Kraken, LMAX Digital, and *Crypto.com*.

The Index Price algorithm, as described above, accounts for manipulation at the outset by only including data from executed trades on Constituent Trading Platforms that charge trading fees. Then, the below-listed elements may impact the weighting of the Constituent Trading Platforms on the Index Price as follows:

- *Volume Weighting:* Each Constituent Trading Platform will be weighted to appropriately reflect the trading volume share of the Constituent Trading Platform relative to all the Constituent Trading Platforms during this same period. For example, an average hourly weighting of 67.06%, 14.57%, 11.88%, and 6.49% for Coinbase, Kraken, LMAX Digital, and *Crypto.com*, respectively, would represent each Constituent Trading Platform's share of trading volume during the same period.
- *Inactivity Adjustment:* Assume that a Constituent Trading Platform represented a 14% weighting on the Index Price of the digital asset, which is based on the per-second calculations of its trading volume and price-variance relative to the cohort of Constituent Trading Platforms included in such Index, and then went offline for approximately two hours. The index algorithm would automatically recognize inactivity and start de-weighting the Constituent Trading Platform at the 3-minute mark and continue to do so over a 7-minute period until its influence was effectively zero, 10 minutes after becoming inactive. As soon as trading activity resumed at the Constituent Trading Platform, the index algorithm would re-weight it to the appropriate weighting based on trading volume and price-variance relative to the cohort of Constituent Trading Platforms included in the Index. Due to the period of inactivity, it would re-weight the Constituent Trading Platform activity to a weight lower than its original weighting—for example, to 12%.
- *Price-Variance Weighting:* The price-variance weighting adjustment is a relative measure of each Constituent Trading Platform versus the cohort of Constituent Trading Platforms. The further the price at a Constituent Trading Platform is from the mean price of the cohort, the less influence that trading platform's price will have on the algorithm that produces the Index Price, as the trading platform data is discretely weighted in proportion to their variance from the rest of the trading platforms on a per-second basis and there is no minimum threshold the variance must meet for this adjustment to take place. For example, assume that for a one-hour period, the digital asset's execution prices on one Constituent Trading Platform were trading more than 7% higher than the average execution prices on another Constituent Trading Platform. The algorithm will automatically detect the anomaly (price variance) and reduce that specific Constituent Trading Platform's weighting during that one-hour period, ensuring a reliable spot reference price that is unaffected by the localized event and that is reflective of broader market activity.

Determination of the Index Price When Index Price Is Unavailable

The Sponsor uses the following cascading set of rules to calculate the Index Price when the Index Price is unavailable.[32] For the avoidance of doubt, the Sponsor will employ the below rules sequentially and in the order as presented below, should one or more specific rule(s) fail:

1. Index Price = The price set by the Index as of 4:00 p.m., New York time, on the valuation date.[33] If the Index becomes unavailable, or if the Sponsor determines in good faith that the Index does not reflect an accurate price, then the Sponsor will, on a best efforts basis,

[32] The Sponsor updated these rules on January 11, 2022.

[33] The valuation date is any day for which the value of the ETH in the Trust may be calculated utilizing the Index Price.

contact the Index Provider to obtain the Index Price directly from the Index Provider. If after such contact the Index remains unavailable or the Sponsor continues to believe in good faith that the Index does not reflect an accurate price, then the Sponsor will employ the next rule to determine the Index Price. There are no predefined criteria to make a good faith assessment and it will be made by the Sponsor in its sole discretion.

2. Index Price = The price set by Coin Metrics Real-Time Rate (the ''Secondary Index'') as of 4:00 p.m., New York time, on the valuation date (the ''Secondary Index Price''). The Secondary Index Price is a real-time reference rate price, calculated using trade data from constituent markets selected by Coin Metrics, Inc. (the ''Secondary Index Provider''). The Secondary Index Price is calculated by applying weighted-median techniques to such trade data where half the weight is derived from the trading volume on each constituent market and half is derived from inverse price variance, where a constituent market with high price variance as a result of outliers or market anomalies compared to other constituent markets is assigned a smaller weight. If the Secondary Index becomes unavailable, or if the Sponsor determines in good faith that the Secondary Index does not reflect an accurate price, then the Sponsor will, on a best efforts basis, contact the Secondary Index Provider to obtain the Secondary Index Price directly from the Secondary Index Provider. If after such contact the Secondary Index remains unavailable or the Sponsor continues to believe in good faith that the Secondary Index does not reflect an accurate price, then the Sponsor will employ the next rule to determine the Index Price. There are no predefined criteria to make a good faith assessment and it will be made by the Sponsor in its sole discretion.

3. Index Price = The price set by the Trust's principal market (as defined in the Annual Report) (the ''Tertiary Pricing Option'') as of 4:00 p.m., New York time, on the valuation date. The Tertiary Pricing Option is a spot price derived from the principal market's public data feed that is believed to be consistently publishing pricing information as of 4:00 p.m., New York time, and is provided to the Sponsor via an application programming interface. If the Tertiary Pricing Option becomes unavailable, or if the Sponsor determines in good faith that the Tertiary Pricing Option does not reflect an accurate price, then the Sponsor will, on a best efforts basis, contact the Tertiary Pricing Provider to obtain the Tertiary Pricing Option directly from the Tertiary Pricing Provider. If after such contact the Tertiary Pricing Option remains unavailable after such contact or the Sponsor continues to believe in good faith that the Tertiary Pricing Option does not reflect an accurate price, then the Sponsor will employ the next rule to determine the Index Price. There are no predefined criteria to make a good faith assessment and it will be made by the Sponsor in its sole discretion.

4. Index Price = The Sponsor will use its best judgment to determine a good faith estimate of the Index Price. There are no predefined criteria to make a good faith assessment and it will be made by the Sponsor in its sole discretion.

In the event of a fork, the Index Provider may calculate the Index Price based on a digital asset that the Sponsor does not believe to be an appropriate asset of the Trust (*i.e.,* a digital asset other than ETH).[34] In this event, the Sponsor has full discretion to use a different index provider or calculate the Index Price itself using its best judgment. In such an event, the Exchange will submit a proposed rule filing to contemplate the assets that would subsequently be held by the Trust.

The Sponsor may, in its sole discretion, select a different index provider, select a different index price provided by the Index Provider, calculate the Index Price by using the cascading set of rules set forth above, or change the cascading set of rules set forth above at any time.[35]

The Impact of the Approval of ETH Futures ETFs on Spot ETH ETPs Like the Trust

On October 2, 2023, the first ETH-based exchange-traded funds (''ETFs'') were approved by the Commission for trading.[36] The ETFs hold ETH futures contracts that trade on the CME and settle using the CME CF Ethereum Reference Rate (''ERR''), which is priced based on the spot ETH markets Coinbase, Kraken, LMAX Digital, Bitstamp, Gemini, and itBit, essentially the same spot markets that are included in the Index that the Trust uses to value its ETH holdings. Given that the Commission has approved ETFs that offer exposure to ETH futures, which themselves are priced based on the underlying spot ETH market, the Sponsor believes that the Commission must also approve ETPs that offer exposure to spot ETH, like the Trust.

In the context of other digital asset-based ETF and ETP proposals for Bitcoin, the Commission has sought to justify treating futures-based ETFs differently from spot-based ETFs because of (i) distinctions between the regulations under which the two products would be registered (the Investment Company Act of 1940 (the '' '40 Act'') for digital-asset futures ETFs and '33 Act for spot digital-asset ETPs) and (ii) the existence of regulation and surveillance-sharing over the CME digital-asset futures market through the Intermarket Surveillance Group (''ISG''),

[34] According to the Annual Report, when a modification is introduced and a substantial majority of users and validators consent to the modification, the change is implemented and the network remains uninterrupted. However, if less than a substantial majority of users and validators consent to the proposed modification, and the modification is not compatible with the software prior to its modification, the consequence would be what is known as a ''hard fork'' of the Ethereum Network, with one group running the pre-modified software and the other running the modified software. The effect of such a fork would be the existence of two versions of ETH running in parallel, yet lacking interchangeability. For example, in July 2016, Ethereum ''forked'' into Ethereum and a new digital asset, Ethereum Classic, as a result of the Ethereum Network community's response to a significant security breach in which an anonymous hacker exploited a smart contract running on the Ethereum Network to syphon approximately $60 million of ETH held by the DAO, a distributed autonomous organization, into a segregated account. In response to the hack, most participants in the Ethereum community elected to adopt a ''fork'' that effectively reversed the hack. However, a minority of users continued to develop the original blockchain, with the digital asset on that blockchain now referred to as Ethereum Classic, or ETC. ETC now trades on several Digital Asset Trading Platforms. In the event of a hard fork of the Ethereum Network, the Sponsor will, if permitted by the terms of the Trust Agreement, use its discretion to determine, in good faith, which peer-to-peer network, among a group of incompatible forks of the Ethereum Network, is generally accepted as the Ethereum Network and should therefore be considered the appropriate network for the Trust's purposes. The Sponsor will base its determination on a variety of then relevant factors, including, but not limited to, the Sponsor's beliefs regarding expectations of the core developers of ETH, users, services, businesses, miners, and other constituencies, as well as the actual continued acceptance of, validating power on, and community engagement with, the Ethereum Network. There is no guarantee that the Sponsor will choose the digital asset that is ultimately the most valuable fork, and the Sponsor's decision may adversely affect the value of the Shares as a result. The Sponsor may also disagree with shareholders, security vendors, and the Index Provider on what is generally accepted as ETH and should therefore be considered ''ETH'' for the Trust's purposes, which may also adversely affect the value of the Shares as a result.

[35] The Sponsor will provide notice of any such changes in the Trust's periodic or current reports and, where applicable, will file a proposed rule change with the Commission.

[36] These ETFs included the Bitwise Ethereum Strategy ETF, Bitwise Bitcoin & Ether Equal Weight Strategy ETF, Hashdex Ether Strategy ETF, ProShares Ether Strategy ETF, ProShares Bitcoin & Ether Strategy ETF, ProShares Bitcoin & Ether Equal Weight Strategy ETF, Valkyrie Bitcoin & Ethereum Strategy ETF, VanEck Ethereum Strategy ETF, and Volatility Shares Ethereum Strategy ETF.

as compared to the spot market for those digital assets.[37] The Sponsor believes that this reasoning is unsupported for the following reasons.

The '40 Act Offers No More Investor Protections Than the '33 Act in the Context of ETH-Based ETF and ETP Proposals

While the '40 Act has certain added investor protections that the '33 Act does not require, these protections do not seek to allay harms arising from underlying assets or markets of assets that ETFs hold, such as the potential for fraud or manipulation in such markets. In other words, the Sponsor does not believe that the application of the '40 Act supports the purported justifications the Commission has made in denying other spot digital asset ETPs. Instead, the '40 Act seeks to remedy certain abusive practices in the *management* of investment companies such as ETFs, and thus places certain restrictions on ETFs and ETF sponsors. The '40 Act explicitly lists out the types of abuses it seeks to prevent, and places certain restrictions related to accounting, borrowing, custody, fees, and independent boards, among others. Notably, none of these restrictions address an ETF's underlying assets, whether ETH futures or spot ETH, or the markets from which such assets' pricing is derived, whether the CME ETH futures market or spot ETH markets. As a result, the Sponsor believes that the distinction between registration of ETH futures ETFs under the '40 Act and the registration of spot ETH ETPs under the '33 Act is one without a difference in the context of ETH-based ETP proposals.

Surveillance-Sharing With the CME ETH Futures Market Is Sufficient To Protect Against Fraud and Manipulation in the Underlying Spot ETH Market

The Sponsor believes that, because the CME ETH futures market is priced based on the underlying spot ETH market, any fraud or manipulation in the spot market would necessarily affect the price of ETH futures, thereby affecting the net asset value of an ETP holding spot ETH or an ETF holding ETH futures, as well as the price investors pay for such product's shares.[38] The Sponsor also believes that a correlation analysis conducted by Coinbase, Inc. further corroborates this conclusion. Coinbase, Inc.'s analysis found that the CME ETH futures market has been consistently and highly correlated with the spot ETH market throughout the past (nearly) three years, with an even greater correlation than that cited by the Commission with respect to the CME Bitcoin futures and spot Bitcoin market in approving proposed rule changes to list and trade spot Bitcoin-based ETPs.[39]

Given the similarity between an ETP holding spot ETH and an ETF holding ETH futures, the Sponsor believes that it must be the case that CME surveillance can either detect spot-market fraud that affects both futures ETFs and spot ETPs, or that such surveillance cannot do so for either type of product. Having approved ETH futures ETFs in part on the basis of such surveillance, the Commission has clearly determined that CME surveillance can detect spot-market fraud that would affect spot ETPs, and the Sponsor thus believes that it must also approve spot ETH ETPs on that basis.

* * * * *

In summary, the Sponsor believes that the distinctions between the '40 Act and the '33 Act, and the surveillance-sharing available for the CME ETH futures market versus the spot ETH market, are not meaningful in the context of ETH-based ETF and ETP proposals, and that such reasoning cannot be a basis for the Commission treating ETH futures ETFs differently from spot ETH ETPs like the Trust. The Sponsor believes that the Commission's approval of ETH futures ETFs means it must also approve spot ETH ETPs like the Trust.

The Structure and Operation of the Trust Protects Investors and Satisfies Commission Requirements for ETH-Based Exchange Traded Products

Even if the Commission had not approved ETH futures ETFs, the Sponsor still believes the Commission should approve the listing and trading of Shares of the Trust. In the context of prior spot digital asset ETP proposal disapproval orders for Bitcoin, the Commission expressed concerns about the underlying Digital Asset Market due to the potential for fraud and manipulation and has outlined the reasons why such ETP proposals have been unable to satisfy these concerns.[40]

[37] *See, e.g.,* Chair Gary Gensler Public Statement, ''Remarks Before the Aspen Security Forum,'' (August 3, 2021), stating that the Chair looked forward to the Commission's review of Bitcoin-based ETF proposals registered under the '40 Act, ''particularly if those are limited to [the] CME-traded Bitcoin futures,'' noting the ''significant investor protection'' offered by the '40 Act, *https://www.sec.gov/news/public-statement/gensler-aspen-security-forum-2021-08-03;* Securities Exchange Act Release No. 93559 (November 12, 2021), 86 FR 64539 (November 18, 2021) (SR–CboeBZX–2021–019) (Order Disapproving a Proposed Rule Change to List and Trade Shares of the VanEck Bitcoin Trust under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares) (''VanEck Order'') (denying the first spot bitcoin ETP registered under the '33 Act following the first approval of a bitcoin futures ETF registered under the '40 Act, noting the differences in the standard of review that applies to such products); Securities Exchange Act Release No. 94620 (April 6, 2022), 87 FR 21676 (April 12, 2022) (SR–NYSEArca–2021–53) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of the Teucrium Bitcoin Futures Fund under NYSE ARCA Rule 8.200–E, Commentary .02 (Trust Issued Receipts)) (''Teucrium Order'') (approving the first bitcoin futures ETP registered under the '33 Act, stating that ''With respect to the proposed ETP, the underlying bitcoin assets are CME bitcoin futures contracts. The relevant analysis, therefore, is whether Arca has a comprehensive surveillance sharing agreement with a regulated market of significant size related to CME bitcoin futures contracts. As discussed below, taking into consideration the direct relationship between the regulated market with which Arca has a surveillance-sharing agreement and the assets held by the proposed ETP, as well as developments with respect to the CME bitcoin futures market—including the launch of exchange-traded funds registered under the Investment Company Act of 1940 (''1940 Act'') that hold CME bitcoin futures (''Bitcoin Futures ETFs'')—the Commission concludes that the Exchange has the requisite surveillance-sharing agreement.'').

[38] *See Grayscale Investments, LLC* v. *Securities and Exchange Commission* (''*Grayscale* v. *SEC*''), No. 22–1142, Brief of Petitioner Grayscale Investments, LLC (October 11, 2022) (advancing the same argument regarding CME Bitcoin futures and the underlying spot Bitcoin market).

[39] *See* Comment Letter from Paul Grewal, Chief Legal Officer, Coinbase, Inc. (February 21, 2024), available at: *https://www.sec.gov/comments/sr-nysearca-2023-70/srnysearca202370-432799-1074283.pdf* (noting that ''the correlation between the CME ETH futures market and the spot ETH market for the full sample period is 99.3% using data at an hourly interval, 96.2% using data at a five-minute interval, and 84.7% using data at a one-minute interval''); Securities Exchange Act Release No. 34–99306 (January 10, 2024), 89 FR 3008 at 3010–11 (January 17, 2024) (SR–NYSEARCA–2021–90; SR–NYSEARCA–2023–44; SRNYSEARCA–2023–58; SR–NASDAQ–2023–016; SR–NASDAQ–2023–019; SR–CboeBZX–2023028; SR–CboeBZX–2023–038; SR–CboeBZX–2023–040; SR–CboeBZX–2023–042; SRCboeBZX–2023–044; SR–CboeBZX–2023–072) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units).

[40] *See* Securities Exchange Act Release Nos. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (SR–BatsBZX–2016–30) (Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To List and Trade Shares of the Winklevoss Bitcoin Trust) (the ''Winklevoss Order''); 87267 (October 9, 2019), 84 FR 55382 (October 16, 2019) (SR–NYSEArca–2019–01) (Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the Bitwise Bitcoin ETF Trust Under NYSE Arca Rule 8.201–E) (the ''Bitwise Order''); 88284 (February 26, 2020), 85 FR 12595 (March 3, 2020) (SR–NYSEArca–2019–39) (Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, to Amend NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares) and to List and Trade Shares of the United States Bitcoin and Treasury Investment Trust Under NYSE Arca Rule 8.201–E) (the ''Wilshire Phoenix Order''); 83904 (August 22, 2018), 83 FR 43934 (August 28, 2018) (SR–NYSEArca–2017–139) (Order Disapproving a Proposed Rule Change to List and

For purposes of the Trust's ETH-based ETP proposal, the Sponsor anticipates that the Commission may have the same concerns and addresses each of these in turn below.

In the Prior Spot Digital Asset ETP Disapproval Orders, the Commission outlined that a proposal relating to a digital asset-based ETP could satisfy its concerns regarding potential for fraud and manipulation by demonstrating:

(1) *Inherent Resistance to Fraud and Manipulation:* that the underlying commodity market is inherently resistant to fraud and manipulation;

(2) *Other Means to Prevent Fraud and Manipulation:* that there are other means to prevent fraudulent and manipulative acts and practices that are sufficient; or

(3) *Surveillance Sharing:* that the listing exchange has entered into a surveillance sharing agreement with a regulated market of significant size relating to the underlying or reference assets.

As described below, the Sponsor believes the structure and operation of the Trust are designed to prevent fraudulent and manipulative acts and practices, to protect investors and the public interest, and to respond to the specific concerns that the Commission may have with respect to potential fraud and manipulation in the context of an ETH-based ETP.

How the Trust Meets Standards in the Prior Spot Digital Asset ETP Disapproval Orders

1. Resistance to or Prevention of Fraud and Manipulation

In the Prior Spot Digital Asset ETP Disapproval Orders, the Commission disagreed with the proposition that a digital asset's fungibility, transportability and exchange tradability combine to provide unique protections against, and allow such digital asset to be uniquely resistant to, attempts at price manipulation. The Commission reached its conclusion based on concessions by one issuer that 95% of the reported trading in the digital asset, Bitcoin, is ''fake'' or non-economic, effectively admitting that the properties of Bitcoin do not make it inherently resistant to manipulation. Such issuer's concessions were further compounded by evidence of potential and actual fraud and manipulation in the historical trading of Bitcoin on certain marketplaces such as (1) ''wash'' trading, (2) trading based on material, non-public information, including the dissemination of false and misleading information, (3) manipulative activity involving Tether, and (4) fraud and manipulation.[41]

The Sponsor acknowledges the possibility that fraud and manipulation may exist in commodity markets and that digital asset trading, such as ETH, *on any given exchange* may be no more uniquely resistant to fraud and manipulation than other commodity markets.[42] However, the Sponsor believes that the fundamental features of digital assets, including fungibility, transportability and exchange tradability offer novel protections beyond those that exist in traditional commodity markets or equity markets when combined with other means, as discussed further below.

2. Other Means To Prevent Fraud and Manipulation

The Commission has recognized that a listing exchange could demonstrate that other means to prevent fraudulent and manipulative acts and practices are sufficient to justify dispensing with the requisite surveillance-sharing agreement.[43] In evaluating the effectiveness of this type of resistance, the Commission does not apply a ''cannot be manipulated'' standard. Instead, the Commission requires that such resistance to fraud and manipulation be novel and beyond those protections that exist in traditional commodity markets or equity markets for which the Commission has long required surveillance-sharing agreements in the context of listing derivative securities products.[44]

The Sponsor believes the Index represents a novel means to prevent fraud and manipulation from impacting a reference price for ETH and that it offers protections beyond those that exist in traditional commodity markets or equity markets. The Index operates materially similarly to CoinDesk Bitcoin Price Index (XBX). Specifically, digital assets, such as ETH, are novel and exist outside traditional commodity markets. It therefore stands to reason that the methods by which they trade will be novel and that the market for digital assets like ETH will have different attributes than traditional commodity markets. Digital assets like ETH were only introduced within the past decade, twenty years after the first U.S. ETFs were offered[45] and 150 years after the first futures were offered.[46] In contrast to older commodities such as gold, silver, platinum, palladium or copper, which the Commission has noted all had at least one significant, regulated market for trading futures on the underlying commodity at the time commodity trust ETPs were approved for listing and trading, the first trading in digital assets like ETH took place entirely in an open, transparent and online setting where other commodities cannot trade.

The Trust has priced its Shares consistently for more than six years based on the Index. The Sponsor believes the Trust's use of the Index specifically addresses the Commission's concerns in that the Index serves as an alternative means to prevent fraud and manipulation. Specifically, the Index can (i) mitigate the effects of fraud, manipulation and other anomalous trading activity on the ETH reference rate, (ii) provide a real-time, volume-weighted fair value of ETH and (iii) appropriately handle and adjust for non-market related events.

As described in more detail below, the Sponsor believes that the Index accomplishes those objectives in the following ways:

1. The Index tracks the Digital Asset Trading Platform Market price through

Trade the Shares of the ProShares Bitcoin ETF and the ProShares Short Bitcoin ETF) (the ''ProShares Order''); 83912 (August 22, 2018), 83 FR 43912 (August 28, 2018) (SR–NYSEArca–2018–02) (Order Disapproving a Proposed Rule Change Relating to Listing and Trading of the Direxion Daily Bitcoin Bear 1X Shares, Direxion Daily Bitcoin 1.25X Bull Shares, Direxion Daily Bitcoin 1.5X Bull Shares, Direxion Daily Bitcoin 2X Bull Shares, and Direxion Daily Bitcoin 2X Bear Shares Under NYSE Arca Rule 8.200–E) (the ''Direxion Order''); 83913 (August 22, 2018), 83 FR 43923 (August 28, 2018) (SR–CboeBZX–2018–01) (Order Disapproving a Proposed Rule Change to List and Trade the Shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF) (the ''GraniteShares Order'') (together, the ''Prior Spot Digital Asset ETP Disapproval Orders'').

[41] *See* Bitwise Order, 84 FR at 55383 (discussing analysis of the Bitcoin spot market that asserts that 95% of the spot market is dominated by fake and non-economic activity, such as wash trades), 55391 (discussing possible sources of fraud and manipulation in the bitcoin spot market). *See also* Winklevoss Order, 83 FR at 37585–86 (discussing pending litigation against a Bitcoin trading platform for fraudulent conduct relating to Tether); Bitwise Order, 84 FR at 55391 n.140, 55402 & n.331 (same); Winklevoss Order, 83 FR at 37584–86 (discussing potential types of manipulation in the Bitcoin spot market). The Commission has also noted that fraud and manipulation in the Bitcoin spot market could persist for a significant duration. *See, e.g.,* Bitwise Order, 84 FR at 55405 & n.379.

[42] *See generally* Bitwise Order.

[43] *See* Winklevoss Order, 84 FR at 37580, 37582–91; Bitwise Order, 84 FR at 55383, 55385–406; Wilshire Phoenix Order, 85 FR at 12597.

[44] *See* Winklevoss Order, 84 FR at 37582; Wilshire Phoenix Order, 85 FR at 12597.

[45] SEC, ''Investor Bulletin: Exchange-Traded Funds (ETFs),'' August 2012, *https://www.sec.gov/investor/alerts/etfs.pdf.*

[46] Commodity Futures Trading Commission (''CFTC''), ''History of the CFTC,'' *https://www.cftc.gov/About/HistoryoftheCFTC/history_precftc.html.*

trading activity at ''U.S.-Compliant Trading Platform'';[47]

2. The Index mitigates the impact of instances of fraud, manipulation and other anomalous trading activity in real-time through systematic adjustments;

3. The Index is constructed and maintained by an expert third-party index provider, allowing for prudent handling of non-market-related events; and

4. The Index mitigates the impact of instances of fraud, manipulation and other anomalous trading activity concentrated on any one specific trading platform through a cross-trading platform composite index rate.

1. The Index tracks the Digital Asset Trading Platform Market price through trading activity at ''U.S.-Compliant Trading Platforms.''

To reduce the risk of fraud, manipulation, and other anomalous trading activity from impacting the Index, only U.S.-Compliant Trading Platforms are eligible to be included in the Index.

The Index maintains a minimum number of three trading platforms and a maximum number of five trading platforms to track the Digital Asset Trading Platform Market while offering replicability for traders and market makers.[48]

U.S.-Compliant Trading Platforms possess safeguards that protect against fraud and manipulation. For example, U.S.-Compliant Trading Platforms regulated by the NYDFS under the BitLicense program have regulatory requirements to implement measures designed to effectively detect, prevent, and respond to fraud, attempted fraud, market manipulation, and similar wrongdoing, and to monitor, control, investigate and report back to the NYDFS regarding any wrongdoing.[49] These trading platforms also have the following obligations:[50]

- Submission of audited financial statements including income statements, statements of assets/liabilities, insurance, and banking;
- Compliance with capitalization requirements set at NYDFS's discretion;
- Prohibitions against the sale or encumbrance to protect full reserves of custodian assets;
- Fingerprints and photographs of employees with access to customer funds;
- Retention of a qualified Chief Information Security Officer and annual penetration testing/audits;
- Documented business continuity and disaster recovery plan, independently tested annually; and
- Participation in an independent exam by NYDFS.

Other U.S.-Compliant Trading Platforms have voluntarily implemented measures to protect against common forms of market manipulation.[51]

Furthermore, all U.S.-Compliant Trading Platforms are considered MSBs that are subject to FinCEN's federal and state reporting requirements that provide additional safeguards. For example, unscrupulous traders may be less likely to engage in fraudulent or manipulative acts and practices on trading platforms that (1) report suspicious activity to FinCEN as money services businesses, (2) report to state regulators as money transmitters, and/or (3) require customer identification through KYC procedures. U.S.-Compliant Trading Platforms are required to:[52]

- Identify people with ownership stakes or controlling roles in the MSB;
- Establish a formal Anti-Money Laundering (AML) policy in place with documentation, training, independent review, and a named compliance officer;
- Implement strict customer identification and verification policies and procedures;
- File Suspicious Activity Reports (SARs) for suspicious customer transactions;
- File Currency Transaction Reports (CTRs) for cash-in or cash-out transactions greater than $10,000; and
- Maintain a five-year record of currency exchanges greater than $1,000 and money transfers greater than $3,000.

Lastly, because of ETH's classification as a commodity, the CFTC has authority to police fraud and manipulation on U.S.-Compliant Trading Platforms.[53]

The Sponsor acknowledges that there are substantial differences between FinCEN and New York state regulations and the Commission's regulation of the national securities exchanges.[54] The Sponsor does not believe the inclusion of U.S.-Compliant Trading Platforms is in and of itself sufficient to prove that the Index is an alternative means to prevent fraud and manipulation such that surveillance sharing agreements are not required, but does believe that the inclusion of only U.S.-Compliant Trading Platforms in the Index is one significant way in which the Index is protected from the potential impacts of fraud and manipulation.

2. The Index mitigates the impact of instances of fraud, manipulation, and other anomalous trading activity in real-time through systematic adjustments.

[47] ''U.S.-Compliant Trading Platforms'' are trading platforms in the Digital Asset Trading Platform Market that are compliant with applicable U.S. federal and state licensing requirements and practices regarding AML and KYC regulations. All Constituent Trading Platforms are U.S.-Compliant Trading Platforms. ''Non-U.S.-Compliant Trading Platforms'' are all other trading platforms in the Digital Asset Trading Platform Market. As of December 31, 2023, the U.S.-Compliant Trading Platforms that the Index Provider considered for inclusion in the Index were Coinbase, Kraken, LMAX Digital and *Crypto.com.* From these U.S.-Compliant Trading Platforms, the Index Provider then applies additional Inclusion Criteria to determine the Constituent Trading Platform. On January 19, 2020, the Index Provider removed itBit due to a lack of trading volume and added LMAX Digital to the Index based on the trading platform meeting the liquidity thresholds as part of its scheduled quarterly review. On July 23, 2022, the Index Provider removed Bitstamp from the Index due to the trading platform's failure to meet the minimum liquidity requirement, and added FTX.US as a Constituent Trading Platform based on its satisfaction of the minimum liquidity requirement as part of its scheduled quarterly review. On November 10, 2022, the Index Provider removed FTX.US from the Index due to the trading platform's announcement that trading on the trading platform would be halted, which would impact FTX.US's ability to reliably publish trade prices and volume on a real-time basis through APIs, and did not add any Constituent Trading Platforms as part of its review. On January 28, 2023, the Index Provider added Binance.US to the Index due to the trading platform meeting the minimum liquidity requirement, and did not remove any Constituent Trading Platforms as part of its quarterly review. On June 17, 2023, the Index Provider removed Binance.US from the Index due to Binance.US's announcement that the trading platform was suspending USD deposits and withdrawals and planned to delist its USD trading pairs, and did not add any Constituent Trading Platforms as part of its review. On October 28, 2023, the Index Provider added *Crypto.com* to the Index due to the trading platform meeting the minimum liquidity requirement, and did not remove any Constituent Trading Platforms as part of its scheduled quarterly review.

[48] According to the Sponsor, the more trading platforms included in the Index, the more ability there is for traders and market makers to trade against the Index by arbitraging price differences. For example, in the event of variances between ETH prices on Constituent Trading Platforms and non-Constituent Trading Platforms, arbitrage trading opportunities would exist. These discrepancies generally consolidate over time, as price differences across trading platforms are realized and capitalized upon by traders and market makers.

[49] *See, e.g.,* ''DFS Takes Action to Deter Fraud and Manipulation in Virtual Currency Markets,'' *available at: https://www.dfs.ny.gov/about/press/pr1802071.htm.*

[50] *See* ''New York's Final ''BitLicense'' Rule: Overview and Changes from July 2014 Proposal,'' June 5, 2015, Davis Polk, *available at: https://www.davispolk.com/files/new_yorks_final_bitlicense_rule_overview_changes_july_2014_proposal.pdf.*

[51] As of the date of this filing, one of the four Constituent Trading Platforms, Coinbase, is regulated by NYDFS.

[52] *See* BSA Requirements for MSBs, FinCEN website: *https://www.fincen.gov/bsarequirements-msbs.*

[53] ''U.S. CFTC Chief Behnam Reinforces View of Ether as Commodity,'' CoinDesk (Mar. 28, 2023), *https://www.coindesk.com/policy/2023/03/28/us-cftc-chief-behnam-reinforces-view-of-ether-as-commodity/;* CME Group, *https://www.cmegroup.com/markets/cryptocurrencies/ether/ether.html?gad=1&gclid=EAIaIQobChMI44KBmu7ygAMVavvjBx2P4g5yEAAYASAAEgJSZfD_BwE&gclsrc=aw.ds.*

[54] *See* Bitwise Order, 84 FR at 55392; Wilshire Phoenix Order, 85 FR at 12603.

The Index is calculated once every second according to a systematic methodology that relies on observed trading activity on the Constituent Trading Platforms. While the precise methodology underlying the Index is currently proprietary, the key elements of the Index are outlined below:

- *Volume Weighting:* Constituent Trading Platforms with greater liquidity receive a higher weighting in the Index, increasing the ability to execute against (*i.e.,* replicate) the Index in the underlying spot markets.
- *Price-Variance Weighting:* The Index reflects data points that are discretely weighted in proportion to their variance from the rest of the Constituent Trading Platforms. As the price at a Constituent Trading Platform diverges from the prices at the rest of the Constituent Trading Platforms, its weight in the Index consequently decreases.
- *Inactivity Adjustment:* The Index algorithm penalizes stale activity from any given Constituent Trading Platform. When a Constituent Trading Platform does not have recent trading data, its weighting in the Index is gradually reduced, until it is de-weighted entirely. Similarly, once trading activity at the Constituent Trading Platform resumes, the corresponding weighting for that Constituent Trading Platform is gradually increased until it reaches the appropriate level.
- *Manipulation Resistance:* In order to mitigate the effects of wash trading and order book spoofing, the Index only includes executed trades in its calculation. Additionally, the Index only includes Constituent Trading Platforms that charge trading fees to its users in order to attach a real, quantifiable cost to any manipulation attempts.

3. The Index is constructed and maintained by an expert third-party index provider, allowing for prudent handling of non-market-related events.

The Index Provider reviews and periodically updates which trading platforms are included in the Index by utilizing a methodology that is guided by the IOSCO principles for financial benchmarks.

According to the Index methodology, for a trading platform to become a Constituent Trading Platform, it must satisfy the following Inclusion Criteria:

- Sufficient USD liquidity relative to the size of the listed assets;
- No evidence in the past 12 months of trading restrictions on individuals or entities that would otherwise meet the trading platform's eligibility requirements to trade;
- No evidence in the past 12 months of undisclosed restrictions on deposits or withdrawals from user accounts;
- Real-time price discovery;
- Limited or no capital controls;
- Transparent ownership including a publicly-owned ownership entity;
- Publicly available language and policies addressing legal and regulatory compliance in the US, including KYC (Know Your Customer), AML (Anti-Money Laundering) and other policies designed to comply with relevant regulations that might apply to it;
- Be a U.S.-domiciled trading platform or a non-U.S. domiciled trading platform that is able to service U.S. investors;
- Offer programmatic spot trading of the trading pair and reliably publish trade prices and volumes on a real-time basis through Rest and Websocket APIs.

Although the Index methodology is designed to operate without any human interference, rare events would justify manual intervention. Manual intervention would only be in response to ''non-market-related events'' (*e.g.,* halting of deposits or withdrawals of funds, unannounced closure of trading platform operations, insolvency, compromise of user funds, etc.). In the event that such an intervention is necessary, the Index Provider would issue a public announcement through its website, API and other established communication channels with its clients.[55]

4. The Index mitigates the impact of instances of fraud, manipulation and other anomalous trading activity concentrated on any one specific trading platform through a cross-trading platform composite index rate.

The Index is based on the price and volume data of multiple U.S.-Compliant Trading Platforms that satisfy the Index Provider's Inclusion Criteria. By referencing multiple trading venues and weighting them based on trade activity, the impact of any potential fraud, manipulation, or anomalous trading activity occurring on any single venue is reduced. Specifically, the effects of fraud, manipulation, or anomalous trading activity occurring on any single venue are de-weighted and consequently diluted by non-anomalous trading activity from other Constituent Trading Platforms.

Although the Index is designed to accurately capture the market price of ETH, third parties may be able to purchase and sell ETH on public or private markets included or not included among the Constituent Trading Platforms, and such transactions may take place at prices materially higher or lower than the Index Price. For example, based on data provided by the Index Provider, on any given day during the twelve months ended December 31, 2023, the maximum differential between the 4:00 p.m., New York time spot price of any single Digital Asset Trading Platform included in the Index and the Index Price was 2.76% and the average of the maximum differentials of the 4:00 p.m., New York time spot price of each Digital Asset Trading Platform included in the Index and the Index Price was 0.75%. During this same period, the average differential between the 4:00 p.m., New York time spot prices of all the Digital Asset Trading Platforms included in the Index and the Index Price was 0.012%.[56]

Since inception of the Trust, the Trust has consistently priced its Shares at 4:00 p.m., New York time based on the Index Price. While that pricing would be known to the market, the Sponsor believes that, even if efforts to manipulate the price of ETH at 4:00 p.m., E.T. were successful on any trading platform, such activity would have had a negligible effect on the pricing of the Trust, due to the controls embedded in the structure of the Index.

Accordingly, the Sponsor believes that the Index has proven its ability to (i) mitigate the effects of fraud, manipulation and other anomalous trading activity on the ETH reference rate, (ii) provide a real-time, volume-weighted fair value of ETH and (iii) appropriately handle and adjust for non-market related events. For these reasons, the Sponsor believes that the Index represents an effective alternative means to prevent fraud and manipulation and the Trust's reliance on the Index addresses the Commission's concerns with respect to potential fraud and manipulation.

3. A Significant, Regulated and Surveilled Market Exists and Is Closely Connected With Spot Market for ETH

In the Prior Spot Digital Asset ETP Disapproval Orders, the Commission described both the need for and the definition of a surveilled market of significant size for commodity-trust ETPs like the Trust to date.[57] Specifically, the Commission explained that:

[55] To the extent any such intervention has a material impact on the Trust, the Sponsor will also issue a public announcement.

[56] All Digital Asset Trading Platforms that were included in the Index throughout the period were considered in this analysis.

[57] *See* Winklevoss Order, 83 FR at 37593–94; Bitwise Order, 84 FR at 55383, 55410; Wilshire Phoenix Order, 85 FR at 12609.

for the commodity-trust ETPs approved to date for listing and trading, there has been in every case at least one significant, regulated market for trading futures on the underlying commodity—whether gold, silver, platinum, palladium, or copper—and the ETP listing exchange has entered into surveillance-sharing agreements with, or held Intermarket Surveillance Group membership in common with, that market.[58]

Further, the Commission stated that its interpretation of the term ''market of significant size'' depends on the interrelationship between the market with which the listing exchange has a surveillance-sharing agreement and the proposed ETP.[59] Accordingly, the terms ''significant market'' and ''market of significant size'' could mean:

a market (or group of markets) as to which (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, so that a surveillance-sharing agreement would assist in detecting and deterring misconduct, and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[60]

In the context of the Prior Spot Digital Asset ETP Disapproval Orders specifically, the Commission has stated that establishing a lead-lag relationship between the futures market and the spot market is central to understanding whether it is reasonably likely that a would-be manipulator of the ETP would need to trade on the futures market to successfully manipulate prices on those spot platforms that feed into the proposed ETP's pricing mechanism such that a surveillance-sharing agreement would assist the ETP listing market in detecting and deterring misconduct.[61] In particular, if the spot market leads the futures market, this would indicate that it would not be necessary to trade on the futures market to manipulate the proposed ETP, even if arbitrage worked efficiently, because the futures price would move to meet the spot price.

While studies have found that the CME futures market does lead the spot market in the context of Bitcoin,[62] as explained in the Sponsor's briefs and argument in its prevailing case before the D.C. Circuit Court of Appeals regarding its Bitcoin-based ETP proposal, the lead/lag question is irrelevant. If a would-be manipulator were to attempt to manipulate either a spot ETP or futures ETP by trading futures on the CME, then a surveillance-sharing agreement with the CME would provide access to information concerning that activity.[63] If, on the other hand, a would-be manipulator were to attempt to manipulate either a spot ETP or a futures ETP by trading on the spot market, then a surveillance-sharing agreement with the CME would also be able to provide access to information concerning that activity. If that were not true, the Commission could not have approved the Bitcoin futures ETPs. Given that the Commission has approved Bitcoin futures ETPs, the Commission must have concluded that the CME is capable of detecting manipulation attempts in the spot Bitcoin market. And given that the Commission has now approved ETH futures ETFs, it must have concluded that the CME is capable of detecting manipulation attempts in the spot ETH market as well. Accordingly, the Sponsor believes that disapproval of the instant proposal on such grounds would be arbitrary given that Shares of the Trust would be just as protected from fraud as shares of previously approved ETH futures ETPs.

Regardless of the irrelevance of the lead/lag relationship and the mixed findings regarding the lead/lag relationship between the CME futures and spot markets in the context of ETH, the Sponsor believes that the CME futures market represents a large, surveilled and regulated market and meets the Commission's definition of a ''significant market.'' For example, from November 1, 2019 to December 31, 2023, the CME futures market trading volume was over $461 billion, compared to $732 billion in trading volume across the Constituent Trading Platforms included in the Index. With over 60% of the Index trading volume, the CME futures market represents significant coverage of U.S.-Compliant Trading Platforms in the Ether market. In addition, the CME futures market trading volume from November 1, 2019 to December 31, 2023 was approximately 50% of the trading volume of the U.S. dollar-denominated spot markets referenced in the Bitwise Order.[64]

Given the size of the CME futures markets, the Sponsor believes such markets meet the Commission's definition of ''significant market'' because there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, since arbitrage between the derivative and spot markets would tend to counter an attempt to manipulate the spot market alone. As a result, the Exchange's ability to obtain information regarding trading in the Shares and futures from markets and other entities that are members of the Intermarket Trading Group (''ISG''), including the CME, would assist the Exchange in detecting and deterring misconduct.

The Sponsor also believes it is unlikely that the ETP would become the predominant influence on prices in the market. While future inflows to the proposed Trust cannot be predicted, to provide comparable data, the Sponsor examined the change in market capitalization of ETH with net inflows into the Trust, which currently trades on OTC Markets and is largest and most liquid ETH investment product in the world.[65] From November 1, 2019 to December 31, 2023, the market capitalization of ETH grew from $20 billion to $273 billion, a $250 billion increase. Over the same period, the Trust experienced $1.2 billion of inflows. The cumulative inflow into the Trust over the stated time period was only 0.5% of the aggregate growth of ETH's market capitalization.

Additionally, the Trust experienced approximately $71 billion of trading

[58] *See* Winklevoss Order, 83 FR at 37594.

[59] *See* Winklevoss Order, 83 FR at 37594; Bitwise Order, 84 FR at 55410; ProShares Order, 83 FR at 43936; GraniteShares Order, 83 FR at 43925; Direxion Order, 83 FR at 43914; Wilshire Phoenix Order, 85 FR at 12609.

[60] *See* Winklevoss Order, 83 FR at 37594. This definition is illustrative and not exclusive. There could be other types of ''significant markets'' and ''markets of significant size,'' but this definition is an example that will provide guidance to market participants.

[61] *See* Bitwise Order, 84 FR at 55411; Wilshire Phoenix Order, 85 FR at 12612.

[62] *See* Memorandum to File from Neel Maitra, Senior Special Counsel (Fintech & Crypto Specialist), Division of Trading and Markets, U.S. Securities and Exchange Commission re: Meeting with Representatives from Fidelity Digital Assets, et al. and attachment (SR–CboeBZX–2021–039) (September 8, 2021), *available at: https://www.sec.gov/comments/sr-cboebzx-2021-039/srcboebzx2021039-250110.pdf;* Letter from Bitwise Asset Management, Inc. re: File Number SR–NYSEArca–2021–89 (February 25, 2022), *available at: https://www.sec.gov/comments/sr-nysearca-2021-89/srnysearca202189-20117902-270822.pdf;* Letter from Wilson Sonsini Goodrich and Rosati, P.C. and Chapman and Cutler LLP, on behalf of Bitwise Asset Management, Inc. re: File No. SR–NYSEArca–2021–89 (March 7, 2022), *available at: https://www.sec.gov/comments/sr-nysearca-2021-89/srnysearca202189-20118794-271630.pdf.*

[63] *Grayscale* v. *SEC,* Commission Reply Br. 27.

[64] These spot markets include Binance.US, Coinbase, Bitfinex, Kraken, Bitstamp, BitFlyer, Poloniex, Bittrex, and itBit.

[65] To further illustrate the size and liquidity of the Trust, as of March 8, 2024, compared with global commodity ETPs, the Trust would rank 8th in assets under management and 10th in notional trading volume for the preceding 30 days.

volume from November 1, 2019 to December 31, 2023, only 15% of the CME futures market and 10% of the Index over the same period.

* * * * *

In summary, the Sponsor believes that the foregoing addresses concerns the Commission may have with respect to ETH-based ETPs, based on the Commission's articulated concerns with respect to potential fraud and manipulation in Bitcoin-based ETPs. Specifically, the Sponsor believes that, although ETH is not itself inherently resistant to fraud and manipulation, the Index represents an effective means to prevent fraudulent and manipulative acts and practices. As discussed above, the Trust has used the Index to price the Shares for more than six years, and the Index has proven its ability to (i) mitigate the effects of fraud, manipulation and other anomalous trading activity on the ETH reference rate, (ii) provide a real-time, volume-weighted fair value of ETH and (iii) appropriately handle and adjust for non-market related events. The Sponsor also believes that the CME futures market is a significant, surveilled and regulated market that is closely connected with the spot market for ETH and fulfills the requirements for surveillance sharing given the Exchange's ability to obtain information from markets and other entities that are members of the ISG to assist in detecting and deterring misconduct.

Creation and Redemption of Shares

Authorized Participants may submit orders to create or redeem Shares under procedures for ''Cash Orders.''

The Authorized Participants will deliver only cash to create Shares and will receive only cash when redeeming Shares. Further, Authorized Participants will not directly or indirectly purchase, hold, deliver, or receive ETH as part of the creation or redemption process or otherwise direct the Trust or a third party with respect to purchasing, holding, delivering, or receiving ETH as part of the creation or redemption process.

The Trust will create Shares by receiving ETH from a third party that is not the Authorized Participant and the Trust, or an affiliate of the Trust (and in any event not the Authorized Participant), is responsible for selecting the third party to deliver the ETH. Further, the third party will not be acting as an agent of the Authorized Participant with respect to the delivery of the ETH to the Trust or acting at the direction of the Authorized Participant with respect to the delivery of the ETH to the Trust. The Trust will redeem Shares by delivering ETH to a third party that is not the Authorized Participant and the Trust, or an affiliate of the Trust (and in any event not the Authorized Participant), is responsible for selecting the third party to receive the ETH. Further, the third party will not be acting as an agent of the Authorized Participant with respect to the receipt of the ETH from the Trust or acting at the direction of the Authorized Participant with respect to the receipt of the ETH from the Trust.

Cash Orders are made through the participation of a Liquidity Provider [66] who obtains or receives ETH in exchange for cash, and are facilitated by the Transfer Agent and Grayscale Investments, LLC, acting in its capacity as the Liquidity Engager. Liquidity Providers are not party to the Participant Agreements and are engaged separately by the Liquidity Engager.

According to the Registration Statement, the Trust creates Baskets (as described below) of Shares only upon receipt of ETH and redeems Shares only by distributing ETH. ''Authorized Participants'' are the only persons that may place orders to create and redeem Baskets. Each Authorized Participant must (i) be a registered broker-dealer and (ii) enter into an agreement with the Sponsor and Transfer Agent that provides the procedures for the creation and redemption of Baskets and for the delivery of ETH required for the creation and redemption of Baskets via a Liquidity Provider (each, a ''Participant Agreement''). An Authorized Participant may act for its own account or as agent for broker-dealers, custodians and other securities market participants that wish to create or redeem Baskets. Shareholders who are not Authorized Participants will only be able to create or redeem their Shares through an Authorized Participant.

The Trust issues Shares to and redeems Shares from Authorized Participants on an ongoing basis, but only in one or more ''Baskets'' (with a Basket being a block of 10,000 Shares). The Trust will not issue fractions of a Basket.

The creation and redemption of Baskets will be made only in exchange for the delivery to the Trust, or the distribution by the Trust, of the number of whole and fractional ETH represented by each Basket being created or redeemed, which is determined by dividing (x) the number of ETH owned by the Trust at 4:00 p.m., New York time, on the trade date of a creation or redemption order, after deducting the number of ETH representing the U.S. dollar value of accrued but unpaid fees and expenses of the Trust (converted using the Index Price at such time, and carried to the eighth decimal place), by (y) the number of Shares outstanding at such time (with the quotient so obtained calculated to one one-hundred-millionth of one ETH (*i.e.,* carried to the eighth decimal place)), and multiplying such quotient by 10,000 (the ''Basket Amount''). The U.S. dollar value of a Basket is calculated by multiplying the Basket Amount by the Index Price as of the trade date (the ''Basket NAV''). The Basket NAV multiplied by the number of Baskets being created or redeemed is referred to as the ''Total Basket NAV.'' All questions as to the calculation of the Basket Amount will be conclusively determined by the Sponsor and will be final and binding on all persons interested in the Trust. The number of ETH represented by a Share will gradually decrease over time as the Trust's ETH are used to pay the Trust's expenses. As of December 31, 2023, each Share represented approximately 0.0096 of one ETH.

The creation of Baskets requires the delivery to the Trust of the Total Basket Amount and the redemption of Baskets requires the distribution by the Trust of the Total Basket Amount.

Although the Trust creates Baskets only upon the receipt of ETH, and redeems Baskets only by distributing ETH, an Authorized Participant will submit Cash Orders, pursuant to which the Authorized Participant will deposit cash with, or accept cash from, the Transfer Agent in connection with the creation and redemption of Baskets.

Cash Orders will be facilitated by the Transfer Agent and Liquidity Engager, acting other than in its capacity as Sponsor. On an order-by-order basis, the Liquidity Engager will engage one or more Liquidity Providers to obtain or

[66] A ''Liquidity Provider'' means one or more eligible companies that facilitate the purchase and sale of ETH in connection with creations or redemptions pursuant to Cash Orders. The Liquidity Providers with which Grayscale Investments, LLC, acting other than in its capacity as the Sponsor (in such other capacity, the ''Liquidity Engager'') will engage in ETH transactions are third parties that are not affiliated with the Sponsor or the Trust and are not acting as agents of the Trust, the Sponsor, or any Authorized Participant, and all transactions will be done on an arms-length basis. Except for the contractual relationships between each Liquidity Provider and Grayscale Investments, LLC in its capacity as the Liquidity Engager, there is no contractual relationship between each Liquidity Provider and the Trust, the Sponsor, or any Authorized Participant. When seeking to buy ETH in connection with creations or sell ETH in connection with redemptions, the Liquidity Engager will seek to obtain commercially reasonable prices and terms from the approved Liquidity Providers. Once agreed upon, the transaction will generally occur on an ''over-the-counter'' basis.

receive ETH in exchange for cash in connection with such order, as described in more detail below.

Unless the Sponsor requires that a Cash Order be effected at actual execution prices (an ''Actual Execution Cash Order''),[67] each Authorized Participant that submits a Cash Order to create or redeem Baskets (a ''Variable Fee Cash Order'') [68] will pay a fee (the ''Variable Fee'') based on the Total Basket NAV, and any price differential of ETH between the trade date and the settlement date will be borne solely by the Liquidity Provider until such ETH have been received or liquidated by the Trust. The Variable Fee is intended to cover all of a Liquidity Provider's expenses in connection with the creation or redemption order, including any ETH trading platform fees that the Liquidity Provider incurs in connection with buying or selling ETH. The amount may be changed by the Sponsor in its sole discretion at any time, and Liquidity Providers will communicate to the Sponsor in advance the Variable Fee they would be willing to accept in connection with a Variable Fee Cash Order, based on market conditions and other factors existing at the time of such Variable Fee Cash Order.

Alternatively, the Sponsor may require that a Cash Order be effected as an Actual Execution Cash Order, in its sole discretion based on market conditions and other factors existing at the time of such Cash Order, and under such circumstances, any price differential of ETH between the trade date and the settlement date will be borne solely by the Authorized Participant until such ETH have been received or liquidated by the Trust.

In the case of creations, to transfer the Total Basket Amount to the Trust's Digital Asset Account, the Liquidity Provider will transfer ETH to one of the public key addresses associated with the Digital Asset Account and as provided by the Sponsor. In the case of redemptions, the same procedure is conducted, but in reverse, using the public key addresses associated with the wallet of the Liquidity Provider and as provided by such party. All such transactions will be conducted on the Blockchain and parties acknowledge and agree that such transfers may be irreversible if done incorrectly.

Authorized Participants do not pay a transaction fee to the Trust in connection with the creation or redemption of Baskets, but there may be transaction fees associated with the validation of the transfer of ETH by the Ethereum Network, which will be paid by the Custodian in the case of redemptions and the Authorized Participant or the Liquidity Provider in the case of creations. Service providers may charge Authorized Participants administrative fees for order placement and other services related to creation of Baskets. As discussed above, Authorized Participants will also pay the Variable Fee in connection with Variable Fee Cash Orders. Under certain circumstances Authorized Participants may also be required to deposit additional cash in the Cash Account, or be entitled to receive excess cash from the Cash Account, in connection with creations and redemptions pursuant to Actual Execution Cash Orders. Authorized Participants will receive no fees, commissions or other form of compensation or inducement of any kind from either the Sponsor or the Trust and no such person has any obligation or responsibility to the Sponsor or the Trust to effect any sale or resale of Shares.

The following is a summary of the procedures for the creation and redemption of Baskets.

Creation Procedures

On any business day, an Authorized Participant may place an order with the Transfer Agent to create one or more Baskets.

Cash Orders for creation must be placed with the Transfer Agent no later than 1:59:59 p.m., New York time.

The Sponsor may in its sole discretion limit the number of Shares created pursuant to Cash Orders on any specified day without notice to the Authorized Participants and may direct the Marketing Agent to reject any Cash Orders in excess of such capped amount. In exercising its discretion to limit the number of Shares created pursuant to Cash Orders, the Sponsor expects to take into consideration a number of factors, including the availability of Liquidity Providers to facilitate Cash Orders and the cost of processing Cash Orders.

Creations under Cash Orders will take place as follows, where ''T'' is the trade date and each day in the sequence must be a business day. Before a creation order is placed, the Sponsor determines if such creation order will be a Variable Fee Cash Order or an Actual Execution Cash Order, which determination is communicated to the Authorized Participant.

Trade date (T)	Settlement date (T+1, or T+2, as established at the time of order placement)
• The Authorized Participant places a creation order with the Transfer Agent. • The Marketing Agent accepts (or rejects) the creation order, which is communicated to the Authorized Participant by the Transfer Agent. • The Sponsor notifies the Liquidity Provider of the creation order. • The Sponsor determines the Total Basket NAV and any Variable Fee and Additional Creation Cash as soon as practicable after 4:00 p.m., New York time.	• The Authorized Participant delivers to the Cash Account: [1] (x) in the case of a Variable Fee Cash Order, the Total Basket NAV, plus any Variable Fee; or (y) in the case of an Actual Execution Cash Order, the Total Basket NAV, plus any Additional Creation Cash, less any Excess Creation Cash, if applicable (such amount, as applicable, the ''Required Creation Cash''). • The Liquidity Provider transfers the Total Basket Amount to the Trust's Vault Balance.

[67] With respect to a creation or redemption pursuant to an Actual Execution Cash Order, as between the Trust and an Authorized Participant, the Authorized Participant is responsible for the dollar cost of the difference between the ETH price utilized in calculating Total Basket NAV on the trade date and the price at which the Trust acquires or disposes of the ETH on the settlement date. If the price realized in acquiring or disposing of the corresponding Total Basket Amount is higher than the Total Basket NAV, the Authorized Participant will bear the dollar cost of such difference, in the case of a creation, by delivering cash in the amount of such shortfall (the ''Additional Creation Cash'') to the Cash Account or, in the case of a redemption, with the amount of cash to be delivered to the Authorized Participant being reduced by the amount of such difference (the ''Redemption Cash Shortfall''). If the price realized in acquiring the corresponding Total Basket Amount is lower than the Total Basket NAV, the Authorized Participant will benefit from such difference, with the Trust promptly returning cash in the amount of such excess (the ''Excess Creation Cash'') to the Authorized Participant.

[68] Unless the Sponsor determines otherwise in its sole discretion based on market conditions and other factors existing at the time of such Cash Order, all creations and redemptions pursuant to Cash Orders are expected to be executed as Variable Fee Cash Orders, and any price differential of ETH between the trade date and the settlement date will be borne solely by the Liquidity Provider until such ETH have been received by the Trust.

Trade date (T)	Settlement date (T+1, or T+2, as established at the time of order placement)
	• Once the Trust is in simultaneous possession of (x) the Total Basket Amount and (y) the Required Creation Cash, the Trust issues the aggregate number of Shares corresponding to the Baskets ordered by the Authorized Participant, which the Transfer Agent holds for the benefit of the Authorized Participant. • Cash equal to the Required Creation Cash is delivered to the Liquidity Provider from the Cash Account. • The Transfer Agent delivers Shares to the Authorized Participant by crediting the number of Baskets created to the Authorized Participant's DTC account.

[1] The ''Cash Account'' means the account maintained by the Transfer Agent for purposes of receiving cash from, and distributing cash to, Authorized Participants in connection with creations and redemptions pursuant to Cash Orders. For the avoidance of doubt, the Trust shall have no interest (beneficial, equitable or otherwise) in the Cash Account or any cash held therein.

Redemption Procedures

The procedures by which an Authorized Participant can redeem one or more Baskets mirror the procedures for the creation of Baskets. On any business day, an Authorized Participant may place a redemption order specifying the number of Baskets to be redeemed.

The redemption of Shares pursuant to Cash Orders will only take place if approved by the Sponsor in writing, in its sole discretion and on a case-by-case basis. In exercising its discretion to approve the redemption of Shares pursuant to Cash Orders, the Sponsor expects to take into consideration a number of factors, including the availability of Liquidity Providers to facilitate Cash Orders and the cost of processing Cash Orders

Cash Orders for redemption must be placed no later than 1:59:59 p.m., New York time on each business day. The Authorized Participants may only redeem Baskets and cannot redeem any Shares in an amount less than a Basket.

Redemptions under Cash Orders will take place as follows, where ''T'' is the trade date and each day in the sequence must be a business day. Before a redemption order is placed, the Sponsor determines if such redemption order will be a Variable Fee Cash Order or an Actual Execution Cash Order, which determination is communicated to the Authorized Participant.

Trade Date (T)	Settlement date (T+1 (or T+2 on case-by-case basis, as approved by Sponsor))
• The Authorized Participant places a redemption order with the Transfer Agent. • The Marketing Agent accepts (or rejects) the redemption order, which is communicated to the Authorized Participant by the Transfer Agent.	• The Authorized Participant delivers Baskets to be redeemed from its DTC account to the Transfer Agent. • The Liquidity Provider delivers to the Cash Account: (x) in the case of a Variable Fee Cash Order, the Total Basket NAV less any Variable Fee; or (y) in the case of an Actual Execution Cash Order, the actual proceeds to the Trust from the liquidation of the Total Basket Amount (such amount, as applicable, the ''Required Redemption Cash'').
• The Sponsor notifies the Liquidity Provider of the redemption order.	• Once the Trust is in simultaneous possession of (x) the Total Basket Amount and (y) the Required Redemption Cash, the Transfer Agent cancels the Shares comprising the number of Baskets redeemed by the Authorized Participant.
• The Sponsor determines the Total Basket NAV and, in the case of a Variable Fee Cash Order, any Variable Fee, as soon as practicable after 4:00 p.m., New York time.	• The Custodian sends the Liquidity Provider the Total Basket Amount, and cash equal to the Required Redemption Cash is delivered to the Authorized Participant from the Cash Account.

Suspension or Rejection of Orders and Total Basket Amount

The creation or redemption of Shares may be suspended generally, or refused with respect to particular requested creations or redemptions, during any period when the transfer books of the Transfer Agent are closed or if circumstances outside the control of the Sponsor or its delegates make it for all practicable purposes not feasible to process creation orders or redemption orders or for any other reason at any time or from time to time.[69] The Transfer Agent may reject an order or, after accepting an order, may cancel such order if: (i) such order is not presented in proper form as described in the Participant Agreement, (ii) the transfer of the Total Basket Amount comes from an account other than a ETH wallet address that is known to the Custodian as belonging to a Liquidity Provider or (iii) the fulfillment of the order, in the opinion of counsel, might be unlawful, among other reasons. None of the Sponsor or its delegates will be liable for the suspension, rejection or acceptance of any creation order or redemption order.

Availability of Information

The Trust's website (*https://grayscale.com/crypto-products/grayscale-ethereum-trust/*) will include quantitative information on a per Share basis updated on a daily basis, including, (i) the current NAV per Share daily and the prior business day's NAV per Share and the reported closing price of the Shares; (ii) the mid-point of the

[69] Extenuating circumstances outside of the control of the Sponsor and its delegates or that could cause the transfer books of the Transfer Agent to be closed are outlined in the Participant Agreement and include, for example, public service or utility problems, power outages resulting in telephone, telecopy and computer failures, acts of God such as fires, floods or extreme weather conditions, market conditions or activities causing trading halts, systems failures involving computer or other information systems, including any failures or outages of the Ethereum Network, affecting the Authorized Participant, the Sponsor, the Trust, the Transfer Agent, the Marketing Agent and the Custodian and similar extraordinary events.

bid-ask price [70] as of the time the NAV per Share is calculated (''Bid-Ask Price'') and a calculation of the premium or discount of such price against such NAV per Share; and (iii) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid-Ask Price against the NAV per Share, within appropriate ranges, for each of the four previous calendar quarters (or for as long as the Trust has been trading as an ETP if shorter). In addition, on each business day the Trust's website will provide pricing information for the Shares.

One or more major market data vendors, will provide an intra-day indicative value (''IIV'') per Share updated every 15 seconds, as calculated by the Exchange or a third party financial data provider during the Exchange's Core Trading Session (9:30 a.m. to 4:00 p.m., E.T.).[71] The IIV will be calculated using the same methodology as the NAV per Share of the Trust (as described above), specifically by using the prior day's closing NAV per Share as a base and updating that value during the NYSE Arca Core Trading Session to reflect changes in the value of the Trust's NAV during the trading day.

The IIV disseminated during the NYSE Arca Core Trading Session should not be viewed as an actual real-time update of the NAV per Share, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the NYSE Arca Core Trading Session by one or more major market data vendors. In addition, the IIV will be available through on-line information services.

The NAV for the Trust will be calculated by the Sponsor once a day and will be disseminated daily to all market participants at the same time. To the extent that the Sponsor has utilized the cascading set of rules described in ''Index Price'' above, the Trust's website will note the valuation methodology used and the price per ETH resulting from such calculation. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA'').

Quotation and last sale information for ETH will be widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters. In addition, real-time price (and volume) data for ETH is available by subscription from Reuters and Bloomberg. The spot price of ETH is available on a 24-hour basis from major market data vendors, including Bloomberg and Reuters. Information relating to trading, including price and volume information, in ETH will be available from major market data vendors and from the trading platforms on which ETH are traded. The normal trading hours for Digital Asset Trading Platforms are 24-hours per day, 365-days per year.

On each business day, the Sponsor will publish the Index Price, the Trust's NAV, and the NAV per Share on the Trust's website as soon as practicable after its determination. If the NAV and NAV per Share have been calculated using a price per ETH other than the Index Price for such Evaluation Time, the publication on the Trust's website will note the valuation methodology used and the price per ETH resulting from such calculation.

The Trust will provide website disclosure of its NAV daily. The website disclosure of the Trust's NAV will occur at the same time as the disclosure by the Sponsor of the NAV to Authorized Participants so that all market participants are provided such portfolio information at the same time. Therefore, the same portfolio information will be provided on the public website as well as in electronic files provided to Authorized Participants. Accordingly, each investor will have access to the current NAV of the Trust through the Trust's website, as well as from one or more major market data vendors.

The value of the Index, as well as additional information regarding the Index, will be available on a continuous basis at *https://www.coindesk.com/indices.*

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m., E.T. in accordance with NYSE Arca Rule 7.34–E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6–E, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00, for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.201–E. The trading of the Shares will be subject to NYSE Arca Rule 8.201–E(g), which sets forth certain restrictions on Equity Trading Permit Holders (''ETP Holders'') acting as registered Market Makers in Commodity-Based Trust Shares to facilitate surveillance. The Exchange represents that, for initial and continued listing, the Trust will be in compliance with Rule 10A–3 [72] under the Act, as provided by NYSE Arca Rule 5.3–E. A minimum of 100,000 Shares of the Trust will be outstanding at the commencement of trading on the Exchange.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Trust.[73] Trading in Shares of the Trust will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

The Exchange may halt trading during the day in which an interruption to the dissemination of the IIV or the value of the Index occurs. If the interruption to the dissemination of the IIV or the value of the Index persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV per Share is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV per Share is available to all market participants.

Surveillance

The Exchange represents that trading in the Shares of the Trust will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[74] The

[70] The bid-ask price of the Trust is determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day NAV.

[71] The IIV on a per Share basis disseminated during the Core Trading Session should not be viewed as a real-time update of the NAV, which is calculated once a day.

[72] 17 CFR 240.10A–3.

[73] *See* NYSE Arca Rule 7.12–E.

[74] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement (''CSSA'').[75] The Exchange is also able to obtain information regarding trading in the Shares in connection with such ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolios of the Trust, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange.

The Sponsor has represented to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the continued listing requirements, and, pursuant to its obligations under section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an ''Information Bulletin'' of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) the procedures for creations of Shares in Baskets; (2) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) information regarding how the value of the Index and the IIV are disseminated; (4) the possibility that trading spreads and the resulting premium or discount on the Shares may widen during the Opening and Late Trading Sessions, when an updated IIV will not be calculated or publicly disseminated; and (5) trading information. The Exchange notes that investors purchasing Shares directly from the Trust will receive a prospectus.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses as described in the Annual Report. The Information Bulletin will disclose that information about the Shares of the Trust is publicly available on the Trust's website.

The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5)[76] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.201–E. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets. In addition, the Exchange may obtain information regarding trading in the Shares from markets that are members of ISG or with which the Exchange has in place a CSSA. Also, pursuant to NYSE Arca Rule 8.201–E(g), the Exchange is able to obtain information regarding trading in the Shares and the underlying ETH or any ETH derivative through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades through ETP Holders which they effect on any relevant market.

The proposed rule change is also designed to prevent fraudulent and manipulative acts and practices because, although the Digital Asset Trading Platform Market is not inherently resistant to fraud and manipulation, the Index serves as a means sufficient to mitigate the impact of instances of fraud and manipulation on a reference price for ETH. Specifically, the Index provides a better benchmark for the price of ETH than the Digital Asset Trading Platform Market price because it (1) tracks the Digital Asset Trading Platform Market price through trading activity at U.S.-Compliant Trading Platforms; (2) mitigates the impact of instances of fraud, manipulation and other anomalous trading activity in real-time through systematic adjustments; (3) is constructed and maintained by an expert third-party index provider, allowing for prudent handling of non-market-related events; and (4) mitigates the impact of instances of fraud, manipulation and other anomalous trading activity concentrated on any one specific trading platform through a cross-trading platform composite index rate. The Trust has used the Index to price the Shares for more than four years, and the Index has proven its ability to (i) mitigate the effects of fraud, manipulation and other anomalous trading activity from impacting the ETH reference rate, (ii) provide a real-time, volume-weighted fair value of ETH and (iii) appropriately handle and adjust for non-market related events, such that efforts to manipulate the price of ETH would have had a negligible effect on the pricing of the Trust, due to the controls embedded in the structure of the Index. In addition, certain of the

[75] For a list of the current members of ISG, *see www.isgportal.org*. The Exchange notes that not all components of the Trust may trade on markets that are members of ISG or with which the Exchange has in place a CSSA.

[76] 15 U.S.C. 78f(b)(5).

Index's Constituent Trading Platforms also have or have begun to implement market surveillance infrastructure to further detect, prevent, and respond to fraud, attempted fraud, and similar wrongdoing, including market manipulation. The proposed rule change is also designed to prevent fraudulent and manipulative acts and practices based on the existence of the CME futures market as a large, surveilled and regulated market that is closely connected with the spot market for ETH and through which the Exchange could obtain information to assist in detecting and deterring potential fraud or manipulation.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that there is a considerable amount of ETH price and market information available on public websites and through professional and subscription services. Investors may obtain, on a 24-hour basis, ETH pricing information based on the spot price for ETH from various financial information service providers. The closing price and settlement prices of ETH are readily available from the Digital Asset Trading Platforms and other publicly available websites. In addition, such prices are published in public sources, or on-line information services such as Bloomberg and Reuters. The NAV per Share will be calculated daily and made available to all market participants at the same time. The Trust will provide website disclosure of its NAV daily. One or more major market data vendors will disseminate for the Trust on a daily basis information with respect to the most recent NAV per Share and Shares outstanding. In addition, if the Exchange becomes aware that the NAV per Share is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The IIV will be widely disseminated on a per Share basis every 15 seconds during the NYSE Arca Core Trading Session (normally 9:30 a.m., E.T., to 4:00 p.m., E.T.) by one or more major market data vendors. The Exchange represents that the Exchange may halt trading during the day in which an interruption to the dissemination of the IIV or the value of the Index occurs. If the interruption to the dissemination of the IIV or the value of the Index persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a CSSA. In addition, as noted above, investors will have ready access to information regarding the Trust's NAV, IIV, and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of exchange-traded product, and the first such product based on ETH, which will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEARCA–2023–70 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEARCA–2023–70. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEARCA–2023–70 and should be submitted on or before April 29, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[77]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024–07333 Filed 4–5–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, April 11, 2024.

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

[77] 17 CFR 200.30–3(a)(12).

Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: April 4, 2024.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–07481 Filed 4–4–24; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 89 FR 22466, April 4, 2024.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Thursday, April 4, 2024, at 2:00 p.m.

CHANGES IN THE MEETING: The Closed Meeting scheduled for Thursday, April 4, 2024 at 2:00 p.m., has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: April 3, 2024.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–07460 Filed 4–4–24; 11:15 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act and OMB procedures, SBA is publishing this notice to allow all interested member of the public an additional 30 days to provide comments on the proposed collection of information.

DATES: Submit comments on or before May 8, 2024.

ADDRESSES: Written comments and recommendations for this information collection request 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 ''Small Business Administration''; ''Currently Under Review,'' then select the ''Only Show ICR for Public Comment'' checkbox. This information collection can be identified by title and/or OMB Control Number.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the information collection and supporting documents from the Agency Clearance Office at Curtis B. Rich, Agency Clearance Office *curtis.rich@sba.gov;* (202) 205–7030, or from *www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: The information will be collected from lending institutions interested in becoming an SBA Supervised Lender. SBA will use the information regarding the institutions' financial condition, lending experience, credit policies, capital adequacy plan, financial statements, credit facilities, and loan risk ratings system, among other things, to determine their eligibility to participate in SBA's 7 (a) Loan Program.

Solicitation of Public Comments

Comments may be submitted 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.

OMB Control Number: 3245–0410.

Title: SBA Supervised Lender.

Description of Respondents: SBA Lenders s.

SBA Form Number: 2498, 2499.

Estimated Number of Respondents: 5.

Estimated Annual Responses: 5.

Estimated Annual Hour Burden: 425.

Curtis Rich,

Agency Clearance Officer.

[FR Doc. 2024–07399 Filed 4–5–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

Establishment of the Small Business Lending Advisory Council (Lending Council)

AGENCY: Small Business Administration (SBA).

ACTION: Notice.

SUMMARY: The SBA announces the establishment of the Small Business Lending Advisory Council. The Administrator has determined that establishing the Small Business Lending Advisory Council is necessary and in the public interest.

DATES: The Small Business Lending Advisory Council will operate for two years after the filing date of its charter that will meet the 15 day requirements of the **Federal Register** Notice, unless otherwise renewed in accordance with FACA.

FOR FURTHER INFORMATION CONTACT: Alejandro Contreras, Acting Director, Office of Financial Assistance, (202) 205–6436 or *LendingCouncil@sba.gov.* The phone number may also be reached by individuals who are deaf or hard of hearing, or who have speech disabilities, through the Federal Communications Commission's TTY-Based Telecommunications Relay Service teletype service at 711.

SUPPLEMENTARY INFORMATION: This notice announces the establishment of the Small Business Lending Advisory Council (Lending Council) as a Federal Advisory Committee in accordance with the Federal Advisory Committee Act (FACA) (Pub. L. 92–463, 5 U.S.C. 10 *et seq.*) to provide information, advice, and recommendations to the Administrator on matters broadly related to facilitating greater access and availability of capital for small business, especially in

underserved communities; providing feedback and input on pending and enacted changes relevant to the small business lending community; cultivating greater public-private engagement, cooperation, and collaboration; developing and/or evolving SBA programs and services to address long-term capital access gaps faced by small businesses and obstacles faced by the lenders that seek to support them. The Lending Council will only undertake tasks assigned to it by the Administrator. The **Federal Register** Notice will be published 15 days prior to filing the charter with Congress. This notice is provided in accordance with the Federal Advisory Committee Act.

Dated: April 2, 2024.

Andrienne Johnson,

Committee Management Officer.

[FR Doc. 2024–07328 Filed 4–5–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

Solicitations of Nominations

AGENCY: Small Business Administration (SBA).

ACTION: Notice.

SUMMARY: The SBA requests nominations of individuals to the Small Business Lending Advisory Council (Lending Council). The SBA will consider nominations received in response to this notice, as well as from other sources.

DATES: Nominations will be accepted through May 10, 2024 on a rolling basis. The SBA will retain nominations received after this date for consideration should additional vacancies occur.

ADDRESSES: All nominations should be emailed to *LendingCouncil@sba.gov* with the subject line 2024 Lending Council Nomination.

FOR FURTHER INFORMATION CONTACT: Alejandro Contreras, Acting Director, Office of Financial Assistance, *LendingCouncil@sba.gov* or (202) 205–6436. The phone number may also be reached by individuals who are deaf or hard of hearing, or who have speech disabilities, through the Federal Communications Commission's TTY-Based Telecommunications Relay Service teletype service at 711.

SUPPLEMENTARY INFORMATION: The Small Business Lending Advisory Council (Lending Council) is being established as a Federal Advisory Committee in accordance with the Federal Advisory Committee Act (FACA) (Pub. L. 92–463, 5 U.S.C. 10. The following provides information about the Committee, membership, and the nomination process.

I. Objectives and Duties

1. The Small Business Lending Advisory Council: advises the SBA Administrator on matters broadly related to facilitating greater access and availability of capital for small business, especially in underserved communities; provides feedback and input on pending and enacted changes relevant to the small business lending community; cultivating greater public-private engagement, cooperation, and collaboration; develops recommendations for additions or enhancements to SBA programs and services to address long-term capital access gaps faced by small businesses and obstacles faced by the lenders that seek to support them.

2. The Lending Council will provide advice and recommendations to SBA on matters relating to small business lending, private sector innovation in the small business lending community, and policy impacting small businesses' ability to access capital, especially in underserved communities.

3. Committee members will examine the issues, challenges and obstacles facing small businesses seeking access to capital, lenders seeking to provide those small businesses capital under the various SBA capital access programs, underserved and under-resourced communities and the stakeholders supporting them in these subject areas and recommend to SBA policy and programmatic changes to help strengthen and refine SBA's programs and services to better facilitate the flow of capital to small businesses.

4. The Lending Council will submit to the SBA Administrator and the Associate Administrator for the Office of Capital Access a report containing a detailed description of the Committee's activities; its findings, conclusions, and recommendations; and recommendations for such administrative actions as the Lending Council considers appropriate to fulfill the purpose and objectives for which the Committee has been created.

5. The Lending Council will function solely as an advisory body and shall comply fully with the provisions of the FACA and the Small Business Act and applicable rules and regulations.

6. The Lending Council will report to the SBA Administrator and the Associate Administrator for the Office of Capital Access.

II. Membership

1. The Lending Council shall consist of no more than twenty-five (25) members appointed by the SBA Administrator and will serve in a representative capacity.

a. Seventeen (17) members may consist of current or former representatives of small business leaders, community leaders, representatives of financial institutions, and members of the small business lending community;

b. Four (4) members may consist of small business advocates, research organizations, or members of the financial support and inclusion community;

c. One (1) member shall be a designated representative of the Department of Treasury, Office of the Comptroller of the Currency;

d. One (1) member shall be a designated representative of the Consumer Financial Protection Bureau;

e. One (1) member shall be a designated representative of the Department of Agriculture;

f. One (1) member shall be a designated representative of the Federal Reserve Board. Representatives of federal agencies shall be designated by the head of their respective department or agency.

2. Members shall be appointed for two (2) year terms and may not serve for more than three consecutive terms if the council is renewed.

3. In appointing members of the Lending Council, the Administrator shall, to the extent practicable, ensure that the members appointed reflect geographic (including both urban and rural areas), racial, gender, and economic diversity.

4. The SBA Administrator shall appoint a Chairperson and Vice Chairperson from the membership of the Lending Council.

III. Miscellaneous

1. The SBA will not compensate members of the Lending Council for their services, but shall, on request, reimburse travel expenses as authorized by 5 U.S.C. 5703. All necessary staff support services, facilities, and expenses will, to the extent permitted by law and subject to the availability of funds, be furnished by the SBA Office of Capital Access.

2. The Lending Council shall meet at least three (3) times per year at the call of the Designated Federal Officer in consultation with the Chairperson, or at the request of the SBA Administrator. There will be one in person meeting held each year, with two virtual meetings.

3. The Designated Federal Officer for the Lending Council is the career Deputy Associate Administrator, Office

of Capital Access, or any other full-time or part-time employee designated and assigned by the SBA Administrator.

IV. Nomination Information

1. Nominations are requested as described below.

2. Nominees must have experience and technical expertise in such areas as commercial lending, small business finance, government-guaranteed lending, small business advocacy or advisement, and expertise needed to provide advice on SBA's loan programs.

3. The SBA is especially interested in receiving applications from persons with expertise in small business finance for underserved communities, including rural communities and high-poverty communities.

4. Individuals, groups, and/or organizations may submit nominations on behalf of individual candidates. Nominees must be able to actively participate in the tasks of the Lending Council, including, but not limited to, regular meeting attendance, Committee meeting discussant responsibilities, review of materials, as well as participation in conference calls, webinars, working groups, and/or special Committee activities.

5. Self-nominations are permitted.

6. Nomination emails sent to *LendingCouncil@sba.gov* should include:

a. The subject line 2024 Lending Council Nomination.

b. The first and last name of the nominee, as well as the nominee's phone number and email address.

c. The nominator, including either the first and last name of the nominator and their current title, or the name of the organization.

d. The nominee's state of residence.

e. A nomination letter, not to exceed 2 pages, that highlights the reason the nominee should serve on the Lending Council.

f. A summary of the nominee's qualifications in a resumé or curriculum vitae, not to exceed 3 pages.

7. The SBA is committed to equal opportunity in the workplace and seeks diverse membership.

Dated: April 2, 2024.

Andrienne Johnson,

Committee Management Officer.

[FR Doc. 2024–07325 Filed 4–5–24; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 12371]

Notice of Shipping Coordinating Committee Meeting in Preparation for International Maritime Organization (IMO) Maritime Safety Committee (MSC 108) Meeting

The Department of State will conduct a public meeting at 09:00 a.m. on Tuesday, May 7, 2024, both in-person at Coast Guard Headquarters in Washington, DC, and via teleconference. The primary purpose of the meeting is to prepare for the 108th session of the International Maritime Organization's (IMO) Maritime Safety Committee (MSC 108) to be held in London, United Kingdom, from Wednesday, May 15, 2024, to Friday, May 24, 2024.

Members of the public may participate up to the capacity of the teleconference line, which will handle 500 participants, or up to the seating capacity of the room if attending in-person. The meeting location will be the United States Coast Guard Headquarters, and the teleconference line will be provided to those who RSVP. To RSVP, participants should contact the meeting coordinator, LT Emily Rowan, by email at *Emily.K.Rowan@uscg.mil.* LT Rowan will provide access information for in-person and virtual attendance.

The agenda items to be considered include:

—Adoption of the agenda
—Decisions of other IMO bodies
—Consideration and adoption of amendments to mandatory instruments
—Development of a goal-based instrument for Maritime Autonomous Surface Ships (MASS)
—Development of a safety regulatory framework to support the reduction of GHG emissions from ships using new technologies and alternative fuels
—Revision of the *Guidelines on Maritime Cyber Risk Management* (MSC–FAL.1/Circ.3/Rev.2) and identification of next steps to enhance maritime cybersecurity
—Measures to enhance maritime security
—Piracy and armed robbery against ships
—Unsafe mixed migration by sea
—Domestic ferry safety
—Formal safety assessment
—Navigation, communication and search and rescue (Report of the tenth session of the Sub-Committee)
—Implementation of IMO instruments (Report of the ninth session of the Sub-Committee)
—Carriage of cargoes and containers (Report of the ninth session of the Sub-Committee)
—Ship design and construction (Report of the tenth session of the Sub-Committee)
—Application of the Committee's method of work
—Work programme
—Any other business
—Consideration of the report of the Committee on its 108th session

Please note: The IMO may, on short notice, adjust the MSC 108 agenda to accommodate any constraints associated with the meeting. Although no changes to the agenda are anticipated, if any are necessary, they will be provided to those who RSVP.

Those who plan to participate should contact the meeting coordinator, LT Emily K. Rowan at *emily.k.rowan@uscg.mil,* by phone at (202) 372–1376, or in writing at 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington, DC 20593–7509 no later than April 23, 2024, 14 days prior to the meeting. Requests made after April 23, 2024, might not be able to be accommodated. The meeting coordinator will provide the teleconference information, facilitate the building security process and requests for reasonable accommodation. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Douglas A. Munro Coast Guard Headquarters Building at St. Elizabeth's. This building is accessible by taxi, public transportation, and privately owned conveyance (upon advanced request).

Additional information regarding this and other IMO public meetings may be found at: *https://www.dco.uscg.mil/IMO.*

(Authority: 22 U.S.C. 2656 and 5 U.S.C. 552)

Leslie W. Hunt,

Coast Guard Liaison Officer, Office of Ocean and Polar Affairs, Department of State.

[FR Doc. 2024–07344 Filed 4–5–24; 8:45 am]

BILLING CODE 4710–09–P

TENNESSEE VALLEY AUTHORITY

Kingston Fossil Plant Retirement Environmental Impact Statement

AGENCY: Tennessee Valley Authority.

ACTION: Record of decision.

SUMMARY: Tennessee Valley Authority (TVA) has made a decision to adopt the Preferred Alternative identified in its Final Environmental Impact Statement (EIS) for the retirement of the Kingston Fossil Plant (KIF). The Notice of

Availability (NOA) for the Kingston Retirement Final EIS was published in the **Federal Register** on February 23, 2024. TVA's Preferred Alternative, Alternative A, involves the retirement of KIF, decommissioning and demolition of KIF's nine coal-fired units, and the construction and operation of facilities to replace the retired generation that include a single natural gas-fired combined cycle (CC) plant, 16 dual-fuel aeroderivative combustion turbines (aero CTs) and a new switchyard (hereafter the CC/aero CT Plant), a 3 to 4 megawatt (MW) solar site, a 100 MW lithium-ion battery energy storage system (BESS), and new transmission line infrastructure. Alternative A also involves the Ridgeline Expansion Project, consisting of a new 122-mile natural gas pipeline, compressor station, and metering and regulation facilities to be constructed, owned, and operated by East Tennessee Natural Gas, LLC (ETNG). Alternative A will achieve the purpose and need to have firm, dispatchable replacement generation to meet capacity system demands, particularly peak load events, by the end of 2027 when KIF is retired. Alternative A will also facilitate the integration of additional solar and battery storage resources elsewhere on TVA's system, which is part of TVA's overall asset planning that includes the deployment and installation of up to 10,000 MW of solar by 2035.

FOR FURTHER INFORMATION CONTACT: Brittany Kunkle, NEPA Compliance Specialist, Tennessee Valley Authority, 400 W. Summit Hill Dr, WT11B–K, Knoxville, Tennessee 37902; telephone 865–632–6470; email *brkunkle@tva.gov.* The Final EIS, this Record of Decision, and other project documents are available on TVA's website at *https://www.tva.gov/nepa.*

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the National Environmental Policy Act (NEPA), as amended (42 U.S. Code [U.S.C.] 4321 *et seq.*), the Council on Environmental Quality's regulations for implementing NEPA (40 Code of Federal Regulations (CFR) 1500 through 1508, as updated April 20, 2022), and TVA's NEPA procedures (18 CFR 1318). TVA is a corporate agency and instrumentality of the United States that provides electricity for 153 local power companies serving approximately 10 million people as well as directly served commercial, industrial, and government customers in the Tennessee Valley—an 80,000-square-mile region comprised of Tennessee and parts of Virginia, North Carolina, Georgia, Alabama, Mississippi, and Kentucky. TVA receives no taxpayer funding and derives virtually all its revenue from the sale of electricity. In addition to operating and investing revenues in its power system, TVA provides flood control, navigation, and land management for the Tennessee River watershed, and provides economic development and job creation assistance within the TVA Power Service Area.

Planning Basis and Assumptions

In 2019, TVA completed its Integrated Resource Plan (IRP) and associated Final EIS. The IRP identified various energy resource options that TVA may pursue to meet the energy needs of the Tennessee Valley region over a 20-year planning period. The Preferred Alternative aligns with the 2019 IRP, which guides future generation planning consistent with TVA's congressionally mandated least-cost planning principles. Following the completion of TVA's 2019 IRP and to inform long-term planning, TVA began conducting end-of-life evaluations of its operating coal-fired generating plants not already scheduled for retirement. This evaluation confirmed that TVA's aging coal fleet is among the oldest in the nation and is experiencing deterioration of material condition and performance challenges. The performance challenges are projected to increase because of the coal fleet's advancing age and the difficulty of adapting the fleet's generation within the changing generation profile that integrates increased renewables. Additionally, the continued, long-term operation of TVA's coal plants, including KIF, may increase environmental, economic, and reliability risks, and the aging infrastructure at KIF, built between 1951 and 1955, exacerbates these risks.

KIF is situated on the 2,254-acre Kingston Reservation on the Clinch and Emory rivers in Harriman, Roane County, Tennessee. As TVA continues to transition the rest of its fleet to cleaner and more flexible technologies, KIF will continually be challenged to operate reliably. In accordance with the recommendations in the 2019 IRP, TVA conducted end-of-life evaluations for its aging coal fleet and concluded that retiring TVA's entire coal fleet by 2035 would align with least-cost planning and reduce economic, reliability, and environmental risks. TVA also developed planning assumptions for the retirement of all TVA coal units by 2033 and sequencing the retirement of TVA's coal fleet and the construction of necessary replacement generation. For the nine coal-fired units at KIF, TVA's planning identified retirement by the end of 2027 as the optimal timeframe.

The nine-unit, coal-fired plant has a summer net generating capacity of 1,298 MW, a reduction from the facility's design capacity (1,700 MW) resulting from the effects of aging equipment and long-term fuel blend changes. As TVA's generating fleet has evolved, primarily driven by additions of nuclear, gas, and renewable resources over the past 10 to 15 years, the need for KIF to operate at full capacity has decreased. This has resulted in more frequent cycling of KIF units to meet fluctuating loads. However, KIF was not designed for these types of operations, which presents reliability challenges that are difficult to anticipate and expensive to mitigate.

Further, a significant monetary investment would be required to comply with the requirements of the 2020 Effluent Limitation Guidelines (ELGs) and other environmental regulations. Continued operation of KIF beyond 2027 would create operational, and therefore reliability risks in TVA's system due to the deteriorating condition of the coal units. In addition, operation of the KIF Plant beyond 2027 is likely to result in cascading delays for the later planned retirements in TVA's phased 2035 coal fleet retirement plan and cause delay in TVA's plans to integrate more solar and storage assets onto the system. Thus, KIF was recommended for retirement by the end of 2027.

Replacement generation for KIF must provide at least 1,500 MW of firm, dispatchable power, capable of providing year-round generation and meeting peak capacity demands, as well as capacity for observed and anticipated future load growth in the Tennessee Valley. Replacement generation needs to be operational prior to the retirement of the nine KIF coal-fired units by the end of 2027. An additional consideration was the location of KIF on the transmission system, specifically the 161-kilovolt system near the Knoxville load center, making KIF an integral part of the system's power flows and stability. The replacement generation must continue to maintain the planning reserve margins and to provide transmission system voltage support to the local area that is needed to maintain overall system stability and reliability.

As with other utilities across the nation, TVA has an active interconnection queue with close to 30,000 MW of generation currently in the queue. Over 15,000 MW of that is solar or solar and storage. While the interest in interconnecting generation is robust, a significant portion of those

projects are non-viable, speculative projects that require significant transmission upgrades, or are not cost competitive. Renewable projects in the queue tend to be located in areas that are more suitable for solar, such as West Tennessee, North Alabama, and North Mississippi, not in the East Tennessee region where KIF is located. The queued projects are not capable of meeting the purpose and need to support generation in the East Tennessee region and to provide replacement capacity by the end of 2027.

TVA prepared a Final EIS pursuant to NEPA to assess the environmental impacts associated with retiring and demolishing the nine KIF coal-fired units and constructing and operating the replacement generation.

