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Title 3—

The President

Proclamation 10496 of November 14, 2022

America Recycles Day, 2022

By the President of the United States of America

A Proclamation

On America Recycles Day, we promote the benefits of recycling for our health, environment, and economy and we reenergize the efforts all of us can take to meet the obligations we have as a Nation to future generations. By manufacturing and packaging more recyclable products, producing less waste, and reusing precious resources, we can cut greenhouse gas emissions, create new good-paying jobs, and do our part to help address the climate crisis.

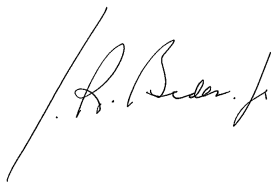
While we know its benefits, recycling is at a crossroads today in many parts of this country. Too many Americans are uncertain about what materials can or should be recycled. Municipalities have trouble finding markets for their recycled waste. Also, as we extract and process more natural resources when we could otherwise reuse materials, we emit dangerous greenhouse gases into the atmosphere. People of color and low-income Americans, who are more likely to live near landfills and other waste processing plants, often suffer disproportionately from the damaging effects of pollution, which impact their health, their livelihoods, and the quality of their lives.

In response, my Administration has released a National Recycling Strategy to guide our efforts to educate Americans about recycling best-practices. This strategy discusses ways to improve collection methods of recyclable products, how to more effectively identify markets for these materials, and how to fund the next generation of recycling technologies. It encourages investments in technologies that recycle important resources. It also strengthens the steps my Administration has taken to address climate change and achieve net-zero greenhouse gas emissions by no later than 2050, including by signing the Inflation Reduction Act into law—a historic investment in clean energy manufacturing and climate action.

For the health of our planet, we must build an economy that prioritizes reducing, reusing, and recycling materials. The Federal Government can—and should—lead by example, but each of us has a role to play. Today, I call on all Americans to take action in their own lives: Dispose of waste in the proper bins whenever possible, reuse containers, compost food, and use products made with recycled materials. I also call on all manufacturers and corporations to do their part to improve the reusability and recyclability of the products they sell and to reduce the amount of non-recyclable packaging they use. Together, as we activate our collective will and actualize our shared responsibility, we can create a cleaner and greener country that secures our future for generations to come.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 15, 2022, as America Recycles Day. I call upon the people of the United States of America to observe this day with appropriate programs and activities, and I encourage all Americans to continue their reducing, reusing, and recycling efforts throughout the year.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of November, in the year of our Lord two thousand twenty-two, and of the Independence of the United States of America the two hundred and forty-seventh.



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Rules and Regulations

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

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

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Docket No. R–1789; RIN 7100–AG 45]

Regulation A: Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (''Board'') has adopted final amendments to its Regulation A to reflect the Board's approval of an increase in the rate for primary credit at each Federal Reserve Bank. The secondary credit rate at each Reserve Bank automatically increased by formula as a result of the Board's primary credit rate action.

DATES:

Effective date: The amendments to part 201 (Regulation A) are effective November 17, 2022.

Applicability date: The rate changes for primary and secondary credit were applicable on November 3, 2022.

FOR FURTHER INFORMATION CONTACT: M. Benjamin Snodgrass, Senior Counsel (202–263–4877), Legal Division, or Francis Martinez, Lead Financial Institution & Policy Analyst (202–245–4217), or Margaret DeBoer, Senior Associate Director (202–452–3139), Division of Monetary Affairs; for users of telephone systems via text telephone (TTY) or any TTY-based Telecommunications Relay Services (TRS), please call 711 from any telephone, anywhere in the United States; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Federal Reserve Banks make primary and secondary credit available to depository institutions as a backup source of funding on a short-term basis, usually overnight. The primary and secondary credit rates are the interest rates that the twelve Federal Reserve Banks charge for extensions of credit under these programs. In accordance with the Federal Reserve Act, the primary and secondary credit rates are established by the boards of directors of the Federal Reserve Banks, subject to review and determination of the Board.

On November 2, 2022, the Board voted to approve a 0.75 percentage point increase in the primary credit rate, thereby increasing the primary credit rate from 3.25 percent to 4.00 percent. In addition, the Board had previously approved the renewal of the secondary credit rate formula, the primary credit rate plus 50 basis points. Under the formula, the secondary credit rate increased by 0.75 percentage points as a result of the Board's primary credit rate action, thereby increasing the secondary credit rate from 3.75 percent to 4.50 percent. The amendments to Regulation A reflect these rate changes.