Alternatives Considered

TVA considered various resource types for replacement generation as a result of retiring the nine units at KIF, see Final EIS section 2.1.5. To meet the stated purpose and need for the proposed action, the alternatives considered were required to be mature, proven technologies, capable of being constructed, and operating by the end of 2027. TVA assessed in detail a No Action Alternative and two action alternatives. Under both action alternatives, the nine KIF coal-fired units would be retired, decommissioned, and demolished, and the retired generation would be replaced with at least 1,500 MW of new capacity. The Final EIS also evaluated related actions associated with the gas supply and transmission components of the respective alternatives. The alternatives considered by TVA in the Draft and Final EIS are:

No Action Alternative—Under the No Action Alternative, TVA would not retire the nine KIF coal-fired units. These units would continue to operate as part of the TVA generation portfolio. For the existing units to remain operational, additional construction, repairs, and maintenance would be necessary to maintain reliability and to comply with applicable regulatory requirements, such as the ELGs under the Clean Water Act (CWA). Under the No Action Alternative, TVA would not construct new replacement generation. The costs of implementing the No Action Alternative could require potentially significant rate increases, which would disproportionately impact low-income Environmental Justice (EJ) populations. Based on the age, material condition, upgrades required for current or future environmental compliance and investment costs required to ensure reliability of KIF, this alternative does not meet the purpose and need of TVA's proposed action.

Alternative A—TVA's Preferred Alternative is the retirement of KIF, decommissioning and demolition of the nine KIF coal-fired units, and the addition of at least 1,500 MW of replacement generation through the construction and operation of a natural gas-fueled CC plant combined with 16 dual-fueled aero CTs, a 3 to 4 MW solar site, a 100 MW BESS, and a new 161-kilovolt switchyard on the Kingston Reservation. The CC/aero CT Plant and associated Alternative A components would occupy approximately 505 acres of the Kingston Reservation and in the East Tennessee region.

Off-site transmission upgrades needed for initiating operations of the new gas plant would be completed during construction of the CC/aero CT Plant. These upgrades would be required to support resiliency, reliability, and the electrical capacity of the off-site transmission lines. Upgrades would include uprating, reconductoring, or rebuilding transmission lines within existing right-of-way, as well as replacing terminal equipment, bus work, and/or jumpers. As described in the Final EIS section 2.1.3.5, four transmission lines on the Eastern Transmission Corridor and one transmission line on the Western Transmission Corridor would require upgrades.

Natural gas would be supplied to the CC/aero CT Plant by ETNG's Ridgeline Expansion Project, if approved by the Federal Energy Regulatory Commission (FERC). For the Ridgeline Expansion Project, ETNG proposes to construct and operate a new natural gas pipeline primarily adjacent to ETNG's existing pipeline system's line number 3100. ETNG's Ridgeline Expansion Project would consist of the construction of approximately 122 miles of new 30-inch natural gas pipeline, a 14,600-horsepower electric motor drive compressor station, and other gas system infrastructure to connect the CC/aero CT Plant to the pipeline. The Ridgeline Expansion Project would include a permanent pipeline easement and adjacent temporary workspace which would cross portions of Trousdale, Smith, Jackson, Putnam, Overton, Fentress, Morgan, and Roane counties, Tennessee. The pipeline requires approval by FERC through the issuance of a Certificate of Public Convenience and Necessity under section 7 of the Natural Gas Act. ETNG has submitted an application for certification of the pipeline to FERC. The Ridgeline Expansion Project (FERC Docket No. CP23–516–000 and amended CP23–516–001) was the subject of a Notice of Intent (NOI) to prepare an EIS issued by FERC on September 22, 2023 (88 FR 65383), and was amended on December 18, 2023 (89 FR 6108). Details of the pipeline and its potential environmental impacts, provided in resource reports prepared by ETNG, were independently evaluated by TVA and are incorporated into TVA's Final EIS.

Alternative A would meet TVA's project purpose and need to provide at least 1,500 MW of firm, dispatchable power to replace the retiring nine KIF coal-fired units by the end of 2027.

Alternative B—Under this alternative, the nine KIF coal-fired units would be retired, decommissioned and demolished, and the necessary replacement power would be supplied through the construction and operation of 1,500 MW of utility-scale solar and 2,200 MW of BESS facilities. These facilities would be located at numerous sites totaling approximately 10,950 acres for the solar facilities and up to 825 acres for the BESS facilities, with portions located in East Tennessee. To maintain stability on TVA's transmission system, TVA would need to accommodate the decreased influx of generated power from KIF as well as ensure that the multiple (15+) solar generating locations can be connected without impacting the existing grid for the areas surrounding the new solar sites. In addition to on-site transmission upgrades and off-site upgrades to existing transmission lines and substations described in Alternative A, each solar and BESS facility would also require the construction of an interconnection to the TVA transmission system.

Based on TVA's experience with interconnections, approximately 5.4 years or greater are generally required to bring a solar interconnection to commercial operation. For the solar and battery resources under Alternative B, it would take approximately 8.4 years to bring those resources online in the Knoxville area following completion of site identification and acquiring control of the site (the timeline for identification and acquisition of sites is hard to predict). This long timeframe would not allow the replacement power for KIF to be online for several years after KIF's retirement in 2027, compounding the operational, reliability, and environmental risks. A blended alternative that combines a smaller gas plant with a solar and BESS scenario to support the retirement of the KIF Plant is not a viable alternative as it would not resolve the transmission-related challenges described above nor

meet the purpose and need to have firm dispatchable power by the end of 2027.

Alternative B would also require a large number of solar panels, approximately 3.8 million panels, based on the projected 10,950 acres required to generate 1,500 MW. Recent supply chain delays in securing solar panels challenge the ability to obtain the projected volume of solar panels in time to complete Alternative B by the end of 2027. While the Inflation Reduction Act incentivizes the transition of the solar supply chain to the U.S., it is projected that it will take 3 to 5 years for the domestic supply chain to mature and ease the current constraints on the solar industry. TVA's review of the 2023 Solar Energy Industries Association affirms this finding. Thus, TVA's Final EIS solar price and supply chain assumptions are valid and are informed by recent market offers, which remain elevated due to supply chain risks.

Preferred Alternative

TVA identified Alternative A as the Preferred Alternative in both the Draft and Final EISs. Alternative B would not fully meet TVA's project purpose and need because it would not provide 1,500 MW of firm, dispatchable replacement generation and could not be constructed and operational prior to the proposed retirement and decommissioning of the nine KIF coal-fired units by the end of 2027. Alternative A is the best overall solution to provide low-cost, reliable energy to TVA's power system and could be built and made operational sooner than Alternative B, thereby reducing economic, reliability, and environmental risks. Alternative A meets the purpose and need of the proposed action, particularly its ability to provide replacement generation that can supply at least 1,500 MW of firm, dispatchable power by the end of 2027 to support the retirement and decommissioning of the KIF coal-fired units. This replacement aligns with the 2019 IRP near-term actions to evaluate engineering end-of-life dates for aging generation units to inform long-term planning and to enhance system flexibility to integrate renewables and distributed resources. Alternative A is consistent with the need set forth in the 2019 IRP to establish new capacity in TVA's region and increase reliability and flexibility, as well as meet near-term TVA energy production goals. It is also consistent with the target supply mix, reflecting the application of least-cost planning principles, adopted by TVA in its 2019 IRP. Replacement of coal-fired generation at KIF with a CC/aero CT Plant is the best overall solution to provide low-cost, reliable, and cleaner energy to TVA's power system. In addition to enabling the integration of renewables, the Preferred Alternative includes a renewable energy component that can be accommodated on the Kingston Reservation and would replace the retired generation with an energy complex that includes natural gas, 3–4 MW of solar, and 100 MW of battery storage–a first-of-its-kind complex for TVA.

TVA prefers Alternative A because the CC/aero CT Plant will provide the operational flexibility needed to support reliably integrating up to 10,000 MW of solar onto the TVA system by 2035 and will also enable the KIF coal-fired units to be retired by the projected end-of-life estimates for those units and before significant water treatment and other investments become necessary under recent and anticipated new regulations such as the ELGs. In contrast, Alternative B would not provide firm, dispatchable power needed to maintain system reliability by 2027. The construction of multiple solar and storage facilities, as well as their associated transmission system interconnections, would not be feasible to complete by the end of 2027 based on current transmission project and construction timelines.

Summary of Environmental Effects

The anticipated environmental impacts of the No Action Alternative and the two action alternatives are described in detail in the Final EIS and summarized in table 2.2–1, and this section summarizes the actions and impacts that would occur under the various alternatives.

No Action Alternative—The No Action Alternative would avoid the impacts of constructing and operating new generating facilities, an associated gas pipeline, and on-site transmission system connections. However, for the existing nine KIF coal-fired units to remain operational given their ongoing performance challenges, additional construction, repairs, and maintenance activities would be necessary to maintain reliability and compliance with applicable regulatory requirements. These performance challenges would result in moderate, adverse, and permanent impacts to utilities; thus, the No Action Alternative could have minor negative financial impacts on ratepayers due to the potential need for rate increases to help pay for the costs to operate and maintain the KIF's coal-fired units, which could have a greater disproportionate impact on low-income EJ populations.

KIF's continued operation would continue to produce relatively large quantities of air emissions under the existing Title V permit, including greenhouse gases (GHGs), as well as wastewater discharges and solid wastes from coal combustion. Any increases in local ambient air temperatures due to climate change could increase the temperature of raw water used to cool plant equipment thereby reducing plant efficiency and increasing the risk of the occurrence, magnitude, and frequency of exceedances of thermal discharge limits in KIF's National Pollutant Discharge Elimination System (NPDES) permit and potentially triggering additional permit requirements under CWA 316(a). The withdrawal of raw water at the KIF cooling water intake structure for non-contact cooling of plant equipment would need to continue, which results in potential adverse effects to aquatic life from entrainment and impingement mortality, and potentially triggering additional permit requirements under CWA 316(b).

Retirement and Demolition of KIF—Under both action alternatives, the nine KIF coal-fired units would be retired, decommissioned, and demolished. These actions will have a minor and temporary adverse effect on the following resources: aquatic life, soils, surface water, groundwater, air quality and GHGs, natural areas, parks and recreation, land use, transportation, waste management, public health and safety, noise, and visual effects. If retirement and demolition activities must be located in floodplains, these activities would be considered temporary uses and would have no permanent impacts. EJ and socioeconomic effects may be offset by temporary employment increases during demolition activities.

The retirement and demolition of KIF will have a permanent and beneficial effect on the following resources: water, air quality and GHGs, aquatic life, public health and safety, and visual. There will be long-term beneficial effects from: reduced cooling water withdrawals and the reduction of wastewater discharges; reduction in emissions of GHGs, which benefits both air quality and public health and safety; viewshed improvement; and the elimination of water withdrawals and heated effluent discharge, which benefits aquatic life.

Alternative A TVA Actions—TVA's actions during construction under this alternative will have a minor and temporary adverse effect on the following resources: EJ, soils, prime farmland, floodplains, air quality and

GHGs, natural areas, parks and recreation, transportation, waste management, public health and safety, socioeconomics, noise, and visual. A temporary increase in employment during construction activities will also occur, which may offset impacts on EJ communities and socioeconomic resources. The decommissioning and demolition of the KIF nine-unit, coal-fired plant is expected to have beneficial effects on local air quality, climate change, and reduce future regional GHG emissions that would be positive for EJ populations as well as the general population.

TVA's actions during operation under Alternative A will have an adverse effect on the following resources: geology, soils, prime farmland, floodplains, surface waters, wetlands, vegetation, wildlife, aquatic life, natural areas, parks and recreation, land use, transportation, waste management, and visual. The U.S. Fish and Wildlife Service (FWS) concurred that TVA's actions under Alternative A may affect but are not likely to adversely affect the gray bat, Indiana bat, or northern long-eared bat. This concurrence completes TVA's obligations under section 7 of the Endangered Species Act. TVA's Final EIS, table 3.824 referenced preliminary Endangered Species Act (ESA) determinations made or pending consultation by ENTG for construction of the natural gas pipeline right of way. TVA updates and incorporates by reference the assessment of impacts on threatened or endangered species, as presented in the Revised Biological Assessment for East Tennessee Natural Gas, LLC's Ridgeline Expansion Project filed March 11, 2024 (FERC Docket No. CP23–516, accession no. 20240311–5269).

TVA actions under Alternative A will have a permanent and beneficial effect on the following resources: air quality and GHGs, utilities, and public health and safety. Alternative A will advance TVA's Strategic Intent and Guiding Principles to execute a plan to 70 percent carbon reduction by 2030, develop a path to 80 percent reduction by 2035, and aspire to achieve net-zero carbon reduction by 2050, all of which supports recent Federal GHG reduction policies and guidance. TVA completed a comparative analysis of GHG and Social Cost of GHG (SC–GHG) of the No Action and Action Alternatives, using methods consistent with the 2023 National Environmental Policy Act Interim Guidance on Consideration of Greenhouse Gas Emissions and Climate Change developed by the Council on Environmental Quality. On a TVA system-wide basis, the estimated total Alternative A life cycle social costs of GHG emissions in comparison to the No Action Alternative, *i.e.,* net savings/benefit, ranges from approximately $398 million to $4.34 billion in nominal dollars. Due to disparate scientific, economic, and legal positions on SC–GHG rates and their application in determining the SC–GHG, the analysis presented in this Final EIS provides a SC–GHG range based on Federal Government published SC–GHG documents (*e.g.,* Biden Administration SC–GHG rate, Trump Administration SC–GHG rate, Interagency Working Group figures, or other Federal Government agency policy or Executive Orders).

Although the U.S. Environmental Protection Agency (EPA) has not yet issued a final rule for New Source Performance Standards for GHG Emissions from New, Modified, and Reconstructed Fossil Fuel-fired Electric Generating Stations, TVA has incorporated a sensitivity analysis of the potential impacts of the Proposed Rule in the evaluation of the No Action and Action Alternatives presented in the Final EIS appendix B. The construction and operation of the KIF replacement generation would be consistent with the requirements of any final rules promulgated by the EPA under section 111 of the Clean Air Act. The Proposed Rule is discussed further in Final EIS section 2.1.5.4. appendix B includes a sensitivity analysis that covers estimated impacts of the Proposed Rules. The GHG Proposed Rule sensitivity analysis takes a conservative approach and does not include tax incentives for carbon capture and storage for the No Action Alternative or Alternative A. EPA's Proposed Rule does not address solar and storage facilities under Alternative B. Based on this sensitivity analysis, Alternative A is still the lowest cost alternative, even after accounting for the cost of carbon capture and storage or hydrogen co-firing that may be applicable to the CC/aero CT plant in a final rule.

To fulfill its obligations under section 106 of the National Historic Preservation Act, TVA completed consultation with the Tennessee State Historic Preservation Officer (SHPO) and federally recognized Indian Tribes regarding potential project-related effects to cultural resources from TVA's actions under Alternative A. The Tennessee SHPO agreed with TVA's findings under section 106 and none of the consulted Tribes objected. Thus, TVA's actions under Alternative A will have no effect on the only recorded National Register of Historic Places (NRHP)-eligible archaeological site within the CC/aero CT Plant site.

ETNG Actions—Under Alternative A, ETNG would construct and operate a new natural gas pipeline as part of the Ridgeline Expansion Project. ETNG's actions would have a minor and temporary adverse effect on the following resources during construction: soils, floodplains, surface waters, air quality and GHGs, vegetation, aquatic life, natural areas, parks and recreation, land use, transportation, waste management, public health and safety, socioeconomics, and noise. A temporary increase in employment during construction activities would also occur which may offset temporary adverse effects on socioeconomic resources. There are seven NRHP-eligible archaeological sites that require further evaluation prior to construction to determine if they would be adversely impacted by construction activities.

ETNG operations would have an adverse effect on the following resources: EJ, geology, soils, prime farmland, wetlands, air quality and GHGs, vegetation, wildlife, land use, socioeconomics, and visual resources. Moderate effects would occur to soils due to placement of fill and land use due to conversion of hay/pasture, forest, and open space to industrial use. ETNG's operation actions would have a permanent and beneficial effect on utilities and public health and safety as described for Alternative A TVA actions. Effects of the natural gas pipeline on climate change would be minor. ETNG's Ridgeline Expansion Project requires approval by FERC through the issuance of a certificate of public convenience and necessity and for related authorizations under section 7 of the Natural Gas Act. FERC will issue an EIS with its findings prior to making a decision on the Ridgeline Expansion Project.

Alternative B TVA Actions—For many environmental resources, the potential impacts of TVA's actions under Alternative A as described above are comparable to Alternative B. Alternative B would be unlikely to affect natural areas, parks and recreation, and cultural resources. Anticipated temporary and beneficial socioeconomic effects under Alternative B include an increase to local population numbers and local employment, indirect effects to the local economy, and long-term and beneficial effects to the local tax base. Specific impacts would be evaluated through reviews for individual solar and storage facilities. Alternative B reflects an estimated $2.26 billion of SC–GHG savings relative to the No Action Alternative, approximately $417 million

more savings than Alternative A. In comparison to Alternative B, Alternative A has higher estimated GHG life cycle emissions and associated estimated future social costs. However, Alternative B would not fully meet the project purpose and need to provide 1,500 MW of replacement generation by 2027. And even accounting for updated pricing as a result of the Inflation Reduction Act, Alternative B is estimated to cost approximately $1 billion more than Alternative A in project costs, which include capital, transmission, and production costs.

Similar to Alternative A, increases in flooding events and severity and extended drought conditions are not expected to have an effect on the physical infrastructure or operations under Alternative B. However, extended heat waves would reduce the efficiency of photovoltaic facilities and the amount of electricity they generate and would also reduce the efficiency of storage facilities by increasing their cooling system energy requirements.

Environmentally Preferable Alternative

While the No Action Alternative would avoid the impacts of constructing and operating new generating facilities and associated gas pipeline and transmission system connections, it would continue to produce relatively large quantities of air pollutants, including GHGs, from the continued operation of the nine KIF coal-fired units, as well as wastewater discharges and solid wastes from coal combustion.

When comparing the environmental impacts of the two action alternatives, Alternative A would be environmentally preferable for certain resources, whereas Alternative B would be environmentally preferable for other resources. Alternative A would have fewer environmental impacts in terms of land use, prime farmland, stream and wetland conversion, visual, and soil impacts. Alternative B would have fewer environmental impacts in terms of surface water, air quality, GHGs, climate change, public health and safety, and noise impacts. For both Alternatives A and B, the intensity of impacts for certain resources are relatively similar, including for EJ communities, floodplains, geology, aquatic, wildlife, and ecological habitat loss and conversion, natural areas and parks and recreation, utilities, cultural resources, socioeconomic resources, and hazardous waste.

Thus, there are important environmental tradeoffs between Alternative A and Alternative B that TVA has considered. While Alternative A would result in lower GHG life cycle emission reductions, Alternative B would require significantly greater land use conversions in the region. No clear environmentally preferred alternative emerges from the comparison. Ultimately, however, Alternative A is the only alternative that would fully meet the project purpose and need to provide 1,500 MW of firm, dispatchable power by 2027 needed to ensure system reliability.

Public Involvement

TVA initiated a 30-day public scoping period on June 15, 2021, when it published a NOI in the **Federal Register** announcing the preparation of an EIS (85 FR 31780, June 15, 2021). TVA also announced the project and requested public input in news releases; on its website; in notices printed in relevant area newspapers and news websites; in flyers which were handed out in the general area of the plant; and in letters to Federal, State, and local agencies and federally recognized Indian Tribes. TVA held a live virtual public scoping meeting on June 29, 2021, and hosted a virtual meeting room with project information for the duration of the scoping period. TVA received approximately 56 scoping comments, a form letter from Sierra Club with 583 signatories, and a petition from Energy Alabama with eight signatories. These comments were carefully considered during the preparation of the EIS. The National Park Service, in its comments on the NOI for the scoping of the Kingston action, requested to be a cooperating agency in the preparation of the Final EIS. TVA granted this request. Additionally, TVA invited the EPA to be a cooperating agency, and EPA has served as a cooperating agency for this EIS.

The NOA of the Draft EIS was published in the **Federal Register** on May 19, 2023, initiating a 45-day public comment period that ended on July 3, 2023 (88 FR 32215, May 19, 2023). The availability of the Draft EIS and request for comments were announced on the TVA website; in regional and local newspapers; in a news release; in locally sent postcards; in electric bill mailers; in flyers handed out at commodity distribution and other local community events; and in letters to local, State, and Federal agencies and federally recognized Tribes. TVA contacted local officials and leaders, schools, and community action organizations in the KIF project area. TVA held a virtual public meeting and two in-person public meetings in Rockwood and Kingston, Tennessee during the Draft EIS comment period.

TVA received 602 comments on the Draft EIS, with one form letter containing approximately 4,350 signatures. A large portion of comments generally supported the retirement of the nine KIF coal-fired units but opposed Alternative A and preferred Alternative B; however, there was also significant support for Alternative A and the No Action Alternative. TVA carefully reviewed all substantive comments and, where appropriate, revised the text of the EIS to address the comments and issued the Final EIS. The submitted comments and TVA's responses to them are included in appendix D to the Final EIS.

The NOA for the Final EIS was published in the **Federal Register** on February 23, 2024 (89 FR 13717). Following publication of the Final EIS, and therefore outside of the comment period, TVA staff and the Board of Directors received several hundred comment submissions, many of which were submitted through form letters, primarily from individuals in support of the retirement of KIF and a renewable replacement generation. These comments were addressed by TVA in section 2.1.5 of the Final EIS, which considered a renewable generation option to replace the generation from the nine retiring KIF units.

Following the publication of the NOA for the Final EIS, and therefore outside of the comment period for the EIS, TVA received additional public comments in March 2024, including a comment letter from the EPA. The comments raised in the letters post-dating the Final EIS largely reiterated earlier comments on the Draft EIS and did not raise new issues of relevance that were not already addressed by TVA in the Final EIS or Appendix D of the Final EIS.

On March 25, 2024, EPA submitted comments in accordance with section 309 of the Clean Air Act and section 102(2)(C) of NEPA. EPA is also a cooperating agency on this project. Many of these comments were raised during EPA's cooperating agency review of the Draft EIS and the Final EIS. TVA responded as discussed in Appendix L of the Final EIS. TVA gave further consideration to EPA's section 309 letter and TVA's responses are included in the administrative record.

Decision

TVA certifies, in accordance with 40 CFR 1505.2(b), that the agency has considered all of the alternatives, information, analyses, material in the record determined to be relevant, and comments submitted by Federal, State, Tribal and local governments and public

commenters for consideration in developing the Final EIS.

TVA has decided to implement the Preferred Alternative identified in the Final EIS: Alternative A, to retire, decommission, and demolish the nine KIF coal-fired units, and to install at least 1,500 MW of replacement generation capacity through the construction and operation of a natural gas-fired combined cycle plant, 16 dual-fired aero-derivative CTs, a 3 to 4 MW solar site, and a 100 MW BESS at the Kingston Reservation. This alternative best achieves TVA's purpose and need to retire the nine KIF units and to replace the generation from those retired units with firm, dispatchable power by the end of 2027 to maintain system reliability.

Mitigation Measures

TVA will employ standard practices and routine measures and other project-specific measures to avoid, minimize, and mitigate adverse impacts from implementation of Alternative A. Certain minimization and mitigation measures were provided by the Tennessee Department of Environment and Conservation (TDEC) as recommendations regarding demolition materials in lieu of open burning, such as beneficial reuse or transport to a recycling facility or landfill; general permitting; and best management practice (BMP) guidance regarding cultural, air, and water resources.

TVA will implement minimization and mitigation measures that have been developed with consideration of BMPs, permit requirements, TDEC recommendations, and adherence to erosion and sediment control plans. TVA will utilize standard BMPs to minimize erosion during construction, operation, and maintenance activities. These BMPs are described in *A Guide for Environmental Protection and BMPs for TVA Construction and Maintenance Activities—Revision 4* and the *Tennessee Erosion and Sediment Control Handbook.* Additionally, TVA will incorporate, as appropriate, environmentally beneficial features, such as pollinator habitat, at the Kingston Reservation in the future.

ETNG has identified numerous mitigation measures for the construction and operation of the 122-mile natural gas pipeline, which include many of the standard practices to comply with environmental laws and regulations, including, but not limited to, FERC's Regulations Implementing the National Environmental Policy Act (18 CFR part 380)—Transportation of Natural Gas and Other Gas by Pipeline: Minimum Federal Safety Standards, the FERC Plan and the FERC Procedures or under FERC-approved deviations, FERC Guidance for Horizontal Directional Drill Monitoring, Inadvertent Return Response, and Contingency Plans (49 CFR part 192).

In association with Alternative A, TVA would employ standard practices and specific routine measures to avoid and minimize effects to resources. During development of the Final EIS, TVA has adopted all practicable means to avoid or minimize environmental harm from Alternative A and commits to implementing the following minimization and mitigation measures and commitments listed in the Final EIS section 2.3 in relation to potentially affected resources:

- Soils
  - Install silt fence along the perimeter of areas cleared of vegetation.
  - Implement other soil stabilization and vegetation management measures to reduce the potential for soil erosion during site operations.
  - Try to balance cut-and-fill quantities to alleviate the transportation of soils offsite during construction.
- Water Resources
  - TVA will continue to implement KIF Ash Pond Dredge Cell Restoration Project Phase III that includes restoration of the natural resources affected by the 2008 Ash Spill.
  - TVA will develop a project specific stormwater pollution prevention plan, as required under the General Permit for Stormwater Discharges Associated with Construction Activities, prior to beginning construction or demolition.
  - Perennial, intermittent, and ephemeral streams and wetlands that could be affected by the construction would be protected by implementing standard BMPs as identified in the project stormwater pollution prevention plan, TVA's BMP manual, and the Tennessee Erosion and Sediment Control Handbook. Direct, permanent effects to streams and wetlands would be permitted and mitigated under the CWA section 404 permit and TDEC Aquatic Resources Alteration Permit/ CWA section 401. In particular, TVA will purchase mitigation credits within the Clinch, Emory, and Tennessee River watersheds, as appropriate and to the extent such credits are available within these watersheds. Should mitigation credits not be available within the primary or applicable secondary watersheds, TVA will pursue mitigation through in-lieu fee credit purchases or through permittee-responsible mitigation.
  - Comply with the terms and water quality standards, as identified in the individual NPDES permit, for industrial wastewater discharge(s) by ensuring any process water discharge meets applicable effluent limits and water quality standards.
  - Use TVA BMP procedures for controlling soil erosion and sediment control, such as the use of buffer zones surrounding perennial and intermittent streams and wetlands (impaired or high-quality designated water features may require larger buffer zones) and install erosion control silt fences and sediment traps.
  - Implement other routine BMPs as necessary, including:
    - non-mechanical tree removal within stream and wetland buffers;
    - placement of silt fence and sediment traps along buffer edges;
    - selective herbicide treatment to restrict application near receiving water and groundwater features;
    - proper vehicle maintenance to reduce the potential for adverse effects to groundwater; and
    - use of wetland mats for temporary crossing, dry season work across wetlands, and no soil rutting of 12 inches or more in wetlands.
- Biological Resources
  - Revegetate with native and/or noninvasive vegetation consistent with Invasive Species Executive Order 13112, including species that attract pollinators, to reintroduce habitat, reduce erosion, and limit the spread of invasive species.
  - In areas requiring chemical treatment, only EPA-registered and TVA-approved herbicides would be used in accordance with label directions designed, in part, to restrict applications near sinkholes and caves and near receiving waters to prevent unacceptable aquatic effects. TVA would apply for coverage under TDEC's NPDES General Permit for Application of Pesticides prior to use of herbicides in aquatic environments.
  - Follow FWS recommendations regarding biological resources and pollinator species:
    - Use of downward and inward facing lighting to limit attracting wildlife, particularly migratory birds and bats;
    - Instruct construction personnel on wildlife resource protection measures, including applicable Federal and State laws such as those that prohibit animal disturbance, collection, or removal, the importance of protecting wildlife resources, and avoiding unnecessary vegetation removal; and
    - Perform surveys of buildings prior to demolition to ensure they have not been colonized by bats or migratory birds. If bats are found, including those listed as threatened or endangered species, these buildings would not be

demolished until one of two mitigation actions occurs: (1) bats are transitioned out of the buildings, or (2) consultation with FWS is completed (if federally listed species are observed). If active nests of migratory birds are present and demolition activities must occur within the nesting season, TVA would coordinate with FWS or the United States Department of Agriculture Wildlife Services, whichever is appropriate based on the species' Federal status, to determine best options for carrying out demolition activities.

- Should actions near nesting osprey rise to levels above normal routine disturbance typically encountered on the Kingston Reservation, U.S. Department of Agriculture Wildlife Services will be contacted to ensure compliance under Federal law.
- As practicable, TVA will endeavor to remove trees on the Kingston Reservation between November 15 and March 31 when listed bat species are not expected to be roosting in trees and when most migratory bird species of conservation concern are not nesting in the region. Likewise, TVA will endeavor, as practicable, to remove trees for the offsite transmission system upgrade activities between November 15 and March 31 for tree clearing activities occurring within 0.5 miles of known bat hibernacula.
- For those activities with potential to affect listed bats, TVA will commit to implementing specific conservation measures approved by FWS through TVA's updated programmatic consultation (May 2023) to ensure effects would not be significant. Relevant conservation measures that will be implemented as part of the approved project are listed in the bat strategy form provided in Appendix F to the Final EIS.
- TVA will endeavor to sell any marketable timber generated from onsite clearing activities. Non-marketable timber may be cut and left in place in specified, non-wetland areas as a windrow BMP or may be chipped and used as sediment barriers or mulch.

• Cultural Resources

- Keep access routes and construction activities outside of the 30-meter buffers surrounding any archaeological sites listed in eligible, or potentially eligible for listing, in the NRHP.
- When access routes must be placed within such buffers, avoid modifications and use wetland mats and light-duty equipment when practicable.
- Locate new structures and buildings at least one-half mile from, and out of view of, any NRHP-listed or eligible historic architectural structures, when practicable. When avoidance is not practical, mitigation will be performed in consultation with the SHPO.
- Maintain vegetative screening (at least 100 feet in width) to prevent clear views from any NRHP-listed or -eligible above-ground resources, or from the Green-Mahoney Cemetery to the new facilities.

• Waste Management

- Develop and implement a variety of plans and programs to ensure safe handling, storage, and use of hazardous materials.

• Public and Occupational Health and Safety

- Implement BMPs for site safety management to minimize potential risks to workers.

• Transportation

- Implement staggered work shifts during daylight hours and utilize a flag person during the heavy commute periods to manage construction traffic flow near the project site(s), if needed.
- To mitigate the potential for effects to public safety, TVA will restrict or close roads in the vicinity should blasting be used to demolish the stack. No barge or boat traffic would be allowed in the area during the stack blasting activities.
- TVA will work with the demolition contractor to create a detailed site-specific plan for any public road closures that will be distributed to affected parties, including emergency personnel.

• Noise

- Minimize construction activities during overnight hours, where possible, and ensure that heavy equipment, machinery, and vehicles utilized at the project site meet all Federal, State, and local noise requirements.

• Visual

- Use downward- and inward-facing lighting.

• Air Quality and GHG Emissions

- Comply with local ordinances or burn permits if burning of vegetative debris is required and use BMPs, such as periodic watering, covering open-body trucks, and establishing a speed limit to mitigate fugitive dust.
- Remove ash from the facilities for deconstruction and demolition, prior to removal of that facility, and implement dust control measures during demolition to prevent the spread of dust, dirt, and debris to minimize potential fugitive dust mobilization associated with explosive demolition. Dust control methods may include covering waste or debris piles, using covered containers to haul waste and debris, or wet suppression techniques. Wet suppression may include wetting of equipment and demolition areas and wetting unpaved vehicle access routes during hauling, which can reduce fugitive dust emissions from roadways and unpaved areas.
- Maintain engines and equipment in good working order.
- Comply with TDEC Air Pollution Control Rule 1200–3–8, which requires reasonable precautions to prevent particulate matter from becoming airborne. If necessary, emissions from open demolition areas and paved/unpaved roads could be mitigated by spraying water on the work areas and roadways to reduce fugitive dust emissions.
- Comply with the EPA mobile source regulations in 40 CFR part 85 for on-road engines and 40 CFR part 1039 for non-road engines, requiring a maximum sulfur content in diesel fuel of 15 ppm.
- Implement inherent (*e.g.,* good combustion design and practice) and/or post-combustion (*e.g.,* selective catalytic reduction, oxidation catalysts) emissions controls for each emissions unit, which will mitigate nitrogen oxides, sulfur dioxide, particulate matter 10 and 2.5, carbon monoxide, and volatile organic compounds.
- Meet 40 CFR part 60, subpart KKKK (NO_X and SO_2), and subpart TTTT (GHGs), requirements for combustion turbines/electric generating units, including emissions monitoring and/or performance testing requirements, fuel and fuel sulfur monitoring requirements, and maintenance, recordkeeping, and reporting requirements. All combustion turbine exhaust stacks will be equipped with continuous emissions monitoring systems.
- Utilize efficient operation and maintenance techniques and leak detection to minimize sulfur hexafluoride emissions associated with transmission construction and upgrades.
- Monitor local air quality and meteorological conditions during construction and demolition activities, using AIRNOW or other applicable data source as appropriate. The U.S. Air Quality Index will be used to monitor local air quality conditions to inform decisions to reduce, or change the timing of, construction/demolition activities.

• Blasting/Explosives

- TVA will work to minimize one-time emissions of fugitive dust from facilities expected to produce large volumes (such as demolition of the stack) by working with the demolition contractor on a site-specific plan. The plan may use mitigation methods that include the treatment of fall zones,

misting, and application of tackifier inside the stacks, or cleaning and removal of ash and other materials. The fall zones may have berms to reduce the lateral extent of the dust cloud. Also, a hardened berm near the base of the stack could act as a backstop to prevent rock and debris spreading from the base of the stacks during demolition.

○ Some blasting may be required during the site preparation due to shallow rock. If blasting is required, the blasting contractor will complete a survey, develop a blast plan, and review with KIF as well as other TVA groups or projects who may have ongoing and unrelated projects in the area (*i.e.* Dam Safety and Civil Projects) to coordinate the limits of the vibration monitors/sensors for KIF generating units or other sensitive features. After obtaining site specific data provided by the blasting contractor, and if deemed necessary during development of the demolition plan, TVA would work with a documentation services company to prepare a vibration model simulating the effects of discharge of the explosives or vibrations due to the stack hitting the ground. If indicated by the results, imported fill, dirt binder, and geofabric could be used for mitigation of noise and vibration.

○ During the construction planning process, TVA will determine mitigation measures to minimize potential effects to on-site power transmission equipment from vibrations caused by explosive demolition of the stacks. Use of such mitigation measures would address any power disruptions.

○ Explosives will be managed under the direction of a licensed blaster, 24-hour security will be provided to monitor the explosives, and detailed security plans will be developed and provided to area emergency response agencies as part of measures that will be taken to mitigate potential effects on the safety of personnel and the public. TVA will comply with all Federal and State regulations applying to blasting and blast vibration limits regarding structures and underground utilities.

• Floodplains

○ Construction of new transmission lines will adhere to the TVA subclass review criteria for transmission lines located in floodplains.

○ KIF decommissioning and deconstruction debris will be disposed of outside 100- and 500-year floodplains.

○ For any access roads within 100-year floodplains but not floodways, the roads will be constructed such that flood elevations would not increase more than one foot.

○ For any roads within 100-year floodways, and to prevent an obstruction in the floodway, (1) any fill, gravel, or other modifications in the floodway that extend above the pre-construction road grade will be removed after completion of the project; (2) this excess material will be spoiled outside of the published floodway; and (3) the area will be returned to its pre-construction condition.

○ Any switchyard(s) located in the floodplain will be located a minimum of one foot above the 100-year flood elevation at that location for a regular action, or a minimum of the 500-year flood elevation for a critical action, as well as be consistent with local floodplain regulations.

○ The flood-damageable components of the solar panels, as well as other flood-damageable structures and facilities sited in floodplains, will be located at least one foot above the 100-year flood elevation at that location and will otherwise be consistent with local floodplain regulations.

○ Outside the Kingston Reservation, in construction laydown areas, flood-damageable equipment or materials located within the 100-year floodplain will be relocated outside the floodplain during a flood.

○ On the Kingston Reservation, in construction laydown areas, flood-damageable equipment or materials located within the 100-year floodplain will be relocated by the equipment owner to an area above elevation 750 during a flood.

• ETNG would implement the following mitigation measures to mitigate the impacts of construction and operation of the pipeline:

○ ETNG would follow the Karst Hazards Mitigation Guidance Plan submitted to FERC on July 18, 2023, with ETNG's Certificate application, which provides practical solutions to address typical karst features, hydrotechnical hazards, and steep slopes, where site-specific mitigation plans are deemed unnecessary.

○ ETNG would conduct pipeline blasting during daylight hours, as feasible, and will not begin until occupants of nearby buildings, stores, residences, places of business and farms have been notified.

○ ETNG will install the natural gas pipeline lateral through trenching or directional drilling, and any excess fill resulting from this would be disposed of outside 100-year floodplains.

TVA has incorporated non-routine mitigation measures into Alternative A such as solar and battery storage facilities and hydrogen fuel blending capabilities. Once constructed and operational, the renewable components will include the 3 to 4 MW solar facility and 100 MW lithium-ion BESS at the Kingston Reservation. Alternative A will be designed to be initially capable of blending 5 percent hydrogen at the time of construction, but would be capable of burning at least 30 percent hydrogen by volume with modification to the balance of the plant once a reliable hydrogen source is identified. If a reliable source of hydrogen is identified in the future, TVA would conduct additional analyses of supply routes, costs, storage requirements, or other needs to facilitate incorporation of hydrogen fuel and to determine the site-specific impacts associated with any future mitigation that is planned. These non-routine mitigation measures have been incorporated into Alternative A to plan for future regulatory requirements and operating conditions, which may necessitate the need for future mitigation efforts.

Authority: 40 CFR 1505.2.

Dated: April 2, 2024.

Jeff Lyash,

President & Chief Executive Officer, Tennessee Valley Authority.

[FR Doc. 2024–07411 Filed 4–5–24; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0332;FMCSA–2013–0121; FMCSA–2013–0122; FMCSA–2013–0123; FMCSA–2013–0124; FMCSA–2013–0125; FMCSA–2015–0327; FMCSA–2016–0003; FMCSA–2017–0057; FMCSA–2017–0059; FMCSA–2018–0137; FMCSA–2018–0138; FMCSA–2019–0111; FMCSA–2022–0032]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 28 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below

and will expire on the dates provided below. Comments must be received on or before May 8, 2024.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2012–0332, Docket No. FMCSA–2013–0121, Docket No. FMCSA–2013–0122, Docket No. FMCSA–2013–0123, Docket No. FMCSA–2013–0124, Docket No. FMCSA–2013–0125, Docket No. FMCSA–2015–0327, Docket No. FMCSA–2016–0003, Docket No. FMCSA–2017–0057, Docket No. FMCSA–2017–0059, Docket No. FMCSA–2018–0137, Docket No. FMCSA–2018–0138, Docket No. FMCSA–2019–0111, or Docket No. FMCSA–2022–0032 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number (FMCSA–2012–0332, FMCSA–2013–0121, FMCSA–2013–0122, FMCSA–2013–0123, FMCSA–2013–0124, FMCSA–2013–0125, FMCSA–2015–0327, FMCSA–2016–0003, FMCSA–2017–0057, FMCSA–2017–0059, FMCSA–2018–0137, FMCSA–2018–0138, FMCSA–2019–0111, or FMCSA–2022–0032) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2012–0332, Docket No. FMCSA–2013–0121, Docket No. FMCSA–2013–0122, Docket No. FMCSA–2013–0123, Docket No. FMCSA–2013–0124, Docket No. FMCSA–2013–0125, Docket No. FMCSA–2015–0327, Docket No. FMCSA–2016–0003, Docket No. FMCSA–2017–0057, Docket No. FMCSA–2017–0059, Docket No. FMCSA–2018–0137, Docket No. FMCSA–2018–0138, Docket No. FMCSA–2019–0111, or Docket No. FMCSA–2022–0032), 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 material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/,* insert the docket number (FMCSA–2012–0332, FMCSA–2013–0121, FMCSA–2013–0122, FMCSA–2013–0123, FMCSA–2013–0124, FMCSA–2013–0125, FMCSA–2015–0327, FMCSA–2016–0003, FMCSA–2017–0057, FMCSA–2017–0059, FMCSA–2018–0137, FMCSA–2018–0138, FMCSA–2019–0111, or FMCSA–2022–0032) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2012–0332, FMCSA–2013–0121, FMCSA–2013–0122, FMCSA–2013–0123, FMCSA–2013–0124, FMCSA–2013–0125, FMCSA–2015–0327, FMCSA–2016–0003, FMCSA–2017–0057, FMCSA–2017–0059, FMCSA–2018–0137, FMCSA–2018–0138, FMCSA–2019–0111, or FMCSA–2022–0032) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers

to be qualified under this standard while wearing a hearing aid (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

The 28 individuals listed in this notice have requested renewal of their exemptions from the hearing standard in § 391.41(b)(11), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the 28 applicants has satisfied the renewal conditions for obtaining an exemption from the hearing requirement. The 28 drivers in this notice remain in good standing with the Agency. In addition, for commercial driver's license (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of these drivers for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of April and are discussed below. As of April 2, 2024, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 12 individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Roger Boge (IA)
Johnny Brewer (OH)
Michael Bunjer (MD)
Stephen Daniels (KS)
James Gooch (MO)
Paul Klug (IA)
Dayton Lawson, Jr. (MI)
Calvin Payne (MD)
Kiley Peterson (IA)
Ronald Rumsey (IA)
Khon Saysanam (TX)
James Schubin (CA)

The drivers were included in docket numbers FMCSA–2013–0122, FMCSA–2013–0125, FMCSA–2015–0327, FMCSA–2016–0003, FMCSA–2017–0057, FMCSA–2017–0059, and FMCSA–2019–0111. Their exemptions are applicable as of April 2, 2024 and will expire on April 2, 2026.

As of April 11, 2024, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following seven individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Nathaniel Borton (WI)
Lee Desoto (NM)
ZanDraya Pollock (UT)
Adem Rexhepi (IL)
Fernando Rizo (CA)
Arnold Vega (TX)
Larry West (TN)

The drivers were included in docket number FMCSA–2022–0032. Their exemptions are applicable as of April 11, 2024 and will expire on April 11, 2026.

As of April 21, 2024, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 3 individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers: Andrew Alcozer (IL); Jacob Paullin (WI); and Ryan Pope (CA).

The drivers were included in docket numbers FMCSA–2013–0121, FMCSA–2013–0122, and FMCSA–2013–0123. Their exemptions are applicable as of April 21, 2024 and will expire on April 21, 2026.

As of April 23, 2024, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following two individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers: Donald Lynch (AR) and Zachary Rietz (AR).

The drivers were included in docket number FMCSA–2012–0332. Their exemptions are applicable as of April 23, 2024 and will expire on April 23, 2026.

As of April 24, 2024, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following four individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Oluwatobi Akinsanya (NJ)

Kwinton Carpenter (OH)

Kevin Dent (MS)

Andrey Shevchenko (MN)

The drivers were included in docket number FMCSA–2013–0124, and FMCSA–2018–0137, FMCSA–2018–0138. Their exemptions are applicable as of April 24, 2024 and will expire on April 24, 2026.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) each driver must report any crashes or accidents as defined in § 390.5T; and (2) report all citations and convictions for disqualifying offenses under 49 CFR parts 383 and 391 to FMCSA; and (3) each driver prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements. Each exemption will be valid for 2 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 28 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the hearing requirement in § 391.41(b)(11). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024–07386 Filed 4–5–24; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0320; FMCSA–2021–0026]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for six individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: The exemptions are applicable on April 11, 2024. The exemptions expire on April 11, 2026. Comments must be received on or before May 8, 2024.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2015–0320, or Docket No. FMCSA–2021–0026 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number (FMCSA–2015–0320, or FMCSA–2021–0026) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2015–0320 or Docket No. FMCSA–2021–0026), 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 material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/,* insert the docket number (FMCSA–2015–0320 or FMCSA–2021–0026) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2015–0320 or FMCSA–2021–0026) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. However, FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

The six individuals listed in this notice have requested renewal of their exemptions from the epilepsy and

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

seizure disorders prohibition in § 391.41(b)(8), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the six applicants has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition. The six drivers in this notice remain in good standing with the Agency, have maintained their medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous 2-year exemption period. In addition, for commercial driver's license (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

As of April 11, 2024, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following six individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers:

Michael Davee (CA)
Thomas DeAngelo (IL)
Jacoby Hitchcock (IA)
Lance Johnson (TN)
Edna Merritt (TN)
Kevin Podman (IL)

The drivers were included in docket number FMCSA–2015–0320 or FMCSA–2021–0026. Their exemptions are applicable as of April 11, 2024 and will expire on April 11, 2026.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based on its evaluation of the six exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024–07385 Filed 4–5–24; 8:45 am]

BILLING CODE 4910–EX–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 U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing a removal of an entity currently included on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List).

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Bradley T. Smith, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The 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 April 2, 2024, OFAC removed from the SDN List the person listed below, which was subject to prohibitions imposed pursuant to Executive Order 14024 of April 15, 2021, ''Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation,'' 86 FR 20249, 3 CFR, 2021 Comp., p. 542 (Apr. 15, 2021) (E.O. 14024). On April 2, 2024, OFAC determined that the circumstances no longer warrant the inclusion of the following person on the SDN list under this authority. This person is no longer subject to the blocking provisions of section 1(a) of E.O. 14024.

Entity

1. VTB BANK EUROPE SE (f.k.a OST–WEST HANDELSBANK AG; f.k.a VTB BANK DEUTSCHLAND AG), Ruesterstasse 7–9, Frankfurt am Main 60325, Germany; SWIFT/BIC DOBADEF1; website *http://www.vtb.eu;* Target Type Financial Institution [RUSSIA–EO14024] (Linked to: VTB BANK PUBLIC JOINT STOCK COMPANY).

Dated: April 2, 2024.

Bradley T. Smith,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2024–07306 Filed 4–5–24; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Agency Collection Activities; Requesting Comments on Form 8302

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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 8302, Electronic Deposit of Tax Refund of $1 Million or More.

DATES: Written comments should be received on or before June 7, 2024 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include OMB Control No. 1545–1760 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Jason Schoonmaker, (801) 620–2128, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *jason.m.schoonmaker@irs.gov*.

SUPPLEMENTARY INFORMATION: The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Electronic Deposit of Tax Refund of $1 Million of More.

OMB Number: 1545–1763.

Form Number: Form 8302.

Abstract: Form 8302 is used to report an electronic deposit of a tax refund of $1 millon or more directly into an account at any U.S. bank or other financial institution that accepts electronic deposits.

Current Actions: There is no change to the existing collection. However, the estimated number of responses was updated based on current filing data.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Responses: 160.

Estimated Time per Respondent: 2 hours, 58 minutes.

Estimated Total Annual Burden Hours: 474.

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: April 2, 2024.

Jason M. Schoonmaker,

Tax Analyst.

[FR Doc. 2024–07341 Filed 4–5–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Agency Collection Activities; Requesting Comments on Form 5308

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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 5038, Request for Change in Plan/Trust Year.

DATES: Written comments should be received on or before June 7, 2024 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include OMB Control No. 1545–0201 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Jason Schoonmaker, (801) 620–2128, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *jason.m.schoonmaker@irs.gov.*

SUPPLEMENTARY INFORMATION: The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Request for Change in Plan/Trust Year (Form 5308).

OMB Number: 1545–0201.

Form Number: Form 5308.

Abstract: Form 5308 is used to request permission to change the plan or trust year for a pension benefit plan. The information submitted is used in determining whether IRS should grant permission of the change.

Current Actions: There is no change to the existing collection. However, the time per respondent was recalculated for a better estimate.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Responses: 3.

Estimated Time per Respondent: 7 hours, 54 minutes.

Estimated Total Annual Burden Hours: 24.

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: April 2, 2024.

Jason M. Schoonmaker,

Tax Analyst.

[FR Doc. 2024–07340 Filed 4–5–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Agency Collection Activities; Requesting Comments on Form 730

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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 730 Monthly Tax Return for Wagers.

DATES: Written comments should be received on or before June 7, 2024 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include OMB Control No. 1545–0235 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Jason Schoonmaker, (801) 620–2128, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *jason.m.schoonmaker@irs.gov.*

SUPPLEMENTARY INFORMATION: The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Monthly Tax Return for Wagers (Form 730).

OMB Number: 1545–0235.

Form Number: Form 730.

Abstract: Form 730 is used to identify taxable wagers under Internal Revenue Code section 4401 and collect the tax monthly. The information is used to determine if persons accepting wagers are correctly reporting the amount of wagers and paying the required tax.

Current Actions: There is no change to the existing collection. However, the estimated number of responses was updated based on current filing data.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Responses: 17,800.

Estimated Time per Respondent: 8 hours, 11 minutes.

Estimated Total Annual Burden Hours: 145,782.

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: April 2, 2024.

Jason M. Schoonmaker,

Tax Analyst.

[FR Doc. 2024–07339 Filed 4–5–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0113]

Agency Information Collection Activity: Application for Fee or Roster Personnel Designation

AGENCY: Veteran Benefits Administraion, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veteran Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 7, 2024.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0113'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0113'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Application for Fee or Roster Personnel Designation.

OMB Control Number: 2900–0113.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 26–6681 solicits information on the fee personnel applicant's background and experience in the real estate valuation field. A fee appraiser is a qualified person requested by the Secretary to render an estimate of the reasonable value of a property, or of a specified type of property, within a stated area for the purpose of justifying the extension of credit to an eligible veteran (38 CFR 36.4301). The fee appraiser's estimate of value is reviewed by a VA staff appraiser or lender's staff appraisal reviewer who uses the data to establish the VA reasonable value (38 U.S.C. 3710(b)(4), (5), (6) and 3731(f)(1)), which becomes the maximum loan guaranty amount an eligible veteran can obtain.

Affected Public: Private Sector.

Estimated Annual Burden: 160 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 319 per year.

By direction of the Secretary.

Dorothy Glasgow,

VA PRA Clearance Officer, (Alt.) Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–07375 Filed 4–5–24; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–XXXX]

Agency Information Collection Activity Under OMB Review: Labor Market Information-Veteran Readiness and Employment

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 by clicking on the following link *www.reginfo.gov/public/do/PRAMain,* select ''Currently under Review—Open for Public Comments'', then search the list for the information collection by Title or ''OMB Control No. 2900–XXXX.''

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–10290'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C 3116 and 3117.

Title: Labor Market Information Report-Veteran Readiness and Employment.

OMB Control Number: 2900–XXXX.

Type of Review: New collection.

Abstract: VA Form 28–10290 will be used to collect information on individualized labor market information to include specific occupational trends, required qualifications, skillsets, salaries, physical and educational requirements for the Veteran's identified occupational career path. The information collected will be used to conduct an evaluation to assist the Veteran in selecting a suitable vocational goal that is consistent with his or her abilities, aptitudes, interests and does not aggravate his or her disability(ies). Vocational planning is a critical element in selecting a suitable vocational goal for the purpose of the development of a rehabilitation plan for a Veteran within the Veteran Readiness and Employment (VR&E) program. The foundation of a successful rehabilitation program is a well-developed plan of action. Comprehensive labor market information is the first step in developing a successful rehabilitation plan for each Veteran. The VR&E staff subsequently, will use the information on this form to ensure a suitable vocational goal is identified as part of the Veteran's rehabilitation plan to assist him or her in obtaining and maintaining suitable employment. This form will be obtained through electronic methods to include *VA.gov* or by the referring Vocational Rehabilitation Counselor. Upon compilation of the data, the form will be electronically submitted to the appropriate VR&E staff.

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 insert citation date: 89 FR 4659 on January 24, 2024, page 4659.

Affected Public: Individuals or Households.

Estimated Annual Burden: 16,586 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 66,344 per year.

By direction of the Secretary.

Dorothy Glasgow,

VA PRA Clearance Officer, (Alt.) Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–07332 Filed 4–5–24; 8:45 am]

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Part II

Federal Trade Commission

Horseracing Integrity and Safety Authority Racetrack Safety Rule Modification; Notice

FEDERAL TRADE COMMISSION

[File No. P222100]

Horseracing Integrity and Safety Authority Racetrack Safety Rule Modification

AGENCY: Federal Trade Commission.

ACTION: Notice of Horseracing Integrity and Safety Authority (HISA) proposed rule modification; request for public comment.

SUMMARY: As required by the Horseracing Integrity and Safety Act of 2020, the Federal Trade Commission publishes a proposed modification of the Horseracing Integrity and Safety Authority's rules addressing horseracing in the United States. The proposed rule modification would amend the Rule Series 2000 Racetrack Safety Rule, which establishes rules concerning racetrack safety and the safety of Covered Horses and Covered Persons. This document contains the Authority's proposed rule modification's text and explanation, and it seeks public comment on whether the Commission should approve the proposed rule modification.

DATES: The Commission must approve or disapprove the proposed modification on or before June 7, 2024. If approved, the proposed rule modification would be effective on July 8, 2024. Comments must be filed on or before April 22, 2024.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Comment Submissions part of the **SUPPLEMENTARY INFORMATION** section below. Write ''HISA Racetrack Safety Rule Modification'' on your comment and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H–144 (Annex H), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Sarah Botha (202–326–2036), Attorney Advisor and Acting HISA Program Manager, Office of the Executive Director, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

The Horseracing Integrity and Safety Act of 2020 [1] (the ''Act'') recognizes a self-regulatory nonprofit organization, the Horseracing Integrity and Safety Authority (''HISA'' or the ''Authority''), which is charged with developing proposed rules on a variety of subjects. Those proposed rules and later proposed rule modifications take effect only if approved by the Federal Trade Commission (''FTC'' or the ''Commission'').[2] The proposed rules and rule modifications must be published in the **Federal Register** for public comment.[3] Thereafter, the Commission has 60 days from the date of publication to approve or disapprove the proposed rule or rule modification.[4]

Pursuant to section 3053(a) of the Act and Commission Rule 1.142, notice is hereby given that, on September 21, 2023, the Authority filed with the Commission a proposed Racetrack Safety Rule modification and supporting documentation as described in Items I, II, III, and IX below, which Items have been prepared by the Authority. The Office of the Secretary of the Commission determined that the filing complied with the Commission's rule governing such submissions.[5] The Commission is publishing this document to solicit comments on the proposed rule modification from interested persons.

I. Self-Regulatory Organization's Statement of the Background, Purpose of, and Statutory Basis for the Proposed Rule Modification

a. Background and Purpose

The Act recognizes that a national uniform set of standards for racetrack safety will apply to a broad range of racetracks with widely varying environments in terms of economic structure, race dates, physical attributes, prevailing weather conditions, and other factors. As such, the Act directs the Authority to develop and implement ''training and racing safety standards and protocols taking into account regional differences and the character of differing racing facilities.'' [6] The Racetrack Safety Rule utilized a practical approach to this implementation, recognizing that some practices are already in place or can be put in place immediately, while others will require adequate time and resources to implement.

As directed in section 3052(c)(2) of the Act, the Authority's Racetrack Safety Standing Committee (the ''Committee'') was constituted and undertook developing a comprehensive proposed rule setting forth a uniform set of training and racing safety standards and protocols. Since the initial Racetrack Safety Rule was submitted to the Commission,[7] the Committee has spent hundreds of hours over the last twenty months reviewing and analyzing modifications to the safety rules that will enhance human and horse safety and welfare issues. The Committee is comprised of four independent members and three industry members.

This submission is also made in order to comply with the Commission's March 27, 2023 Order that directed ''the Authority to review all of its existing rules (Racetrack Safety, Assessment Methodology, Enforcement, Registration, and [Anti-Doping and Medication Control (''ADMC'')]) and submit any proposed rule modifications to the Commission by September 27, 2023.'' [8] The Authority has reviewed all of its existing rules and this submission was the first to be filed in accordance with the March 27, 2023, Order.

On April 29, 2023, for the first draft of the Rule 2100 modifications, and on May 9, 2023, for the first draft of the Rule 2200 modifications, HISA representatives shared a draft of the these proposed rule modifications with the following interested stakeholders for input: Racing Officials Accreditation Program; Racing Medication and Testing Consortium (Scientific Advisory Committee); Water Hay Oats Alliance; National Thoroughbred Racing Association; The Jockey Club; The Jockeys' Guild; Thoroughbred Racing Association; Arapahoe Park; Rillito Downs; Thoroughbred Owners of California; California Horse Racing Board; Kentucky Racing Commission; Delaware Racing Commission; Maryland Racing Commission; National Horsemen's Benevolent and Protective Association; Thoroughbred Horsemen's Association; Thoroughbred Owners and Breeders Association; Kentucky Thoroughbred Association; American Association of Equine Practitioners; American Veterinary Medical Association; Stronach Racing Group (5

[1] 15 U.S.C. 3051 through 3060.

[2] 15 U.S.C. 3053(b)(2).

[3] 15 U.S.C. 3053(b)(1).

[4] 15 U.S.C. 3053(c)(1).

[5] 16 CFR 1.140 through 1.144; *see also* FTC, Procedures for Submission of Rules Under the Horseracing Integrity and Safety Act, 86 FR 54819 (Oct. 5, 2021).

[6] 15 U.S.C. 3056(b)(1).

[7] *See* FTC, Notice of HISA Racetrack Safety Proposed Rule, 87 FR 435 (Jan. 5, 2022) (''2022 Proposed Rule Notice''); FTC, Order Approving the Racetrack Safety Rule Proposed by the Horseracing Integrity and Safety Authority (Mar. 3, 2022), *https://www.ftc.gov/system/files/ftc_gov/pdf/order_re_racetrack_safety_2022-3-3_for_publication.pdf.*

[8] FTC, Order Approving the Anti-Doping and Medication Control Rule Proposed by the Horseracing Integrity and Safety Authority at 6 (Mar. 27, 2023), *https://www.ftc.gov/system/files/ftc_gov/pdf/P222100CommissionOrderAntiDopingMedication.pdf.*

thoroughbred racetracks); Churchill Downs (6 thoroughbred racetracks); Breeders' Cup; Keeneland; Del Mar; and the Racing Operations Committee. Additionally, both drafts of the proposed modifications were made available to the public for review and comment on the HISA website at *https://hisaus.org/.* On July 24, 2023, for the second draft of the Rule 2100 modifications, and on July 30, 2023, for the second draft of the Rule 2200 modifications, HISA representatives shared a draft of these proposed rule modifications with the interested stakeholders set forth above for input. On July 24, 2023, the revised Rule 2100 modifications were made available to the public for review and comment on the HISA website at *https://www.hisaus.org/.* On July 31, 2023, the revised Rule 2200 modifications were made available to the public for review and comment on the HISA website at *https://www.hisaus.org/.* Voluminous comments were received from various stakeholders, which are outlined in Item II of this publication. Attached to this publication is Exhibit A, which includes copies of all comments received concerning the rule modification proposal.

In accordance with the Commission's March 27, 2023 Order, the Authority's submission in support of the proposed rule modification discusses each of the suggestions made by commenters on the **Federal Register** from the original Racetrack Safety Rule submission where the Authority in its February 2, 2022 letter to the Commission [9] (the ''February 2, 2022 Letter'') committed to further consider the suggestions. In accordance with the Order, Item III below sets forth the relevant comments and states the reasons why the Authority did or did not adopt the suggestions within the text of the proposed rule modification.

The Authority's Rule 2000 safety rules were implemented in racing jurisdictions nationwide on July 1, 2022. Since that time Covered Horseraces have been successfully conducted under a uniform set of rules devoted to equine and human health and safety, and that serve to ensure that horseracing under the jurisdiction of the Authority is conducted in the safest manner possible. Since July 1, 2022, the Authority has closely observed the rules in action, the Authority staff have engaged on a daily basis with the implementation of the rules, and many helpful comments have been received from members of the industry concerning the numerous aspects of the rules. Throughout this process, the Authority has been careful to focus on the further development and modification of various rules to enhance racetrack safety and welfare. After much study and analysis under the direction of the Authority's Racetrack Safety Committee, the Authority now submits this proposed modification to the Rule 2000 Series. The submission consists of a comprehensive set of modifications to many of the rules, as described in detail in this publication. In some instances, modifications are proposed to include more detail concerning a regulated activity, or to create new instrumentalities to further the purposes of the Act (as in the creation of the concept of Designated Equine Facilities in Rule 2144). In other instances, modifications are proposed to address unanticipated circumstances encountered in the implementation of the rules, or to provide clarity where questions have surfaced concerning the proper implementation of the rules in various situations. The reasons for the modifications, and any problems the modifications are intended to address and resolve, are outlined in the discussion of each particular rule modification.

In general, the Authority states that the rule modifications will affect Covered Horses by ensuring that races are run on safe racing surfaces and with properly inspected equipment and highly trained racetrack personnel; these matters are examined by the Authority's accreditation team pursuant to the Rule 2100 series. Numerous modifications are proposed for the accreditation rules to ensure timely and accurate reporting of information. In addition, Covered Horses will be affected by and benefit from procedures implemented to ensure the timely and accurate reporting of equine injuries and fatalities, rule modifications pertaining to veterinary examinations, the veterinarian's list, horseshoe inspections, and the performance of necropsies. These are only a few examples; all of the modifications are described further in this publication.

Covered Persons will be affected by and benefit from the proposed rule modifications as well. A chief example, and a matter of particular concern to the Authority, are the measures taken to safeguard the safety of Jockeys and other riders on the racetrack grounds. This publication will outline in detail the significant modification of provisions concerning Jockey concussion protocols, physical examinations, and human ambulance support.

Covered Horseraces will be affected by and benefit from the modifications in additional ways as described herein. The efficient running of claiming races will be much enhanced by the modifications to the claiming rules set forth in Rule 2262.[10] The prompt and efficient resolution of violations of the rules of racing will be enhanced by modifications to the riding crop rules and penalty structure, as well as the establishment of an intermediate appeal process that will hasten the resolution of riding crop violations. When the rules of racing are strongly enforced, Covered Horseraces will be run in a safe manner that directly affects and benefits both Covered Horses and Covered Persons.

The Authority is always open to comments from industry participants, and in the development of rule modifications, these comments have often led to the consideration and adoption of alternatives in the proposed rule drafts circulated to the industry. In the numerous instances in which alternatives to the proposed modifications were considered, this publication will describe the proposals and state the reasons why a proposal was adopted or rejected by the Authority, or in some cases deferred for future consideration.

The Authority states that the proposed rule modifications in this submission are consistent with the Act. The proposed rule modifications meet the requirements in 15 U.S.C. 3056(b), because the modifications are made to the originally filed safety rules that were crafted upon and established the 12 elements of the horseracing safety program as enumerated in 15 U.S.C. 3056(b). The new provisions that are established in these proposed rule modifications are also within the ambit of the elements of the horseracing safety program. Furthermore, the Authority incorporates by reference into this modification the existing standards that were set forth in the Notice of Filing of Proposed Rule previously submitted to the Commission in the original filing of the Rule 2000 Series on December 6, 2021.[11] As was the case then, and pursuant to 15 U.S.C. 3056(a)(2), the rule modifications herein take into

[9] This letter is available on the docket for the 2022 Proposed Rule Notice at *https://www.regulations.gov/docket/FTC-2021-0076/document.*

[10] A ''Claiming Race'' is defined in HISA Rule 1020 as a Covered Horserace in which a Covered Horse, after leaving the starting gate, may be claimed (or, purchased for a designated amount) in accordance with the rules and regulations of the applicable State Racing Commission.

[11] This supporting documentation is available on the docket for the 2022 Proposed Rule Notice at *https://www.regulations.gov/docket/FTC-2021-0076/document.*

consideration existing safety standards, including the National Thoroughbred Racing Association Safety and Integrity Alliance Code of Standards, Association of Racing Commissioners International (''ARCI'') Model Rules, the International Federation of Horseracing Authority's International Agreement on Breeding, Racing, and Wagering, and the British Horseracing Authority's Equine Health and Welfare program.

With the review, input and ultimate approval of the Authority's Board of Directors, the proposed modifications to the Rule 2000 Series modify and enhance the penalties and adjudication procedures for the enforcement of rules promulgated by the Authority. The Authority submits herewith the proposed rules for Commission approval.

b. Statutory Basis

The Horseracing Integrity and Safety Act of 2020, 15 U.S.C. 3051 through 3060.

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Modification

Rule 2010. Definitions

a. References to Corresponding Definition in Rule 1020

Various definitions currently established in Rule 2010 are also referenced in Rule 1020 of the ADMC Program Rules. The following definitions have been modified to reference the corresponding definition in Rule 1020, for consistent usage throughout the Authority's Rules: Act, Adverse Analytical Finding, Association Veterinarian, Attending Veterinarian, Authority, Claim, Claiming Race, Commission, Covered Horse, Covered Horserace or Race, Covered Person, Designated Owner, Owner, Person, Prohibited List, Prohibited Methods, Prohibited Substance, Protocol, Race Day, Regulatory Veterinarian, Responsible Person, State Racing Commission, Timed and Reported Workout, Trainer, Training Facility, Veterinarian, Vets' List Workout, and Workout.

b. Proposed New Definitions

The Authority proposes to add several new terms to the definitions section in Rule 2010 to aid in the proper interpretation and application of the Authority's existing and proposed new rules included in the Rule 2100 and Rule 2200 Series of the Racetrack Safety Rule. The proposed new definitions are set forth below.

Catastrophic Injury means an Equine Injury that resulted in death or euthanasia of a Covered Horse within 72 hours of injury.

A commenter requested that the definition of *Catastrophic Injury* be broadened to include both sickness and accidents, and that it specifically incorporate the concept of sudden death, maintaining that sudden death is not an ''injury.'' [12] The Authority believes the proposed modification in its current form is appropriate, but will consider this comment in further deliberations upon rulemaking.

Designated Equine Facility means an equine facility designated by a Racetrack in accordance with the procedures established in Rule 2144, whose biosecurity protocols are consistent with those of the Racetrack, and from which the Racetrack will accept horses onto its grounds with a valid health certificate issued within the last 30 days or in a shorter period of time if high risk situations dictate.

This term was modified significantly over the two rounds of informal public comment. The original draft stated that the required biosecurity protocols be ''reasonably consistent,'' but in response to comment the definition was revised to require the protocols to be ''consistent.'' [13] The same commenter suggested that the protocols be specified in the rule.[14] The Authority declines to adopt this suggestion, as it is incumbent upon the Racetracks to apply and review the appropriate biosecurity protocols.

Several commenters suggested that the definition should be written to give the state racing commission the duty to approve the designation by the Racetrack.[15] The Authority considered this comment, but declined to adopt the idea because not all state racing commissions have a process in place to review and approve designated equine facilities.

Some commenters stated that no health certificate should be required for horses that ship to a Racetrack from training facilities owned by the Racetrack, and that to impose this requirement places an undue burden on horsemen, attending vets, and stable gate personnel.[16] The Authority on balance does not consider the requirement to be an undue burden when weighed against the health and safety of Covered Horses.

Epistaxis means that blood from one or both nostrils of a Covered Horse has been observed after exercise, attributable to an episode of exercise-induced pulmonary hemorrhage (''EIPH''). The term Epistaxis is referred to in numerous places in the Rule 2000 Series, and especially in Rules 2240 and 2241 concerning the Veterinarians' list. This definition will make it clear that the only horses subject to regulatory action are those experiencing EIPH to the degree they show signs of Epistaxis. The definition of the term *Bled* will be deleted in this rule modification.

Equine Injury means an injury to a Covered Horse that occurred during racing or training for which intervention by the Regulatory Veterinarian or reporting by the Safety Director pursuant to Rule 2131 is required, and for which an injury report must be submitted pursuant to the Rule 2000 Series.

A commenter asked whether entering injury information into the Equine Injury Database is sufficient to satisfy the reporting requirement.[17] In answer, the Authority notes that it is sufficient if the Racetrack shares with the Authority information entered into the Equine Injury Database; however, not all Racetracks do so. The Authority does not believe the filing of an injury report is unduly burdensome but will consider this possible concept in future rulemaking.

A commenter opined that the definition is too broad and that the definition should apply to horses whose participation in racing or training has been restricted, in a manner similar to the definition of human injury.[18] The Authority notes that drafting the definition in a manner similar to the Human Injury definition would actually broaden the definition to include conditions that might temporarily restrict a horse's participation but are not reportable. The reporting obligation in the proposed rule is more appropriately keyed to intervention by the Regulatory Veterinarian or reporting by the Safety Director.

Equine Mortality means a fatality of a Covered Horse that is not attributable to a Catastrophic Injury.

This definition is added to facilitate the distinction between Equine Mortality and Catastrophic Injury, which is used in prescribing the duties of the Racetrack Risk Management Committee in new provisions proposed to be added in Rule 2112.

[12] California Horse Racing Board (''CHRB'').

[13] The Jockey Club.

[14] The Jockey Club.

[15] The Jockey Club, Tom Robbins, Racing Operations Committee (''ROCO'').

[16] Comment jointly submitted by NYRA, Del Mar, Keeneland, Churchill Downs, Breeders' Cup, and 1/ST Racing.

[17] 1/ST Racing.

[18] Thoroughbred Owners and Breeders Association, and Mid-Atlantic Strategic Plan to Reduce Equine Fatalities (collectively, ''THA'').

Exercise Rider means a rider of a Covered Horse during a training activity that is not a Covered Horserace.

The defined term is included in the application of several proposed rules that are necessary to regulate the safety and conduct of persons mounted on horses on the grounds of the Racetrack.

Farrier means a farrier (or horseshoer, plater or blacksmith) who provides all aspects of hoof care or orthotic services to Covered Horses, including trimming and/or the application of various orthotics to the hoof.

This new definition is added to define the term as used in proposed new Rule 2138 and elsewhere in the proposed rules.

Horseshoe Inspector means a person (for example, a paddock farrier) employed, contracted, or appointed by a State Racing Commission, Racetrack, or the Authority, who has been trained in, and is responsible for, inspecting horseshoes or other orthotics on hooves of Covered Horses.

This definition establishes the new position of Horseshoe Inspector, who will inspect horseshoes under new rules of the Authority. These inspections are a vital component in ensuring the health and safety of Covered Horses.

A commenter asked if the qualifications of the horseshoe inspector can be defined.[19] The Authority believes that it is unnecessary to prescribe at length the specific qualifications of the Horseshoe Inspector and further notes that minimum qualifications for this position are set out in Rule 2137(b). The Authority exercises oversight over personnel performing functions on its behalf that allows the Authority to ensure that personnel are qualified to perform their duties.

Human Injury means an injury to a Covered Person that requires medical attention and, as a result, may restrict a Covered Person's current or future participation or employment in racing, and for which an injury report must be submitted.

The Authority adopted the suggestion that the definition refer to current or future participation in racing.[20]

In line with another commenter's query as to the extent of the persons who are embraced by the rule, the word ''individual'' was replaced by ''Covered Person.'' [21] The commenter also asked who must submit the report.[22] A commenter suggested the term ''may restrict,'' since at the time of the report the effects of the injury may not be known. This phrase was incorporated into the definition.[23]

Layoff Report means a report completed in a manner prescribed by the Authority and submitted by the Trainer or Trainer's designee for a Covered Horse that has not raced in a Covered Horserace for 150 consecutive days or more. The Layoff Report shall include, at a minimum, information regarding all examinations, medical treatments, surgical treatments, and exercise history of the Covered Horse during the layoff period.

This definition is added to define the term Layoff Report in accord with the new provision creating the obligation to provide Layoff Reports in Rule 2142(a).

A commenter asked whether the Authority already has all of the information included in the definition of Layoff Report.[24] The Authority does not have all of the information; during a typical layoff period, much of the information is not subject to the Authority's reporting requirements. Another commenter queried concerning the length of time over which records will be required to be provided, suggesting that a period of 30 days prior to submission should be sufficient.[25] In response, the Authority notes that the Rule requires reporting ''in a manner prescribed by the Authority,'' and the Authority will specify a reasonable span of time for which the information is requested.

Outrider means a rider employed or contracted by the Racetrack who oversees and assists with the safety of all Riders, Trainers, and horses on the Racetrack.

The definition is added because various rules govern the responsibilities and duties of Outriders.[26]

Pony Horse means a horse, including the Outrider's horse, that accompanies a Covered Horse(s) during training or racing activities.

This definition is added because various new provisions create rules governing Pony Horses and racehorses in the same manner.[27]

Racetrack Risk Management Committee means the committee established pursuant to Rule 2121.

This definition is added in order to change the name of the Racetrack Safety and Welfare Committee to the Racetrack Risk Management Committee. The term Racetrack Safety and Welfare Committee has caused confusion due to its similarity to the term Racetrack Safety Committee.

Racetrack Safety Committee means the committee (or its delegate) established pursuant to 15 U.S.C. 3052(c)(2).

The definition is modified to include the words ''or its delegate,'' which is necessary to specify that the Racetrack Safety Committee has the power to delegate certain responsibilities and duties to other functionaries under the supervision of the Racetrack Safety Committee.

Rider means any person who is mounted on a Covered Horse or Pony Horse on the Racetrack, including a Jockey.

This definition is proposed in order to cover in one term the various racing participants who are mounted on Covered Horses or Pony Horses on the Racetrack. Several proposed rules and modifications refer to all such participants, who are now referred to as Riders. For the sake of clarity, the definition explicitly states that the term Rider includes Jockeys.

Safety Program Effective Date means July 1, 2022.

Traction Device means any device that extends beyond the ground surface of the horseshoe and includes but is not limited to inserts, wear plates, rims, toe grabs, bends, jar calks, stickers, ice nails, frost nails, and mud nails.

A definition of Traction Device is added which aids in the proper interpretation of the Rule 2276 Horseshoe Rule. Traction devices have been thought to increase a horse's ability to ''dig in'' to the track surface to enhance propulsion and to prevent slipping. Traction devices also reduce the horse's ability to plant its hoof level with a hard surface and to dampen forces from the ground to the limb by inhibiting hoof movement through the surface. These effects can contribute to catastrophic musculoskeletal injuries. Rule 2276 follows scientific evidence that toe grab traction devices are associated with equine catastrophic injuries and appropriately limits the height of rims used as traction devices on forelimb and hindlimb horseshoes. The rule prohibits use of any other traction devices.

Veterinarians' List means a list maintained, or approved for use, by the Authority of all Covered Horses that are determined to be ineligible to compete in a Covered Horserace in any

[19] National Horsemen's Benevolent and Protective Association (''HBPA'').

[20] Breeders' Cup.

[21] HBPA.

[22] HBPA. The Medical Director must submit the report under Rule 2132.

[23] CHRB.

[24] The Jockey Club.

[25] THA.

[26] NYRA, Del Mar, Keeneland, Churchill Downs, Breeders' Cup, and 1/ST Racing made helpful suggestions to the wording, including the inclusion of the reference to ''contracted by.''

[27] NYRA, Del Mar, Keeneland, Churchill Downs, Breeders' Cup, and 1/ST Racing offered a helpful suggestion which resulted in the inclusion of a reference to the Outrider's horse.

jurisdiction until released by a Regulatory Veterinarian.

This definition is added to define the Veterinarians' List more clearly. The term is used extensively in conjunction with Rules 2240, 2241, and 2242, and aids in the application of those rules. A commenter suggested inclusion of the phrase ''approved for use,'' as it appears in the modification.[28] The phrase is used to allow for flexibility in the event that the Authority does not itself maintain the list, but instead at some point in time utilizes a list maintained by another organization pursuant to an agreement with the Authority.

c. Additional Proposed Modifications

The Authority proposes additional modifications to the definitions as set forth below:

Groom means a Covered Person who is engaged by a Responsible Person to assist in the daily physical care of Covered Horses.

Jockey means a rider licensed in any state and registered with the Authority to ride a Covered Horse in a Covered Horserace.

The Jockeys' Guild requested that the rule specify the rider of a Covered Horse in a Covered Horserace ''or during training.'' The request is understandable but unnecessary, as the rule only requires licensure and registration of the rider; the definition does not exclude Jockeys from the ambit of the Authority's regulatory provisions simply because an activity occurs during training hours rather a horse race.[29]

Starting Gate Person means any individual licensed as a starter, assistant starter, or any individual who handles Covered Horses in the starting gate.

Veterinarian shall have the meaning set forth in Rule 1020. Notwithstanding any provision set forth in the Rule 9000 Series (Registration Rules), a Veterinarian who provides veterinarian services to Covered Horses shall register with the Authority.

The definition is modified to state that it has the meaning set forth in Rule 1020. In addition, a new sentence is added that requires Veterinarians who provide services to Covered Horses to register with the Authority. The safety and welfare of Covered Horses are of paramount concern to the Authority, and it is vital that information concerning any treatment rendered to Covered Horses be provided to the Authority, along with the identity of, and contact information for, the Veterinarian who has treated the Covered Horse. Registration of Veterinarians with the Authority is the most effective means to obtain the required information.

The following list contains those definitions that are modified with only a change in the form of the citation:

Lead Veterinarian means any Veterinarian appointed pursuant to Rule 2134(c).

Racetrack Safety Accreditation or Accreditation means the process for achieving, and the issuance of, safety Accreditation to a Racetrack in accordance with Rules 2100 through 2193.

Finally, the Authority proposes deletion of the following definitions as unnecessary: Out of Competition, Program Effective Date, and Racetrack Safety and Welfare Committee.

2015. Racehorse Epidemiology Database and Study

The Horseracing Integrity and Safety Act mandates that the Authority, in consultation with the Federal Trade Commission, develop and maintain a nationwide database of racehorse safety, performance, health, and injury information for the purpose of conducting an epidemiological study. 15 U.S.C. 3056(c)(3)(A). The Act further provides that ''the Authority may require covered persons to collect and submit to the database described in subparagraph (A) such information as the Authority may require to further the goal of increased racehorse welfare.'' *Id.* at (c)(3)(B). The Authority proposes this rule in connection with its statutory mandate under the Act.

This proposed new rule identifies all sources of records and data that will be collected by the Authority for purposes of developing the nationwide database referenced in section 3056 of the Act. The majority of sources identified in this rule are references to other existing rules in the Racetrack Safety Rule under which the Authority is already receiving pertinent information and do not contain new, separate reporting obligations on Covered Persons. Paragraph (c), however, does require, upon the written request of the Authority, Racetracks to provide historical equine injury and fatality data for the previous 10 years from the date of the request. One commenter questioned whether the Authority has the statutory authority to request information and records that pre-date the Act.[30] In response, the Authority states that access to this historical information ''furthers the goal of increased racehorse welfare'' as it will aid in the Authority's research and understanding of the patterns and trends relative to racehorse injuries and fatalities. Additionally, the information will be used to initially develop the database which will expedite the research process. Other commenters[31] noted that some of the information referenced in this rule is already being captured and collected through other non-Authority sources, such as the InCompass database. These commenters are correct and, where applicable, the Authority does receive information directly from these third-party sources, obviating the concern of duplicative reporting.

2100. Racetrack Accreditation

2101. General

Language in this rule concerning the adoption of best practices and guidance by the Racetrack Safety Committee has been stricken as unnecessary.

2110. Accreditation Process

2111. Interim and Provisional Accreditation

No significant modifications are being proposed with regard to this rule; minor modifications to terms used have been made.

The Jockeys' Guild expressed concerns about the granting of ''interim accreditation'' to Racetracks prior to HISA performing an assessment under Rule 2112. The Jockey Club noted that the delay could result in unaddressed safety concerns for up to three years.[32] The Jockeys' Guild also expressed concerns that the automatic granting of ''interim Racetrack Safety Accreditation'' by the Authority, and the length of time before the Authority is able to conduct an assessment of the track, might allow safety concerns to go unaddressed.[33] The Authority notes that these comments do not address the modifications and concern provisions that have already been approved. Regardless, if safety concerns arise, the Authority may intervene by issuing a Notice of Suspected or Actual Violation. In the case of very serious hazards, provisional suspension under Rule 2117 also provides the Authority with the ability to address safety concerns rapidly in the interest of protecting Covered Horse and Riders.

[28] The Jockey Club.

[29] The Jockeys' Guild.

[30] Dr. Jeff Blea.

[31] The Jockey Club, the Maryland Racing Commission, and comment jointly submitted by NYRA, Del Mar, Keeneland, Churchill Downs, Breeders' Cup, and 1/ST Racing.

[32] The Jockeys' Guild.

[33] The Jockeys' Guild.

2112. Accreditation Assessment

Modifications are proposed in three paragraphs. Paragraph (a) is amended to require a Racetrack to respond to questions and inquiries posed by the Racetrack Safety Committee within a deadline established by the Committee, rather than within 60 days. This provides more flexibility in the time permitted to respond, in relation to the extent and nature of the questions and inquiries posed.

In addition, paragraph (c) is amended to require a Racetrack's response to a post-inspection report within 30 days, rather than 60 days. This change expedites the accreditation inspection and review process and will result in more rapid remedial action taken to cure any deficiencies in Racetrack operations or equipment. A commenter asked whether there will be a response from the Authority indicating that a Racetrack reporting submission has been received by the Authority.[34] The Authority is currently developing an IT modality that will confirm receipt of all submissions.

Finally, Paragraph (d) is amended to include a new sentence that permits the Racetrack Safety Committee to require a Racetrack, as a condition of accreditation, ''to take any remedial or other action that is consistent with the Authority's safety rules and Accreditation standards established in the Rule 2100 Series and Rule 2200 Series.'' This provision provides greater flexibility in encouraging Racetracks to meet the accreditation requirements expeditiously, as an alternative to denying accreditation for non-compliance.

2113. Issuance of Accreditation

No significant changes are proposed for this rule. Minor changes to the language of the Rule are proposed for clarity.

2114. Effective Periods of Accreditation

Rule 2114 in its current form establishes 3-year periods of accreditation, which may be modified to 1 to 7 years if the Authority determines that a modified period is consistent with the rules of accreditation. No significant changes are proposed for this rule. A ''notwithstanding'' clause is included in paragraph (a) to make clear that the 3-year period of accreditation is subject to the 1-to-7-year terms set forth in paragraph (b). Other minor changes to the language of the Rule are proposed for clarity.

[34] Tom Robbins.

2115. Racetrack Reporting

Rule 2115 establishes reporting requirements for Racetracks. A new paragraph (a) provides more detail concerning annual reports to the Authority by Racetracks; the rule explicitly requires Racetracks to file a report within 30 days after the end of each race meeting, and, by December 31 of each year, to complete a Racetrack Safety Accreditation Audit. The audit is a key tool by which the Authority may monitor a Racetrack's level of compliance with Authority rules.

An additional new provision, paragraph (g), requires Racetracks to submit a certified report to the Authority within 30 days of the end of each Race Meet. A commenter asked whether the information required in the end of Race Meet report can be prescribed in the rule.[35] The Authority prefers the current language in the rule, which states that the report shall be submitted ''in such form as the Authority may prescribe.'' This provides greater flexibility, and the Authority will outline in an appropriate form the precise information required, all of which will pertain to Racetrack safety matters and requirements as set forth in the rules of the Authority. Another commenter suggested that the deadline for the report should be 60 days rather than 30 days.[36] The Authority believes the 30-day requirement is appropriate and not burdensome, and notes that the end of meet report consists only of data reporting; no narrative composed by the Racetrack is required. The sooner the information is provided to the Authority after the end of the meet, the more likely it is to be accurate.

New proposed rules will require Racetracks to maintain a list of, and contact information for, key personnel at the Racetrack. Racetracks will also be required to authorize third party system providers who collect information regarding Covered Persons, Covered Horses, and Covered Racetracks to provide data upon request, and to authorize any video replay or video service provider to provide to the Authority upon request high-resolution video replays of Covered Horseraces at the Racetrack. These new provisions will ensure the Authority may access data relative to Covered Persons, Covered Horses, or Covered Horseraces that is submitted by the Racetrack to the third-party system provider (such as, fatality information submitted to the Equine Injury Database or video replays to be used for injury and fatality review). These new requirements will further the Authority's goal of increased racehorse welfare and aid in making accreditation determinations.

Finally, new provisions in the rule permit the Authority to obtain upon request information pertaining to accreditation or suspected violations of Authority rules. Tracks are also made subject to on-site inspection by the Authority at any time so that any suspected safety violation can be promptly investigated and addressed.

All of these modifications refine the reporting requirements in Rule 2115, so that the Authority possesses the information it needs to review Racetrack compliance and make appropriate decisions concerning Racetrack accreditation. The painstaking review of all aspects of Racetrack operations are of vital importance in securing the health, safety and welfare of Covered Horses and Covered Persons.

2116. Suspension and Revocation of Accreditation

Rule 2116 establishes the procedures for situations in which a Racetrack is in material non-compliance with the Accreditation requirements. In addition to stylistic changes, a new provision is added which states that the Authority may consider all factors that it deems important, including factors established in Rule 8360(e)(1)–(5).

Commenters suggested that the factors for material non-compliance should be clearly established in the rules.[37] The Authority prefers to leave ''material non-compliance'' as an open term; the circumstances under which a Racetrack might be in material non-compliance are many and varied, and difficult to anticipate and articulate in their entirety in a rule. In response, however, the Authority proposed new language clarifying that the Authority shall consider all factors that it deems appropriate, including the factors established in Rule 8360(e)(1)–(5).

2117. Provisional Suspension of Racetrack Accreditation

Rule 2117, Provisional Suspension of Racetrack Accreditation, is a new proposed rule. This provision permits the Authority to suspend racing activity in a short period of time if ''the Authority has reasonable grounds to believe that the conditions or operations of a Racetrack present an imminent danger to the health, safety, or welfare of Covered Horses or Riders arising from specific violations by the Racetrack of

[35] Minnesota Racing Commission.

[36] Tom Robbins.

[37] This is a comment jointly submitted by NYRA, Del Mar, Keeneland, Churchill Downs, Breeders' Cup, and 1/ST Racing.

the Authority's Racetrack safety or accreditation rules.'' [38]

Proposed Rule 2117 was distributed for public comment in July 2023. Since that time, the Authority has received numerous comments and has worked with industry stakeholders to address due process concerns that were raised during the informal public comment period. This proposed rule is the result of both collaboration with industry stakeholders and the Authority's input. Under this rule, the Authority may issue a show-cause notice concerning a provisional suspension of a Racetrack's accreditation if the Authority has reasonable grounds to believe that the conditions or operations of the Racetrack present an imminent danger to the health, safety, or welfare of Covered Horses or Riders arising from specific violations by the Racetrack of the Authority's Racetrack safety or accreditation rules. The show-cause notice will include an itemization of the rules which the Racetrack is believed to have violated, the corrective actions suggested to achieve compliance, a request for a written response from the Racetrack, and a statement indicating that the Racetrack may request a provisional hearing within 3 business days of receipt of the notice. Notably, the Racetrack's accreditation would not be suspended during the time between receipt of the show-cause notice and the provisional hearing.

The Racetrack is afforded significant procedural due process protections under this rule; first at the provisional hearing stage and, later, at the final hearing. For instance, if the Racetrack requests a provisional hearing, the provisional hearing will be promptly held within 3 business days of receipt of the Racetrack's request for a hearing. The provisional hearing will be conducted by a 3-person panel consisting of 1 industry member of the Board, 1 independent member of the Board, and 1 member of the Arbitral Body selected by the Chair of the Board. The sole issue to be determined at the provisional hearing is whether the Racetrack's provisional suspension of Accreditation shall go into immediate effect following the provisional hearing, be stayed pending a final hearing under this rule, or be withdrawn. The burden is on the Authority to demonstrate good cause why the provisional suspension of the Racetrack's accreditation should go into immediate effect or be stayed pending a final adjudication. Within 7 business days of the conclusion of the provisional hearing, the 3-person panel will issue a written decision imposing an immediate provisional suspension of the Racetrack's accreditation, staying the provisional suspension, or dismissing the notice.

The Racetrack may seek prompt review of any decision rendered at the provisional hearing by requesting a final hearing, which will take place within 14 calendar days of the Racetrack's request for a final hearing. The final hearing will be conducted by a quorum of the Board and the 2 Board members who participated in the provisional hearing will be precluded from participating in the final hearing. The final hearing will be conducted pursuant to the procedural rules established in Rules 8340(d) through (j), which provide for a full presentation of evidence and place the burden on the Authority to demonstrate, by a preponderance of the evidence, that the Racetrack is in violation of the Accreditation rules.

Within 7 business days of the conclusion of the final hearing, the Board may (1) order that the Racetrack's accreditation be reinstated, suspended, or revoked; (2) reinstate accreditation subject to any requirements the Board deems necessary to address the specific safety violations; and/or (3) impose a fine in an amount not to exceed $50,000.

The outcome of the final hearing of the Authority will be considered a final civil sanction subject to appeal and review in accordance with the provisions of 15 U.S.C. 3058.

2120. Accreditation Requirements

2121. Racetrack Risk Management Committee

The title of the Committee has been changed to Racetrack Risk Management Committee. As noted in several comments, the previous title, the Racetrack Safety and Welfare Committee, was sometimes confused with the Racetrack Safety Committee established by the Act.

The Rule sets forth the composition of the Committee. Revisions are proposed which rename several positions; the term ''Horsemen's representative'' has been replaced by ''Owners' representative'' and ''Trainers' representative,'' as Owners and Trainers are often collectively referred to as ''Horsemen.''

The Racetrack may alter the composition of the Racetrack Risk Management Committee, if approved by the Racetrack Safety Committee. This allows the Racetrack to adapt the structure of the Racetrack Risk Management Committee to well-functioning structures already in place in states such as California.[39]

The current rule specifies the responsibilities of the Racetrack Risk Management Committee in paragraph (c); several modifications clarify terminology and duties. New provisions require interviews of witnesses to be conducted in the case of Human Injury, and to interview Racetrack personnel when appropriate in the review of Catastrophic Injuries and Equine Mortalities. In addition, the Rule expands upon current language to specify that the Racetrack Risk Management Committee must file a certified end of meet report, with attached meeting minutes, within 60 days of the end of a race meet of fewer than 60 days (this is separate from the Racetrack's obligation to submit an end of meet report 30 days after the meet). Quarterly reports are required for race meets of 60 days or more. The Racetrack Safety Committee will specify the contents of the post-meet report, in response to a commenter who queried concerning the contents of the report.[40]

A new paragraph (b)(2) clarifies that the Regulatory Veterinarian shall chair the Racetrack Risk Management Committee, unless there is no agreement between the Authority and the State Racing Commission. If there is no agreement, a Lead Veterinarian shall be appointed by the Racetrack and shall chair the Racetrack Risk Management Committee, and the cost of this position will be funded by the Racetracks.

The purpose of the Racetrack Risk Management Committee is to review, with the input of members from multiple disciplines, information and occurrences relevant to equine and human safety. This allows the Racetrack Risk Management Committee to take action to improve safety at the Racetrack. The purpose of the Racetrack Risk Management Committee is not to impose discipline upon Covered Persons, but rather to facilitate the process of discussion, risk analysis, education and implementation of strategies for injury prevention.

A commenter asked whether all of the members of the committee are required to perform all of the responsibilities outlined in 2121(c).[41] Another commenter expressed concern that provision was not being made for small groups.[42] As noted above, a Racetrack may alter the composition of the committee upon approval of the Racetrack Safety Committee. The

[38] Rule 2117(a)(1).

[39] Prompted by a comment from the CHRB.

[40] Minnesota Racing Commission.

[41] HBPA.

[42] CHRB.

Authority further notes that the rule does not require the Safety Director to perform all of the work of the Committee; the various members of the Committee will perform much of the work. The role of the Safety Director is to oversee the Committee's work to make sure that the work is performed in a coordinated manner, and to provide assistance and additional resources where necessary to ensure the tasks of the Committee are thoroughly and efficiently performed. It is anticipated that members of the Committee may perform as sub-groups to assist in accomplishing the Committee's various duties and tasks.

A commenter suggested that Starting Gate Persons and Track Superintendents should be among those persons required to be interviewed after a Catastrophic Injury or Equine Mortality.[43] The Authority notes that such interviews are covered by the rule, with flexibility to adjust for individual cases; the rule currently requires interviews when appropriate with ''Racetrack personnel.''

Commenters opined that an attending veterinarian should be a member of the committee.[44] The Authority believes the committee is best served by the membership of the Regulatory Veterinarian or Association Veterinarian.

2130. Required Safety Personnel

2131. Safety Director

Rule 2131 concerning the Safety Director is modified in several provisions in addition to minor clarifications of terminology. The most significant change is the new provision, establishing a new responsibility for the Safety Director: ''(c)(4) Establishing a formal protocol by which health, safety, and welfare issues are reported, investigated, and resolved by the Racetrack. The protocol shall address coordination between racetrack management, Veterinarians, safety stewards, and Stewards, so that all persons involved have a clear understanding of their roles and further action may be taken where appropriate.'' This provision tasks the Safety Director with creating a comprehensive protocol that systematizes the methods by which health, safety and welfare issues are addressed and resolved. The provision also requires that the protocol address vital issues concerning how the various officials will cooperate in addressing issues. The protocol ensures that officials may work together in a pre-determined and coordinated way, rather than in an ad hoc manner with no consistent approach.

Commenters have expressed concern that the Safety Director cannot perform all of the duties set forth in the rule.[45] The rule, however, does not require the Safety Director to perform all of the work of the Committee; the various members of the Committee will perform the work in collaboration. The role of the Safety Director is to oversee the Committee's work to make sure that the work is performed in a coordinated manner, and to provide assistance and additional resources where necessary to ensure the tasks of the Committee are thoroughly and efficiently performed. In response to a comment expressing concern about the Safety Director's oversight of Regulatory and Association Veterinarians,[46] the Authority emphasizes that the veterinarian's prerogative and medical judgment of equine welfare issues will not be limited or constrained by the Safety Director.

Paragraph (c)(8) is modified to state that the Safety Director shall be responsible for: ''(8) Report[ing] all equine injuries that required equine ambulance assistance and fatalities to the Racetrack's Risk Management Committee and the Authority within 72 hours of an injury, and within 24 hours of a fatality[.]'' The provision, suggested by a commenter,[47] more precisely limits the reporting of equine injuries to those that required ambulance assistance, rather than minor injuries that do not require extensive medical care. The provision also now requires that equine fatalities be reported to the Racetrack Risk Management Committee and the Authority within 24 hours. The reporting of equine fatalities is vital to ensure that Racetrack officials may take prompt action to determine the cause of fatalities and take action to mitigate the possibility of further injuries to Covered Horses on Racetrack grounds. It is important to note that the reporting requirement does not require the filing of a written report; verbal notification satisfies the initial 24-hour reporting requirement.

A commenter asked whether the Safety Director will also be responsible for emergency drills concerning, for example, weather-related events.[48] In response, the Authority notes that the Safety Director is not charged with personally directing emergency drills, but is charged with the oversight function of ensuring that the drills are conducted pursuant to Rule 2161.

A commenter urged that the Equine Injury Database be used for the reporting of equine injuries within 24 hours of a fatality, and 72 hours of an injury.[49] The veterinarians do not have to report to both the Equine Injury Database and the Authority, provided the Racetracks permit the Authority to access the Equine Injury Database. If the Racetrack does not permit access, the reporting must be made directly to the Authority in addition to the Equine Injury Database.

2132. Medical Director

There are several significant additions to Rule 2132. Rule 2132 is modified with the following language: ''The Medical Director shall be either a licensed physician, a board-certified athletic trainer, or an individual qualified to perform the duties and responsibilities set forth in this Rule with the assistance of the Authority's National Medical Director.'' While the engagement of a licensed physician is ideal, this is not possible at this time at some Racetracks. The rule allows, for example, a qualified medical provider (such as a nurse practitioner) to perform the duties of the Medical Director, with the proviso that the Medical Director shall have the assistance of the Authority's National Medical Director in performing the duties.

An additional significant provision is added to the duties of the Medical Director. The provision states that the Medical Director shall: ''(c)(3) Require notification of Human Injuries during racing or training to the Authority's National Medical Director within 1 hour of transport of the individual(s) from the scene of the injury.'' This rule will enhance the safety of Riders by ensuring that HISA's National Medical Director is informed of Human Injuries very quickly, so that the Medical Director can assist in providing any services needed by the Rider or the medical responders. A commenter questioned whether 1 hour was realistic, recommending 24 hours instead.[50] The Authority disagrees with this view, and notes that all the rule requires is ''notification,'' which can include verbal notification. No written report or communication is required to satisfy the 1-hour requirement.

An early draft of Rule 2132 implied that all human injuries be reported

[43] The Breeders' Cup.

[44] THA, Dr. Scott Hay.

[45] The Jockeys' Guild and a comment jointly submitted by NYRA, Del Mar, Keeneland, Churchill Downs, Breeders' Cup, and 1/ST Racing.

[46] This is a comment jointly submitted by NYRA, Del Mar, Keeneland, Churchill Downs, Breeders' Cup, and 1/ST Racing.

[47] Tom Robbins.

[48] Breeders' Cup.

[49] The Jockey Club.

[50] Tom Robbins.

under the rule. Commenters noted,[51] and the Authority agrees, that the reporting of all human injuries that occur at a Racetrack is impractical. The definition of Human Injuries was therefore modified to limit Human Injuries to those injuries requiring medical attention and that may restrict a Covered Person's current or future participation or employment in racing.

In the provision requiring the Racetracks to reimburse the Authority for the costs associated with the employment of the Medical Director, the clause that provides for the reimbursement to be based on ''total handle wagered in the applicable state in the prior calendar year'' has been removed. This change is made to conform to substantive changes in the Authority's Rule 8500 Series concerning the allocation of costs.

A provision is modified to state that the Medical Director shall ''develop and implement a process for certifying a Jockey's fitness to resume riding.'' This clarifies that the Medical Director is not required to certify the Jockey's fitness to ride, but instead is charged with the development of the certification process.

A provision is modified to require the reporting of Human Injuries to the Racetrack Risk Management Committee and the Authority within 24 hours rather than the current requirement of 72 hours. This allows the Racetrack Risk Management Committee and the Authority's National Medical Director to review the factors contributing to the injury more rapidly.

Finally, a provision is added that requires the Safety Director to coordinate with the Authority's National Medical Director. This ensures effective coordination between these two officials in addressing Human Injuries.

2133. Stewards

In Rule 2133, paragraph (b) is amended to state: ''Unless the Authority determines that the applicable individual is otherwise qualified, to qualify for appointment as a Steward, the appointee shall meet the experience, education, and examination requirements necessary to be accredited by [the Racing Officials Accreditation Program (''ROAP'')].''

A commenter expressed opposition to the amended introduction, stating that it might undermine standards of racing experience.[52] The Authority understands the need for competent and experienced Stewards, and will carefully consider any individual who is not accredited by ROAP.

A commenter suggested that the term ''or contracted with'' should be added to Rule 2133(c), which concerns the contractual agreements entered into by the Authority and State Racing Commissions.[53] This change was made, so that Rule 2133(c) now reads as follows: ''The requirements of Rule 2133 for any Steward employed by or contracted with a State Racing Commission are subject to the applicable State Racing Commission electing to enter into an agreement with the Authority.''

2134. Regulatory Veterinarian

Rule 2134 sets forth the requirements and duties concerning Regulatory Veterinarians at the Racetrack. A new proposed rule is added as paragraph (a) which requires Racetracks to ensure that that no fewer than 2 Regulatory Veterinarians (as defined in Rule 1020 and excluding test barn veterinarians) are present at the Racetrack during all live racing. Upon a request and a showing of undue hardship by the Racetrack, the Racetrack Safety Committee may permit a Racetrack to have 1 Regulatory Veterinarian present at the Racetrack during all live racing. Some commenters observed that the shortage of veterinarians nationwide will make it difficult for Racetracks to have 2 Regulatory Veterinarians present at the track.[54] The Authority recognizes that a shortage exists, and in response to these concerns has added a provision allowing the Racetrack Safety Committee to permit a Racetrack to have 1 Regulatory Veterinarian present at the Racetrack upon a showing of undue hardship. The Racetrack Safety Committee will scrutinize any such request very carefully, and always with the safety of Covered Horses firmly in mind.

Other commenters questioned how a Racetrack can be charged with controlling the number of Regulatory Veterinarians on the grounds of the Racetrack.[55] In response, the Authority notes that Racetracks are permitted (and encouraged) to appoint a veterinarian to supplement the duties of the Regulatory Veterinarians and to comply with the requirement in proposed Rule 2134(a). Such veterinarians are referred to as ''Lead Veterinarians'' and have the same duties, obligations, and responsibilities of the Regulatory Veterinarians under these rules.

Paragraphs (b)(1) and (2) of this rule are modified to clarify that the Regulatory Veterinarians may be contracted or appointed by a State Racing Commission or the Authority, and that Regulatory Veterinarians need only be licensed to practice in the state in which the Regulatory Veterinarian is performing the duties established under the rule, if required in the applicable jurisdiction. A number of commenters expressed viewpoints concerning proposed amendments to this rule, weighing in favor of retaining the requirement that Regulatory Veterinarians must be licensed to practice in the state in which they perform their regulatory duties. The Rule is amended for greater flexibility in light of the nationwide veterinary shortage and accommodates the possibility that a jurisdiction might not require the Regulatory Veterinarians to be licensed by the state in which they perform regulatory duties, in which case no license is required. Of course, if the applicable jurisdiction requires the veterinarian to be licensed in the jurisdiction, this rule does not alter that requirement.

Paragraph (b)(4) is amended to clarify that the Regulatory Veterinarian is restricted from prescribing ''medications'' for any Covered Horse within the applicable jurisdiction except in cases of emergency, accident, or injury. A comment had noted that Regulatory Veterinarians must be able to prescribe diagnostics; the term ''medications'' more precisely states the activity intended to be prohibited.[56]

Paragraph (c) contains changes to the provisions concerning the appointment of a Lead Veterinarian. In those jurisdictions where the state racing commission does not elect to enter into an agreement with the Authority to establish a Regulatory Veterinarian, the Racetrack is required to appoint a Lead Veterinarian to carry out the duties, obligations, and responsibilities of the Regulatory Veterinarian under the rules. New language is added to this rule to clarify that even in jurisdictions where the applicable state racing commission does elect to enter into an agreement with the Authority to establish a Regulatory Veterinarian, the Racetrack may still appoint a Veterinarian(s) to serve as the Lead Veterinarian(s) to supplement the duties of the Regulatory Veterinarian(s) and to comply with the requirements in Rule 2134(a). In both cases, the appointment of the Lead

[51] Tom Robbins, HBPA.

[52] Dan Fick and ROAP.

[53] CHRB.

[54] ROAP, Washington Horse Racing Commission.

[55] ROAP, Mike Hopkins, Joe Wilson.

[56] This is a comment jointly submitted by NYRA, Del Mar, Keeneland, Churchill Downs, Breeders' Cup, and 1/ST Racing.

Veterinarian(s) is subject to the Racetrack Safety Committee's approval.

A comment stated that the sharing of a Lead Veterinarian may be impractical in some states in which racing dates overlap.[57] In response, the Authority notes that nothing in the rule *requires* Racetracks within a state to share a Lead Veterinarian.

2135. Responsibilities and Duties of Regulatory Veterinarian

Paragraph (a)(5) of this rule is revised to clarify that the Stewards retain the authority to scratch horses, upon receiving notification from the Regulatory Veterinarian that the horse is injured, ill, otherwise unable to compete due to a medical or health related condition, or poses a hazard to other horses or racing participants. This codifies pre-existing industry practice and is in accord with the preference of several commenters who opined that the Stewards should retain the ultimate authority to scratch horses.[58]

Paragraph (a)(7) is revised to clarify that, notwithstanding Rule 2220 (specifying that only Attending Veterinarians may attend to Covered Horses at any location under the jurisdiction of the State Racing Commission), a Regulatory Veterinarian may provide emergency medical care and effect case transfer to the Attending Veterinarian. This is necessary for the health and safety of Covered Horses. The addition of ''training'' is intended to cover emergency situations where an Attending Veterinarian is not present on the Racetrack grounds.

Paragraph (a)(9) is amended to state that the Regulatory Veterinarian must ''report to the Safety Director and the Authority within 24 hours the names of all Covered Horses who are euthanized or which otherwise die at the meeting and the reasons therefor.'' The addition of ''and the Authority within 24 hours'' is intended to facilitate prompt notice to the Authority of potentially emerging safety situations.

A commenter suggested that the reference to the Safety Director should be deleted from this rule.[59] The Authority prefers to retain the reference to the Safety Director because regular communication of safety and welfare issues with the Authority is expected and is in the best interest of equine safety and welfare.

Paragraph (a)(10) is modified as follows: ''collaborate with the Safety Director, Chief Veterinarian of the State Department of Agriculture (or comparable State government official), Equine Disease Communication Center (EDCC), and other regulatory agencies to take measures to control communicable or reportable equine diseases.'' This provision was developed while considering a comment that suggested the inclusion of the ''comparable State government officials'' phrase, since states vary as to the specific state officials responsible for the communicable diseases.

Paragraph (b) is amended to clarify that a Regulatory Veterinarian may access Covered Horses on Racetrack grounds, perform inspections of Covered Horses, observe Covered Horses during training activities, and place a Covered Horse on the Veterinarians' List. This codifies pre-existing industry measures intended to reduce the number of injured or at-risk horses participating in racing activities.

Paragraph (c) is modified to permit the Authority to retain additional veterinarians if it determines that the Regulatory Veterinarian identified in the agreement with the Authority requires additional assistance to perform the regulatory duties set out under these rules. The modification is necessary to address situations where a vacancy can be difficult to fill, especially as a stop gap measure, and the Authority may be able to deploy additional veterinary personnel in the short term.

Paragraph (d) is modified to clarify that the Regulatory Veterinarian identified in the agreement with the Authority or, if there is no Regulatory Veterinarian, the Lead Veterinarian has jurisdiction over all veterinarians within the grounds of the Racetrack. A commenter noted that jurisdiction over the Attending Veterinarian should be vested in the Association Veterinarian where there is no Regulatory Veterinarian filing such as role, as in the state of Florida.[60] In response, the Authority states that the Racetrack can appoint the Association Veterinarian as a Lead Veterinarian, which obviates the concern raised in this comment. However, only the Regulatory Veterinarian may review and consult with the Stewards and State Racing Commission regarding licensing applications under paragraph (d) of this rule.

2136. Racetrack Safety Officer

Rule 2136 sets out the duties of the Racetrack Safety Officer. This rule contains minor modifications. The rule in paragraph (b) specifies the duties the Safety Officer must carry out, and modifies the prefatory sentence as follows: ''The Safety Officer or the Safety Officer's designee shall. . . .'' This phrase referring to the Safety Officer's designee is added to make clear that the Safety Officer may designate other individuals to assist in the performance of the specified duties. This addition is in response to concerns expressed by a commenter that the Safety Officer's duties are too expansive.[61] Under the modified rule, the Safety Officer may enlist assistance in the performance of the prescribed duties.

One of these duties, as set forth in paragraph (b)(5), is modified to state that the Safety Officer shall monitor ambulance and medical personnel protocols for Covered Horses and Riders in cooperation with the Medical Director. This addition is made to emphasize that the Safety Officer will monitor protocols in conjunction with, and with the benefit of, the medical knowledge and expertise of the Medical Director.

Finally, the rule is modified in (b)(8) to specify that the Safety Officer will conduct ''HISA registration checks,'' rather than ''license checks;'' the latter term is more applicable to State Racing Commission licenses, whereas registration is a function of the Authority under the Rule 9000 Series.

A commenter observed that the Safety Officer should ''either participate in the creation of or be the sole individual to draft standard operating protocols for racetrack safety and equine welfare.'' [62] The Safety Director is charged with the development of the protocols pursuant to Rule 2131(c)(4), but the Safety Officer under Rule 2136(b)(13) may make recommendations to Racetrack management and officials to ensure the safety and welfare of Covered Horses and Riders. The Safety Officer may certainly make recommendations concerning the protocols.

2137. Horseshoe Inspector; 2138. Responsibilities and Duties of Horseshoe Inspector; 2139. Horseshoe Inspections

The Authority proposes a set of three new rules aimed at reducing equine injuries and riding-related incidents attributable to noncompliant horseshoes. The first rule, Rule 2137, establishes a requirement on Racetracks (or State Racing Commissions where the applicable State Racing Commission elects to enter into an agreement with the Authority), to employ or contract

[57] This is a comment jointly submitted by NYRA, Del Mar, Keeneland, Churchill Downs, Breeders' Cup, and 1/ST Racing.

[58] ROAP, Tom Robbins, ROCO, Washington Horse Racing Commission.

[59] 1 S/T Racing.

[60] 1 S/T Racing.

[61] The Jockeys' Guild.

[62] Jeanne Schnell.

with a Horseshoe Inspector (defined in Rule 2010) to perform the duties and responsibilities specified in Rule 2138. The Authority believes it is important to have a designated individual at each Racetrack responsible for inspecting horseshoes and ensuring compliance with the Authority's rules. Not all Racetracks currently have an individual who is solely responsible for inspecting horseshoes prior to racing.

Rule 2137 was originally circulated for informal industry comment in April 2023. That version of the rule required the Horseshoe Inspector to be licensed by the State Racing Commission. The Authority received a comment in response to this rule, noting that this is not a position which is licensed by State Racing Commissions.[63] The Authority believes that it is likely that the position will require licensure but has revised this rule to only require licensing if such licensing is required in the applicable jurisdiction. In addition to licensing, this rule requires the Horseshoe Inspector to be knowledgeable of matters pertaining to hooves, horseshoes, and the Authority's rules pertaining to these subjects. The rule also includes a continuing education requirement for Horseshoe Inspectors.

The second rule, Rule 2138, sets out the specific responsibilities and duties of the Horseshoe Inspector—that is, conducting inspections of horseshoes and other orthotics on all Covered Horses entered in a Covered Race on Race Day and notifying the Stewards of any Covered Horse that is shod with horseshoes that are not compliant with the Authority's rules. The rule instructs the Horseshoe Inspector to perform additional inspections if requested by the Steward. Involving Stewards in this process provides an additional safeguard as they have the authority to scratch a Covered Horse from a race. Reducing the number of Covered Horses competing with noncompliant shoes will lead to fewer Racetrack incidents and injuries and enhance the overall safety of Covered Riders and Covered Horses.

Finally, Rule 2139 contains the process for pre-race horseshoe inspections. The rule specifies that the trainer of each Covered Horse must present the Covered Horse for inspection on the day of the race and that the Horseshoe Inspector's inspection must include, at a minimum, identification of the Covered Horse and examination of the horseshoe and other orthotics and documentation of features relating to a violation of horseshoe rules of the Authority. If, prior to starting a Race, the Horseshoe Inspector is unable to make a determination, or determines that a Covered Horse is wearing non-compliant horseshoes, the Horseshoe Inspector shall notify the Stewards prior to the Covered Horse leaving the paddock. Again, this measure ensures that the Stewards are notified of Covered Horses that should not be competing and can take the appropriate steps to remove the horse from the race. Intervention on the part of the Horseshoe Inspector or Steward has the potential to prevent or reduce the number of incidents and injuries associated with the use of shoes that are not compliant with the Authority's rules.

2140. Racehorse Inspections and Monitoring

2141. Veterinary Inspections

Rule 2141 establishes that Veterinary inspections shall be performed by the Regulatory Veterinarians on all Covered Horses entered in a Race, and that such inspections shall include the items listed in Rule 2142. The current rule specifies that if the Regulatory Veterinarian determines that a Covered Horse is unfit for competition, or if the Regulatory Veterinarian is unable to make a determination of racing soundness, the Regulatory Veterinarian shall have the unconditional authority to scratch the Covered Horse from the race, and shall notify the Stewards that the Covered Horse shall be scratched.

The rule is modified in paragraph (a) to change the phrase ''unfit for competition'' to ''unsound for competition,'' because the word ''unsound'' is a more holistic veterinary term that embraces a wider range of conditions that could potentially compromise the horse's safety and welfare. In addition, the rule is modified to state that if the Regulatory Veterinarian determines that the Covered Horse should be scratched for the specified reasons articulated in the rule, the Regulatory Veterinarian shall notify the Stewards that the horse shall be scratched, and the Stewards shall then scratch the horse from the race. This change was suggested and supported by commenters,[64] because it accords with existing state racing commission rules which provide only the Stewards with the authority to scratch a horse from a race.

2142. Assessment of Racing Soundness

Rule 2142 details the various reports, inspections and procedures that promote equine welfare and safety. A commenter suggested the removal of a provision in the modified rule as originally drafted that required the Layoff Report to be submitted not less than 30 days prior to entry.[65] The Racetrack Safety Committee considered this suggestion and removed the provision; the committee concluded that the Racetrack entry schedule (under which entries routinely close several days in advance of the race) provides adequate time for the Regulatory Veterinarian to review the lay-off reports.

Another commenter asked whether the Regulatory Veterinarian should be required to sign off on the horse prior to entry.[66] The California rule requires an additional regulatory inspection. The intent of the rule is to mirror more closely that in place in the Mid-Atlantic region, which is to require that the information be made available to the Regulatory Veterinarian to review. The intent is not to require an additional pre-entry regulatory inspection.

Concerning paragraph 2142(b), which governs post-entry screening, the modification requires Layoff Reports to be reviewed (in accord with the new provision concerning Layoff Reports in paragraph (a)). The modification also adds a sentence which states: ''Additional physical inspection and observation in motion may be performed by the Regulatory Veterinarian.'' This addition makes clear that the Regulatory Veterinarian may exercise the discretion to expand the inspection as needed to ensure the safety and well-being of the horse under inspection. At the suggestion of commenters,[67] the Authority removed a provision that required the Racetrack Safety Committee to approve any additional inspection. This allows the Regulatory Veterinarian to exercise immediate discretion according to the Regulatory Veterinarian's professional judgement concerning the horse.

Commenters requested that the Authority develop a reporting form that will provide the medical history of all horses entered, to aid in the review of the last 30 days of medical history as required in the current rule.[68] The Authority agrees and is working on developing the form.

A commenter asked whether hindlimbs should be included in the current requirement that digital

[63] HBPA.

[64] Tom Robbins, ROCO.

[65] Gary Palmisano.

[66] Tom Robbins.

[67] Comment jointly submitted by NYRA, Del Mar, Keeneland, Churchill Downs, Breeders' Cup, and 1/ST Racing.

[68] Comment jointly submitted by NYRA, Del Mar, Keeneland, Churchill Downs, Breeders' Cup, and 1/ST Racing.

palpation be performed on forelimbs.[69] The Racetrack Safety Committee will consider this proposed requirement in future rulemaking. Nothing in the proposed rule prohibits a Regulatory Veterinarian from palpating hindlimbs.

The current rule in paragraph (b)(3) requires that a report summarizing the results of pre-race inspections shall be submitted to the Authority on the day of the inspection. A commenter suggested that the Responsible Person be provided a copy of the report immediately in the event of a scratch by the Regulatory Veterinarian, so that all parties are kept informed as to the horses' condition.[70] The Authority will consider this suggestion in future rulemaking.

A minor modification is made to the current rule which requires that a Covered Horse be presented for inspection with bandages removed, and with legs in clean and dry condition. The current rule specifies that Covered Horses ''may not be placed in ice,'' to which the modification adds the clarifying language that the horse may not be placed in ice ''until the Regulatory Veterinarian has completed the veterinary inspection.'' This clarification is made in response to inquiries concerning the meaning of the rule. The rule makes clear that the practice is permitted once the regulatory inspection is complete.

With regard to various reporting requirements in various portions of the rule, a comment suggested that reporting be accomplished through InCompass, for the sake of efficiency.[71] Currently, the Authority is encouraging Racetracks to provide the Authority with access to their InCompass Equine Examination modules so that Regulatory Veterinarians do not have to report to both the Authority and InCompass. Under proposed Rule 2115(d), Racetracks will be required to authorize third-party system providers to provide this type of information directly to the Authority.

2143. Racehorse Monitoring

Rule 2143 provides the procedures by which necessary vaccinations of Covered Horses are monitored. This is very important in the prevention or mitigation of the transmission of infectious diseases, which benefits the health and safety of Covered Horses. Paragraph (a) of the rule is modified to specify that the paragraph applies to all horses entering Racetrack grounds ''directly from any location or facility other than a Designated Equine Facility or licensed racing facility within the same state as the receiving Racetrack.'' (The new proposed Rule 2144 establishes the concept of Designated Equine Facilities and will be discussed further under Rule 2144 below). The purpose of this exemption for Designated Equine Facilities and licensed racing facilities within the same state as the receiving Racetrack is to reduce the compliance burden on Responsible Persons and Attending Veterinarians when horses are stabled at auxiliary training centers where the risk of infectious disease transmission is deemed low.

The rule is also modified to require a ''current'' health certificate; the modification is necessary to clarify questions as to whether horses would be accepted from these facilities without any health certificate at all.

The rule is modified at the suggestion of a commenter[72] to permit the acceptance of a current health certificate or, in the alternative, ''other health documentation sufficient for importation to the United States and approved by the [United States Department of Agriculture-Animal and Plant Health Inspection Service (''USDA–APHIS'')] representatives.'' This phrase is added because horses at times arrive to race in the United States from foreign countries and are under USDA–APHIS surveillance, which includes surveillance for signs of infectious disease. This surveillance is documented and is considered to sufficiently mitigate the risk of infectious disease transmission.

Finally, the rule is modified to impose the requirements upon ''Pony Horses'' as well as Covered Horses, because Pony Horses often travel with, are stabled next to, and work in close proximity to Covered Horses. As such, transmission of infectious disease is increased. Extending the requirement to Pony Horses will mitigate that risk.

Concerning current Rule 2143(a)(1), which requires a certificate of veterinary inspection (''CVI'') within the prior 5 days, or fewer days if high risk situations dictate, a commenter opined that ''5-day health certificates do not work in many situations; consider something intrastate or go back to 30 days.''[73] In response, the Authority notes that the Designated Equine Facility was a compromise created to reduce the compliance burden of Rule 2143(a)(1) in those situations deemed to be at lower risk for transmission of infectious disease while still affording a reasonable level of protection to Racetracks and stakeholders who have a shared financial interest in keeping the stable area and racing program safeguarded from infectious disease outbreak.

Another commenter opined that there ''should be explicit language allowing the racetrack to require in-state horses to provide a CVI in the face of an outbreak.''[74] In response, the Authority replies that there is nothing in the rule that would prohibit this, and notes that the requirement was implemented by several Racetracks in 2023 during periods of heightened infectious disease concern.

A commenter expressed frustration with the varying health certificate rules in different jurisdictions.[75] The Authority understands the issue, but adopting, for example, a uniform flu-rhino requirement would eliminate the ability of Racetracks and state Departments of Agriculture to respond with shorter vaccination window requirements in high-risk situations. These entities believe this flexibility is needed to manage outbreaks of disease of economic importance to protect the equine industry at large.

A new paragraph (b) is included in Rule 2143, which states as follows: ''(b) The applicable Racetrack shall maintain records that document that the requirements of Rule 2143(a) have been satisfied for each Covered Horse entering racetrack grounds. Such records shall be subject to inspection and audit by the Authority.'' This provision is added in response to stakeholder requests for clarification about whose responsibility it is to maintain these records beyond the time of entry into the stable gate.

A commenter asked: ''Is the racetrack responsible for maintaining records of all vaccinations or is the trainer themselves? Isn't the trainer responsible for adding them to each individual horse record through HISA?''[76] In response, the Authority notes that Rule 2143 does not relieve the Responsible Person from the duty to keep the vaccines current in the horse's health record in the HISA portal. The Racetrack, in turn, is responsible for maintaining records that document that the horse's vaccination status was verified when the horse entered the Racetrack grounds.

A new paragraph (c) is added which states as follows:

[69] Tom Robbins.

[70] THA.

[71] This is a comment jointly submitted by NYRA, Del Mar, Keeneland, Churchill Downs, Breeders' Cup, and 1/ST Racing.

[72] Breeders' Cup.

[73] HBPA.

[74] 1/ST Racing.

[75] Dr. Scott Hay.

[76] Minnesota Racing Commission.

(c) Exemption for vaccination requirements. Covered Horses that are imported to the United States to participate in a specific race or races or to enter race training in the United States may, upon application to the Authority, be exempted from the vaccination requirements, with the exception of requirements for Influenza and Rhinopneumonitis, for the following periods:

(1) if the Covered Horse is leaving the United States immediately following the specific race or races, then for the period of USDA temporary importation or transit to an approved USDA location, or

(2) if the Covered Horse is remaining in the United States, then for the period of 14 days following the specific race or races, or from arrival at a Racetrack, whichever is longer.

The proposed provision governs the health certificate rules for imported horses, with certain exemptions from vaccine requirements as specified. This takes into account the fact that certain vaccines are not available in some foreign nations, and a temporary exemption process in the rule provides a mechanism by which imported horses enter the U.S. Department of Agriculture quarantine facility; the rule provides a window of time within which any vaccines that the horse lacks can be administered once the horse arrives at the Racetrack. A commenter noted: ''Just want to make sure that should such foreign horses stay beyond 14 days if okay. Del Mar had a Japanese horse stay beyond 14 days post Breeders' Cup that remained under USDA observation/isolation before shipping to run In Hong Kong.'' [77] In response, the Authority notes that extensions may be granted by the Racetrack Safety Committee on a case-by-case basis upon consideration of the circumstances.

Commenters opined that the vaccination exemption for imported horses should not include EHV/EIV.[78] The Authority agrees, and the rule was changed accordingly. This is because Equine Influenza and Equine Rhinopneumonitis are the two respiratory diseases of greatest concern in racehorses.

Paragraphs (b) and (c) of the current rule (now restyled as paragraphs (d) and (e)), enumerate the items of information that must be submitted to the Authority by the Racetrack with respect to each Covered Horse on its grounds, and each Covered Horse leaving its grounds. This rule is modified to state in each case that the information must only be provided ''upon request by the Authority.'' This change is made to clarify that Racetracks are not required to upload this detailed information on a daily basis to the Authority.

2144. Designated Equine Facility

A new proposed Rule 2144 will establish a procedure by which Racetracks may seek to designate equine facilities as Designated Equine Facilities under the rules. The reason for the adoption of this rule is to balance the interest in safeguarding the equine population from infectious disease outbreak with the compliance burden imposed by a health certificate requirement.

The proposed rule states in full:

(a) To qualify an equine facility as a Designated Equine Facility, the applicable Racetrack shall certify to the Authority in such form as the Authority may prescribe that it has reviewed and determined that the biosecurity protocols and procedures of the Designated Equine Facility are consistent with the biosecurity protocols and procedures of the Racetrack.

(b) The applicable Racetrack shall maintain records that document that the requirements of Rule 2144(a) have been satisfied for each Designated Equine Facility, including but not limited to the written biosecurity protocols and procedures of the Designated Equine Facility. Such records shall be subject to inspection and audit by the Authority.

In essence, the rule allows Racetracks to designate certain facilities as exempt from specified health certificate requirements, on the condition that the Racetrack certifies to the Authority that it has confirmed that the biosecurity protocols at the facility are consistent with those at the Racetrack.

A commenter maintained that if the Authority chooses ''to certify Designated Training Facilities that are not owned by a racetrack, [the Authority] should be responsible for certifying their biosecurity protocols and oversight of compliance.'' [79] The commenter further asserted that ''[a]s an independent entity, the racetrack has no authority over their operations or right of entry.'' [80] In response, the Authority notes that it will not be certifying Designated Equine Facilities, though it will, as part of a Racetrack's Accreditation process, review the records referenced in paragraph (b) of this rule. The risk assessment and Designation determination is left to the Racetrack, and Racetracks are free to require 5-day health certificates (or lesser, in high-risk situations) for horses coming from any property at any time. A commenter stated: ''Please note, not all training facilities are affiliated with Covered Racetracks. Will HISA be recognizing and allowing horses to run off of training facilities that are not affiliated or designated by Covered Racetracks? Regardless if the training facility is affiliated with a Racetrack or if it is independent operation, there are certain safety precautions and protocols that must be adhered to, similar to a Racetrack. Additionally, the Authority should be reviewing and approving all protocols and procedures of the training facilities, and not just those pertaining to the biosecurity.'' [81] In response, the Authority notes that the Racetrack Safety Committee considered the risk assessment with regard to nearby, intrastate facilities was best left to the Racetrack operators whose familiarity with the local landscape and ability to respond quickly to emerging diseases exceeds that of the Authority. The alternative was to keep the original 5-day health certificate intact for all horses coming from off-site, and the Racetrack Safety Committee felt the creation of the Designated Equine Facility was a reasonable compromise.

Another commenter stated: ''Designated Training Facilities should be subject to their own accreditation process, tailored to that particular circumstance. As the Racetrack Safety and Antidoping and Medication Control Programs continue to develop, it is very likely that owners and trainers will relocate their Covered Horses to such facilities in order to avoid the increased protocols being observed on Racetrack grounds. This calls for regulation of such facilities in greater depth which will, in turn, bring with it increased levels of safety and integrity protections while also providing further sources of data and information for the Authority's programs.'' [82] In response, the Authority notes the intent of the comment, and does not disagree in principle. However, the comment does not appear to be directly relevant to the creation of a compromise proposed solution to the requirement of a 5-day health certificate in certain situations.

[77] Tom Robbins.

[78] 1/ST Racing and a comment jointly submitted by NYRA, Del Mar, Keeneland, Churchill Downs, Breeders' Cup, and 1/ST Racing.

[79] This is a comment jointly submitted by NYRA, Del Mar, Keeneland, Churchill Downs, Breeders' Cup, and 1/ST Racing. A previous version of this proposed rule referred to the facilities contemplated in this rule as ''Designated Training Facilities.''

[80] *Id.*

[81] The Jockeys' Guild.

[82] The Jockey Club.

2150. Racetrack and Racing Surface Monitoring and Maintenance

2151. Data Collection, Recordkeeping and Submission

The Authority is proposing minor clarifying language to this rule.

2152. Testing Methods

The Authority is not proposing any modifications to this rule.

2153. Racetrack Facilities

Rule 2153 is modified with the addition of the following requirement in paragraph (b)(2): ''The top of the inner and outer rails on dirt and turf courses must be at least 40 inches but not more than 50 inches above the top of the race surface.''

Commenters expressed concerns about the reasonable allowances for variations in rail height.[83] The Authority believes that the 10-inch span for compliance with the top inner and outer rails on dirt and turf courses provides considerable latitude for variation. In response to a comment concerning the sources of information concerning rail height,[84] the Authority states that it consulted extensively with experienced racetrack superintendents in specifying the appropriate dimensions.

A commenter expressed the view that more precise specifications concerning metrics, measurement devices, and time and space intervals should be prescribed in the rule.[85] The Authority will be considering all requirements in the course of its ongoing study and analysis of Racetrack facility requirements and their relationship to equine and rider safety.

A current provision under new paragraph (d)(2) requires protective padding on starting gates; the modification adds Riders and Starting Gate Persons to the persons whose safety is to be ensured. This addition is made to ensure that the specific safety requirements of these persons be considered when addressing padding requirements.

Commenters asked whether there should be a requirement for backup starting gate batteries on Racetrack grounds.[86] The Authority's rule requires a functioning starting gate; track management is given the latitude to determine how that shall be accomplished, whether by using backup batteries or other functionalities.

A modification of the paragraph clarifies the requirement that the Racetracks have in place a written plan for the removal of the starting gate after the start of each Race in a safe and timely manner. The modification will also require the plan to be reviewed annually. This further enhances the safety of starting gate operation and procedures.

An important new modification now states: ''(8) A Racetrack shall ensure there is at least 1 Starting Gate Person present for each Covered Horse starting in a Covered Horserace.'' Although some commenters expressed concern about complying with the requirement,[87] the requirement is a vital component of ensuring the safety of all persons working at the starting gate.[88]

A new rule is added stating as follows: (f) The Racetrack shall provide a suitable area for jogging claimed horses in or near the Test Barn or, if approved by the Authority, a secured area used for claimed horse exams. The jogging area shall be of sufficient length to jog the claimed horse in hand in a straight line of not fewer than 5 strides and have consistent, firm, and level footing, and shall be out of the view of persons not authorized in the Test Barn or secured area. The purpose of the rule is to provide adequate space for the jogging of claimed horses. The ''out-of-view requirement'' is a component of maintaining the integrity of the examination.

A commenter expressed the view that the emergency warning system should be more specifically defined in Rule 2153(d)(1) of the current rule (now restyled as paragraph (e)(1)).[89] The Authority requires an emergency warning system to be in place, but the rule properly allows Racetracks the discretion to conform to the rule requirements as local track conditions dictate.

2154. Racetrack Surface Monitoring

In addition to minor terminological changes, the language in Rule 2154(b) is modified to more clearly state that Racetracks shall perform pre-meet inspections on surfaces; the current language does not specify the person or entity charged with performing the inspections.

Rule 2154(d) is modified to explicitly state that the surface equipment inventory, surface maintenance logs, and surface material addition or renovation logs specified in the current rule are to be documented daily and uploaded weekly by the Racetrack to an electronic database designated by the Authority; the current language does not make clear to whom the information is submitted, and the rule will now establish the timing of the documentation and upload requirements, rather than leaving this unspecified.

At the suggestion of commenters,[90] the words ''and speed'' are added to the specified contents of the daily surface maintenance logs addressed in Rule 2154(d)(1). Additionally, the words ''material specifications'' are added to the documentation requirements concerning additions to surfaces set forth in Rule 2154(d)(2). These are minor modifications intended to ensure that all important informational items are included within the requirements of these rules.

2160. Emergency Preparedness

2161. Emergency Drills

Rule 2161 governing emergency drills is modified to require emergency protocols to be reviewed periodically during each Race Meet, in addition to prior to the Race Meet as required under the current rule. Modifications also add Starting Gate Person injury and medical emergencies to the list of emergencies to be included in the protocols, and the term ''Jockey'' is deleted in favor of the term ''Rider'' in two provisions, widening the ambit of the injury scenarios that must be anticipated and included in the protocols. These modifications will benefit Covered Horses and Riders by enhancing a Racetrack's response to the emergencies specified in the rule.

2162. Catastrophic Injury

Rule 2162 concerning Catastrophic Injury is modified with minor changes in terminology. A modification deletes a provision that currently requires communication to the public to be a component of the protocols required in the rule. The need for communication is difficult to specify when Racetracks are responding to an emergency, and may have little information to provide until the situation is assessed.

2163. Fire Safety

This rule is unchanged.

2164. Hazardous Weather

Rule 2164 is modified to include a new provision requiring Racetracks to

[83] Comment jointly submitted by NYRA, Del Mar, Keeneland, Churchill Downs, Breeders' Cup, and 1/ST Racing.

[84] Mike Hopkins.

[85] CHRB.

[86] Comment jointly submitted by NYRA, Del Mar, Keeneland, Churchill Downs, Breeders' Cup, and 1/ST Racing; Breeders Cup.

[87] Comment jointly submitted by NYRA, Del Mar, Keeneland, Churchill Downs, Breeders' Cup, and 1/ST Racing; Mike Hopkins.

[88] This new language was suggested by the Jockeys' Guild.

[89] The Jockeys' Guild.

[90] Dan Fick and ROAP.

comply with State Racing Commission rules governing the delay or cancellation of races due to inclement weather, extreme heat, extreme cold, lightning or other hazardous racing conditions. In the absence of state rules, Racetracks are required, in conjunction with the Racetrack's Stewards, Jockeys, and Horsemen, to develop Racetrack-specific protocols for the delay or cancellation of races due to inclement weather, extreme heat, extreme cold, lightning or other hazardous racing conditions. The terms ''extreme heat'' and ''extreme cold'' were added at the suggestion of a commenter to the list of environmental conditions that must be addressed in the hazardous weather protocols that are developed under the rule.[91] The terms cover extremes of weather that are prevalent at some Racetracks. In addition, new provisions are added to provide a structured method by which Air Quality Index may lead to a cessation of racing. Air quality is an important consideration in preserving the health and safety of Covered Horses and Riders. The Authority will consider in future rulemaking suggested provisions provided by a commenter concerning lightning protocols.[92]

2165. Infectious Disease Management

Rule 2165 is largely unchanged, except for the modification of the word ''symptoms'' to ''signs'' in paragraph (b). A particular condition of a Covered Horse may be difficult initially to identify as symptom of a particular infectious disease. ''Signs'' refers only to an observed physical condition or behavior. The Authority is also proposing a modification to paragraph (d) to expand the reporting requirements in the event of a disease outbreak at the Racetrack. The proposed modification will now require reporting to the Authority in addition to the applicable state official.

2166. Human Ambulance Support

The Authority proposes several modifications to its human ambulance rule. These modifications were the subject of considerable debate and discussion, and this revised rule has undergone numerous iterations in response to important and thoughtful comments submitted by industry stakeholders over the last few months. All of the proposed changes are intended to improve the efficiency and speed of the medical response to an on-track riding incident, which, in turn, improves the health and safety of all racing participants, including Covered Persons and Covered Horses.

A new proposed rule is added as paragraph (a), which will require Racetracks to ensure that no fewer than 2 properly staffed and equipped Advanced Life Support (''ALS'') ambulances or ALS adapted vehicles are present at the Racetrack during training and racing hours. This is in accord with a comment submitted by the Jockeys' Guild. ALS ambulances are staffed by a minimum of 1 paramedic and 1 emergency medical technician, who are trained in a variety of first aid and resuscitation techniques. The Authority recognizes the economic burden this requirement may place on Racetracks, and in response to these concerns has added a provision allowing the Racetrack Safety Committee to permit a Racetrack to have 1 ALS ambulance or ALS adapted vehicle present during racing and training hours. The Racetrack Safety Committee will scrutinize any such request very carefully, and always with the safety of Riders and Covered Horses firmly in mind.

Paragraph (c) requires Racetracks that operate a training track in addition to a main track to provide at least 1 of the following medical response vehicles dedicated to the training track during training hours: 1 ALS ambulance, ALS adapted vehicle, Basic Life Support (''BLS'') ambulance or BLS adapted vehicle. Requiring a medical response unit to be present on the training track is necessary to effectively and swiftly respond to medical events and incidents that take place at the training track. The Authority again recognizes the economic burden this may place on Racetracks, and in response to these concerns has provided tracks with some flexibility as to the type of ambulance or adapted vehicle present at the track.

Paragraphs (e), (f), and (g) require the tracks to develop and implement (1) a training program for all ambulance staff to ensure they are familiar with and adequately trained on the unique safety and incident response issues present in horseracing; (2) protocols for incidents involving injuries to more than one Covered Person during the same race; and (3) an incentive program to retain skilled and certified ambulance staff experienced in the medical response issues present in horseracing. The Authority believes these measures are critical to ensure on-site medical staff are properly trained and experienced in the unique safety and incident response issues associated with horseracing. Commenters noted that mandating creation of an incentive program for retaining personnel is an overreach into the business operations of the Racetrack.[93] The Authority appreciates this comment and recognizes that incentive programs can take many forms. Thus, the Authority has intentionally left it to the tracks to identify the type(s) and details of the incentive program that will be most effective for that track.

Finally, paragraph (h) imposes a requirement on tracks to have an ALS ambulance or ALS adapted vehicle to follow the field at a safe distance during the running of races. The Authority received comments expressing concern over mandating the use of a chase vehicle without accounting for poor weather conditions or narrow Racetrack.[94] The Authority appreciates and agrees with these commenters and has modified the rule to clarify the steps the track should take in the event Racetrack surface conditions prevent the ALS ambulance or ALS adapted vehicle from safely following the racing field.

2167. Rider Injury Reporting Procedure

Rule 2167 is modified to change the title of the rule from ''Accident Reporting System'' to ''Rider Injury Reporting Procedure'' as this better identifies the subjects addressed in this rule.

The rule is also modified to specify that State Racing Commissions that enter into an agreement with the Authority shall develop the procedures outlined in the rule, rather than the Racetracks. The term ''Rider'' will replace ''Jockey and exercise rider,'' and the modification specifies that data collected under the rule shall be submitted to the Racetrack Risk Management Committee, in addition to the Authority. This change ensures that the Racetrack Risk Management Committee is provided with Rider injury data, a critical element in the Committee's endeavor to ensure the safety of Riders and Covered Horses. A final change is the inclusion of ''safety equipment used'' in the listing of data elements to be collected.

The Jockeys' Guild asked several important questions concerning how the data will be collected and stored. In any Rider injury situation, the first responders and racetrack safety personnel will have available data and information that is submitted by the Jockey to the Authority's electronic platform designated for collection and storage of Jockey eligibility documentation. This system is designed for use at the scene of the injury for

[91] ROCO.

[92] The Jockeys' Guild.

[93] Comment jointly submitted by NYRA, Del Mar, Keeneland, Churchill Downs, Breeders' Cup, and 1/ST Racing.

[94] Mike Hopkins, Tracks.

entry of data concerning the Jockey and the circumstances of the injury. The system will provide an accident report form into which injury information will be entered in detail. The Jockey's records will be stored in a database maintained by the electronic platform referenced above. It will also be available to the Authority for use in further analysis of issues pertaining to Jockeys and Covered Horses. The Jockeys' Guild asked if the information may be shared with the Guild. The Authority is willing to provide the information, provided the transfer is authorized by the Jockey and in compliance with all applicable laws.

2168. Equine Ambulance

Several modifications are proposed for this rule to establish specified performance and equipment requirements. The requirements specify that the ambulance must be able to operate in all weather conditions, that it is properly equipped to stabilize distal limb injuries, and that it is capable of removing a recumbent horse from the racetrack and safely transporting the horse off of association grounds. These requirements will enhance the safety of Covered Horses by ensuring that the ambulance is properly equipped to respond effectively to any equine injury.

2169. Paddock Safety

Rule 2169 is amended to specify that when State Racing Commissions, rather than racetracks, enter into an agreement with the Authority, the State Racing Commissions shall ensure that the protocols outlined in the rule are in place. This provides greater flexibility to the rule, and allows State Racing Commissions that agree to do so to perform the duties in Rule 2169.

2170. Necropsies

Rule 2170 is modified significantly. The current rule states that ''field necropsies are strongly discouraged.'' (In the racing industry, ''field necropsies'' means necropsies performed at the Racetrack.) Field necropsies are extremely rare today and are not favored. The modified rule specifies that necropsies shall be performed at a laboratory. The rule mandates necropsies to be performed on all Covered Horses that die or are euthanized on Racetrack grounds. In addition, the rule is extended to include all horses that die or are euthanized due to, or related to, a musculoskeletal injury within 72 hours of leaving Racetrack grounds. The rule specifies musculoskeletal injuries because these injuries are usually sustained as a result of high-speed training and racing. If the horse leaves the Racetrack after sustaining the injuries, a necropsy must be performed if the horse dies or is euthanized within 72 hours. The 72-hour benchmark is an industry standard; for example, the existing Equine Injury Database by InCompass operates according to a 72-hour reporting criteria for many types of injuries. The 72-hour reporting requirement does not apply to other types of injuries. If, for example, a horse leaves a Racetrack and dies or is euthanized soon afterward due to colic (which has nothing to do with racing and might as easily develop on a farm), a necropsy is required only if the horse dies or is euthanized on Racetrack grounds. Several Racetracks encouraged the Authority to include the musculoskeletal injuries 72-hour specification, and the Authority agrees.[95]

The modified rule requires Racetracks to establish standard operating procedures that specify various elements of necropsy procedure, including contact and coordination between persons and organizations necessary to perform the necropsy, transportation options, secure storage procedures, sound infection control practices, and procedures for reporting necropsy findings.

The modified rule requires Racetracks, or State Racing Commissions that have an agreement with the Authority, to coordinate with a diagnostic laboratory that performs necropsies. A contract is not required because, as noted by several Racetrack commenters, ''it is difficult to require a contract between a state laboratory and the racetrack. Simply, the diagnostic laboratory chosen for a particular necropsy is often based upon volume of horses that can be examined. Some facilities are very limited in the number of horses they can take at one time. This often necessitates sending other horses to another facility. Mandating a contract decreases flexibility in these instances and will lead to an increase in field necropsies which are less effective.'' [96] The requirement in the rule to coordinate with a diagnostic laboratory that performs necropsies means that arrangements concerning means of communication, transportation, and intake procedures must be established. In some states, laboratories may lack the resources necessary to conduct musculoskeletal injury examinations; in this case, the rule authorizes Racetracks and/or diagnostic laboratories to contract with a laboratory that specializes in musculoskeletal injury racehorse examinations. The rule requires initial necropsy findings and subsequent reports to be filed with the Regulatory Veterinarian, the Racetrack Risk Management Committee, and the Authority within 72 hours of receipt.

The modified rule imposes the cost of necropsies upon ''those persons who are responsible for necropsy costs pursuant to existing state rules. In jurisdictions that do not provide for necropsy costs or address the responsibility for payment, the Racetrack shall be responsible for payment.'' Some commenters expressed that Racetracks should not have to bear some or any of the costs of necropsies.[97] Nationwide, Racetracks do bear much of the cost, though states have varying rules and agreements by which the Racetracks, state racing commissions, and horsemen's groups share the cost together. While the Racetracks do bear the cost in the absence of state rules or agreements, nothing in the rule inhibits Racetracks from entering into such agreements.

Necropsies are a vital source of information in the effort to prevent equine fatalities. The information obtained from musculoskeletal injury examinations can help determine the cause of breakdowns and injuries, and can lead to the discovery or enhancement of preventive measures. The necropsy rule as modified will ensure that necropsies are performed effectively and efficiently, and will thereby benefit Covered Horses.

2180. Safety Training and Continuing Education

2181. Uniform National Trainers Test

This rule is unchanged, except for the capitalization of the word ''State'' and additional language clarifying that Trainers shall be knowledgeable of the rules set out in the Racetrack Safety Rule and the Anti-Doping and Medication Control Program.

2182. Continuing Education

Several modifications are proposed for Rule 2182 which establishes continuing education (''CE'') requirements. The rule is modified to make clear that Jockeys and Exercise Riders are required to complete at least 2 hours of safety and rider protocols on an annual basis. Paragraph (4) concerning CE for Stewards is modified to refer generally to continuing education programs that might be approved by the Authority, rather than

[95] This is a comment jointly submitted by NYRA, Del Mar, Keeneland, Churchill Downs, Breeders' Cup, and 1/ST Racing.

[96] *Id.*

[97] ROCO, Joe Wilson.

to the specialized ROAP. ROAP is approved by the Authority and provides high quality CE programs; the modification will allow the Authority to identify other useful CE programs as well.[98]

New requirements are added for Safety Directors and for the Farriers and Horseshoe Inspectors who will have roles and responsibilities under new Rules 2137, 2138, and 2139, which together create a structured procedure for horseshoe inspections. Minor changes include the modification to refer to the new proposed defined term ''Starting Gate Persons,'' rather than starters and assistant starters.

Several commenters asked who will provide the CE and monitor compliance, sanction non-compliance, and set the curriculum.[99] The Authority is developing a CE program that will be a component of the registration portal and will be made available to Covered Persons participating in states where the State Racing Commission has not entered into an agreement with the Authority to implement the provision of Rule 2182. It will allow the entry and monitoring of CE credit hours for the convenience and benefit of all Covered Persons required to complete CE hours.

A state racing commission asked if it would be required to provide CE, rather than identify existing training opportunities.[100] The current rule and modified proposed rule both require a State Racing Commission that has an agreement with the Authority to ''identify existing, or provide locally, training opportunities.'' The State Racing Commission may fully comply with the rule by identifying CE rather than providing it.

2183. Sexual Harassment Prevention

Rule 2183 is a new provision requiring Covered Racetracks to implement and enforce a sexual harassment and non-discrimination policy that offers protection to Covered Persons by prohibiting discriminatory behavior at its facilities. The Authority proposes this new rule in response to reports it received from racing participants pertaining to sexual harassment and discrimination at the Racetrack or in a racing workplace. The reports focused primarily on the absence of an established reporting process for harassing and discriminatory behavior, and other comments touched on a lack of confidence in the reporting system (if any). The Authority aims to address, at least in part, some of these issues by requiring each Racetrack to develop and implement and enforce a sexual harassment and non-discrimination policy that offers protection to Covered Persons by prohibiting discriminatory behavior at its facilities. At a minimum, the policy must define and prohibit sexual harassment and discrimination against Covered Persons within the applicable legal protected classifications and provide an effective process for reporting and investigation of prohibited sexual harassment and discrimination. The policy must also memorialize the Racetrack's authority to impose discipline on any individual found to be in violation of the policy, including but not limited to exclusion from the Racetrack (and all related Racetrack grounds and facilities) and any racing activities.

Several commenters expressed the view that this rule exceeds the scope of the Authority's jurisdiction under the Act.[101] The Authority disagrees. Part of the Authority's statutory mandate is to exercise independent and national authority over the safety, welfare, and integrity of Covered Persons. This rule is consistent with that mandate.

In further support of this Rule, the Authority refers the Federal Trade Commission to a report recently commissioned by controlling bodies of racing in Australia (Racing Victoria Limited, Harness Racing Victoria, and Greyhound Racing Victoria), which demonstrates that harassment and discrimination are widespread in the racing industry and underscores the need for well-defined channels for reporting sexual harassment and discrimination in the racing workplace.[102]

2190. Jockey and Starting Gate Person Health

2191. Drug and Alcohol Testing

Currently, Rule 2191 requires State Racing Commissions electing to enter into an agreement with the Authority to develop and implement a testing program for drugs and alcohol for Jockeys. The rule is modified to add Starting Gate Persons to the testing program. Starting Gate Persons perform a vital role in handling horses and loading them into the starting gate. Ensuring that Starting Gate Persons are not impaired is important for their safety and the safety of Jockeys and Covered Horses. The Jockeys' Guild urged that the program be required for additional categories of racing officials.[103] The Authority agrees that this is an important proposal to consider in future rulemaking. At present, the most immediate need is to ensure that both Jockeys and Starting Gate Persons are subject to drug and alcohol testing, and that will be accomplished under the terms of the proposed rule modification.

2192. Concussion Management

A minor modification is proposed for Rule 2192, Concussion Management. Paragraph (a)(1) is amended to make clear that the requirement that Jockeys must acknowledge in writing that they have been made aware of the Concussion protocols is an annual requirement, rather than a requirement to review the protocols ''in place for the facility at which they are riding;'' the quoted phrase will be deleted in the modification.

The Jockeys' Guild stressed the importance of developing a unified national concussion management protocol with return to ride guidelines established by medical experts in concussions. The Jockeys' Guild emphasized that the return to ride protocol should operate to clear a Jockey to return to riding for all Jockey injuries, and not just concussions. The Authority's return to ride protocol does embrace all Jockey injuries. The Authority recognizes the vital importance of these components of racing safety. The Authority has developed a national concussion management protocol, as well as a return to ride protocol in collaboration with the third-party medical records storage organization with which the Authority has partnered. Both protocols are currently being implemented nationwide.

2193. Insurance

Rule 2193 requires Racetracks, in states that do not afford Jockeys workers compensation insurance, to maintain primary accidental medical expense coverage for all Jockeys. The rule is modified to clarify that the insurance covers training as well as racing. In addition, the modified rule will require that the current policy's declaration page shall be posted in the Jockeys'

[98] ROAP suggested the continued use of the term ''ROAP,'' but the Authority believes the better course is to avoid identifying a particular program by name, since a number of programs may ultimately be identified.

[99] ROCO, HPBA, Washington Horse Racing Commission.

[100] Kentucky Horse Racing Commission.

[101] *See, e.g.,* comment jointly submitted by NYRA, Del Mar, Keeneland, Churchill Downs, Breeders' Cup, and 1/ST Racing; comment submitted by Mike Hopkins.

[102] *See* Racing Integrity Commissioner, Independent Review into Victorian Racing Industry Victim Support and Complaint Processes (Aug. 31, 2023), *available at https://racingintegrity.vic.gov.au/__data/assets/pdf_file/0026/201869/Independent-Review.pdf.*

[103] The Jockeys' Guild.

quarters prior to the beginning of the racing season.

Medical insurance is a vital component of ensuring the well-being of Jockeys, and the extension of medical insurance to training activities is a natural and beneficial extension of insurance coverage. The majority of Racetracks across the United States already provide this coverage, but the rule makes it an explicit and uniform requirement. The requirement that the declaration page be posted in the Jockey's quarters allows Jockeys to review the coverage, and to obtain the name of the insurance company involved in case a Jockey wishes to inquire further about coverage.

2200. Specific Rules and Requirements of the Racetrack Safety Program

2210. Purpose and Scope

The Authority proposes minor stylistic modifications to this rule along with elimination of the preemption language referenced in paragraph (c) as it is a general statement of law that need not be included in this rule.

2215. Welfare and Deprivation of Care

The Authority proposes this new rule to establish a prohibition on abusive practices, neglect and mistreatment of Covered Horses that is not otherwise covered by the rules and to incorporate existing industry principles and standards codified in the National Thoroughbred Racing Association Safety and Integrity Alliance Code of Standards and the Association of Racing Commissioners International Model Rules.

Commenters requested that the Authority describe with particularity the types of conduct prohibited under this rule.[104] Abuse, neglect or mistreatment of a Covered Horse, however, may take many forms and is not easily capable of definition. Thus, the Authority believes that this rule, like the Code of Standards and the ARCI Model Rules, should remain open-ended to provide flexibility in its application to varied circumstances that could constitute abuse, neglect or mistreatment of a Covered Horse.

2220. Attending Veterinarian

The Authority proposes new language to Rule 2220(a) to specify that an Attending Veterinarian must be licensed by a ''State's board of veterinary examiners (or applicable veterinary licensing board),'' in addition to the current requirement of licensure by the State Racing Commission in the jurisdiction in which the Attending Veterinarian is attending to Covered Horses.[105]

Several commenters noted that treatment should not be limited to Attending Veterinarians, as Association Veterinarians often provide emergency care as well as supportive care for Covered Horses that are injured.[106] The Authority agrees and has proposed new introductory language to Rule 2220(a), authorizing Regulatory Veterinarians and Lead Veterinarians (which are appointed by the Authority and may include Association Veterinarians) to administer emergency treatment to Covered Horses on Racetrack grounds when the Attending Veterinarian is not present.[107] This exception is necessary to protect the safety and welfare of Covered Horses in emergency situations.

2221. Treatments by Attending Veterinarian

In addition to minor modifications to include the words ''Responsible Person'' and ''Covered Horse,'' the word ''drug'' is replaced by ''Controlled Medication'' in the rule's prohibition against prescribing, dispensing, or administering a Controlled Medication except in the context of a valid Veterinarian-client patient relationship. The term ''Controlled Medication'' is preferred to avoid confusion, to clarify what is being referenced in this rule, and to correspond to the term as used and defined in the Anti-Doping and Medication Control Program Rules.

2230. Treatment Restrictions

Paragraph (a) of the rule is modified to remove the qualifier ''at locations under the jurisdiction of the State Racing Commission'' from the provision that now states in pertinent part that only Responsible Persons ''or their designees shall be permitted to authorize veterinary medical treatment of Covered Horses under their care, custody, and control.'' The language is deleted as improperly restrictive; the restriction concerning the authorization of veterinary medical treatment exists regardless of where the Covered Horse is located. This further promotes the welfare of Covered Horses.

Paragraph (b) restricts to Veterinarians the power to prescribe medication with instructions for administration by a Responsible Person for a Covered Horse. Paragraph (b) is modified to make clear that a Veterinarian must be licensed to practice veterinary medicine in the applicable state only if such licensure is required in the State. Veterinarians often travel from state to state, and should not be required to be licensed to practice veterinary medicine in a particular state if that state does not require such licensure. In addition, paragraph (b) is modified to delete the requirement that the Veterinarian be licensed by the State Racing Commission; instead, the rule now explicitly requires that the Veterinarian be registered with the Authority.

Paragraph (c) generally prohibits contact by an Attending Veterinarian with a Covered Horse within the 24 hours before post-time of race in which the Covered Horse is scheduled to compete. The current rule permits an exception to this restriction in ''an emergency.'' This phrase is replaced by more precise language that permitting contact if ''such contact is necessitated by an imminent risk to equine welfare, health, or safety.'' The rule is also modified to require that any contact with the Covered Horse within the specified 24 hours be reported to the Regulatory Veterinarian. This reporting requirement is necessary to prompt intervention by the Regulatory Veterinarian to determine whether a Covered Horse should be scratched from the race.

The introductory clause ''notwithstanding Rule 2220(a)'' is added to paragraph (d). This clause clarifies that paragraph (d), which permits the Regulatory Veterinarian (and, by extension, the Lead Veterinarian) to administer emergency treatment to Covered Horses on Racetrack grounds when the Attending Veterinarian is not present, is an exception to Rule 2220(a), which states that only Attending Veterinarians may attend to Covered Horses at locations under the jurisdiction of the State Racing Commission. Paragraph (g), governing the ability of persons with medical conditions to possess a syringe at locations under the jurisdiction of the State Racing Commission, is modified to require that any request for permission to possess a syringe must be in writing, and to clarify that the person making the request must submit a letter from a physician to the Stewards or the State

[104] Dr. Jeff Blea and the CHRB.

[105] The additional language was suggested by the HBPA.

[106] This is a comment jointly submitted by NYRA, Del Mar, Keeneland, Churchill Downs, Breeders' Cup, and 1/ST Racing.

[107] The new introductory language in Rule 2220(a) provides, ''[s]*ubject to Rule 2230(d),* only Attending Veterinarians . . . may attend to Covered Horses at any location under the jurisdiction of the State Racing Commission.'' (emphasis added). Rule 2230(d) authorizes the Regulatory Veterinarian to administer emergency treatment to horses on Racetrack grounds when the Attending Veterinarian is not present. Rule 2134(c) provides that the ''Lead Veterinarian(s) shall perform all of the duties, obligations and responsibilities of the Regulatory Veterinarian(s) as specified in these Rules.'' Thus, this exception permits the Regulatory Veterinarian(s) and Lead Veterinarian(s) to attend to Covered Horses in emergency situations.

Racing Commission in connection with the request. This modification is necessary to clarify the process for submitting requests to possess a syringe on Racetrack grounds.

2240. Veterinarians' List

This rule establishes the Veterinarians' List, which is a list of Covered Horses that have compromised health or unsoundness and prohibits these Covered Horses from racing. Rules 2240 through 2242 outline the process by which Covered Horses are determined to have recovered from their illness or unsoundness and may return to racing. Covered Horses that participate in a race while medically or physically compromised are at risk for exacerbating the illness or physical injury, and in some cases having a career ending or catastrophic injury, also risking severe injury to the Jockey. The rule prevents affected Covered Horses from racing until the Covered Horses have recovered from their illness or injury. The rule is designed to protect Covered Horses from worsening an existing condition, and allow for recovery, rehabilitation, and return to racing in a healthy state. The rule is intended to protect Jockeys from injury associated with a fall from a Covered Horse due to the Covered Horse incurring a severe injury during a race and falling at high speed. Racetracks will benefit from the prevention of horse fatalities during races. Racetracks and Racing Commissions will benefit because the Veterinarians' List will be shared among all racing jurisdictions so that Covered Horses put on the list at one jurisdiction will be identifiable when the Covered Horse moves to another jurisdiction.

The Authority proposes several modifications to this rule. Paragraph (b) is modified to state with more precision, and in specific respects to alter, the current rule governing those Covered Horses required to be placed on the Veterinarians' List. The modification deletes the phrase ''positive test or overage, administration of a medication invoking a mandatory stand down time,'' and the phrase ''positive Out of Competition Test.'' The Authority proposes deletion of these phrases as no longer necessary with the implementation of the ADMC Program. Covered Horses with a positive test may be subject to periods of ineligibility under the ADMC Program, which, like the Veterinarians' List, prevents the Covered Horse from racing while in a compromised state.

The current language setting out the triggering conditions or events that require placement on the Veterinarians' List is re-written to distinguish placement on the Veterinarians' List by the Regulatory Veterinarian from placement on the Veterinarians' List by the Authority. Generally speaking, the Regulatory Veterinarian regulates and monitors the physical condition of Covered Horses at the Racetrack, and may place Covered Horses on the Veterinarians' List for physical conditions such as unsoundness, injury, Epistaxis, and other conditions listed in the rule. In the new language, three conditions in particular (unsoundness, injury, Epistaxis) prohibit Covered Horses from participating in a Workout for 7 days. This is an added safety measure for the Covered Horse.

The Authority is permitted to place Covered Horses on the Veterinarians' List for any of the grounds specified in Rule 2240(b)(3)(i) through (vii). These grounds correspond to treatments or racing status that the Authority has the ability to monitor through required reporting to the Authority by Responsible Persons and Attending Veterinarians and include:

(i) Covered Horses which have not started in more than 365 days;

(ii) unraced Covered Horses which have not made a start prior to January 1 of their 4-year-old year;

(iii) Covered Horses which have been administered Shock Wave Therapy;

(iv) Covered Horses which have been administered an intra-articular injection;

(v) Covered Horses which have been administered clenbuterol;

(vi) Covered Horses designated by the Agency; and

(vii) Covered Horses currently on a Veterinarian's List in any state, if trying to enter in a Covered Horserace.

Several of these categories are added to this rule to harmonize with the ADMC Rules and to ensure that all reasons for placement on the Veterinarians' List are included in a single location for easy reference by stakeholders. Category (vii) is included to account for Covered Horses that race in Covered Horseraces and non-Covered Horseraces over the course of their career. This ensures that any Covered Horse placed on any Veterinarians' List—regardless of jurisdiction—is accurately captured by the Authority's Veterinarians' List.

Rule 2240(c) is modified to use the phrases ''Responsible Person'' and ''Designated Owner'' in place of the words ''trainers and owners.'' The essential requirement of the rule remains the same: the Responsible Person and Designated Owner are required to be notified within 24 hours that their Covered Horse has been placed on the Veterinarians' List. The Authority received several comments pertaining to this 24-hour notification requirement, asking who is responsible for sending the notification as well as the method for notifying the Responsible Person and Designated Owner.[108] Under current practice, notifications are being delivered through the Authority's portal to the Responsible Person and the Designated Owner (their contact information is on file with the Authority) when the Covered Horse is placed on the Veterinarians' List for a category that requires the Covered Horse to complete a workout for removal from the Veterinarians' List, such as Epistaxis, unsoundness, no starts within the last 365 days, and no start prior to January 1 of the Covered Horse's 4-year-old year. The Authority is currently developing a system to notify the Responsible Person and Designated Owner when the Covered Horse is placed on the Veterinarians' List for all other reasons. The Authority anticipates this notification system will be live when these rules take effect.

2241. Duration of Stay on the Veterinarians' List

Rule 2241 specifies the duration of periods for which Covered Horses must remain on the Veterinarians' List. The provisions concerning multiple placements on the Veterinarians' List for unsoundness and Epistaxis remain essentially the same—multiple placements on the Veterinarians' List within a 365-day period could subject the Covered Horse to an extended period of time on the Veterinarians' List. This rule is designed to identify Covered Horses that may be at an increased risk of injury and mandate additional recovery time.

Physical distress, medical compromise, injury, infirmity, and heat exhaustion are added to illness in paragraph (a)(5) as conditions requiring a Covered Horse to remain on the Veterinarians' List for 7 days. These additions are intended to correct an oversight in the original safety rules which did not provide a duration of stay for these conditions. The 7-day period on the Veterinarians' List is consistent with standard industry practice. The phrase ''a minimum'' is also added to this paragraph to provide discretion to the Regulatory Veterinarian to extend the duration on the Veterinarians' List.

[108] Graham Motion, Tom Robbins, Breeders' Cup, ROCO, Dr. Lynn Hovda, and a comment submitted jointly by submitted by NYRA, Del Mar, Keeneland, Churchill Downs, Breeders' Cup, and 1/ST Racing.

The Authority received a comment in response to paragraph (a)(6), questioning whether a Covered Horse is permitted to participate in training activities while on the Veterinarians' List following Shock Wave Therapy treatment.[109] The Authority supplemented the language in this rule to clarify that Covered Horses treated with Shock Wave Therapy are prohibited from participating in a Workout for 14 days. This permits the Covered Horse to continue light training while undergoing Shock Wave Therapy treatment, which was a request submitted by various industry participants.[110]

Language is added to paragraph (a)(7) to incorporate the provisions in Rule 4222 of the Anti-Doping and Medication Control Program regarding the standdown times following administration of an intra-articular injection to a Covered Horse. The Authority believes the use and regulation of intra-articular injections is a safety issue that is best addressed in the Rule 2000 Series. This paragraph (a)(7) requires Covered Horses administered any intra-articular injection to be placed on the Veterinarians' List for 14 days and further prohibits the Covered Horses from participating in a Workout for 7 days. However, consistent with Rule 2271(a)(12), if the Covered Horse is administered a corticosteroid intra-articular injection in the fetlock joint, the duration on the Veterinarians' List is extended to 30 days.

The Authority received a question asking whether a Covered Horse may apply to perform a Workout 7 days into the 14-day period on the Veterinarians' List following administration of an intra-articular injection.[111] As noted above, this rule has been modified to clarify that, with the exception of corticosteroid intra-articular injections in the fetlock joint, a Covered Horse may participate in a Workout and resume training activities 7 days after being placed on the Veterinarians' List.

2242. Removal of Covered Horses From the Veterinarians' List

Rule 2242 sets forth the criteria for removal of a Covered Horse from the Veterinarians' List. Under the current rule, a process is established by which the Trainer and the Attending Veterinarian, after observing the horse jog, may submit a co-signed statement that the Covered Horse is fit to perform a Workout. New language will address diagnostics required by the Regulatory Veterinarian and application by the Trainer for permission to perform a Workout, such application to be made no less than 48 hours in advance of the Workout. A new provision in this rule specifies that: ''If the Covered Horse does not perform the Workout for the Regulatory Veterinarian within 7 days, the Trainer and Attending Veterinarian must observe the Covered Horse again at the jog and submit a new co-signed statement.'' This is to ensure that the co-signed statement and Workout are taking place as contemporaneously as practically possible to avoid any significant changes to the health of Covered Horse between the time of the jog (and co-signed statement) and the Workout.

Under the current rule, a Covered Horse may be released if the Regulatory Veterinarian determines that there are no signs of Epistaxis, physical distress, medical compromise, or unsoundness. New language requires this determination to be made after the Workout, but during a period that is no less than 30 minutes and no greater than two hours after the Workout.[112] This range enhances safety and is in the best interests of the health and welfare of the Covered Horse.

Additional new language requires the collection of a blood sample after the Workout, and requires the Regulatory Veterinarian who conducts the Workout to communicate the results to the Regulatory Veterinarian who placed the Covered Horse on the Veterinarians' List. Currently, some racing jurisdictions require a blood test before a Covered Horse may be removed from the Veterinarians' List. The Authority agrees with this requirement as it enhances equine welfare. Thus, the Authority proposes this new requirement as a measure to improve equine safety and welfare of Covered Horses and to benefit the industry by creating a uniform standard for removal of Covered Horses from the Veterinarians' List.

A new provision, in paragraph (c), states: ''A Covered Horse which has not started in more than 365 days or has not made a start prior to January 1 of its 4-year-old year may perform a Workout in the presence of the Regulatory Veterinarian beginning 335 days since its last start or, if unraced, December 1st of its 3-year-old year. If the Covered Horse has not started within 60 days of being released by the Regulatory Veterinarian, the Covered Horse must fulfill the requirements in 2242(a) again.'' This ''pre-clearance process'' is proposed at the request of stakeholders and provides a mechanism whereby the Covered Horse may complete a Workout and submit to a blood sample beginning 335 days since the last start. If cleared by the Regulatory Veterinarian, the Covered Horse will be permitted to enter a race immediately (provided it is no later than 60 days from the date the Covered Horse was cleared by the Regulatory Veterinarian) as opposed to starting or restarting the clearance process beginning on day 365 or later. The practical effect is that horses that are approaching race readiness will not have an additional wait time imposed if they can be pre-authorized. The time between requesting an appointment to work off the Veterinarians' List, being cleared by the testing lab, and having the right race come up for entry can be in excess of 30 days. The 60-day reset is consistent with pre-existing standard industry practice.

The following language is to be deleted from the rule: ''In addition to the requirements set forth herein and any requirements of the Protocol, if a Horse is placed on the Veterinarians' List for a positive test or overage of a primary substance invoking a mandatory stand down time, a positive Out-of-Competition test, or any other veterinary administrative withdrawal, the Horse shall be prohibited from entering a Race and may be released from the Veterinarians' List only after also undergoing a post-Workout inspection by the Regulatory Veterinarian.'' As noted above, the Authority is deleting language from Rule 2240 regarding the placement of Covered Horses on the Veterinarians' List for positive tests. Accordingly, the Authority proposes deletion of the language in Rule 2242 concerning the corresponding procedures for removal of these horses from the Veterinarians' List.

Multiple commenters requested clarification as to the permitted activities while a Covered Horse is on the Veterinarians' List.[113] Placement on the Authority's Veterinarians' List restricts a Covered Horse from participating in a Covered Horserace during the applicable period of time but, unless expressly prohibited in the rules, the Covered Horse may participate in a Workout and other training activities.

[109] Tom Robbins.

[110] *See, e.g.,* Dr. Scott Hay.

[111] Breeders' Cup.

[112] This is in response to comments received from Dr. Lynn Hovda, Tom Robbins, Dr. Jeff Blea, and a comment jointly submitted by NYRA, Del Mar, Keeneland, Churchill Downs, Breeders' Cup, and 1/ST Racing.

[113] Breeders' Cup and the Kentucky Horse Racing Commission.

2250. Covered Horse Treatment History and Records

2251. Veterinary Reports

Rule 2251 sets forth the reporting requirements imposed upon Veterinarians who treat Covered Horses. The current rule specifies the information that must be provided; these requirements are modified to apply to ''treatments, procedures, and surgeries performed at a location licensed by a State Racing Commission or a Training Facility.'' An additional category is established in new paragraph (c): ''For treatments, procedures, and surgeries performed at a location that is not a Training Facility or is not licensed by a State Racing Commission, and in addition to the information required to be submitted by Veterinarians pursuant to Rule Series 3000, every Veterinarian who examines or treats a Covered Horse shall, within 24 hours of ambulatory care, outpatient care, or discharge from a clinic or hospital, submit to the Authority the following information in an electronic format designated by the Authority:. . .'' In response to industry feedback, the Authority proposes separate reporting requirements to ease the administrative burden on referral clinics and other medical facilities that are not licensed by the State Racing Commission. In some instances, these clinics may be providing multiple treatments per day to a Covered Horse. To reduce their compliance obligation, the Authority has limited the reporting requirements of these facilities to information that is relevant to racing eligibility and the safety and health of Covered Horses.

A commenter suggested that ''all HISA Registered Vets'' should be included at the beginning of paragraph (a) of this Rule.[114] All veterinarians that treat Covered Horses are required to register with the Authority. Thus, the Authority does not believe the addition of this language is necessary. Moreover, the Authority does not want to exclude unregistered veterinarians from reporting information to the Authority pertaining to the treatment of Covered Horses. Another commenter asked what is meant by the term ''treatments'' as used in this rule.[115] This term is intended to capture the types of treatment or practices that would require the Veterinarian to generate a written record under applicable state veterinary laws.

Finally, the Authority is proposing new language to this Rule to explicitly authorize it to utilize the information included in the treatment records for purposes of research conducted by the Authority in accordance with its mandate under the Act.

2252. Responsible Persons' Records

Rule 2252 imposes upon Responsible Persons the requirement to maintain specified categories of records of medical, therapeutic, and surgical treatments and procedures for every Covered Horse under their control. The rule specifies that treatment includes ''the administration of medications that are prescribed by a Veterinarian but administered by the Responsible Person or the Responsible Person's designee . . . and specifically excludes medications or procedures directly administered by a Veterinarian.'' The Authority proposes deleting all references to ''Veterinarians licensed by the State Racing Commission'' as duplicative of the definition of Veterinarian in Rule 1020, which already includes a licensing requirement.

A commenter questioned whether the current version of (b)(3) (''specifically excludes medications or procedures directly administered by a Veterinarian. . . .'') contradicts with the wording in Rule 3040(8).[116] The Authority agrees with this comment and has revised (b)(3) to include the introductory phrase ''notwithstanding Rule 3040(8)'' to avoid any potential conflict between the rules.

Additional language is added to clarify that the approval of the Authority is required for State Racing Commissions and Stewards to access treatment records, and that no provision of the rules shall limit the Authority's use of records submitted under the Rule 2000 Series. These changes are made to ensure the Authority may use the information for purposes of research conducted by the Authority in accordance with the Horseracing Integrity and Safety Act to enhance the safety and welfare of Covered Horses.

2253. Records for Covered Horses Shipping to the Racetrack

The Authority proposes a few modifications to Rule 2253 pertaining to records for Covered Horses shipping to a Racetrack. Currently, the rule requires the Responsible Person to maintain specified treatment information regarding the Covered Horse for the ''previous thirty (30) days.'' The Authority proposes removing this requirement to ensure all treatment information is being maintained by the Responsible Person. Moreover, the Authority proposes the addition of new categories of information to be maintained by the Responsible Person, including daily logs of exercise activities and daily logs of treatments and procedures. Finally, consistent with Rule 2251 and Rule 2252, the Authority has proposed new language authorizing it to use the information for purposes of research in accordance with the Act.

A commenter asked whether the trainer is responsible for maintaining these records or whether this rule requires submission to the Authority or someone else.[117] This Rule 2253 requires the Responsible Person to obtain and maintain the information set out in the Rule; there is no language in this Rule requiring the information to be submitted to the Authority, though the Authority may request the information at any time.

2260. Claiming Races

2261. Transfer of Claimed Covered Horse Records

Claiming races are races in which horses entered in the race may be purchased for the claiming price by a new trainer/owner. The horse becomes the property of the new trainer/owner as soon as the horse leaves the starting gate in the race. In the case of a successful claim (horse purchase), Rule 2261 effects transfer of medical records of the horse to the new trainer/owner. Knowledge of the past medical history provides information to the new trainer/owner so that the horse may be managed appropriately, given its history, and obtain the best training and medical care for the horse's optimal health. The proposed modifications to this Rule clarify the records to be transferred to the new owner as well as the process for effectuating the transfer of information.

2262. Void Claim

Rule 2262 contains the Authority's void claim rule. The rule currently in effect provides the claim exceptions that if the horse dies, is euthanized, is vanned off (due to the inability of the horse to exit the racecourse), becomes unsound or medically compromised, bleeds from the nostrils (and presumably the lungs) after the race, or has a positive drug test, then transfer of the horse does not occur. The rule protects the purchaser of the horse from acquiring an injured, compromised, or dead horse and provides disincentives to trainers/owners to enter a horse that is compromised from latent injury or ailment in a race with the intent for another trainer/owner to take responsibility by claiming the horse in

[114] The Jockey Club.

[115] Keeneland.

[116] HBPA.

[117] ROCO.

the race. The rule does permit the claimant the option not to void the claim if, prior to the race in which the Covered Horse is claimed, the claimant elects to claim the Covered Horse by checking the appropriate box on the claim slip regardless of whether the Regulatory Veterinarian determines the Covered Horse will be placed on the Veterinarians' List for Epistaxis or as unsound or lame. The option not to be voided by the potential new trainer/owner is useful in circumstances in which a compromised horse may be rehabilitated after the race, or where the new trainer/owner desires to acquire a horse for breeding purposes as opposed to continuing to train and race.

The void claim rule protects Covered Horses from being raced when they are not physically or medically fit to do so. The rule protects Covered Persons from purchasing a compromised horse. Racetracks, racing commissions, and the racing industry benefit because compromised horses in races are more likely to suffer a catastrophic injury, and thus the rule prevents some catastrophic or career ending injuries. The rule is now modified in a number of ways to enhance equine safety.

The current rule requires the claimed horse to go to the test barn for observation by the Regulatory Veterinarian. New provisions are added that provide more detailed requirements for the observation. A modification specifies that the horse may be sent to a test barn ''or approved secured area,'' since the test barn at some Racetracks is not large enough to accommodate claimed horse inspections. New provisions include a minimum period of 30 minutes during which the horse shall be periodically observed, unless excused by the Regulatory Veterinarian; a requirement that the horse be jogged to determine if the horse exhibits signs of Epistaxis or is unsound or lame; and a specific direction that the horse be observed for Epistaxis, or any other clinical abnormalities. If a horse is placed on the Veterinarians' List for Epistaxis, or is unsound or lame, a new rule requires the Regulatory Veterinarian to inform the Stewards, who may order the claim to be voided.

Current language has been re-worked and new provisions added stating that if a post-race sample collected from a horse that is claimed results in an Adverse Analytical Finding (as that term is defined in the Rule 1000 Series), the claimant is provided 48 hours to exercise the option to void the claim. This rule was the subject of much analysis and consideration during its development, and comments expressed a number of divergent views concerning the rule. If a Prohibited Substance is determined to be present in the Covered Horse, the claimant should have the option to void the claim in part because the Prohibited Substance may have enhanced the performance of the horse. Claimants should have the option to void the claim under these circumstances, since the horse's performance in the race is not reflective of its actual abilities in a race. However, in those instances in which the Prohibited Substance does not alter the value of the horse to the claimant, the claimant should have the option to keep the horse. This might be the case if the claimant desires to purchase the horse for breeding purposes, rather than to run the horse in future races.

New provisions are added that specify that the claim may not be voided if the Covered Horse makes a start under the new owner, if the new owner fails to exercise due care in maintaining and boarding the Covered Horse, makes material alterations to the horse, or if the Covered Horse dies or is euthanized, as these acts demonstrate an intent on the part of the claimant to exercise ownership of the horse and could result in physical changes to the horse. The meaning of the term ''material alterations'' is left open-ended to provide flexibility in its application to varied circumstances that can constitute and alteration.

Finally, a new provision is added to permit the claimant whose claim is voided to recover all sums paid, as well as reasonable expenses incurred for care of the horse while the horse was in the care, custody, and control of the claimant. This conforms with pre-existing industry practice.

2263. Waiver Claiming Option

Under the Waiver Claiming Option Rule, if a horse trainer/owner has rehabilitated a horse and wishes to start the horse in a race, the trainer/owner can start the horse in a claiming race without the possibility of the horse being claimed by another trainer/owner. This allows a horse trainer/owner to take time to rehabilitate a horse and then start the horse in a race without the possibility of losing the horse to another trainer/owner. The rule incentivizes trainers/owners to rehabilitate horses for long term health and an extended racing career. A new provision is added which allows a Responsible Person to declare a Covered Horse to be ineligible to be claimed for a second consecutive race provided certain conditions are met, including (1) the waiver was asserted in the first race back; (2) the horse does not win its first race back; (3) no change in majority ownership; and (4) the horse is entered in a claiming race with a claiming price equal to or greater than the claiming price for which it last started. Permitting a second consecutive waiver encourages owner/trainer continuity and is in the best interest of the Covered Horse.

2270. Prohibited Practices and Requirements for Safety and Health of Covered Horses

2271. Prohibited Practices

This rule regulates the use of practices that: (1) mask pain to allow horses to train and race with injuries or joint disease (*e.g.,* neurectomy, shock wave therapy, electrical medical devices); (2) induce inflammation and pain with the intent to speed healing of injured structures (*e.g.,* pin-firing); or, (3) cause pain to stimulate a horse to run faster (*e.g.,* electrical shock). Certain specific practices (such as shock wave therapy) are also addressed in specific rules in this section. The rule is intended to prevent abuse of racehorses by preventing the masking of pain that allows horses to train and race while injured, and by preventing the stimulation of pain to coerce racehorses to perform beyond their athletic potential. Inhumane and dangerous practices on racehorses will be prevented.

This rule also prohibits horses within the foal crop of 2023 or later from participating in a Covered Horserace or a Timed and Reported Workout if they have been subject to pin-firing of any structure or freeze-firing of the shins (dorsal surface of the third metacarpal/metatarsal bones). These procedures are associated with permanent, material alterations to the horse and this rule is designed to deter owners, trainers, and veterinarians from performing these practices on future Covered Horses.

Paragraph (a)(9) is modified to prohibit use of any medical therapeutic device requiring an external power source within 48 hours prior to the start of the published post time for which a Covered Horse is scheduled to race. The Authority received two comments suggesting the addition of ''battery operated devices'' to this list; however, the Authority believes these devices are already captured by the rule as written.[118]

Sections (a)(11) and (a)(12) of the rule contain mandatory standdown times following the administration of an intra-articular injection. Any Covered Horse treated with any intra-articular injection of any joint shall not be permitted to

[118] Dr. Lynn Hovda and a comment jointly submitted by NYRA, Del Mar, Keeneland, Churchill Downs, Breeders' Cup, and 1/ST Racing.

perform a Workout for 7 days following treatment or participate in a Covered Horserace for 14 days following treatment. However, if the Covered Horse is treated with a corticosteroid intra-articular injection of the metacarpophalangeal or metatarsophalangeal joint, the horse shall not be permitted to perform a Workout for 14 days following treatment or participate in a Covered Horserace for 30 days following treatment. One commenter opposed this increased standdown time for fetlock joint injections, claiming that these joints should be treated the same way as other joints.[119] The Authority disagrees. Approximately 50 percent of musculoskeletal fatalities are attributable to an injury to the fetlock joint. The administration of corticosteroids to the fetlock joint can alleviate inflammation and pain associated with abnormalities that promote injury in this joint, leading to potential overexertion, injury, and catastrophic breakdown. Introduction of a mandatory standdown time from training and racing activities provides an additional safety margin for horses to recover from abnormalities that promote injury and reduce susceptibility to catastrophic injury to this high-risk joint.

One commenter stated that the increased standdown time for fetlock joint injections should be limited to corticosteroids.[120] The Authority agrees with this recommendation and the proposed language limits the increased standdown time to corticosteroid injections.