The 0.75 percentage point increase in the primary credit rate was associated with a 0.75 percentage point increase in the target range for the federal funds rate (from a target range of 3 percent to 3¼ percent to a target range of 3¾ percent to 4 percent) announced by the Federal Open Market Committee on November 2, 2022, as described in the Board's amendment of its Regulation D published elsewhere in today's **Federal Register**.

Administrative Procedure Act

In general, the Administrative Procedure Act (''APA'') [1] imposes three principal requirements when an agency promulgates legislative rules (rules made pursuant to Congressionally-delegated authority): (1) publication with adequate notice of a proposed rule; (2) followed by a meaningful opportunity for the public to comment on the rule's content; and (3) publication of the final rule not less than 30 days before its effective date. The APA provides that notice and comment procedures do not apply if the agency for good cause finds them to be ''unnecessary, impracticable, or contrary to the public interest.'' [2] Section 553(d) of the APA also provides that publication at least 30 days prior to a rule's effective date is not required for (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) a rule for which the agency finds good cause for shortened notice and publishes its reasoning with the rule.[3] The APA further provides that the notice, public comment, and delayed effective date requirements of 5 U.S.C. 553 do not apply ''to the extent that there is involved . . . a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.'' [4]

Regulation A establishes the interest rates that the twelve Reserve Banks charge for extensions of primary credit and secondary credit. The Board has determined that the notice, public comment, and delayed effective date requirements of the APA do not apply to these final amendments to Regulation A. The amendments involve a matter relating to loans and are therefore exempt under the terms of the APA. Furthermore, because delay would undermine the Board's action in responding to economic data and conditions, the Board has determined that ''good cause'' exists within the meaning of the APA to dispense with the notice, public comment, and delayed effective date procedures of the APA with respect to the final amendments to Regulation A.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (''RFA'') does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[5] As noted previously, a general notice of proposed rulemaking is not required if the final rule involves a matter relating to loans. Furthermore, the Board has determined that it is unnecessary and contrary to the public interest to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (''PRA'') of 1995,[6] the Board reviewed the final rule under the authority delegated to the Board by the

[1] 5 U.S.C. 551 *et seq.*

[2] 5 U.S.C. 553(b)(3)(A).

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

[4] 5 U.S.C. 553(a)(2) (emphasis added).

[5] 5 U.S.C. 603, 604.

[6] 44 U.S.C. 3506; see 5 CFR part 1320 Appendix A.1.

Office of Management and Budget. The final rule contains no requirements subject to the PRA.

List of Subjects in 12 CFR Part 201

Banks, banking, Federal Reserve System, Reporting and recordkeeping.

Authority and Issuance

For the reasons set forth in the preamble, the Board is amending 12 CFR Chapter II to read as follows:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 12 U.S.C. 248(i)–(j), 343 *et seq.,* 347a, 347b, 347c, 348 *et seq.,* 357, 374, 374a, and 461.

■ 2. In § 201.51, paragraphs (a) and (b) are revised to read as follows:

§ 201.51 Interest rates applicable to credit extended by a Federal Reserve Bank.[1]

(a) *Primary credit.* The interest rate at each Federal Reserve Bank for primary credit provided to depository institutions under § 201.4(a) is 4.00 percent.

(b) *Secondary credit.* The interest rate at each Federal Reserve Bank for secondary credit provided to depository institutions under § 201.4(b) is 4.50 percent.

* * * * *

By order of the Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2022–25081 Filed 11–16–22; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Docket No. R–1790; RIN 7100–AG 46]

Regulation D: Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (''Board'') has adopted final amendments to its Regulation D to revise the rate of interest paid on balances (''IORB'') maintained at Federal Reserve Banks by or on behalf of eligible institutions. The final amendments specify that IORB is 3.90 percent, a 0.75 percentage point increase from its prior level. The amendment is intended to enhance the role of IORB in maintaining the federal funds rate in the target range established by the Federal Open Market Committee (''FOMC'' or ''Committee'').

DATES:

Effective date: The amendments to part 204 (Regulation D) are effective November 17, 2022.

Applicability date: The IORB rate change was applicable on November 3, 2022.