Finally, a new penalty section sets forth escalating fines and suspension periods to be assessed against the Responsible Person for successive violations within a 365-day period. In addition, if the Covered Horse involved is the subject of two or more violations with a 365-day period, the Covered Horse may be placed on the Veterinarian's List for 30 days.

2272. Shock Wave Therapy

This rule regulates the use and monitoring of a treatment (Shock Wave Therapy) used on bone, tendon, and ligament injuries. Shock Wave Therapy can also provide pain relief that allows affected horses to continue to train and race on a mild injury. Continued training and racing on a mild injury could precipitate a career ending or catastrophic injury. The rule addresses the problem by closely monitoring treatments and requiring treated horses to refrain from training at high speed or racing until an appropriate time for rehabilitation of the injury that was treated. The rule enhances safety of Covered Horses by reducing the incidence of career ending and catastrophic injuries. Because Jockey injuries are associated with horse falls due to catastrophic injuries during high-speed training and racing, the rule also enhances Jockey safety and welfare.

There are new reporting requirements incorporated into this rule. The industry has long recognized the concern that underreported Shock Wave treatments could be associated with equine musculoskeletal injury. Administration of Shock Wave Therapy must be reported by the treating Veterinarian to the Authority within 24 hours after treatment and by the Responsible Person to the Regulatory Veterinarian within 48 hours after treatment. This dual-reporting requirement is essential for promoting Rider and equine welfare and ensures the Covered Horse is placed on the Veterinarians' List following Shock Wave Therapy treatment.

This rule also contains a slight expansion to the registration requirement for machines used to administer Shock Wave treatment. The rule now makes clear that these machines are required to be registered with the Authority, if they are being used to treat Covered Horses. The Authority's previous registration requirements reflected the industry's interest in understanding the locations where Shock Wave treatments were being administered. Knowing that Shock Wave treatment machines are in use at facilities not licensed by State Racing Commissions, this new registration requirement is intended to extend the industry's pre-existing registration requirements to include unlicensed locations.

Finally, this rule contains enhanced penalties for a failure to report Shock Wave Therapy treatment. A commenter expressed concern over the leniency of the existing penalties for a failure to report treatment, which included a 5-day suspension for a first offense.[121] The commenter urged the Authority to adopt the penalty schedule established in the ARCI Model Rules, which carries a minimum 1-year suspension and $10,000 fine for a first offense. The Authority agreed that enhanced penalties are in the best interests of Covered Horses and Riders and has proposed a penalty structure that more closely aligns with the ARCI Model Rules.

2273. Other Devices

This rule currently prohibits the possession of any device which is designed to increase or retard the speed of a Covered Horse, with the exception of riding crops. The rule is in place in all US racing jurisdictions. The penalty for noncompliance is not standard across jurisdictions and varies from a 10-year loss of racing license to suspensions and fines. The rule is intended to standardize the language nationally and standardize sanctions. Stewards will have national standardized language and sanctions when adjudicating cases and issuing sanctions. Covered Persons will know that the industry considers the use of performance-affecting devices a serious issue.

Initially, the rule was intended to cover horses in racing and training. Now the coverage of the rule is expanded to embrace horse welfare in the context of any use of prohibited devices upon Covered Horses. The rule is modified to prohibit devices that are ''purchased, designed, or used with the intent'' to retard or increase the speed of a Covered Horse. This will preclude, for example, use of a cattle prod on the grounds, even though a cattle prod is not specifically designed to be used on a horse. The phrase ''or during a Workout'' is deleted as unnecessary due to the fact workouts are conducted on Racetrack grounds.[122]

A commenter suggested that various specific items that might be used as prohibited devices be specifically listed.[123] The Authority prefers to the more flexible language referring to ''electrical, mechanical, or other devices,'' as it expresses more broadly any type of device is prohibited that may be used to retard or increase the speed of a Covered Horse and will also capture devices that are not currently known by the Authority.

2274. Other Device Penalties

Rule 2274, which provides the penalties for violation of Rule 2273, is modified to impose restrictions upon registration with the Authority as the penalty for violations of Rule 2273. The modification deletes the reference to loss of eligibility ''to obtain a racing license in all racing jurisdictions.'' The change is made because restrictions upon registration with the Authority are more appropriate penalties imposed by the Authority.

[119] Dr. Scott Hay.

[120] Dr. Jeff Blea.

[121] The Jockeys' Guild.

[122] A comment by the CHRB prompted deletion of the reference to ''Workout.''

[123] ROCO.

2275. Communication Devices

Rule 2275, which regulates the use of communication devices by Riders, is modified to clarify that the prohibition upon the use of a hand-held communication device applies to a Rider who is mounted on a ''Covered Horse or Pony Horse.'' Two commenters questioned whether this rule should be revised to clarify whether this prohibition applies to just the racing surface or all areas of the racetrack.[124] The term ''Rider'' is limited to persons mounted on a Covered Horse or Pony Horse on the racing surface. Therefore, the rule is already clear that the prohibition on the use of hand-held communication devices applies just to the racing surface.

Several commenters expressed concerns that the rule might prohibit the use of two-way radios entirely.[125] The rule does not prohibit two-way radios that, as an example, clip onto a vest and are equipped with a shoulder microphone. The purpose of the rule is to prohibit the use of devices that are hand-held and interfere with a Rider's control of the horse.

In addition to the above, a new provision is added that states: ''A Rider, while on a Covered Horse or Pony Horse, shall not wear an audio device that obstructs or impairs the Rider's ability to hear other horses, Riders, hazards, or the Racetrack's emergency warning system.'' This rule does not prohibit the use of hearing aids, which enhances hearing, but rather is intended to prohibit, for example, audio devices on both ears with noise cancelling features.

2276. Horseshoes

The rule limits the height of rims used as traction devices on forelimb and hindlimb horseshoes. The rule prohibits use of any other traction devices except in specific circumstances. Traction devices affect the interaction of the hoof with the racetrack surface, altering movement of the hoof through the racetrack surface. That reduction of movement contributes to catastrophic breakdowns and skeletal injuries. The rule follows the scientific evidence that shows that traction devices increase equine injuries. The rule is intended to increase the safety of Riders and Covered Horses by reducing the number of accidents resulting from injuries associated with the use of traction devices. The rule will standardize traction device use nationwide.

The Authority proposes modifications to this Rule to establish specific prohibitions on the use of traction devices based on the type of racing surface (dirt, synthetic, and turf). A commenter requested clarification as to whether certain inserts and wear plates would be considered a prohibited traction device under this rule.[126] The Authority has addressed this question through the creation of a new definition for ''Traction Device'' in the definitions section of Rule 2010. This definition clarifies that ''Traction Device'' includes ''any device that extends beyond the ground surface of the horseshoe and includes but is not limited to inserts, wear plates, rims, toe grabs, bends, jar calks, stickers, ice nails, frost nails, and mud nails.''

2280. Use of Riding Crop

Allowing use of the crop enhances safety of Covered Horses and Riders. The rule limits the number of times the crop can be used for encouragement. The rule unifies crop design and use of the crop across all jurisdictions. The rule unifies penalties for crop abuse or use of prohibited devices across jurisdictions. There has been heated debate about use of the riding crop, especially for encouragement. Some believe the new crops do not hurt the horse at all, while others remain concerned about the public perception of using a crop for encouragement. The rule allows riding crop use for safety of the horse and Jockey. It also limits the number of times the crop can be used for encouragement during a race. This compromise of use of the crop for safety, and limited use for encouragement that will be unified across racing jurisdictions is in the best interest of the horses, horsemen, the owners, the Jockeys, the betting public, racing commissions, and the general public. The rule is intended to protect horses from excessive use of the crop. Jockeys will have a clear understanding of crop use rules and will be able to adapt their usage due to uniformity of the rules.

The Authority proposes additional language clarifying that a tap to the shoulder of the horse is permitted and does not count towards the 6 permitted uses of the crop as set forth in Rule 2280. The Rule is modified to make clear that the rule applies to Jockeys who use a riding crop on a ''Covered Horse.'' A new provision is added that prohibits a Jockey from striking a Covered Horse with any other object than a riding crop that conforms to the requirements established in Rule 2281.

Commenters urged that additional strikes be permitted depending upon the length of the race, or that the number of permitted strikes be increased under varying circumstances.[127] The Authority believes that 6 strikes is an appropriate limit, and that the length of the race is less significant as most crop use takes place in the final stretch. The Authority also notes that the exception concerning use of the crop for safety purposes provides proper flexibility in the use of the crop.

Commenters suggested that the language in this rule be modified to make clear that the riding crop rules apply only to Covered Horseraces so that Racetracks and State Racing Commissions can further limit the use of the crop during training activities.[128] The Authority believes this is an appropriate modification and has revised this rule to clarify that it only applies ''during a Covered Horserace.''

2281. Riding Crop Specifications

The Authority proposed numerous modifications to Rule 2281. Paragraph (c) is modified to include the word ''flap'' in addition to ''smooth foam cylinder'' to permit the use of riding crops that incorporate a flap, rather than a foam cylinder. This will permit the use of additional riding crops which may be used safely and effectively by Jockeys. Paragraph (c)(6) is modified to require riding crops to ''have a mark identifying the name and manufacturer of the crop.'' This language was suggested by a commenter and will assist in ensuring compliance with the riding crop specifications.[129] The requirement that the riding crop bear a label stating that the riding crop meets the Rule 2281 standards is deleted as unnecessary.

A commenter suggested that the rule explicitly require riding crops to be tested for durability and use.[130] The Authority appreciates the comment. There are currently no standards for durability testing of crops. The Authority has initiated the process for development of a durability test and will reconsider this comment when an appropriate test is available.

2282. Riding Crop Violations and Penalties

The proposed modification for Rule 2282 will alter the system of penalties applicable to riding crop violations. The new system establishes a scale of

[124] Dr. Jeff Blea and 1/ST Racing.

[125] Barbara Borden, ROCO, Jockeys' Guild, The Jockey Club.

[126] Dan Burke.

[127] The Jockeys' Guild, HBPA, Christine Sanchez.

[128] Comment jointly submitted by NYRA, Del Mar, Keeneland, Churchill Downs, Breeders' Cup, and 1/ST Racing.

[129] The Jockeys' Guild.

[130] *Id.*

penalties that escalate in severity as the purse value of the race increases. Some members of the industry believe that the imposition of the same penalties upon Jockeys regardless of purse size, is too severe as applied to Jockeys running at small tracks for small purses, and that the Jockeys running in high stakes races should be penalized more heavily for violations. The rule will be based upon five tiers of purse levels, and will impose fines, suspensions and disqualifications that are tailored to the particular tier. The rule will benefit Jockeys and other Covered Persons by ensuring that riding crop violations result in meaningful penalties that are fairly administered. The number of riding crop violations has declined significantly since the implementation of the riding crop rule on July 1, 2022. The Authority believes that the rule is having the desired effect upon excessive use of the crop at Covered Horseraces.

A commenter suggested increasing the purse level on the lowest tier, which is set at $9,000.00 in the proposed rule.[131] The Authority believes the current purse levels as matched with penalties are appropriate and fair to Jockeys at all levels of competition. Another commenter opined that horses should not be disqualified as part of the penalty against the Jockey.[132] The Authority believes the penalty of disqualification is appropriate as applied to violations by the penalty scheme. Among other things, this penalty disincentivizes trainers/owners from encouraging Jockeys to violate the crop rule for purposes of winning races, and in some instances paying the jockey penalty for the Jockey. The Authority's Racetrack Safety Committee studied all aspects of the riding crop rule thoroughly and over a prolonged period, and received a great deal of comment and advice from Jockey experts in the industry. The Authority believes the penalties achieve an equitable balance as applied to all Jockeys.

Another commenter asked who is responsible for adjudicating the initial violation of the riding crop rule.[133] This question is addressed by Rule 8320, which states that the Stewards shall adjudicate all alleged violations of Rule 2280 relating to the use of the riding crop.

2283. Multiple Violations

Rule 2283 is modified by the establishment of a new set of rules concerning multiple violations of the Rule 2280 riding crop rules. The point system in the current rule will be deleted, and replaced by a system in which an escalating multiplier is applied to repeated violations in the previous 180 days. A commenter has urged that the severity of the penalties is excessive.[134] The Authority closely studies and monitors the riding crop use and the imposition of appropriate penalties, and will consider all views expressed by members of the industry. As one commenter noted, ''multiple violation penalty rules for riding crop violations were recommended to better ensure compliance, deter excessive use of the riding crop, and give teeth to the new requirements.'' [135] The Authority agrees. The Authority believes that the riding crop rule is operating very effectively as a deterrent, and this multiple violation rule is vital to the safety and welfare of Covered Horses as it disincentivizes ''jockeys who routinely flout the new riding crop rules.'' [136]

2284. Redistribution of Purse

Rule 2284 is a proposed new rule, which states: ''Upon the disqualification of a Covered Horse from a Covered Horserace pursuant to the Rule 2000 Series, the purse shall be redistributed in accordance with the revised order of finish.'' The rule is meant to resolve any confusion concerning whether post-race redistribution of purses should be carried out by the Stewards upon disqualification of a horse under the Rule 2000 Series; the rule affirmatively requires the redistribution of the purse in accordance with the order of finish.

2285. Intermediate Appeal of Violations

A new proposed Rule 2285 establishes a level of intermediate appeal of rulings issued to Jockeys by the Stewards for violations of the riding crop provisions in Rules 2280 and 2281. The rule provides that the appeals shall be heard initially by a three-member appeal panel appointed from the pool of adjudicators who constitute the Internal Adjudication Panel as established under the Rule 7000 Series. Any decision rendered by the Internal Adjudication Panel is appealable to the Board of the Authority, who may hold a hearing on the matter, or in the alternative may decide the appeal based upon the record and any written submissions required to be filed by the Board. The Board also has the option to adopt the decision of the Internal Adjudication Panel. The rule will benefit Jockeys by affording a prompt appeal to the Internal Adjudication Panel. The expeditious nature of the appeal process will benefit the administration of the riding crop rule generally, a rule which is vital to serve the safety and welfare of Covered Horses.

2286. Procedures for Adjudications of Violations in the Rule 2200 Series

New proposed Rule 2286 is strictly procedural in nature, and establishes that the violation cases referred to the Internal Adjudication Panel or an Arbitral Body pursuant to Rules 8320(b)(1) and (b)(2) shall be adjudicated according to the procedures set forth in Rule 8340(c) through (j).[137] The Rule 8340 procedures are a comprehensive set of rules that will provide the necessary structure for efficient administration of appeals by the Internal Adjudication Panel and the Arbitral Body.

2287. Provisional Suspension of Registration

This proposed Rule 2287, Provisional Suspension of Covered Person's Registration, was distributed for public comment in July 2023. The Authority received numerous comments and made significant revisions to address the concerns raised in the industry comments. Under this rule, the Authority may issue a show-cause notice concerning a provisional suspension of a Covered Person's registration if the Authority or the Stewards have reasonable grounds to believe that the actions or inactions of a Covered Person present an imminent danger to the health, safety, or welfare of Covered Horses or Riders arising from specific violations by the Covered Person of the Authority's safety rules. The show-cause notice will include an itemization of the rules which the Covered Person is believed to have violated, the corrective actions suggested to achieve compliance, a request for a written response from the Covered Person, and a statement indicating that the Covered Person may request a provisional hearing within 3 days of receipt of the notice. The Covered Person's registration would not be suspended during the time between receipt of the show-cause notice and the provisional hearing unless the Stewards or the Authority have clear and convincing evidence that the actions or inactions of the Covered Person present

[131] Breeders' Cup.

[132] HPBA.

[133] Keeneland.

[134] The Jockeys' Guild.

[135] THA.

[136] *Id.*

[137] The Internal Adjudication Panel is also referred to as the National Stewards Panel throughout the Authority's Rule Series. The Authority's proposed modifications to its various Rule Series include updating all references to the National Stewards Panel to the Internal Adjudication Panel.

an immediate threat of serious injury or death to Covered Horses or Riders.

A Covered Person who has received a show-cause notice or whose registration has been provisionally suspended is entitled to a provisional hearing to be conducted by the Internal Adjudication Panel, an independent Arbitral Body, the state Stewards, or a panel of 3 board members appointed by the Board chair. The provisional hearing would be conducted within 3 business days of receipt by the Authority of the Covered Person's request for a provisional hearing. The sole issue to be determined at the provisional hearing is whether the Covered Person's provisional suspension of registration shall remain in effect, go into immediate effect following the provisional hearing, be stayed pending a final hearing under this rule, or be withdrawn. The burden is on the Authority to demonstrate good cause why the provisional suspension should remain in effect, go into immediate effect, or be stayed pending a final adjudication. Within 72 hours of the conclusion of the provisional hearing, the adjudicatory panel will issue a written decision determining whether the provisional suspension shall remain in effect, go into immediate effect, be stayed pending a final adjudication, or be withdrawn.

The Covered Person may seek prompt review of any decision rendered at the provisional hearing by requesting a final hearing, which will take place within 14 days of the Covered Person's request for a final hearing. The final hearing will be conducted by a quorum of the Board and, if the provisional hearing was conducted by a panel of Board members, the Board members that participated in the provisional hearing would be precluded from participating in the final hearing. The final hearing will be conducted pursuant to the procedural rules established in Rules 8340(d) through (j), which provide for a full presentation of evidence and place the burden on the Authority to demonstrate, by a preponderance of the evidence, that the Covered Person is in violation of the Authority's safety rules.

Within 7 days of the conclusion of the final hearing, the Board may (1) order that the Covered Person's registration be reinstated, suspended, or revoked; (2) reinstate registration subject to any requirements the Board deems necessary to address the specific safety violations; and/or (3) impose a fine in an amount not to exceed $50,000. The outcome of the final hearing of the Authority will be considered a final civil sanction subject to appeal and review in accordance with the provisions of 15 U.S.C. 3058.

2290. Requirements for Safety and Health of Riders

2291. Jockey Eligibility

Rule 2291 requires that a Jockey have a physical examination, including baseline concussion testing, in order to be eligible to ride in races. The rule ensures that Jockeys are physically fit and capable of riding without endangering themselves or other participants during a race.

Rule 2291 is modified to make more explicit the requirements for the physical examination and baseline concussion test required of Jockeys on an annual basis or more frequently as needed following illness, injury, or other circumstances impacting a Jockey's fitness to participate. The modified rule will serve to specify the concussion assessment tools applicable to the baseline concussion test. New provisions are added by the modified rule that require Jockeys to submit to the Authority documentation concerning fitness to ride, physical examination and the concussion test.

Some commenters raised concerns concerning HIPAA laws and medical record privacy issues.[138] These issues have been resolved, as the Authority has engaged with a third-party HIPAA compliant medical records organization to receive medical information. The new rule directs all Jockey medical records to be submitted to the third-party electronic platform. Another new provision requires Jockeys to execute a written authorization permitting the release of medical information as needed to assist in the collection or receipt of Jockey eligibility documentation and coordination of care in response to racing related injury or illness.

A commenter recommended referencing the rules applicable to international Jockeys who arrive in the United States for a specific event.[139] There is no need to revise Rule 2291 in this way; the rules of the Authority apply in all respects to international Jockeys in the same way as they apply to all other jockeys. Another commenter urged the Authority to require cross-track concussion reporting for Jockeys.[140] The Authority agrees and this is being undertaken by the Authority as part of the partnership with the third-party medical records organization.

[138] 1/ST Racing; Tracks.

[139] Breeders' Cup.

[140] THA.

2292. Rider Medical History Information

Rule 2292 is modified to replace the words ''Jockey and exercise rider'' with the word ''Rider.'' Rider is a newly proposed defined term, which states: ''*Rider* means any person who is mounted on a Covered Horse or Pony Horse on the Racetrack, including a Jockey.'' The modification of Rule 2292 thus extends the requirements concerning medical information cards to all persons mounted on a Covered Horse or Pony Horse on the racetrack. This enhances the safety and welfare of additional mounted racing participants. If a Rider is injured, the medical information card provides medical responders with vital information about the injured Rider's medical history and condition, which may be important for the provider.

2293. Equipment

Rule 2293 sets forth the standards for helmets and vests. The rule is modified to delete the term ''stable pony'' and include instead the word ''Pony Horse,'' in accordance with the new definition for that term. A new rule in paragraph (b)(2) requires all Starting Gate Persons to ''securely attach to their safety vest one or more medical information cards describing their medical history and any conditions pertinent to emergency care, including a listing of any previous injuries, drug allergies, and current medications.'' The addition of this rule was suggested by a commenter, and parallels the similar rule medical card for Riders in Rule 2292.[141]

2294. Weight of Riders

Rule 2294 is a new proposed rule, which states: ''The weight of an approved safety helmet and an approved safety vest will be excluded from the required weight to be carried by a Jockey during a race.'' This rule encourages use of helmet and safety vest without consideration of the effect on applicable weight requirements.

Jurisdictions vary in their rules concerning whether helmets and vests are to be included in required weight. Under Rule 2294, the rule is standardized. A commenter suggested that the Authority address the issue of establishing the minimum weights for Jockeys nationwide.[142] The Authority will consider this proposal in future rulemaking.

III. Compliance With the Commission's March 27, 2023 Order

In accordance with the Commission's March 27, 2023 Order, the Authority's

[141] Breeders' Cup.

[142] The Jockeys' Guild.

submission in support of the proposed rule modification discusses each of the suggestions made by commenters on the **Federal Register** from the original Racetrack Safety Rule submission where the Authority in its February 2, 2022 Letter committed to further consider the suggestions. The Authority's response to each of the suggestions is set out below.

1. A commenter urged the Authority to establish a sub-committee of the Safety Committee formed to propose and draft ''Jockey, Exercise Rider, and Horsemen Health Protocols.''

The Authority has not yet established any subcommittees of the Racetrack Safety Committee. To date, the Committee has relied upon, and frequently seeks input from, industry participants and subject matter experts to assist the Committee in developing safety rules and otherwise implementing the Racetrack Safety Program. The Authority believes there is value in utilizing subcommittees to research and dive more deeply into the racetrack safety issues and will consider developing subcommittees in the near future.

2. Two commenters criticized the removal of the purse to claim price ratio that was contained in earlier drafts of the Racetrack Safety Rules.

The Racetrack Safety Committee again considered the issue of developing and implementing rules regarding a purse-to-claim ratio. The Committee received comments urging it to adopt a purse-to-claim ratio and this topic was debated extensively by the Committee over the last several months. The Committee declined to adopt such a rule, determining that it lacks sufficient data at this time. The Committee will continue to study this issue and may, at the appropriate time, develop rules regarding a purse-to-claim ratio. The Authority notes that, until that time, existing racetrack rules and state laws concerning a purse-to-claim ratio will continue to apply.

3. Two commenters stated that the definition of Claiming Race is not clear.

The safety rules currently in effect contain the following definition of ''Claiming Race'': ''a Race in which a Horse after leaving the starting gate may be claimed in accordance with the rules and regulations of the applicable State Racing Commission.'' The Authority is proposing a modification to this definition, which will incorporate the definition of ''Claiming Race'' from the Rule 1000 Series of the ADMC Program: ''a Covered Horserace in which a Covered Horse after leaving the starting gate may be claimed in accordance with the rules and regulations of the applicable State Racing Commission.'' This proposed modification clarifies that application of the definition is limited to Covered Horses and Covered Horseraces. The Authority did not receive any comments on this definition during the informal comment periods and believes this modification makes this definition sufficiently clear.

4. Two commenters suggested that the term exercise rider and catastrophic injury be added to the definitions.

The Authority agrees and has proposed adding both ''Catastrophic Injury'' and ''Exercise Rider'' to the list of defined terms in the definitions section of the Rule 2000 Series.

5. A commenter urged the Authority to develop rules permitting it to suspend accreditation in emergency situations.

The Authority has proposed Rule 2117, which, if approved, will permit the Authority to suspend racing activity in a short period of time if ''the Authority has reasonable grounds to believe that the conditions or operations of a Racetrack present an imminent danger to the health, safety, or welfare of Covered Horses or Riders arising from specific violations by the Racetrack of the Authority's racetrack safety or accreditation rules.'' *See* Rule 2117(a)(1).

6. A commenter urged that the period of accreditation in Rule 2114(2) be changed from one to seven years to one to five years.

It is important to note that under Rule 2114(a)(1), accreditation is effective for three (3) years, and the one (1) to seven (7) year period modification in Rule 2114(a)(2) is only utilized if the Authority determines that such modified period will be consistent with the requirements of Accreditation outlined in the Rule 2100 Series. To further alleviate the concerns expressed by this commenter, the Authority notes that it has the authority—regardless of the number of years of Accreditation granted under Rule 2114(a)(2)—to suspend or revoke a Racetrack's accreditation if the Racetrack is in material noncompliance with the Accreditation requirements. *See* Rules 2116 and 2117.

7. One commenter suggested that the Medical Director should oversee the medical needs not only of jockeys, but of all covered persons and invitees while on covered racetracks.

The Horseracing Integrity and Safety Act recognizes the Authority to exercise exclusive national authority over Covered Persons, which are defined in the Act as ''all trainers, owners, breeders, jockeys, racetracks, veterinarians, persons (legal and natural) licensed by a State racing commission and the agents, assigns, and employees of such persons and other horse support personnel who are engaged in the care, training, or racing of covered horses.'' The Authority does not have jurisdiction over non-Covered Persons.

8. A commenter maintained that the first sentence of Rule 2133(c) needs to be amended to include the following italicized words: ''The requirements of this Rule for any steward employed *or contracted* by a State Racing Commission are subject to the applicable State Racing Commission electing to enter into an agreement with the Authority.''

The Authority agrees and has proposed this amendment to Rule 2133(c).

9. One commenter noted that Rule 2142(b) requires that all entered horses must be inspected no later than one (1) hour prior to scratch time. The commenter states that racing jurisdictions have different scratch times ranging from a few hours to one day prior to the race. Therefore, the rule should be changed to require inspection on race day not later than one (1) hour prior to scratch post time for the race in which the horse is to compete.

In recognition of this comment, the Authority has proposed an amendment to this rule to require the inspection of the horse to be completed ''prior to starting in the Race for which it is entered on Race Day.'' (The provision has been renumbered and now appears at 2142(c)).

10. One commenter suggested that the phrase ''may be placed on the Veterinarians' List'' be changed to ''shall be placed on the Veterinarians' List'' in Rule 2142(d).

In recognition of this comment, this change has been proposed by the Authority. (The provision has been renumbered and now appears at 2142(e).

11. Two commenters requested stricter requirements for the construction of the racetrack rails and the elimination of the use of wooden rails in Rule 2153.

The Racetrack Safety Committee consulted several of the industry's safety rail experts and proposed amendments to Rule 2153 to require specific rail heights. The Racetrack Safety Committee will, through the Accreditation process, evaluate Racetrack rails to determine compliance with 2153(a)(1), which requires that the rails be ''designed, constructed and maintained to provide for the safety of Riders and Covered Horses.'' Regarding the elimination of the use of wooden rails, the Racetrack Safety Committee

maintains that this issue deserves additional discussion and deliberation. If this deliberation concludes that it is appropriate to eliminate wooden rails, this issue will be addressed in future modifications of the rules.

12. One commenter opined that the emergency warning system should include mandatory use of lights and sirens for both racing and training [Rule 2153].

Rule 2153(e) (previously (d)), states that each Racetrack ''shall have an operational emergency warning system on all racing and training tracks. The emergency warning system shall be approved by the State Racing Commission, subject to the applicable State Racing Commission electing to enter into an agreement with the Authority. If such agreement does not exist, the emergency warning system shall be approved by the Authority.'' The Racetrack Safety Committee believes that Racetracks and, where applicable, the State Racing Commissions are in the best position to determine the type of warning system that is most effective in their racing environment. Further discussions regarding the standardization of a warning system will continue as additional data is gathered.

13. A commenter stated that Rule 2162 needs to add a requirement that biological samples be collected in all instances of catastrophic injury, not just those injuries that occur during racing and training.

The language regarding collection of biological samples has been struck from the safety rules, following the program effective date of the ADMC rules. It is HIWU protocol to collect samples from all fatalities when practical, and proposed rule 5436(l) will require samples to be collected ''in case of any fatality howsoever occurring.''

14. One commenter objected to the stewards making the determination of whether a Jockey who falls or is thrown from a horse may continue riding.

Proposed Rule 2166(d) addresses this commenter's concern as the new language in the rule clarifies that it is a medical provider who is making the determination of whether a Jockey should continue riding following an incident: ''Any Jockey who falls or is thrown from a Covered Horse during a race shall be examined by a medical provider experienced in concussion management and familiar with the HISA Concussion Protocol. The medical provider shall report their findings to the Stewards who, upon the recommendation of the medical provider shall order the Jockey taken off any remaining mounts.''

15. One commenter suggested that insurance coverage should be included in the collected data under Rule 2167, and asked who will analyze the data and how the data will be used. The commenter also enquired concerning private medical data.

Racetracks are responsible for designating a person to collect the data in their respective standard operating procedures. The data collected can be analyzed to determine risk factors for injury and can thus be used to further develop and implement injury prevention measures. The Racetrack Safety Committee does not currently believe that insurance information should be included in the list of information collected under this rule as it is not relevant to the evaluation of contributory factors and safety intervention measures.

16. The commenter stated that Rule 2168 does not provide minimum standards for equipment necessary to treat a horse or remove a horse from the track.

The Authority has proposed modifications to the Equine Ambulance Rule (Rule 2168) to now include the following minimum standards for the track's dedicated equine ambulance: (1) navigate on the racetrack during all weather conditions; (2) safely transport a horse off the association grounds; (3) contain equipment to stabilize distal limb injuries; and (4) remove a recumbent horse from the racetrack.

17. One commenter claimed that section (b) of Rule 2170 contradicts itself by first stating that necropsies should be performed by personnel with capabilities and expertise to perform necropsy examination of racehorses and subsequently implying that a veterinarian always performs a necropsy. The commenter suggests that the second sentence could be amended to read: ''An Attending Veterinarian of the affected Horse should never perform the necropsy.''

Rule 2170 has been significantly revised and the language of concern has been struck altogether.

18. One commenter stated that it is not practical for Jockeys to complete 2 hours of continuing education before each meet.

Under the Authority's proposed modifications to Rule 2182, Jockeys will need to complete just 2 hours of continuing education each year. Thus, the concerns raised in this comment have been addressed.

19. Commenters made the following significant comments regarding Rule 2182: (i) the burden to create training content should not fall on the State racing commissions; (ii) continuing education specific to racetrack regulatory and racetrack practice is not consistently offered and available; (iii) the rule requires grooms to complete continuing education offered in English and Spanish and asked whether it is a violation of the rule if a groom completes a training that is only available in English, or only available in Spanish; (iv) bilingual continuing education be available for trainers and outriders; and (v) asked who is responsible for arranging and administering the continuing education.

It is important to note that any role for a State Racing Commission in the continuing education rule is subject to the State Racing Commission entering into an agreement with the Authority. In response to (i), (ii), and (v), the Authority states that Rule 2182 requires the State Racing Commission to identify existing, or provide locally, training opportunities for the individuals referenced in Rule 2182(b). The State Racing Commissions are not required to create content to comply with this Rule. The Authority is currently developing a process for approval of continuing education content. Regarding (iii), the Authority states that it would not be a violation of Rule 2182 for a groom to complete training that is only available in English or only available in Spanish. Finally, in response to (iv), the Authority states that bilingual continuing education will be made available for trainers and outsiders.

20. One commenter stated that all racing officials and licensees in positions that allow them to affect the outcome of a race or diminish the conditions of safety or decorum should also be subject to drug and alcohol regulations.

The Racetrack Safety Committee recognizes the Jockey's uniquely hazardous role in horseracing and feels strongly that a testing program for drug and alcohol use for Jockeys is critical to increasing safety during training and racing. The expansion of testing to include Starting Gate Persons is currently being proposed by the Authority in Rule 2191. The Racetrack Safety Committee will consider adding additional categories of Covered Persons to this rule in the future.

21. The commenter stated that the rule [2193] should include a requirement that the Racetrack shall have an actual copy of the policy on file with the Commission and send a copy to the Guild at least 10 days prior to the start of the meet. The commenter also stated that the rule should also require that any changes to the policy and/or carrier must be provided to all

concerned parties in writing prior to the changes being implemented.

The Racetrack Safety Committee considered these comments from the Jockeys' Guild and has proposed modifications to this rule to require insurance coverage to be in place for all training and racing activities and a copy of the current policy's declaration page to be posted in the Jockeys' quarters prior to the beginning of the racing season.

22. One commenter stated that the rule [2230] should require an onsite central pharmacy at each racetrack to control and monitor medication use and to prevent abuse.

The Racetrack Safety Committee believes this issue deserves further study but did not believe such a rule was ripe for adoption at this time.

23. One commenter suggested the following changes to Rule 2230: first, in (a) after the phrase ''. . . care, custody and control'', delete ''at locations under the jurisdiction of the State Racing Commission''; second, change (g) to read: ''. . . that person *must* request permission of the stewards or the State Racing Commissioning in writing'' and delete the word ''may''; and third, add language to (e) to allow the Regulatory Vet (as well as the commission) to approve the use of these items.

The Racetrack Safety Committee considered all of these comments and is proposing modifications consistent with the first two suggested revisions noted in this comment.

24. One commenter suggested that the Safety Director be removed from the list of persons in Rule 2240(d) who may require diagnostic testing for any Horse placed on the Veterinarian's List.

In recognition of this comment, the Authority is recommending removing the Safety Director from the list of persons authorized to require veterinary diagnostics be performed.

25. One commenter was opposed to the practice of placing a horse treated with shock-wave therapy on the Veterinarians' List for 30 days. The commenter recommended placing horses on the List for only 10 days, stating that a 10-day period is sufficient to safeguard the welfare of the horse.

The Racetrack Safety Committee carefully considered industry input and has proposed an amendment to the prohibition on Workouts from 30 days to 14 days. This permits the horse to continue in light training during the course of therapy. The Committee opted not to amend the 30-day prohibition on racing.

26. One commenter stated that Rule 2242 should require a post-work blood test for unsound horses and those horses placed on the Veterinarians' List for a positive test.

In recognition of this comment, the Authority has added the requirement for a post-Workout blood test for horses placed on the Veterinarians' List as unsound, having experienced Epistaxis, not having started in more than 365 days, and unraced horses after January 1st of their 4-year-old year. (The provision has been renumbered and may be found at 2242(b)(6)). The language placing horses on the Veterinarians' List for a ''positive test'' has been struck from the safety rules.

27. One commenter believed that ''individual Horse risk factors'' in Rule 2142(b) was too subjective in identifying the risk factors and suggested that language be added to identify the risk factors to ensure compliance with the rules.

Individual horse risk factors, while inclusive of horse age and sex, will expand as data are collected and analyzed to identify additional individual horse factors. Consequently, an explicit statement of all individual horse risk factors would preclude useful assessment. However, individual horse risk factors will be considered for revision in future rule modifications as data and analysis dictate.

28. One commenter suggested that sections (a) and (b) [of Rule 2253] be amended to state ''. . . maintain the information for the previous 30 days and make available to the Regulatory Veterinarian within 1 hour of request.''

Because of the importance of this information, the proposed rule eliminates the time restriction of 30 days. The Racetrack Safety Committee did not propose a time requirement be adopted for production.

29. A commenter noted that not all horses vanned off are unsound [Rule 2262].

In recognition of this comment, the revised rule specifies categories of Veterinarians' List placement that trigger the voiding of the claim. The provision has been renumbered and now appears at 2262(e)(2).

30. Several commenters noted that the definition of claiming races varies between states and these commenters believe that a standard definition is needed.

See the Authority's response to question no. 3 herein.

31. In response to comments on ''Prohibited Practices'' (Rule 2271), the Authority noted that, while Rule 2271 is appropriate as written, the phrase ''or a counter-irritant effect'' will be the subject of future study by the Racetrack Safety Committee, and if necessary future rule modifications will be considered.

Rule 2271 is the subject of extensive revision. Language has been added to make clear that a ''counter irritant effect'' is only prohibited if it is produced via injection of a substance, not topically. (The provision has been renumbered and now appears at 2271(a)(7)).

32. One commenter suggested that the term ''workout'' should be substituted for the use of the undefined term ''breeze'' in section (a)(3).

The term ''breeze'' has been deleted where it previously appeared in the safety rules and has been replaced by the defined term ''Workout.''

33. One commenter stated that section (a)(1) requires disclosure 48 hours prior to use, while (a)(2) requires disclosure within 48 hours of treatment. The commenter suggests requiring the disclosure of shock wave therapy at any time prior to use and notes that veterinarians often do not know that shock wave treatment will be necessary 48 hours in advance of the treatment.

Non-enforcement of the 48-hour pre-treatment notification requirement was the subject of an announcement dated December 21, 2022. The elimination of the provision is codified in these proposed rules.

34. One commenter suggested that Rule 2273 could be interpreted to prohibit outriders and pony riders from using spurs.

A horse being utilized by an outrider or a pony rider is unlikely to be a Covered Horse. Therefore, the Authority does not believe further modifications are necessary in response to this comment.

35. One commenter asked what license or registration would be suspended under Rule 2274.

This rule is modified to impose restrictions upon registration with the Authority as the penalty for violations of Rule 2273. The modification deletes the reference to loss of eligibility ''to obtain a racing license in all racing jurisdictions.'' The change is made because restrictions upon registration with the Authority are more appropriate penalties imposed by the Authority.

36. One commenter stated that ''communication device'' should be defined in Rule 2275.

The Racetrack Safety Committee proposed new language to the rule that further prohibits any audio device that ''. . . obstructs or impairs the Rider's ability to hear other horses, Riders, hazards, . . .''. The Authority feels that these changes assist in defining ''communication device''.

37. The commenters submitted a wide range of comments on Rule 2280. PETA and the Animal Welfare Institute stated that crop use should be banned. The CHRB, NJRC, Senator Feinstein and the Humane Society stated that the overhand use of the riding crop should be prohibited. The Jockeys' Guild submitted over four pages of comments and urged that more permissive riding crop rules should be implemented.

There has been heated debate about use of the riding crop for encouragement. The comments previously posted to the **Federal Register** are consistent with the comments the Authority has received throughout the development of the Racetrack Safety Rule. Some believe the new crops do not hurt the horse at all, while others remain concerned about the public perception of crop use. The Racetrack Safety Committee has carefully considered all of these comments in developing the rule. The rule permits use of the riding crop for the safety of the horse and Jockey, but prohibits excessive use of the crop by limiting the number of times the crop can be used during a race for encouragement. This compromise, as embodied in the rule, will establish a uniform standard across racing jurisdictions that is in the best interest of the horses, horsemen, the owners, the Jockeys, the betting public, racing commissions, and the general public. Jockeys will benefit from a single uniform rule in all jurisdictions to which they can adapt their usage. It is also important to note that the proposed rule is more restrictive than the rules currently in place in numerous jurisdictions.

A modification has been made to Rule 2280, Use of the Riding Crop, making clear that crop strikes to the shoulder of the horse are counted in the total allowable strikes. Additionally, the penalties for misuse of the crop have been structured to be more punitive as the level of purses increases.

38. One commenter asked the Authority review section (c) of Rule 2281 to ensure that the rule does not refer to a crop specific to one brand or vendor. The description of a ''smooth cylinder'' crop appears to refer to a specific brand and the commenter opposes allowing one vendor to have a monopoly on crop sales. One commenter stated that the rule refers to a specific style and brand of crop and argues that none of the crops used at Indiana Grand last year would be permitted under the rule. Another commenter requested that the rule allow the use of cushioned, shock absorbing and/or the cylinder popper.

The Racetrack Safety Committee has determined that the crop specifications should be defined to prevent the use of crops that have features likely to injure the horse. The rule is largely based on the ARCI Model Rules and the NTRA Safety and Integrity guidelines with modifications to ''soften'' the end of the crop that contacts the horse. The Authority is proposing modification to this rule to include a wider range of allowable crops. In addition to ''smooth cylinder'' crops, ''padded flat'' crops are allowed. To date, 6 ''smooth cylinder'' crops have been approved by the Racetrack Safety Committee for use as well as 1 ''padded flat'' crop.

39. One commenter asked regarding Rule 2282: ''if a horse is disqualified from purse earnings under either (b)(2) or (b)(3), how is it possible to also forfeit a percentage of the Jockey's portion of the purse?'' Another commenter asked whether the suspension days are calendar or racing days. One commenter noted that the rule fails to specify penalties for violations other than exceeding the number of strikes.

The Authority is proposing modifications to Rule 2282 to clarify the forfeiture of a percentage of the Jockey's portion of the purse when the horse is disqualified. The 8000 Rule Series provides for Stewards to address crop violations other than exceeding the number of strikes.

40. One commenter stated that a protocol was needed to share concussion information across racetracks. Another recommended that the Racetrack Safety Committee review New York's licensing requirements and rider medical fitness for incorporation into the rules. One commenter expressed the opinion that the rule should address exercise riders. One commenter urged the Authority to create a banned substance list. Another commenter noted that the rule does not contain a protocol for weight practices.

The Authority has received several comments regarding cross-track concussion reporting for Jockeys. The Authority agrees and this is being undertaken by the Authority as part of the partnership with the Authority's electronic platform designated for collection and storage of Jockey eligibility documentation. As for the other issues raised in this comment, the Authority states that this rule is being modified to make more explicit the requirements for the physical examination and baseline concussion test required of Jockeys on an annual basis. The modified rule will serve to specify the concussion assessment tools applicable to the baseline concussion test. New provisions are added by the modified rule that require Jockeys to submit to the Authority documentation concerning fitness to ride, physical examination and the concussion test.

41. The commenter expressed support for the requirement in Rule 2292 that medical information cards be attached to the rider's vest. The commenter urged that a centralized database be developed and utilized.

Rule 2292 will now require all Riders to securely attach to the Rider's safety vest one or more medical information cards describing the Rider's medical history and any conditions pertinent to emergency care, including a listing of any previous injuries, drug allergies and current medications.

IV. Legal Authority

This rule is proposed by the Authority for approval or disapproval by the Commission under 15 U.S.C. 3053(c)(1).

V. Date of Effectiveness

If approved by the Commission, this proposed rule will take effect on July 8, 2024.

VI. Request for Comments

Members of the public are invited to comment on the Authority's proposed rule. The Commission requests that factual data on which the comments are based be submitted with the comments. The supporting documentation referred to in the Authority's filing are available for public inspection on the docket for this matter at *https://www.regulations.gov.*

The Commission seeks comments that address the decisional criteria provided by the Act. The Act gives the Commission two criteria against which to measure proposed rules and rule modifications: ''The Commission shall approve a proposed rule or modification if the Commission finds that the proposed rule or modification is consistent with—(A) this chapter; and (B) applicable rules approved by the Commission.'' [143] In other words, the Commission will evaluate the proposed rule for its consistency with the specific requirements, factors, standards, or considerations in the text of the Act as well as the Commission's procedural rule.

Although the Commission evaluates the Authority's proposed rule for its consistency with the Act and the Commission's procedural rule, the Commission may consider broader questions—about the health and safety of horses and jockeys, the integrity of horseraces and wagering on horseraces, and the administration of the Authority

[143] 15 U.S.C. 3053(c)(2).

itself—in another context: ''The Commission . . . may abrogate, add to, and modify the rules of the Authority promulgated in accordance with this chapter as the Commission finds necessary or appropriate to ensure the fair administration of the Authority, to conform the rules of the Authority to requirements of this chapter and applicable rules approved by the Commission, or otherwise in furtherance of the purposes of this chapter.'' [144] The Commission may exercise this rulemaking power on its own initiative or in response to a petition from a member from the public. If members of the public wish to provide comments to the Commission about its use of the rulemaking power, they are encouraged to submit a petition requesting that the Commission issue a rule addressing the subject of interest. The petition must meet all the criteria established in the Rules of Practice (part 1, subpart D); [145] if it does, the petition will be published in the **Federal Register** for public comment. In particular, the petition for a rulemaking must ''identify the problem the requested action is intended to address and explain why the requested action is necessary to address the problem.'' [146]

VII. Comment Submissions

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before April 22, 2024. Write ''HISA Racetrack Safety Rule Modification'' on your comment. Your comment—including your name and your State—will be placed on the public record of this proceeding, including the *https://www.regulations.gov* website.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we strongly encourage you to submit your comments online. To make sure the Commission considers your online comment, you must file it at *https://www.regulations.gov,* by following the instructions on the web-based form.

If you file your comment on paper, write ''HISA Racetrack Safety Rule Modification'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H–144 (Annex H), Washington, DC 20580. If possible, please submit your paper comment to the Commission by overnight service.

Because your comment will be placed on the public record, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not contain sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other State identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential''—as provided in section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including, in particular, competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *https://www.regulations.gov*—as legally required by FTC Rule 4.9(b), 16 CFR 4.9(b)—we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this document and any news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments it receives on or before April 22, 2024. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/siteinformation/privacypolicy.*

VIII. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or Commissioner's advisor, will be placed on the public record. *See* 16 CFR 1.26(b)(5).

IX. Self-Regulatory Organization's Proposed Rule Language

The following language reflects the Racetrack Safety Rule with the proposed modifications incorporated. A redline version that shows every way in which the previously approved Racetrack Safety Rule would be modified by the proposed rule modification is available as Exhibit B on the docket at *https://www.regulations.gov.*

[insert new clean rule text]

Rule 2000 Series—Racetrack Safety Program

2010 Definitions
2015 Racehorse Epidemiology Database and Study
2100 Racetrack Accreditation
2110 Accreditation Process
2120 Accreditation Requirements
2130 Required Safety
2140 Racehorse Inspections and Monitoring
2150 Racetrack and Racing Surface Monitoring and Maintenance
2160 Emergency Preparedness
2170 Necropsies
2180 Safety Training and Continuing Education
2190 Jockey Health
2200 Specific Rules and Requirements of Racetrack Safety Program
2210 Purpose and Scope
2220 Attending Veterinarian
2230 Treatment Restrictions
2240 Veterinarians' List
2250 Racehorse Treatment History and Records
2260 Claiming Races
2270 Prohibited Practices and Requirements for Safety and Health of Horses
2280 Use of Riding Crop
2290 Requirements for Safety and Health of Jockeys

2010. Definitions

When used in the Rule 2000 Series:

Act shall have the meaning set forth in Rule 1020.

Adverse Analytical Finding shall have the meaning set forth in Rule 1020.

Association Veterinarian shall have the meaning set forth in Rule 1020.

Attending Veterinarian shall have the meaning set forth in Rule 1020.

[144] 15 U.S.C. 3053(e) (as amended by the Consolidated Appropriations Act, 2023, H.R. 2617, 117th Cong., Division O, Title VII (2022)).

[145] 16 CFR 1.31; *see* FTC, Procedures for Responding to Petitions for Rulemaking, 86 FR 59851 (Oct. 29, 2021).

[146] 16 CFR 1.31(b)(3).

Authority shall have the meaning set forth in Rule 1020.

Catastrophic Injury means an Equine Injury that resulted in death or euthanasia of a Covered Horse within 72 hours of injury.

Claim shall have the meaning set forth in Rule 1020.

Claiming Race shall have the meaning set forth in Rule 1020.

Commission shall have the meaning set forth in Rule 1020.

Concussion means an injury to the brain that results in temporary loss of normal brain function.

Covered Horse shall have the meaning set forth in Rule 1020.

Covered Horserace or *Race* shall have the meaning set forth in Rule 1020.

Covered Person shall have the meaning set forth in Rule 1020.

Designated Equine Facility means an equine facility designated by a Racetrack in accordance with the procedures established in Rule 2144, whose biosecurity protocols are consistent with those of the Racetrack, and from which the Racetrack will accept horses onto its grounds with a valid health certificate issued within the last 30 days or in a shorter period of time if high risk situations dictate.

Designated Owner shall have the meaning set forth in Rule 1020.

Epistaxis means that blood from one or both nostrils of a Covered Horse has been observed after exercise, attributable to an episode of exercise induced pulmonary hemorrhage.

Equine Injury means an injury to a Covered Horse that occurred during racing or training for which intervention by the Regulatory Veterinarian or reporting by the Safety Director pursuant to Rule 2131 is required, and for which an injury report must be submitted pursuant to the Rule 2000 Series.

Equine Mortality means a fatality of a Covered Horse that is not attributable to a Catastrophic Injury.

Exercise Rider means a rider of a Covered Horse during a training activity that is not a Covered Horserace.

Farrier means a farrier (or horseshoer, plater or blacksmith) who provides all aspects of hoof care or orthotic services to Covered Horses, including trimming and/or the application of various orthotics to the hoof.

Groom means a Covered Person who is engaged by a Responsible Person to assist in the daily physical care of Covered Horses.

Horseshoe Inspector means a person (for example, a paddock farrier) employed, contracted, or appointed by a State Racing Commission, Racetrack, or the Authority, who has been trained in, and is responsible for, inspecting horseshoes or other orthotics on hooves of Covered Horses.

Human Injury means an injury to a Covered Person that requires medical attention and, as a result, may restrict a Covered Person's current or future participation or employment in racing, and for which an injury report must be submitted.

Jockey means a rider licensed in any state and registered with the Authority to ride a Covered Horse in a Covered Horserace.

Layoff Report means a report completed in a manner prescribed by the Authority and submitted by the Trainer or Trainer's designee for a Covered Horse that has not raced in a Covered Horserace for 150 consecutive days or more. The Layoff Report shall include, at a minimum, information regarding all examinations, medical treatments, surgical treatments, and exercise history of the Covered Horse during the layoff period.

Lead Veterinarian means any Veterinarian appointed pursuant to Rule 2134(c).

Medical Director means an individual designated as Medical Director in accordance with the provisions of Rule 2132.

Outrider means a rider employed or contracted by the Racetrack who oversees and assists with the safety of all Riders, Trainers, and horses on the Racetrack.

Owner shall have the meaning set forth in Rule 1020.

Person shall have the meaning set forth in Rule 1020.

Pony Horse means a horse, including the Outrider's horse, that accompanies a Covered Horse(s) during training or racing activities.

Prohibited List shall have the meaning set forth in Rule 1020.

Prohibited Methods shall have the meaning set forth in Rule 1020.

Prohibited Substance shall have the meaning set forth in Rule 1020.

Protocol shall have the meaning set forth in Rule 1020.

Race Day shall have the meaning set forth in Rule 1020.

Race Meet means the entire period granted by the State Racing Commission to a Racetrack for the conduct of Covered Horseraces on the Racetrack's premises.

Racetrack means an organization licensed by a State Racing Commission to conduct Covered Horseraces.

Racetrack Risk Management Committee means the committee established pursuant to Rule 2121.

Racetrack Safety Accreditation or *Accreditation* means the process for achieving, and the issuance of, safety Accreditation to a Racetrack in accordance with Rules 2100 through 2193.

Racetrack Safety Committee means the committee (or its delegate) established pursuant to 15 U.S.C. 3052(c)(2).

Regulatory Veterinarian shall have the meaning set forth in Rule 1020.

Responsible Person shall have the meaning set forth in Rule 1020.

Rider means any person who is mounted on a Covered Horse or Pony Horse on the Racetrack, including a Jockey.

ROAP means the Racing Officials Accreditation Program.

Safety Director means an individual designated as, and having the responsibilities of, a Safety Director as set forth in Rule 2131.

Safety Officer means an individual designated as, and having the responsibilities of, a Safety Officer as set forth in Rule 2136.

Safety Program Effective Date means July 1, 2022.

Shock Wave Therapy means extracorporeal shock wave therapy or radial pulse wave therapy.

Starting Gate Person means any individual licensed as a starter, assistant starter, or any individual who handles Covered Horses in the starting gate.

State Racing Commission shall have the meaning set forth in Rule 1020.

Steward or Stewards shall have the meaning set forth in Rule 2133.

Timed and Reported Workout shall have the meaning set forth in Rule 1020.

Traction Device means any device that extends beyond the ground surface of the horseshoe and includes but is not limited to inserts, wear plates, rims, toe grabs, bends, jar calks, stickers, ice nails, frost nails, and mud nails.

Trainer shall have the meaning set forth in Rule 1020.

Training Facility shall have the meaning set forth in Rule 1020.

Veterinarian shall have the meaning set forth in Rule 1020. Notwithstanding any provision set forth in the Rule 9000 Series (Registration Rules), a Veterinarian who provides veterinarian services to Covered Horses shall register with the Authority.

Veterinarians' List means a list maintained, or approved for use, by the Authority of all Covered Horses that are determined to be ineligible to compete in a Covered Horserace in any jurisdiction until released by a Regulatory Veterinarian.

Vets' List Workout shall have the meaning set forth in Rule 1020.

Workout shall have the meaning set forth in Rule 1020.

2015. Racehorse Epidemiology Database and Study

(a) The Authority, in consultation with the Commission, shall develop and maintain a nationwide database of Covered Horse safety, performance, health, and injury information.

(b) The database shall consist of information from the following sources:

(1) Post-inspection reports developed by the Racetrack Safety Committee pursuant to Rule 2112, and all information and documentation submitted by Racetracks and obtained from other sources that relate to the post-inspection reports requested by the Authority pursuant to Rule 2112.

(2) Annual Racetrack Safety Accreditation Audits and any supporting documentation submitted by Racetracks to the Authority pursuant to Rule 2115(b).

(3) End of meet reports submitted by Racetracks to the Authority pursuant to Rule 2115(g).

(4) End of Race Meet Reports submitted by the Racetrack Risk Management Committees to the Authority pursuant to Rule 2121(c)(8).

(5) Risk management and injury prevention programs and protocols developed by the Racetrack Risk Management Committees and submitted to the Authority pursuant to Rule 2131.

(6) The names of all Covered Horses that suffer an injury requiring equine ambulance assistance, are euthanized, or which otherwise die, as submitted to the Racetrack's Risk Management Committee and the Authority by the Safety Director pursuant to Rule 2131(c)(8).

(7) The names of all Covered Horses euthanized, or which otherwise die at a race meeting, as submitted to the Authority by Regulatory Veterinarians pursuant to Rule 2135(a)(9).

(8) Reports summarizing the results of pre-Race inspection and submitted to the Authority by Regulatory Veterinarians pursuant to Rule 2142(c)(3).

(9) Post-race inspection findings documented to the Authority by Regulatory Veterinarians pursuant to Rule 2142(d)(1).

(10) Information documented to the Authority by Regulatory Veterinarians pursuant to Rule 2142(d)(2) concerning any observed skin lacerations, swellings, or welts resulting from crop use.

(11) Information reported to the Authority by Regulatory Veterinarians concerning Covered Horses observed during training pursuant to Rule 2142(e).

(12) Information concerning Racehorse Monitoring submitted by Racetracks to the Authority pursuant to Rule 2143.

(13) Racetrack design records, racing and training surface maintenance records, surface material tests, and daily tests data submitted by Racetracks to the Authority pursuant to Rule 2151(b).

(14) Racetrack surface monitoring logs and documentation required to be submitted by Racetracks to the Authority pursuant to Rule 2154.

(15) Information concerning infectious disease management submitted to the Authority pursuant to Rule 2165.

(16) Information concerning Rider injuries collected by Racetracks and submitted to the Authority pursuant to Rule 2167.

(17) Necropsies and any related information findings that are required to be submitted to the Authority pursuant to Rule 2170.

(18) Any information concerning Jockey concussion management required to be submitted to the Authority pursuant to Rule 2192.

(19) Covered Horse treatment records required to be submitted to the Authority pursuant to Rule 2251.

(20) Records submitted to the Authority by Responsible Persons pursuant to Rule 2252.

(21) Records, information, and data pertaining to Jockey Crop violations.

(22) Records, information, and data pertaining to the basis for the voiding of claims at Covered Racetracks.

(23) Any other records, information or data generated or obtained by the Authority that is relevant to Covered Horse safety, performance, health, and injury.

(c) Upon the written request of the Authority, a Racetrack shall provide historical equine injury and fatality data for the previous 10 years from the date of the request. Such information may be included in the national database at the discretion of the Authority.

(d) To the extent that records, information, or data are not specifically required to be submitted under the rules of the Authority, the Authority may require the production from Covered Persons of records, information and data that are relevant to Covered Horse safety, performance, health and injury.

(e) The Authority shall review the data received under this Rule to conduct an epidemiological study pertaining to racehorse safety, performance, health, and injury. Epidemiological studies may be conducted on a periodic basis as deemed appropriate by the Authority.

2100. Racetrack Accreditation

2101. General

(a) The Racetrack Safety Committee and the Authority shall oversee Racetrack Safety Accreditation in accordance with the provisions of Rules 2100 through 2193.

(b) All Racetracks shall meet the requirements of Racetrack Safety Accreditation with the Racetrack Safety Committee in accordance with the provisions of Rules 2100 through 2193.

2110. Accreditation Process

2111. Interim and Provisional Accreditation

(a) Interim Accreditation.

(1) A Racetrack that is accredited by the National Thoroughbred Racing Association as of the Safety Program Effective Date shall be granted interim Racetrack Safety Accreditation, which shall be effective until the later of:

(i) such time as the Racetrack Safety Committee completes an Accreditation assessment under Rule 2112 with respect to such Racetrack; or

(ii) the time period established by the Authority under Rule 2114(a).

(b) Provisional Accreditation.

(1) A Racetrack that is not accredited by the National Thoroughbred Racing Association as of the Safety Program Effective Date shall be granted provisional Racetrack Safety Accreditation, which shall be effective until the later of:

(i) such time as the Racetrack Safety Committee completes an Accreditation assessment under Rule 2112 with respect to such Racetrack; or

(ii) the time period established by the Authority under Rule 2114(b).

(2) The Authority may at any time upon reasonable notice require a Racetrack with provisional Racetrack Safety Accreditation to report on its progress toward achieving full Accreditation. The Authority may request any additional information from the Racetrack that the Authority deems necessary or relevant to an Accreditation determination and may conduct unannounced on-site inspections at any time.

2112. Accreditation Assessment

(a) Upon the initiation of an Accreditation assessment by the Racetrack Safety Committee, the subject Racetrack shall submit or provide access to any relevant information and documentation requested by the Racetrack Safety Committee. The Racetrack Safety Committee may request additional information and documentation as the assessment proceeds. The Racetrack Safety

Committee may at any time propound written questions or inquiries to the Racetrack, to which the Racetrack shall respond in writing by the deadline established by the Racetrack Safety Committee.

(b) After review of all information submitted by the Racetrack under Rule 2112(a), the Racetrack Safety Committee shall conduct an on-site inspection of the Racetrack. The Racetrack Safety Committee shall then prepare a post-inspection report identifying any aspects of the Racetrack's operations that are not in compliance with the requirements of Rules 2100 through 2193.

(c) Within 30 calendar days of the Racetrack's receipt of the post-inspection report under Rule 2112(b), the Racetrack shall respond in writing to the Racetrack Safety Committee setting forth all actions to be taken by the Racetrack to remedy the areas of non-compliance identified in the post-inspection report, and the timeframes necessary for implementation of such remedial actions.

(d) The Racetrack Safety Committee shall assess the Racetrack's response and make a written recommendation to the Authority whether to issue or deny Accreditation or provisional Accreditation of the Racetrack. As a condition of Accreditation, the Racetrack Safety Committee may require a Racetrack to take any remedial or other action that is consistent with the Authority's safety rules and Accreditation standards established in the Rule 2100 Series and Rule 2200 Series.

2113. Issuance of Accreditation

(a) The Authority shall determine whether a Racetrack is entitled to Accreditation by evaluating compliance with the requirements set forth in Rules 2100 through 2193.

(b) In determining whether to grant, renew, or deny Accreditation to a Racetrack, the Authority shall review all information submitted by the Racetrack and the Racetrack Safety Committee's recommendation.

2114. Effective Periods of Accreditation

(a) Accreditation.

(1) Subject to Rule 2114(a)(2), Accreditation shall be effective for a period of 3 years.

(2) The Authority may modify the Accreditation period to a period of 1 to 7 years if the Authority determines that such modified period will be consistent with the requirements of Accreditation outlined in Rules 2100 through 2193.

(b) Provisional Accreditation.

(1) Provisional Accreditation shall be effective for an initial period of 1 year.

(2) Upon the expiration of the initial 1 year period referenced in paragraph (1) above, provisional Accreditation may be extended for additional 1 year periods if the Authority determines that the subject Racetrack is continuing to undertake good faith efforts to comply with the requirements of Rules 2100 through 2193 and achieve Accreditation.

2115. Racetrack Reporting

(a) All Racetracks under these Rules shall participate in ongoing reporting and review to the Authority.

(b) All Racetracks shall, by December 31 of each calendar year, submit to the Racetrack Safety Committee a completed Racetrack Safety Accreditation Audit along with any supporting documentation required by the Authority demonstrating efforts to comply with all Accreditation requirements. The Audit shall be certified by an appropriate Racetrack official who can attest to the truth and accuracy of the information in the Audit.

(c) All Racetracks shall maintain on file with the Authority an accurate list of names and contact information for key personnel within their organization as designated by the Authority.

(d) All Racetracks shall authorize any third-party system provider who collects or returns data related to a Covered Person, Covered Horse, or Covered Horserace, to provide to the Authority, upon request, any data submitted by the Racetrack that relates to a Covered Person, Covered Horse, or Covered Horserace.

(e) All Racetracks shall authorize any video replay or video service provider of Covered Horseraces to make available to the Authority, upon request, unedited, high-resolution video replays of all Covered Horseraces taking place at the Racetrack.

(f) The Authority may request from the Racetrack any information and records that it deems necessary or relevant to an Accreditation determination or a suspected violation of the Accreditation rules and may conduct unannounced on-site inspections at any time.

(g) All Racetracks shall submit a report within 30 calendar days of the end of each Race Meet in such form as the Authority may prescribe. The report shall be certified by an appropriate Racetrack official who can attest to the truth and accuracy of the information in the report.

2116. Suspension and Revocation of Accreditation

(a) An accredited Racetrack that is in material noncompliance with the Accreditation requirements, after having received notice of the noncompliance and been given a reasonable opportunity to remedy the noncompliance, may have its Accreditation suspended by the Authority.

(b) In determining whether a Racetrack is in material noncompliance with the Accreditation requirements, the Authority shall consider all factors that it deems appropriate, including but not limited to the factors established in Rule 8360(e)(1)–(5).

(c) A Racetrack that has been granted provisional or interim Accreditation and that is in material noncompliance with the Accreditation requirements, after having received notice of the noncompliance and been given a reasonable opportunity to remedy the noncompliance, may have its provisional or interim Accreditation suspended by the Authority.

(d) Notwithstanding Rule 8360(b), a Racetrack under suspension shall not conduct any Covered Horserace during the period of the suspension.

(e) A suspended Racetrack that fails to remedy the noncompliance in a reasonable time may have its Accreditation or provisional Accreditation revoked by the Authority.

2117. Provisional Suspension of Racetrack Accreditation

(a) Provisional Suspension of Racetrack Accreditation

(1) If the Authority has reasonable grounds to believe that the conditions or operations of a Racetrack present an imminent danger to the health, safety, or welfare of Covered Horses or Riders arising from specific violations by the Racetrack of the Authority's racetrack safety or Accreditation rules, the Authority may issue to such Racetrack a written notice to show cause concerning a potential provisional suspension of the Racetrack's Accreditation, which notice shall include:

(i) an itemization of the specific Authority's safety and Accreditation rules which the Racetrack is believed to have violated, and a summary of the conditions, practices, facts, or circumstances which give rise to each apparent violation;

(ii) the corrective actions suggested to achieve compliance;

(iii) a request for a written response to the findings, including commitments to suggested corrective action or the presentation of mitigating or opposing facts and evidence; and

(iv) a statement that the Racetrack may, within 3 business days of receipt of the show-cause notice, request a provisional hearing, which, absent exceptional circumstances necessitating a reasonable delay of the hearing, shall be conducted within 3 business days of receipt by the Authority of the Racetrack's request for a provisional hearing. If the Racetrack does not request a provisional hearing within 3 business days of the Racetrack's receipt of the show-cause notice, the Authority shall conduct a provisional hearing in accordance with Rule 2117(b).

(2) Nothing in the Authority's Rules shall preempt or otherwise impair the authority of a State Racing Commission to suspend racing at a Racetrack in accordance with its provisions of licensure.

(b) Provisional Hearing.

(1) A Racetrack that has received a show cause notice pursuant to Rule 2117(a)(1)) is entitled to a provisional hearing to be conducted by the Authority. The provisional hearing shall be conducted within 3 business days of receipt by the Authority of the Racetrack's request for a provisional hearing. If the Racetrack does not request a provisional hearing, the Authority shall conduct the provisional hearing within 7 business days of the date the show-cause notice was issued to the track pursuant to Rule 2117(a)(1). The provisional hearing is not a full hearing on the merits, and the sole issue to be determined at the provisional hearing shall be whether the Racetrack's provisional suspension of Accreditation shall go into immediate effect following the provisional hearing, be stayed pending a final hearing under section (c) of this Rule 2117, or be withdrawn.

(2) The provisional hearing shall be conducted by a 3-person panel consisting of 1 industry member of the Board, 1 independent member of the Board, and 1 member of the Arbitral Body selected by the Chair of the Board. The hearing may be conducted in person, or by means of an audio-visual teleconferencing system or a telephone audio system. The panel may submit any findings and make any recommendation to the Board that the panel deems appropriate. The panel shall, as appropriate, submit to the Board a record of the proceedings conducted under this subsection (b)(2).

(3) At the provisional hearing, the burden is on the Authority to demonstrate good cause why the provisional suspension of the Racetrack's Accreditation should go into immediate effect, or be stayed pending a final adjudication. The panel shall consider all factors that it deems appropriate, including but not limited to the factors established in Rule 8360(e)(1)–(5). Within 7 business days of the conclusion of the hearing, the panel shall issue a written decision determining whether the provisional suspension of the Racetrack's Accreditation shall go into immediate effect, be stayed pending a final adjudication, or be withdrawn. As a condition of issuing a stay of the provisional suspension, the panel may require the Racetrack to comply with additional safety standards or other requirements necessary to address the specific violations by the Racetrack of the Authority's safety or Accreditation rules.

(c) Final Hearing by the Board.

(1) A final hearing on the matters giving rise to the provisional suspension shall be adjudicated by at least a quorum of the Board in accordance with the procedures set forth in Rule 8340(d) through (j). The 2 Board members that participated in the provisional hearing shall not participate in the final hearing. If the Racetrack has requested a final hearing, the final hearing shall be conducted by the Board within 14 calendar days of the request by the Racetrack for a final hearing, absent exceptional circumstances which necessitate a reasonable delay of the hearing. If the Racetrack does not request a final hearing within 10 calendar days of the date of the written decision referenced in subsection (b)(3), the Board shall schedule the final hearing. The Board in its discretion may adopt any portion of the record submitted to the Board by a panel under subsection (b)(2) of this Rule 2117.

(2) Within 7 business days of the conclusion of the final hearing, the Board may take one or more of the following actions:

(i) order that the Racetrack's Accreditation be reinstated, suspended, or revoked, upon a vote in favor of reinstatement, suspension, or revocation by two-thirds of a quorum of the members of the Board;

(ii) reinstate Accreditation subject to any requirements the Board deems necessary to address the specific violations by the Racetrack of the Authority's racetrack safety or Accreditation rules. The Board may also impose a fine upon reinstatement in an amount not to exceed $50,000.00. The Board may require the Racetrack to report at reasonably prescribed intervals on the status of Racetrack safety operations and remedial efforts to address specific violations by the Racetrack of the Authority's Racetrack safety or Accreditation rules.

(3) The outcome of the final hearing shall be the final decision of the Authority as that term is used in Rule 8350 and Rule 8370, and shall constitute a final civil sanction subject to appeal and review in accordance with the provisions of 15 U.S.C. 3058.

2120. Accreditation Requirements

2121. Racetrack Risk Management Committee

(a) General. The Racetracks in each State shall form a Racetrack Risk Management Committee to review the circumstances around fatalities, injuries, and Racetrack safety issues with the goal of identifying possible contributing risk factors that can be mitigated.

(b) Composition.

(1) Subject to Rule 2121(b)(4), the Racetrack Risk Management Committee shall include, at a minimum, the following:

(i) Regulatory Veterinarian;

(ii) Association Veterinarian;

(iii) Medical Director;

(iv) Safety Officer or Steward;

(v) Jockeys' representative;

(vi) Trainers' representative;

(vii) Owners' representative;

(viii) Racing secretary;

(ix) Racetrack superintendent; and

(x) Horseshoe Inspector.

(2) In any jurisdiction where the applicable State Racing Commission enters into an agreement with the Authority to establish a Regulatory Veterinarian(s), the Regulatory Veterinarian(s) identified in the agreement shall chair the Racetrack Risk Management Committee. In any jurisdiction where the applicable State Racing Commission does not elect to enter into an agreement with the Authority to establish a Regulatory Veterinarian(s), the Lead Veterinarian(s) established pursuant to Rule 2134(c) shall chair the Racetrack Risk Management Committee. The Racetrack Safety Committee may approve the Association Veterinarian to serve as the chair of the Racetrack Risk Management Committee in place of the Regulatory Veterinarian or Lead Veterinarian if the Racetrack Safety Committee determines that the Association Veterinarian is capable of performing the duties of the chair of the Racetrack Risk Management Committee.

(3) If the Safety Director is not a committee member, the Safety Director shall be an ex officio member of the Racetrack Risk Management Committee.

(4) Subject to the written approval of the Racetrack Safety Committee, a Racetrack may alter the composition of the Racetrack Risk Management Committee.

(5) No individual may concurrently occupy 2 or more of the positions established in Rule 2121(b)(1)(i)–(x) on the Racetrack Risk Management Committee absent prior written approval of the Racetrack Safety Committee.

(c) Responsibilities. The Racetrack Risk Management Committee shall:

(1) Review all findings relative to Catastrophic Injuries and Equine Mortalities. For each Catastrophic Injury and Equine Mortality, the Racetrack Risk Management Committee shall:

(i) interview Trainers, Jockeys, Exercise Riders, and Attending Veterinarians, and, when appropriate, Racetrack personnel and a qualified human health provider;

(ii) examine past performances, Workouts, pre-race inspection findings, necropsy examination findings, and Trainer and Veterinary treatment records;

(iii) review Race or training video footage, if available;

(iv) review Racetrack surface conditions and weather information;

(v) convene a meeting with the connections of the Covered Horse and other interested persons who may have information relevant to the Catastrophic Injury or Equine Mortality, including, at a minimum, the Regulatory Veterinarian, Trainer, Jockey, Rider, and Attending Veterinarian, and others if applicable to:

(A) convey the findings of the review;

(B) acquire additional information useful for developing strategies for injury prevention; and

(C) provide continuing education or continuing education recommendations related to the cause of equine injury, if available, to persons related to the applicable Covered Horse;

(vi) evaluate factors that may have contributed to injuries;

(vii) evaluate the effectiveness of protocols and procedures for managing the equine injury scenario; and

(viii) develop strategies to mitigate identified factors that may have contributed to the injury.

(2) Review all findings relative to Human Injuries. For each Human Injury, the Racetrack Risk Management Committee shall:

(i) interview witnesses and other persons who may have information relevant to the Human Injury;

(ii) evaluate factors that may have contributed to the Human Injury;

(iii) develop strategies to mitigate risks or safety hazards that may have contributed to the Human Injury; and

(iv) evaluate the effectiveness of protocols and procedures for managing Human Injury occurrences.

(3) Consider Racetrack safety issues brought to the Racetrack Risk Management Committee's attention;

(4) Summary review of all injuries and considerations to review existing practices;

(5) Develop strategies to reduce or mitigate injury occurrences;

(6) Enhance the identification of Covered Horses or conditions for which intervention is warranted;

(7) Enhance Racetrack safety for equine and human participants; and

(8) Prepare and submit a report in such form as the Authority may prescribe that summarizes the findings of the Racetrack Risk Management Committee under this paragraph (c) to the Authority within 60 calendar days of the end of Race Meets that are fewer than 60 calendar days in length or at least quarterly for Race Meets of 60 calendar days or more, unless the Racetrack Safety Committee requires earlier submission. The report shall be certified as true and accurate by the chair of the Racetrack Risk Management Committee. The minutes from the meeting(s) of the Racetrack Risk Management Committee shall be attached as an exhibit to the report.

2130. Required Safety Personnel

2131. Safety Director

(a) The Safety Director shall oversee equine safety, Racetrack safety, and risk management and injury prevention at each Racetrack in accordance with the provisions of these rules. The Safety Director may at the same time serve in the applicable jurisdiction as Safety Officer. Subject to the approval of the Racetrack Safety Committee, the Safety Director may be shared within and among jurisdictions.

(b) If the applicable State Racing Commission does not enter into an agreement with the Authority, then the Racetracks in such jurisdiction shall implement the requirements set forth in this Rule, subject to the Racetrack Safety Committee's approval of the individual named as Safety Director.

(c) The Safety Director shall:

(1) Create a culture of safety for Covered Horses, Riders, and Racetrack personnel;

(2) Oversee all aspects of equine safety, Racetrack safety, and safety of personnel working with Covered Horses by ensuring that all activities and practices involving the training and racing of Covered Horses at the track meet safety standards required by the Authority;

(3) Implement a risk management and injury prevention program under the oversight of the Racetrack Risk Management Committee;

(4) Establish a formal protocol by which health, safety, and welfare issues are reported, investigated, and resolved by the Racetrack. The protocol shall address coordination between Racetrack management, Veterinarians, safety stewards, and Stewards, so that all persons involved have a clear understanding of their roles and further action may be taken where appropriate;

(5) Provide guidance to all Covered Persons on safety issues;

(6) Maintain and annually review standard operating procedures and protocols related to the safety of Covered Horses, Riders, and Racetrack personnel;

(7) Coordinate and oversee emergency drills including equine injury, starting gate malfunction, and hazardous weather;

(8) Report all equine injuries that required equine ambulance assistance and fatalities to the Racetrack's Risk Management Committee and the Authority within 72 hours of an injury, and within 24 hours of a fatality; and

(9) Interact with the Authority concerning Racetrack Safety Accreditation compliance.

2132. Medical Director

(a) The Medical Director shall oversee the care and organization of the medical needs of Jockeys. The Medical Director shall be either a licensed physician, a board-certified athletic trainer, or an individual qualified to perform the duties and responsibilities set forth in this Rule with the assistance of the Authority's National Medical Director. Subject to the approval of the Racetrack Safety Committee, the Medical Director may be shared within and among jurisdictions.

(b) In any jurisdiction where the applicable State Racing Commission does not elect to enter into an agreement with the Authority to establish a Medical Director consistent with this Rule, the Authority shall appoint and employ a Medical Director to serve as Medical Director in that jurisdiction. The Racetracks in the applicable jurisdiction shall reimburse the Authority for all costs associated with the employment of the Medical Director. Such reimbursement shall be shared by the Racetracks in such jurisdiction.

(c) The Medical Director (or their designees) shall:

(1) identify professional medical providers and referral networks that are licensed and certified to oversee Racetrack emergency services, which may include hospital affiliations, nursing staff, EMT service and paramedics, internists, surgeons, family

practitioners, dentists, athletic trainers, or psychiatrists;

(2) make medical provider contact information readily available for ease of communication and immediate coordination of care for any medical event;

(3) require notification of Human Injuries during racing or training to the Authority's National Medical Director within 1 hour of transport of the individual(s) from the scene of the injury;

(4) require reporting of Human Injuries to the Racetrack's Racetrack Risk Management Committee and the Authority within 24 hours of injury;

(5) coordinate and oversee a plan for on-site medical care, including provisions for emergency medical facilities and staffing;

(6) implement an emergency drill for a Jockey injury;

(7) coordinate and oversee a comprehensive plan for transportation of an injured Jockey to the nearest Trauma Level One or Two facility;

(8) coordinate and oversee a plan for transportation of injured Covered Persons to medical care providers;

(9) ensure compliance with mandatory annual Jockey physical examination requirements to indicate readiness to ride for Jockeys;

(10) exercise oversight of medical standards, including the minimum criteria for riding fitness;

(11) develop and implement a process for certifying a Jockey's fitness to resume riding after any incident at the Racetrack that may impair the Jockey's reflexes, decision-making or ability to maintain control of a Covered Horse in a race;

(12) implement the program for Concussion evaluation, Jockey exclusion and clearance, and return to ride protocol;

(13) develop in writing, subject to annual review and revision as necessary, the Racetrack's Emergency Action Plan, which shall provide for rapid response to the medical needs of Covered Persons at the Racetrack;

(14) work with local, State, and Federal regulators to standardize the approach and response to pandemic-related issues among Covered Persons at the Racetrack; and

(15) coordinate with the Authority's National Medical Director.

2133. Stewards

(a) In States where the applicable State Racing Commission elects to enter into an agreement with the Authority, the Stewards, in addition to their duties under State law, shall enforce the safety regulations set forth in Rules 2200 through 2293.

(b) Unless the Authority determines that the applicable individual is otherwise qualified, to qualify for appointment as a Steward, the appointee shall meet the experience, education, and examination requirements necessary to be accredited by ROAP.

(c) The requirements of Rule 2133 for any Steward employed by or contracted with a State Racing Commission are subject to the applicable State Racing Commission electing to enter into an agreement with the Authority. If the applicable State Racing Commission does not enter into such an agreement, the Racetracks in the jurisdiction shall implement the requirements set forth in Rule 2133, subject to the Racetrack Safety Committee's approval of the individual(s) named as Steward(s) by the Racetracks. The Steward(s) named by the Racetracks shall enforce only the safety regulations set forth in Rules 2200 through 2293. The Racetracks in the applicable jurisdiction shall reimburse the Authority for any costs incurred by the Authority associated with the Steward(s).

2134. Regulatory Veterinarian

(a) A Racetrack shall ensure that no fewer than 2 Regulatory Veterinarians (as defined in Rule 1020) (excluding test barn veterinarians) are present at the Racetrack during all live racing. Upon a request and a showing of undue hardship by the Racetrack, the Racetrack Safety Committee may permit a Racetrack to have 1 Regulatory Veterinarian present at the Racetrack during all live racing.

(b) The Regulatory Veterinarian shall:

(1) subject to the provisions of Rule 2134(c), be employed, contracted, or appointed by a State Racing Commission or the Authority, who, in addition to other duties, is responsible for monitoring the health and welfare of Covered Horses during Covered Horseraces;

(2) be licensed to practice in the state in which the Regulatory Veterinarian is performing the duties established under this Rule, if such licensing is required in the applicable jurisdiction;

(3) refuse employment or payment, directly or indirectly, while employed as a Regulatory Veterinarian, from any Owner or Trainer of a Covered Horse racing or intending to race in the jurisdiction;

(4) refrain from directly treating or prescribing medications for any Covered Horse within the applicable jurisdiction except in cases of emergency, accident, or injury; and

(5) be knowledgeable about identifying and stabilizing common musculoskeletal injuries.

(c) In any jurisdiction where the applicable State Racing Commission does not elect to enter into an agreement with the Authority to establish a Regulatory Veterinarian(s) consistent with Rule 2134, the Racetrack shall appoint a Veterinarian(s) to serve as the Lead Veterinarian(s) in such jurisdiction or Racetrack, as the case may be. In any jurisdiction where the applicable State Racing Commission does elect to enter into an agreement with the Authority to establish a Regulatory Veterinarian(s) consistent with Rule 2134, the Racetrack may appoint a Veterinarian(s) to serve as the Lead Veterinarian(s) to supplement the duties of the Regulatory Veterinarian(s) and to comply with the requirements in Rule 2134(a). The appointment of the Lead Veterinarian(s) is subject to the Racetrack Safety Committee's approval. The Lead Veterinarian(s) shall perform all of the duties, obligations and responsibilities of the Regulatory Veterinarian(s) as specified in these Rules. The Racetracks in the applicable jurisdiction shall reimburse the Authority for any costs incurred by the Authority associated with the Lead Veterinarian(s).

2135. Responsibilities and Duties of Regulatory Veterinarian

(a) Regulatory Veterinarian(s) shall have the following responsibilities and duties:

(1) conduct pre-race inspections on all potential starters on Race Day;

(2) inspect any Covered Horse when there is a question as to the physical condition of such Covered Horse independent of the Covered Horse's entry status;

(3) be present in the paddock during saddling, at the Racetrack during the post parade, and at the starting gate until the Covered Horses are dispatched from the starting gate for the Race;

(4) perform post-Race observations;

(5) notify the Stewards of the scratch of any Covered Horse that is, in the opinion of the Regulatory Veterinarian, injured, ill, otherwise unable to compete due to a medical or health-related condition, or that poses a hazard to other horses or racing participants. The Stewards shall then scratch the Covered Horse from the Race;

(6) inspect any Covered Horse which appears to be in physical distress during the Race or upon completion of the Race;

(7) notwithstanding Rule 2220(a), provide emergency medical care to Covered Horses injured while racing or

training and effect case transfer to the Attending Veterinarian;

(8) be authorized to euthanize, consistent with the current version of the American Veterinary Medical Association Guidelines for the Euthanasia of Animals, any Covered Horse deemed to be so seriously injured that it is in the best interests of the Covered Horse to so act;

(9) report to the Safety Director and the Authority within 24 hours the names of all Covered Horses who are euthanized or which otherwise die at the meeting and the reasons therefor;

(10) collaborate with the Safety Director, Chief Veterinarian of the State Department of Agriculture (or comparable State government official), Equine Disease Communication Center (EDCC), and other regulatory agencies to take measures to control communicable or reportable equine diseases; and

(11) remove a Covered Horse from the Veterinarians' List in accordance with Rules 2241 and 2242.

(b) Regulatory Veterinarian(s) may:

(1) access any and all Covered Horses housed on Racetrack grounds regardless of entry status;

(2) perform inspections of any Covered Horse at any time;

(3) observe Covered Horses during training activities and Workouts; and

(4) place a Covered Horse on the Veterinarians' List.

(c) If the Regulatory Veterinarian and the Regulatory Veterinarian's staff are unable to fulfill any of the duties described in Rule 2135(a) and (b), such duties may be performed by an Association Veterinarian. In such case, the Association Veterinarian shall be responsible for adhering to and upholding the rules and regulations of the Authority and the State Racing Commission. Notwithstanding anything contained in the Rules of the Authority to the contrary, if after consultation with the Regulatory Veterinarian, the Authority determines that the Regulatory Veterinarian requires additional assistance to perform the duties of the Regulatory Veterinarian as established in the Authority's rules, the Authority may retain additional Veterinarians to assist the Regulatory Veterinarian. The applicable Racetracks in the applicable jurisdiction shall reimburse the Authority for all costs associated with the employment of any additional Veterinarians retained under this paragraph.

(d) In any jurisdiction where the applicable State Racing Commission enters into an agreement with the Authority to establish a Regulatory Veterinarian(s), the Regulatory Veterinarian(s) identified in the agreement shall have authority over all Veterinarians within the grounds of the Racetrack. In any jurisdiction where the applicable State Racing Commission does not elect to enter into an agreement with the Authority to establish a Regulatory Veterinarian(s), the Lead Veterinarian(s) established pursuant to Rule 2134(c) shall have authority over all Veterinarians within the grounds of the Racetrack. The Regulatory Veterinarian(s) identified in the agreement shall review and consult with the Stewards and State Racing Commission regarding the State Racing Commission license applications of Attending Veterinarians, veterinary technicians or assistants, vendors of medical supplies and equipment, and non-Veterinarian equine health care providers. The authority and responsibilities of the Regulatory Veterinarian to review and consult with the Stewards and State Racing Commission regarding license applications under this paragraph (d) shall not be exercised by an Association Veterinarian or Lead Veterinarian.

2136. Racetrack Safety Officer

(a) Each Racetrack shall have a Safety Officer to ensure that all activities and practices involving the training and racing of Covered Horses at the Racetrack meet required safety standards and regulatory guidelines. The Safety Officer may also be a Steward.

(b) The Safety Officer or the Safety Officer's designee shall:

(1) monitor daily stable area activities and practices in the barn area and on the Racetrack for compliance with the applicable State Racing Commission safety regulations and the Rules of the Authority;

(2) conduct pre-Race Meet Racetrack safety inspections;

(3) monitor Outrider compliance with Racetrack rules during training;

(4) monitor starting gate procedures;

(5) monitor ambulance and medical personnel protocols for Covered Horses and Jockeys in cooperation with the Medical Director;

(6) assist Regulatory Veterinarians with follow-up on Covered Horses barred from training or vanned off during training and racing;

(7) review ship-in and ship-out lists and undertake appropriate investigations;

(8) conduct random HISA registration checks for Covered Persons in the stable area;

(9) conduct random barn inspections to monitor safety and regulatory compliance, including fire safety regulations;

(10) conduct random inspections to verify acceptable management, equine husbandry, and veterinary practices;

(11) enforce fire safety rules in the stable area;

(12) serve as a member or ex officio member of the Racetrack Risk Management Committee; and

(13) make recommendations to Racetrack management and racing officials to ensure the safety and welfare of Covered Horses and Jockeys, and compliance with applicable horse racing laws and regulations.

2137. Horseshoe Inspector

(a) Racetracks, or State Racing Commissions where the applicable State Racing Commission elects to enter into an agreement with the Authority, shall employ or contract with a Horseshoe Inspector to perform the duties and responsibilities established in Rule 2138.

(b) The Horseshoe Inspector shall:

(1) be licensed by the State Racing Commission if required in the applicable jurisdiction;

(2) be knowledgeable of matters pertaining to hooves, horseshoes and the rules of the Authority pertaining to Covered Horses and horseshoes; and

(3) annually complete continuing education as required by Rule 2182(b)(15).

2138. Responsibilities and Duties of Horseshoe Inspector

(a) The Horseshoe Inspector shall have the following responsibilities and duties:

(1) conduct inspections of horseshoes and other orthotics on all Covered Horses entered in a Covered Race on Race Day; and

(2) notify the Stewards of any Covered Horse that is shod with horseshoes that are not compliant with the Authority's rules.

(b) The Horseshoe Inspector, or any Farrier exercising the duties of the Horseshoe Inspector as provided in Rule 2138(a), are authorized to perform other inspections of horseshoes or other orthotics of any Covered Horse by direction of a Steward.

2139. Horseshoe Inspections

(a) Pre-race Horseshoe inspection. Every Covered Horse entered to participate in a Covered Horserace shall be inspected on Race Day by a Horseshoe Inspector prior to starting in the Race.

(1) the Trainer of each Covered Horse or a representative of the Trainer who is knowledgeable about the Covered Horse and able to communicate with the Horseshoe Inspector must present the Covered Horse for inspection.

(2) the Horseshoe Inspector's inspection of each Covered Horse prior to participating in a Race shall include, at a minimum, the following:

(i) identification of the Covered Horse; and

(ii) examination of the horseshoe or other orthotics and documentation of any features relating to a violation of horseshoe rules of the Authority.

(b) If, prior to starting a Race, the Horseshoe Inspector is unable to make a determination, or determines that a Covered Horse is wearing non-compliant horseshoes, the Horseshoe Inspector shall notify the Stewards prior to the Covered Horse leaving the paddock.

2140. Racehorse Inspections and Monitoring

2141. Veterinary Inspections

(a) Veterinary inspections shall be performed by the Regulatory Veterinarians on all Covered Horses entered in a Race. Such inspections shall include the items listed in Rule 2142.

(b) If, prior to starting a Race, a Covered Horse is determined to be unsound for competition, or if the Regulatory Veterinarian is unable to make a determination of racing soundness, the Regulatory Veterinarian shall notify the Stewards that the Covered Horse shall be scratched. The Stewards shall then scratch the Covered Horse from the Race.

2142. Assessment of Racing Soundness

(a) Post-layoff report. The Trainer or Trainer's designee of any Covered Horse that has not raced for 150 or more days shall complete a Layoff Report and submit it to the Authority prior to entry. Nothing in this rule shall alter any state law requiring a post-layoff examination of a Covered Horse.

(b) Post-entry screening. The Regulatory Veterinarian shall perform post-entry screenings of previous pre-Race inspection findings of entered Covered Horses to identify Covered Horses that may be at increased risk for injury. The Regulatory Veterinarian shall review past performances, lay-ups (more than 60 days without a Timed and Reported Workout or Race), Layoff Reports, last 30 days medical history, previous injury and lameness diagnostics, intra-articular corticosteroid injections, previous surgery, and individual Covered Horse risk factors. Additional physical inspection and observation in motion may be performed by the Regulatory Veterinarian.

(c) Race Day veterinary inspection. Every Covered Horse entered to participate in a Covered Horserace shall be inspected by a Regulatory Veterinarian prior to starting in the Race for which it is entered on Race Day.

(1) The Trainer of each Covered Horse or a representative of the Trainer who is knowledgeable about the Covered Horse and able to communicate with Regulatory Veterinarian(s) must present the Covered Horse for inspection. Covered Horses presented for inspection must have bandages removed, and the legs must be clean and dry. Covered Horses may not be placed in ice until the Regulatory Veterinarian has completed the veterinary inspection and no device or substance shall be applied to the Covered Horse that impedes veterinary clinical assessment on Race Day.

(2) The Regulatory Veterinarian's inspection of each Covered Horse prior to participating in a Race shall include, at a minimum, the following:

(i) identification of the Covered Horse;

(ii) ascertainment of the sex of the Covered Horse;

(iii) performance of an overall inspection of the entire Covered Horse, assessing general appearance, behavior, disposition, posture, and body condition;

(iv) observation of the Covered Horse jogging in hand, moving toward and away from the Veterinarian so that both hind-end and front-end motion can be evaluated;

(v) performance of a digital palpation on both distal forelimbs;

(vi) placement of the Covered Horse on the Veterinarians' List if the Covered Horse does not jog sound or warm up to the Regulatory Veterinarian's satisfaction;

(vii) visual observation in the paddock and saddling area, during the parade to post, and at the starting gate; and

(viii) any other inspection deemed necessary by Regulatory Veterinarian(s), including Jockey consultation for the Jockey's mount.

(3) A report summarizing the results of the Race Day inspection under paragraph (c) shall be submitted to the Authority on the day of the inspection.

(d) Post-race assessment. Post-Race visual observations shall be performed by a Regulatory Veterinarian on all Covered Horses leaving the Racetrack at the conclusion of every Race.

(1) If a Covered Horse is determined to have Epistaxis or to be physically distressed, medically compromised, injured, or unsound at any time before exiting the racetrack or leaving the Test Barn, the Covered Horse shall be placed on the Veterinarians' List and the Regulatory Veterinarian shall document post-race inspection findings to the Authority.

(2) If a Covered Horse is determined to have skin lacerations, swellings, or welts that resulted from crop use, the Stewards and Attending Veterinarian shall be notified, and the information documented to the Authority.

(e) Training. Regulatory Veterinarians may observe Covered Horses during training activities. Covered Horses deemed physically distressed, medically compromised, injured, or unsound shall be placed on the Veterinarians' List and reported to the Authority.

2143. Racehorse Monitoring

(a) All Covered Horses and Pony Horses entering the Racetrack grounds directly from any location or facility other than a Designated Equine Facility or licensed racing facility within the same state as the receiving Racetrack must have a current health certificate or other health documentation sufficient for importation to the United States and approved by the USDA–APHIS representatives. Required vaccinations shall be current and recorded in the Covered Horse's or Pony Horse's health record. These shall include:

(1) Certificate of veterinary inspection within the prior 5 days, or fewer days if high risk situations dictate;

(2) EEE/WEE, WNV, rabies, and tetanus vaccinations within the last 365 days;

(3) Influenza and Rhinopneumonitis vaccinations within the prior 180 days, or fewer days if high risk situations dictate; and

(4) Negative equine infectious anemia (Coggins) test within the last 365 days or in a shorter period of time if high risk situations dictate.

(b) The applicable Racetrack shall maintain records that document that the requirements of Rule 2143(a) have been satisfied for each Covered Horse entering Racetrack grounds. Such records shall be subject to inspection and audit by the Authority.

(c) Exemption for vaccination requirements. Covered Horses that are imported to the United States to participate in a specific race or races or to enter race training in the United States may, upon application to the Authority, be exempted from the vaccination requirements, with the exception of requirements for Influenza and Rhinopneumonitis, for the following periods:

(1) if the Covered Horse is leaving the United States immediately following the specific race or races, then for the period of USDA temporary importation or transit to an approved USDA location, or

(2) if the Covered Horse is remaining in the United States, then for the period of 14 days following the specific race or races, or from arrival at a Racetrack, whichever is longer.

(d) Each Racetrack shall, upon request by the Authority, submit the following information to the Authority with respect to each Covered Horse on its grounds:

(1) Covered Horse identification;

(2) origin of Covered Horse;

(3) date of entry;

(4) verification of certificate of veterinary inspection; and

(5) verification of vaccinations.

(e) Each Racetrack shall, upon request by the Authority, submit the following information to the Authority with respect to each Covered Horse leaving its grounds:

(1) Covered Horse identification;

(2) intended destination;

(3) reason for departure;

(4) date of exit;

(5) vehicle license plate; and

(6) transporter.

(f) Covered Horses moving interstate must also meet the entry requirements of the destination State, the State Racing Commission in the destination State, and the individual Racetracks or Training Facilities to which the Covered Horse is being shipped in the destination State.

2144. Designated Equine Facility

(a) To qualify an equine facility as a Designated Equine Facility, the applicable Racetrack shall certify to the Authority in such form as the Authority may prescribe that it has reviewed and determined that the biosecurity protocols and procedures of the Designated Equine Facility are consistent with the biosecurity protocols and procedures of the Racetrack.

(b) The applicable Racetrack shall maintain records that document that the requirements of Rule 2144(a) have been satisfied for each Designated Equine Facility, including but not limited to the written biosecurity protocols and procedures of the Designated Equine Facility. Such records shall be subject to inspection and audit by the Authority.

2150. Racetrack and Racing Surface Monitoring and Maintenance

2151. Data Collection, Recordkeeping and Submission

(a) Racetracks shall have data collection protocols in place to assist in the proper and consistent maintenance of all racing and training surfaces. Racing and training surface testing and maintenance should be performed based on the Racetrack's written standard operating procedures which are reviewed annually and updated as needed. The Racetrack Safety Committee, or its designees, shall develop and annually update a Racetrack Surface Standard Practices Document.

(b) All Racetrack design records, racing and training surface maintenance records, surface material tests, and daily tests data shall be recorded in a format acceptable to the Authority and shall be submitted to the Authority. Any test results shall be submitted to the Authority within 1 week of receipt of the test results.

2152. Testing Methods

Surface test methods and surface material test methods must be documented and consistent with testing standards from internationally recognized standards organizations including ASTM International, American Society of Agricultural and Biological Engineers, or other relevant international standards, and when possible for unpublished standards, methods consistent with those documented by the Racing Surfaces Testing Laboratory.

2153. Racetrack Facilities

(a) Racetrack facilities must be designed, constructed, and maintained as described in this Rule to provide for the safety of Covered Persons and Covered Horses.

(b) Rails.

(1) Racetracks shall have inside, outside, and gap rails designed, constructed, and maintained to provide for the safety of Riders and Covered Horses.

(2) The top of the inner and outer rails on dirt and turf courses must be at least 40 inches but not more than 50 inches above the top of the race surface.

(3) Objects within 10 feet of the inside rail shall be flexible enough to collapse upon impact of a Covered Horse or Rider, or sufficiently padded as to prevent injury.

(4) Rails shall be inspected prior to each Race Meet and daily during training and racing events.

(c) Gaps.

(1) All gaps must be clearly marked, must have protective padding covering any sharp edges or unique angles, and have proper mechanisms to allow for secure closure when needed.

(2) Main gaps and on-gaps should include signage with safety rules, Racetrack hours, and other applicable rules.

(3) For Races breaking from a chute there should be sufficient temporary rail extension to prevent Covered Horses from ducking in or out.

(d) Starting gate.

(1) All gates, and the vehicle that moves the gates, must be inspected pre-Race Meet and documented to be in proper working condition.

(2) All gates must have protective padding to ensure the safety of the Covered Horse, Riders and Starting Gate Persons. Protective padding shall protect the Riders and Starting Gate Persons from contact with sharp edges and help to distribute impact loads. All padding shall be designed to ensure durability for outdoor use and shall be capable of maintaining safety and physical integrity during all weather conditions.

(3) Gates and the vehicle that moves the gates shall be inspected and tested each Race Day before the Races and each morning before schooling to ensure proper functioning.

(4) No personnel, other than those required for steering the gate, shall ride on the gate while the gate is in motion or being transported.

(5) Racetracks shall have in place a written plan for the removal of the starting gate after the start of each Race in a safe and timely manner. This plan shall also include procedures for gate removal if the primary removal mechanism fails. The plan shall be reviewed annually by the Racetrack.

(6) Every Starting Gate Person shall wear protective gear when working on or around the starting gate, including approved helmets and safety vests.

(7) If the starting gate becomes inoperable during racing hours, racing may not continue until the starting gate is brought back to safe operating standards or the inoperable gate is replaced with a properly functioning alternate gate.

(8) A Racetrack shall ensure there is at least 1 Starting Gate Person present for each Covered Horse starting in a Covered Horserace.

(9) A Racetrack shall make at least 1 starting gate and 1 Starting Gate Person available for racehorse schooling during designated gate training hours.

(e) Emergency warning system.

(1) Each Racetrack shall have an operational emergency warning system on all racing and training tracks. The emergency warning system shall be approved by the State Racing Commission, subject to the applicable State Racing Commission electing to enter into an agreement with the Authority. If such agreement does not exist, the emergency warning system shall be approved by the Authority.

(2) The emergency warning system shall be tested twice a week before training or racing.

(3) During training, when the emergency warning system is activated, all persons on horseback shall slow to a walk and no one on horseback shall enter the Racetrack.

(4) The Racetrack announcer shall be trained to utilize the public address system to:

(i) warn Riders of potentially dangerous situations and provide direction; and

(ii) warn patrons of potentially dangerous situations and provide direction.

(f) The Racetrack shall provide a suitable area for jogging claimed horses in or near the Test Barn or, if approved by the Authority, a secured area used for claimed horse exams. The jogging area shall be of sufficient length to jog the claimed horse in hand in a straight line of not fewer than 5 strides and have consistent, firm, and level footing, and shall be out of the view of persons not authorized in the Test Barn or secured area.

2154. Racetrack Surface Monitoring

(a) Racetracks shall provide equipment and personnel necessary to maintain the Racetrack surface in a safe and consistent condition.

(b) Racetracks shall have pre-meet inspections performed on all surfaces prior to the start of each Race Meet with sufficient time allotted to facilitate corrections of any issues prior to racing. For Race Meets spanning periods with significant weather variation, inspections shall be performed seasonally prior to anticipated weather changes.

(1) Inspections for dirt and synthetic surfaces shall include the following elements:

(i) determine and document race and training track configurations and geometries, including:

(A) geometry and slopes of straights and turns and slopes at each distance marker pole;

(B) the accuracy of distances from the finish line to the marker poles; and

(C) cushion and base geometries;

(ii) base inspection, including windrowing and base survey, surface survey, ground penetrating radar, or other method;

(iii) mechanical properties of racing and training tracks using a biomechanical surface tester shall be determined and documented;

(iv) surface material samples of racing and training tracks shall be analyzed for material composition pursuant to the Racetrack Surface Standard Practices Document; and

(v) corrective measures to address issues under paragraphs (i) through (iv) above.

(2) Inspections for turf surfaces shall include the following elements:

(i) determine and document Racetrack configuration and geometry, including:

(A) geometry and slopes of straights and turns and slopes at each distance marker pole;

(B) irrigation systems;

(C) turf profile; and

(D) ensure distances from the finish line to the marker poles are correct;

(ii) document turf species;

(iii) mechanical properties of racing and training tracks using a surface tester should be determined and documented;

(iv) surface material samples of racing and training tracks shall be analyzed for material composition pursuant to the Racetrack Surface Standard Practices Document;

(v) the irrigation system must be tested to evaluate function of all components and water coverage including gaps and overlap; and

(vi) corrective measures to address issues under paragraphs (i) through (v) above.

(c) Daily measurements shall be taken at the beginning of all daily training and racing sessions for racing and training tracks, and taken at each ¼ mile marker pole at locations 5 and 15 feet outside the inside rail.

(1) For dirt and synthetic surfaces, such daily measurements shall include:

(i) moisture content;

(ii) cushion depth; and

(iii) weather conditions and precipitation at 15-minute intervals from a national or local weather service.

(2) For turf surfaces, such daily measurements shall include:

(i) moisture content; and

(ii) penetration and shear properties.

(d) Surface equipment inventory, surface maintenance logs, and surface material addition or renovation logs shall be documented daily and uploaded weekly by the Racetrack to an electronic database designated by the Authority.

(1) Daily surface maintenance logs should include equipment used, direction and speed of travel, and water administration.

(2) Documentation of the source, timing, quantity, material specifications, and method of all additions to the surfaces shall be submitted to the Authority.

2160. Emergency Preparedness

2161. Emergency Drills

(a) Emergency protocols shall be reviewed, and drills shall be conducted, prior to the beginning of and periodically during each Race Meet for purposes of demonstrating the Racetrack's proficiency in managing the following emergencies:

(1) starting gate malfunction;

(2) paddock emergencies;

(3) Equine Injury;

(4) Rider injury;

(5) Starting Gate Person injury;

(6) medical emergencies;

(7) loose horse;

(8) fire;

(9) hazardous weather condition; and

(10) multiple injury scenarios for both Covered Horses and Riders.

2162. Catastrophic Injury

Racetracks and Training Facilities under the jurisdiction of a State Racing Commission shall have protocols in place for instances of Catastrophic Injury to Covered Horses during racing and training.

2163. Fire Safety

Racetracks and Training Facilities under the jurisdiction of a State Racing Commission shall plan for and have protocols in place for instances of fire within their enclosures. Fire and life safety inspections shall be performed in accordance with the local authority and appropriate National Fire Protection Association standards and shall be conducted at the required frequency. Racetracks shall document adherence to the applicable local fire protection authority.

2164. Hazardous Weather

(a) Except as set forth in Rule 2164(b), Racetracks shall comply with the applicable rules and regulations of the applicable State Racing Commission for the delay or cancellation of races due to inclement weather, extreme heat, extreme cold, lightning or other hazardous racing conditions. If the applicable State Racing Commission does not have such rules and regulations, then the Racetracks, in conjunction with its Stewards, Jockeys, and horsemen, shall develop Racetrack-specific protocols for the delay or cancellation of races due to inclement weather, extreme heat, extreme cold, lightning or other hazardous racing conditions. Such protocols shall take into consideration specific weather conditions and shall include a predetermined method for establishing consensus among stakeholders. The first priority of all decisions made shall be the well-being and safety of all persons and animals. The protocols shall include:

(1) designation of the personnel responsible for monitoring weather

conditions, immediately investigating any known impending threat of dangerous weather conditions and determining if conditions exist which warrant delay or cancellation of training or racing and the notification to the public of such dangerous weather conditions;

(2) use of a designated weather watcher and a reliable source for monitoring the weather, including lightning strike distance/radius notifications;

(3) implementation of a dangerous weather protocol, which accounts for extreme heat and chill factors and states that participation in racing or training activities may be modified or canceled if heat or cold conditions are in the extreme range for exertional heat illness, frostbite, or hypothermia;

(4) Designation by the Racetrack of an official responsible for monitoring weather conditions during training and racing hours;

(5) Consideration by the Racetrack of lightning safety guidelines such as the National Athletic Trainers' Association Position Statement, or more recent evidence-based recommendations;

(6) Requirements that the Stewards shall contact Racetrack management when weather conditions may become hazardous, and that the Stewards shall commence a racing and training delay when weather conditions pose risks to human and equine welfare; and

(7) Designation by the Racetrack of an official responsible for enforcing any weather associated training delay.

(b) All Racetracks shall develop and implement a written protocol pertaining to training and racing activities when the Air Quality Index approaches unhealthy levels. The protocol shall contain the following minimum components:

(1) when the Air Quality Index is elevated for the Racetrack's zip code due to particle pollution (defined as an Air Quality Index of 100–150), Responsible Persons shall monitor Covered Horses and Pony Horses for signs of respiratory inflammation and contact their Attending Veterinarian to evaluate Covered Horses and Pony Horses exhibiting coughing, nasal discharge, or respiratory distress;

(2) when the Air Quality Index for the Racetrack's zip code is considered Unhealthy (defined as an Air Quality Index of >150), both equine and human participants shall be provided the option to withdraw from competition without penalty. The Air Quality Index shall be closely monitored, and Racetracks shall have discretion to cancel Covered Horseraces and Timed and Reported Workouts if Air Quality Index is trending upward; and

(3) no Covered Horserace or Timed and Reported Workouts shall be conducted when the Air Quality Index for the Racetrack's zip code is at or above 175.

2165. Infectious Disease Management

(a) Plans and protocols shall be put in place by each Racetrack to manage an infectious disease outbreak. Such protocols shall be based on guidelines recommended by the AAEP General Biosecurity Guidelines and AAEP Healthy Horse Protocols: Biosecurity Guidelines for Racetrack Entry and Stabling or more recent versions or developed in consultation with the appropriate State agency or official.

(b) The Regulatory Veterinarian shall maintain written biosecurity guidelines and standard operating procedures and train Racetrack safety personnel in basic biosecurity protocols. All Covered Persons must report any signs that may be attributed to an infectious disease to the Regulatory Veterinarian and Safety Director.

(c) During an infectious disease outbreak, the above requirements may be revised as dictated by the circumstances, and all Covered Persons shall adhere to disease control measures implemented by State Racing Commissions or applicable State veterinary authorities.

(d) The Safety Director, or Regulatory Veterinarian if the Safety Director is not a licensed veterinarian, must notify the Authority and the Chief Veterinarian of the relevant State Department of Agriculture (or comparable State government official) to enable timely and accurate reporting of disease outbreaks at the racetrack to the Equine Disease Communication Center.

2166. Human Ambulance Support

(a) A Racetrack shall ensure that no fewer than 2 properly staffed and equipped Advanced Life Support (''ALS'') ambulances or ALS adapted vehicles are present at the Racetrack during training and racing hours. Upon a request and a showing of undue hardship by the Racetrack, the Racetrack Safety Committee may permit a Racetrack to have 1 ALS ambulance or certified ALS adapted vehicle present at the Racetrack during training and racing hours.

(b) A Racetrack shall not conduct a Covered Horserace or allow Covered Horses on the Racetrack until an ALS ambulance or ALS adapted vehicle is present at the Racetrack and available for service.

(c) If a Racetrack operates a training track in addition to a main track, the Racetrack shall provide at least 1 ALS ambulance, ALS adapted vehicle, Basic Life Support (''BLS'') ambulance or BLS adapted vehicle dedicated to the training track.

(d) Racetracks shall ensure all ambulance staff have been trained in Concussion management and have acknowledged review of the HISA Concussion Protocol. Any Jockey who falls or is thrown from a Covered Horse during a race shall be examined by a medical provider experienced in concussion management and familiar with the HISA Concussion Protocol. The medical provider shall report their findings to the Stewards who, upon the recommendation of the medical provider shall order the Jockey taken off any remaining mounts.

(e) Racetracks shall develop and implement a training program for all ambulance staff to ensure they are familiar with and adequately trained on the unique safety and incident response issues present in horseracing.

(f) Racetracks shall develop and implement protocols for incidents involving injuries to more than one Covered Person during the same race.

(g) Racetracks shall develop and implement an incentive program to retain skilled and certified ambulance staff experienced in the medical response issues present in horseracing.

(h) The ALS ambulance or ALS adapted vehicle shall follow the field at a safe distance during the running of Covered Horseraces. In the event Racetrack surface conditions prevent the ALS ambulance or ALS adapted vehicle from following the racing field:

(1) the ALS ambulance or ALS adapted vehicle shall be stationed at the Racetrack entrance; and

(2) the ALS paramedic shall move to a chase vehicle or other vehicle capable of maneuvering on the racing surface and shall follow the racing field in that vehicle. In the event of an incident requiring the ALS ambulance or certified ALS adapted vehicle, the ALS paramedic shall promptly call for it to travel to the appropriate location.

2167. Rider Injury Reporting Procedure

(a) Racetracks or State Racing Commissions where the applicable State Racing Commission elects to enter into an agreement with the Authority, shall develop standard operating procedures for the collection of data associated with all incidents resulting in Rider injuries sustained at the Racetrack and submit such information to the Racetrack Risk Management Committee and the Authority within 10 days of the injury

occurrence. Covered Persons involved in, or witnesses to, the circumstances surrounding the injury shall make themselves available to and cooperate with those individuals collecting data for the database.

(b) Data collected shall include:
(1) name of person injured;
(2) nature of the injury;
(3) date and time of day of injury;
(4) occupation of person;
(5) safety equipment used;
(6) cause of the incident;
(7) weather;
(8) location of the incident; and
(9) witness statements.

2168. Equine Ambulance

(a) A dedicated equine ambulance with personnel trained to operate the ambulance shall at all times be available for rapid deployment during racing and training periods. It is recommended that a second ambulance be available in the case of multiple equine injuries or failure of the primary equine ambulance. The primary ambulance must be equipped to:

(1) navigate on the racetrack during all weather conditions;

(2) safely transport a horse off the association grounds;

(3) contain equipment to stabilize distal limb injuries; and

(4) remove a recumbent horse from the racetrack.

2169. Paddock Safety

Racetracks or State Racing Commissions where the applicable State Racing Commission elects to enter into an agreement with the Authority shall have protocols in place to manage the safety of their saddling paddocks and walking rings. Such protocols shall include crowd management policies as well as emergency response procedures for human and equine injuries. An emergency medical technician or paramedic shall be present during saddling.

2170. Necropsies

(a) All Covered Horses that die or are euthanized on Racetrack grounds shall have an autopsy (necropsy) examination performed. All Covered Horses that die or are euthanized due to, or related to, a musculoskeletal injury within 72 hours of leaving Racetrack grounds shall have an autopsy (necropsy) examination performed.

(b) Racetracks must have a standard operating protocol that specifies:

(1) contact information and coordination procedures for the persons and organizations necessary to perform the necropsy;

(2) transportation options for necropsy cases and invoicing procedures for the cost of transportation;

(3) secure storage of the body pending transport, and transportation of the body (and body parts, when necessary) in such a way that tissue degradation and the development of post-mortem artifacts are minimized;

(4) sound infection control practices with respect to equine infectious or zoonotic disease; and

(5) procedures for reporting necropsy findings.

(c) Racetracks or State Racing Commissions where the applicable State Racing Commission elects to enter into an agreement with the Authority shall coordinate with a diagnostic laboratory equipped with the facilities and trained personnel necessary to perform equine necropsies.

(1) The diagnostic laboratory shall perform a systematic gross examination of all body systems and shall collect relevant samples for further examination and tests.

(2) For fatalities related to a musculoskeletal injury, the Racetrack and/or diagnostic laboratory may contract with a diagnostic laboratory that specializes in examination of racehorse musculoskeletal injuries. The affected limb and contralateral limb (and when appropriate, the skull, vertebral spine or pelvis), shall be shipped to the specialty laboratory for examination, with consideration given to optimizing the condition of the body tissues.

(3) Necropsy findings shall be reported in a manner prescribed by the Authority, and shall be submitted to the Regulatory Veterinarian, the Racetrack Risk Management Committee, and the Authority within 72 hours of receiving the necropsy report. The ancillary test results and the final report shall be submitted to the Regulatory Veterinarian, the Racetrack Risk Management Committee, and the Authority within 72 hours of their receipt.

(d) The cost of necropsies set forth in this Rule 2170 shall be paid by those persons who are responsible for necropsy costs pursuant to existing state rules. In jurisdictions that do not provide for necropsy costs or address the responsibility for payment, the Racetrack shall be responsible for payment.

2180. Safety Training and Continuing Education

2181. Uniform National Trainers Test

Subject to the applicable State Racing Commission electing to enter into an agreement with the Authority, the State Racing Commission shall require the use of a uniform National Trainers Test in addition to any State licensing requirements. This test shall have a written component and include practical interviews that demonstrate knowledge and proficiency in basic horsemanship skills, knowledge of the Protocol, the Racetrack Safety Program, racing office protocols, State specific information, and basic equine health care.

2182. Continuing Education

(a) Subject to the applicable State Racing Commission electing to enter into an agreement with the Authority, the State Racing Commission shall identify existing, or provide locally, training opportunities for all Racetrack employees having roles in Racetrack safety or direct contact with Covered Horses.

(b) Required annual continuing education shall include:

(1) Regulatory Veterinarians shall complete, on an annual basis, at least 8 hours of continuing education specific to racetrack regulatory medicine;

(2) Attending Veterinarians shall complete, on an annual basis, at least 8 hours of continuing education specifically applicable to racetrack practice;

(3) Medical Directors shall complete, on an annual basis, at least 8 hours of continuing education;

(4) Stewards shall complete at least 16 hours of continuing education every 2 years;

(5) Safety Directors shall complete, on an annual basis, at least 8 hours of continuing education;

(6) Trainers shall complete, on an annual basis, at least 4 hours of continuing education;

(7) assistant trainers shall complete, on an annual basis, at least 4 hours of continuing education;

(8) Owners shall complete, on an annual basis, at least 2 hours of continuing education;

(9) Racetrack surface managers shall complete at least 8 hours of continuing education every 2 years;

(10) Grooms shall complete, on an annual basis, at least 2 hours of continuing education offered in English and Spanish;

(11) Outriders shall complete, on an annual basis, at least 2 hours of safety and outrider protocol training delivered locally prior to the beginning of a Race Meet;

(12) Jockeys and Exercise Riders shall complete, on an annual basis, at least 2 hours of safety and rider protocols delivered locally or virtually in English and Spanish;

(13) Starting Gate Persons shall complete, on an annual basis, at least 2 hours of safety training either delivered locally prior to the beginning of a Race Meet or through the ROAP certification;

(14) equipment operators shall complete, on an annual basis, at least 2 hours of safety training either delivered locally prior to the beginning of a Race Meet or through a continuing education program; and

(15) Farriers and Horseshoe Inspectors shall complete, on an annual basis, at least 2 hours of continuing education and be knowledgeable of HISA's horseshoe regulations.

2183. Sexual Harassment Prevention

Each Racetrack shall implement and enforce a sexual harassment and non-discrimination policy that offers protection to Covered Persons by prohibiting discriminatory behavior at its facilities. At a minimum, the policy shall define and prohibit sexual harassment and discrimination against Covered Persons within the applicable legal protected classifications and provide an effective process for reporting and investigation of prohibited sexual harassment and discrimination. The policy shall also memorialize the Racetrack's authority to impose discipline on any individual found to be in violation of the policy, including but not limited to exclusion from the Racetrack (and all related Racetrack grounds and facilities) and any racing activities.

2190. Jockey and Starting Gate Person Health

2191. Drug and Alcohol Testing

Subject to the applicable State Racing Commission electing to enter into an agreement with the Authority, the State Racing Commission shall develop and implement a testing program for drugs and alcohol for Jockeys and Starting Gate Persons. The program shall include provisions for medications prescribed by licensed medical doctors that do not affect mental and physical abilities. If a State Racing Commission does not elect to enter into an agreement with the Authority, the Racetracks in such States shall develop and implement a testing program for drugs and alcohol for Jockeys and Starting Gate Persons, subject to the approval of the Authority.

2192. Concussion Management

(a) State Racing Commissions, or Racetracks if the applicable State Racing Commission does not enter into an agreement with the Authority, shall implement the Authority's Concussion management protocol containing the following elements:

(1) each Jockey shall acknowledge in writing that they have been made aware of the Concussion protocols at least annually;

(2) a minimum assessment shall include a current Concussion assessment tool examination;

(3) a return-to-ride guideline shall be established in order to clear a Jockey who has been concussed, or is believed to have been concussed, once the Jockey is declared fit-to-ride; and

(4) the Stewards shall be notified when a Jockey is not permitted to ride and when the Jockey has been authorized to return to riding.

2193. Insurance

In States where workers compensation benefits are not afforded to Jockeys by State statute or regulation, Racetracks shall maintain a minimum standard of One Million Dollars ($1,000,000) per incident worth of primary accident medical expense coverage for all Jockeys. The insurance coverage shall be in place for all training and racing activities. A copy of the current policy's declaration page shall be posted in the Jockeys' quarters prior to the beginning of the racing season.

2200. Specific Rules and Requirements of the Racetrack Safety Program

2210. Purpose and Scope

(a) The purpose of Rules 2200 through 2293 is to establish specific safety rules and requirements designed to enhance equine and Rider safety in horseracing.

(b) Violation of, or failure to comply with, the requirements of Rules 2200 through 2293 may result in disciplinary action by racing officials and the Authority.

2215. Welfare and Deprivation of Care

(a) No Covered Person acting alone or in concert with another person shall compromise the welfare of a Covered Horse for competitive or commercial reasons or subject or permit any Covered Horse under their control, custody or supervision to be subjected to or to incur the following:

(1) any form of cruelty, mistreatment, neglect, or abuse;

(2) abandonment, injury, maiming, or killing (except for euthanasia for humane reasons and in a manner consistent with the current version of the American Veterinary Medical Association Guidelines for the Euthanasia of Animals);

(3) administration of any noxious substance; or

(4) deprivation of necessary care, sustenance, shelter, or veterinary care.

2220. Attending Veterinarian

(a) Subject to Rule 2230(d), only Attending Veterinarians licensed by the State's board of veterinary examiners (or applicable veterinary licensing board) and the State Racing Commission may attend to Covered Horses at any location under the jurisdiction of the State Racing Commission.

(b) Attending Veterinarians at any location under the jurisdiction of a State Racing Commission are under the authority of the Regulatory Veterinarian and the Stewards.

2221. Treatments by Attending Veterinarian

The following limitations apply to treatments by Attending Veterinarians of Covered Horses.

(a) No Controlled Medication shall be prescribed, dispensed, or administered except in the context of a valid Veterinarian-client patient relationship between a Veterinarian, the Responsible Person and the Covered Horse. The Responsible Person is not required to follow the Veterinarian's instructions, but no Controlled Medication may be administered without a Veterinarian having examined the Covered Horse and provided the treatment recommendation. Such relationship requires the following:

(1) the Veterinarian, with the consent of the Responsible Person, has accepted responsibility for making medical judgments about the health of the Covered Horse;

(2) the Veterinarian has sufficient knowledge of the Covered Horse to make a preliminary diagnosis of its medical condition;

(3) the Veterinarian has performed an examination of the Covered Horse and is acquainted with the keeping and care of the Covered Horse;

(4) the Veterinarian is available to evaluate and oversee treatment outcomes, or has made appropriate arrangements for continuing care and treatment;

(5) the relationship is maintained by veterinary visits as needed; and

(6) the medical judgments of the Veterinarian are independent and are not dictated by the Responsible Person of the Covered Horse.

(b) The Responsible Person and Veterinarian are both responsible for ensuring compliance with this Rule 2221, except that the medical judgment to recommend a drug treatment or to prescribe a drug is the responsibility of the Veterinarian, and the decision to proceed with a drug treatment that has been so recommended is the responsibility of the Responsible Person.

2230. Treatment Restrictions

(a) Only the Responsible Person or their designees shall be permitted to authorize veterinary medical treatment of Covered Horses under their care, custody, and control.

(b) No person other than a Veterinarian licensed to practice veterinary medicine in the applicable State, if required in the applicable State, and registered with the Authority may prescribe medication with instructions for administration by a Responsible Person for a Covered Horse.

(c) Attending Veterinarians shall not have contact with a Covered Horse entered in a Covered Horserace within 24 hours before the scheduled post time of the race in which the Covered Horse is scheduled to compete unless approved by the Regulatory Veterinarian, or such contact is necessitated by an imminent risk to equine welfare, health, or safety. Any contact by an Attending Veterinarian with a Covered Horse entered in a Covered Horserace within 24 hours before the scheduled post time of the race shall be reported to the Regulatory Veterinarian. Any unauthorized contact may result in the Covered Horse being scratched from the race in which it was scheduled to compete and may result in further disciplinary action by the Stewards or the Authority.

(d) Notwithstanding Rule 2220(a), the Regulatory Veterinarian may administer emergency treatment to horses on Racetrack grounds when the Attending Veterinarian is not present.

(e) Except as set forth in paragraphs (f) and (g) below, no person shall possess a hypodermic needle, syringe capable of accepting a needle or injectable of any kind on Racetrack grounds or any facility under the jurisdiction of the State Racing Commission, unless otherwise approved in writing by the State Racing Commission.

(f) At any location under the jurisdiction of the State Racing Commission, Veterinarians may use only one-time disposable syringes, needles, or IV infusion sets; and shall dispose of items in a manner approved by the State Racing Commission and applicable State and governmental regulations.

(g) If a person has a medical condition which makes it necessary to have a syringe at any location under the jurisdiction of the State Racing Commission, that person shall request, in writing, permission of the Stewards or the State Racing Commission to possess a syringe. The person making the request shall furnish to the Stewards or the State Race Commission a letter from a licensed physician explaining why it is necessary for the person to possess a syringe, and shall comply with any conditions and restrictions set by the Stewards and the State Racing Commission.

2240. Veterinarians' List

(a) A Veterinarians' List shall be maintained by the Authority of Covered Horses that are determined to be ineligible to compete in a Covered Horserace in any jurisdiction until released by a Regulatory Veterinarian registered with the Authority.

(b) Covered Horses shall be placed on the Veterinarians' List until removed in accordance with Rules 2241 and 2242:

(1) the following Covered Horses shall be placed on the Veterinarians' List by a Regulatory Veterinarian:

(i) Covered Horses affected by illness, physical distress, medical compromise, unsoundness, injury, Epistaxis, infirmity, heat exhaustion, or deemed unfit to race.

(2) Covered Horses placed on the Veterinarians' List for unsoundness, injury, or Epistaxis are prohibited from participating in a Workout for 7 days.

(3) The following Covered Horses shall be placed on the Veterinarians' List by the Authority:

(i) Covered Horses which have not started in more than 365 days;

(ii) unraced Covered Horses which have not made a start prior to January 1 of their 4-year-old year;

(iii) Covered Horses which have been administered Shock Wave Therapy;

(iv) Covered Horses which have been administered an intra-articular injection;

(v) Covered Horses which have been administered clenbuterol;

(vi) Covered Horses designated by the Agency; and

(vii) Covered Horses currently on a Veterinarian's List in any state, if trying to enter in a Covered Horserace.

(c) The Responsible Person and the Designated Owner (as defined in Rule 1020) shall be notified in writing within 24 hours that their Covered Horse has been placed on the Veterinarians' List.

(d) Diagnostic testing may be required for any Covered Horse placed on the Veterinarians' List, at the discretion of the Regulatory Veterinarian or Association Veterinarian.

2241. Duration of Stay on the Veterinarians' List

(a) Covered Horses placed on the Veterinarians' List in accordance with Rule 2240 shall remain on the Veterinarians' List as follows:

(1) Covered Horses placed on the Veterinarians' List for unsoundness shall remain on the list for a minimum of 14 days;

(2) Covered Horses placed on the Veterinarians' List two or more times for unsoundness within the previous 365 days shall remain on the Veterinarians' List for a minimum of 45 days for the second time, a minimum of 75 days for the third time, and shall be permanently barred for life from further participation in Covered Horseraces for the fourth time;

(3) Covered Horses placed on the Veterinarians' List for Epistaxis shall remain on the list for a minimum of 14 days;

(4) Covered Horses placed on the Veterinarians' List two or more times for Epistaxis within the previous 365 days shall remain on the Veterinarians' List for a minimum of 30 days for the second time, for a minimum of 180 days for the third time, and shall be permanently barred for life from further participation in Covered Horseraces for the fourth time;

(5) Covered Horses placed on the Veterinarians' List for illness, physical distress, medical compromise, injury, infirmity, or heat exhaustion shall remain on the list for a minimum of 7 days;

(6) Covered Horses treated with Shock Wave Therapy shall be placed on the Veterinarians' List for 30 days and are prohibited from participating in a Workout for 14 days;

(7) Except as set forth in Rule 2271(a)(11) and Rule 2271(a)(12), Covered Horses administered any intra-articular injection(s) shall be placed on the Veterinarians' List for 14 days and are prohibited from participating in a Workout for 7 days;

(8) Covered Horses administered clenbuterol shall be placed on the Veterinarians' List until they have undergone a release protocol approved by the Agency; and

(9) if before, during, or after the workout for removal from the Veterinarians' List, the Covered Horse is deemed to be unsound or to have Epistaxis, the stay on the Veterinarians' List shall be extended an additional 30 days, and further diagnostic testing may be required as determined by the Regulatory Veterinarian.

2242. Removal of Covered Horses from the Veterinarians' List

(a) Regulatory Veterinarians may remove Covered Horses from the Veterinarians' List in accordance with Rule 2242 and shall document such removal to the Authority.

(b) A Covered Horse placed on the Veterinarians' List which has not started in more than 365 days or has not made

a start prior to January 1 of its 4-year-old year, or has been placed on the Veterinarians' List as unsound or as having experienced Epistaxis may be removed from the Veterinarians' List upon satisfaction of paragraphs (1) through (7) below.

(1) the Trainer and Attending Veterinarian must observe the Covered Horse jog and submit to the Regulatory Veterinarian a co-signed statement that the Covered Horse is fit to perform a Workout. If the Covered Horse does not perform the Workout for the Regulatory Veterinarian within 7 days, the Trainer and Attending Veterinarian must observe the Covered Horse again at the jog and submit a new co-signed statement.

(2) any diagnostics required by the Regulatory Veterinarian who placed the Covered Horse on the Veterinarians' List must be produced by the Responsible Person, and any associated diagnostic criteria required by the Regulatory Veterinarian must be satisfied, prior to requesting permission to work the Covered Horse for removal.

(3) the Trainer must then apply no less than 48 hours in advance of the Workout to the Regulatory Veterinarian for permission to work the Covered Horse for removal from the Veterinarians' List.

(4) the Covered Horse must perform a Workout under the supervision of the Regulatory Veterinarian and demonstrate to the satisfaction of the Regulatory Veterinarian that the Covered Horse is sound to race.

(5) the Regulatory Veterinarian must determine, no earlier than 30 minutes or later than 2 hours after the Workout conducted pursuant to paragraph (b)(4) above, that there is no evidence or sign of Epistaxis, physical distress, medical compromise, or unsoundness.

(6) a blood sample shall be collected from the Covered Horse following the Workout, and in accordance with Rule 3132(e), is subject to all of the same requirements that apply to Sample collection at Covered Horseraces.

(7) the Regulatory Veterinarian shall communicate the determination made in paragraph (b)(5) above and the results of the testing conducted pursuant to paragraph (b)(6) above to the Regulatory Veterinarian who placed the Covered Horse on the list, or in that Regulatory Veterinarian's absence, with a Regulatory Veterinarian from the same Racetrack, who then may release the Covered Horse from the Veterinarians' List.

(c) A Covered Horse which has not started in more than 365 days or has not made a start prior to January 1 of its 4-year-old year may perform a Workout in the presence of the Regulatory Veterinarian beginning 335 days since its last start or, if unraced, December 1st of its 3-year-old year. If the Covered Horse has not started within 60 days of being released by the Regulatory Veterinarian, the Covered Horse must fulfill the requirements in 2242(b) again.

(d) A Covered Horse placed on the Veterinarians' List for illness, physical distress, medical compromise, injury, infirmity, or heat exhaustion may be removed from the Veterinarians' List after expiration of the applicable minimum duration set forth in Rule 2241 and sound health has been declared by the Attending Veterinarian and the Regulatory Veterinarian and documented to the Authority.

2250. Covered Horse Treatment History and Records

2251. Veterinary Reports

(a) All Veterinarians shall provide treatment records pursuant to Rule Series 3000. In addition to the uses set forth therein, these records may be used by Regulatory Veterinarians in the performance of their duties at the Racetrack, for transfer to the new Responsible Person of a Covered Horse, and for purposes of research conducted by the Authority in accordance with the Act to enhance the safety and welfare of racehorses. Subject to the approval of the Authority, records may also be accessed by the State Racing Commission or the Stewards.

(b) For treatments, procedures, and surgeries performed at a location licensed by a State Racing Commission or a Training Facility, and in addition to the information required to be submitted by Veterinarians pursuant to Rule Series 3000, every Veterinarian who examines or treats a Covered Horse shall, within 24 hours after such examination or treatment, submit to the Authority the following information in an electronic format designated by the Authority:

(1) name and HISA ID of the Covered Horse or, if unnamed, the registered name of the dam and year of foaling;

(2) name and HISA ID of the Responsible Person of the Covered Horse;

(3) name and HISA ID of the Veterinarian;

(4) contact information for the Veterinarian (phone number, email address);

(5) any information concerning the presence of unsoundness and responses to diagnostic tests;

(6) diagnosis;

(7) condition treated;

(8) the name of any medication, drug, substance, or procedure administered or prescribed, including date and time of administration, dose, route of administration (including structure treated if local administration), frequency, and duration (where applicable) of treatment;

(9) any non-surgical procedure performed (including but not limited to diagnostic tests, imaging, and shockwave treatment) including the structures examined/treated and the date and time of the procedure;

(10) any surgical procedure performed including the date and time of the procedure; and

(11) any other information necessary to maintain and improve the health and welfare of the Covered Horse.

(c) For treatments, procedures, and surgeries performed at a location that is not a Training Facility or is not licensed by a State Racing Commission, and in addition to the information required to be submitted by Veterinarians pursuant to Rule Series 3000, every Veterinarian who examines or treats a Covered Horse shall, within 24 hours of ambulatory care, outpatient care, or discharge from a clinic or hospital, submit to the Authority the following information in an electronic format designated by the Authority:

(1) name and HISA ID of the Covered Horse or, if unnamed, the registered name of the dam and year of foaling;

(2) name and HISA ID of the Responsible Person for the Covered Horse;

(3) name and HISA ID of the Veterinarian;

(4) contact information for the Veterinarian (phone number, email address);

(5) any information concerning the presence of unsoundness;

(6) summary of all diagnostic tests and test results;

(7) any intra-articular diagnostic and therapeutic medications administered or prescribed, including the date and time of the treatment;

(8) administration of Shock Wave Therapy, including the date and time of the Shock Wave Therapy; and

(9) any surgical procedure performed including the date and time of the procedure.

2252. Responsible Persons' Records

(a) In addition to the information required to be submitted by Responsible Persons under Rule Series 3000, a Responsible Person is responsible for maintaining a record of medical, therapeutic, and surgical treatments and procedures for every Covered Horse in the Responsible Person's control.

(b) For purposes of this Rule, the term treatment:

(1) means the administration of any medication or substance containing a medication to a Covered Horse by a Responsible Person or the Responsible Person's designee;

(2) includes the administration of medications that are prescribed by a Veterinarian but administered by the Responsible Person or the Responsible Person's designee; and

(3) notwithstanding Rule 3040(b)(8), specifically excludes medications or procedures directly administered by a Veterinarian or that Veterinarian's employees.

(c) Records must include the information outlined in paragraphs (1) and (2) below.

(1) For medical treatments:

(i) name and HISA ID of the Covered Horse or, if unnamed, the registered name of the dam and year of foaling;

(ii) name and HISA ID of the Responsible Person;

(iii) generic name of the drug, or brand name if a non-generic drug is used;

(iv) name and HISA ID of the prescribing Veterinarian;

(v) date of the treatment;

(vi) route of administration;

(vii) dosage administered;

(viii) approximate time (to the nearest hour) of each treatment; and

(ix) full name and contact information of the individual who administered the treatment.

(2) For medical procedures, including, but not limited to, Shock Wave Therapy, physiotherapy, acupuncture, chiropractic, and surgeries:

(i) name and HISA ID of the Covered Horse, or, if unnamed, the registered name of the dam and year of foaling;

(ii) name and HISA ID of the Responsible Person;

(iii) diagnosis and condition being treated;

(iv) name of procedure or surgery;

(v) date of the procedure;

(vi) full name and contact information of the individual who administered or performed the procedure; and

(vii) any other information necessary to maintain and improve the health and welfare of the Covered Horse.

(d) In addition to the uses of records set forth in the Rule Series 3000, records may be used by the Regulatory Veterinarians in the performance of their duties at the Racetrack, for transfer of medical records to the new Responsible Person of a Covered Horse, and for purposes of research conducted by the Authority in accordance with the Act to enhance the safety and welfare of racehorses. Subject to the approval of the Authority, records may also be accessed by the State Racing Commission or the Stewards.

(e) Nothing set forth in the rules of the Authority shall limit the Authority's access to, or use of, records submitted under any provision in the Rule 2000 Series.

2253. Records for Covered Horses Shipping to the Racetrack

(a) If a Covered Horse is not stabled at a facility under the Authority's jurisdiction for the full 30 days prior to a Race or Workout for purposes of removal from the Veterinarians' List, the Responsible Person shall obtain and maintain the following information:

(1) name and HISA ID of the Covered Horse or, if unnamed, the registered name of the dam and year of foaling;

(2) generic name of the drug, or brand name of the drug if a non-generic drug is used;

(3) date and duration of the treatment;

(4) route of administration;

(5) dosage administered;

(6) surgical procedures;

(7) non-surgical therapies and procedures;

(8) daily log of exercise activities at the facility;

(9) daily log of treatments and procedures at the facility; and

(10) any other information necessary to maintain and improve the health and welfare of the Covered Horse.

(b) In addition to the uses of records set forth in the Rules Series 3000, records may be used by the Regulatory Veterinarians in the performance of their duties at the Racetrack, for transfer of medical records to the new Responsible Person of a Covered Horse, and for purposes of research conducted by the Authority in accordance with the Act to enhance the safety and welfare of racehorses. Subject to the approval of the Authority, records may also be accessed by the State Racing Commission or the Stewards.

2260. Claiming Races

2261. Transfer of Claimed Covered Horse Records

(a) Entry of a Covered Horse subject to being claimed in a Claiming Race implies consent of the Responsible Person to the transfer of the following records to the new Responsible Person of the claimed Covered Horse:

(1) all medical records required to be maintained pursuant to Rules 2252 and 2253; and

(2) all veterinary records required to be submitted pursuant to Rule 2251.

(b) If a Covered Horse is successfully claimed by a new Responsible Person, the previous Responsible Person must transfer the Covered Horse's medical records required to be maintained pursuant to Rule 2252 and Rule 2253 to the new Responsible Person within 3 calendar days of transfer of the claimed Covered Horse to the new Responsible Person.

2262. Void Claim

(a) Except as provided in paragraphs (e) and (g), title to a Covered Horse which is claimed shall be vested in the successful claimant from the time the field has been dispatched from the starting gate and the Covered Horse becomes a starter.

(b) All claimed Covered Horses shall go to the Test Barn, or, if approved by the Authority, the secured area used for claimed Covered Horse inspections, for observation by the Regulatory Veterinarian.

(c) Test Barn or approved secured area observation:

(1) upon entry into the Test Barn or approved secured area, a claimed Covered Horse shall be periodically observed for no less than 30 minutes during the ''cooling out'' process, unless excused by the Regulatory Veterinarian.

(2) a claimed Covered Horse shall be observed by the Regulatory Veterinarian at the completion of any required sample collection, or immediately before the Covered Horse is released from the Test Barn or approved secured area, to determine whether the claimed Covered Horse will be placed on the Veterinarians' List for Epistaxis, or as unsound or lame.

(3) the minimum criteria for observation by the Regulatory Veterinarian are:

(i) to assess the claimed Covered Horse for signs of Epistaxis or any other concerning clinical abnormalities; and

(ii) to jog the claimed Covered Horse in hand in a straight line of not fewer than 5 strides moving toward and away from the Regulatory Veterinarian.

(d) If a claimed Covered Horse is placed on the Veterinarians' List for Epistaxis, or as unsound or lame, it is the responsibility of the Regulatory Veterinarian to notify the Stewards immediately so that the Stewards may order the Claim voided.

(e) The Claim shall be voided, and ownership of the Covered Horse retained by the original Owner, if:

(1) the Covered Horse dies or is euthanized before the Covered Horse is released to the claimant;

(2) the Covered Horse is vanned off of the racing track and placed on the Veterinarians' List for Epistaxis, or as unsound or lame; or

(3) the Regulatory Veterinarian determines pursuant to the observation described in Rule 2262(c)(1) that the Covered Horse will be placed on the

Veterinarians' List for Epistaxis, or as unsound or lame before the Covered Horse is released to the successful claimant.

(f) The Claim shall not be voided if, prior to the Race in which the Covered Horse is claimed, the claimant elects to claim the Covered Horse by checking the appropriate box on the claim slip regardless of whether the Regulatory Veterinarian determines the Covered Horse will be placed on the Veterinarians' List for Epistaxis or as unsound or lame.

(g) Notwithstanding Rule 3060(a) and 3070(c), and subject to Rule 2262(h), if a post-race sample collected from a claimed Covered Horse on the day of the Claim results in an Adverse Analytical Finding, the claimant shall be promptly notified by the Agency or the Authority and the claimant shall have the option to void the claim. The claimant shall have 48 hours from notification of the Adverse Analytical Finding to void the claim by submitting in writing to the Stewards the claimant's decision to void the claim.

If the claimant chooses to void the Claim:

(1) the claimant shall be entitled to the return from the prior Owner of all sums paid for the claimed Covered Horse;

(2) the claimant shall be entitled, upon submission of expense records, to recoup reasonable expenses from the prior Owner related to the care, custody and control of the Covered Horse incurred after the date of the claim; and

(3) the claimed Covered Horse shall be returned to the prior Owner.

(h) A claimant shall not have the option to void a Claim pursuant to Rule 2262(g) if any of the following events have occurred since the Claim:

(1) the claimed Covered Horse has made a start in a Covered Horserace or race;

(2) the claimant failed to exercise due care in maintaining and boarding the claimed Covered Horse;

(3) the claimant made material alterations to the claimed Covered Horse; or

(4) the claimed Covered Horse dies or is euthanized.

2263. Waiver Claiming Option

(a) At time of entry into a Claiming Race an Owner or Responsible Person may opt to declare a Covered Horse ineligible to be claimed, provided:

(1) the Covered Horse has not started in 120 days;

(2) the Covered Horse's last start must have been for a claiming price; and

(3) the Covered Horse is entered in a claiming race with a claiming price equal to or greater than the claiming price for which it last started.

(b) A Responsible Person may opt to declare a Covered Horse ineligible to be claimed for a second consecutive race, provided:

(1) the waiver must have been asserted in the first race back to be eligible for the second waiver;

(2) if the Covered Horse wins the first race back, it is ineligible for the second waiver;

(3) if the Covered Horse changes majority ownership subsequent to the first race, it is ineligible for the second waiver; and

(4) the provisions in 2263(a)(3) still apply.

2270. Prohibited Practices and Requirements for Safety and Health of Covered Horses

2271. Prohibited Practices

(a) The following are prohibited practices:

(1) use of physical or veterinary procedures to mask the effects or signs of injury so as to allow training or racing to the detriment of the Covered Horse's health and welfare.

(2) use of Shock Wave Therapy in a manner that may desensitize any limb structures during racing or training.

(3) surgical or chemical neurectomy to cause desensitization of musculoskeletal structures associated with the limbs. Horses within the foal crop of 2023 or later shall not be allowed to participate in a Covered Horserace or a Timed and Reported Workout if they have been subject to the procedure(s) described in this Rule 2271(a)(3).

(4) pin-firing and freeze-firing of the shins (dorsal surface of the third metacarpal/metatarsal bones) are prohibited. Horses within the foal crop of 2023 or later shall not be allowed to participate in a Covered Horserace or a Timed and Reported Workout if their shins have been pin-fired or freeze-fired.

(5) pin-firing of any structure. Horses within the foal crop of 2023 or later shall not be allowed to participate in a Covered Horserace or a Timed and Reported Workout if any structure on their body has been pin-fired.

(6) application of any substance to cause vesiculation, blistering, or any physical disruption of the epidermis or surface of the skin.

(7) injection of any substance to cause inflammation or a counter-irritant effect.

(8) the use of a device to deliver an electrical shock to the Covered Horse including but not limited to cattle prods and batteries.

(9) the use of any medical therapeutic device requiring an external power source within 48 hours prior to the start of the published post time for which a Covered Horse is scheduled to race. This includes but is not limited to pulsed electromagnetic field (PEMF), laser, nebulizer, electro-magnetic blankets, and boots.

(10) the use of acupuncture within 48 hours prior to the start of the published post time for which a Covered Horse is scheduled to race.

(11) notwithstanding Rule 4222, and except as set forth in Rule 2271(a)(12), any Covered Horse treated with any intra-articular injection of any joint shall not be permitted to perform a Workout for 7 days following treatment or participate in a Covered Horserace for 14 days following treatment.

(12) notwithstanding Rule 2271(a)(11) and Rule 4222, any Covered Horse treated with any corticosteroid intra-articular injection of the metacarpophalangeal or metatarsophalangeal joint shall not be permitted to perform a Workout for 14 days following treatment or participate in a Covered Horserace for 30 days following treatment.

(b) The Responsible Person of any Covered Horse that violates the prohibitions established in Rule 2271(a)(11) or Rule 2271(a)(12) shall be subject to the following penalty schedule:

(1) first violation (within a 365-day period): $3,000 fine.

(2) second violation (within a 365-day period): $6,000 fine, 10-day suspension from participating in any Timed and Reported Workout or Covered Horserace.

(3) third violation (within a 365-day period): $10,000 fine, 30-day suspension from participating in any Timed and Reported Workout or Covered Horserace.

(4) fourth violation (within a 365-day period): $20,000 fine, 60-day suspension from participating in any Timed and Reported Workout or Covered Horserace.

(5) fifth and subsequent violations (within a 365-day period): $25,000 fine, 120-day suspension from participating in any Timed and Reported Workout or Covered Horserace.

(c) If the Covered Horse is the subject of 2 or more violations of the prohibitions established in Rule 2271(a)(11) or Rule 2271(a)(12) within a 365-day period, the Covered Horse may be placed on the Veterinarians' List for 30 days.

2272. Shock Wave Therapy

(a) The use of Shock Wave Therapy shall be limited to licensed Veterinarians and, in addition to the

reporting required under Rule 2251, must be reported by the Responsible Person to the Regulatory Veterinarian within 48 hours after treatment.

(b) Shock Wave Therapy treatment administered to a Covered Horse may only be performed using a machine that is registered with the Authority.

(c) Any Covered Horse treated with Shock Wave Therapy shall be placed on the Veterinarians' List and shall not be permitted to Race for 30 days following treatment or perform a Workout for 14 days following treatment.

(d) Failure to report Shock Wave Therapy in accordance with Rule 2251 shall subject the Veterinarian to a suspension of the Veterinarian's registration for a period not to exceed 1 year and a fine not to exceed $10,000.

(e) Failure to report Shock Wave Therapy in accordance with Rule 2272(a) shall subject the Responsible Person to a suspension of the Responsible Person's registration for a period not to exceed 1 year and a fine not to exceed $10,000.

(f) The Stewards shall adjudicate all alleged violations of this Rule 2272. For purposes of determining the period of suspension and the amount of the fine to be imposed under Rule 2272(d) and Rule 2272(e), the Stewards shall consider all mitigating and aggravating factors presented by the Veterinarian or Responsible Person, including the severity of the underlying circumstances or conduct giving rise to the violation. Examples of aggravating factors shall include, but are not limited to, a Covered Horse that was removed from Racetrack grounds with the intent to evade the reporting requirements under this Rule 2272; and multiple violations of this Rule 2272 within a 365-day period.

2273. Other Devices

No electrical, mechanical, or other device, which is purchased, designed, or used with the intent to increase or retard the speed of a Covered Horse, other than a riding crop, shall be possessed by anyone, or applied by anyone, to a Covered Horse at any time on Racetrack grounds.

2274. Other Device Penalties

(a) Penalties for violations of Rule 2273 shall be as follows:

(1) for a first offense, loss of eligibility for, or revocation of, registration with the Authority for 10 years.

(2) for any subsequent violation, the penalty shall be a lifetime ban from registration with the Authority.

2275. Communication Devices

(a) The use of a hand-held communication device by a Rider is prohibited while the Rider is on a Covered Horse or Pony Horse.

(b) A Rider, while on a Covered Horse or Pony Horse, shall not wear an audio device that obstructs or impairs the Rider's ability to hear other horses, Riders, hazards, or the Racetrack's emergency warning system.

2276. Horseshoes

(a) The following prohibitions apply to the use of horseshoes during training and racing:

(1) on dirt surfaces, Traction Devices (as defined in Rule 2010) other than full rims 2 millimeters or less in height from the ground surface of the horseshoe are prohibited on forelimb horseshoes. Traction Devices other than full rims 4 millimeters or less in height from the ground surface of the horseshoe, or toe grabs 4 millimeters or less in height from the ground surface of the horseshoe, are prohibited on hindlimb horseshoes.

(2) on synthetic surfaces, Traction Devices other than full rims that are 2 millimeters or less in height from the ground surface of the horseshoe are prohibited on forelimb and hindlimb horseshoes.

(3) on turf surfaces, Traction Devices are prohibited on forelimb and hindlimb horseshoes.

2280. Use of Riding Crop

(a) Subject to paragraphs (b) and (c) of this Rule, a Jockey who uses a riding crop on a Covered Horse during a Covered Horserace shall do so only in a professional manner consistent with maintaining focus and concentration of the Covered Horse for safety of Covered Horses and Riders, or for encouragement to achieve optimal performance.

(b) A Jockey may:

(1) use the crop only on the hindquarters or the shoulders to activate and focus the Covered Horse;

(2) use the crop a maximum of 6 times during a race. Use of the crop shall be considered any contact of the crop with the Covered Horse except for a tap to the shoulder of the Covered Horse as permitted by Rule 2280(b)(4);

(3) use the crop in increments of 2 or fewer strikes. A Jockey must allow at least 2 strides for the Covered Horse to respond before using the crop again;

(4) tap the Covered Horse on the shoulder with the crop while both hands are holding on to the reins and both hands are touching the neck of the Covered Horse. A tap to the shoulder of a Covered Horse in accordance with the first sentence of this paragraph (4) shall not count towards the 6 permitted uses of the crop established in Rule 2280(b)(2);

(5) show or wave the crop to the Covered Horse without physically contacting the Covered Horse; and

(6) use the crop to preserve the safety of Covered Horses and Jockeys.

(c) A Jockey shall not:

(1) raise the crop with the Jockey's wrist above the Jockey's helmet when using the crop;

(2) injure the Covered Horse with the crop or leave any physical marks, such as welts, bruises, or lacerations;

(3) use the crop on any part of the Covered Horse's body other than the shoulders or hindquarters;

(4) use the crop during the post parade or after the finish of the race other than to avoid a dangerous situation or preserve the safety of Covered Horses and Riders;

(5) use the crop if the Covered Horse has obtained its maximum placing;

(6) use the crop persistently even though the Covered Horse is showing no response;

(7) use a crop on a 2 year-old Covered Horse in races before April 1 of each year other than to avoid a dangerous situation or preserve the safety of Covered Horses and Riders;

(8) strike another horse or person with the crop; or

(9) strike a Covered Horse with any object other than a riding crop that conforms to the requirements established in Rule 2281.

(d) In any Race in which a Jockey will ride without a crop, that fact shall be declared at entry, included in the official program, and an announcement of that fact shall be made over the public address system.

2281. Riding Crop Specifications

(a) Riding crops are subject to inspection by the Safety Officer, Stewards, and the clerk of scales.

(b) All riding crops must be soft-padded.

(c) Riding crops shall have a shaft and a flap or smooth foam cylinder and must conform to the following dimensions and construction:

(1) the maximum allowable weight shall be 8 ounces;

(2) the maximum allowable length, shall be 30 inches;

(3) the minimum diameter of the shaft shall be three-eighths of one inch;

(4) the shaft, beyond the grip, must be smooth with no protrusions or raised surface and covered by shock absorbing materials;

(5) there shall be no binding within 7 inches of the end of the shaft;

(6) the flap or smooth foam cylinder is the only allowable attachment to the shaft and must meet the following specifications:

(i) shall have no reinforcements;

(ii) shall have a maximum length beyond the shaft of one inch;

(iii) shall have a minimum diameter of 0.8 inches and a maximum width of 1.6 inches;

(iv) there shall be no other reinforcements or additions beyond the end of the shaft;

(v) shall be made of shock absorbing material with a compression factor of at least 5 millimeters;

(vi) shall be made of a waterproof, ultraviolet, and chemical resistant flap or foam material that is durable and preserves its shock absorption in use under all conditions; and

(vii) shall be replaced after reasonable wear and tear is visibly evident.

(d) Riding crops shall not be altered and shall have a mark identifying the name and manufacturer of the crop.

2282. Riding Crop Violations and Penalties

(a) Violations of Rule 2280 shall be categorized as follows, with the exception that use of the crop for the safety of horse and Rider shall not count toward the total crop uses:

(1) Class 3 Violation—1 to 3 strikes over the limit.

(2) Class 2 Violation—4 to 9 strikes over the limit.

(3) Class 1 Violation—10 or more strikes over the limit.

(b) Unless the Stewards determine the merits of an individual case warrant consideration of an aggravating or mitigating factor, the penalties for violations are as follows:

Purse	Class 3	Class 2	Class 1
Up to $9,000	Fine: $150 AND Minimum 1-day suspension.	Fine: $300 AND Minimum 3-day suspension AND Disqualification of the horse from the race.*	Fine: $500 AND Minimum 5-day suspension AND Disqualification of the horse from the race.*
$9,001–$50,000	Fine: $250 AND Minimum 1-day suspension.	Fine: $500 AND Minimum 3-day suspension AND Disqualification of the horse from the race.*	Fine: $750 AND Minimum 5-day suspension AND Disqualification of the horse from the race.*
$50,001–$200,000	Fine: $500 AND Minimum 1-day suspension.	Fine: $750 AND Minimum 3-day suspension AND Disqualification of the horse from the race.*	Fine: $1000 AND Minimum 5-day suspension AND Disqualification of the horse from the race.*
$200,001–$500,000	Fine: 10% of Jockey's portion of the purse or $750 whichever is > AND Minimum 1-day suspension.	Fine: 20% of Jockey's portion of the purse or $1000 whichever is > AND Minimum 3-day suspension AND Disqualification of the horse from the race.*	Fine: 30% of Jockey's portion of the purse or $2000 whichever is > AND Minimum 5-day suspension AND Disqualification of the horse from the race.*
$500,001–higher	Fine: 10% of Jockey's portion of the purse or $1000 whichever is > AND Minimum 1-day suspension	Fine: 20% of Jockey's portion of the purse or $2000 whichever is > AND Minimum 3-day suspension AND Disqualification of the horse from the race.*	Fine: 30% of Jockey's portion of the purse or $3000 whichever is > AND Minimum 5-day suspension AND Disqualification of the horse from the race.*

* Disqualification of the horse from the race includes forfeiture of the purse and all attendant benefits, including but not limited to: placing, black type earnings, automatic entry berths, and trophies. Parimutuel payouts are not affected.

(c) Except for violations of Rule 2280(b)(2), for which penalties are imposed pursuant to Rule 2282(a) and (b), the Stewards may impose any of the penalties set forth in Rule 8200(b) for violations of Rules 2280 and 2281.

2283. Multiple Violations of Rule 2280

(a) Stewards shall submit violations of Rule 2280 to the Authority.

(b) Multiple violations of Rule 2280 within a 180-day period shall be subject to the enhanced penalties in paragraph (c) of this Rule.

(c) For each violation after the first violation within a 180-day period, the fine and the suspension day(s) associated with the current violation, as established in Rule 2282(b), shall be multiplied by the number of cumulative violations of any class (Class 1, 2, and 3 violations) within the prior 180 calendar days. The following examples demonstrate the application of this rule:

(1) 1 prior violation + current violation = 2 × fine and 2 × suspension day(s) of the current violation.

(2) 2 prior violations + current violation = 3 × fine and 3 × suspension day(s) of the current violation.

(3) 3 prior violations + current violation = 4 × fine and 4 × suspension day(s) of the current violation.

2284. Redistribution of Purse

Upon the disqualification of a Covered Horse from a Covered Horserace pursuant to the Rule 2000 Series, the purse shall be redistributed in accordance with the revised order of finish.

2285. Intermediate Appeal of Violations

(a) Notwithstanding any other provision in the rules of the Authority, any appeal of a Stewards ruling issued for violation of any rule set forth in Rule 2280 or 2281 shall be heard initially by the Internal Adjudication Panel established in the Rule 7000 Series. The Internal Adjudication Panel shall

appoint 3 members from the pool of adjudicators to hear the appeal.

(b) An appeal made pursuant to this Rule 2285 shall not automatically stay the Stewards' ruling. A request for a stay pending an appeal under this Rule 2285 may be made to the Board pursuant to the procedures established in Rule 8350(c).

(c) A party to the Stewards' ruling may appeal to the Internal Adjudication Panel by filing with the Authority a written request for an appeal within 10 calendar days of receiving the Stewards' written ruling. The appeal request shall contain the following information:

(1) the name, address, and telephone number, if any, of the appellant;

(2) a description of the objection(s) to the ruling;

(3) a statement of the relief sought; and

(4) whether the appellant desires to have a hearing of the appeal.

(d) The Internal Adjudication Panel may waive the requirement that a written submission be filed by the appellant and permit the appellant to make an oral presentation at a hearing if doing so is in the interest of justice and the conduct of the hearing will not prejudice any of the other parties.

(e) If the appellant requests a hearing, the Internal Adjudication Panel shall set a date, time, and place for a hearing. Notice shall be given to the appellant in writing and shall set out the date, time, and place of the hearing, and shall be served personally or sent by electronic or U.S. mail to the last known address of the appellant. If the appellant objects to the date of the hearing, the appellant may obtain a continuance, but the continuance shall not automatically stay imposition of a sanction or prolong a stay issued by the Board. At the discretion of the Internal Adjudication Panel, the hearing may be conducted in person, or by means of an audio-visual videoconferencing system or a telephone audio system.

(f) If the appellant does not request a hearing, the Internal Adjudication Panel may in its discretion review a Stewards' ruling based solely upon written submissions scheduled for filing with such timing and response requirements as the Internal Adjudication Panel may require.

(g) Upon review of the Stewards' ruling which is the subject of the appeal, the Internal Adjudication Panel shall uphold the ruling unless it is clearly erroneous or not supported by the evidence or applicable law.

(h) Upon completing its review, the Internal Adjudication Panel shall issue a written decision based on the record and any further proceedings, testimony, or evidence. The decision shall:

(1) affirm the Stewards' ruling; or

(2) reject or modify the Stewards' ruling, in whole or in part.

(i) Any decision rendered by the Internal Adjudication Panel may be appealed to the Board of the Authority for review pursuant to Rule 8350. The Board may in its discretion:

(1) schedule a hearing to hear the appeal under the procedures set forth in Rule 8350; or

(2) decide the appeal based solely upon the record and any written submissions required to be filed by the Board. The Board may adopt the decision of the Internal Adjudication Panel.

2286. Procedures for Adjudications of Violations in the Rule 2200 Series

(a) Notwithstanding any provision in the Rule 8000 Series to the contrary, any matter referred to the Internal Adjudication Panel pursuant to Rule 8320(b)(1) shall be adjudicated in conformity with the procedures established for an initial hearing before the Racetrack Safety Committee or the Board of the Authority as set forth in Rule 8340 (c) through (j). All references to the ''Board'' or the ''Racetrack Safety Committee'' in Rule 8340 (c) through (j) shall be deemed to be references to the ''Internal Adjudication Panel''.

(b) Notwithstanding any provision in the Rule 8000 Series to the contrary, any matter referred to the independent Arbitral Body pursuant to Rule 8320(b)(2) shall be adjudicated in conformity with the procedures established for an initial hearing before the Racetrack Safety Committee or the Board of the Authority as set forth in Rule 8340 (c) through (j). All references to the ''Board'' or the ''Racetrack Safety Committee'' in Rule 8340 (c) through (j) shall be deemed to be references to the ''Arbitral Body''.

2287. Provisional Suspension of Registration

(a) Provisional Suspension of Covered Person's Registration.

(1) If the Stewards or the Authority have reasonable grounds to believe that the actions or inactions of a Covered Person present an imminent danger to the health, safety, or welfare of Covered Horses or Riders arising from specific violations by the Covered Person of the Authority's Racetrack safety or accreditation rules, the Stewards or the Authority may issue to such Covered Person a written notice to show cause concerning a potential provisional suspension of the Covered Person's registration, which notice shall include:

(i) an itemization of the specific Authority's safety and accreditation rules which the Covered Person is believed to have violated, and a summary of the conditions, practices, facts, or circumstances which give rise to each apparent violation;

(ii) the corrective actions suggested to achieve compliance;

(iii) a request for a written response to the findings, including commitments to suggestive corrective action or the presentation of mitigating or opposing facts and evidence; and

(iv) a statement that the Covered Person may within 3 business days of receipt of the show-cause notice request a provisional hearing, which, absent exceptional circumstances necessitating a reasonable delay of the hearing, shall be conducted within 3 business days of receipt by the Authority of the Covered Person's request for a provisional hearing. If the Covered Person does not request a provisional hearing within 3 business days of the Covered Person's receipt of the show-cause notice, the Authority shall initiate a provisional hearing in accordance with Rule 2287(b).

(2) Notwithstanding Rule 2287(a)(1), if the Stewards or the Authority have clear and convincing evidence that the actions or inactions of the Covered Person present an immediate threat of serious injury or death to Covered Horses or Riders arising from violations by the Covered Person of the Authority's safety or accreditation rules, the Stewards or the Authority may immediately issue a provisional suspension of the Covered Person's registration, which shall remain in effect until the provisional hearing described in paragraph (b) of this Rule.

(3) Nothing in the Authority's rules shall preempt or otherwise impair the authority of a State Racing Commission to suspend a Covered Person in accordance with its provisions of licensure.

(b) Provisional Hearing.

(1) A Covered Person who has received a show cause notice pursuant to Rule 2287(a)(1) or whose registration has been provisionally suspended pursuant to Rule 2287(a)(2) is entitled to a provisional hearing to be conducted by one of the following, as determined by the Authority:

(i) one or more members of the Internal Adjudication Panel;

(ii) an independent Arbitral Body;

(iii) the Stewards for adjudication in accordance with the hearing procedures of the applicable state jurisdiction. Provided however, that in any state that has not entered into an agreement with the Authority under which the state

Stewards serve in an adjudicatory capacity under the Rule 8000 Series and enforce the Rule 2200 Series, a hearing may be conducted by one or more Stewards, notwithstanding any state rule to the contrary; or

(iv) a panel of 3 Board members appointed by the Board chair.

(2) The provisional hearing may be conducted in person, or by means of an audio-visual teleconferencing system or a telephone audio system.

(3) The provisional hearing shall be conducted within 3 business days of receipt by the Authority of the Covered Person's request for a provisional hearing. If the Covered Person does not request a provisional hearing, the Authority shall conduct the provisional hearing within 7 business days of the date the show-cause notice was issued to the Covered Person pursuant to Rule 2287(a)(1) or the date the provisional suspension was issued pursuant to Rule 2287(a)(2). The provisional hearing is not a full hearing on the merits, and the sole issue to be determined at the provisional hearing shall be whether the Covered Person's provisional suspension shall remain in effect, go into immediate effect, be stayed pending a final hearing under section (c) of this Rule 2287, or be withdrawn.

(4) At the provisional hearing, the burden is on the Authority to demonstrate good cause why the provisional suspension should remain in effect, go into immediate effect, or be stayed pending a final adjudication. The adjudicatory panel conducting the hearing shall consider all factors that it deems appropriate, including but not limited to the factors established in Rule 8360(e)(1)–(5). Within 72 hours of the conclusion of the hearing, the adjudicatory panel shall issue a written decision determining whether the provisional suspension shall remain in effect, go into immediate effect, be stayed pending a final adjudication, or be withdrawn. As a condition of issuing a stay of the provisional suspension, the adjudicatory panel may require the Covered Person to comply with additional safety standards or other requirements necessary to protect the health, safety, or welfare of Covered Horses or Riders.

(c) Final Hearing by the Board.

(1) A final hearing on the matters giving rise to the provisional suspension shall be adjudicated by at least a quorum of the Board in accordance with the procedures set forth in Rule 8340(d) through (j). If a panel of Board members conducted the provisional hearing pursuant to Rule 2287(b)(1)(iv), the Board members that participated in the provisional hearing shall not participate in the final hearing. If the Covered Person has requested a final hearing, the final hearing by the Board shall be conducted within 14 calendar days of the request by the Covered Person for a final hearing, absent exceptional circumstances which necessitate a reasonable delay of the hearing. If the Covered Person does not request a final hearing within 10 calendar days of the written decision referenced in subsection (b)(3), the Board shall schedule the final hearing.

(2) Within 7 business days of the conclusion of the final hearing, the Board may take one or more of the following actions:

(i) order that the Covered Person's registration be reinstated, suspended, or revoked, upon a vote in favor of reinstatement, suspension, or revocation by two-thirds of a quorum of the members of the Board; or

(ii) reinstate the Covered Person's registration subject to any requirements the Board deems necessary to ensure that horseracing will be conducted in a manner consistent with the Authority's safety or accreditation rules. The Board may also impose a fine upon reinstatement in an amount not to exceed $50,000.00.

(3) The outcome of the final hearing shall be the final decision of the Authority as that term is used in Rule 8350 and Rule 8370 and shall constitute a final civil sanction subject to appeal and review in accordance with the provisions of 15 U.S.C. 3058.

(d) This Rule 2287 shall not apply to Racetracks. Provisional suspensions of Racetracks shall be governed exclusively by Rule 2117.

2290. Requirements for Safety and Health of Riders

2291. Jockey Eligibility

(a) A Jockey shall pass a physical examination given within the previous 12 months by a licensed medical provider affirming the Jockey's fitness to participate as a Jockey, as well as a baseline Concussion test using the Sport Concussion Assessment Tool, Fifth Edition, or such other generally accepted Concussion testing protocol specified by the Authority's National Medical Director. Documentation affirming the Jockey's fitness to participate as a Jockey and successful completion of the physical examination and concussion test in a form and format approved by the Authority's National Medical Director shall be submitted by the Jockey to the Authority's electronic platform designated for collection and storage of Jockey eligibility documentation. Jockey eligibility documentation must be submitted by the Jockey at least annually and updated examination, testing, and affirming documentation may be required more frequently as needed following illness, injury, or other circumstances impacting Jockey's fitness to participate as reasonably determined by the Medical Director or the Authority's National Medical Director. The Stewards may require that any Jockey be reexamined and may refuse to allow any Jockey to ride in a race or Workout pending completion of such examination.

(b) All Jockeys shall execute a written authorization permitting the release of medical information as needed to assist in the collection or receipt of Jockey eligibility documentation and coordination of care in response to racing related injury or illness. Medical information submitted to the Authority shall be maintained by the Authority's electronic platform designated for collection and storage of Jockey eligibility documentation.

2292. Rider Medical History Information

(a) At all times while mounted on a Covered Horse or Pony Horse at a Racetrack, a Rider shall securely attach to the Rider's safety vest one or more medical information cards describing the Rider's medical history and any conditions pertinent to emergency care, including a listing of any previous injuries, drug allergies and current medications.

(b) The Stewards shall confirm compliance during their safety vest inspections at the beginning of the season and with random inspections throughout the Race Meet.

(c) The Stewards may, in their discretion, take disciplinary action against, suspend, make ineligible to race, or fine any Rider found in violation of this Rule.

2293. Equipment

(a) *Helmets.*

(1) Any Rider mounted on a Covered Horse or Pony Horse anywhere on Racetrack grounds shall wear a properly secured safety helmet.

(2) All Starting Gate Persons shall wear a properly secured safety helmet at all times while performing their duties or handling a horse.

(3) The safety helmet may not be altered in any manner and the product marking shall not be removed or defaced.

(4) The Stewards, or their designee, shall inspect safety helmets at the beginning of a Race Meet and randomly throughout the Race Meet.

(5) The clerk of scales shall report to the Stewards any variances of safety helmets seen during the course of their work.

(6) The helmet must comply with one of the following minimum safety standards or later revisions:

(i) American Society for Testing and Materials (ASTM 1163);

(ii) European Standards (EN–1384 or PAS–015 or VG1);

(iii) Australian/New Zealand Standards (AS/NZ 3838 or ARB HS 2012); or

(iv) Snell Equestrian Standard 2001.

(b) *Vests.*

(1) Any Rider mounted on a Covered Horse or Pony Horse on the Racetrack grounds must wear a properly secured safety vest.

(2) All Starting Gate Persons shall wear a properly secured safety vest at all times while performing their duties or handling a horse. All Starting Gate Persons are required to securely attach to their safety vest one or more medical information cards describing their medical history and any conditions pertinent to emergency care, including a listing of any previous injuries, drug allergies, and current medications.

(3) The safety vest may not be altered in any manner and the product marking shall not be removed or defaced.

(4) The Stewards shall inspect safety vests at the beginning of a Race Meet and randomly throughout the Race Meet.

(5) The clerk of scales shall report to the Stewards any variances of safety vests seen during their course of work.

(6) The safety vest must comply with one of the following minimum standards, as the same may be from time to time amended or revised:

(i) British Equestrian Trade Association (BETA):2000 Level 1;

(ii) iEuro Norm (EN) 13158:2000 Level 1;

(iii) American Society for Testing and Materials (ASTM) F2681–08 or F1937;

(iv) Shoe and Allied Trade Research Association (SATRA) Jockey Vest Document M6–3; or

(v) Australian Racing Board (ARB) Standard 1.1998.

2294. Weight of Riders

The weight of an approved safety helmet and an approved safety vest shall be excluded from the required weight to be carried by a Jockey during a race.

By direction of the Commission.

April J. Tabor,

Secretary.

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Part III

Department of Homeland Security

8 CFR Part 274a

Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants; Temporary Final Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 274a

[CIS No. 2767–24; DHS Docket No. USCIS–2024–0002]

RIN 1615–AC78

Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Temporary final rule with request for comments.

SUMMARY: This rule temporarily amends existing Department of Homeland Security (DHS) regulations to provide that the automatic extension period applicable to expiring Employment Authorization Documents (Forms I–766 or EADs) for certain renewal applicants who have filed Form I–765, Application for Employment Authorization (EAD application), will be increased from up to 180 days to up to 540 days from the expiration date stated on their EADs. DHS is taking these steps to help prevent renewal applicants from experiencing a lapse in their employment authorization and documentation.

DATES:

Effective dates: This temporary final rule (TFR) is effective April 8, 2024, through September 20, 2027, except for the amendments to 8 CFR 274a.13(d)(5), which are effective from April 8, 2024 through October 15, 2025.

Submission of public comments: Comments must be received on or before June 7, 2024.

ADDRESSES: You may submit comments on the entirety of this temporary final rule package, identified by DHS Docket No. USCIS–2024–0002, through the Federal eRulemaking Portal: *https://www.regulations.gov*. Follow the website instructions for submitting comments. The electronic Federal Docket Management System will accept comments before midnight Eastern time on June 7, 2024.

Comments must be submitted in English, or an English translation must be provided. Comments that will provide the most assistance to USCIS in implementing these changes will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. Comments submitted in a manner other than as provided above, including emails or letters sent to DHS or U.S. Citizenship and Immigration Services (USCIS) officials, will not be considered comments on the TFR and may not receive a response from DHS. Please note that DHS and USCIS cannot accept any comments that are hand-delivered or couriered. In addition, USCIS cannot accept comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives. USCIS is also not accepting mailed comments at this time. If you cannot submit your comment by using *https://www.regulations.gov,* please contact Samantha Deshommes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by telephone at (240) 721–3000 (not a toll-free call) for alternate instructions.

FOR FURTHER INFORMATION CONTACT: Charles Nimick, Chief, Business and Foreign Workers Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20746; telephone 240–721–3000 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Public Participation

DHS invites you to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this temporary final rule. DHS also invites comments that relate to the economic, environmental, or federalism effects that might result from this temporary final rule. Comments must be submitted in English, or an English translation must be provided. Comments that will provide the most assistance to DHS will reference a specific provision of the temporary final rule, explain the reason for any recommended change, and include data, information, or authority that supports the recommended change. Comments submitted in a manner other than explicitly provided in this section, including emails or letters sent to USCIS or DHS officials, will not be considered comments on the TFR and may not receive a response.

In addition to seeking comments on all aspects of this TFR, DHS also invites the public to comment on the following:

- Whether DHS regulations should be revised to permanently lengthen the period of the automatic extension period to up to 540 days for employment authorization and/or EAD validity for eligible renewal applicants;
- Whether a different permanent extension period should be implemented, for some or all applicants covered by the automatic extension provision on either a temporary or permanent basis; and
- Whether other solutions should be considered to mitigate the risk of expiring employment authorization and/or EAD validity for some or all applicants covered by the automatic extension provision.

DHS also specifically seeks comments on the regulatory alternatives described in section III.C. and V.B. of this preamble.

Instructions

All submissions should include the agency name and DHS Docket No. USCIS–2024–0002 for this rulemaking. Providing comments is entirely voluntary. DHS will post all submissions, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov* and will include any personal information you provide. Because the information you submit will be publicly available, you should consider limiting the amount of personal information in your submission. DHS may withhold information provided in comments from public viewing if it determines that such information is offensive or may affect the privacy of an individual. For additional information, please read the Privacy and Security notice available through the link in the footer of *https://www.regulations.gov*.

Docket: For access to the docket and to read comments received, go to *https://www.regulations.gov,* referencing DHS Docket No. USCIS–2024–0002. You may also sign up for email alerts on the online docket to be notified when comments are posted or a subsequent rulemaking is published.

I. Executive Summary

A. Purpose and Summary of the Regulatory Action

DHS has determined that the up to 180-day automatic extension under 8 CFR 274a.13(d) is currently not enough time for the growing number of renewal EAD applicants. Without this TFR, approximately 800,000 renewal EAD applicants will be in danger of having their applications remain pending beyond the 180-day automatic extension period, resulting in applicants losing employment authorization and/or EAD validity in the approximately 2-year period beginning May 2024 because of USCIS processing delays and through no fault of their own. Such widescale lapses in employment authorization and EAD validity would result in substantial and unnecessary harm to noncitizens

who timely filed for extensions of employment authorization, their families, their employers, and the public at large. To avert these gaps in employment authorization and/or EAD validity for certain renewal EAD applicants, and the resulting harmful effects gaps can cause, DHS is temporarily amending existing DHS regulations to increase the automatic extension period applicable to expiring employment authorization and/or EADs (Form I–766) for certain renewal applicants who have filed EAD applications from up to 180 days to up to 540 days from the expiration date stated on their EADs. The increase will be available to any eligible renewal EAD applicant with an application filed on or after October 27, 2023, and pending on or after April 8, 2024 and any eligible applicant who files a renewal EAD application during the 540-day period beginning on or after April 8, 2024 and ending September 30, 2025. DHS has decided to focus on near-term uncertainty and critical needs of applicants, their families, and their employers by ensuring that, through this TFR, none of them will imminently or in the near-term experience the harmful effects caused by gaps in employment authorization and/or EAD validity due to processing delays. At the same time, this rule provides DHS with an additional window during which it can consider long-term solutions by soliciting public comments, evaluating the effects of ongoing and future policy and operational changes described throughout this rule, and continuing to identify new strategies and efficiencies.

B. Summary of Legal Authority

The authority for the Secretary of Homeland Security (Secretary) to issue this TFR is found in section 274A(h)(3)(B) of the INA, 8 U.S.C. 1324a(h)(3)(B), which recognizes the Secretary's authority to extend employment authorization to noncitizens in the United States, and section 101(b)(1)(F) of the Homeland Security Act (HSA), 6 U.S.C. 111(b)(1)(F), which establishes as a primary mission of DHS the duty to ''ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland.'' Under section 103(a) of the INA, 8 U.S.C. 1103(a), the Secretary is authorized to administer the immigration and nationality laws and establish such regulations as the Secretary deems necessary for carrying out such authority.

C. Summary of the TFR Provisions

This rule amends 8 CFR 274a.13(d) as follows:

- New 8 CFR 274a.13(d)(6): DHS is adding a new paragraph 8 CFR 274a.13(d)(6). With this new paragraph, DHS is temporarily increasing the regular automatic extension period for employment authorization and/or EAD validity of up to 180 days under 8 CFR 274a.13(d)(1) to a period of up to 540 days for renewal applicants eligible to receive an automatic extension.
- Amending existing 8 CFR 274a.13(d)(5): To avoid confusion between the automatic extension period granted under new 8 CFR 274a.13(d)(6) and existing 8 CFR 274a.13(d)(5), DHS is revising the heading of existing 8 CFR 274a.13(d)(5). 8 CFR 274a.13(d)(5) only applies to EAD renewal applications properly filed on or before October 26, 2023. The new heading will clearly reflect the date. DHS is neither extending nor otherwise amending 8 CFR 274a.13(d)(5).

D. Summary of Costs and Benefits

This rule results in stabilization of earnings worth $29.1 billion to employment-authorized immigrants, cost savings of $5.2 billion to U.S. employers from avoided labor turnover, and is expected to yield $3.1 billion in employment tax transfer payments over a 5-year period of analysis using a 2 percent discounting rate (see Table 13 for more information). While the EAD end dates are known to USCIS and can be used to accurately project lapses, there is uncertainty around the monetized, economic impacts due to the timing of EAD renewal filing behavior and the resulting duration of lapses experienced by workers of varying wages in the absence of this rule. The Regulatory Impact Analysis discusses the low end and high end estimates that bound the expected impacts of this regulatory action.

II. Background

USCIS' ability to process both initial and renewal EAD applications within USCIS' targeted processing times has been adversely impacted by a variety of unforeseeable and dynamic events and circumstances, described in the following sections. As a result, DHS has found it necessary to take actions to reduce the likelihood that certain applicants for renewal EADs experience unnecessary lapses in their employment authorization and/or proof of employment authorization because of USCIS processing delays and through no fault of their own. Such widescale lapses in employment authorization and EAD validity would result in substantial and unnecessary harm to noncitizens who timely filed for extensions of employment authorization, their families, their employers, and the public at large.

In 2021, a surge in EAD applications, coupled with operational challenges exacerbated by the COVID–19 pandemic, resulted in a significant increase in EAD application processing times. The EAD application processing times increased to such a level that the 180-day automatic extension of employment authorization for certain pending renewal EAD applications [1] was insufficient to prevent many renewal applicants from experiencing a lapse in employment authorization and/or documentation while their renewal applications remained pending with USCIS.

In May 2022, DHS published a temporary final rule (''2022 TFR'') that, for certain renewal EAD applications filed during a limited period that ended on October 26, 2023, increased the automatic extension period from up to 180 days to up to 540 days.[2] This measure helped minimize gaps in employment authorization and/or EAD validity for certain renewal EAD applicants, while giving USCIS a window of time to address its backlogs through operational and sub-regulatory measures. Those operational and sub-regulatory measures helped USCIS to work toward its goal of returning to regular processing times.

Although USCIS' efforts since the issuance of the 2022 TFR prevented a substantial number of renewal applicants from experiencing a lapse in their employment authorization and/or documentation, the processing times for renewal EAD applications are currently at such a level that the current 180-day automatic extension period for certain renewal EAD applications remains insufficient to prevent a large number of lapses in the coming months.

Accordingly, DHS is again taking steps to help prevent certain renewal EAD applicants from experiencing a lapse in their employment authorization, valid documentation of their employment authorization, or both, while their renewal applications remain pending. USCIS also continues to implement other solutions to return processing times to target levels, as detailed in section III.B of the preamble.

Without this 2024 TFR, approximately 800,000 renewal applicants will be in danger of losing their employment authorization and/or

[1] *See* 8 CFR 274a.13(d).

[2] *See* 87 FR 26614 (May 4, 2022) (2022 TFR).

documentation in the period beginning May 2024 and ending March 2026.[3] If faced with a disruption of their employment authorization and/or documentation, these renewal applicants may lose their jobs through no fault of their own, and employers may be faced with finding replacement workers, an undue burden that is exacerbated during a time when the U.S. economy is experiencing more job openings than available workers.[4]

Therefore, DHS has determined that it is imperative to increase the automatic extension period of employment authorization and/or EAD validity for eligible renewal EAD applicants for a temporary period. This temporary increase to the automatic extension period will be effective April 8, 2024 and will apply to renewal EAD applications that are properly filed on or after October 27, 2023,[5] and on or before September 30, 2025.

This new temporary increase to the automatic extension period will, in most cases, help avoid the gaps in employment authorization and/or documentation that could otherwise affect eligible renewal EAD applicants, their families, and their U.S. employers in those cases where USCIS is unable to process their renewal applications within the 180-day automatic extension period provided under the current regulation.

A. Legal Authority

The Secretary of Homeland Security's (Secretary) authority for the regulatory amendments made in this TFR are found in various sections of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. 1101 *et seq.,* and the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135 (codified in part at 6 U.S.C. 101 *et seq.*). General authority for issuing this TFR is found in section 103(a) of the INA, 8 U.S.C. 1103(a), which authorizes the Secretary to administer and enforce the immigration and nationality laws and establish such regulations as the Secretary deems necessary for carrying out such authority, as well as section 102 of the HSA, 6 U.S.C. 112, which vests all of the functions of DHS in the Secretary and authorizes the Secretary to issue regulations.[6] Further authority for this TFR is found in:

- Section 208(d)(2) of the INA, 8 U.S.C. 1158(d)(2), which authorizes the Secretary to grant employment authorization to applicants for asylum if 180 days have passed since filing an application for asylum;
- Section 214 of the INA, 8 U.S.C. 1184, including section 214(a)(1) of the INA, 8 U.S.C. 1184(a)(1), which authorizes the Secretary to prescribe, by regulation, the time and conditions of the admission of nonimmigrants;
- Section 244(a)(1)(B) of the INA, 8 U.S.C. 1254a(a)(1)(B), which states that the Secretary shall authorize employment and provide evidence of employment authorization for noncitizens who have been granted Temporary Protected Status;
- Section 274A(h)(3)(B) of the INA, 8 U.S.C. 1324a(h)(3)(B), which recognizes the Secretary's authority to extend employment authorization to noncitizens in the United States; and
- Section 101(b)(1)(F) of the Homeland Security Act, 6 U.S.C. 111(b)(1)(F), which establishes as a primary mission of DHS the duty to ''ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland.''