FOR FURTHER INFORMATION CONTACT: M. Benjamin Snodgrass, Senior Counsel (202–263–4877), Legal Division, or Francis Martinez, Lead Financial Institution & Policy Analyst (202–245–4217), or Margaret DeBoer, Senior Associate Director (202–452–3139), Division of Monetary Affairs; for users of telephone systems via text telephone (TTY) or any TTY-based Telecommunications Relay Services (TRS), please call 711 from any telephone, anywhere in the United States; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

For monetary policy purposes, section 19 of the Federal Reserve Act (''Act'') imposes reserve requirements on certain types of deposits and other liabilities of depository institutions.[1] Regulation D, which implements section 19 of the Act, requires that a depository institution meet reserve requirements by holding cash in its vault, or if vault cash is insufficient, by maintaining a balance in an account at a Federal Reserve Bank (''Reserve Bank'').[2] Section 19 also provides that balances maintained by or on behalf of certain institutions in an account at a Reserve Bank may receive earnings to be paid by the Reserve Bank at least once each quarter, at a rate or rates not to exceed the general level of short-term interest rates.[3] Institutions that are eligible to receive earnings on their balances held at Reserve Banks (''eligible institutions'') include depository institutions and certain other institutions.[4] Section 19 also provides that the Board may prescribe regulations concerning the payment of earnings on balances at a Reserve Bank.[5] Prior to these amendments, Regulation D established IORB at 3.15 percent.[6]

II. Amendment to IORB

The Board is amending § 204.10(b)(1) of Regulation D to establish IORB at 3.90 percent. The amendment represents a 0.75 percentage point increase in IORB. This decision was announced on November 2, 2022, with an effective date of November 3, 2022, in the Federal Reserve Implementation Note that accompanied the FOMC's statement on November 2, 2022. The FOMC statement stated that the Committee decided to raise the target range for the federal funds rate to 3¾ to 4 percent.

The Federal Reserve Implementation Note stated:

> The Board of Governors of the Federal Reserve System voted unanimously to raise the interest rate paid on reserve balances to 3.9 percent, effective November 3, 2022.

As a result, the Board is amending § 204.10(b)(1) of Regulation D to establish IORB at 3.90 percent.

III. Administrative Procedure Act

In general, the Administrative Procedure Act (''APA'')[7] imposes three principal requirements when an agency promulgates legislative rules (rules made pursuant to Congressionally-delegated authority): (1) publication with adequate notice of a proposed rule; (2) followed by a meaningful opportunity for the public to comment on the rule's content; and (3) publication of the final rule not less than 30 days before its effective date. The APA provides that notice and comment procedures do not apply if the agency for good cause finds them to be ''unnecessary, impracticable, or contrary to the public interest.''[8] Section 553(d) of the APA also provides that publication at least 30 days prior to a rule's effective date is not required for (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) a rule for which the agency finds good cause for shortened notice and publishes its reasoning with the rule.[9]

The Board has determined that good cause exists for finding that the notice, public comment, and delayed effective date provisions of the APA are unnecessary, impracticable, or contrary to the public interest with respect to

[1] The primary, secondary, and seasonal credit rates described in this section apply to both advances and discounts made under the primary, secondary, and seasonal credit programs, respectively.

[1] 12 U.S.C. 461(b). In March 2020, the Board set all reserve requirement ratios to zero percent. See Interim Final Rule, 85 FR 16525 (Mar. 24, 2020); Final Rule, 86 FR 8853 (Feb. 10, 2021).

[2] 12 CFR 204.5(a)(1).

[3] 12 U.S.C. 461(b)(1)(A) and (b)(12)(A).

[4] See 12 U.S.C. 461(b)(1)(A) & (b)(12)(C); see also 12 CFR 204.2(y).

[5] See 12 U.S.C. 461(b)(12)(B).

[6] See 12 CFR 204.10(b)(1).

[7] 5 U.S.C. 551 *et seq.*

[8] 5 U.S.C. 553(b)(3)(A).

[9] 5 U.S.C. 553(d).

these final amendments to Regulation D. The rate change for IORB that is reflected in the final amendment to Regulation D was made with a view towards accommodating commerce and business and with regard to their bearing upon the general credit situation of the country. Notice and public comment would prevent the Board's action from being effective as promptly as necessary in the public interest and would not otherwise serve any useful purpose. Notice, public comment, and a delayed effective date would create uncertainty about the finality and effectiveness of the Board's action and undermine the effectiveness of that action. Accordingly, the Board has determined that good cause exists to dispense with the notice, public comment, and delayed effective date procedures of the APA with respect to this final amendment to Regulation D.

IV. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (''RFA'') does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[10] As noted previously, the Board has determined that it is unnecessary and contrary to the public interest to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (''PRA'') of 1995,[11] the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The final rule contains no requirements subject to the PRA.