B. Legal Framework for Employment Authorization

1. Types of Employment Authorization: 8 CFR 274a.12(a), (b), and (c)

Whether a noncitizen is authorized to work in the United States depends on the noncitizen's immigration status or other conditions that may permit employment authorization (for example, having a pending application for asylum or a grant of deferred action). DHS regulations outline three classes of noncitizens who may be eligible for employment in the United States, as follows:[7]

- Noncitizens in the first class, described at 8 CFR 274a.12(a), are authorized to work ''incident to status'' for any employer, as well as to engage in self-employment, as a condition of their immigration status or circumstances. This means that for certain eligible noncitizens, employment authorization is granted with the underlying immigration status (called ''incident to status'' employment authorization). Although authorized to work as a condition of their status or circumstances, certain classes of noncitizens must apply to USCIS in order to receive a Form I–766 EAD as evidence of that employment authorization.[8]
- Noncitizens in the second class, described at 8 CFR 274a.12(b), also are authorized to work ''incident to status'' as a condition of their immigration status or circumstances, but generally the authorization is valid only with a specific employer.[9] These noncitizens are issued an Arrival-Departure Record (Form I–94) indicating their employment-authorized status in the United States and do not file separate requests for evidence of employment authorization.
- Noncitizens in the third class, described at 8 CFR 274a.12(c), are required to apply for employment authorization and may work only if USCIS, in its discretion, approves their application. They are authorized to work for any employer or engage in self-employment upon approval of their EAD application, subject to certain restrictions, so long as their EAD remains valid.[10]

2. The Application Process for Obtaining Employment Authorization and EADs: 8 CFR 274a.13(a)

For certain eligibility categories listed in 8 CFR 274a.12(a) (the first class) and all eligibility categories listed in 8 CFR 274a.12(c) (the third class), as well as additional categories specified in form instructions, an EAD application must be properly filed with USCIS (with fee

[3] *See* section V.B.2. Table 7, TFR Future Population Projections by Month, Rounded to Thousands.

[4] Bureau of Labor Statistics data show that, as of December 2023, there were 0.7 unemployed persons per job opening. *See* U.S. Department of Labor, U.S. Bureau of Labor Statistics, ''Number of unemployed persons per job opening, seasonally adjusted,'' *https://www.bls.gov/charts/job-openings-and-labor-turnover/unemp-per-job-opening.htm* (last visited Feb. 6, 2024).

[5] The 2022 TFR increased the automatic extension period from up to 180 days to up to 540 days for certain renewal EAD applications filed on or after May 4, 2022, and on or before October 26, 2023. Beginning on October 27, 2023, the automatic extension period reverted to the original 180-day period for those eligible applicants who timely file Form I–765 renewal applications. For individuals who received an increased automatic extension under the 2022 TFR, the automatic extension generally will end when they receive a final decision on their renewal application or the end of the up to 540-day period, whichever comes earlier.

[6] Although several provisions of the INA discussed in this TFR refer exclusively to the ''Attorney General,'' such provisions are now to be read as referring to the Secretary of Homeland Security by operation of the HSA. *See* 6 U.S.C. 202(3), 251, 271(b), 542 note, 557; 8 U.S.C. 1103(a)(1) and (g), 1551 note; *Nielsen* v. *Preap,* 139 S. Ct. 954, 959 n.2 (2019).

[7] There are several employment-eligible categories that are not included in DHS regulations, but instead are described in the form instructions to Form I–765, Application for Employment Authorization (EAD application). Employment-authorized L nonimmigrant spouses are an example. *See* INA sec. 214(c)(2)(E), 8 U.S.C. 1184(c)(2)(E).

[8] *See* 8 CFR 274a.12(a).

[9] *See* 8 CFR 274a.12(b).

[10] *See* 8 CFR 274a.12(c); *Matter of Tong,* 16 I&N Dec. 593, 595 (BIA 1978) (holding that the term '''employment' is a common one, generally used with relation to the most common pursuits,'' and includes ''the act of being employed for one's self'').

or fee waiver, as applicable) to receive employment authorization and/or an EAD.[11] EADs issued under 8 CFR 274a.12(a) or (c) generally allow these noncitizens to work for any U.S. employer or engage in self-employment, subject to certain restrictions, as applicable. If an EAD application is granted under CFR 274a.12(a), the resultant EAD provides the noncitizen with proof of employment authorization incident to status or circumstance. Certain noncitizens may file EAD applications concurrently with related benefit requests if permitted by the form instructions or as announced by USCIS.[12] In such instances, the underlying benefit requests, if granted, would form the basis for an EAD or eligibility to apply for employment authorization. For eligibility categories listed in 8 CFR 274a.12(a) and (c), USCIS has the discretion to establish a specific validity period for the EAD.[13]

3. Automatic Extensions of EADs for Renewal Applicants: 8 CFR 274a.13(d)

a. Renewing Employment Authorization and/or EADs

Employment authorization and EADs generally are not valid indefinitely but instead expire after a specified period of time.[14] Generally, noncitizens within the eligibility categories listed in 8 CFR 274a.12(c) must obtain a renewal of employment authorization and their EADs before the expiration date stated on their current EADs, or they will lose their eligibility to work in the United States (unless, since obtaining their current EADs, the noncitizens have obtained an immigration status or belong to a class of individuals with employment authorization incident to that status or class, or obtain employment authorization based on another category).[15] The same holds true for some classes of noncitizens authorized to work incident to status whose EAD expiration dates coincide with the termination or expiration of their underlying immigration status. Other noncitizens authorized to work incident to status, such as asylees, refugees, and Temporary Protected Status (TPS) beneficiaries may have immigration status that confers employment authorization that continues past the expiration date stated on their EADs. Nevertheless, such noncitizens may wish to renew their EAD to have acceptable evidence of their continuous employment authorization for various purposes, such as presenting evidence of employment authorization and identity to their employers for completion of the Employment Eligibility Verification (Form I–9) process. Failure to renew their EADs prior to the expiration date may result in job loss if such noncitizens do not have or cannot present alternate acceptable evidence of employment authorization to show their employers, as employers who continue to employ noncitizens without employment authorization may be subject to criminal penalties and/or civil monetary penalties.[16]

Those seeking to renew previously granted employment authorization or EADs must file renewal EAD applications with USCIS in accordance with the form instructions.[17]

b. Minimizing the Risk of Gaps in Employment Authorization and/or EAD Validity Through Automatic Extensions

If an eligible noncitizen is not able to obtain renewal of their employment authorization and/or EAD before it expires, the noncitizen and the employer could experience adverse consequences. For the noncitizen, the lack of renewal could cause job loss, gaps in employment authorization and/or documentation, and loss of income. For the noncitizen's employer, the disruption may cause instability with business continuity or other financial harm. Beyond the financial and economic impact that gaps in employment authorization or proof thereof create for the noncitizen and the employer, if the noncitizen engages in unauthorized employment, such activity may render a noncitizen removable,[18] render a noncitizen ineligible for future benefits such as adjustment of status,[19] and/or subject the employer to civil and/or criminal penalties.[20]

Before 2016, DHS regulations stated that USCIS would ''adjudicate an application [for an EAD] within 90 days'' from the date USCIS received the application.[21] If USCIS did not adjudicate the application within that timeframe, the applicant was eligible for an interim document evidencing employment authorization with a validity period not to exceed 240 days. On November 18, 2016, as part of DHS's efforts to implement the flexibilities provided to noncitizens and employers by the American Competitiveness in the Twenty-first Century Act of 2000 (AC21), as amended, and the American Competitiveness and Workforce Improvement Act of 1998, DHS published a final regulation [22] removing the provision and replacing it with the current 8 CFR 274a.13(d).

To prevent gaps in employment authorization and/or documentation and related consequences for certain renewal applicants,[23] and in light of processing times and possible filing

[11] *See* 8 CFR 103.2(a) and 8 CFR 274a.13(a). An applicant who is employment authorized incident to status (*e.g.,* asylees, refugees, TPS beneficiaries) may file an EAD application to request an EAD. Applicants who are filing within an eligibility category listed in 8 CFR 274a.12(c) must, by contrast, use the EAD application form to request both employment authorization and an EAD.

[12] *See* 8 CFR 274a.13(a). For example, the spouse of an H–1B worker may file an EAD application at the same time as their Form I–539, Application to Extend/Change Nonimmigrant Status. *See* USCIS, DHS, ''Employment Authorization for Certain H–4, E Dependent Spouses,'' *https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/employment-authorization-for-certain-h-4-dependent-spouses* (last visited Dec. 4, 2023).

[13] *See* 8 CFR 274.12(a) and (c).

[14] *See* 8 CFR 274a.13(b). *But see* 8 CFR 274a.14 (setting forth the bases for termination or revocation of employment authorization).

[15] *See* 8 CFR 274a.14(a)(1)(i).

[16] The employee must present the employer with acceptable documents evidencing identity and employment authorization. The lists of acceptable documents can be found on the second page of the Form I–9. *See* USCIS, DHS, Form I–9, ''Employment Eligibility Verification,'' *https://www.uscis.gov/sites/default/files/document/forms/i-9.pdf* (last visited Feb. 7, 2024). An employer that does not properly complete Form I–9, which includes reverifying continued employment authorization, or continues to employ an individual with knowledge that the individual is not authorized to work, may be subject to civil money penalties. *See* USCIS, DHS, ''M–274 Handbook for Employers,'' ''11.8 Penalties for Prohibited Practices,'' *https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274/110-unlawful-discrimination-and-penalties-for-prohibited-practices/118-penalties-for-prohibited-practices* (last visited Feb. 7, 2024). In addition, an employer who engages in a ''pattern or practice'' of employing unauthorized individuals may face criminal penalties under 8 U.S.C. 1324a(f). U.S. Immigration and Customs Enforcement has primary enforcement responsibilities for enforcement of the civil monetary penalties under Section 274A of the INA, 8 U.S.C. 1324a and Section 274C of the INA, 8 U.S.C. 1324c.

[17] *See* USCIS, DHS, Form I–765, ''Instructions for Application for Employment Authorization,'' *https://www.uscis.gov/sites/default/files/document/forms/i-765instr.pdf* (last visited Feb. 7, 2024). In reviewing the EAD application, USCIS ensures that the fee was paid, a fee waiver was granted, or a fee exemption applies.

[18] *See, e.g.,* INA sec. 237(a)(1)(C), 8 U.S.C. 1227(a)(1)(C); 8 CFR 214.1(e).

[19] *See* INA sec. 245(c), (k); 8 U.S.C. 1255(c), (k).

[20] *See* INA sec. 274A, 8 U.S.C. 1324a.

[21] *See* 8 CFR 274a.13(d) (2016).

[22] *See* 81 FR 82398 (Nov. 18, 2016) (''AC21 Final Rule''). The final rule was issued after a proposed rule was published in the **Federal Register**. *See* 80 FR 81899 (Dec. 31, 2015) (''AC21 NPRM'').

[23] *See* 80 FR 81899, 81927 (Dec. 31, 2015) (''DHS proposes to amend its regulations to help prevent gaps in employment authorization for certain employment-authorized individuals who are seeking to renew expiring EADs. . . . These provisions would significantly mitigate the risk of gaps in employment authorization and required documentation for eligible individuals, thereby benefitting them and their employers.'').

surges,[24] DHS changed its regulations at 8 CFR 274a.13(d) such that under the current provision, and except as otherwise provided by law, certain categories of renewal applicants receive an automatic extension of their EADs (and, if applicable, related employment authorization) for up to 180 days from the expiration date on the EAD.[25] To receive the automatic extension, an eligible renewal applicant must meet the following conditions:

- The renewal applicant timely files an application to renew the employment authorization and/or EAD before the EAD expires; [26]
- The renewal EAD application is based on the same employment authorization category on the front of the expiring EAD or is for an individual approved for TPS whose EAD was issued pursuant to 8 CFR 274a.12(c)(19); [27] and
- The renewal applicant's eligibility to apply for employment authorization continues notwithstanding the expiration of the EAD and is based on an employment authorization category that does not require the adjudication of an underlying application or petition before the adjudication of the renewal application, as may be announced on the USCIS website.[28]

The following classes of noncitizens filing to renew an EAD may be eligible to receive an automatic extension of their employment authorization and/or EAD for up to 180 days: [29]

- Noncitizens admitted as refugees (A03); [30]
- Noncitizens granted asylum (A05); [31]
- Noncitizens admitted as parents or dependent children of noncitizens granted permanent residence under section 101(a)(27)(I) of the INA, 8 U.S.C. 1101(a)(27)(I) (A07); [32]
- Noncitizens admitted to the United States as citizens of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau pursuant to agreements between the United States and the former trust territories (A08); [33]
- Noncitizens granted withholding of deportation or removal (A10); [34]
- Noncitizens granted TPS, regardless of the employment authorization category on their current EADs (A12); [35]
- Noncitizen spouses of E–1/2/3 nonimmigrants (Treaty Trader/Investor/Australian Specialty Worker) (A17); [36]
- Noncitizen spouses of L–1 nonimmigrants (Intracompany Transferees) (A18); [37]
- Noncitizens who have properly filed applications for TPS and who have been deemed *prima facie* eligible for TPS under 8 CFR 244.10(a) and have received an EAD as a ''temporary treatment benefit'' under 8 CFR 244.10(e) and 274a.12(c)(19) (C19); [38]
- Noncitizens who have properly filed applications for asylum and withholding of deportation or removal (C08); [39]
- Noncitizens who have filed applications for adjustment of status to lawful permanent resident under section 245 of the INA, 8 U.S.C. 1255 (C09); [40]
- Noncitizens who have filed applications for suspension of deportation under section 244 of the INA (as it existed prior to April 1, 1997), cancellation of removal pursuant to section 240A of the INA, or special rule cancellation of removal under section 309(f)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (C10); [41]
- Noncitizens who have filed applications for creation of record of lawful admission for permanent residence (C16); [42]
- Noncitizens who have properly filed legalization applications pursuant to section 210 of the INA, 8 U.S.C. 1160 (C20); [43]
- Noncitizens who have properly filed legalization applications pursuant to section 245A of the INA, 8 U.S.C. 1255a (C22); [44]
- Noncitizens who have filed applications for adjustment of status pursuant to section 1104 of the Legal Immigration Family Equity Act (C24); [45]
- Certain noncitizen spouses (H–4) of H–1B nonimmigrants with an unexpired Form I–94 showing H–4 nonimmigrant status (C26); [46] and
- Noncitizens who are the principal beneficiaries or derivative children of approved Violence Against Women Act (VAWA) self-petitioners,[47] under the employment authorization category ''(c)(31)'' in the form instructions to the EAD application (C31).[48]

The extension automatically terminates the earlier of up to 180 days after the expiration date of the EAD, or upon issuance of notification of a decision denying the renewal request.[49] An EAD that is expired on its face is considered unexpired when combined with a Form I–797C receipt notice indicating a timely filing of the application to renew the EAD.[50] Therefore, when the expiration date on the front of the EAD is reached, a noncitizen who is continuing in their employment with the same employer may present to their employer the Form I–797C receipt notice for the EAD application to show that their EAD has been automatically extended as evidence of continued employment authorization, and the employer must

[24] *See* 80 FR 81899, 81927 (Dec. 31, 2015) (''DHS believes that this time period [of up to 180 days] is reasonable and provides more than ample time for USCIS to complete the adjudication process based on USCIS' current 3-month average processing time for Applications for Employment Authorization.''); *id.* at 81927 n.77 (''Depending on any significant surges in filings, however, there may be periods in which USCIS takes longer than 2 weeks to issue Notices of Action (Forms I–797C).'').

[25] 8 CFR 274a.13(d); *see also* 81 FR 82398, 82455–82463 (Nov. 18, 2016) (AC21 Final Rule).

[26] 8 CFR 274a.13(d)(1)(i). TPS beneficiaries must file during the designated period in the applicable **Federal Register** notice.

[27] *See* 8 CFR 274a.13(d)(1)(ii) (exempting individuals approved for TPS with EADs issued pursuant to 8 CFR 274a.12(c)(19) from the requirement that the employment authorization category on the face of the expiring EAD be the same as on the EAD renewal application).

[28] *See* 8 CFR 274a.13(d)(1)(iii).

[29] *See* USCIS, DHS, ''Automatic Employment Authorization (EAD) Extension,'' *https://www.uscis.gov/working-in-the-united-states/information-for-employers-and-employees/automatic-employment-authorization-document-ead-extension* (last visited Feb. 7, 2023).

[30] *See* 8 CFR 274a.12(a)(3).

[31] *See* 8 CFR 274a.12(a)(5).

[32] *See* 8 CFR 274a.12(a)(7).

[33] *See* 8 CFR 274a.12(a)(8).

[34] *See* 8 CFR 274a.12(a)(10).

[35] *See* 8 CFR 274a.12(a)(12) or (c)(19).

[36] *See* INA sec. 214(e)(2), 8 U.S.C. 1184(e)(2).

[37] *See* INA sec. 214(c)(2)(E), 8 U.S.C. 1184(c)(2)(E).

[38] *See* 8 CFR 274a.12(c)(19).

[39] *See* 8 CFR 274a.12(c)(8).

[40] *See* 8 CFR 274a.12(c)(9). In certain adjustment of status cases, if the applicant seeks an EAD and advance parole (by filing Form I–131, Application for Travel Document), USCIS may issue an employment authorization card combined with an Advance Parole Card (Form I–512). This is also referred to as a ''combo card.'' If the EAD card is combined with the advance parole authorization (the EAD card has an annotation ''SERVES AS I–512 ADVANCE PAROLE''), any automatic extension does not apply to the advance parole part of the combo card.

[41] *See* 8 CFR 274a.12(c)(10).

[42] *See* 8 CFR 274a.12(c)(16).

[43] *See* 8 CFR 274a.12(c)(20).

[44] *See* 8 CFR 274a.12(c)(22).

[45] *See* 8 CFR 274a.12(c)(24).

[46] *See* 8 CFR 274a.12(c)(26).

[47] Family based immigration generally requires U.S. citizens and lawful permanent residents to file a petition on behalf of their noncitizen family members. Some petitioners may misuse this process to further abuse their noncitizen family members by threatening to withhold or withdraw sponsorship in order to control, coerce, and intimidate them. With the passage of VAWA and its subsequent reauthorizations, Congress provided noncitizens who have been abused by their U.S. citizen or lawful permanent resident relative the ability to petition for themselves (self-petition) without the abuser's knowledge, consent, or participation in the process. The VAWA provisions allow victims to seek both safety and independence from their abusers.

[48] INA sec. 204(a)(1)(D)(i)(II), (IV), (a)(1)(K), 8 U.S.C. 1154(a)(1)(D)(i)(II), (IV), (a)(1)(K).

[49] *See* 8 CFR 274a.13(d)(3).

[50] *See* 8 CFR 274a.13(d)(4).

update the previously completed Form I–9 to reflect the extended EAD expiration date based on the automatic extension while the renewal is pending. For new employment, the automatic extension date is recorded on the Form I–9 by the employee and the employer in the first instance. In either case, the reverification of employment authorization or the EAD occurs when the automatic extension period terminates.[51]

USCIS generally recommends the filing of a renewal EAD application up to 180 days before the current EAD expires.[52] If the renewal application is granted, the employment authorization and/or EAD generally will be valid as of the date of approval of the application. If the application is denied, the automatically extended employment authorization and/or EAD generally is terminated on the day of the denial.[53] If the renewal application was timely and properly filed, but remains pending beyond the 180-day automatic extension period, the applicant must stop working upon the expiration of the automatically extended validity period and the employer must remove the employee from the payroll if the applicant/employee cannot provide other acceptable evidence of current employment authorization.[54] As a result, both the employee and the employer may experience the negative consequences of gaps in employment authorization and/or EAD validity. Since its promulgation in 2016, the automatic extension provision at 8 CFR 274a.13(d) has helped to minimize the risk of these negative consequences for applicants who are otherwise eligible for the automatic extension and their employers.

C. 2022 Temporary Final Rule

1. Overview

In 2022, processing times for EAD applications had increased due to operational challenges that were exacerbated by the emergency measures USCIS employed to maintain its operations through the height of the COVID–19 pandemic in 2020, combined with a sudden increase in EAD application filings. The up to 180-day automatic extension period for renewal EAD applicants' employment authorization and/or EADs was no longer sufficient to prevent lapses in employment authorization for these applicants.

To mitigate the impact of these operational challenges, on May 4, 2022, DHS published a TFR titled ''Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants'' (2022 TFR) in the **Federal Register**.[55] The rule temporarily amended DHS regulations at 8 CFR 274a.13(d) by adding a new paragraph 8 CFR 274a.13(d)(5), which lengthened the automatic extension period provided in that section from up to 180 days to up to 540 days for those categories described in the TFR, upon timely filing of an EAD renewal application.[56] That increase was available to eligible renewal applicants whose EAD applications were pending as of May 4, 2022, including those applicants whose employment authorization had already lapsed following the initial 180-day extension period, and to eligible applicants who filed a renewal EAD application during the 540-day period beginning on or after May 4, 2022, and ending October 26, 2023.[57] On October 27, 2023, the automatic extension renewal period reverted to 180 days (the automatic extension period under 8 CFR 274a.13(d)(1)) for eligible renewal EAD applications filed on or after October 27, 2023.[58]

2. Public Comments

In promulgating the 2022 TFR, DHS invited the public to participate in the rulemaking by submitting comments and written data. In response to the request for comments, the Department received a total of 190 public comment submissions. Of the 190 submissions, 117 are unique submissions, 61 are copies of form letters associated with mass mail campaigns, 6 are duplicate submissions, and 6 are not germane to the 2022 TFR.[59]

Of the comments listed above, one submission expressed opposition, 94 submissions expressed support, and 83 expressed a mixed opinion (*e.g.,* general support with a request for further changes). Many expressed their appreciation for the rule and commented on the positive impacts the rule had not only on applicants, their families, and their support systems, but also on employers and the economy. Many who supported the rule overall also expressed that DHS should have applied the rule more broadly by expanding certain aspects of the rule (*e.g.,* to cover all classes of noncitizens) or requested revisions to the rule (*e.g.,* that the effective period of the rule be longer, or that it be issued as a final rule that would make the increased extension permanent, not temporary). A comment submitted by an advocacy group noted that USCIS should make permanent the 540-day automatic extension because it was unlikely that USCIS would fully eliminate USCIS' backlog owing to circumstances beyond USCIS' control, including a lack of funding and adequate staffing. The group added that USCIS could publish a final rule to make the 540-day automatic extension period permanent as an appropriate exercise of USCIS' rulemaking authority under the Administrative Procedure Act (APA) because USCIS requested comments in connection with the 2022 TFR.[60] Another advocacy group noted that making permanent the automatic extension period of 540 days would be more efficient and promote predictability. Some commenters suggested that DHS consider alternative regulatory or sub-regulatory actions. Some addressed other concerns, including clarity, outreach, and coordination with other departments.

While DHS reviewed and considered the comments submitted in response to the 2022 TFR, DHS did not make changes to the 2022 TFR in response to the comments because DHS considered the rulemaking to be sufficient at that time to address the issues facing the affected population of renewal EAD applicants and their U.S. employers. DHS also considered some comments, such as commenters' suggestions to eliminate employment authorization for certain groups entirely, to be beyond the scope of the 2022 TFR, which was intended to be a temporary solution to the potential disruption facing certain renewal applicants and their U.S. employers resulting from USCIS

[51] *See* USCIS, DHS, ''Completing Supplement B, Reverification and Rehires (formerly Section 3),'' *https://www.uscis.gov/i-9-central/complete-correct-form-i-9/completing-supplement-b-reverification-and-rehires-formerly-section-3* (last visited Nov. 3, 2023); *see also* USCIS, DHS, ''M–274 Handbook for Employers,'' ''5.2 Temporary Increase of Automatic Extension of EADs from 180 Days to 540 Days'' (last visited Dec. 7, 2023).

[52] *See* USCIS, DHS, ''I–765, Application for Employment Authorization,'' *https://www.uscis.gov/i-765* (last visited Jan. 19, 2024); USCIS, DHS, ''Employment Authorization Document,'' *https://www.uscis.gov/green-card/green-card-processes-and-procedures/employment-authorization-document* (last visited Dec. 7, 2023); *see also* 81 FR at 82456 (''AC21 Final Rule'').

[53] *See* 8 CFR 274a.13(d)(3).

[54] *See* 8 CFR 274a.2(b)(vii) (reverification provision).

[55] 87 FR 26614 (May 4, 2022).

[56] *See* 8 CFR 274a.13(d); *see also* 87 FR 26614, 26651 (May 4, 2022).

[57] *See id.*

[58] *See* 87 FR 26614, 26631 (May 4, 2022).

[59] The agency has not previously responded to the public comments received from the 2022 TFR.

[60] The group cited *Little Sisters of the Poor Saints Peter & Paul Home* v. *Pennsylvania,* 140 S.Ct. 2367, 2384–85 (2020) (holding that an interim final rule's ''request for comments readily satisfied the APA notice requirements.'').

processing delays. DHS also took various sub-regulatory actions, as described in section III.B of this preamble, to further address USCIS processing delays and minimize the risk of potential gaps in employment authorization and/or documentation.

Lastly, DHS considered the comment in opposition to the rule that asserted that DHS only provided a cursory justification for the TFR and questioned DHS's authority to issue the TFR, its consideration of the impact on U.S. workers, and its justification for claiming good cause to issue the rule without the notice and comment procedure required under the APA. DHS disagrees with these various assertions, as the preamble to the 2022 TFR included a detailed explanation of the legal authority and justification for the rulemaking, as well as the basis for foregoing notice and comment based on the good cause exception.[61] Nevertheless, DHS included additional details in this rule to further clarify the legal authority for this TFR and has provided additional explanation regarding the consideration of U.S. workers and potential impacts, if any, of this TFR on U.S. workers. Specifically, as explained in this preamble, this TFR is limited to certain renewal EAD applicants—*i.e.,* those who have already been authorized for employment—and automatically extending their employment authorization and/or EAD, so that they may continue to perform the services they are already doing will have minimal adverse impact, if any, on other U.S. workers.[62] Moreover, in providing benefits for renewal applicants and their U.S. employers, this rule indirectly benefits U.S. workers by protecting the financial stability and continuity of operations for affected U.S. employers. DHS also provides a detailed explanation, including citation to cases cited by the commenter, regarding the APA's good cause exception and its application to this TFR.

All comments submitted in response to the 2022 TFR have been reviewed and considered by DHS in the development of this 2024 TFR.

3. Impact of the 2022 TFR

The 2022 TFR proved to be very successful at minimizing disruption to renewal EAD applicants and their U.S. employers that would have otherwise resulted from USCIS processing delays. Not only did the 2022 TFR immediately restore employment authorization for approximately 70,000 renewal EAD applicants who were already beyond the up to 180-day automatic extension period when the 2022 TFR published, but the 2022 TFR also helped nearly 280,000 renewal EAD applicants avoid a gap in employment authorization or employment authorization documentation based on applications filed on or after May 4, 2022, and on or before October 26, 2023.

III. Purpose of This Temporary Final Rule

DHS has determined that the up to 180-day automatic extension under 8 CFR 274a.13(d) is currently not enough time for the growing number of renewal EAD applicants. Without this TFR, hundreds of thousands of renewal EAD applications will remain pending beyond the 180-day automatic extension period, resulting in applicants losing employment authorization and/or EAD validity. The grave situation that many renewal applicants (and their families) and their employers will imminently or soon face without this action is not the result of the applicants' actions but is instead the result of several converging factors affecting USCIS operations. These factors, as described in detail later in this section, have resulted in a significant increase in USCIS processing times for several categories of renewal EAD applications.

Based on these factors, DHS has determined that the 180-day automatic extension provision is currently insufficient to protect applicants, their families, and their employers as was originally intended. If USCIS does not take immediate action, approximately 800,000 EAD renewal applicants will be in danger of experiencing a gap in employment authorization and/or EAD validity in the approximately 2-year period beginning May 2024.[63] Such widescale lapses in employment authorization and EAD validity would result in substantial and unnecessary harm to noncitizens who timely filed for extensions of employment authorization, their families, their employers, and the public at large. Approximately 80 percent of those renewal applications will be pending asylum applicant (C08) EADs. The remaining 20 percent will primarily be adjustment applicant (C09) and cancellation of removal (C10) EADs.[64] Therefore, to avert gaps in employment authorization and/or EAD validity for certain renewal EAD applicants and the harmful effects caused by such lapses, DHS is temporarily amending existing DHS regulations to increase the automatic extension period from to up to 540 days from the expiration date stated on their EADs.

DHS is applying this rule to all renewal EAD application categories eligible for automatic extension pursuant to 8 CFR 274a.13(d), not just to C08, C09, and C10 EAD renewal categories, even though some of these categories currently experience processing times that do not raise a risk of the applicant experiencing a lapse in employment authorization or documentation. While nearly all renewal applications eligible for automatic extension fall within the C08, C09, and C10 categories, DHS has made this decision because it has determined that it would not be operationally practical for USCIS to implement a different approach. Making distinctions among categories would cause confusion among employers and employees; and backlogs and processing times may yet increase for these other categories.

[61] Among other things, the commenter asserted that section 274A(h)(3)(B) of the INA, 8 U.S.C. 1324a(h)(3)(B) was ''merely definitional'' and did not confer authority on DHS to grant or extend employment authorization to certain classes of noncitizens covered by the rule. DHS disagrees with the commenter's assertion. DHS further discusses the relevant authorities earlier in section II of this preamble. *See also, e.g., Washington Alliance of Technology Workers* v. *DHS,* 50 F.4th 164, 191–192 (D.C. Cir. 2022) (''What matters is that section 1324a(h)(3) expressly acknowledges that employment authorization need not be specifically conferred by statute; it can also be granted by regulation.'').

[62] *See* section V.B.3.d., Module D. Other Impacts. As explained, this rule extends current employment authorization for individuals who are at risk of losing such authorization solely because of USCIS processing delays; it does not grant new work authorization to additional persons. *See id.* According to the most recent data (applicable to October 2023), the U.S. labor force stands at 167,728,000. The maximum population of about 824,000 represents 0.50 percent of the national labor force, approximately 554,000 of which would potentially not lapse as a result of the action being taken. *See id.* Additionally, according to the Bureau of Labor Statistics data, and as of December 2023, there were 0.7 unemployed persons per job opening. *See* U.S. Department of Labor, U.S. Bureau of Labor Statistics, ''Number of unemployed persons per job opening, seasonally adjusted,'' *https://www.bls.gov/charts/job-openings-and-labor-turnover/unemp-per-job-opening.htm* (last visited Feb. 6, 2024). Thus, data indicates that there are currently more jobs than available employees. As such, DHS believes, based on the nature of this rulemaking as well as current economic conditions, that the hypothetical possibility of some U.S. workers replacing workers who would temporarily lose employment authorization in the absence of this rulemaking is not a compelling reason to allow widespread losses of employment authorization due to USCIS processing delays.

[63] *See* section V.B.2. Table 6 of the Regulatory Impact Analysis.

[64] *See* section V.B.2. Table 6 of the Regulatory Impact Analysis for how the renewal categories will be affected under this TFR.

A. Sudden Increase in EAD Applications and Associated Operational Challenges

1. Comparing Fiscal Year (FY) 2023 Receipts to FY 2022 Receipts

The most recent and significant contributing factor to the severe backlog and increased processing times for renewal EAD applications is the substantial increase in the number of initial EAD applications based on pending asylum applications (C08) that began in March 2023. This surge and sustained increase in receipts during FY 2023 [65] substantially increased processing times for renewal EAD applications because USCIS was required to prioritize adjudication of certain initial EAD applications over other applications such as renewal EAD applications.[66]

As shown in Tables 1A. through C. below, in FY 2023, USCIS received approximately 3.49 million EAD applications, which was 50 percent higher than the volume received in FY 2022 (approximately 2.33 million). USCIS received approximately 2.37 million initial EAD applications in FY 2023, which was 77 percent higher than the volume of initial EAD applications received in FY 2022 (approximately 1.34 million). USCIS received approximately 1.12 million renewal EAD applications in FY 2023, which was 13 percent higher than the volume received in FY 2022 (approximately 990,000).

TABLE 1A—INITIAL AND RENEWAL EAD APPLICATIONS

Fiscal year	EAD applications	Difference
2022 ...	2,330,000	
2023 ...	3,490,000	50 percent higher than 2022.

TABLE 1B—INITIAL EAD APPLICATIONS

Fiscal year	EAD applications	Difference
2022 ...	1,340,000	
2023 ...	2,370,000	77 percent higher than 2022.

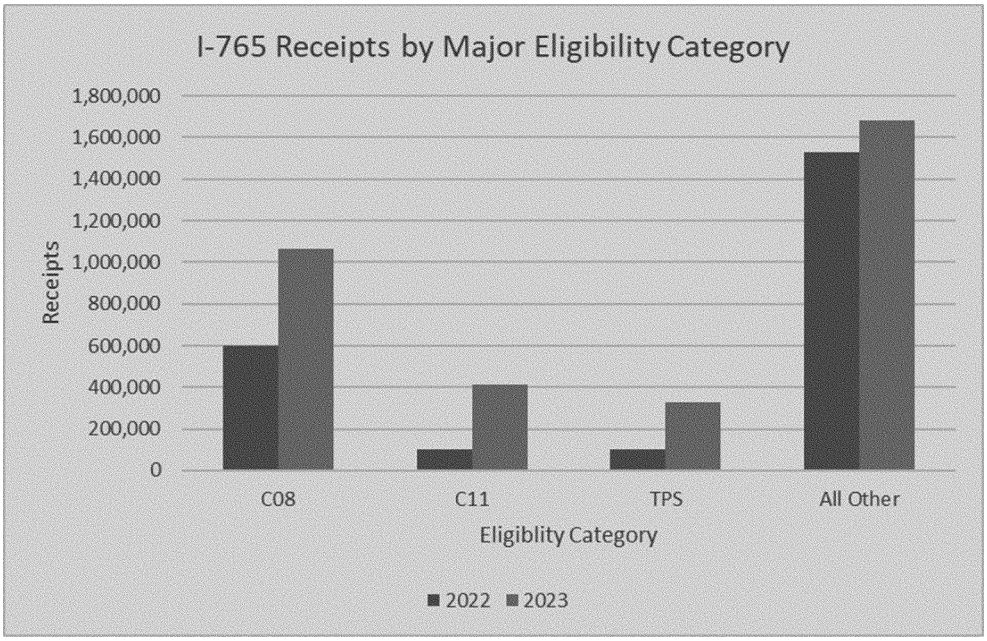
TABLE 1C—RENEWAL EAD APPLICATIONS

Fiscal year	EAD applications	Difference
2022 ...	990,000	
2023 ...	1,120,000	13 percent higher than 2022.

While overall EAD application filings increased in FY 2023, USCIS received a substantial increase in filings in the second half of the fiscal year. USCIS received a spike of nearly 100,000 EAD application filings in March 2023, resulting in a monthly total well over 300,000. However, USCIS received approximately 61,000 fewer EAD applications the following month in April 2023, underscoring the dynamic and variable nature of EAD filings at that time.

As shown in Figure 1 below, the primary drivers in the growth of EAD applications in FY 2023 (both initials and renewals) were EAD applications based on pending asylum applications (C08), TPS (A12/C19), and parole (C11).

Figure 1. I–765 Receipts by Major Eligibility Category



The higher volume receipts, particularly initial C08 EAD applications, led to increased processing times for renewal EAD applications because, as explained in section III.A.2.a., USCIS had to prioritize adjudicative resources on C08 initial EAD applications to comply with court-ordered deadlines for processing these case types and to address other priorities.[67] Consequently, the efforts USCIS undertook to improve its

[65] For the beginning of FY 2023 until March 2023, USCIS averaged 160,000 initial EAD application receipts per month. In March 2023, initial EAD application receipts spiked to over 250,000. For the remainder of FY 2023, USCIS averaged 220,000 initial EAD application receipts per month. The EAD category with the largest growth of initial receipts in the second half of FY 2023 was C08 (pending asylum applications).

[66] See section III.A.2.a of this preamble for more information on this requirement to prioritize initial EAD applications in the C08 category (pending asylum applications).

[67] *See* section III.A.2.a of this preamble for more information on the court-imposed requirement to prioritize initial EAD applications in the C08 category. For more information on EAD application processing times resulting from increased filings, *see* section III.C of this preamble.

processing times for renewal EAD applications—including increasing its staffing levels—were insufficient to keep up with the substantial and unanticipated increase in EAD application filings.

To address the unexpectedly high volume of incoming receipts, USCIS increased officer hours expended on initial C08 EAD applications from 116,000 in FY 2022 to 361,000 in FY 2023, an increase of approximately 245,000 hours. The increase in officer hours was comprised of straight time [68] (95,000 hours in FY 2022 to 268,000 hours in FY 2023, an increase of 173,000 hours or 282 percent) and overtime (21,000 hours in FY 2022 to 93,000 hours in FY 2023, an increase of 72,000 hours or 443 percent). To achieve this increase in hours, USCIS reassigned officers from other workloads and hired new staff.

For staff transfers from other product lines to initial C08 EAD applications, USCIS first utilized staff that previously worked on C08 renewals because they were already trained on C08 EAD processing. When this was insufficient to meet the court-ordered 30-day processing requirement for C08 EAD initial applications, USCIS reassigned personnel from other product lines and trained them to work on C08 EAD processing.

This court-ordered prioritization of initial C08 EAD applications over other applications has negatively affected renewal EAD processing times because USCIS was unable to dedicate sufficient officer hours to keep pace with renewal EAD applications. To help address this issue, USCIS increased officer hours from 92,000 in FY 2022 to 113,000 in FY 2023 for renewal C08 EAD applications. Despite this increase of 21,000 officer hours, USCIS has been unable to keep up with its volume of renewal C08 EAD applications. As of February 2024, the 80th percentile processing time [69] for renewal C08 EAD applications was 16 months. USCIS is also behind in its target for adjudications of other automatic extension categories, including C09 (pending adjustment of status application, 7.5 months), C10 (suspension of deportation, 16.3 months), A12 (TPS, 11.2 months), A5 (asylee, 4.8 months), and A10 (granted withholding of deportation or removal, 6.6 months).

As is explained in this preamble, EAD application processing times and the number of pending EAD applications have not sufficiently improved, and despite USCIS' multiple operational and sub-regulatory efforts to reduce the backlog, ongoing and dynamic circumstances, which are outside of USCIS' control, have prevented USCIS from keeping up with the adjudicatory workload.

USCIS has continued to closely monitor the automatic-extension eligible renewal EAD caseloads and processing times. Despite USCIS' best efforts, such improvements have not yet provided the desired impact. Table 2 shows that the number of pending EAD applications has not materially improved since the end of FY 2023. The total number of pending EAD applications at the end of February of 2024 is approximately 1.40 million applications, which continues to pose a challenge for USCIS and also impacts processing times for renewal EAD applications eligible for automatic extensions because of the limited amount of USCIS resources that can be allocated to those case types. The total number of pending auto-extension EAD renewal applications at the end of February 2024 was approximately 439,000. While some progress has been made in addressing the backlog, the progress has not yet achieved sufficient gains to reduce EAD renewal processing times and avoid imminent and near-term lapses in employment authorization for EAD renewal applicants.

TABLE 2—PENDING EAD APPLICATIONS BY MONTH

Month	All EAD applications	Auto-extension renewals
Sep 2023	1,490,000	534,000
Oct 2023	1,510,000	504,000
Nov 2023	1,500,000	474,000
Dec 2023	1,470,000	448,000
Jan 2024	1,440,000	457,000
Feb 2024	1,400,000	439,000

Source: DHS, USCIS, OPQ, CLAIMS3, ELIS, retrieved March 15, 2024.

2. Effect of Operational Challenges on EAD Application Adjudications

a. Operational Challenges Associated With Initial EAD Application Filings by Pending Asylum Applicants (C08)

The operational challenges associated with the recent surge in EAD applications has primarily [70] been driven by initial EAD applications by individuals with pending asylum applications (C08).[71] In FY 2022, USCIS received 266,036 initial C08 applications. In FY 2023, receipts dramatically increased to 802,284. The increase in initial C08 EAD applications placed a substantial strain on USCIS' adjudicative resources due to the high volume of cases and, as discussed in this section, the stringent 30-day timeline in which USCIS must, by regulation and court order, adjudicate these applications.

In addition to increased EAD filings, EAD processing overall also has been affected by litigation regarding two rules, published in 2020, that amended the regulations governing EAD applications associated with asylum applications.

The regulation at 8 CFR 208.7(a)(1), which was originally promulgated in 1994,[72] requires USCIS to adjudicate initial C08 EAD applications within 30 days of filing.[73] However, on June 22, 2020, DHS published a final rule titled ''Removal of 30-day Processing Provision for Asylum Applicant-Related Form I–765 Employment Authorization Applications'', which amended 8 CFR 208.7(a)(1) to remove the 30-day

[68] Straight time is the regular wage an employee receives for working a regular schedule and does not include overtime pay.

[69] The processing times displayed on the USCIS website is the amount of time it took USCIS to complete 80 percent of adjudicated cases over the last 6 months. ''Processing time is defined as the number of days (or months) that have elapsed between the date USCIS received an application, petition, or request and the date USCIS completed the application, petition, or request (that is, approved or denied it) in a given six-month period.'' *See* USCIS, DHS, ''Case Processing Times,'' *https://egov.uscis.gov/processing-times/more-info* (last visited January 19, 2024).

[70] Other factors related to EAD processing have affected USCIS' workload and personnel, such as processing EADs for noncitizens who were paroled after scheduling an appointment through CBP One or through the Cuban, Haitian, Nicaraguan, and Venezuelan parole processes. However, these processes have not significantly compounded the pressures on EAD renewal processing, and they do not alter USCIS' determination that the primary factor leading to longer processing times for renewal EAD applications is the sudden and sustained increase in initial applications for EADs in the C08 category, which must be adjudicated within 30 days. *See* section III.A.2 of this preamble for a detailed discussion of the operational effects of the C08 initial applications.

[71] Currently, pending asylum applicants may not be granted employment authorization until 180 days after the filing of the application for asylum. INA sec. 208(d)(2), 8 U.S.C. 1158(d)(2). Pending asylum applicants requesting employment authorization under the C08 category may file their EAD applications once the asylum application has been pending for 150 days. 8 CFR 208.7(a)(1).

[72] *See* 59 FR 62284 (Dec. 5, 1994).

[73] On July 26, 2018, in *Rosario* v. *USCIS,* the U.S. District Court for the Western District of Washington granted summary judgment against the government and issued an order requiring USCIS to comply with the 30-day regulatory timeline at 8 CFR 208.7. *See* 365 F. Supp. 3d 1156 (W.D. Wash. 2018).

processing requirement.[74] Several days later, DHS published another final rule titled ''Asylum Application, Interview, and Employment Authorization for Applicants,'' which made further changes to DHS's regulations governing eligibility for employment authorization based on a pending asylum application, including extending the waiting period before asylum applicants could apply for an EAD from 180 days to 365 days (not including delays caused or requested by an applicant) and imposing other restrictions and requirements.[75]

Litigation followed the publication of these two rules (''2020 Asylum EAD Rules''), including *CASA*[76] in the U.S. District Court for the District of Maryland, and *Asylumworks*[77] in the U.S. District Court for the District of Columbia. On September 11, 2020, the court in *CASA* imposed a preliminary injunction requiring that USCIS not apply the 2020 Asylum EAD Rules to members of CASA and Asylum Seeker Advocacy Project organizations. On February 7, 2022, the U.S. District Court for the District of Columbia issued an order in *Asylumworks* vacating the 2020 Asylum EAD Rules in their entirety.[78] On September 22, 2022, DHS published a final rule titled ''Asylum Application, and Employment Authorization for Applicants; Implementation of Vacatur''[79] that removed the changes made by the 2020 Asylum EAD Rules, restoring the regulatory text that predated the 2020 Asylum EAD Rules and thus implementing the court order in *Asylumworks.*

As a result of the *Asylumworks* court order, since February 7, 2022, USCIS has been required to process initial EAD applications for all asylum applicants within 30 days of filing. While the court order required a return to a regulatory requirement that existed until 2020, the burden created by the court's order was significant and continues to affect overall EAD processing today.

Following the *Asylumworks* vacatur, at the end of February 2022, there were 93,639 pending cases to which the 30-day processing requirement applied. To address the backlog of cases and comply with the court's order, USCIS worked to increase resources for the entire initial C08 EAD application workload, including adding staff (pulling from other workloads as well as new hires) and offering overtime.[80]

In particular, USCIS has added staff dedicated to the adjudication of C08 initial EAD applications by reassigning and training experienced officers from other portfolios and assigning new hires to this portfolio. In addition, USCIS offered overtime to all officers working C08 initial EAD applications.[81] As a result of these efforts, USCIS maintained higher levels of completions than have occurred since 2017, resulting in the significant reduction of total C08 initial EAD applications pending over 30 days. USCIS expended 68,000 hours on C08 initial EAD applications in FY 2021, 116,000 hours in FY 2022, and 361,000 hours in FY 2023. USCIS expended 245,000 more officer hours in FY 2023 than FY 2022 adjudicating C08 initial EAD applications. Some of these hours could have gone to other workloads, including renewal EAD applications.

b. Impact of the Significant Increase in Referrals to USCIS for Credible Fear Assessments

As DHS noted in 2023, economic and political instability around the world has been fueling high levels of global migration, including in the Western Hemisphere.[82] For example, in December 2022, U.S. Border Patrol (USBP)[83] encountered approximately 222,000 noncitizens between ports of entry, then second only to May 2022 (approximately 224,000 encounters). Daily encounters averaged 7,152 in that month (as compared to the daily average of 1,265 in the immediate pre-pandemic period, 2014–2019).[84] The Department estimated, based on April 2023 projections and planning models, that the number of daily encounters could rise to approximately 11,000 per day.[85] The Department announced sweeping new measures to address the anticipated further increase in migration, including a new rule that introduced a rebuttable presumption of asylum ineligibility for certain noncitizens[86] and a surge in resources to expeditiously process and remove individuals who arrive at the southwest border without a lawful basis to remain.[87]

These new measures have helped DHS to better manage migratory flows, but require USCIS resources to implement in the face of historically high levels of encounters at the southwest land border between the ports of entry. Although such encounters dropped between April 2023 (183,921) and May 2023 (171,382), and dropped again in June 2023 (99,538), encounters began to increase in July 2023 (132,642) and then remained higher than May 2023 levels through December 2023 (249,735), before falling again in January 2024 (176,205).[88] With this increase in encounters at the southwest border, there has also been an increase in referrals to USCIS for credible fear screenings[89] of individuals

[74] *See* 85 FR 37502 (June 22, 2020). DHS issued this final rule after having issued a proposed rule, seeking public comments. *See* 84 FR 47148 (Sept. 9, 2019).

[75] *See* 85 FR 38532 (June 26, 2020). This final rule was promulgated after publishing a notice of proposed rulemaking. *See* 84 FR 62374 (Nov. 14, 2019).

[76] *See CASA de Maryland, Inc.* v. *Wolf,* 486 F. Supp. 3d 928 (D. Md. 2020).

[77] *See Asylumworks* v. *Mayorkas,* 590 F. Supp. 3d 11 (D.D.C. Feb. 7, 2022).

[78] *Asylumworks* v. *Mayorkas,* 590 F. Supp. 3d 11 (D.D.C. Feb. 7, 2022) (''*Asylumworks* vacatur''). The vacatur decision in *Asylumworks* effectively mooted the *CASA* case. The *CASA* court eventually acknowledged the case had become moot on May 18, 2023, when it granted the government's motion to dismiss. *See CASA de Maryland, Inc.* v. *Mayorkas,* No. 8:20–CV–2118–PX, 2023 WL 3547497 (D. Md. May 18, 2023).

[79] *See* 87 FR 57795 (Sept. 22, 2022).

[80] Receipts of initial C08 EAD applications for the first half of FY 2022 averaged 16,900 per month, and for the second half of FY 2022, 27,500 receipts per month. Average monthly receipts of initial C08 EAD applications for the first half of FY 2023 was 55,000, and it increased to 78,700 in the second half of FY 2023.

[81] From October 2020 to February 2022, USCIS officers collectively averaged 250 overtime hours per month processing C08 initial EAD applications. From March 2022 until February 2023, USCIS officers collectively averaged 3,800 overtime hours per month on C08 initial EAD applications. From March 2023 until October 2023, USCIS officers collectively averaged 9,900 overtime hours per month on C08 initial EAD applications.

[82] *See* 88 FR 31314, 31314–31315 (May 16, 2023). Analysis by the DHS Office of Immigration Statistics (OIS) found that even while the Centers for Disease Control and Prevention's (CDC) Title 42 public health Order had been in place, encounters with noncitizens attempting to cross the United States' southwest border without authorization has been high. *See* 88 FR at 31315. The ''Title 42 public health Order'' issued by CDC under 42 U.S.C. 265, was in effect from March 20, 2020 until May 11, 2023 and suspended the introduction into the United States of certain persons who, due to the existence of COVID–19 in countries or places from which persons were traveling, created a serious danger of the introduction of such disease into the United States. *See* 85 FR 17060 (Mar. 26, 2020). The processes usually applicable under the INA, Title 8 of the U.S.C., generally did not apply to cover noncitizens while the Order was in effect.

[83] USBP is the component of U.S. Customs and Border Protection (CBP) within DHS responsible for U.S. border security between ports of entry. USBP's mission is to detect and prevent the illegal entry of individuals into the United States. *See* CBP, DHS, ''Along the U.S. Borders,'' *https://www.cbp.gov/border-security/along-us-borders* (last visited Mar. 7, 2024).

[84] *See* 88 FR 31314, 31315 (May 16, 2023).

[85] *See* 88 FR 31314, 31316 (May 16, 2023).

[86] *See* 88 FR 31314, 31314 (May 16, 2023).

[87] *See* DHS, Fact Sheet: U.S. Government Announces Sweeping New Actions to Manage Regional Migration (Apr. 27, 2023), *https://www.dhs.gov/news/2023/04/27/fact-sheet-us-government-announces-sweeping-new-actions-manage-regional-migration* (last visited Mar. 11, 2024).

[88] *See* Southwest Land Border Encounters at *https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters* (last visited Mar. 7, 2024).

[89] Under the INA, certain noncitizens arriving in the United States who are found to be inadmissible under either section 212(a)(6)(C) of the INA, 8

Continued

who express an intention to apply for asylum or who express a fear of persecution, torture, or returning to their home country. In FY 2023, USCIS received a historic high of 149,700 credible fear referrals.[90]

The Directorate at USCIS that processes these claims, the Refugee, Asylum and International Operations Directorate (''RAIO''), had insufficient staff to accommodate such increased volume. To address the impact of these high numbers of credible fear referrals from the southwest border on existing asylum and credible fear procedures, USCIS has been detailing USCIS personnel, including officers who adjudicate EAD applications, to the USCIS RAIO directorate for up to 120 days to conduct credible fear screenings.[91] However, because only an immigration officer who is also an ''asylum officer,'' as defined at section 235(b)(1)(E) of the Act, 8 U.S.C. 1225(b)(1)(E), may conduct credible fear screenings, USCIS had to ensure that any non-asylum officers received the necessary asylum officer training before they could start on the detail.[92] Thus, many USCIS detailees were required to take a full-time asylum officer training course lasting several weeks. Having had to divert adjudicatory resources by having adjudicators detailed to the credible fear process created a significant operational strain in the renewal EAD adjudication resulting in an increase of processing times.[93] Due to the ongoing need for additional asylum officers and credible fear interviews, USCIS continues to solicit for detailees across all USCIS components.

Positive credible fear determinations also create a downstream increase in applications for employment authorization, as these individuals may apply for asylum before the Executive Office for Immigration Review, which renders them eligible to apply for employment authorization after the asylum application has been pending for 150 days.

c. Impact of Affirmative and Defensive Asylum Filing Surges and Backlogs and the Effect on C08 Renewals

As noted above, the recent surge in EAD applications has primarily been driven by initial EAD applications filed by individuals with pending asylum applications (C08). USCIS received historic levels of affirmative asylum applications in FY 2022 and FY 2023. In FY 2022, USCIS received more than 240,600 affirmative asylum applications.[94] In FY 2023, USCIS received more than 454,300 affirmative asylum applications.[95] Despite efforts to adjudicate these pending applications, backlogs for both affirmative (filed with USCIS) and defensive (filed with the Executive Office for Immigration Review (EOIR)) asylum applications have grown. Specifically, as of September 30, 2023, over 1.062 million affirmative asylum applications were pending with USCIS and 937,000 total asylum applications were pending before EOIR, respectively. Owing to these backlogs, USCIS has seen an increase in C08 renewal EAD applications. Because initial C08 EADs issued prior to September 2023 were valid for a period of 2 years, the backlog in asylum applications at USCIS and EOIR is projected to result in over 770,000 C08 renewal EAD application filings during the effective period of this TFR.[96]

3. Additional Designations for Temporary Protected Status

Over the course of FY 2022 and FY 2023, the Secretary of Homeland Security, following consideration of relevant country conditions and other appropriate factors and in consultation with interagency partners, designated, redesignated, and extended the designation of several foreign countries for TPS under section 244 of the INA, 8 U.S.C. 1254a. There are currently 16 foreign countries with active TPS designations.[97] TPS provides temporary protection from removal and employment authorization to eligible nationals of designated countries present in the United States. The Secretary may designate a country for TPS if the conditions in a country prevent the country's nationals from returning safely due to ongoing armed conflict or extraordinary and temporary conditions or render the country temporarily unable to handle adequately the return of its nationals due to an environmental disaster that has resulted in a substantial but temporary disruption in living conditions.[98] USCIS is the designated entity within DHS to administer the TPS program.

Once a country is designated, eligible nationals of that country may apply for TPS by filing Form I–821, Application for Temporary Protected Status (TPS application). Applicants may also request an EAD by filing an EAD application with their TPS application, while their TPS application is pending

U.S.C. 1182(a)(6)(C) (misrepresentation) or section 212(a)(7) of the INA, 8 U.S.C. 1182(a)(7) (for failure to meet documentation requirements for admission), may be removed from the United States without a further hearing or review (expedited removal) unless the noncitizen indicates either an intention to apply for asylum under section 208 of the INA, 8 U.S.C. 1158, or expresses a fear of persecution or torture. *See* INA sec. 235(b)(1)(A)(i), (iii), 8 U.S.C. 1225(b)(1)(A)(i), (iii); 8 CFR 235.3(b)(4). If such a noncitizen indicates an intention to apply for asylum or expresses a fear of persecution, torture, or of returning to their home country, the immigration officer refers the noncitizen for an interview with a USCIS asylum officer, who will determine if the noncitizen has a credible fear of persecution in his or her country of nationality or last habitual residence. *See* INA sec. 235(b)(1)(A), 8 U.S.C. 1225(b)(1)(A). If the USCIS asylum officer determines the noncitizen has a credible fear of persecution or torture, the noncitizen may apply for asylum and remain in the United States until a final determination is made on the asylum application by an immigration judge or, in some cases, by an asylum officer. *See* generally INA sec. 235(b), 240, 8 U.S.C. 1225(b), 1229a; *see also* 8 CFR 208.2, 208.30 and 1208.30. The HSA grants to DHS the authority to adjudicate affirmative asylum applications—*i.e.,* applications for asylum filed with DHS for individuals not in removal proceedings—and authority to conduct credible fear interviews, make credible fear determinations in the context of expedited removal, and establish procedures for further consideration of asylum applications after an individual is found to have a credible fear. *See* 6 U.S.C. 271(b)(3); INA sec. 235(b)(1)(B), 8 U.S.C. 1225(b)(1)(B).

[90] *See* USCIS, DHS, Asylum Division Monthly Statistics Report, Fiscal year 2023, October 2022 to September 2023, *https://www.uscis.gov/sites/default/files/document/data/asylumfiscalyear2023todatestats_230930.xlsx* (last visited Nov. 27, 2023).

[91] *See* DHS, ''Fact Sheet: U.S. Government Announces Sweeping New Actions to Manage Regional Migration,'' *https://www.dhs.gov/news/2023/04/27/fact-sheet-us-government-announces-sweeping-new-actions-manage-regional-migration* (last updated May 11, 2023) (''DHS and the Department of Justice (DOJ) are also surging asylum officers and immigration judges, respectively, to complete immigration proceedings at the border more quickly.''). Approximately 157 immigration officer FTEs participated in a credible fear detail in FY 2023, and approximately 212 FTEs participated from May 2023 to January 2024.

[92] *See* INA sec. 235(b)(1)(B)(i) and (b)(1)(e), 8 U.S.C. 1225(b)(1)(B)(i) and (b)(1)(e); 8 CFR 208.1(b). As required by law, asylum officers receive special training, including training on international human rights law, non-adversarial interview techniques, and country conditions information.

[93] On October 20, 2023, the Administration requested $755 million in supplemental funding from Congress for USCIS to hire additional officers to adjudicate an increase in asylum filings and address the backlog in processing employment authorization applications and immigration benefit requests. *See* Letter regarding critical national security funding needs for FY 2024, *https://www.whitehouse.gov/wp-content/uploads/2023/10/Letter-regarding-critical-national-security-funding-needs-for-FY-2024.pdf.* Congress has not fulfilled that request as of March 11, 2024.

[94] *See* USCIS, DHS, Asylum Division Monthly Statistics Report. Fiscal Year 2022. October 2021 to September 2022, *https://www.uscis.gov/sites/default/files/document/data/AsylumFiscalYear2022ToDateStats.xlsx* (last visited Nov. 27, 2023).

[95] *See* USCIS, DHS, Asylum Division Monthly Statistics Report. Fiscal year 2023. October 2022 to September 2023, *https://www.uscis.gov/sites/default/files/document/data/asylumfiscalyear2023todatestats_230930.xlsx,* (last visited Nov. 27, 2023).

[96] *See* TFR Modeling Methodology.

[97] For a list of designated countries, see *https://www.uscis.gov/humanitarian/temporary-protected-status* (last visited Nov. 7, 2023).

[98] *See* INA secs. 244(b)(1)(A)–(C); 8 U.S.C. 1254a(b)(1)(A)–(C).

or after their TPS application is approved.[99] TPS-based EADs fall under the A12 (TPS previously granted) and C19 (initial TPS application pending) categories. Individuals granted TPS may re-register for TPS and apply to renew their EADs as part of any announced re-registration period if the country continues to be designated for TPS.[100]

Over the course of FY 2022 and FY 2023, the Secretary newly designated five countries for TPS: Afghanistan,[101] Cameroon,[102] Ethiopia,[103] Sudan,[104] and Ukraine [105] because of humanitarian concerns and instability in these countries. These initial designations allowed nationals of these countries who were already in the United States to remain in the United States and apply for EADs. During this same period, the Secretary extended and redesignated for TPS Burma,[106] Haiti,[107] Syria,[108] Somalia,[109] South Sudan,[110] and Yemen,[111] which allowed existing TPS beneficiaries to re-register for TPS and apply for renewal of their EADs, and allowed additional nationals present in the United States from these countries to apply for TPS to remain in the United States and apply for EADs. The Secretary also extended the TPS designation for El Salvador,[112] Honduras,[113] Nicaragua,[114] Nepal,[115] and Venezuela,[116] thereby allowing existing TPS beneficiaries to re-register for TPS and apply for renewal of their EADs.

These additional designations, extensions, and redesignations resulted in a significant increase in initial and renewal EAD filings. In FY 2021, USCIS received 148,898 EAD applications filed by TPS applicants. Of these, 24,172 were renewal EAD applications. In FY 2022, USCIS received 100,484 EAD applications filed by TPS applicants. Of these, 33,352 were renewal EAD applications. In FY 2023, USCIS received 329,325 EAD applications filed by TPS applicants, which represent an over 300 percent increase in TPS EAD applications from FY 2022 to FY 2023. Of these, 230,363 were renewal EAD applications as a result of the withdrawal of the TPS terminations and extensions of TPS in that fiscal year. As of January 2024, the Secretary has redesignated and extended TPS for Cameroon [117] and Syria.[118]

The increased number of TPS-based EAD filings (particularly in renewal EAD applications in the A12 category) from FY 2022 to FY 2023 further stretched limited USCIS resources and contributed to the longer processing times for renewal EAD applications overall. Specifically, this increase helps explain why the 80th percentile processing time for automatic extension-eligible renewal applicants was 14.5 months by February 2024,[119] and increased the number of persons who are projected to experience a lapse in their employment authorization and/or EAD validity starting May 2024, as further detailed below.

4. Increased Workforce Resources Unlikely To Keep Pace

Despite USCIS' best efforts to sufficiently anticipate and allocate staff to process EAD applications, USCIS has been unable to keep pace due to unexpected increases in receipts. The agency increased its adjudicative resources in concert with the increased receipts, devoting approximately 54 percent more adjudicative hours to EADs in FY 2023 than in FY 2022, resulting in 46 percent more EAD completions than in FY 2022.[120] USCIS projects that EAD application filings will continue to increase into FY 2024. The rapid increase in anticipated EAD application filings in FY 2024,[121] combined with the mandated 30-day processing time for initial C08 EAD applications, means that USCIS expects a shortfall in adjudications compared to receipts. This shortfall will prevent USCIS from adjudicating renewal EAD applications in time to avoid approximately 800,000 applicants from experiencing a temporary lapse in employment authorization and/or employment authorization documentation during the 2-year period beginning May 2024 absent the implementation of this temporary final rule.

From FY 2021 to FY 2023, adjudicative staff time [122] in the Service Center Operations (SCOPS) and Field Operations Directorate (FOD) spent on EAD adjudications increased rapidly. In FY 2021, USCIS Immigration Services Officers (ISOs) in these directorates expended 6,571,544 hours on all form types. This equates to roughly 5,249 full-time equivalents (FTEs).[123]

During FY 2021, USCIS spent 420,248 hours on EAD applications alone, which represents approximately 336 FTEs, or 6 percent of the total adjudicative time spent on all filings. In FY 2022, USCIS ISOs expended 6,732,963 hours (5,378 FTEs) in adjudications in SCOPS and FOD, with 512,413 hours (which equates to approximately 409 FTEs), or 8 percent of total adjudication time for all filings, used on EAD applications alone. In FY 2023, the proportion of time spent on EAD application adjudications continued to increase, with 788,861 hours (which equates to approximately 630 FTEs), or 12 percent of the total adjudicative time of 6,376,682 (5,093 FTEs).[124]

Thus, from FY 2021 to FY 2023, the proportion of USCIS' total adjudicative time that was spent on EAD adjudications doubled from 6 percent of total adjudicative time to 12 percent, and USCIS was not able to sufficiently increase staff for EAD adjudications,

[99] *See* INA sec. 244(a)(4), 8 U.S.C. 1254a(a)(4); 8 CFR 244.5, 274a.12(c)(19).

[100] *See* INA sec. 244(a)(1)(B), 8 U.S.C. 1254a(a)(1)(B); 8 CFR 244.12, 274a.12(a)(12).

[101] 87 FR 30976 (May 20, 2022).

[102] 87 FR 34706 (June 7, 2022).

[103] 87 FR 76074 (Dec. 12, 2022).

[104] 87 FR 23202 (Apr. 19, 2022).

[105] 87 FR 23211 (Apr. 19, 2022).

[106] 87 FR 58515 (Sept. 27, 2022).

[107] 88 FR 5022 (Jan. 26, 2023).

[108] 87 FR 46982 (Aug. 1, 2022).

[109] 88 FR 15434 (Mar. 13, 2023).

[110] 88 FR 60971 (Sept. 6, 2023).

[111] 88 FR 94 (Jan. 3, 2023).

[112] 88 FR 40282 (June 21, 2023).

[113] 88 FR 40304 (June 21, 2023).

[114] 88 FR 40294 (June 21, 2023).

[115] 88 FR 40317 (June 21, 2023).

[116] 87 FR 55024 (Sept. 8, 2022).

[117] 88 FR 69945 (Oct. 10, 2023).

[118] 89 FR 5562 (Jan 29, 2024).

[119] For more information on how USCIS calculates its processing times, see USCIS' web page at *https://egov.uscis.gov/processing-times/more-info* (last visited Nov. 14, 2023).

[120] The 54 percent increase in officer hours did not result in a 54 percent increase in completions because there are different hours per completion rates for different EAD categories. There was a significant increase in C08 initial adjudications in FY 2023. In FY 2023, the average C08 initial EAD application took 0.44 hours, whereas EADs overall took 0.23 hours. Therefore, the difference in complexity of different types of EAD adjudications is the primary reason for the deviation in the increase of total hours and total completions.

[121] The Volume Projection Committee (VPC) forecasts USCIS workload volume using subject matter expertise from various directorates and program offices, including the Service Centers, National Benefits Center, RAIO, and regional, district, and field offices. Input from these offices helps refine the volume projections. VPC forecasts that there will be 4.6 million EAD application filings for FY 2024, compared to the approximately 3.49 million EAD applications filed in FY 2023.

[122] Adjudicative staff time means actual time, in hours, that USCIS spends adjudicating a benefit request. This includes straight time and overtime.

[123] An FTE is an approximation of the number of hours of labor that make up the equivalent of one full-time employee. It allows for a more meaningful comparison of resources than the raw number of staff allocated to a particular adjudication, as it accounts for factors such as part-time work, leave, and other factors. When calculating FTEs, USCIS used a 60-percent utilization rate to account for non-adjudicative time, such as the time officers spend attending trainings and roundtable discussions, performing administrative tasks, and leave.

[124] The number of adjudicative hours in FOD and SCOPS went down in FY 2023, as the FTE equivalent of approximately 157 Immigration Services Officers were detailed to credible fear screenings.

despite its robust hiring efforts.[125] This doubling of adjudicative time expended on a single form type over 2 years is highly unusual [126] and cannot be sustained without increasing resources and staffing rapidly.

As discussed earlier in this section, USCIS projects continued growth in EAD filings in FY 2024, requiring a combination of reallocating additional staff to adjudicate EAD applications, providing additional overtime opportunities, and hiring new staff.[127]

Based on these developments, USCIS predicts that without this TFR, approximately 800,000 noncitizens will experience a lapse in employment authorization or proof of employment authorization for the 2-year period beginning May 2024.[128]

B. Other Measures Taken To Reduce EAD Application Processing Times

USCIS has also taken other significant operational steps to streamline EAD adjudications and reduce EAD processing times. Backlogs in general are a significant concern for the applicants who are applying for benefits with USCIS.[129] As the backlogs increase, applicants and petitioners experience longer wait times to receive a decision on their benefit requests. This is especially concerning where the backlog involves employment authorization and/or employment eligibility verification documentation, which is critical to applicants' and their families' livelihoods as well as U.S. employers' continuity of operations. USCIS understands the impact that delays in receiving decisions on pending EAD applications have on applicants and is striving to address the backlogs through a number of measures, including but not limited to this TFR. Specifically, USCIS has taken the following steps to address EAD application workloads and processing times, which includes initiatives that were implemented prior to the 2022 TFR and are still in effect, such as lifting the hiring freeze, publishing the Fee Rule, and reducing processing time for adjustment of status applicants with visas that are immediately available.

1. Increased EAD Validity Periods for Certain Applicants

As discussed in section II. B., Legal Framework for Employment Authorization, while certain classes of noncitizens are authorized to engage in employment authorization incident to status or circumstance, other classes of noncitizens are authorized to engage in employment only if they apply for and are granted such authorization by USCIS.[130] Under governing regulations, USCIS has the discretion to assign the validity period for EADs.[131]

Since 2021, USCIS has made multiple policy changes to increase the maximum validity period for EADs in a number of categories.[132] In February 2022, USCIS increased the validity period for initial and renewal EADs for asylees and refugees, noncitizens with withholding of deportation or removal, and VAWA self-petitioners from maximum 1 year to maximum 2 years.[133]

USCIS also changed the policy by which, in some cases, initial and/or renewal EADs were issued for noncitizens with deferred action (non-DACA) and parolees for a validity period that was less than the period of deferred action or parole. The update increased the maximum period of EAD validity to run concurrently with the underlying deferred action or parole, thus reducing the need for repeat renewal EAD filings by these noncitizens.[134]

On September 27, 2023, USCIS updated its policy to increase the validity period to a maximum of 5 years for initial and renewal EADs for certain noncitizens who must apply for employment authorization, including applicants for asylum or withholding of removal, adjustment of status under section 245 of the INA, 8 U.S.C. 1255, and suspension of deportation or cancellation of removal.[135] USCIS expects this EAD policy to cause EAD filings in the applicable categories to significantly decrease starting in late FY 2025 and remain low until the third quarter of FY 2028, as there should be relatively few EADs with an expiration date between September 25, 2025, and September 26, 2028. Although USCIS predicts that the main effects of this policy change will not occur until after October 2025, USCIS projects that the increased validity periods will lead to a greater than 95 percent reduction in renewal EAD filing volumes from FY 2026 to late FY 2028 for categories covered by this policy.

The guidance that was published as part of the updated policy also explains that the categories of noncitizens who are automatically authorized employment incident to status or circumstances and provided more information on who can present a Form I–94, Arrival/Departure Record, to an employer as an acceptable document showing employment authorization under List C of Form I–9, Employment Eligibility Verification.[136] This guidance

[125] See other parts of this preamble explaining operational challenges encountered through litigation and other events, such as the need for increased staffing at the southwest border.

[126] For example, over the same time period, adjudicative time spent on other large USCIS workloads held relatively steady. As a percentage of adjudication time for all filings, time spent on Form N–400, Application for Naturalization was 22 percent in FY 2021, 22 percent in FY 2022, and 20 percent in FY 2023. Time on Form I–129, Petition for Nonimmigrant Worker seeking H–1B classification was 8 percent of all total filings in FY 2021, 8 percent in FY 2022, and 9 percent in FY 2023.

[127] The resources required to reduce the processing backlogs for renewal EAD applications is discussed at section III.C.3.a.

[128] *See* section V.B.2. Table 7, TFR Future Population Projections by Month, Rounded to Thousands.

[129] For example, the Citizenship and Immigration Services Ombudsman 2023 Annual Report to Congress stated that the backlogs at USCIS have resulted in an ''ongoing exponential increase . . . in requests for case assistance.'' The Report further states ''USCIS began the year fully cognizant of its challenges in decreasing processing times and getting its backlogs under control and took significant steps to accomplish those goals. But 2022 brought with it significant new tasks for the agency that would create their own processing and operational challenges—challenges that the agency continues to grapple with in 2023 and which will impact future workloads.'' *See* CIS Ombudsman, DHS, ''Citizenship and Immigration Services Ombudsman Annual Report 2023 '' (June 30, 2023) at v, viii, *https://www.dhs.gov/sites/default/files/2023-07/2023%20Annual%20Report%20to%20Congress_0.pdf.*

[130] *See* 8 CFR 274a.12(a)–(c).

[131] *See* 8 CFR 274a.12(a) (''USCIS may, in its discretion, determine the validity period assigned to any document issued evidencing an alien's authorization to work in the United States.''); 8 CFR 274a.12(c) (''USCIS, in its discretion, may establish a specific validity period for an employment authorization document, which may include any period when an administrative appeal or judicial review of an application or petition is pending.'').

[132] *See, e.g.,* USCIS, DHS, Policy Alert (PA–2021–10), ''Employment Authorization for Certain Adjustment Applicants'' (June 9, 2021), *https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210609-EmploymentAuthorization.pdf* (updating the validity period for initial and renewal EADs issued to applicants for adjustment of status under INA 245 from 1 year to 2 years).

[133] *See* USCIS, DHS, Policy Alert (PA–2022–07), ''Updating General Guidelines on Maximum Validity Periods for Employment Authorization Documents based on Certain Categories'' (Feb. 7, 2022), *https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220207-EmploymentAuthorizationValidity.pdf.*

[134] *See* USCIS, DHS, Policy Alert (PA–2022–07), ''Updating General Guidelines on Maximum Validity Periods for Employment Authorization Documents based on Certain Categories'' (Feb. 7, 2022), *https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220207-EmploymentAuthorizationValidity.pdf.*

[135] *See* USCIS, DHS, Policy Alert (PA–2023–27), ''Employment Authorization Document Validity Period for Certain Categories'' (Sept. 27, 2023), *https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20230927-EmploymentAuthorizationValidity.pdf.*

[136] *See* USCIS, DHS, Policy Alert (PA–2023–27), ''Employment Authorization Document Validity Period for Certain Categories'' (Sept. 27, 2023), *https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20230927-EmploymentAuthorizationValidity.pdf.*

also clarified that certain Afghan and Ukrainian parolees are employment authorized incident to parole.[137]

With the ongoing efforts to improves processing, which USCIS anticipates will lead to eventual reductions in filing volumes, USCIS will be better able to keep up with the EAD application workflow, avoid lapses in employment authorization and documentation, focus on reducing the overall backlog at USCIS, and enable officers to focus on other workloads.

2. Lifted the Hiring Freeze and Increased the Number of Full Time Equivalent Employees

USCIS is a fee-based agency that relies on predictable fee revenue and its carryover from the previous year. Due in part to the significant drop in revenue from the impact of the COVID–19 pandemic on benefit request filings and USCIS' inability to update its fee structure since the 2016 Fee Rule, as explained below, USCIS employed every available means to preserve sufficient funds to meet payroll and carryover obligations. These measures included drastic cuts as well as an agency-wide hiring freeze beginning on May 1, 2020.[138]

USCIS lifted the agency-wide hiring freeze in March 2021. With the hiring freeze lifted, USCIS was able to begin hiring personnel in an effort to return to pre-pandemic staffing levels. Initial hiring was largely internal in order to fill promotional vacancies. Following that initial hiring, USCIS posted public job announcements to hire from outside USCIS. This effort's impact is not realized immediately, as it is lengthy, time-consuming, and ongoing. The hiring process entails posting the job announcement, reviewing resumes, providing qualified candidates' information to the hiring office, conducting assessments and interviews, making and approving selections, and completing background checks prior to a new employee entering on duty. New hires then go through orientation, several weeks of basic training, duty-specific training, and mentoring.[139] The entire process from entering on duty to a new hire reaching full proficiency may take several months.

Hiring new personnel continued to be a USCIS priority in 2023 in order to help reduce backlogs and meet operational requirements. When DHS issued the 2022 TFR on May 4, 2022, USCIS had approximately 18,500 employees. USCIS ended 2022 with 19,983 staff, and staffing levels grew to 20,631 by June 30, 2023.

As discussed previously, from FY 2021 to FY 2023, USCIS increased the number of FTEs adjudicating EAD applications from 336 FTEs to 630 FTEs, an 87.5-percent increase.[140] However, a large portion of the FTE increase for EADs was dedicated to initial C08 EAD applications due to the 30-day processing requirement. As a result, USCIS was unable to divert resources to other categories, such as renewal EAD applications in the auto-extension categories. From FY 2021 to FY 2023, USCIS increased the number of FTEs adjudicating initial C08 EAD applications by approximately 480 percent.[141]

In short, from FY 2021 to FY 2023, USCIS increased the number of FTEs dedicated to adjudicating EAD applications by 87.5 percent. However, this significant increase in personnel performing EAD adjudications has not been sufficient to address the surge in applications. USCIS expects a continued FTE shortfall in the short term that will prevent USCIS from adjudicating renewal EAD applications in time to prevent a temporary lapse in employment authorization for approximately 800,000 applicants during the 2-year period beginning May 2024.

3. Issuance of Final Fee Rule

USCIS is primarily funded by fees charged to applicants and petitioners for the adjudication of immigration and naturalization benefits requests and is authorized, by law, to recover the full cost [142] of all adjudications and naturalization services.[143] USCIS calculates and proposes fees to recover the full cost of operations associated with adjudicating immigration benefit requests as authorized by section 286(m) of the INA, 8 U.S.C. 1356(m). USCIS last adjusted its fee schedule in December 2016, including the fees for EAD applications, although the mandated biennial fee reviews indicate an urgent need to update USCIS filing fees.[144] However, DHS until recently has been unable to update the fee structure, as explained below, and the current 2016 fee structure, including the Form I–765 fee of $410 per adjudication, has been insufficient to recover the full cost of USCIS operations, thus leading to the fiscal troubles previously described.[145]

In the spring of 2020, in the wake of the COVID–19 pandemic, USCIS revenue dropped by 40 percent in April and an additional 25 percent in May from the forecasted collections. That created a possibility that USCIS might violate statutory anti-deficiency requirements and led to dramatic cuts in spending through the last half of FY 2020, a hiring freeze, and planned furloughs if revenue did not increase.[146]

Towards the end of June and July 2020, revenue began to return to normal levels and, in conjunction with major budget cuts, allowed USCIS to avoid the furloughs. In FY 2021, USCIS instituted 32 percent cuts to non-payroll expenses, continued the hiring freeze through April 2021, and did not fund enhancements. While USCIS' carryover funding has stabilized, USCIS is still enduring the effects of those 32 percent budget cuts.[147]

DHS issued a final rule on August 3, 2020, to adjust the USCIS fee schedule by a weighted average of 20 percent, reflecting the results of the FY 2019/2020 USCIS fee review.[148] DHS

[137] *See* USCIS, DHS, Policy Alert (PA–2023–27), ''Employment Authorization Document Validity Period for Certain Categories'' (Sept. 27, 2023), *https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20230927-EmploymentAuthorizationValidity.pdf.*

[138] Although the agency-wide hiring freeze started on May 1, 2020, USCIS' FOD initiated a hiring freeze in December 2019 and USCIS' SCOPS Directorate did the same starting in February 2020.

[139] *See* USCIS, DHS, ''Training,'' *https://www.uscis.gov/about-us/careers/training* (last updated Jan. 2, 2020).

[140] An FTE is an approximation of the number of hours of labor that make up the equivalent of one full-time employee. *See* fn. 123 in section III.A.4 of this preamble.

[141] As previously discussed, USCIS ISOs spent 68,000 hours on C08 initial EAD applications in FY 2021, 116,000 hours in FY 2022, and 361,000 hours in FY 2023.

[142] Full costs of providing all adjudication and naturalization services, includes support costs such as physical overhead, information technology management and oversight, human resources, national security vetting and investigations, accounting and budgeting, and legal services. *See* 88 FR 402, 417 (Jan. 4, 2023) (''2023 Fee Rule NPRM'').

[143] *See* INA sec. 286(m), 8 U.S.C. 1356(m) (authorizing DHS to charge fees for adjudication and naturalization services at a level to ''ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants''). This contrasts with congressional appropriated agencies, whose budgets are not directly impacted by fluctuations in fee revenue.

[144] *See* 81 FR 73292 (Oct. 24, 2016) (''2016/2017 Fee Rule''). Under the Chief Financial Officers Act of 1990 (''CFO Act''), codified at 31 U.S.C. 901–03, and under the Office of Management and Budget (OMB) Circular A–25, USCIS must conduct biennial reviews of the non-statutory fees deposited into USCIS' fee account. The primary objective of a fee review is to determine whether immigration and naturalization benefit fees will generate sufficient revenue to fund the anticipated operating costs associated with administering the nation's legal immigration system and to propose the necessary adjustments.

[145] *See* 88 FR 402, 405 (Jan. 4, 2023).

[146] *See* 88 FR 402, 426 (Jan. 4, 2023).

[147] *See* 88 FR 402, 426 (Jan. 4, 2023).

[148] *See* 85 FR 46788 (Aug. 3, 2020) (''2020 Fee Rule''). The final rule was issued after DHS has

Continued

estimated an average annual USCIS deficit of $1,035.9 million.[149] The rule was scheduled to become effective on October 2, 2020.[150] However, USCIS was not able to implement the fees set out in the 2020 fee rule because it was enjoined by two Federal district courts.[151]

On January 31, 2024, DHS published a new Fee Rule to cover the increased cost of adjudicating benefit requests.[152]

As explained in section III.B.2 of this preamble, prior to finalizing the Fee Rule, a USCIS endured a lengthy hiring freeze that left thousands of positions unfilled for an extended period. Even though the hiring freeze ended on March 31, 2021, USCIS was constrained for a prolonged period by the fee levels in the 2016 Fee Rule. USCIS is working diligently to backfill vacant positions and hire for new ones. However, the Federal recruitment, hiring, and vetting processes take many months followed by onboarding, basic training, and several weeks of form-specific training and mentoring. Incoming receipts have exceeded the agency's gains through hiring, and those hiring gains have been limited by insufficient revenue.[153]

4. Prioritized Adjudication of Employment-Based I–485 Adjustment Applications

Another area in which USCIS is actively prioritizing its workload is employment-based adjustment of status applications, which has downstream effects on EAD application adjudications, particularly those based on a pending adjustment of status application (C09). Since employment-based adjustment of status applicants are eligible for employment authorization based on the pendency of the adjustment of status application, the number of such applications filed with USCIS and the duration of their pendency directly impact the number of initial and renewal EAD applications filed. At the start of FY 2021, there were approximately 126,000 employment-based adjustment of status applications pending with USCIS. Approximately 313,000 employment-based adjustment of status applications were received during FY 2021. USCIS typically processes approximately 120,000 employment-based adjustment of status applications each year,[154] which generally corresponds with the number of available employment-based immigrant visas minus the number of such visas issued by Department of State annually. However, in FY 2021, FY 2022, and FY 2023, additional employment-based visas became available because of unusually low visa usage in the family-sponsored preference categories due in part to consular closures during the COVID–19 pandemic.[155] In response, USCIS prioritized processing of employment-based adjustment of status applications to maximize usage of available visas. By the end of FY 2021, USCIS had processed and approved approximately 175,000 employment-based adjustment of status applications, an increase of approximately 50 percent above the typical baseline.[156] USCIS continued this prioritization in FY 2022, approving more than 220,000 employment-based adjustment of status applications, and in FY 2023, where preliminary estimates show that USCIS approved more than 145,000 such applications. However, at the start of FY 2024 approximately 180,000 employment-based adjustment of status applications remained unadjudicated, including approximately 122,000 impacted by priority date retrogressions that may leave them pending for many years and thereby eligible for C09 EADs during this extended period.[157]

To the extent possible, USCIS is committed to prioritizing adjudicating employment-based adjustment of status applications to utilize the available visa numbers each fiscal year.[158] In turn, many applicants are relieved from filing renewal EAD applications, because approval of the adjustment of status application grants the noncitizen lawful permanent resident status such that they are employment authorized incident to status, and leads to issuance of a Permanent Resident Card, an acceptable Form I–9 document.[159] Therefore, the more adjustment of status applications USCIS is able to process and approve, the fewer C09 renewal EAD applications USCIS will receive, thereby reducing the number of EAD renewal filings overall. In the interim, urgent action is needed to address the growing number of renewal EAD applicants who may soon experience a gap in their employment authorization and/or EAD because of USCIS' predicted but unprecedented renewal EAD processing times.

5. Issued Guidance Stating That Spouses of E and L Nonimmigrants Are Employment Authorized Incident to Status

In March 2022, USCIS issued policy guidance stating that spouses of E [160]

published a proposed rule. *See* 84 FR 62280 (Nov. 14, 2019).

[149] *See* 85 FR 46788, 46794 (Aug. 3, 2020).

[150] *See* 85 FR 46788 (Aug. 3, 2020).

[151] *Immigrant Legal Res. Ctr.* v. *Wolf,* 491 F. Supp. 3d 520 (N.D. Cal. 2020) (''*ILRC*''); *Nw. Immigrant Rights Project* v. *USCIS,* 496 F. Supp. 3d 31 (D.D.C. 2020) (''*NWIRP*'').

[152] *See* U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, proposed rule, 88 FR 402, 492 (Jan. 4, 2023); and U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, final rule, 89 FR 6194 (Jan. 31, 2024).

[153] From FY 2021 through FY 2022, USCIS received a range of approximately 2.3 to 2.6 million EAD applications (seeking both initial EADs and renewal of initial EADs) each fiscal year. In FY 2023, this figure increased to approximately 3.5 million. This increase in EAD applications contributed to the formation of backlogs, as discussed further in section III.C.1 of this preamble.

[154] *See* Office of Immigration Statistics, DHS, ''2021 Yearbook of Immigration Statistics,'' Table 7, ''Persons Obtaining Lawful Permanent Resident Status by Type and Major Class of Admission: Fiscal Years 2012 2021,'' *https://www.dhs.gov/sites/default/files/2023-03/2022_1114_plcy_yearbook_immigration_statistics_fy2021_v2_1.pdf* (last visited Nov. 14, 2023).

[155] Family-sponsored visas that remain unused at the end of the fiscal year are made available in the subsequent fiscal year to employment-based categories. *See* INA sec. 201(d); 8 U.S.C. 1151(d); *see also* USCIS, DHS, Archive, ''Fiscal Year 2022 Employment-Based Adjustment of Status FAQs'' (last reviewed/updated Aug. 26, 2022), *https://www.uscis.gov/archive/fiscal-year-2022-employment-based-adjustment-of-status-faqs.*

[156] *See* USCIS, DHS, News Release, ''USCIS Announces FY 2021 Accomplishments'' (Dec. 16, 2021), *https://www.uscis.gov/newsroom/news-releases/uscis-announces-fy-2021-accomplishments* (last viewed Nov. 27, 2023).

[157] For more information on visa retrogression, *see https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-priority-dates/visa-retrogression* (last accessed Dec. 7, 2023). In the interest of reducing the burden on both the agency and the public, USCIS has implemented multiple increases of the maximum validity period for initial and renewal EADs issued to applicants for adjustment of status under sec. 245 of the INA, 8 U.S.C. 1255, as described in section III.B.1 of this preamble. USCIS' return to its processing goal of 3 months for EAD renewal applications is critically important for applicants facing visa retrogression, as they may require multiple renewals.

[158] While the INA provides that unused employment-based visas allocated to a given fiscal year are made available in the subsequent fiscal year to family-sponsored preference categories, those visas are effectively lost due to other provisions that have the effect, after accounting for the number of immigrant visas used by immediate relatives of U.S. Citizens (among others), of setting the number of family-sponsored preference visas in a fiscal year at 226,000. *See* INA sec. 201(c) and (d); 8 U.S.C. 1151(c) and (d). To avoid the loss of unused employment-based immigrant visas, USCIS prioritizes employment-based adjustment of status applications over most other applications, including EAD renewal applications.

[159] *See* 8 CFR 274a.12(a)(1).

[160] *See* INA sec. 101(a)(15)(E), 8 U.S.C. 1101(a)(15)(E) (providing that a noncitizen entitled to enter the United States under and in pursuance of the provisions of a treaty of commerce and navigation between the United States and the foreign state of which the noncitizen is a national, (or, in the case of a noncitizen who acquired the relevant nationality through a financial investment and who has not previously been granted status under this subparagraph, the foreign state of which the noncitizen is a national and in which the noncitizen has been domiciled for a continuous period of not less than 3 years at any point before applying for a nonimmigrant visa under this

and L[161] nonimmigrants were authorized to work incident to status and did not need to obtain an EAD in order to seek employment.[162] This new policy resulted in reduced initial and renewal EAD applications by these noncitizen spouses. During the 12 months preceding this policy update, between March 1, 2021, and February 28, 2022, USCIS received an average of 700 A17 (spouse of E nonimmigrant) and 1,500 A18 (spouse of L nonimmigrant) EAD applications per month. Between March 1, 2022, and September 30, 2023, after the policy began to take effect, USCIS received an average of 220 A17 and 350 A18 EAD applications per month. In FY 2023, USCIS received an average of 160 A17 and 90 A18 EAD applications per month. Therefore, this policy resulted in a reduction of about 2,000 initial and renewal EAD applications per month.

6. Permitted Certain Asylum Applicants To Electronically File EAD Applications

In January 2023, USCIS announced that certain asylum applicants were now eligible to electronically file applications for EADs in the C08 category.[163] This allowed applicants to submit their applications, check the status of their case, and receive notices from USCIS online, thus reducing the operational costs associated with paper applications such as scanning, manual data entry, and shredding. These cost savings have allowed resources to be used elsewhere, including funding new positions and overtime. Offering the option to file EAD applications online has made the process more efficient, secure, and convenient for EAD applicants and increased operational efficiencies for USCIS.

7. Alternative Backlog Reduction Method Considered But Not Implemented: Changing the Adjudication of EAD Renewal Applications To Prioritize Adjudication by the Expiration Date of an Applicant's 180-Day Automatic Extension

In addition to the backlog reduction efforts described in section III.B of this preamble, USCIS explored the possibility of changing the order of renewal EAD adjudications from a general First in First Out (FIFO) processing order[164] to a processing order that would prioritize adjudication based on the expiration date of the applicant's 180-day automatic extension period. After careful consideration, USCIS has determined that this option was not operationally feasible. The primary reasons are the manual effort required to identify and assign cases to officers based on when an individual's previous employment authorization expires, the volume of impacted cases, and the inability to surge additional resources to implement such a change.

Regarding the manual effort required to identify when the EAD associated with a renewal case expires, there is currently no system-based way to assign work based on expiring employment authorization. This means that, although cases can be tracked online using existing systems, the act of delivering those cases based on expiration dates to an officer requires that they be manually assigned. Additionally, as the categories of renewal applications are filed and adjudicated in a mix of paper and electronic formats, records staff must physically locate each individual paper file. EAD applications that are paper files are generally organized and assigned by receipt date on file room shelves, so any attempt to manually identify when the EAD associated with a renewal case expires would require physically tabbing through all files received on the same given day and for the same filing category. Multiplying that effort by the hundreds of thousands of pending renewal EAD applications would cause significant inefficiencies for both adjudications and records staff, diverting resources further away from other tasks, in turn creating new backlogs. As of November 2023, approximately 467,000 thousand EAD applications pending with SCOPS (44 percent) remained in paper files.

Even with respect to electronically filed renewal EAD applications, it is currently not possible to assign cases electronically by expiration date. USCIS would have to do so manually, using spreadsheets to log and identify all pending EAD renewal applications and then document and sort each case by date of EAD expiration. USCIS would then need to identify each application in the system and then manually route each EAD application to be assigned for pre-processing and adjudication.[165] The task of manually assigning work for both pre-processing and adjudication would take additional time and interfere with USCIS' overall productivity until the system can be modified to accommodate a new process for prioritizing and assigning work. As discussed below, it would take at least one year to modify the system to re-prioritize this workload.

In addition, the information technology resources required to modify the system in this manner and the time it takes to develop, test, and implement an automated assignment process make it infeasible to reprioritize the workload in the system in time to prevent the renewal EAD expirations beginning in May 2024. To implement this process in USCIS' Electronic Immigration System online system, it would take the USCIS Office of Information Technology approximately 6 to 9 months of development work and an additional 3 months for beta testing and deployment. In addition, changes would need to be made to the process by which cases are selected for adjudication in the case management system used by USCIS to process immigration benefit requests.

Finally, prioritizing renewal EAD applications based on the expiration of the 180-day automatic extension periods versus a general FIFO processing order would lead to the inequitable result that applicants who filed their renewal EAD applications right before the expiration of their EADs could be prioritized over applicants who filed their renewal EAD applications according to USCIS' recommended filing period in advance of their EAD expiration date. Such prioritization could incentivize more applicants to file their renewal EAD applications close to the expiration of their EADs, as their applications would effectively be expedited over other applications filed up to 6 months in advance of expiration. Should that occur, USCIS and the public would

subparagraph), and the spouse and children of any such noncitizen if accompanying or following to join such alien.).

[161] *See* INA sec. 101(a)(15)(L); 8 U.S.C. 1101(a)(15)(L) (providing that a noncitizen who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge, and the noncitizen spouse and minor children of any such noncitizen if accompanying him or following to join him'').

[162] *See* USCIS, DHS, Policy Alert (PA–2022–11), ''Documentation of Employment Authorization for Certain E and L Nonimmigrant Dependent Spouses'' (Mar. 18, 2022) *https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220318-EmploymentAuthorization.pdf.*

[163] *See* USCIS, DHS, ''Asylum Applicants Can Now File Form I–765 Online,'' *https://www.uscis.gov/newsroom/alerts/asylum-applicants-can-now-file-form-i-765-online* (last accessed Dec. 7, 2023).

[164] Under a FIFO processing order, applications are generally reviewed in the order in which they are received.

[165] Before most applications and petitions are assigned to an officer for adjudication, they are pre-processed, meaning the information contained with the case is ingested, vetted, and verified, and then the case is routed to the appropriate workflow for adjudication.

become more reliant on automatic extensions to help minimize the problem of gaps in employment authorization and/or valid documentation instead of the preferred solution of maintaining the current processing order, continuing to pursue additional processing efficiencies, and temporarily extending the automatic extension period to up to 540 days in this TFR.

C. The Need To Increase the Automatic Extension Period From 180 Days to 540 Days

1. EAD Application Processing Backlogs

USCIS relies on a combination of internal processes and plans to work to reduce backlogs.[166] Although USCIS has been diligently implementing the backlog mitigation efforts discussed in section III.B of this preamble in order to reduce renewal EAD application processing times, USCIS is unable to achieve its target 3-month processing goal or significantly reduce the EAD renewal processing times to below 180 days due to the volume of pending EAD applications, new EAD filings that USCIS continues to receive, and time needed to increase staffing levels to meet existing demands.

As of February 2024, USCIS had approximately 439,000 pending renewal EAD requests in the categories eligible for automatic extension,[167] and received an average of approximately 52,800 additional automatic extension-eligible renewal EAD applications per month in FY 2023.[168] These additional renewal applications are adding to the current backlog, given that USCIS currently completes approximately 49,100 automatic extension-eligible renewal EAD applications per month.[169]

In FY 2023, the 80th percentile processing time for all renewal EAD applications was 14.2 months. For those automatic extension-eligible renewal applicants, as of February 2024, the 80th percentile processing time was 14.5 months.[170] Given these processing times and USCIS' EAD adjudication rates, DHS projects that, between May 2024 to March 2026, approximately 800,000 renewal applicants eligible for an automatic extension will exceed the 180-day automatic extension period unless this Temporary Final Rule is issued.

2. Impact of Long Processing Times for Renewal EAD Applications

For the reasons discussed in section III.A of this preamble, the dramatic increase in EAD applications and associated operational challenges were caused by a number of external developments that constrained USCIS' ability to dedicate sufficient resources to processing renewal EAD applications. As a result, the 180 days of additional employment authorization and/or EAD validity under 8 CFR 274a.13(d) are insufficient. After the additional 180 days are exhausted, many applicants will still be waiting for their renewal EAD applications to be approved. These applicants will experience a lapse in their employment authorization and/or EAD validity while their renewal applications remain pending.

Without immediate intervention, DHS estimates that the situation will dramatically worsen over time, as each month thousands of additional renewal EAD applicants will be at risk of losing their employment authorization and/or EAD validity despite the 180-day automatic extension period currently provided by regulation.

USCIS projects that approximately 800,000 individuals could lose employment authorization between May 2024 and March 2026 in the absence of this TFR.[171] In May 2024, 3,000 renewal applicants, the majority [172] of whom are in the C08 pending asylum applicant category, are projected to experience a gap in their employment authorization and/or EAD validity. The number of applicants who could lose employment authorization and/or EAD validity each month will rapidly increase to 12,000 during July, and peaking at more than 60,000 during November 2025, unless immediate action is taken to remedy the situation.

The situation for asylum applicants is especially dire because of the significant time that asylum applicants must wait to become employment-authorized in the first place. By statute, asylum applicants cannot be approved for initial EADs until their asylum applications have been pending for 180 days.[173] This initial wait time exacerbates the often-precarious economic situations asylum seekers may be in as a result of fleeing persecution in their home countries. Many lacked substantial resources to support themselves before they fled or spent much of what they had to escape their country and travel to the United States. Those with resources may have been forced to leave what they had behind because they lacked the time to sell property or otherwise gather what they owned. When whole families are threatened, the primary earner may be the first to travel to the United States to establish a new home before bringing the rest of the family. The cost to travel to the United States is high, as is the relative cost of living. In these circumstances, if the asylum seeker is unable to work for extended periods of time, it can not only negatively impact that individual, but the whole family as well. For those who have already found jobs to support their needs, the potential for their initial EADs to expire prior to the approval and issuance of a renewed EAD may force them back into instability caused by a gap in their authorization to work.

Continuation of employment authorization and/or EADs is also a requirement for their employers who must comply with Form I–9 reverification requirements in order to continue to employ these employees.[174] In addition, some employers, notwithstanding possible violation of section 274B of the INA, 8 U.S.C. 1324b

[166] The primary way staffing for backlog reduction has taken place is through hiring based on fee-funded receipts, improved efficiencies to current processes, and some appropriations from Congress.

[167] The vast majority of applicants filing renewal EAD applications and who are eligible for the automatic extension of EADs under 8 CFR 274a.13(d) fall into three filing categories: (1) noncitizens who have properly filed applications for asylum and withholding of deportation or removal (C08); (2) noncitizens who have filed applications for adjustment of status to lawful permanent resident under section 245 of the INA, 8 U.S.C. 1255 (C09); and (3) noncitizens who have filed applications for suspension of deportation under section 244 of the INA (as it existed prior to April 1, 1997), cancellation of removal pursuant to section 240A of the INA, 8 U.S.C. 1229b, or special rule cancellation of removal under section 309(f)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (C10). In FY 2023, these three filing categories made up nearly 61 percent of the renewal EAD receipts filed in categories eligible for the automatic extension of employment authorization. Broken down further among these three categories: the C08 category comprised approximately 41 percent of the renewal EAD receipts filed in categories eligible for the automatic extension, while the C09 category comprised approximately 10 percent and the C10 comprised approximately 10 percent.

[168] In FY 2023, USCIS received a total of approximately 633,000 renewal EAD applications in the categories eligible for automatic extension, which averages to approximately 52,800 filings per month.

[169] Based on current processing times, many of the 534,000 currently pending renewal EADs will remain pending through the end of FY 2024. These applications generally do not add to the number of renewal applicants who will lose employment authorization in May 2024 because most of the pending renewal applications were filed under the 2022 TFR and still benefit from the 540-day automatic extension period.

[170] For more information on how USCIS calculates its processing times, see USCIS' web page at *https://egov.uscis.gov/processing-times/more-info* (last visited Nov. 14, 2023).

[171] *See* section V.B.2., Table 7, TFR Future Population Projections by Month, Rounded to Thousands.

[172] *See* section V.B.2., Table 6A. EADs that could lapse in the absence of the TFR, by Class and Percent Variation.

[173] *See* INA sec. 208(d)(2), 8 U.S.C. 1158(d)(2).

[174] *See* 8 CFR 274a.2(b)(1)(vii).

(governing unfair immigration-related employment practices), may be hesitant to hire asylum seekers in the first place if it appears maintaining their employment will be difficult due to potential lapses in employment authorization.

Continuous employment authorization and documentation during the pendency of an asylum application is vital for asylum seekers in the United States to access housing, food, and other necessities. In addition, asylum seekers may need income from employment to access medical care, mental health services, and other resources, as well as to access legal counsel in order to pursue their claims before USCIS or EOIR. Access to mental health services is particularly crucial for asylum seekers due to the prevalence of trauma-induced mental health concerns, including depression and post-traumatic stress disorder. The physical harm experienced by many asylum seekers frequently necessitates continuous medical care for extended periods of time. Finally, the purpose for which asylum seekers came to the United States is to seek long-term protection by receiving asylum.

In addition, having unexpired employment authorization and EADs is necessary for certain noncitizens such as asylum applicants and TPS beneficiaries when they apply for benefits that require proof of identity or immigration status. The only acceptable document available to some noncitizens such as asylum applicants and TPS beneficiaries to establish identity for other purposes, such as obtaining a REAL ID-compliant driver's license or identification card, may be an unexpired EAD.[175] REAL ID-compliant driver's licenses as well as identification cards are used for other official purposes including access to Federal facilities and boarding federally regulated commercial aircraft.[176] Without an unexpired EAD, certain classes of noncitizens would not be able to apply for REAL ID-compliant driver's licenses and IDs.

DHS is aware of the importance of employment authorization and evidence of employment authorization for applicants' and their families' livelihoods, as well as their U.S. employers' continuity of operations and financial health. DHS also is cognizant of the potential detrimental impact that gaps in employment authorization may have on an applicant's eligibility for future immigration benefits should the applicant, *e.g.,* inadvertently engage in unauthorized employment during the gap,[177] and on their U.S. employers who must examine unexpired documents that evidence their employees' employment eligibility and attest that their employees are authorized to work in the United States.[178] DHS also acknowledges that the substantial increase in backlogs and prolonged processing times for renewal EAD applications are not the fault of applicants, but nonetheless will have significant adverse consequences for applicants, their families, and their employers in the absence of this TFR.

3. The Current Automatic Extension Period of 180 Days Must Be Temporarily Increased to 540 Days

DHS has determined that the automatic extension period of up to 180 days at 8 CFR 274a.13(d) is currently insufficient to meet the original purpose for which it was implemented: to prevent the occurrence of gaps in employment authorization and documentation for eligible applicants.[179] Although USCIS has significantly increased staffing as well as case completions, these gains have been outstripped by the increased volume of receipts and other operational issues. As a result, USCIS is unable to significantly increase its rate of completion in the immediate term and, therefore, is currently unable to meaningfully reduce the volume of pending cases while also keeping pace with the inflow of renewal EAD filings. While USCIS will continue to explore and implement ways to improve adjudicative efficiencies in the short and long term, USCIS expects that its substantial renewal EAD backlogs will continue in the immediate future. This temporary circumstance has created an urgent situation for noncitizens and U.S. employers as gaps in employment authorization and documentation have a highly detrimental impact on noncitizen workers and their U.S. employers.

a. Reduce Backlogs

As stated above, USCIS received an average of approximately 52,800 automatic extension-eligible EAD applications per month in FY 2023, and completes approximately 49,100 such requests per month, leading to the growing backlog.[180] The 80th percentile processing time for the automatic extension categories combined as of February 2024 was 14.5 months. Based on current incoming volumes and completions, USCIS projects that this backlog will hold steady, if not slightly increase, in the next 6 months. USCIS began to hire following the end of the hiring freeze associated with the fiscal impacts of COVID–19 and the potential furlough, both of which contributed to higher-than-average attrition. The hiring and training processes are lengthy, but USCIS is continuing to grow and see the increases in completions associated with improved staffing. Additionally, the agency continues to refine and expand the use of systems to improve processing efficiency.

Based on the growth of receipts for renewal EAD applications in the past year[181] and USCIS' projection of similar growth, DHS believes that a temporary increase of 360 days (beyond the 180-day period) for a total of 540 days (approximately 18 months) is an appropriate increase of the automatic extension period to mitigate the risk that a majority of eligible applicants will experience a lapse in employment authorization or EAD validity, consistent with the purpose of the generally applicable automatic extension provision provided under the current regulation.

The temporary extension period implemented in this TFR better reflects current and potential processing times for renewal EADs and should provide USCIS with more time to further increase adjudicative staff, implement additional processing efficiencies, and reduce renewal EAD processing times to a level that aligns with the current up to 180-day automatic extension provision. USCIS is committed to mitigating the impact of renewal EAD application processing delays on applicants as it continues to work to return to its goal of processing renewal EAD applications within 3 months.[182]

[175] 6 CFR 37.11(c).

[176] REAL ID Act of 2005, Public Law 109–13, div. B, Title II, Sec. 201(3) (May 11, 2005).

[177] With certain exceptions, if a noncitizen continues to engage in or accepts unauthorized employment, the individual may be barred from adjusting status to that of a lawful permanent resident under INA 245. *See* INA secs. 245(c)(2) and (8), 8 U.S.C. 1255(c)(2) and (8).

[178] *See, e.g.,* INA sec. 274A(b)(1), 8 U.S.C. 1324a(b)(1), 8 CFR 274a.2(a)(3).

[179] *See* Retention of EB–1, EB–2, and EB–3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers final rule, 81 FR 82398, 82405 (Jan. 17, 2017) (''To prevent gaps in employment for such individuals and their employers, the final rule provides for the automatic [180-day] extension of EADs (and, where necessary, employment authorization) upon the timely filing of a renewal application.'').

[180] *See* section V.B.2, Table 6A., EADs that could lapse in the absence of the TFR, by Class and Percent Variation.

[181] *See* section III.A, Table 1C. of this preamble for more details.

[182] *See* USCIS, DHS, ''Reducing Processing Backlogs,'' *https://egov.uscis.gov/processing-times/reducing-processing-backlogs* (last visited Jan. 19, 2024).

To determine how long DHS should provide this temporary increased automatic extension period, DHS assessed the pending and incoming volume of renewal EAD filings against current USCIS resources. As of February 2024, USCIS had approximately 439,000 pending renewal EAD requests in automatic extension-eligible categories, and this is projected to increase for the near future. To achieve USCIS' processing goal of 3 months for EAD renewal applications,[183] USCIS must keep pace with the incoming volume (in other words, complete approximately 57,500 renewal EAD requests in automatic extension-eligible categories per month projected in the 18 month period beginning in May 2024) in addition to reducing the pending volume of renewal requests from 439,000 to 172,500.[184] USCIS anticipates that the decrease in filings for applicants who received an EAD with 5-year validity will provide an opportunity to address existing backlogs and improve processing times. USCIS currently completes approximately 49,100 automatic-extension eligible renewal EAD adjudications per month, averaging 0.23 hours per completion. To reduce the expiration counts to near zero by the end of the TFR period, USCIS would need to increase completions by approximately 4,900 per month, which is about a 10% increase. This means that USCIS would need to devote approximately 162,000 officer hours a year at 15 minutes per case, or achieve an equivalent increase in completions through policy changes, processing enhancements, or other means, in order to keep pace with the incoming flow of new renewal requests and minimize the number of renewal applicants who may lose their employment authorization and/or documentation prior to the approval of their EAD applications. As described in section III.C.3.b of this preamble, USCIS will continue pursuing other means to increase completions and reduce expirations while this TFR is in effect.

Therefore, DHS has concluded that it will authorize a temporary 360-day increase to the automatic 180-day extension period, for a total of 540 days, to individuals who file a renewal EAD application during the 540-day period following publication of this rule. DHS will also grant the additional 360-day increase to the automatic extension period to those with pending renewal applications that were filed after the expiration of TFR 2022, that is, on or after October 27, 2023. Applicants who file an EAD renewal application after this filing timeframe and who are eligible for an automatic extension of their employment authorization and/or EADs will receive the 180-day automatic extension period currently provided at 8 CFR 274a.13(d)(1).

This TFR applies to two groups of applicants. First, the rule applies to those renewal applicants eligible for the automatic extension who have filed their renewal EAD applications on or after October 27, 2023,[185] which remain pending as of the date this rule goes into effect, [INSERT DATE OF PUBLICATION IN THE **FEDERAL REGISTER**], and whose EAD has not expired or whose current up to 180-day auto-extension has not yet lapsed, since this group is at imminent or near-term risk of experiencing a gap in employment authorization and/or documentation.[186] Second, the rule applies to new renewal applicants who file their EAD applications during the 18-month period following the rule's effective date to avoid a future gap in employment authorization and/or documentation.[187] However, in recognition of Congress' clear intent in the INA to prohibit and provide penalties for unauthorized employment, including the accountability of employers that employ noncitizens who are not authorized to work in the United States,[188] this TFR does not address periods of unauthorized employment. In other words, this rule does not cure any unauthorized employment that may have accrued prior to issuance of the rule.

In addition, DHS has determined that the temporary amendment made by this rule should remain in the Code of Federal Regulations (CFR) for an amount of time sufficient to cover the approximately 18-month period during which the up to 540-day automatic extension will be authorized, plus an additional 720 days, so that the regulatory provision remains in the CFR for the entire time that applicants may be relying on this temporary increase to the regular automatic extension period.[189] As such, this TFR will take effect on April 8, 2024, and will be removed from the CFR on September 20, 2027, that is, approximately 3 years and 6 months (or 1,260 days) after the rule takes effect, although no new beneficiaries will receive a 540-day automatic extension after September 30, 2025. Further, as is consistent with current guidance, applicants should file a renewal EAD application no earlier than 180 days prior to the expiration date of their EAD.

b. Improve Future Processing Times and Reduce Filing Volume

DHS also considered other factors that may further help to reduce the renewal EAD application processing times, including the potential for additional officers based on a potential increase in filing fee revenue while this TFR is in effect, as well as processing efficiencies through streamlining certain steps in the processing of renewal EAD applications and the policy changes described above. Based on the available data on the pending and incoming volume of renewal EAD filings, and taking into consideration future variables, such as increased adjudicative staff and filing fees, USCIS expects to improve its processing times over the coming years.

Additionally, the automatic extensions provided in this TFR will extend through the period in which USCIS expects to see a decrease in filings due to the policy change to provide 5-year validity to certain categories of EADs. This window of decreased receipts should provide USCIS the opportunity to significantly decrease backlogs. Based on the conditions in place at the beginning of FY 2024, USCIS projects that the implementation of the 5-year-maximum EAD policy will result in a significant drop in EAD renewal applicants as of September 27, 2025. The largest volume of EAD categories are C08s, C09s, and

[183] *See* USCIS, DHS, ''Reducing Processing Backlogs,'' *https://egov.uscis.gov/processing-times/reducing-processing-backlogs* (last visited Jan. 19, 2024).

[184] USCIS estimates that 172,500 pending requests translates roughly to a 3-month processing time, depending on monthly EAD renewal application receipts and the number of officer hours devoted to processing renewal receipts.

[185] Individuals who have filed their renewal EAD application on or before October 26, 2023.

[186] An individual who filed a renewal EAD application on or after October 27, 2023, but whose application was denied prior to the publication date of this rule, no longer has a pending application and therefore will not receive the additional automatic extension.

[187] Providing a set amount of additional automatic extension time for a set period is the least administratively burdensome approach, allowing the agency to focus its limited resources on addressing the lengthy processing times themselves. Additionally, DHS anticipates that this approach is the least burdensome for the public, including employees and employers, since the temporary solution is clear, can be relied upon, can be planned for, and otherwise operates in the same way as the existing automatic extension described in 8 CFR 274a.13(d)(1) and the 2022 TFR.

[188] *See generally* INA sec. 274A, 8 U.S.C. 1324a.

[189] 720 days is the amount of time needed to cover the up to 540-day automatic extension for all EAD renewal applicants eligible for the automatic extension, including those who timely filed an EAD renewal application on or before September 30, 2025 but whose EAD expires within 180 days after September 30, 2025. Such applicants could be eligible for the up to 540-day automatic extension, beginning on the day their EAD expires.

C10s, which have generally been issued 5-year EADs starting on September 27, 2023.[190] This means that EADs in these categories issued on or after September 27, 2023, will not be facially expiring until on or after September 26, 2028. Thus, DHS projects, as of the beginning of FY 2024 that there will be very few EAD renewal applicants in these categories after September 27, 2025 (just before the beginning of FY 2026), until early FY 2028. DHS expects that, by the close of the filing timeframe outlined in this temporary final rule, the usual 180-day automatic extension period will be sufficient.

In addition, the 540-day filing period will ensure that eligible EAD renewal applicants who timely file a renewal application will have a near term solution and will not experience a lapse in employment authorization and/or documentation starting in May 2024, while USCIS continues to pursue a long-term solution by soliciting public input and fully assessing the effects of policy and operational changes described in this preamble.

4. EAD Renewal Applicants at Risk of Experiencing a Gap in Employment Authorization or EAD Validity Under This TFR

The data projection in the Regulatory Impact Analysis (''RIA'') indicates that even with the 540-day automatic extension provided in this TFR, approximately 260,000 EAD renewal applicants are potentially at risk of experiencing a gap in employment authorization or proof of employment authorization.[191] That is, at the baseline and assuming that no operational or other policy changes are implemented, of the projected 689,000 (lower bound estimate) to 824,000 (upper bound estimates) [192] of renewal applicants who receive a temporary up to 540-day automatic extension period, about 260,000 renewal EAD applicants could still lapse between November 2025 and April 2027.[193] However, this projection is based on data from the beginning of FY 2024 and the conditions in place at that specific time. Because of several variables, these data projections cannot fully take into account the complete effect of operational and policy changes described above, combined with any future changes and operational shifts (such as hiring additional officers or additional technological changes and operational shifts that improve processing efficiency) that USCIS plans to undertake to reduce EAD processing times.[194] This TFR will provide USCIS with more time to evaluate the effects of the operational changes already implemented [195] and consider and implement additional operational, policy, and technological changes that may further improve the overall efficiency of USCIS adjudications. Based on current projections, this TFR also will ensure that, during the 540 days following publication of this TFR, none of the affected applicants are expected to experience a gap in employment authorization and/or EAD validity because of USCIS processing delays. This TFR will therefore address the associated harmful effects that gaps in employment authorization and/or documentation will have for applicants, their families, their employers, and the economy during that time.

As part of the development of this rule, DHS considered whether the temporary automatic extension period in the new 8 CFR 274a.13(d)(6) should be increased to at least up to 730 days (rather than up to 540 days). Based on the baseline data projections, DHS believes that increasing the automatic extension period to at least up to 730 days could ensure that a large part of the approximately 260,000 renewal EAD applicants who are currently predicted to experience a gap in employment authorization and/or documentation under the 540-day automatic extension period would not experience any gaps.

However, although DHS understands that granting an automatic extension of 540-days might not fully resolve the problem, DHS has determined to focus on near-term needs of applicants, their families, and employers by ensuring that, through this TFR, none of them will imminently or in the near-term experience the harmful effects that gaps in employment authorization and/or documentation could create. At the same time, the rule provides DHS with an additional window during which it can consider long-term solutions by soliciting public comments, evaluating the effects of ongoing policy and operational changes described in this preamble, and continuing to identify new strategies and efficiencies in the future.

Creating a near-term solution with a 540-day extension period is furthermore appropriate because longer extension periods would create additional complexities for employers. For example, TPS designations and associated EAD benefits cannot be granted for longer than 18 months (which is approximately 540 days).[196] If USCIS were to extend the automatic EAD extension period beyond 540 days, it would have to create a separate provision for TPS-based EAD applicants. Having up to 730 days of an automatic extension period for one group of EAD renewal applicants and 540 days for others increases the risk of confusion as employers would be required to understand and adhere to additional different extension periods depending on eligibility category on the EAD the worker possessed and when the EAD renewal application was filed. For example, an employer may have multiple employees who are employment authorized under the C08 category but, depending on when their EAD renewal application was filed, those employees may have different amounts of time for which their employment authorization and EAD are automatically extended. Even though they all have employment authorization under C08, those employees who filed an EAD renewal application before October 27, 2023, would have an automatic extension up to 540 days, whereas those who filed on or after October 27, 2023, would have an automatic extension up to 730 days. These variables increase the risk that an

[190] In general, USCIS issued EADs for 2 years in these categories prior to September 27, 2023.

[191] *See* V.B.2. Table 6 detailing how variation in the inputs used to the model a baseline affect the range of results of the rule's estimated impacts in the RIA.

[192] *See* V.B.2. Table 6 and Table 7.

[193] DHS predicts that, based on the high level of C08 filings who received a 2-year validity EAD prior to the policy change implementing a 5-year policy, USCIS will experience a spike in renewal EAD processing times starting around August 2024 and lasting through October 2025 because of a large amount of C08 renewal filings. As a result of this spike in processing times, USCIS projects that approximately 260,000 renewal EAD applicants could lapse between November 2025 and April 2027 if there is no change to current conditions.

[194] Although these data projections cannot fully take into account the complete effect of possible operational and policy changes, USCIS does include a sensitivity analysis that considers a change in officer output by +/−10 percent and +/−15 percent. All other variables remain constant. See Tables 6A and 6B.

[195] For example, as explained in section III.B.1. of this preamble, USCIS expects that the new 5-year EAD practice implemented in September 2023 will cause certain EAD renewal filings in the applicable categories to significantly decrease starting in October 2025 and to remain low until the third quarter of FY 2028. There should be very few EADs in the categories covered by the 5-year EAD policy with a validity expiration date between September 25, 2025, and September 26, 2028. Although the main effects of the 5-year EAD policy change will not occur until October 2025, USCIS projects that the increased validity periods will lead to a 60 percent reduction in volumes, on average, and possibly greater for categories who historically file only one EAD renewal to maintain employment authorization during the pendency of their primary immigration benefit. After October 2025, USCIS, as well as applicants filing for renewal of their EADs, will benefit from the long-term effects of this policy change as the reduced filing volumes should allow USCIS to reduce EAD renewal processing times.

[196] *See* INA secs. 244(a)(2), (b)(2), (d), 8 U.S.C. 1254a(a)(2), (b)(2), (d); 8 CFR 244.12.

employer may make a mistake when verifying employment authorization or determining when reverification needs to occur. Because employers may face civil money penalties if they do not properly maintain employment eligibility verification paperwork or employ a noncitizen without employment authorization,[197] the risk of a mistake stemming from different automatic extension periods is not insignificant.

In addition, DHS currently assesses that it is premature to grant an automatic extension for up to 730 days (or approximately 2 years), in part because the longer the period of time before an employer has to reverify a noncitizen employee whose employment authorization is automatically extended, the greater the risk they could unknowingly employ someone whose employment authorization has ended.[198]

Additionally, both employers and applicants are already familiar either with the normal 180-day extension or the 540-day extension under the 2022 TFR. The 540-day extension provided under the 2022 TFR continues to be effective for some applicants until October 15, 2025, and having other validity periods in this 2024 TFR may be confusing to applicants, employers, and the public at large. For these reasons, and because employers would assess the applicability of the auto-extension based in part on a non-secure document (such as the Form I–797C, Notice of Action), at this time DHS prefers shorter validity periods for temporary, non-secure documents.

Also, operationally, while managing 540- and 730-day extensions might be feasible and could mitigate harms projected after October 2025, the additional complexity, for both USCIS and employers, of administering different automatic extension durations could delay issuing or implementing this TFR to address imminent lapses in employment authorization and EAD validity.

DHS also believes that the automatic extension period of 540 days is appropriate in scope because of the uncertainties in data projections. As described above, USCIS' current projections are based on factors as they exist as of the beginning of FY 2024 and the conditions in place at that specific time. USCIS' projections become less certain further into the future because those existing factors will be impacted as changes and operational shifts arise. For example, over the course of the coming months, processing times may improve based on the policy and operational changes described throughout this preamble and by gaining additional adjudicative efficiencies and technological changes. As a result, the projection that approximately 260,000 renewal EAD applicants might experience a lapse in employment starting in October 2025 may exceed the actual number. On the other hand, there are also unpredictable variables that are out of USCIS's control, such as the events that resulted in the need for this very rulemaking. Thus, because of these uncertainties, DHS believes it to be appropriate to address the imminent and near-term needs of applicants and their U.S. employers by implementing an up to 540-day automatic extension period for eligible EAD renewal applications properly filed during the 540 days after this TFR is published, and to create a longer-term solution after soliciting additional input and having had the opportunity to fully assess the effects of USCIS policy and operational changes described in this preamble.

Finally, DHS notes that providing a 730-day *filing period* (*i.e.,* the period of time, following publication of this rule, during which the timely filing of an EAD renewal application results in an up to 540-day automatic extension), would not assist those 260,327 EAD renewal applicants who could still experience a lapse in their EAD validity. This is because the cause of the remaining 260,000 at-risk renewal EAD applicants under this TFR is primarily the number of 2-year initial asylum application EADs (C08) issued in mid- to late-FY 2023, when USCIS substantially increased its production to comply with the 30-day processing time requirement imposed by the *Rosario* court order.[199] Based on current data predictions, and if staffing levels and adjudicative efficiencies remain unchanged, renewal of these initial C08 EADs will be pending longer than the 540-day automatic extension period. Thus, extending the filing period to 730 days would not assist these applicants and would not have an impact because they will already have timely-filed and pending EAD renewal applications. If their applications are approved, they generally will be granted a 5-year EAD and/or employment authorization.

For these reasons, DHS believes an up to 540-day automatic extension period and a 540-day automatic extension filing period are appropriate as they are narrowly tailored to serve the imminent short-term need of eligible EAD renewal applicants and their U.S. employers. These periods also allow DHS to consider longer-term solutions following receipt of additional input and assess the effect of ongoing and future policy and operational changes. If DHS determines that future regulatory action would be warranted, DHS may issue another rule. DHS welcomes public comment that would inform any potential future regulatory actions on this subject, including whether to permanently extend the automatic extension period to 540 days, or whether a different permanent extension period should be implemented, for some or all applicants covered by the automatic extension provision on either a temporary or permanent basis.

D. Severability

In issuing this TFR, it is DHS's intention that the rule's various provisions be considered severable from one another to the greatest extent possible. For instance, if a court of competent jurisdiction were to hold that the automatic extension may not be applied to a particular category of renewal EAD applicants or in a particular circumstance, DHS would intend for the court to leave the remainder of the rule in place with respect to all other covered persons and circumstances. DHS's overarching goal is to avoid widescale lapses in employment authorization and EAD validity that would result in substantial and unnecessary harm to noncitizens who timely filed for extensions of employment authorization, their families, their employers, and the public at large.

IV. Temporary Regulatory Change: 8 CFR 274a.13(d)(5) and 8 CFR 274a.13(d)(6)

A. Adding New 8 CFR 274a.13(d)(6)

With this TFR, DHS is amending 8 CFR 274a.13(d) to add a new paragraph (6) that will be in effect temporarily until September 20, 2027. Under the new paragraph, DHS is increasing the automatic extension period for employment authorization and/or EAD validity of up to 180 days (described in 8 CFR 274a.13(d)(1)) to a period of up to 540 days for renewal applicants eligible to receive an automatic extension who properly file a renewal EAD application on or after October 27, 2023, and on or before September 30, 2025 and whose application is pending

[197] *See* INA sec. 274A(e)(5), 8 U.S.C. 1324a(e)(5).

[198] EAD renewal applications are filed by the noncitizen, so employers do not know when or if the application is approved. Employers usually must rely on the employee to provide the information.

[199] *See Rosario* v. *USCIS,* 365 F.Supp.3d 1156 (W.D. Wash. 2018).

during the 18-month [200] period beginning April 8, 2024, and ending September 30, 2025. Automatic extensions of employment authorization and/or EAD validity will revert to the up to180-day period for those eligible applicants who timely file renewal EAD applications after September 30, 2025. The increased automatic extension period will apply to eligible renewal applicants who timely file their EAD applications on or before the last day of the 18-month period.

Similar to the 180-day automatic extension period provided by 8 CFR 274a.13(d)(1), the increased automatic extension period of up to 540 days established by this TFR generally will automatically terminate the earlier of up to 540 days after the expiration date of the EAD, or upon issuance of notification of a denial on the renewal EAD request even if this date is after September 30, 2025.

Moreover, 8 CFR 274a.13(d)(6) will remain in the CFR for an additional 720 days after this 540-day period, until September 20, 2027, to ensure that renewal applicants who are already within their up to 540-day automatic extension period as of September 30, 2025, will not get cut off from any remaining employment authorization and/or EAD validity that is over 180 days (the normal automatic extension period under 8 CFR 274a.13(d)(1) but instead will be able to take full advantage of the 540-day period.

Similar to 8 CFR 274a.13(d)(4), this TFR provides that an EAD that appears on its face to be expired (''facially expired'') is considered unexpired under this rule for up to 540 days from the expiration date on the front of the EAD when combined with a Notice of Action (Form I–797C) indicating timely filing of the renewal EAD application and the same employment eligibility category as stated on the facially expired EAD (or in the case of an EAD and I–797C notice that each contains either an A12 or C19 TPS category code, the category codes need not match).[201] While the current provision at 8 CFR 274a.13(d)(4), and, likewise, the provision in this TFR, do not require that the qualifying Notices of Action specify the automatic extension period, in practice, USCIS issues a Form I–797C Notice of Action to all renewal applicants with general information regarding who is eligible for an automatic extension and currently includes an explanation of the up to 180-day automatic extension period. On and after April 8, 2024, USCIS plans to issue Form I–797C Notices of Action with an explanation of the up to 540-day automatic extension period. USCIS does not plan to issue updated Form I–797C notices to eligible applicants who filed their renewal EAD application before April 8, 2024. However, even Form I–797C notices for an EAD application filed after October 26, 2023, that refer to a 180-day automatic extension still meet the regulatory requirements. Therefore, individuals in the categories covered by this rule who are issued Form I–797C notices with a Received Date of October 27, 2023, through the day preceding April 8, 2024 that refer to a 180-day extension, along with their qualifying EADs, still receive the extension of up to 540 days from the date on the face of the EAD under this rule. USCIS will update the web page on the USCIS website that is referenced in the current Form I–797C receipt notice to reflect the change in the automatic extension period. The public should refer to this web page when determining whether a Form I–797C Notice of Action, if presented with the facially expired EAD, is acceptable to show that the EAD validity is extended. Employers completing Form I–9 may attach a copy of the web page with the employee's Form I–9 to document the extension of employment authorization and/or EAD validity. USCIS will also update I–9 Central on the USCIS website to provide employees and employers with specific guidance on Form I–9 completion, including any required notations indicating the above-described extension of employment authorization and/or EAD validity, in such cases. The automatic extension established by this rule applies to EADs as such; therefore, if another agency accepts unexpired EADs for any purpose (such as establishing identity or, in some situations, immigration status), then the agency should generally accept the EADs that are automatically extended under this rule. This applies to benefit granting agencies that are registered to use the SAVE [202] program to verify immigration status, because SAVE can verify a benefit applicant's immigration status using an automatically extended EAD.

This rule does not modify the current reverification requirements an employer must follow for Form I–9 at 8 CFR 274a.2(b)(1)(vii) that apply to automatic extensions, except that this rule temporarily extends the automatic extension period in 8 CFR 274a.13(d) from up to 180 days to up to 540 days. Therefore, to complete Form I–9 for new employment, the employee and employer should use the extended expiration date to complete Sections 1 and 2 of the Form I–9 and reverify once the automatic extension period expires.[203] For current employment, the employer should update the previously completed Form I–9 to reflect the extended expiration date based on the automatic EAD extension while the renewal is pending and reverify once the automatic extension expires.[204]

Under this TFR, just as under existing 8 CFR 274a.13(d)(3), DHS will retain the ability to otherwise terminate any employment authorization or EAD, or extension period for such employment authorization or document, by written notice to the applicant, by notice to a class of noncitizens published in the **Federal Register**, or as provided by statute or regulation, including 8 CFR 274a.14.[205]

B. Amending 8 CFR 274a.13(d)(5)

To avoid confusion between the automatic extension period granted under 8 CFR 274a.13(d)(5) and period granted under newly added 8 CFR 274a.13(d)(6), DHS is amending existing 8 CFR 274a.13(d)(5) by revising the heading in the paragraph to reflect that the paragraph applies to renewal applications properly filed on or before October 26, 2023.[206]

With this TFR, DHS is not extending or otherwise amending the provisions in

[200] For ease of reference, DHS sometimes refers to the approximate period of 18 months. However, the precise number of days is 540.

[201] As it is currently the case with the up-to 180-day automatic extension, if an adjustment of status applicant's (C09) EAD card is combined with the advance parole authorization, *i.e.,* the applicant is issued a combo card (in this case, the EAD card itself has an annotation ''SERVES AS I–512 ADVANCE PAROLE''), Similarly, the 540-day automatic extension provided by the 2022 TFR, as well as the up-to 540-day automatic extension provided by this rule, do not apply to the advance parole part of the applicant's combo card.

[202] SAVE is a program administered by USCIS and is used by Federal, state and local benefit granting agencies to verify the immigration status of their benefit applicants in order for the agency to determine eligibility for the benefits they administer. *See https://www.uscis.gov/save* (last visited Jan.19, 2024).

[203] *See* 8 CFR 274a.2(b)(1)(vii); *see also* USCIS, DHS, ''Automatic Extensions Based on a Timely Filed Application to Renew Employment Authorization and/or Employment Authorization Document'' *https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274/50-automatic-extensions-of-employment-authorization-andor-employment-authorization-documents-eads-in/51-automatic-extensions-based-on-a-timely-filed-application-to-renew-employment-authorization* (last visited Oct. 27, 2023).

[204] *Id.*

[205] Therefore, for example, in situations where the underlying status that provides employment authorization would expire prior to 540 days, USCIS may include specific information on the applicant's Form I–797C receipt notice as to how long the automatic extension of the individual's EAD will last.

[206] *See* 8 CFR 274a.13(d)(5) heading.

8 CFR 274a.13(d)(5). As explained in the 2022 TFR, the filing period for the temporary increase of the automatic extension under 8 CFR 274a.13(d)(5) ended on October 26, 2023, after which the automatic extension period reverted to up to 180 days.[207] The increased automatic extension period under 8 CFR 274a.13(d)(5) was available to eligible renewal applicants who had a timely filed renewal EAD application pending during the 18-month period beginning May 4, 2022, and ending at the end of October 26, 2023, and it remains valid until the individual's up to 540-day automatic extension period expires.[208] However, once an individual's up to 540-day automatic extension period under 8 CFR 274a.13(d)(5) expires, the individual will not receive any additional employment authorization and/or EAD validity under this new TFR, because DHS is not extending the effect of 8 CFR 274a.13(d)(5).

Additionally, the 2022 TFR provided that 8 CFR 274a.13(d)(5) would remain in the CFR for an additional 720 days after October 26, 2023, although the up to 540-day automatic extension period has reverted to up to 180 days for individuals who filed a renewal application after October 26, 2023.[209] Therefore, 8 CFR 274a.13(d)(5) will remain in the CFR until October 15, 2025. The 2022 TFR explained that retaining the paragraph until October 15, 2025, will ensure that applicants who are within their up to 540-day automatic extension period on or after October 26, 2023, will not lose any remaining employment authorization and/or EAD validity that is over 180 days (the normal automatic extension period under 8 CFR 274a.13(d)(1)), but will be able to take full advantage of the up to 540-day period.[210]

Having both paragraphs 8 CFR 274a.13(d)(5) and 8 CFR 274a.13(d)(6) may result in the confusion of employers, applicants, and the public in general. Thus, to avoid confusion, DHS is amending 8 CFR 274a.13(d)(5) by revising its heading to clearly state that 8 CFR 274a.13(d)(5) only applies to renewal applications properly filed on or before October 26, 2023.

[207] *See* 87 FR 26614, 26631 (May 4, 2022).

[208] For example, if the applicant properly and timely filed the EAD renewal application on October 26, 2023, the applicant's employment authorization and/or EAD validity lasts up to 540 days from the date of expiration printed on the applicant's employment authorization and/or EAD, or upon issuance of notification of a denial on the renewal EAD request.

[209] *See* 87 FR 26614, 26631.

[210] *See id.*

V. Regulatory Requirements

A. Administrative Procedure Act

This rule is informed and supported by comments on the 2022 TFR, which as noted above suggested making the TFR permanent. In addition, DHS is issuing this rule without a separate proposed rule describing the present emergency, or a delayed effective date. DHS therefore invokes the ''good cause'' and other exceptions in the APA. 5 U.S.C. 553(b)(B) and (d)(3); *see also* 5 U.S.C. 553(d)(1) (exception for delayed effective dates for substantive rules that grant or recognize an exemption or relieve a restriction).[211]

1. Requirements for Establishing Good Cause

An agency may forgo notice-and-comment rulemaking and a delayed effective date when the agency ''for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B); *see also* 5 U.S.C. 553(d)(3).

The ''impracticable'' prong of the good cause exception ''excuses notice and comment in emergency situations, or where delay could result in serious harm.'' [212] Although the good cause exception is ''narrowly construed and only reluctantly countenanced,'' [213] ''it is an important safety valve to be used where delay caused by notice and comment would do real harm.'' [214] An agency may find that advance notice and comment or a delayed effective date is ''impracticable'' when undertaking such procedures would impede due and timely execution of important agency functions.[215] For example, a finding of impracticability may be appropriate when an investigation shows that a new rule must be put in place immediately to avert a serious safety risk to the public.[216] Courts have held that a determination of impracticability ''is inevitably fact-or context-dependent,'' [217] and have acknowledged that the need to avert an imminent ''fiscal calamity could conceivably justify bypassing the notice-and-comment requirement,'' if, for instance, the agency's finding is supported by an adequate record and reflects consideration of alternatives to bypassing notice-and-comment procedures.[218] In determining whether to invoke the exception under 5 U.S.C. 553(d)(3) some courts call for the agency ''to balance the necessity for immediate implementation against the principles of fundamental fairness which requires that all affected persons be afforded a

[211] Separate from the APA's 30-day delayed-effective-date requirements, 5 U.S.C. 553(d), the Congressional Review Act imposes a 60-day delayed-effective-date requirement for rules identified at 5 U.S.C. 804(2), *see* 5 U.S.C. 801(a)(3). Under both the APA and the Congressional Review Act, however, the agency is exempt from the delayed effective date requirements of both acts if the agency provides good cause, as it does in this rulemaking. *See* 5 U.S.C. 553(d)(3) and 808(2).

[212] *Jifry* v. *FAA,* 370 F.3d 1174, 1179 (D.C. Cir. 2004).

[213] *State of New Jersey* v. *EPA,* 626 F.2d 1038, 1045 (D.C. Cir. 1980); *see also Am. Fed. Gov't Emps.* v. *Block,* 655 F.2d 1153, 1156 (D.C. Cir. 1981) (''As the legislative history of the APA makes clear, moreover, the exceptions at issue here are not 'escape clauses' that may be arbitrarily utilized at the agency's whim. Rather, use of these exceptions by administrative agencies should be limited to emergency situations. . .'').

[214] *U.S.* v. *Dean,* 604 F.3d 1275, 1279 (11th Cir. 2010).

[215] *See Util. Solid Waste Activities Group* v. *EPA,* 236 F.3d 749, 754–55 (D.C. Cir. 2001) (''With respect to the ''impracticable'' ground, the Attorney General's Manual explains ''that a situation is 'impracticable' when an agency finds that due and timely execution of its functions would be impeded by the notice otherwise required in [§ 553]. . .'') (quoting United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 30–31 (1947)).

[216] *See Util. Solid Waste Activities Grp.* v. *EPA,* 236 F.3d 749, 754–55 (D.C. Cir. 2001) (citing the Attorney General's Manual on the APA (1947).).

[217] *Mid-Tex Elec. Co-op, Inc.* v. *FERC,* 822 F.2d 1123, 1132 (D.C. Cir. 1987); *Petry* v. *Block,* 737 F.2d 1193, 1203 (D.C. Cir. 1984) (''But it is clear beyond cavil that we are duty bound to analyze the entire set of circumstances. . .''). Courts have explained that notice-and-comment rulemaking may be impracticable where, for instance, air travel security agencies would be unable to address threats posing ''a possible imminent hazard to aircraft, persons, and property within the United States,'' *Jifry,* 370 F.3d at 1179; if ''a safety investigation shows that a new safety rule must be put in place immediately,'' *Util. Solid Waste Activities Grp.* 236 F.3d at 755 (ultimately finding that not to be the case and rejecting the agency's argument); or if a rule was of ''life-saving importance'' to mine workers in the event of a mine explosion, *Council of the Southern Mountains, Inc.* v. *Donovan,* 653 F.2d 573, 581 (D.C. Cir. 1981).

[218] *See Sorenson Comms., Inc.* v. *FCC,* 755 F.3d 702, 707 (D.C. Cir. 2014); *Mack Trucks, Inc.* v. *EPA,* 682 F.3d 87, 93–94 (D.C. Cir. 2012) (acknowledging that good cause may be found when ''an entire industry and its customers were imperiled,'' in contrast to a situation where the agency seeks to rescue certain third parties from the consequences of their own business choices); *Mid-Tex Elec. Co-op, Inc.,* 822 F.2d at 1132 (upholding a good cause finding where the agency sought to avert ''irremedial [sic] financial consequences and regulatory confusion''); *Am. Fed'n of Govt. Emp., AFL–CIO* v. *Block,* 655 F.2d 1153, 1157 (D.C. Cir. 1981) (concluding that the agency's good cause finding was a reasonable response to avoid economic harm to certain poultry processors and likely shortages and increases in consumer prices); *N. Am. Coal Corp.* v. *Director, Off. Of Workers' Comp. Prog., DOL,* 854 F.2d 386, 389 (10th Cir. 1988) (concluding that ''the loss or delay of medical benefits to many eligible coal miners was a real harm and the extension of the filing deadline operated as a safety valve to prevent this harm.''); *Nat'l Venture Capital Ass'n* v. *Duke,* 291 F. Supp. 3d 5, 18 (D.D.C. 2017) (reasoning that fiscal injury to an agency may be less likely to support a good cause finding than fiscal injury to third parties).

reasonable time to prepare for the effective date of its ruling.'' [219]

DHS believes that engaging in the APA's notice and comment requirement under 5 U.S.C. 553(b) in this situation would impede due execution of USCIS' mission and result in real and serious harm to the public. As outlined in this preamble, unless DHS takes this action immediately, USCIS' lengthy processing times for renewal EAD applications will result in hundreds of thousands of renewal EAD applicants experiencing gaps in employment authorization and/or EAD validity, leading to adverse impacts on the applicants, their families, their employers, and their communities. The grave situation that these third parties face is not the result of their own actions and is beyond their control. Rather, the present situation is the result of several circumstances that affected USCIS operations, resulting in significant increases to USCIS processing times for several categories of renewal EAD applications since the publication of the 2022 TFR.

DHS believes, as supported by the comments received on the 2022 TFR,[220] that this regulation will allow USCIS to immediately avert the dire impact the circumstances create for affected renewal EAD applicants, their families, and their employers. Accordingly, DHS believes that bypassing the ordinary notice and comment procedure and the delayed effected date requirement is justified in the totality of the circumstances and is consistent with USCIS' statutory mission to take regulatory action to administer employment authorization benefits effectively,[221] and is necessary to achieve the purpose of 8 CFR 274a.13(d).

2. The EAD Processing Backlog Has Grown Despite USCIS' Best Efforts

In the middle of FY 2023, EAD application filings began to increase substantially. USCIS ultimately received a record-breaking total of approximately 3.49 million initial and renewal EAD applications in FY 2023, which is up from approximately 2.33 million EAD filings in FY 2022 (October 2021 through September 2022), a 50-percent increase of approximately 1.2 million EAD initial and renewal filings. Of these, approximately 1.12 million renewal EAD applications were filed in FY 2023, which was 13 percent higher than the volume received in FY 2022 (approximately 990,000 applications). Thus, the historic 1 million application increase in initial and renewal filings, compounded by the lack of fee increase, the adjudicative demands of USCIS' responses to global humanitarian crises, and other increases in immigration benefit filings, has created an unsurmountable operational strain. This strain significantly impacts USCIS' ability to keep pace with the growing numbers of applications.

As explained in detail elsewhere in this preamble, the effects of USCIS' previous and current financial strains have unfortunately continued through FY 2022 and FY 2023. In particular, the preliminary injunction of the 2020 Fee Rule has resulted in USCIS operating with insufficient reserves to increase staffing commensurate with increased filing rates. If USCIS operates under these conditions, it significantly hampers USCIS' agility when reacting to spikes in filings.[222] Thus, although USCIS increased its workforce in FY 2023, substantially increased the number of officer hours spent adjudicating EAD applications,[223] and took numerous steps to improve adjudicatory efficiency,[224] it has been unable to sufficiently reduce renewal EAD processing times. The problem has been compounded by a litigation outcome that requires USCIS to reimplement the 30-day processing timeline for initial C08 EADs.[225] The operational burden on USCIS resulting from complying with court orders and reimplementing the 30-day processing timeline was further strained by the recent surge in initial C08 EAD applications: In FY 2023 (October 2022 through September 2023) there were approximately 800,000 initial C08 EAD applications, which is an increase of approximately 200 percent over the approximately 266,000 initial C08 EAD applications filed in FY 2022. Because adjudicative capacity to date has been unable to keep up with the increased rate of filings, in order to comply with the *Rosario* court order and the required 30-day processing timeline, USCIS had to prioritize initial C08 EAD applications over other applications, including renewal EAD applications, which has negatively affected renewal EAD processing times overall.[226]

As explained earlier in the preamble, EAD application processing times and the number of pending EAD applications have not sufficiently improved, despite multiple operational and sub-regulatory efforts that USCIS has been implementing. Despite USCIS' best efforts at backlog reduction, ongoing and dynamic circumstances, which are outside of USCIS' control, have prevented USCIS from keeping up with the adjudicatory workload.

During FY 2024, USCIS has continued to closely monitor the automatic extension-eligible renewal EAD caseloads and processing times.[227] These improvements have not yet provided the desired reduction in pending EAD applications. For example, Table 2 shows that the volume of pending EAD applications has not materially improved in FY 2024.[228] The total number of pending EAD applications at the end of February of 2024 is approximately 1.40 million applications, which continues to pose a challenge for USCIS and also impacts processing times for renewal EAD applications eligible for automatic extensions because of the limited amount of USCIS resources that can be allocated to those case types. The total number of pending auto-extension EAD renewal applications at the end of February 2024 was approximately 439,000. While some progress has been made in addressing the backlog, the progress has not yet achieved sufficient gains to reduce EAD renewal processing times and avoid imminent and near-term lapses in employment authorization for EAD renewal applicants.

[219] *N. Arapahoe Tribe* v. *Hodel,* 808 F.2d 741, 752 (10th Cir. 1987) (finding that the agency's reliance on the good cause exception under 5 U.S.C. 553(b) and (d)(3) to be proper given the immediate urgency that warranted the imposition of the regulations as an interim action). Note that the requirements of § 553(d)(3) do not apply in the case of an action covered by section 553(d)(1), *i.e.,* a rule which grants or recognizes an exemption or relieves a restriction. This is one such rule.

[220] *See* section II.C.2 of this preamble.

[221] *See* Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135, sec. 101(b)(1)(F), codified as 6 U.S.C. 111(b)(1)(F). USCIS, as a component of DHS, should exercise its function in a manner that ensures that the overall economic security of the United States is not diminished by efforts, activities and programs aimed at securing the homeland.

[222] *See* ''U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,'' 88 FR 402, 529 (Jan. 4, 2023) (stating that processing times increase, and the case processing backlog grows when USCIS does not have sufficient resources to meet its goals).

[223] *See* section III.A.2. of this preamble (as compared to FY 2021).

[224] *See* section III.B. of this preamble.

[225] *See Asylumworks* v. *Mayorkas,* 590 F. Supp. 3d 11 (D.D.C. 2022).

[226] *See* section III.A.2.a, Operational Challenges Associated with Initial EAD Application Filings by Pending Asylum Applicants (C08).

[227] *See* Sections III.A.2 and B.

[228] *See* Section III.A.1. Table 2. Pending EAD Applications by Month.

3. Advance Notice and Comment Are Impracticable Due to Imminent Risk of Severe Harm to Third Parties

Processing times [229] for renewal EADs that are eligible for the up-to 180-day automatic extension were 14.5 months as of February 2024.[230] It is not operationally feasible, particularly because of demands on USCIS to comply with court orders and the 30-day timeline for adjudication of initial C08 EAD applications, for USCIS to redirect any portion of its resources currently dedicated to adjudicating initial EAD applications to handle the adjudication of renewal EAD applications. Consequently, the lengthy processing times, which exceed the up to 180-day automatic extension available under the current rule, will lead to significant gaps in employment authorization and/or employment authorization documentation for those who complied with all requirements to timely file a renewal EAD application so as not to experience such gaps.

Because this result would substantially harm applicants, their families and their employers, DHS believes there is urgent need to act via this rule to mitigate the risk of a significant lapse in employment authorization for a majority of eligible applicants. DHS anticipates that, without this action, as soon as May 2024, the 180-day extension of employment authorization and/or EADs of approximately 3,000 renewal applicants will expire.[231] After May 2024, the number of renewal applicants expected to experience gaps in employment authorization and/or EAD validity each month will rapidly increase to up to 12,000 (upper bound estimate) per month by July 2024, to up to 45,000 (upper bound estimate) by April 2025 and up to 64,000 (upper bound estimate) per month by November 2025.[232] Thus, in the absence of this action, DHS anticipates that over the time period of May 2024 to March 2026,[233] between 689,000 (lower bound estimate) to 824,000 (upper bound estimate) renewal EAD applicants would be at risk of losing their employment authorization and/or valid documentation [234] and, consequently, experiencing job loss, while waiting for USCIS to process their renewal EAD applications.[235]

Of the approximately 3,000 renewal applicants projected to face this situation in May 2024, the majority [236] are asylum applicants (C08 category), a particularly vulnerable population. Continuous employment authorization during the pendency of an asylum application is vital for asylum seekers in the United States, given their particularly vulnerable position. Therefore, this group of renewal applicants needs urgent action via this rulemaking so these applicants can continue to have employment authorization and/or EAD validity and continue to make a living to sustain themselves and their families.

Considering the total population potentially impacted by this rule, DHS estimates that, with the implementation of this rule, approximately $60.1 billion (for the upper bound population estimate using a 2-percent discount rate) in labor income for affected renewal applicants would be preserved from FY 2024 through FY 2028.[237] This also translates to potential preserved employment taxes of approximately $6.3 billion (for the upper bound population estimate using a 2-percent discount rate) [238] that benefit government entities and that would be forgone if these individuals were to lose their employment due to the potential lapses in employment authorization simply on account of processing delays.

Any delay in action to provide an advance opportunity for notice and comment, therefore, would risk severe harm and unnecessary burdens on applicants, their families, employers, and communities. DHS believes, based on the success of the 2022 TFR, that the immediate implementation of this rulemaking will serve the short-term needs of applicants, their families and employers as it will significantly reduce the potential for additional gaps in employment authorization and/or EAD validity, job loss, and financial uncertainty for renewal EAD applicants and their families.[239] At the same time, the rule provides DHS with an additional window during which it can consider long-term solutions by soliciting public comments and evaluating the effects of the ongoing policy changes described throughout this preamble and future policy and operational changes that will enable USCIS to reach its target processing time of 3 months.

As it relates to employers, DHS notes that as of the beginning of the calendar year 2024, employers continue to face a variety of challenges, including more job openings than available workers.[240] To ensure continuity of operations, businesses and entities may have made decisions (for example, entering into contracts, applying for grants, signing leases, or commencing development of product lines) in reliance on the expectation that their affected employees would receive timely renewals of employment authorization and documentation. Thus, this rule prevents adverse impacts on businesses and individuals resulting from the uncertainty associated with widescale lapses in employment authorization.[241]

DHS's analysis suggests that, if this rule is not implemented immediately, approximately 63,000 to 82,000 employers may be negatively affected.[242] DHS further estimates that these businesses and organizations employing affected EAD holders would incur approximately $17.4 billion in labor turnover costs (for the upper bound population estimate using a 2-percent discount rate) for the separation and replacement of these employees.[243]

[229] Processing times are based on the 80th percentile of those approved or denied.

[230] *See* section III.A.3., Additional Designations for Temporary Protected Status.

[231] *See* section V.B.2. Table 7. TFR Future Population Projections by Month, Rounded to Thousands.

[232] *See* section V.B.2. Table 7. TFR Future Population Projections by Month, Rounded to Thousands.

[233] *See* section V.B.2. Table 7. TFR Future Population Projections by Month, Rounded to Thousands.

[234] *See* section V.B.2. Table 6A. EADs that could lapse in the absence of the TFR, by Class and Percent Variation. As explained in the preamble, certain applicants within the affected population, including those who are employment authorized incident to status or non-working adults and children, may not necessarily lose their employment authorization after the 180-day automatic extension period is exhausted, but their EADs become invalid so that they can no longer use them for other purposes, such as an identification document or as proof for receiving State or local public benefits to the extent eligible, in addition to not having proof of employment authorization for Form I–9 purposes.

[235] *See* DHS's analysis outlined in the preamble at section V.B., Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review), regarding the affected population.

[236] *See* section V.B.2. Table 6A. EADs that could lapse in the absence of the TFR, by Class and Percent Variation.

[237] Labor earnings includes wages and salaries as well as benefits (*e.g.,* paid leave, supplemental pay, insurance).

[238] *See* section V.B.3.c. Table 13, Monetized Expected Value Impacts for the TFR ($ millions, 2022).

[239] *See* section V.B.2. Table 7, TFR Future Population Projections by Month, Rounded to Thousands, Column ''With TFR,'' showing that the effect of this TFR.

[240] Bureau of Labor Statistics data show that, as of December 2023, there were 0.7 unemployed persons per job opening. U.S. Department of Labor, U.S. Bureau of Labor Statistics, ''Number of unemployed persons per job opening, seasonally adjusted,'' *https://www.bls.gov/charts/job-openings-and-labor-turnover/unemp-per-job-opening.htm* (last visited Feb. 6, 2024).

[241] *See* section V.B. Introduction, Table 5. OMB A–4 Accounting Statement ($ millions, 2022).

[242] *See* section V.B.1. Table 3. Summary of Impacts (2022 dollars, FY 2024–FY 2028).

[243] *See* section V.B.3.c. Table 13. Monetized Expected Value Impacts for the TFR ($ millions,

Thus, this rule would avoid significant costs to employers that employers would otherwise experience through no fault of their own.[244]

With this TFR, DHS seeks to reduce the likelihood that additional businesses and entities may be adversely impacted by terminating employees whose employment authorization or documentation expires due to USCIS processing delays. However, the longer this rule is delayed, the greater these potential costs to employers will be. The resulting costs and disruptions in business continuity that employers will experience are the same harm that 8 CFR 274a.13(d) and this rulemaking seek to prevent. As outlined elsewhere in this preamble, in its 2016 rule proposing the up to 180-day automatic extension of employment authorization, DHS explained that the purpose of the provision is to mitigate the risk of gaps in employment authorization and required documentation and the resulting consequences to eligible renewal applicants and their employers.[245] As a DHS component agency, one of USCIS' primary functions is to administer immigration benefits, including adjudicating requests for and issuing employment authorization and/or EADs.[246] As explained previously, the INA recognizes the Secretary's authority to extend employment authorization to noncitizens in the United States[247] and authorizes the Secretary to take necessary regulatory action to carry out this authority effectively.[248]

In short, an advance opportunity for notice and comment and a 60-day delayed effective date would result in thousands of renewal EAD applicants and their employers experiencing gaps in employment authorization and/or EAD validity. Such a course of action is therefore impracticable as it would impede USCIS functions in effectively administering DHS's employment authorization authority and document issuance functions and would have a significant negative impact on applicants and employers. Under the current circumstances, DHS believes that an immediate, temporary increase in the duration of the automatic extension period is necessary to achieve this purpose.

4. The TFR Is of Limited Duration and Scope

Although courts have noted that the time-limited nature of an agency's action cannot, by itself, justify forgoing notice and comment rulemaking, it is a significant factor in the agency's claim for good cause when addressing an emergency.[249] DHS believes that issuing this measure as a temporary rule, which will be for only a period of 540 days, is a reasonable approach to avoid the harms discussed in this rule and thus supports the claim of good cause. Specifically, the regulatory reach of the amendments to 8 CFR 274a.13(d) is limited to individuals with renewal EAD applications properly filed on or after October 27, 2023, and on or before September 30, 2025.[250] The amendments to DHS regulations made by this TFR will only remain in place for a total of 1,260 days (*i.e.,* 3.5 years). The temporal limitations and narrowly scoped population are suitably tailored to avert imminent and near-term harm to a specific class of applicants and their employers, given the special circumstances.[251]

The remedy is further limited to applicants who are currently in the United States and authorized to work. These applicants are merely seeking renewal of their employment authorization and/or EADs, not initial determination of their eligibility. These individuals, if employed, are already workers in the U.S. labor market as a result of the initial employment authorization, and they have relied on the current regulations under 8 CFR 274a.13(d) to avoid experiencing a gap in employment if they timely and properly file the renewal applications. Yet, having complied with the law, they nonetheless face a gap in employment authorization and/or documentation because of processing delays that directly resulted from the emergent circumstances that befell USCIS. This TFR is limited to renewal EAD applicants—*i.e.,* those who have already been authorized for employment—and the additional automatic extension will have minimal adverse impact, if any, on other U.S. workers.[252] Moreover, in providing significant benefits for renewal applicants and their U.S. employers, this rule indirectly benefits

2022). Turnover costs are calculated as a percent of annual salary. Amount shown as total present value, using a 2-percent discount rate.

[244] *See* section III.C.3. The Current Automatic Extension Period of 180 Days Must be Temporarily Increased to 540 Days.

[245] *See* 80 FR 81899, 81927 (Dec. 31, 2015). Further, in the AC21 NPRM, DHS explained that it believed the 180-day auto extension to be a reasonable and effective amount of time to mitigate that risk. *See* 80 FR 81899, 81927 (Dec. 31, 2015). (''DHS believes that this time period [of up to 180 days] is reasonable and provides more than ample time for USCIS to complete the adjudication process based on USCIS' current 3-month average processing time for Applications for Employment Authorization.'') After receiving and considering public comments, DHS published the final rule. DHS later also welcomed comments on the 2022 TFR, as discussed above. Thus, the concept of the up to 180-day automatic extension has been ventilated for public comment multiple times. This TFR is merely a temporary 18-month deviation from the 180-day timeframe, warranted in this situation for the reasons explained.

[246] As of March 1, 2003, the former INS ceased to exist as an agency within the U.S. Department of Justice, and its functions respecting applications for immigration benefits (such as the adjudication of requests for employment authorization and/or EADs) were transferred to U.S. Citizenship and Immigration Services in the U.S. Department of Homeland Security. *See* HSA of 2002, Public Law 107–296, sections 451 and 471(a) (Nov. 25, 2002); 68 FR 10922 (Mar. 6, 2003). Additionally, under the HSA sec. 101(b)(1)(F), 6 U.S.C. 111(b)(1)(F), USCIS, as a DHS component, should exercise this function in a manner that ensures that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland.

[247] *See* INA sec. 274A(h)(3)(B), 8 U.S.C. 1324a(h)(3)(B).

[248] *See* INA sec. 103(a)(3), 8 U.S.C. 1103(a)(3).

[249] *See Mid-Tex,* 822 F.2d at 1132 (stating that public notice and comment gain in importance the more expansive the regulatory reach of an agency's rule and that courts, therefore, have consistently recognized that a rule's temporally limited scope is among the key considerations in evaluating an agency's ''good cause'' claim.).

[250] *See* 8 CFR 274a.13(d)(6).

[251] Courts have been more inclined to finding good cause for issuance of rules without notice and comment if the effect is limited in scope and duration. *See, e.g., Nat'l Fed'n Emps* v. *Divine,* 671 F.2d 607 (D.C. Cir. 1982) (finding that OPM's emergency action was within the scope of the ''good cause'' exception as the agency's action of postponing the open benefits season was required by events and circumstances beyond its control and necessary because not delaying would have been not only impracticable but also potentially harmful); *Council of Southern Mountains, Inc.,* 653 F.2d at 582 (upholding Mine Safety and Health Administration order delaying implementation of a rule without notice and comment ''for a relatively short time''); *San Diego Navy Broadway Complex Coalition* v. *U.S. Coast Guard,* 2011 WL 1212888, at *6 (S.D. Cal. 2011) (finding good cause for issuance of a TFR because agency limited its effect to several months and also explicitly indicated its intent to initiate notice-and-comment rulemaking).

[252] *See* section V.B.3.d., Module D. Other Impacts. As explained, this rule extends current employment authorization for individuals who are at risk of losing such authorization solely because of USCIS processing delays; it does not grant new work authorization to additional persons. *See id.* According to the most recent data (applicable to October 2023), the U.S. labor force stands at 167,728,000. The maximum population of about 824,000 represents 0.50 percent of the national labor force, approximately 554,000 of which would potentially not lapse as a result of the action being taken. *See id.* Additionally, according to the Bureau of Labor Statistics data, and as of December 2023, there were 0.7 unemployed persons per job opening. *See* U.S. Department of Labor, U.S. Bureau of Labor Statistics, ''Number of unemployed persons per job opening, seasonally adjusted,'' *https://www.bls.gov/charts/job-openings-and-labor-turnover/unemp-per-job-opening.htm* (last visited Feb. 6, 2024). Thus, data indicates that there are currently more jobs than available employees. As such, DHS believes, based on the nature of this rulemaking as well as current economic conditions, that the hypothetical possibility of some U.S. workers replacing workers who would temporarily lose employment authorization in the absence of this rulemaking is not a compelling reason to allow widespread losses of employment authorization due to USCIS processing delay.

U.S. workers by protecting the financial stability and continuity of operations for affected U.S. employers.

This temporary measure is consistent with the intent of the current 8 CFR 274a.13(d). In this rule, DHS neither makes additional categories eligible for the automatic extension nor alters existing procedures for such extension; DHS is simply temporarily increasing the up to 180-day timeframe for those already eligible for an automatic extension. As shown by the 2022 TFR, such an increase in the automatic extension of employment authorization and/or EAD validity is effective, yet narrowly scoped, measure for navigating filing spikes and their effects on application processing times.

DHS also significantly limits this rulemaking to address the potential lapses that are imminent, further demonstrating that DHS has good cause to issue this rulemaking without the notification procedures required under the APA. The data projections show that even with the 540-day automatic extension provided in this TFR, approximately 260,327 EAD renewal applicants (or approximately 33 percent of the applicants who are the subjects of this rule) are potentially at risk of experiencing a gap in employment authorization and/or EAD validity once their 540-day automatic extension period expires.[253] The data further indicates that extending the automatic extension period to up to 730 days would be required to prevent many of these lapses in employment authorization and/or EAD validity, which could begin in November 2025, based on projected processing times.[254] At this time, DHS has limited the automatic extension to the minimum period necessary to avert the immediate emergency while USCIS (1) works to improve processing times and (2) seeks comment on this TFR and potential additional measures to take at a future time.

DHS appreciates that this TFR does not resolve all potential uncertainty with respect to renewal EAD applications, but notes that it has sought comment on potential solutions and that USCIS' ongoing streamlining efforts, sub-regulatory measures, and technology innovations may produce significant results within this filing period. The filing period and concomitant up to 540-day automatic extension established by this TFR is therefore appropriately tailored to avert imminent harm to renewal EAD applicants, their families and employers and provide USCIS with the time needed to assess the effect of any recently implemented adjudicative efficiency measures [255] and implement further improvements.

5. USCIS Has Not Delayed in Issuing This TFR

Finally, in some cases regarding the good cause standard, courts have concluded that an agency's claim of emergency was undermined because the agency delayed in implementing its decision.[256] In such contexts, courts have considered, for instance, whether the agency ''acted diligently'' to address the problem and ''overcome the hurdles created by other parties,'' [257] whether the circumstances requiring agency action ''were beyond the agency's control,'' [258] and whether the agency addressed the emergency with an action of limited scope and duration.[259]

As an initial matter, DHS notes that the harm the agency seeks to avoid is vast and would directly befall many blameless third parties.[260] DHS further urges that the agency has not delayed at all. As noted above, USCIS has been taking active measures to reduce the backlog since the publication of the 2022 TFR,[261] including staffing increases, overtime allowance, policy changes that reduce overall adjudicatory volumes and eliminate unnecessary hurdles for applicants, and technological innovations that have created operational efficiencies. Unfortunately, these measures have not yet been sufficient to return to the goal of normal average processing times of 3 months for renewal EAD applications because of the volume of EAD applications that USCIS received in FY 2023—a circumstance that is beyond USCIS' control. USCIS has looked for other options to further create efficiencies but has yet been unable to create efficiencies that match the increase in receipts. Accordingly, having tried many alternatives and in the face of a dynamic set of challenges,[262] DHS has determined that this temporary regulatory action is the only practicable solution to reduce the likelihood that approximately 824,000 renewal applicants, their families, and their employers will imminently face the dire circumstances and associated costs resulting from a lapse in employment authorizations and/or EAD validity periods. USCIS developed the technical analysis underlying this regulation on an expedited basis, and dedicated scarce agency resources to the swift issuance of this rule while addressing other pressing policy matters, such as the Fee Rule.

In sum, DHS has concluded that the good cause exceptions in 5 U.S.C. 553(b)(B) and (d)(3) apply to this TFR. Delaying implementation of this rule until the conclusion of notice-and-comment procedures of section 553(b) and the delayed effective date provided by 5 U.S.C. 553(d) would be impracticable due to the need to prevent significant harm to renewal EAD applicants, their families, employers, and communities.

B. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

Executive Orders 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review), and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic,

[253] *See* section V.B.2. Table 6B. EADs that could lapse under the TFR, by Class and Percent Variation.

[254] *See* section V.B.3.d. Table 14, Approximate EAD lapses under different extensions.

[255] *See* section III.B. Other Measures Taken to Reduce EAD Application Processing Times.

[256] Many of the leading cases involve circumstances where the agency cited a need to meet an imminent statutory or administrative deadline. *See Envtl. Def. Fund, Inc.* v. *EPA,* 716 F.2d 915 (D.C. Cir. 1983) (rejecting a claim of good cause to suspend certain reporting requirements before they entered into effect, because the agency had almost a year earlier deferred such requirements and announced that it intended to rescind them); *Council of Southern Mountains, Inc.,* 653 F.2d at 580–82 (stating that ''only in exceptional circumstances'' may ''the imminence of [a legal or administrative] deadline'' for taking a particular action ''permit[ ] avoidance of APA procedures,'' because otherwise the agency could delay in acting and then claim an emergency); *NRDC* v. *Abraham,* 355 F.3d 179, 205 (2d Cir. 2004) (rejecting the agency's claim of an emergent need to review and reconsider certain standards prior to an impending and self-imposed administrative deadline); *Nat'l Venture Capital Ass'n,* 291 F. Supp. 3d at 16–17 (collecting cases).

[257] *See, e.g., Council of Southern Mountains, Inc.,* 653 F.2d at 581.

[258] *See, e.g., Council of Southern Mountains, Inc.,* 653 F.2d at 581; *Nat'l Fed'n of Fed. Empl.* v. *Devine,* 671 F.2d 607, 611 (D.C. Cir. 1982).

[259] *See, e.g., Council of Southern Mountains, Inc.,* 653 F.2d at 581; *Devine,* 671 F.2d at 612.

[260] *See, e.g., Nat'l Venture Capital Ass'n,* 291 F. Supp. 3d at 16–17.

[261] *Cf., e.g., Tri-County. Tel. Ass'n, Inc.* v. *FCC,* 999 F.3d 714, 720 (D.C. Cir. 2021) (''But this is not a case of unjustified agency delay. The Commission did act earlier. . . . [and t]he agency needed to act again . . . because ''persistent power outages and other logistical challenges ha[d] made the continued operation of restored networks more expensive than some expected.'').

[262] *See* also section III.A.1, Comparing Fiscal Year (FY) 2023 Receipts to FY 2022 Receipts, describing the significant increase in the numbers of filings in the second half of FY 2023.

environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget (OMB) has designated this rule a ''significant regulatory action'' as defined under section 3(f)(1) of E.O. 12866, as amended by Executive Order 14094. Accordingly, OMB has reviewed this rule.

1. Introduction

This TFR temporarily amends existing DHS regulations to provide that the automatic extension period applicable to expiring employment authorization and/or Employment Authorization Documents (Forms I–766 or ''EADs'') for certain renewal applicants who have timely filed their EAD renewal applications, will be increased from up to 180 days to up to 540 days for qualified applicants who filed or file an EAD renewal application between October 27, 2023 and September 30, 2025.

As is detailed earlier in the preamble, processing times for renewal EAD applications remain at such a level that the current 180-day automatic extension period for certain renewal EAD applicants' employment authorization and/or EADs is currently insufficient. Despite USCIS working on reducing the backlog of renewal EAD applications, recent events have made it difficult to keep up with the adjudicatory workload.[263] While USCIS is implementing solutions to return processing times to target levels, USCIS is taking additional steps to mitigate the risk that renewal EAD applicants will experience a lapse in employment authorization and/or documentation and related consequences while their renewal EAD applications remain pending.[264]

In the absence of this rule, we estimate that between approximately 689,000 and 824,000 renewal EAD applicants will experience a lapse in employment authorization and/or employment authorization documentation between May 2024 and March 2026. As of the current data analysis (November 1, 2023) even with the extension up to 540 days about 260,000 renewal EAD applicants may still experience a lapse,[265] beginning in November 2025, under baseline conditions, *i.e.,* assuming status quo conditions.[266] The purpose of this TFR is to reduce the likelihood that large numbers of eligible applicants who qualify for automatic extensions of their expiring EADs will experience gaps in employment authorization and/or EAD validity.[267] This TFR will therefore provide for greater earnings stability for individuals and continuity of business operations for their employers.

DHS has determined that the population impacted by this TFR consists of the pool of future applicants who, without this rule, would likely experience a lapse in employment during the 23-month period as described above. Because USCIS cannot forecast the future population with precision, we present a baseline population that could range from 689,000 to 824,000. After applying an adjustment for current unemployment conditions in the economy (described in detail in the ensuing analysis section), we arrive at an adjusted population that could range from 663,000 to 793,000.

DHS has prepared two types of quantified estimates of the impacts that could be generated by this TFR applicable to the adjusted population. This rule will prevent the majority of EAD holders from incurring a loss of earnings (''stabilized earnings'') because of USCIS processing delays for renewal EAD applications, as under this rule there will be no disruption to their earnings due to a lapsed EAD. This rule will also generate labor turnover cost-savings to businesses that employ the EAD holders, as under this rule there would not be a disruption to the majority of EAD holders' employment authorization and/or document validity. Additionally, to the extent this rule prevents affected EAD holders' jobs from going unfilled, there will be less impacts to tax transfers from businesses and employees to the Federal Government.[268]

Due to substantial variation in the inputs utilized to estimate the impacts, there is a very wide range in which they could fluctuate. These impacts are summarized in Table 3, where the monetized figures represent the forecast expected value (which is the mean of trial-based simulations) discounted at 2 percent.

TABLE 3—SUMMARY OF IMPACTS
[2022 Dollars, FY 2024–FY 2028]

EAD Holder Earnings Preserved (''Stabilized Earnings''):

- *Entities directly affected:* Individual EAD holders.
- *Population:* maximum 663,000 to 793,000 individuals with renewal EADs.
- *Monetized present value estimate (2 percent):* $29.1 billion.
- *Type:* Stabilized labor income to affected renewal EAD applications; this labor income is a proxy for either prevented transfers from EAD holders to others in the workforce or cost savings to employers for preserved productivity, depending on if employers would have been able to easily find replacement labor for affected EAD holders without this rule.
- *Summary:* Individuals would benefit from being able to maintain their employment authorization and, by extension, their employment, without disruption; DHS estimated these savings based on data from recently lapsed EADs and labor earnings, both of which vary within a range.

[263] Events such as increased designations of countries for temporary protected status, increased number of Afghan and Ukrainian national parolees, increased asylum filings due to the end of the Title 42 public health Order, and a court decision to require USCIS to process all initial EAD applications from asylum applicants with 30 days. Please see ''Additional Designations for Temporary Protected Status,'' ''Increased EAD Validity Periods for Certain Applicants,'' ''Impact of the Significant Increase in Referrals to USCIS for Credible Fear Assessments,'' and ''Effect of Operational Challenges on EAD Application Adjudications'' in the preamble for more information.

[264] Such measures include increasing the validity periods for certain types of applicants, permitting certain asylum applicants to electronically file EAD applications, lifting the USCIS hiring freeze and increasing the number of employees, prioritizing workload management, and addressing fiscal issues in the Fee Rule. Please see ''Other Measures Taken to Reduce EAD Application Processing Times'' in the preamble for more information.

[265] Extensions beyond 540 days would likely reduce the number of EADs that would still lapse, however this TFR opts for a 540-day extension, as discussed in the preamble and later in ''Module D. Other Impacts.''

[266] The estimate of 260,000 renewal EAD applicants that may still experience a lapse is based on assumptions that renewal applicants will maintain the same filing behavior, operational efficiency and productivity will not change, and staffing levels and adjudication hours for EAD renewals will remain unchanged.

[267] As stated earlier in the preamble, DHS is applying this rule to all renewal EAD application categories eligible for automatic extension pursuant to 8 CFR 274a.13(d), even though some of these categories currently experience processing times that do not raise a risk of the applicant experiencing a lapse in employment authorization or documentation. Ninety-five percent of applications fall within the C08, C09, and C10 categories. DHS has made this decision because it has determined that it would not be operationally practical for USCIS to implement a different approach; making distinctions among categories would cause confusion among employers and employees; and backlogs and processing times may yet increase for these other categories.

[268] This rule will also prevent a reduction in State and local tax revenue but that is not quantified in this analysis. Please see Table 5 for more information.

TABLE 3—SUMMARY OF IMPACTS—Continued
[2022 Dollars, FY 2024–FY 2028]

- *Potential preserved employment taxes*: $3.1 billion (Present Value, 2-percent discount rate); actual amount will depend on how easily businesses would have been able to find replacement labor for affected EAD holders without this rule.

Employer Labor Turnover Cost Savings:

- *Entities directly affected:* businesses that employ the EAD holders.
- *Population:* Possibly 63,000 to 82,000 employers.
- *Monetized present value estimate (2 percent):* $5.2 billion.
- *Type:* Cost-savings.
- *Summary:* There would be cost savings to employers in terms of continuity of business operations due to the worker not being separated; DHS estimated these savings based on information applicable to turnover costs relevant to employee annual earnings, both of which vary within a range.

Other Impacts Considered:

- Individuals impacted would likely benefit from cost-savings accruing to not having to incur the direct costs and some related costs associated with searching for and obtaining a new job once their renewal EAD that lapsed is eventually approved.
- To the extent that individuals' earnings will be maintained, burdens to their support network would be prevented.
- DHS does not expect adverse disruptions to the labor market from this TFR, as the rule is intended to avoid disruptions to employment.
- DHS did not include estimates for stabilized earnings for any duration of continued unemployment that EAD holders might have experienced beyond their EAD lapse duration without this rule. Inclusion of such additional time would increase the estimates of saved earnings from the rule.
- Avoid opportunity costs to businesses for having to choose the next best alternative to employment of the affected renewal EAD applicant. We do not know if the replacement hire in a next best alternative scenario would have been a comparable substitute (*i.e.,* a productivity or profit charge to employers).
- Prevent adverse impacts on businesses and individuals resulting from the uncertainty associated with widescale lapses in employment authorization.

Some of the impacts of this rule will depend on whether businesses would have been able to find replacement labor for the positions the affected renewal EAD applicants would have lost if they had experienced a gap in employment authorization and/or employment authorization documentation without this rule. If businesses would have been able to find replacement labor from the pool of the unemployed, the only monetized cost savings of the rule to society is for preventing costs resulting from labor turnover. If businesses would not have been able to find replacement labor, the monetized cost savings of the rule would also include prevented lost productivity due to a lack of available labor. However, the impacts of this rule to the affected renewal EAD applicants do not depend on whether their employer can find replacement labor. This rule will prevent affected renewal EAD applicants from incurring a loss of earnings.

DHS estimates that stabilized earnings to renewal EAD applicants ranges from $2.0 billion to $12.7 billion with a primary estimate of $6.2 billion (annualized, 2 percent), depending on the wages and other compensation the renewal EAD applicants earn, the number of renewal EAD applicants affected, and the duration of the gap in employment authorization and/or employment authorization documentation that would occur without this rule.[269] DHS uses estimates of the stabilized earnings as a measure of either: (1) prevented transfers of this compensation from the affected population to others in the labor market; or (2) a proxy for businesses' cost savings from prevented lost productivity, depending on whether businesses would have been able to find replacement labor for affected renewal EAD applicants without this rule.

DHS does not know what the next best labor alternative would have been for businesses without this rule. Accordingly, DHS does not know the portion of the overall effects of this rule that are transfers or costs savings. To begin, DHS describes the two extreme scenarios, which provide the bounds for the range of effects.

Scenario 1: If, in the absence of this rule, all businesses would have been able to immediately find reasonable labor substitutes for the positions the renewal EAD applicants would have lost, businesses would have lost little or no productivity. Accordingly, this rule prevents $6.2 billion (primary estimate annualized, 2 percent) from being transferred from affected renewal EAD applicants to workers currently in the labor force (whom are not presently employed full time) or induced back into the labor force and this rule would result in $0 cost savings to businesses for prevented productivity losses.

Scenario 2: Conversely, if all businesses would have been unable to within the period of analysis find reasonable labor substitutes for the position the EAD holder filled, then businesses would have lost productivity. Accordingly, $6.2 billion is the estimated monetized cost savings from this rule for prevented productivity losses and this rule will result in preventing $0 from being transferred from affected renewal EAD applicants to replacement labor. Because under this scenario businesses would not have been able to find replacement labor, the rule may also result in additional cost savings to employers for prevented profit losses; and further, may also prevent a reduction in tax transfer payments from businesses and employees to the government. DHS has not estimated all potential tax effects but notes that stabilized earnings of $6.2 billion would have resulted in employment tax losses to the Federal Government (*i.e.,* Medicare and Social Security) of $0.7 billion (annualized, 2 percent).

In both scenarios, whether without this rule employers would have been able to find replacement labor or not, DHS assumes that businesses would have incurred labor turnover costs for having to search for a replacement for affected renewal EAD applicants. Accordingly, DHS estimates the rule will also result in additional labor turnover cost savings to businesses ranging from $0.09 billion to $3.7 billion, with a primary estimate of $1.1 billion (annualized, 2 percent) depending on the wages and other compensation the renewal EAD applicants earn, the number of renewal EAD applicants affected, and the replacement cost to employers.

Table 4 below summarizes these two scenarios and the primary estimate of this rule at a 2-percent discount rate. Because DHS does not know the overall proportion of businesses that would have been able to easily find replacement labor in the absence of this rule, for DHS's primary estimate we assume that replacement labor would have been immediately found for half of all renewal EAD applicants and not found for the other half (*i.e.,* an average of the two extreme scenarios described above). However, as noted previously, December 2023 unemployment and job openings data indicate there are more jobs available than people looking for

[269] Lapse-duration accounted for approximately 47.5 percent of this range, wages accounted for 47.0 percent, and the lapse rate 4.9 percent. For more information, please see section V.B.3.b.i. ''Earnings impact to EAD holders.''

jobs.[270] Accordingly, we believe the impacts of this rule will most likely skew towards Scenario 2, with the rule resulting in mostly cost savings for employers who would have been unable to fill the jobs of affected renewal EAD applicants without this rule.

TABLE 4—PRIMARY ESTIMATE—MONETIZED ANNUALIZED IMPACTS AT 2%

[Millions]

Category	Description	Scenario 1: immediate replacement labor found for all affected EAD	Scenario 2: no replacement labor found for affected EAD over the period of analysis	Primary estimate: replacement labor found for half of affected EAD holders
Transfers				
Stabilized Earnings	Prevented compensation transfers from renewal EAD applicants to other workers.	$6,176.5	$0	$3,088.3
Employment Taxes	Prevented reduction in employment taxes paid to the Federal Government.	0	651.7	325.9
Cost Savings				
Labor Turnover	Prevented labor turnover costs to businesses	1,098.3	1,098.3	1,098.3
Productivity	Prevented lost productivity to businesses (stabilized earnings used as a proxy).	0	6,176.5	3,088.3
Total Cost Savings		1,098.3	7,274.8	4,186.6

There are two important caveats to the monetized estimates. First, as the pending caseload evolves over the course of time that this TFR applies to, the pending count and therefore the total number of renewal EAD applications and individuals associated with them will change.[271] A resultant effect of the caseload changes is that as USCIS works through this backlog, the number of affected renewal EAD applicants and the durations for which renewal EAD applicants may experience a lapse in employment without this rule will likely vary from the durations modeled. As a result, DHS acknowledges the uncertainty in the above monetized impacts.

Second, DHS recognizes that non-work time performed in the absence of employment authorization has a positive value, which is not accounted for in the above monetized estimates.[272] For example, if someone performs childcare, housework, home improvement, or other productive or non-work activities that do not require employment authorization, that time still has value. In assessing the burden of regulations to unemployed populations, DHS routinely assumes the time of unemployed individuals has some value.[273] The monetized estimates of the compensation this rule preserves are measured relative to a baseline in which individuals lose employment authorization and the associated income as a result of the problem this rule seeks to address. The monetary value of the compensation this rule preserves are savings to the individual, but DHS has considered whether net societal savings may be lower than the sum of the preserved compensation to the individuals and whether a more accurate estimate of the net impact to society from losing employment authorization in the absence of this rule might take into account the value of individuals' non-work time, even though this population has lost their authorization to sell their time as labor. Due to the variety of values placed on non-work time, and the additional fact that this non-work time is involuntary, it is difficult to estimate the appropriate adjustment that DHS should make to preserved compensation in order to account for the social value of non-work time. Accordingly, DHS recognizes that the net societal savings of this rule may be somewhat lower than those reported below, but they are a reasonable estimate of the impacts to avoiding the costs of lapsed employment authorization.

Pursuant to OMB Circular A–4, DHS has prepared an A–4 Accounting Statement for this rule.[274]

[270] Bureau of Labor Statistics data show that, as of December 2023, there were 0.7 unemployed persons per job opening. *See* U.S. Department of Labor, U.S. Bureau of Labor Statistics, ''Number of unemployed persons per job opening, seasonally adjusted,'' *https://www.bls.gov/charts/job-openings-and-labor-turnover/unemp-per-job-opening.htm* (last visited Feb. 6, 2024).

[271] Caseload changes can be the result of workforce hiring and/or officer re-assignments to other non-EAD renewal application workloads, as well as policy changes such as increasing certain EAD validity periods and improving processing efficiency through increased use of technological advancements.

[272] Boardman et al., *Cost-Benefit Analysis Concepts and Practice* (2018), p. 152.

[273] For regulatory analysis purposes, DHS generally assumes the value of time for unemployed individuals is at least the value of the Federal minimum wage.

[274] OMB Circular A–4 (November 9, 2023) is available at *https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf* (last viewed on March 12, 2024).