List of Subjects in 12 CFR Part 204

Banks, Banking, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the Board amends 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

■ 1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 461, 601, 611, and 3105.

[10] 5 U.S.C. 603, 604.

[11] 44 U.S.C. 3506; see 5 CFR part 1320 Appendix A.1.

■ 2. Section 204.10 is amended by revising paragraph (b)(1) to read as follows:

§ 204.10 Payment of interest on balances.

* * * * *

(b) * * *

(1) For balances maintained in an eligible institution's master account, interest is the amount equal to the interest on reserve balances rate (''IORB rate'') on a day multiplied by the total balances maintained on that day. The IORB rate is 3.90 percent.

* * * * *

By order of the Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2022–25082 Filed 11–16–22; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0984; Project Identifier MCAI–2022–00236–T; Amendment 39–22207; AD 2022–21–08]

RIN 2120–AA64

Airworthiness Directives; Embraer S.A. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Embraer S.A. Model EMB–545 airplanes. This AD was prompted by an error that was detected in the airplane takeoff configuration warning logic. The error prevents the system from sounding an aural alert ''No Takeoff Trim'' for the flightcrew. This AD requires the installation of a new software version of engine indication and crew alert system (EICAS), as specified in an Agência Nacional de Aviação Civil (ANAC) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 22, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 22, 2022.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–0984; 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, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

• For material incorporated by reference (IBR) in this AD, contact ANAC, Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email *pac@anac.gov.br;* website *anac.gov.br/en/.* You may find this IBR material on the ANAC website at *sistemas.anac.gov.br/certificacao/DA/DAE.asp.*

• You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2022–0984.

FOR FURTHER INFORMATION CONTACT: Hassan Ibrahim, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3653; email *Hassan.M.Ibrahim@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Embraer S.A. Model EMB–545 airplanes. The NPRM published in the **Federal Register** on July 29, 2022 (87 FR 45707). The NPRM was prompted by AD 2022–02–02, effective February 23, 2022, issued by ANAC, which is the aviation authority for Brazil (referred to after this as the MCAI). The MCAI states that an error was detected in the airplane takeoff configuration warning logic. The error prevents the system from sounding an aural alert ''No Takeoff Trim'' for the flightcrew, if the pitch trim is in a position that would not allow a safe takeoff (positioned out of the green band indication).

In the NPRM, the FAA proposed to require installation of a new software version of EICAS, as specified in ANAC

AD 2022–02–02. The FAA is issuing this AD to address the lack of sound aural alert ''No Takeoff Trim'' to the flightcrew on a possibly misconfigured airplane, which could result in loss of airplane controllability.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–0984.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

ANAC AD 2022–02–02 specifies procedures for installation of a new software version of EICAS.

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

Costs of Compliance

The FAA estimates that this AD affects 41 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
3.5 work-hours × $85 per hour * = $297.50	.....	$297.50	$12,197.50

* The FAA has received no definitive data on which to base the cost estimates for the parts specified in this AD.

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all known costs in the cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–21–08 Embraer S.A.: Amendment 39–22207; Docket No. FAA–2022–0984; Project Identifier MCAI–2022–00236–T.

(a) Effective Date

This airworthiness directive (AD) is effective December 22, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Embraer S.A. Model EMB–545 airplanes, certificated in any category, as identified in Agência Nacional de Aviação Civil (ANAC) AD 2022–02–02, effective February 23, 2022 (ANAC AD 2022–02–02).

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Unsafe Condition

This AD was prompted by an error that was detected in the airplane takeoff configuration warning logic. The error prevents the system from sounding an aural alert ''No Takeoff Trim'' for the flightcrew, if the pitch trim is in a position that would not allow a safe takeoff (positioned out of the green band indication). The FAA is issuing this AD to address the lack of sound aural alert ''No Takeoff Trim'' to the flightcrew on a possibly misconfigured airplane, which could result in loss of airplane controllability.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required

actions and compliance times specified in, and in accordance with, ANAC AD 2022–02–02.

(h) Exceptions to ANAC AD 2022–02–02

(1) Where ANAC AD 2022–02–02 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Alternative methods of compliance (AMOC)'' section of ANAC AD 2022–02–02 does not apply to this AD.

(3) Where paragraph (b) of ANAC AD 2022–02–02 specifies acceptable higher software versions, replace ''For higher software versions, use the applicable Service Bulletin recommended by the Manufacturer'' with ''For higher software versions, use the applicable Service Bulletin approved by ANAC and recommended by the Manufacturer.''

(i) No Reporting Required

Although the service information referenced in ANAC AD 2022–02–02 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation 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 responsible Flight Standards Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or ANAC; or ANAC's authorized Designee. If approved by the ANAC Designee, the approval must include the Designee's authorized signature.

(k) Additional Information

For more information about this AD, contact Hassan Ibrahim, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3653; email *Hassan.M.Ibrahim@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) Agência Nacional de Aviação Civil (ANAC) AD 2022–02–02, effective February 23, 2022.

(ii) [Reserved]

(3) For ANAC AD 2022–02–02, contact ANAC, Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email *pac@anac.gov.br;* website *anac.gov.br/en/.* You may find this ANAC AD on the ANAC website at *sistemas.anac.gov.br/certificacao/DA/DAE.asp.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued on October 3, 2022.

Christina Underwood,

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

[FR Doc. 2022–24988 Filed 11–16–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0682; Project Identifier MCAI–2021–01271–T; Amendment 39–22171; AD 2022–19–02]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2016–10–08, AD 2017–05–10, and AD 2019–01–05, which applied to certain Airbus SAS Model A330–200, –200 Freighter, and –300 series airplanes; and AD 2019–20–13, which applied to certain Airbus SAS Model A330–200, A330–200 Freighter, A330–300, A340–200, A340–300, A340–500, and A340–600 series airplanes. AD 2016–10–08 required determining the flight cycles accumulated on certain trimmable horizontal stabilizer actuators (THSAs), and replacing the THSA if necessary. AD 2017–05–10, AD 2019–01–05, and AD 2019–20–13 required revising the existing maintenance or inspection program, as applicable. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 22, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 22, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of June 24, 2016 (81 FR 31844, May 20, 2016).

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of November 26, 2019 (84 FR 56378, October 22, 2019).

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–0682; 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, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For EASA AD 2021–0250, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*
- For Airbus SAS service information, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com; internet airbus.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the

availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2022–0682.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3229; email *vladimir.ulyanov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0250, dated November 17, 2021 (EASA AD 2021–0250) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A330–201, –202, –203, –223, and –243 airplanes; Model A330–223F and –243F airplanes; Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; Model A330–841 airplanes; and Model A330–941 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2016–10–08, Amendment 39–18519 (81 FR 31844, May 20, 2016) (AD 2016–10–08); AD 2017–05–10, Amendment 39–18821 (82 FR 13379, March 13, 2017) (AD 2017–05–10); AD 2019–01–05, Amendment 39–19544 (84 FR 4310, February 15, 2019) (AD 2019–01–05); and AD 2019–20–13, Amendment 39–19766 (84 FR 56378, October 22, 2019) (AD 2019–20–13). AD 2016–10–08, AD 2017–05–10, and AD 2019–01–05, applied to certain Airbus SAS Model A330–200, –200 Freighter, and –300 series airplanes, and AD 2019–20–13 applied to certain Airbus SAS Model A330–200, A330–200 Freighter, A330–300, A340–200, A340–300, A340–500, and A340–600 series airplanes. The NPRM published in the **Federal Register** on June 23, 2022 (87 FR 37454). The NPRM was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The NPRM proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, as specified in EASA AD 2021–0250.

The FAA is issuing this AD to address the failure of system components, which could reduce the controllability of the airplane. See the MCAI for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from the Air Line Pilots Association, International (ALPA) who supported the NPRM without change.

Conclusion

The FAA reviewed the relevant data, considered the comment received, and determined that air safety requires adopting this AD as proposed. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0250 specifies airworthiness limitations for system equipment maintenance requirements.

This AD also requires Airbus Service Bulletin A330–27–3199, dated July 15, 2014, which the Director of the Federal Register approved for incorporation by reference as of June 24, 2016 (81 FR 31844, May 20, 2016).

This AD also requires Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Revision 07, dated October 15, 2018, which the Director of the Federal Register approved for incorporation by reference as of November 26, 2019 (84 FR 56378, October 22, 2019).

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

Costs of Compliance

The FAA estimates that this AD affects 138 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA estimates the total cost per operator for the retained actions from AD 2016–10–08 to be $255 per product (3 work-hours × $85 per work-hour) for inspecting the THSA for a total cost for U.S. operators of $35,190. The retained on-condition cost for AD 2016–10–08 is $724,511 per product (23 work-hours × $85 per work-hour). The FAA estimates the total cost per operator for the retained actions from AD 2019–20–13 to be $7,650 (90 work-hours × $85 per work-hour).