TABLE 5—OMB A–4 ACCOUNTING STATEMENT
[$ Millions, 2022]
[Period of analysis: FY 2024–FY 2028]

Category	Primary estimate		Minimum estimate	Maximum estimate	Source citation (RIA, preamble, etc.)
Benefits:					
Monetized Benefits	2%	N/A	N/A	N/A	RIA.
Annualized quantified, but un-monetized, benefits	N/A		N/A	N/A	RIA.
Unquantified Benefits	• Avoiding a lapse in employment authorization and/or EAD validity for renewal EAD applicants may also prevent any monetary or other support that would have been necessary for the support network of affected EAD holders to transfer to affected EAD holders during such a period of unemployment. • The rule would prevent affected individuals from incurring direct and indirect costs associated with looking for work.				RIA.
Costs:					
Annualized monetized costs	2%	−$4,186.6	−$87.9	−$16,449.3	RIA.
Annualized quantified, but un-monetized, costs	N/A		N/A	N/A	RIA.
Qualitative (unquantified) costs	• It will better ensure other cost savings of holding an EAD or job will not be disrupted or subject to significant uncertainty because of USCIS processing delays, such as valid identity documents, or health insurance obtained through an employer. • Additionally, this rule will prevent adverse impacts on businesses that would result from required terminations for affected renewal EAD applicants, or the uncertainty associated with widescale lapses in employment authorization. • In cases where, in the absence of this rule, companies cannot find reasonable substitutes for the labor the affected renewal EAD applicants have provided, affected businesses would also save profits from the productivity that would have been lost. In all cases, companies would avoid opportunity costs from having to choose the next best alternative to employment of the affected renewal EAD applicant.				RIA.
Transfers:					
Annualized monetized transfers: "on budget"	2%	0	0	0	RIA.
From whom to whom?	N/A				N/A.
Annualized monetized transfers: stabilized earnings	2%	3,088.3	0	12,749.4	RIA.
From whom to whom?	This rule will prevent compensation from transferring from affected renewal EAD applicants to other workers.				RIA.
Annualized monetized transfers: taxes	2%	325.9	0	1,345.3	RIA.
From whom to whom?	This rule will prevent a reduction in employment taxes from companies and employees to the Federal Government (quantified). It would also prevent a reduction in income taxes from employees to Federal, State, and local governments (unquantified).				RIA.

Category	Effects	Source citation (RIA, preamble, etc.)
Effects on State, local, and/or tribal governments	This rule will prevent a reduction in State and local tax revenue (unquantified). It will also prevent potential reliance on State or local government-funded support services that may have been necessary with a gap in employment authorization (unquantified).	RIA.
Effects on small businesses	This rule does not directly regulate small entities but has indirect cost-saving to small entities that may employ affected renewal EAD applicants. Such businesses will avoid the costs for labor turnover and loss of productivity and profits had they not been able to immediately fill the labor performed by the affected renewal EAD applicant.	RIA, RFA.
Effects on wages	Preserve access to wages and other compensation for renewal EAD applicants.	RIA.
Effects on growth	None.	RIA.

2. Background and Population

As is detailed in the preamble and elsewhere in this rule, processing times for renewal EAD applications continue to increase to such a level that the current 180-day automatic extension period for certain renewal EAD applicants' employment authorization and/or EADs is currently insufficient. DHS has carefully analyzed the current backlog of cases and has been able to make projections regarding the

population. At the likely time the TFR would become effective, DHS has identified approximately 1 million EADs that would be slated to expire during FY 2024 through FY 2027. We culled this ''broad'' population for cases accruing to very early filers and certain classes that might be adjudicated to arrive at a ''baseline'' population of about 793,000 that would likely face a lapse. Our analysis considers projected filing volumes, filing time behavior, case processing times, and officer completion metrics. However, there is likely to be some variation in the officer completion metrics that source this figure, and we have allowed this input to vary 10- and 15-percent from the baseline to account for uncertainty such as in USCIS workforce hiring of adjudication officers and officer re-assignments to other non-EAD renewal application workloads.[275] The results are captured in Table 6, which shows by EAD category. As is shown, the population could range from about 689,000 to 824,000, and at the baseline, about 260,000 could still lapse (beginning in November 2025 after exceeding the up to 540-day automatic extension) under the action being taken.[276]

TABLE 6A—EADS THAT COULD LAPSE IN THE ABSENCE OF THE TFR, BY CLASS AND PERCENT VARIATION

Variation	A03	A05	A10	C08	C09	C10	Total
+15%	315	16,706	6,152	494,631	149,619	22,001	689,423
+10%	426	17,525	7,591	529,156	152,125	24,568	731,391
Baseline	628	18,701	10,622	581,372	155,699	26,030	793,053
−10%	912	19,584	12,082	602,442	158,365	26,171	819,556
−15%	1,033	20,050	12,510	604,356	159,575	26,181	823,706

Table 6B—EADs That Could Lapse Under the TFR, by Class and Percent Variation

Variation	A03	A05	A10	C08	C09	C10	Total
+15%	0	2,040	0	90	65,061	33	67,223
+10%	0	4,111	0	52,030	77,651	33	133,825
Baseline	0	7,703	0	155,730	96,861	33	260,327
−10%	0	10,960	0	262,245	110,540	74	383,818
−15%	86	12,100	989	314,911	117,581	74	445,741

Source: USCIS analysis of renewal EAD filing data, provided by Office of Performance and Quality (OPQ), USCIS, DHS, Claims 3 database; data provided October 18, 2023.

Note: Numbers may not total due to rounding.

In developing the populations examined for this analysis, it is useful to consider three categories. First, there are applicants whose automatically extended EADs under the relevant categories benefited from the FY 2022 TFR (*i.e.,* they filed on or before October 26, 2023). Second, there are applicants who filed after October 26, 2023 and whose EADs are still valid, including being within the 180-day auto-extension period, but whose auto-extension period will expire in the timespan leading up to this TFR taking effect (the ''current'' period captures the date of the analysis, which is November 2023, through April 2024). Third are the applicants whose EADs would lapse after this TFR becomes effective if it were not for the TFR. These population components will be considered ''past,'' ''current,'' and ''future,'' respectively.

In this specific case, we think it is most appropriate to attribute the impacts to the ''future'' population when the TFR is in effect. The ''past'' pool of applicants benefited from the previous TFR and would not be affected by this rule. The ''current'' pools of applicants, whose EADs may lapse before this rule takes effect, also would not gain any benefit from this rule. However, this population is expected to be relatively very small in size (if not zero) compared to the size of the pool of ''future'' applicants.

In the absence of this rule, we estimate that between 689,000 and 824,000 renewal EAD applicants will likely experience a lapse in employment authorization and/or employment authorization documentation. This ''future'' population would begin to lapse in May 2024 if not for this TFR, as applicants would have reverted back to an auto-extension period of up to 180 days beginning in October 2023. These lapses would occur through March 2026, a point in time when it is estimated that USCIS would have caught up on adjudicating these renewal filings. This TFR will reduce the likelihood that renewal EAD applicants will experience gaps in employment authorization and/or EAD validity with an auto-extension period of approximately 18 months. Because this rule auto-extends employment authorization for an additional 18 months and does not on its own reduce incoming volumes, it is estimated that even under this rule some renewal EAD applicants may still experience lapses. However, they would not begin to experience lapses until 18 months after the effective date of this TFR (approximately November 2025), under the baseline scenario and would occur through March 2027 under this TFR. Table 7 provides a granular tabulation of the populations without the TFR and with the TFR and figure 2 provides a monthly expirations of baseline values from Table 7.

[275] All other variables remain constant.

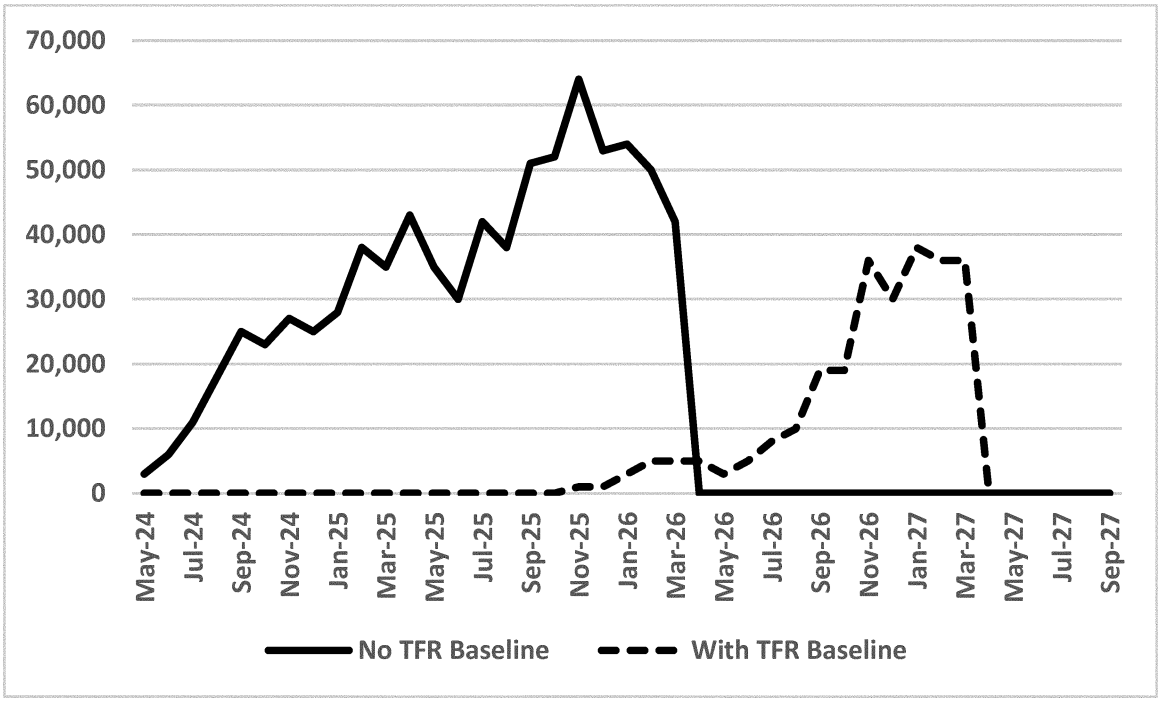
[276] Certain categories have been excluded from this analysis. The A17 (E spouses), A18 (L spouses) and C26 (H spouses) potential auto-extensions are limited to the duration of their unexpired I–94 or the auto extension period, whichever is shorter. However, I–94 data is controlled by CBP Arrival and Departure Information System (ADIS) and is currently not available in a batch/systematic manner for USCIS to use to calculate this auto-extension end date and estimate these populations. Moreover, a large cohort of E, L, and H spouses concurrently file renewal EAD applications with an underlying Form I–129 and Form I–539, and therefore the auto-extension end date is limited by the current I–94 validity date. But, in these circumstances, the E, L, and H spouses do not have an unexpired I–94 that extends beyond the current expiration date of the existing EAD. While a minority of renewal EAD applications filed for these spouses are not filed concurrently with the Form I–539, and their associated EADs face expiration, USCIS projects that H spouses (the largest population in the cohort) would mostly be processed on time to avoid any lapses in EAD validity. Furthermore, with the new ''incident to status'' employment authorization for E and L spouses, the relatively low number of A17 and A18 renewals noticeably decreased during the first six months of FY 2024. The A12 and C19 categories (TPS categories) often have a separate auto-extension related to each country-specific **Federal Register** Notice (FRN). Additionally, each TPS designation, redesignation, or extension only remains in place for up to 18 months at a time. A07, A08, C16, C20, C22, C24, and C31 all have relatively low renewal filing rates. As such, these categories are excluded from this analysis.

TABLE 7—TFR FUTURE POPULATION PROJECTIONS BY MONTH, ROUNDED TO THOUSANDS

	No TFR			With TFR		
	Low bound: EADs facing lapse each month (baseline +15%)	Baseline: EADs facing lapse each month	Upper bound: EADs facing lapse each month (baseline −15%)	Low bound: EADs facing lapse each month (baseline +15%)	Baseline: EADs facing lapse each month	Upper bound: EADs facing lapse each month (baseline −15%)
May–24	3,000	3,000	3,000	0	0	0
Jun–24	5,000	6,000	6,000	0	0	0
Jul–24	10,000	11,000	12,000	0	0	0
Aug–24	16,000	18,000	18,000	0	0	0
Sept–24	22,000	25,000	26,000	0	0	0
Oct–24	16,000	23,000	27,000	0	0	0
Nov–24	19,000	27,000	31,000	0	0	0
Dec–24	17,000	25,000	29,000	0	0	0
Jan–25	21,000	28,000	32,000	0	0	0
Feb–25	27,000	38,000	42,000	0	0	0
Mar–25	27,000	35,000	36,000	0	0	0
Apr–25	32,000	43,000	45,000	0	0	0
May–25	26,000	35,000	36,000	0	0	0
Jun–25	23,000	30,000	32,000	0	0	0
Jul–25	36,000	42,000	43,000	0	0	0
Aug–25	33,000	38,000	39,000	0	0	0
Sept–25	49,000	51,000	52,000	0	0	1,000
Oct–25	50,000	52,000	52,000	0	0	2,000
Nov–25	61,000	64,000	64,000	0	1,000	2,000
Dec–25	52,000	53,000	53,000	0	1,000	4,000
Jan–26	53,000	54,000	54,000	0	3,000	7,000
Feb–26	50,000	50,000	50,000	1,000	5,000	7,000
Mar–26	41,000	42,000	42,000	1,000	5,000	12,000
Apr–26	0	0	0	2,000	5,000	12,000
May–26	0	0	0	1,000	3,000	13,000
Jun–26	0	0	0	3,000	5,000	13,000
Jul–26	0	0	0	4,000	8,000	25,000
Aug–26	0	0	0	3,000	10,000	22,000
Sept–26	0	0	0	4,000	19,000	36,000
Oct–26	0	0	0	5,000	19,000	44,000
Nov–26	0	0	0	9,000	36,000	54,000
Dec–26	0	0	0	8,000	30,000	51,000
Jan–27	0	0	0	8,000	38,000	51,000
Feb–27	0	0	0	10,000	36,000	49,000
Mar–27	0	0	0	8,000	36,000	41,000
Apr–27	0	0	0	0	0	0
May–27	0	0	0	0	0	0
Jun–27	0	0	0	0	0	0
Jul–27	0	0	0	0	0	0
Aug–27	0	0	0	0	0	0
Sept–27	0	0	0	0	0	0
Total	689,000	793,000	824,000	67,000	260,000	446,000

Source: USCIS analysis of renewal EAD filing data, provided by Office of Performance and Quality (OPQ), USCIS, DHS, Claims 3 database; data provided October 18, 2023.

Figure 2. Monthly Expirations of Baseline Values from Table 7



An assumption that is implicit in the populations developed above is that every individual with a lapsed EAD would be unauthorized to work. In reality, some of the individuals may be authorized to work—or become authorized to work—incident to status and merely relying upon the EAD to evidence that employment authorization. Others may be relying upon the EAD as a government-issued identity document and not using it to obtain employment. In either instance, USCIS does not know, and is unable to reasonably estimate, how many individuals or what percentages of the populations may be separately employment authorized or otherwise not relying on the EAD to document their employment authorization. It is possible, therefore, that the lower bound estimate of population is overstated.

USCIS stresses that the population over time can vary via changes in volumes, processing times, and other factors that are very difficult to predict. As such, DHS acknowledges the uncertainties in these estimates, but they represent the potential population for the impact estimates using the best available information at the time of this analysis. To the extent that the population can vary, the impacts estimated in the following analysis would vary as well.

3. Impact Analysis

This section is organized into modules as follows: Module A develops earnings levels for the renewal EAD filers, which is a key component of the impacts we estimate. Module B focuses on the impact simulations for the impacted population's labor earnings impacts and is divided into two sections: (1) labor earnings, and (2) labor turnover cost. Module C collates the monetized impacts and discounts them over the course of the five fiscal years in which the impacts could accrue. Module D concludes with consideration of other possible effects.

a. Module A. Earnings of Renewal EAD Applicants

USCIS expects two broad types of impacts from this TFR that are estimated and quantified. First, there will be impacts to eligible individual EAD holders in terms of their ability to maintain labor earnings. Second, impacts will accrue to businesses that employ the EAD holders in maintaining continuity of employment and thus avoiding labor turnover costs. A core component of both impacts is the earnings of the renewal EAD filers, which figure prominently into the monetized estimates. Since there is likely to be variation in earnings applicable to the population, in this module we cover the methodology to develop a range for earnings bounded by a lower and upper level.

Because many of the individuals renewing EADs would be relatively new entrants to the labor force, we would not expect most of them to earn very high-tier wages. The Federal minimum wage is currently $7.25 per hour,[277] but many States have implemented higher minimum wage rates.[278] However, the Federal Government does not track a nationwide population-weighted minimum wage estimate. Individuals in the population of interest could be located anywhere within the United States and may be subject to a range of minimum wage rates depending on the State or city in which they live.

Consistent with other rules, DHS uses the 10th percentile hourly wage from the Bureau of Labor Statistics (BLS) National Occupational Employment and Wage Estimates for all occupations as a reasonable proxy for the effective minimum wage for individuals who are likely to earn an entry-level wage. BLS estimates account for changes in wages across the United States labor market, which is updated annually and will thus reflect any changes to State minimum wage rates. The 10th percentile hourly wage estimate for all occupations is currently $13.14, not accounting for worker benefits.[279]

It is likely however, that some individuals impacted earn wages above the minimum. Because the EADs

[277] *See* DOL, ''Minimum Wage,'' *https://www.dol.gov/general/topic/wages/minimumwage* (last accessed Nov. 7, 2023).

[278] *See* DOL, ''State Minimum Wage Laws,'' *https://www.dol.gov/agencies/whd/minimum-wage/state* (last accessed Nov. 7, 2023).

[279] *See* BLS, ''May 2022 National Occupational Employment and Wage Estimates,'' ''United States,'' *https://www.bls.gov/oes/2022/may/oes_nat.htm#00-0000* (last visited Nov. 7, 2023). The 10th, 25th, 75th and 90th percentile wages are available in the downloadable XLS file link.

impacted do not include or require, at the initial or renewal stage, any data regarding wages, DHS has no information from the associated forms concerning earnings, occupations, industries, positions, or businesses that may employ such workers. DHS can add some robustness to the estimates by incorporating actual data concerning the employment of the EAD holders to draw inference on their earnings.

DHS obtained E-Verify case data for FY 2021 and FY 2022 for the EAD categories potentially impacted, which yielded 12.26 million records.[280] These data neither distinguish between an E-Verify case for an initial EAD, a renewal EAD, or the E-Verify case result, but they do provide information that we can draw from regarding employment. The E-Verify data do not provide information on job type or occupation, but it does provide information about the primary business activity of the EAD holder's employer as categorized by the North American Classification System (NAICS).

Analysis of the E-Verify case data shows that they disproportionately accrued to a small subset of activity. Of 103 represented economic activities, only three exhibited shares of cases higher than 10 percent—Professional, Scientific, & Technical Services (24.5 percent), Other Information Services (19.1 percent), and Administrative and Support Services (11.9 percent). Moreover, the upper quartile (75th percentile) is reached with just eleven activities. The average individual share across these eleven activities was 6.8 percent, while for the entire remainder the individual average was 0.3 percent. Given this concentration, we will center the analysis on the activities comprising the upper quartile.

In Table 8 we present the activities, followed by the level of activity applicable to the respective the North American Industry Classification System (NAICS) code from the BLS. We rescaled the shares of the activities according to the total number of records for the upper quartile (9.01 million) and obtained the July 2022 average hourly wage for the activities of all employees within the relevant NAICS codes from BLS.[281] We then calculated a weighting factor input, which is the product of the wage and the rescaled share.

TABLE 8—DERIVATION OF UPPER BOUND FOR HOURLY WAGE [282]

Economic activity	NAICS code	Level	Share (%)	Cumulative	Wage [283]	Weight factor
Professional, Scientific, & Technical Services	541000	subsector	33.3	33.3	48.34	16.10
Other Information Services	519100	industry	26.0	59.4	45.27	11.79
Administrative & Support Services	561000	subsector	16.2	75.6	25.78	4.18
Internet Service providers, Web Search Portals, & Data Processing.	518200	industry	7.4	83.0	51.33	3.80
Educational Services	611000	subsector	3.1	86.1	33.31	1.03
Food Services & Drinking Places	722000	subsector	2.8	88.8	18.54	0.51
Nursing & residential Care Facilities	623000	subsector	2.5	91.4	23.31	0.59
Publishing Industries (non-internet)	511000	subsector	2.3	93.7	50.10	1.17
Specialty Trade Contractors	238000	subsector	2.3	96.0	33.83	0.78
Hospitals	622000	subsector	2.1	98.1	38.00	0.80
Management of Companies/Enterprises	550000	sector	1.9	100.0	44.48	0.84
Sum (rounded)						41.60

Summing along the final column yields an hourly wage of $41.60, which will apply as the upper earnings bound for this analysis, noting that it is 39.6 percent higher than the national average wage weighted across all occupations, of $29.76.[284]

DHS accounts for worker benefits when estimating the opportunity cost of time by calculating a benefits-to-wage multiplier using the most recent BLS report detailing average total employee compensation for all civilian U.S. workers.[285] DHS estimates the benefits-to-wage multiplier to be 1.45, which incorporates employee wages and salaries and the full cost of benefits, such as paid leave, insurance, and retirement.[286] Therefore, using the benefits-to-wage multiplier, DHS calculates the total rate of compensation for individuals at the high end of the range as $60.32. DHS calculates the total

[280] USCIS, DHS, Immigration Records and Identity Services Directorate (IRIS), Verification Division; (Oct. 12, 2023).

[281] BLS, ''Industries at a Glance,'' ''Industries by Supersector and NAICS Code,'' *https://www.bls.gov/iag/tgs/iag_index_naics.htm* (last visited Nov. 7, 2023).

[282] There are some technical details applicable to Table 8. The title of the activity shown is in a few cases abbreviated for space consideration. Otherwise, they reflect exactly what was recorded in the E-Verify data. For the activities shown comprising the upper quartile, from the first level analysis one activity, Non-store Retailers, was dropped, and ''replaced'' by Management of Companies/Enterprises. The reason this was conducted is that in the recent (2022) revision to the NAICS codes, Non-store Retailers was eliminated. Many such revisions to activities have been made, and the BLS will often describe what revised activity(ies) in the update ensconce the former classification. In this case, the removed activity consists of three current industry groups, Electronic Shopping and Mail-Order Houses (NAICS 4541), Vending Machine Operators (NAICS 4542), and Direct Selling Establishments (NAICS 4543). However, the BLS does not provide wage data applicable to these industry groups (*see https://www.bls.gov/iag/tgs/iag454.htm*). In addition, internet Service providers, Web Search Portals, & Data Processing appears to apply to a dated 2002 NAICS application, and was changed in a 2007 revision to ''Data Processing, Hosting, and Related Services'' subsector (*see https://www.bls.gov/iag/tgs/iag518.htm*).

[283] July 2022 average hourly wages from the following: *https://www.bls.gov/iag/tgs/iag54.htm; https://www.bls.gov/iag/tgs/iag519.htm; https://www.bls.gov/iag/tgs/iag561.htm; https://www.bls.gov/iag/tgs/iag518.htm; https://www.bls.gov/iag/tgs/iag61.htm; https://www.bls.gov/iag/tgs/iag722.htm; https://www.bls.gov/iag/tgs/iag623.htm; https://www.bls.gov/iag/tgs/iag511.htm; https://www.bls.gov/iag/tgs/iag238.htm; https://www.bls.gov/iag/tgs/iag622.htm; https://www.bls.gov/iag/tgs/iag55.htm.* For Educational Services, the average earnings are reported annually for five specific occupations, and the hourly wage was derived by dividing the annual salary by 2,080 annual work hours (*see https://www.bls.gov/iag/tgs/iag61.htm*) (Obtained 10–15–2023).

[284] The national average wage is found in the ''May 2022 National Occupational Employment and Wage Estimates'' in the BLS Occupational Employment and Wage Statistics (OEWS) portal, *https://www.bls.gov/oes/2022/may/oes_nat.htm* (last updated Apr. 25, 2023). Relevant calculation: $(41.60 \div 29.80) - 1) \times 100$.

[285] *See* BLS, Economic News Release, ''Employer Costs for Employee Compensation—June 2023,'' Table 1. Employer costs for employer compensation by ownership, p. 4, *https://www.bls.gov/news.release/archives/ecec_09122023.pdf* (last visited Nov. 7, 2023).

[286] The benefits-to-wage multiplier is calculated as follows: (Total Employee Compensation per hour) ÷ (Wages and Salaries per hour) = $43.26 ÷ $29.86 = 1.45 (rounded). *See* BLS, Economic News Release, ''Employer Costs for Employee Compensation—June 2023,'' Table 1. Employer costs for employer compensation by ownership, p. 4, *https://www.bls.gov/news.release/archives/ecec_09122023.pdf* (last visited Nov. 7, 2023).

rate of compensation for individuals at the lower end of the range as $19.05 per hour, where the 10th percentile hourly wage estimate is $13.14 per hour and the average benefits are $5.91 per hour.[287]

b. Module B. Impacts That Could Accrue to Labor Earnings

i. Earnings Impact to EAD Holders

There are three core inputs (''components'' or ''variables'') requisite to estimate the impacts that could accrue to labor compensation; the lapse-duration, earnings, and the impacted population. DHS first extracted adjudication records on 77,000 auto-extended EADs for the relevant categories, which had lapsed and where the renewal EAD applications were subsequently approved from January 1, 2022, to May 15, 2022.[288] This date range is the benchmark needed for this module of the analysis because it captures the most recent data in the past in which the auto-extension was 180 days and USCIS was experiencing processing delays that resulted in lapses in employment authorization. This timeframe serves as the general structure for the distribution or shape of lapse durations; later, we make further adjustments to account for the larger population of renewal applications in need of processing than during this time period.

Next, USCIS used the Excel random number generator tool to randomly sample 3,000 records in order to work with a much smaller and tractable data set. For each record, we calculated the lapse-duration in calendar days. The data were next grouped into the number of cases that elapsed per day-duration and the concomitant share of cases applicable to each duration was tabulated.

Having a tractable sample, it is important to evaluate the structure of the data. We utilized the Oracle Crystal Ball® Modelling and Simulation Software (''OCB'') to analyze the data. The data analysis batch fit tool in OCB indicates that the Gamma density function provides the best fit.[289] The Gamma distribution is a member of the exponential distributions and is applicable in situations where the data displays considerable variance, is restricted to positive values, and is skewed to the right (positively skewed). It is frequently utilized in analyses to predict durations and wait times until future events occur. The durations display a wide range (1—1,049) and cluster around a median of 58, which is lower than the mean of 77.9, further informing the positive skew.[290] The extreme skew of the data can be evidenced from Table 9, which displays the percentiles applicable to the average lapse durations.

TABLE 9—PERCENTILES FOR THE NUMBER OF CALENDAR DAYS BETWEEN WHEN AUTO-EXTENDED EADS EXPIRED AND RENEWAL FORMS I–765 WERE SUBSEQUENTLY APPROVED FROM JANUARY 1, 2022, TO MAY 15, 2022

[''Lapse Duration'' in calendar days]

Percentile	Lapse duration
10	10
20	21
30	30
40	42
50	58
60	89
70	121
80	147
90	176
100	1,049

Source: USCIS analysis of renewal EAD filing data, provided by Office of Performance and Quality (OPQ), USCIS, DHS, Claims 3 database; data provided October 18, 2023.

As can be seen, the extreme jump in the lapse value from 176 to 1,049 in the 90th to 100th percentile is evident that there is long tail on the right side of the distribution capturing a small number of low probability outlier (numerically high value) durations.

All three core inputs require some adjustments to make them as salient as possible. Foremost, the lapse-durations are in calendar days, hence we make an adjustment to account for a full-time 8-hour workday and 5-day workweek. However, not all U.S. workers are employed full-time, so we also make an adjustment to number of hours worked per week. BLS currently reports that average weekly hours across all private nonfarm industries is 34.4.[291] This figure is 86.0 percent of a 40-hour workweek.

As it relates to the core variable, population, the assessments of possible impacts rely on the assumption that everyone who was approved for an EAD under the relevant categories entered the labor force. DHS believes this assumption is justifiable because applicants, with few exceptions, would generally not have expended the direct filing (for the pertinent EAD categories in which there is a filing fee) and time-related opportunity costs associated with applying for an EAD if they did not expect to recoup an economic benefit. Realistically, however, individuals might not be employed for any number of other reasons not specifically relevant to this action. The national unemployment rate as of October 2023 is 3.9 percent.[292] There is constant and considerable job turnover in the labor market even when the unemployment rate is low. Individuals could be unemployed due to this normal turnover or from any number of case-specific factors and conditions. As such, we believe it is reasonable to scale the population to account for current unemployment, which is conducted by integrating the employment rate, as unity minus 0.039, to arrive at 0.961.

DHS scales the baseline population by the unemployment rate and the lapse rate—the percentage of the affected renewal population that might still experience a lapse in EAD with this rule—to achieve the population likely to avoid a lapsed EAD with this rule. The sensitivity analysis discussed in Tables 6 and 7 reveals that the percentage of EADs that would lapse under the proposed bridge varies. As such, the rate that would not lapse also varies. For the baseline population and lapse rate we rely on the triangle distribution. This distribution is ideal for these inputs because it sets a minimum and maximum value around a center point (''likeliest'' value). In our calibration, the center point is the baseline value. For the population, the approximate minimum is 689,000, maximum is 824,000, and the center point is 793,000. For the lapse rate, the minimum is 9.8 percent, maximum is 54.1 percent, and the center point is 32.8 percent.[293] See Table 6.

[287] The calculation of the benefits-weighted 10th percentile hourly wage estimate: $13.14 per hour × 1.45 benefits-to-wage multiplier = $19.053 = $19.05 (rounded) per hour.

[288] Data provided by the USCIS, OPQ, Performance and Evaluation reporting (PAER) Division. USCIS Global Claims, and Global systems (10–17–23).

[289] OCB ranks density fit according to internal routines that evaluate the appropriateness of several tests according to features of the data. In this case, the Gamma density function fits the data best based on all continuous distributions subject to a scoring method applicable to the test statistic of the Anderson-Darling (A–D) test, which in this case is 20.661.

[290] The produced tuning parameters are, location = 0.96, scale = 78.0, shape = 1.04671.

[291] BLS, Economic News Release, ''The Employment Situation—September 2023,'' *https://www.bls.gov/news.release/archives/empsit_10062023.htm* (Oct. 6, 2023).

[292] BLS, Economic News Release, ''The Employment Situation—October 2023,'' *https://www.bls.gov/charts/employment-situation/civilian-unemployment-rate.htm* (Nov. 7, 2023).

[293] Low bound: 67,223 lapses with the rule/689,423 without; Primary: 260,327 lapses with the rule/793,053 without; Upper bound: 445,741 lapses with the rule/823,706 without.

DHS is interested in estimating the mean and a range for the impacts that is likely to be realized and employs a simulation approach. For the earnings we rely on the uniform distribution. This is a discrete distribution, which essentially means that any value in the range has the same probability as being selected as any other value. This structure is chosen because we have no evidence or data to suggest that the earnings would tend to cluster at either the low or high end of the range.

Next, DHS adjusts the lapse durations for the expected future under the TFR. DHS explained that the Gamma density function provides the best fit to the lapse- durations. DHS will operate under the assumption that the underlying data structure does not change over the future (the period of the TFR). Specifically, the durations will be positively skewed and clustered around a median less than the mean, with a long thin tail capturing very low-probability values substantially greater than the mean. The benefit of the Gamma distribution is that the location parameter is generally close to the minimum value, which will be consistent (in time), and the scale parameter represents the mean. The key shift factor that will change in the future is that the average duration will increase drastically. This increase will result from the increased processing times for EAD renewal filings that are concomitant to the growth in filings and the resulting backlog of cases, as is described in the preamble. We therefore have the capability to change the mean, and providing we do not alter the shape parameter, the general underlying data structure is retained–albeit with a new mean. In practice, changing the mean can have some effect on the other two parameters, but the distortion is very miniscule. DHS ran dozens of experiments with a range of means that could be gleaned as appropriate as being informed by the data and in every case the Gamma fit was solidly retained, visual examination yielded no discernable differences in structure, and the parameters varied by a miniscule amount. Stated in more slightly formal terms, the distribution for lapse-durations that DHS is working with is generally scalable about its mean, which is a crucial necessary condition for estimation.

To determine the mean to impute we analyzed data provided by the USCIS Office of Performance and Quality, applicable to estimated lapse-durations by the size of the population that could be impacted. We began by forecasting monthly filing volumes over the period of analysis based on historical filing patterns and expected EAD expirations by month. We also estimated average monthly officer completions based on FY 2023 totals.

Because USCIS generally adjudicates applications in the order of the date received, for each month in the analysis we calculated the pending inventory by adding forecasted receipts and subtracting average officer completions. Using this information, we are able to estimate the number of pending applications that would expire each month and the estimated amount of time until the expired EADs would be adjudicated (*i.e.,* the lapse duration). Next, DHS utilized estimates of the number of possible lapses and the estimate of the average lapse duration over the period in which most of the EADs would lapse. We then divided the number of EADs lapsing by duration into the total number that could lapse over the entire period to obtain individual weighting factors. Multiplying each weight factor by the lapse duration and summing over all data points yielded a weighted average lapse duration of 271 days.

Above, we have described the adjustments made to the population to account for unemployment and employment lapses that may still happen, to wages to account for benefits, and to the lapse duration to account for the work week and hours worked. In practice, it is not necessary to make the adjustments to the core inputs directly or even sequentially. The reason is that the inputs (core and incumbent adjustment factors) interact in the estimation procedure multiplicatively, hence they can be abridged into a single equation and nested compactly as a ''one-step'' routine in the software program.

The inputs and settings for the estimates are encapsulated in Table 10. In practice there are two modules (populations) that will comprise the earnings impacts. The Department believes the impacts will be beneficial to EAD holders as ''preserved'' or ''stabilized'' earnings. For EADs that this rule will prevent from lapsing, the duration input is the gamma density tuned to the parameters produced by the software and truncated at the upper end by a value of 360 (days), since the gamma curve is infinite in its upper tail. However, individuals with EADs that may still lapse would also incur a benefit of being able to work exactly 360 days longer than they otherwise would—there is no variation or distribution, as the extra days is the point value of 360 days. There are any number of ways to derive an expression capturing the two population modules that may still incur stabilized earnings, *i.e.,* (a) those that would be prevented from lapsing, and (b) those that would still lapse. In the technical appendix accompanying this rulemaking, we develop the system from its long form into a compact nested equation, which is the product of two terms, as is shown in Table 10. The combined employment ''intensity'' scalar is developed to abridge all non-varying inputs common to both modules as a single input for purpose of brevity.

TABLE 10—MODEL FOR ESTIMATION OF EARNINGS IMPACT

Input	Structure	Settings
Baseline Population (P)	Triangle distribution	Min: 689,000. Max: 824,000. Likeliest: 793,000.
Lapse rate (L)	Triangle distribution	Min: 9.8%. Max: 54.1%. Likeliest: 32.8%.
Hourly wage (W)	Uniform distribution	Min: $13.14. Max: $41.60.

TABLE 10—MODEL FOR ESTIMATION OF EARNINGS IMPACT—Continued

Input	Structure	Settings
Lapse Durations: ..... D_S: EADs saved from lapse ..... D_L: EADs that lapse	D_S: Gamma density; ..... D_L: Point value	D_S: Gamma density. Location: 0.96. Scale: 271.0. Shape: 1.047. Max: 360. D_L: 360.
Combined scalar	Point value	Benefits multiplier (B): 1.45. Workweek time (T): 5 ÷ 7 days = 0.714. Average hours (H): 34.4 ÷ 40 hours = 0.86. Full time day hours (F): 8.0. Employment rate (E): 1 − 0.039 = 0.961. Scalar (S) = B × T × H × F × E = 6.85.
Nested equation	$\{(W \times S \times P) \times (D_S - (L \times (D_S - D_L)))\}$	
Results summary	Forecast values (millions, undiscounted) [294]	

Range level	Preserved earnings impact	Taxes = (impact × 0.153) ÷ 1.45
low	$10,230.1	$1,079.5
average	30,984.8	3,269.4
high	63,958.4	6,748.7

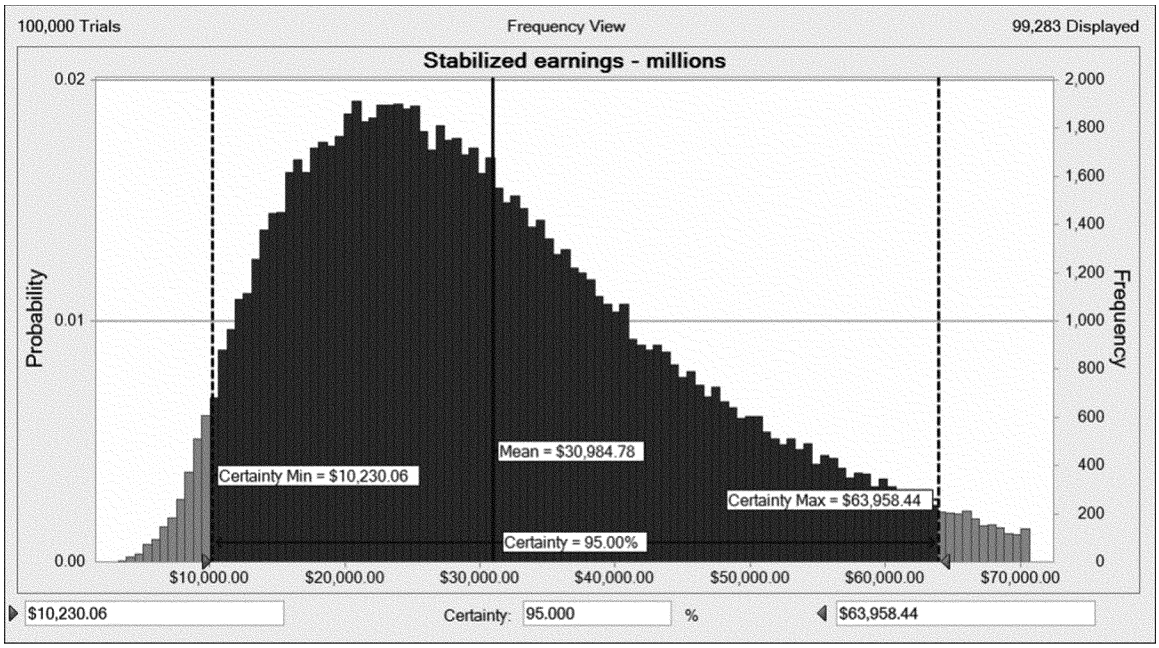
- Impact type: stabilized earnings to individuals.
- Contribution to forecast variance:
  Lapse duration = 47.5%.
  Hourly wage = 47.0%.
  Lapse rate: 4.9%.
  Population: 0.6%.

Source: USCIS analysis, 3–5–24.

OCB repeatedly calculates results using a different set of random values from the range of values and probability distributions described in Table 10 above to build a model of possible results. We ran 100,000 randomized seed trials, which is more than sufficient to generate a 95 percent level of precision in the results.

[294] The low and high values reflect a 95 percent certainty bound, which captures the distribution specific values between the 2.5th and 97.5th percentiles.

Figure 3. Stabilized Earnings Estimate



Based on the simulation, and as shown in Figure 3, the expected value (which is the mean of probabilistic-based forecast values) for stabilized earnings is $31.0 billion.[295] We also generated a 95 percent certainty range, which reports $10.2 billion to $64.0 billion. A sensitivity analysis that scores the inputs in terms of how much variation in each contributes to fluctuation in the forecasted values reveals that the lapse-durations (that vary) and wage contributed about the same, 47.5 and 47.0 percent of the total variation, in order, while the lapse rate contributed a small 4.9 percent of the variation (see Table 10 for more information). DHS believes that the earnings impact, which can be thought of as ''stabilized'' or ''preserved'' earnings to renewal EAD applicants, will be beneficial to the EAD holders, as the rule would prevent a lapse in their employment authorization and an incumbent interruption of their labor compensation.

If, without this rule, businesses would not have been able to find replacement labor for the position the affected renewal EAD applicant filled, then the unperformed labor would have resulted in a reduction in taxes from employers and employees to governments. Accordingly, the stabilized earnings derived from this rule, and estimated above, will prevent such a reduction in taxes. It is challenging to quantify Federal and State income tax impacts of employment in the labor market scenario because individual and household tax situations vary widely as do the various State income tax rates.[296] But DHS is able to estimate the potential contributory effects on employment taxes, namely Medicare and Social Security, which have a combined tax rate of 7.65 percent (6.2 percent and 1.45 percent, respectively).[297] With both the employee and employer paying their respective portion of Medicare and Social Security taxes, the total estimated level of tax transfer payments from employees and employers to Medicare and Social Security is 15.3 percent.

DHS estimates the tax impacts on the unburdened earnings basis. This is done by multiplying the stabilized earnings by the employment tax rate of 15.3 percent, and dividing the resulting product by the benefits burden multiple of 1.45.[298] If, without this rule, all employers would have been unable to find replacement labor for the position the renewal EAD applicant filled, this rule will prevent a reduction in employment taxes from employers and employees to the Federal Government of $3.3 billion, but could range from $1.1 billion to $6.7 billion, in undiscounted terms. The actual value of tax impacts will depend on the number of affected EAD holders that businesses would have been able to easily find reasonable labor substitutes for in the absence of this rule.

There are several caveats to our estimates that could cause the true impacts to vary higher or lower. In one way, the estimates are likely to be understated. DHS accounted for the duration of the EAD lapse, but this is not necessarily the total spell of unemployment individuals could face. The BLS reports that the median spell of unemployment across all economic sectors is 9.2 weeks, which would be 64.4 days (unadjusted). We did not include this because we do not know if

[295] The certainty level is based on the entire range of forecast values, so the 95 percent certainty range is the range between which 95 percent of forecasted values are expected to fall, regardless of proximity to the mean. Roughly speaking, the 95 percent certainty bound would generally capture the distribution-specific forecast values lying between the 2.5th and 97.5th percentiles.

[296] Robert Frank, ''61% of Americans paid no federal income taxes in 2020, Tax Policy Center says,'' CNBC (Aug. 18, 2021), *https://www.cnbc.com/2021/08/18/61percent-of-americans-paid-no-federal-income-taxes-in-2020-tax-policy-center-says.html* (last updated Aug. 20, 2021), and for varying State income tax rates, *see* Tonya Moreno, ''Your Guide to State Income Tax Rates,'' The Balance, *https://www.thebalance.com/state-income-tax-rates-3193320* (last updated Jan. 3, 2022).

[297] The various employment taxes are discussed in more detail, *see* Internal Revenue Service, ''Understanding Employment Taxes,'' *https://www.irs.gov/businesses/small-businesses-self-employed/understanding-employment-taxes* (last updated Mar. 14, 2022). *See* Internal Revenue Service ''Publication 15,'' ''(Circular E), Employer's Tax Guide'' (Dec. 19, 2023), *https://www.irs.gov/pub/irs-pdf/p15.pdf* for specific information on employment tax rates. Relevant calculation: (6.2 percent Social Security+1.45 percent Medicare)×2 employee and employer losses=15.3 percent total estimated public tax impact.

[298] We divide by the 1.45 benefits multiplier to account for the fact that employment taxes are calculated based upon wages paid, not including fringe benefits.

some portion of individuals may be able to return to their previous employers (for example, if the EAD lapse was shorter than the median spell of unemployment and if the employer has difficulty finding a replacement worker) or, for those who cannot, if they would start the search process until they became reauthorized to work. If they did not—*i.e.,* they started looking for new work during the lapse, double counting would be invoked for some portion of the duration. It may be useful to think of the total unemployment spell as being the sum of two parts, the EAD lapse and the [job] ''search time.'' We have no data to support a determination on when the search process starts, and hence if the two parts intersect, and therefore we do not include it. However, to the extent that it may be reasonable to assume that many individuals would not start looking for work until after they became re-authorized to work, incorporating the ''search time'' duration in addition to their lapse duration would substantially increase the scope of the stabilized earnings impacts.

Second, in addition to the search time spell of unemployment outside of the lapse alone, there are costs to looking for work. There are direct costs involved in activities such as resume updating, possibly learning new skills, travel to interviews, and so on. There are also time-related opportunity costs applicable to the job search. DHS does not have salient data or method to allocate the portion of individuals that would need to conduct a job search and the portion of the search time that could be conducted during the EAD lapse, and thus they are not monetized.

ii. Labor Turnover Cost Impacts

This TFR is expected to generate a labor turnover cost savings to employers of affected EAD holders. DHS bases the assessment of these impacts on the assumption that every EAD applicable to the adjusted population that would have lapsed without this rule would have generated an involuntary separation from an employer, and that the separation is due to no other factors.

Employment separations can generate substantial labor turnover costs to employers that can be divided into several components. First are the direct or ''hard'' costs that involve separation and replacement costs. The separation costs include exit interviews, severance pay, and costs of temporarily covering the employee's duties and functions with other employees, which may require overtime or temporary staffing. The replacement costs typically include expenses of advertising positions, search and agency fees, screening applicants, interviews, background verification, employment testing, hiring bonuses, and possible travel and relocation costs. Once hired, employers face additional training, orientation, and assessment costs.

Second, direct costs involve loss of productivity and possibly profitability due to operational and production disruptions, which can include errors from other employees that may temporally fill the position. Some analysts have identified a third cost segment, which is a type of indirect cost, which encompasses loss of institutional knowledge, networking, and impacts to work-culture, morale, and interpersonal relationships. This last type of cost is almost impossible to measure quantitatively.[299]

There are numerous studies and reports concerning labor turnover costs available from Human Resource entities that are cited across correspondent literature. Some focus on specific occupations, industries, salary levels, and often measure turnover cost in slightly different ways. Labor turnover cost is generally reported as a share of annual earnings or an actual cost per employee. Usually these reports measure the more direct, or ''hard'' costs associated with turnover and not intangible effects such as worker morale or lost productivity. Many reports cite a 2012 report published by the Center for American Progress (CAP) that surveyed more than 30 studies that considered both direct (*e.g.,* separation and replacement) and indirect (*e.g.,* loss of institutional knowledge) costs. DHS captures preserved productivity savings—proxied by stabilized earnings to applicants—had employers not been able to immediately find replacement labor for renewal EAD applicants without this rule. DHS requests public comments on how, or if, that measure of productivity may overlap with the types of productivity covered in the CAP report captured here, such as from the substitutability of replacement labor.[300]

The CAP and other reports that we reviewed confirm three central aspects of turnover cost: (1) that they vary substantially across industries and jobs; (2) that they tend to grow (in absolute and percentage terms) according to skill level and earnings; and (3) that they are higher for salaried workers compared to hourly wage earners.[301] The report notes that specialized technical jobs and highly paid jobs in line with senior or executive levels, which involve high levels of education, credentials, and stringent hiring criteria, can generate disproportionately high replacement costs that can reach more than 100 percent of the salary—compared to jobs with low educational and technical requirements.[302] However, the CAP survey found that costs tend to range within a bound of 10 percent to around 40 percent of the salary. For example, CAP found despite wide variation and range, for workers earning on average $75,000 per year or less (2012$), turnover costs ranged typically from 10 to 30 percent of the salary, clustering at about 21 percent. More recent reports indicate that the typical cost is about one-third of the salary.[303]

DHS could nest the information provided above into an estimation procedure, but it would be beneficial to examine granular data to hone the estimates for two reasons. First, it would be valuable to quantify the correlation between annual earnings and labor turnover costs and incorporate it in the ensuing forecast procedure. Second, it is desirable to obtain a distribution for the data—an average and median could be gathered from the referenced reporting, but there would be a gap in terms of other metrics needed to calibrate a certain distribution.

DHS examined a 2020 report by the Washington Center for Equitable Growth, which updated the earlier CAP study results to provide information on about thirty-five studies on turnover costs.[304] We selected data points that

[299] For additional descriptions of the components of labor turnover costs, *see* Ghase Charba, ''Employee retention: The Real Cost of Losing an Employee,'' PeopleKeep, (updated February 2, 2023), *https://www.peoplekeep.com/blog/employee-retention-the-real-cost-of-losing-an-employee.*

[300] DHS did not receive public comment on this specific request in the previous EAD Auto Extension TFR.

[301] *See* Heather Boushey and Sarah Jane Glynn, ''There Are Significant Business Costs to Replacing Employees,'' Center for American Progress, (Nov. 16, 2012), *https://www.americanprogress.org/issues/economy/reports/2012/11/16/44464/there-are-significant-business-costs-to-replacing-employees/.*

[302] *See* Shane Mcfeely and Ben Wigert, ''This Fixable Problem Costs U.S. Businesses $1 Trillion,'' Workplace, (Mar. 13, 2019), *https://www.gallup.com/workplace/247391/fixable-problem-costs-businesses-trillion.aspx. See also* Kate Heinz, ''The True Costs of Employee Turnover,'' Built In, *https://builtin.com/recruiting/cost-of-turnover* (last updated June 23, 2023).

[303] *See* ''The Real Cost of Employee Turnover in 2021,'' Terra Staffing Group (Nov. 4, 2020), *https://www.terrastaffinggroup.com/resources/blog/cost-of-employee-turnover. See* also Louie Andre, ''112 Employee Turnover Statistics: 2021 Causes, Cost & Prevention Data,'' Finances Online, *https://financesonline.com/employee-turnover-statistics/#cost* (last accessed Nov. 7, 2023).

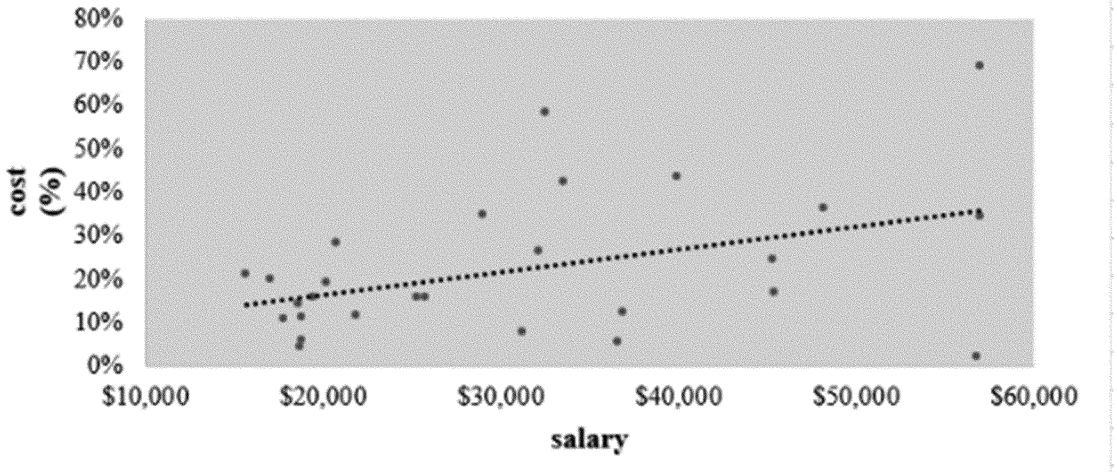
[304] *See* Kate Bahn and Carmen Sanchez Cumming, ''Improving U.S. Labor Standards and the Quality of Jobs to Reduce the Costs of Employee Turnover to U.S. Companies,'' Washington Center for Equitable Growth, (December 2020), *https://*

Continued

captured both the annual earnings salary (which the study benchmarked to 2019 levels) and turnover costs. We then culled the data applicable to salary levels more than the maximum in our earnings bound. We note before making any adjustments, multiplying the maximum wage ($41.60) by 2,080 average annual hours yields a maximum annual earnings figure of $86,528. Twenty-seven resulting data points were employed for the analysis. While this may be relatively few observations, OCB nevertheless was able to fit a lognormal density function to the data, and we are confident in relying on the results.[305] Foremost, the mean of 22.4 percent and the median of 16.6 percent of annual salary are amenable to the metrics reported in the studies referenced above and fall within a substantial range, from 2.1 percent to 68.7 percent. Second, on qualitative grounds the lognormal distribution is well-suited as a setup, as it is often utilized in situations where there is wide variation and there is a discrete lower end minimum, further restricted to positive values. First, negative values can be ruled out in context—there cannot be zero cost to an employee separation—and thus a lower tail cutoff to bound to the cost percentage is appropriate. Second, we can reasonably conjecture that the costs would tend to cluster near the lower tail of the distribution (as outlined in the CAP report), which is amenable to the positive skew of the distribution, reinforced by the data resultant mean being larger than the median.[306]

Additionally, the scatterplots presented in Figures 4A and 4B with the fitted least squares line clearly reveal that turnover cost is an increasing function of the annual earnings, with a moderately strong correlation coefficient of 0.421.[307] Figure 4A plots the cost as a percentage of salary, as this is how it is inputted into the estimation, while Figure 4B plots the cost in actual dollars, for context (the data points utilized are provided in the accompanying technical appendix).

Figure 4A. Relation Between Annual Salary and Turnover Cost (%)



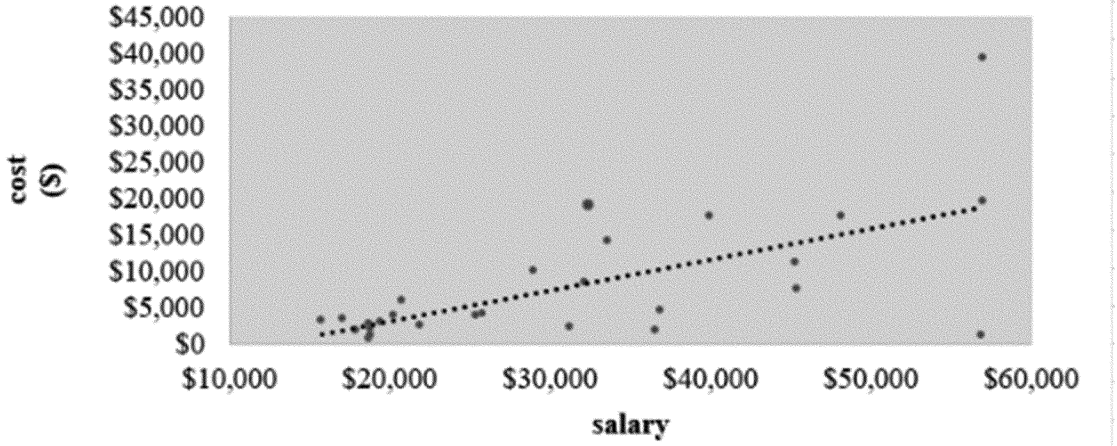
equitablegrowth.org/wp-content/uploads/2020/12/122120-turnover-costs-ib.pdf. The data are found in the methodological appendix, located in the Docket for this rulemaking.

[305] DHS used the same general data source for the turnover costs for the 2022 EAD TFR. In that earlier rule a slightly different distribution was applied than the lognormal herein. The software periodically updates the mathematics and scoring algorithms applicable to density fits and the result was a slight change in the appropriate fit. However, both distributions take on a very similar shape and any resulting differences in results would be very minor.

[306] OCB indicates that the multiple continuous distributions are appropriate for the data but ranks the Lognormal distribution highest in terms of goodness of fit with an A–D test statistic of t = 0.1282 and an associated p-value of 0.971. The three produced parameters are as follows: location = −0.03, mean = 0.23, and standard deviation = 0.19. The fitted parameters affect the shape and position of the distribution.

[307] The slope coefficient for the regression of costs against salary is 5.2E–06. By multiplying this figure by 5,000 to obtain 0.026, it can be interpreted that a $5,000 increase in salary is associated with a 2.6 percentage point increase in labor turnover costs, on average, within the range of our data. The exact probability of committing a type I error (p-value) for the slope coefficient is 0.028, such that we can reject the hypothesis that salary and turnover costs are not systemically related (or such that the correlation in the particular data is due to randomness) with more than 95 percent confidence.

Figure 4B. Relation Between Annual Salary and Turnover Cost ($)



To obtain the annual salary we multiply the (non-burdened) wage bounds ($13.14 and $41.60) by 2,080 annual full-time hours but make the adjustment to account for average hours by scaling by 0.86, as was introduced above for stabilized earnings. In addition, we scale the baseline population to account for unemployment and lapses that may still occur even with this rule; this rule would delay though not prevent separations for employees that may still experience a lapse. DHS also recognizes that a certain number of individuals may have been terminated or chosen to leave irrespective of this rule and, accordingly, this rule won't prevent such turnover. DHS does not have data on the number of renewal EAD applicants that would have been terminated from or left their jobs had they not lost employment authorization.[308] DHS requests public comment on data that could be used to make such an adjustment.[309]

We calibrated the lognormal distribution for the parameters produced and calibrated the estimation program according to the below input values. The lognormal distribution is infinite in the upper tail and we truncated the cost percentage to 68.7 percent, the highest value in the underlying data. The core inputs are the baseline population, turnover cost percentage, and the wage (unburdened). In practice, it is not necessary to adjust them directly or even sequentially. The reason is that all the inputs (core and adjustment factors) interact in the estimation procedure multiplicatively, hence they can be abridged into a single equation and nested compactly as a ''one-step'' routine in the software program as the product of two terms. The inputs and settings are collated in Table 11, with the nested equation shown as well. The correlation between cost and earnings is tuned to 0.421. Imputing the correlation essentially means that if a randomly chosen earnings value is high, there is a higher probability that a high turnover cost percentage will be selected as well and vice versa for lower cost percentages. The table below summarizes the entire system—the inputs, their settings, and the resulting outputs.

TABLE 11—MODEL FOR ESTIMATION OF TURNOVER COST IMPACT

Input	Structure	Settings
Baseline Population (P)	Triangle distribution	Min: 689,000. Max: 824,000. Likeliest: 793,000.
Lapse rate (L)	Triangle distribution	Min: 9.8%. Max: 54.1%. Likeliest: 32.8%.
Hourly wage (W)	Uniform distribution	Min: $13.14. Max: $41.60.
Turnover cost % (C)	Lognormal density	Location: −0.03. Mean: 0.23. S-dev.: 0.19. Max: 0.687.

[308] Further, DHS does not have data on the number of EAD renewal applicants that have been terminated because their employer used an online calculator provided by USCIS to assist in the determination of an EAD expiration date. Presumably an employer would determine an EAD expiration well in advance of the date for business continuation purposes. Regardless, an employer would spend time utilizing this optional online calculator with or without this rule and is not considered an additional burden for this rule.

[309] DHS did not receive public comment on this specific request in the previous EAD Auto Extension TFR.

TABLE 11—MODEL FOR ESTIMATION OF TURNOVER COST IMPACT—Continued

Input	Structure	Settings
Employment scalar (S)	Point value	Average hour adjustment (H): 0.86. Full time annual hours (A): 2,080. Employment rate (E): 0.961. Scalar = H × A × E = 1,719.
Correlation	W, C	0.421.
Nested equation	{(W × C × P × S) × (1 − L)	
Results summary	Forecast values (millions, undiscounted)	

low	average	high
$441.0	$5,509.9	$18,560.7

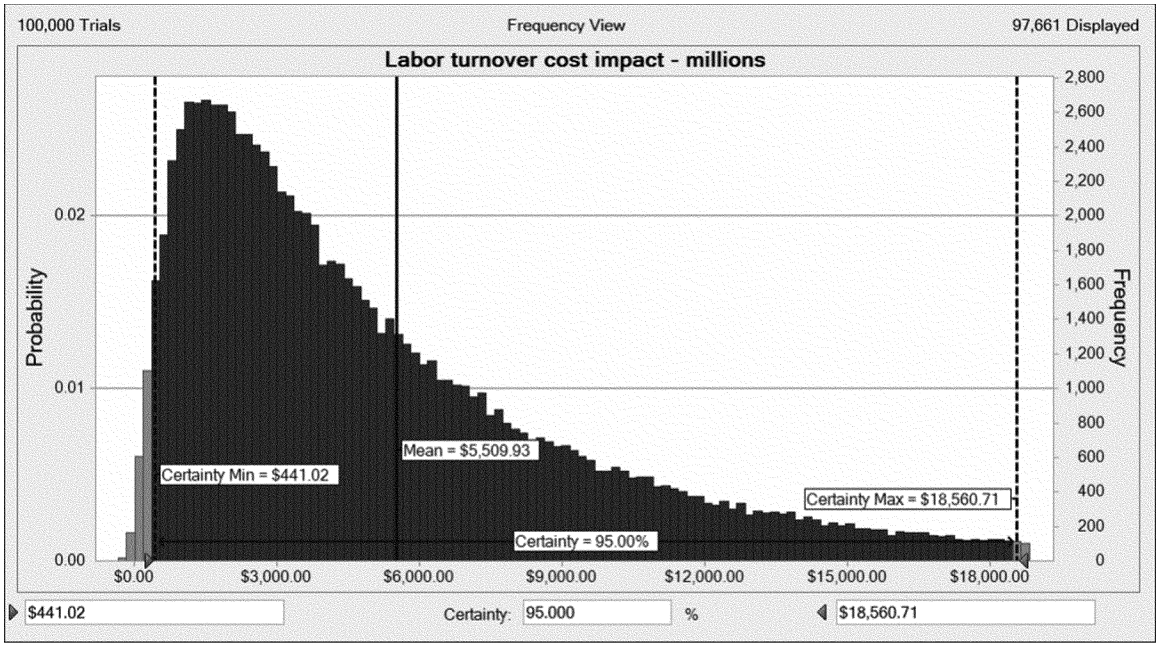
- Impact type: Cost-savings to employers
- Contribution to forecast variance:
  (a) Turnover cost (%) = 65.1%
  (b) Hourly wage = 34.9%
  (c) Population and lapse rate = negligible

Number of businesses impacted: 62,900–82,400

Source: USCIS analysis, 3–5–2024.

We ran 100,000 randomized seed trials, which is more than sufficient to generate 95 percent level of precision in the results. The results are displayed in Figure 5.

Figure 5. Estimated Labor Turnover Impacts



Based on the simulation, the expected value is $5.5 billion, and the 95 percent precision bound results in a range of forecasts from $0.4 billion to $18.6 billion. The sensitivity analysis reveals that variation in the turnover cost percentage of the salary contributed about 65.1 percent of the wide certainty range while about 34.9 percent was driven by the variance in earnings. The other inputs contributed negligibly.

In addition to the projected cost-savings to businesses reported above, DHS can make some estimates of the number of businesses that could benefit from the cost-savings. From the E-Verify data utilized to develop an upper wage bound, we randomly sampled 451 EAD employers, which is more than the requisite 384 needed for a 95 percent level of confidence and collected the number of E-Verify cases per EAD employer.[310] The analysis reveals that there were on average ten cases per EAD employer for FY 2022. If this figure is

[310] DHS determined the sample size using a standard statistical formula based on the total EAD employer population of 149,132 in FY 2022 with a 95 percent confidence level and a 5 percent confidence interval. This means that there is a 95 percent chance that parameters descriptive of the population (*e.g.*, the EAD employer population size) are no more than 5 percent different from the statistic obtained by the sample.

extrapolated to the baseline population, it would indicate that between 62,900 and 82,400 EAD employers could be impacted.

c. Module C. Monetized Impacts for the TFR

In Table 12 we collate the undiscounted monetized impacts derived from the above sections.

TABLE 12—SUMMARY OF MONETIZED IMPACTS

[FY 2024 through FY 2028, undiscounted, in $ millions, 2022$]

	Stabilized earnings	Labor turnover cost	Total impacts	Employment taxes
Low end	$10,230.1	$441.0	$10,671.1	$1,079.5
Average	30,984.8	5,509.9	36,494.7	3,269.4
High end	63,958.4	18,560.7	82,519.1	6,748.7

Because the TFR will apply to more than one full fiscal year, we also apply a discounting framework to the impacts. Since there is a one-to-one mapping from the population to the impacts, we can derive the yearly allocations directly from the population figures. According to our analysis, based on the broad population, the shares of impacts allocated to the FYs 2024, 2025, 2026, 2027, and 2028, in order, are 6.0, 18.7, 36.2,31.8, and 7.4 percent.[311]

Table 13 provides the allocated impacts according to the allocation derived above, to account for the average, and low and high ends of the certainty bound in order. The table is organized into two sections to account for undiscounted terms and those at a 2-percent discount rate. We parsed out the stabilized earnings and labor turnover impacts separately, as they will embody different types of impacts.

TABLE 13—MONETIZED EXPECTED VALUE IMPACTS FOR THE TFR

[$ millions, 2022]

A. Undiscounted

1. Low end bound

FY	Stabilized earnings	Labor turnover	Total impacts	Estimated taxes[312]
2024	$618.3	$26.7	$645.0	$65.2
2025	1,909.3	82.3	1,991.6	201.5
2026	3,699.5	159.5	3,858.9	390.4
2027	3,249.3	140.1	3,389.4	342.9
2028	753.8	32.5	786.3	79.5
5-year Total	10,230.1	441.0	10,671.1	1,079.5

2. Average

FY	Stabilized earnings	Labor turnover	Total impacts	Estimated taxes
2024	1,872.7	333.0	2,205.7	197.6
2025	5,782.8	1,028.3	6,811.1	610.2
2026	11,204.9	1,992.5	13,197.4	1,182.3
2027	9,841.4	1,750.1	11,591.5	1,038.4
2028	2,283.0	406.0	2,689.0	240.9
5-year Total	30,984.8	5,509.9	36,494.7	3,269.4

3. High end bound

FY	Stabilized earnings	Labor turnover	Total impacts	Estimated taxes
2024	3,865.6	1,121.8	4,987.4	407.9
2025	11,936.8	3,464.0	15,400.8	1,259.5
2026	23,129.0	6,712.0	29,841.0	2,440.5
2027	20,314.5	5,895.3	26,209.8	2,143.5

[311] These shares are derived by dividing into a total population of EADs that could expire (before making any adjustments) across the four- year span FY 2024 through FY 2027 of 1,112,425 the share that could expire in each of those years, in order, 90,612 (8.1 percent), 248,299 (22.3 percent), 455,822 (41.0 percent), and 317,692 (28.6 percent). Because the average lapse duration of 271 days is 74.2 percent of a 365-day year, the stabilized earnings and employment taxes may be spread over more than one fiscal year. To account for the cost savings accruing to the next fiscal year (the remaining 25.8 percent), we then extrapolate this percentage to the population for lapses that would begin in the second half of a fiscal year t. The resulting impacts are spread over FY 2024 through FY 2028 in the following shares: 6.0 percent (8.1 percent × 74.2 percent), 18.7 percent (8.1 percent × 25.8 percent + 22.3 percent × 74.2 percent), 36.2 percent (22.3 percent × 25.8 percent + 41.0 percent × 74.2 percent), 31.8 percent (41.0 percent × 25.8 percent + 28.6 percent × 74.2 percent), and 7.4 percent (28.6 percent × 25.8 percent). Source: DHS, USCIS, OPQ (March 5, 2024).

TABLE 13—MONETIZED EXPECTED VALUE IMPACTS FOR THE TFR—Continued

[$ millions, 2022]

FY	Stabilized earnings	Labor turnover	Total impacts	Estimated taxes
2028	4,712.5	1,367.6	6,080.1	497.3
5-year Total	63,958.4	18,560.7	82,519.1	6,748.7

B. 2% discount

4. Low end bound

FY	Stabilized earnings	Labor turnover	Total impacts	Estimated taxes
2024	606.2	26.1	632.3	64.0
2025	1,835.1	79.1	1,914.2	193.6
2026	3,486.1	150.3	3,636.4	367.8
2027	3,001.8	129.4	3,131.2	316.7
2028	682.7	29.4	712.1	72.0
5-year Total	9,612.0	414.4	10,026.3	1,014.2
Annualized	2,039.3	87.9	2,127.2	215.2

5. Average

FY	Stabilized earnings	Labor turnover	Total impacts	Estimated taxes
2024	1,836.0	326.5	2,162.5	193.7
2025	5,558.2	988.4	6,546.6	586.5
2026	10,558.6	1,877.6	12,436.2	1,114.1
2027	9,092.0	1,616.8	10,708.7	959.4
2028	2,067.8	367.7	2,435.5	218.2
5-year Total	29,112.6	5,177.0	34,289.5	3,071.9
Annualized	6,176.5	1,098.3	7,274.8	651.7

6. High end bound

FY	Stabilized earnings	Labor turnover	Total impacts	Estimated taxes
2024	3,789.8	1,099.8	4,889.6	399.9
2025	11,473.3	3,329.5	14,802.8	1,210.6
2026	21,795.0	6,324.9	28,119.8	2,299.7
2027	18,767.5	5,446.3	24,213.8	1,980.3
2028	4,268.3	1,238.7	5,506.9	450.4
5-year Total	60,093.8	17,439.2	77,533.0	6,340.9
Annualized	12,749.4	3,699.9	16,449.3	1,345.3

For the discounted figures, the annualized amounts are the average annual equivalence basis.

d. Module D. Other Impacts

As explained previously, DHS does not know what the next best alternative would have been for businesses without this rule. Accordingly, DHS does not know the proportion of the stabilized labor earnings estimates developed above that would represent cost savings to businesses for prevented lost productivity or are prevented transfer payments from affected EAD holders to replacement labor.[313] These effects are very difficult to quantify and could be influenced by multiple factors, but we will address the possibilities at a conceptual level.

In the cases where, in the absence of this rule, businesses would have been able to easily find reasonable labor substitutes for the renewal EAD applicants, then the impact of this rule is preventing a distributional impact where the earnings of affected EAD holders would be transferred to others, who might fill in for (and presumably replace) the renewal EAD applicants during their earnings lapse. The portion of the total estimate of stabilized income that would represent this prevented transfer payment will depend on the ability of businesses to have found replacement labor in the absence of this rule.

[312] If, without this rule, businesses could not find replacement labor for any of the affected EAD holders, the tax impacts shown represent the loss in employment taxes this rule would prevent. The actual amount will depend on how easily businesses would have been able to find replacement labor in the absence of this rule.

[313] Transfer payments are monetary payments from one group to another that do not affect total resources available to society. *See* OMB Regulatory Impact Analysis: A Primer pages 7 and 8 for further discussion of transfer payments and distributional effects. *https://www.reginfo.gov/public/jsp/Utilities/circular-a-4_regulatory-impact-analysis-a-primer.pdf.*

In the cases where, in the absence of this rule, businesses would not have been able to easily find reasonable labor substitutes for the renewal EAD applicants, then the impact of this rule is preventing an associated loss of productivity for employers. Therefore, the portion of the total estimate of stabilized income that would represent cost savings to employers for prevented productivity losses will depend on the ability of businesses to have found replacement labor in the absence of this rule. In this case, the rule may also result in additional cost savings to employers for prevented profit losses and having to choose the next best alternative to the EAD holder.

DHS does not know what this next-best alternative may be for those companies. However, if the replacement candidate would have been substitutable for the affected renewal EAD applicant to a high degree, the labor performed by the new candidate would not have resulted in changes to profits or productivity. Accordingly, if the replacement labor is highly substitutable, we wouldn't expect this rule to result in cost savings for productivity loss as a result of employing the next available alternative for labor. If, however, the replacement labor is a poor substitute and would have decreased productivity, then this rule will preserve that lost productivity.

The above discussion involves two important points: If employers replaced individuals who faced a lapse in their employment authorization and/or EAD validity after the automatic extension with others in the labor force, then once employment eligibility and the EAD was eventually reauthorized the EAD holder would need to conduct a new search for a new job. They would thus incur direct costs associated with seeking new employment. As discussed above, DHS was not able to monetize these potential additional costs.

DHS does not believe this rule will adversely affect the U.S. labor market. This rule extends current employment authorization for individuals who are at risk of losing it solely because of USCIS processing delays; it does not grant new work authorization to additional persons. DHS expects that this rule will help to partially alleviate the adverse effects that a lapse in employment authorization would have on affected current employment-authorized individuals and their employers. In FY 2022, 89 percent of EAD renewals for affected categories were approved [314] and all renewals, by definition, had a previously approved initial EAD application. According to the most recent data (applicable to October 2023), the U.S. labor force stands at 167,728,000.[315] The maximum population of about 824,000 represents 0.50 percent of the national labor force, approximately 554,000 of which would potentially not lapse as a result of the action being taken.

Without this rule, EAD holders who remain eligible for employment authorization would encounter delays in renewal EADs and either be unauthorized to work for periods of time or lack documentation reflecting their employment authorization. This rule is not making additional categories eligible for employment authorization; it simply temporarily increases the 180-day timeframe for those already eligible for an automatic extension. It will mitigate the risk that these EAD holders will experience gaps in employment authorization and/or EAD validity as a result of USCIS processing delays. Accordingly, stabilized earnings for these EAD holders may also relieve the support network of the applicants for any monetary or other support that would have been necessary during such a period of unemployment. This network could include public and private entities, and it may comprise family and personal friends, legal services providers and advisors, religious and charity organizations, State and local public institutions, educational providers, and nongovernmental organizations. DHS believes these impacts would accrue as cost-savings to the noncitizen EAD holders and their families.

Finally, DHS provides Table 14 to elucidate the share and number of EADs that could lapse at the baseline population value (793,000).

TABLE 14—APPROXIMATE EAD LAPSES UNDER DIFFERENT EXTENSIONS

Extension days (above current 180 days)	Total automatic extension days (including current 180 days)	Approximate share that could lapse (percent)	Approximate number that could lapse
0	180	100	793,000
30	210	90	713,000
60	240	80	634,000
90	270	75	595,000
120	300	65	515,000
180	360	55	436,000
210	390	45	376,000
360	540	33	260,000
540	720	8	63,000

Source: USCIS analysis, 11–3–23

[314] We note that the applicable renewal EAD approval rate from FY 2022 for A03, A05, A07, A08, A10, A12, A17, A18, C08, C09, C10, C16, C19, C20, C22, C24, C26, and C31 filings was 89 percent. The calculation was made from EAD filing data. *See* Form I–765, Application for Employment Authorization, All Receipts, Approvals, Denials Grouped by Eligibility Category and Filing Type (FY 2003 through 2022), *https://www.uscis.gov/sites/default/files/document/data/I-765_Application_for_Employment_FY03-22_AnnualReport.pdf* (last updated Nov. 2022). Due to the increase in backlogs, the renewal EAD approval rate was calculated as the number of approvals divided by the sum of approvals and denials, rather than the receipts basis. Calculation: 511,660 ÷ (551,660 + 63,545) = 0.89. We note that this percent may be understated because some C09 denials are denied because the applicant's Form I–485 was approved, and they are now a lawful permanent resident; setting aside C09 adjudications entirely, the renewal EAD approval rate would be 94%. Calculation: 430,879 ÷ (430,879 + 26,252) = 0.94. Further, the table in the above link notes that ''[s]ome applications approved or denied may have been received in previous reporting periods.'' It is possible that an approval or denial reported in this table for FY 2022 could have been from a renewal EAD application submitted in FY 2021.

[315] BLS, ''Employment Situation Summary Table A, Household Data, seasonally adjusted,'' ''Civilian labor force,'' *https://www.bls.gov/news.release/empsit.a.htm* (last visited Nov. 7, 2023).

Even with the TFR an estimated 260,000 (baseline) EADs could still lapse, though adding 360 days to the current 180-day extension would help ensure that these lapses would not occur until November 2025. Extensions below 540 days would stand to generate larger numbers of potential lapses. Therefore, DHS did not consider lower extensions as alternatives.[316]

DHS has not quantified the net benefits from an alternative of granting extensions greater than 540 days to all or some EAD categories. Qualitatively, although Table 14 shows the approximate number of EADs that could lapse is further reduced using a 720-day bridge (540 temporary extension + the existing 180 days) and thus attending benefits would be greater, policy and operational constraints exist. As discussed earlier in this preamble, a longer automatic extension period would result in a larger number of employers using 720 or 730 days as their Form I–9 reverification date, even though only one-third of affected applicants could need longer than 540 days. Additionally, TPS designations, and thus associated-EAD benefits cannot be granted for longer than 18 months (approximately 540 days). In addition, the Department believes that a longer period could cause confusion and potential mistakes in employer verification. While a hypothetical carve out might allow for all non-TPS EAD extensions of greater duration, DHS has limited information on the potential burdens such a carve out could create by deviating from the 540-day extension that applicants and their U.S. employers are familiar with from the 2022 TFR. Operationally, while managing 540- and 730-day extensions might be feasible and could mitigate harms projected after October 2025, the additional complexity to both USCIS and employers of administering two different automatic extension durations could delay issuing or implementing this TFR to address imminent lapses in employment authorization and EAD validity. Accordingly, USCIS is proposing an automatic extension totaling 540 days, consistent with the FY 2022 TFR and TPS EAD limitations and will evaluate the public comments and consider further action as appropriate, while at the same time working to reduce the number of EAD renewal applicants that may still have their EADs lapse as a result of processing backlogs.

4. Future Regulatory Action

This rule temporarily amends existing DHS regulations to provide that the automatic extension period applicable to expiring EADs for certain renewal applicants who have filed Form I–765, Application for Employment Authorization, will be increased from up to 180 days to up to 540 days from the expiration date stated on their EADs. DHS is soliciting public comment on this TFR as well as potential alternatives, such as a permanent increase in the automatic extension period from up to 180 days to up to 540 days or a longer extension period for certain populations, such as non-TPS EAD renewal applicants.

Qualitatively, a permanent provision for increasing the automatic extension period to up to 540 days would provide long-term predictability for applicants and relieve DHS from the pressure of having to promptly respond to unexpected changes in circumstances that may result in spikes in USCIS processing times and lapses in employment authorization and/or documentation for renewal EAD applicants. As previously discussed, recent unexpected increases in EAD applications, such as initial EAD applications by individuals with pending asylum applications (C08) and EAD applications for adjustment of status (C09), have contributed to a growing backlog. Should there again be unexpected increases in EAD applications for reasons unknown at this time, USCIS would have greater flexibility to temporarily reallocate adjudicative resources to other product lines because it would have a longer period to process renewal EAD applications before applicants would be adversely affected by a delay in the processing of their renewal EAD application. A permanent rule would also mitigate the number of potential lapses in employment authorization and/or documentation for renewal EAD applicants that may otherwise occur after the current TFR expires if processing times were to spike again in the future.

A future temporary or permanent rule might also include an extension period of greater than 540 days for non-TPS EAD renewal applicants, but although such a longer period would reduce the number of EADs that could still lapse with a 540-day extension period, among other potential effects, such bifurcated automatic extension periods may result in some confusion among employers, who have become familiar with either a 180-day period or a 540-day period. DHS welcomes public comments on any potential benefits and burdens from a permanent increase of the automatic extension period, longer extension period for non-TPS applicants, or other measures that would create more certainty for this population of renewal EAD applicants and their employers.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The RFA's regulatory flexibility analysis requirements apply only to those rules for which an agency is required to publish a general notice of proposed rulemaking pursuant to 5 U.S.C. 553 or any other law. *See* 5 U.S.C. 604(a). As discussed previously, DHS did not issue a notice of proposed rulemaking for this action. Therefore, a regulatory flexibility analysis is not required for this rule.

D. Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act)

The Congressional Review Act (CRA) was included as part of SBREFA by section 251 of SBREFA, Public Law 104–121, 110 Stat. 847, 868, *et seq.* OIRA has determined that this TFR meets the criteria in 5 U.S.C. 804(2). DHS has complied with the CRA's reporting requirements and has sent this rule to Congress and to the Comptroller General as required by 5 U.S.C. 801(a)(1). As stated in section V.A of this preamble, DHS has found that there is good cause to make this rule effective immediately upon publication.[317]

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed rule, or final rule for which the agency published a proposed rule, which includes any Federal mandate that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal

[316] DHS emphasizes that these figures are only approximations. The reason is that the percentages for lapses (column 2) are the OCB ventiles (percentiles at 5 percent increments) for the extensions below 360 days. But they do not align exactly with the day extensions (column 1). Because of the way the data are produced, we chose the percentile closest to the true extension value.

[317] *See* 5 U.S.C. 808(2).

governments, in the aggregate, or by the private sector.[318] The inflation adjusted value of $100 million in 1995 is approximately $200 million in 2023 based on the Consumer Price Index for All Urban Consumers (CPI–U).[319] This rule is exempt from the written statement requirement, because DHS did not publish a notice of proposed rulemaking for this rule.

This TFR does not contain a Federal mandate as the term is defined under UMRA.[320] The requirements of title II of UMRA, therefore, do not apply, and DHS has not prepared a statement under UMRA.

F. Executive Order 13132 (Federalism)

This rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of E.O. 13132, 64 FR 43255 (Aug. 4, 1999), this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988 (Civil Justice Reform)

This rule was drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform. This rule was written to provide a clear legal standard for affected conduct and was reviewed carefully to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. DHS has determined that this rule meets the applicable standards provided in section 3 of E.O. 12988.

H. National Environmental Policy Act

DHS and its components analyze proposed actions to determine whether the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* applies to them and if so, what degree of analysis and documentation is required. DHS Directive 023–01 Rev. 01 and Instruction Manual 023–01–001–01 Rev. 01 (Instruction Manual) [321] establish the policies and procedures that DHS and its components use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA.[322] The CEQ regulations allow Federal agencies to establish, in their NEPA implementing procedures, categories of actions (''categorical exclusions'') that experience has shown do not, individually or cumulatively, have a significant effect on the human environment and, therefore, do not require preparation of an environmental assessment or environmental impact statement.[323] The Instruction Manual, Appendix A lists the DHS categorical exclusions.[324]

Under DHS NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) the entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect.[325]

This rule amends DHS's existing regulations under 8 CFR 274a.13(d) to temporarily increase the period of time that the employment authorization of certain eligible renewal EAD applicants are automatically extended while their renewal applications remain pending with USCIS. More specifically, this rule provides that the automatic extension period applicable to expiring EADs for certain applicants who have filed renewal EAD applications will be increased from up to 180 days to up to 540 days.

DHS finds no significant impact on the environment, or any change in environmental effect that will result from the rule amendments being promulgated in this temporary final rule. Accordingly, DHS finds that the promulgation of this temporary final rule's amendments clearly fits within categorical exclusion A3 established in the Department's NEPA implementing procedures as an administrative change with no change in environmental effect.

This TFR is limited to increasing the automatic extension period applicable to expiring EADs for certain renewal applicants who have filed a renewal EAD application and is not part of a larger DHS rulemaking action. In accordance with DHS's NEPA implementing procedures, DHS has reviewed the rule and finds no extraordinary circumstances associated with this TFR exists that may give rise to significant environmental effects requiring further analysis and documentation. Therefore, this action is categorically excluded and no further NEPA analysis or documentation is required.

I. Family Assessment

DHS has reviewed this rule in line with the requirements of section 654 of the Treasury and General Government Appropriations Act, 1999,[326] enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999.[327] DHS has systematically reviewed the criteria specified in section 654(c)(1), by evaluating whether this regulatory action: (1) impacts the stability or safety of the family, particularly in terms of marital commitment; (2) impacts the authority of parents in the education, nurture, and supervision of their children; (3) helps the family perform its functions; (4) affects disposable income or poverty of families and children; (5) only financially impacts families, if at all, to the extent such impacts are justified; (6) may be carried out by State or local government or by the family; or (7) establishes a policy concerning the relationship between the behavior and personal responsibility of youth and the norms of society. If the agency determines a regulation may negatively affect family well-being, then the agency must provide an adequate rationale for its implementation.

DHS has determined that the implementation of this regulation will not negatively affect family well-being and will not have any impact on the autonomy or integrity of the family as an institution. DHS believes that this TFR will create positive effects on the family by mitigating uncertainty about continued employment authorization for renewal applicants.

J. Paperwork Reduction Act

This rule does not propose new, or revisions to existing, ''collection[s] of

[318] *See* 2 U.S.C. 1532(a).

[319] *See* BLS, ''Historical Consumer Price Index for All Urban Consumers (CPI–U): U.S. city average, all items, by month,'' *https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202312.pdf* (last visited Jan. 17, 2024). Calculation of inflation: (1) Calculate the average monthly CPI–U for the reference year (1995) and the current year (2023); (2) Subtract reference year CPI–U from current year CPI–U; (3) Divide the difference of the reference year CPI–U and current year CPI–U by the reference year CPI–U; (4) Multiply by 100 = [(Average monthly CPI–U for 2023—Average monthly CPI–U for 1995) ÷ (Average monthly CPI–U for 1995)] × 100 = [(304.702 − 152.383) ÷ 152.383] = (152.319/152.383) = 0.99958001 × 100 = 99.96 percent = 100 percent (rounded). Calculation of inflation-adjusted value: $100 million in 1995 dollars × 2.00 = $200 million in 2023 dollars.

[320] The term ''Federal mandate'' means a Federal intergovernmental mandate or a Federal private sector mandate. *See* 2 U.S.C. 1502(1), 658(6).

[321] The Instruction Manual contains the Department's procedures for implementing NEPA and was issued November 6, 2014. Available at *https://www.dhs.gov/publication/directive-023-01-rev-01-and-instruction-manual-023-01-001-01-rev-01-and-catex*.

[322] 40 CFR parts 1500 through 1508.

[323] 40 CFR 1507.3(e)(2)(ii) and 1501.4.

[324] *See* Appendix A, Table 1.

[325] *See* Instruction Manual section V.B(2)(a) through (c).

[326] *See* 5 U.S.C. 601 note.

[327] Pub. L. 105–277, 112 Stat. 2681 (1998).

information'' as that term is defined under the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320. As this is a TFR that only will increase the duration of an automatic extension of employment authorization and EAD, USCIS does not anticipate a need to update the EAD application or to collect additional information beyond that already collected on the EAD application.

List of Subjects in 8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, the Secretary of Homeland Security amends 8 CFR part 274a as follows:

PART 274a CONTROL OF EMPLOYMENT OF ALIENS

■ 1. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1105a, 1324a; 48 U.S.C. 1806; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 114–74, 129 Stat. 599; Title VII of Pub. L. 110–229, 122 Stat. 754; Pub. L. 115–218, 132 Stat. 1547; 8 CFR part 2.

■ 2. Effective April 8, 2024, through October 15, 2025, amend § 274a.13 by revising the heading of paragraph (d)(5) to read as follows:

§ 274a.13 Application for employment authorization.

* * * * *

(d) * * *

(5) *Temporary increase in the automatic extension period for renewal applications properly filed on or before October 26, 2023.* * * *

■ 3. Effective April 8, 2024, through September 20, 2027, amend § 274a.13 by adding paragraph (d)(6) to read as follows:

The revisions and additions read as follows:

§ 274a.13 Application for employment authorization.

* * * * *

(d) * * *

(6) *Temporary increase in the automatic extension period for renewal applications properly filed on or after October 27, 2023.* The authorized extension period stated in paragraph (d)(1) of this section, 8 CFR 274a.2(b)(1)(vii), and referred to in paragraph (d)(3) and (4) of this section is increased to up to 540 days for all eligible classes of aliens as described in paragraph (d)(1) of this section who properly filed their renewal application on or after October 27, 2023, and on or before September 30, 2025. Such automatic extension period will automatically terminate the earlier of up to 540 days after the expiration date of the Employment Authorization Document (Form I–766, or successor form) or upon issuance of notification of a denial on the renewal request, even if such date is after September 30, 2025. An Employment Authorization Document that has expired on its face is considered unexpired when combined with a Notice of Action (Form I–797C), which demonstrates that the requirements of paragraph (d)(1) of this section and this paragraph (d)(6) have been met, notwithstanding any notations on such notice indicating an automatic extension of up to 180 days. Nothing in this paragraph (d)(6) will affect DHS's ability to otherwise terminate any employment authorization or Employment Authorization Document, or extension period for such employment authorization or document, by written notice to the applicant, by notice to a class of aliens published in the **Federal Register**, or as provided by statute or regulation, including 8 CFR 274a.14.

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2024–07345 Filed 4–4–24; 8:45 am]

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FEDERAL REGISTER

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Part IV

The President

Memorandum of March 26, 2024—Delegation of Authority Under Section 506(a)(2) of the Foreign Assistance Act of 1961

Federal Register
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Presidential Documents

Title 3—

The President

Memorandum of March 26, 2024

Delegation of Authority Under Section 506(a)(2) of the Foreign Assistance Act of 1961

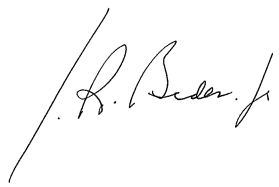
Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 621 of the Foreign Assistance Act of 1961 (FAA), I hereby delegate to the Secretary of State:

(1) the authority under section 506(a)(2) of the FAA to direct the drawdown of up to $10 million in articles and services from the inventory and resources of any agency of the United States Government and military education and training from the Department of Defense, for the purposes and under the authorities of chapter 8 of part I of the FAA to provide anti-crime and counternarcotics assistance to Haiti; and

(2) the authority to make the determination required under such section to direct such a drawdown.

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



THE WHITE HOUSE,
Washington, March 26, 2024

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