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the new actions to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

Accordingly, under the authority delegated to me by the Administrator,

the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) AD 2016–10–08, Amendment 39–18519 (81 FR 31844, May 20, 2016); AD 2017–05–10, Amendment 39–18821 (82 FR 13379, March 13, 2017); AD 2019–01–05, Amendment 39–19544 (84 FR 4310, February 15, 2019); and AD 2019–20–13, Amendment 39–19766 (84 FR 56378, October 22, 2019); and

■ b. Adding the following new AD:

2022–19–02 Airbus SAS: Amendment 39–22171; Docket No. FAA–2022–0682; Project Identifier MCAI–2021–01271–T.

(a) Effective Date

This airworthiness directive (AD) is effective December 22, 2022.

(b) Affected ADs

(1) This AD replaces the ADs identified in paragraphs (b)(1)(i) through (iv) of this AD.

(i) AD 2016–10–08, Amendment 39–18519 (81 FR 31844, May 20, 2016) (AD 2016–10–08).

(ii) AD 2017–05–10, Amendment 39–18821 (82 FR 13379, March 13, 2017) (AD 2017–05–10).

(iii) AD 2019–01–05, Amendment 39–19544 (84 FR 4310, February 15, 2019) (AD 2019–01–05).

(iv) AD 2019–20–13, Amendment 39–19766 (84 FR 56378, October 22, 2019) (AD 2019–20–13).

(2) This AD affects the ADs identified in paragraphs (b)(2)(i) and (ii) of this AD.

(i) AD 2014–16–22, Amendment 39–17946 (79 FR 49442, August 21, 2014) (AD 2014–16–22).

(ii) AD 2017–25–13, Amendment 39–19127 (82 FR 59960, December 18, 2017) (AD 2017–25–13).

(c) Applicability

This AD applies to Airbus SAS airplanes specified in paragraphs (c)(1) through (5) of this AD, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before July 1, 2021.

(1) Model A330–201, –202, –203, –223, and –243 airplanes.

(2) Model A330–223F and –243F airplanes.

(3) Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(4) Model A330–841 airplanes.

(5) Model A330–941 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address the failure of system components, which could reduce the controllability of the airplane.

(f) Compliance

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

(g) Retained Inspection To Determine Trimmable Horizontal Stabilizer Actuator (THSA) Part Number and Accumulated Total Flight Cycles, With Removed References to Certain Models

This paragraph restates the requirements of paragraph (g) of AD 2016–10–08, with removed references to certain models. For Model A330–200 Freighter, A330–200, and A330–300 series airplanes: Within 90 days after June 24, 2016 (the effective date of AD 2016–10–08), inspect the THSA to determine if it has part number 47147–500, 47147–700, 47172–300, 47172–500, 47172–510, or 47172–520, and to determine the total number of flight cycles accumulated since the THSA's first installation on an airplane, or since the most recent no-back brake (NBB) replacement. A review of airplane delivery or maintenance records is acceptable in lieu of this inspection if the part number of the THSA can be conclusively determined from that review. Accomplishing the revision of the existing maintenance or inspection program required by paragraph (o) of this AD terminates the requirements of this paragraph.

(h) Retained THSA Replacement for Model A330–200 Freighter, A330–200, and A330–300 Series Airplanes, With Removed References to Certain Models and Service Information

This paragraph restates the requirements of paragraph (h) of AD 2016–10–08, with removed references to certain models and service information. For Model A330–200 Freighter, A330–200, and A330–300 series airplanes having a THSA with a part number specified in paragraph (g) of this AD: At the applicable time specified in paragraph (h)(1), (2), or (3) of this AD, replace each affected THSA with a serviceable THSA, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–27–3199, dated July 15, 2014. Accomplishing the revision of the existing maintenance or inspection program required by paragraph (o) of this AD terminates the requirements of this paragraph.

(1) For a THSA that has accumulated or exceeded 20,000 total flight cycles since the THSA's first installation on an airplane, or since the most recent NBB replacement, whichever is later, as of June 24, 2016 (the effective date of AD 2016–10–08): Within 6 months after June 24, 2016.

(2) For a THSA that has accumulated or exceeded 16,000 total flight cycles, but less than 20,000 total flight cycles since the THSA's first installation on an airplane, or since the most recent NBB replacement, whichever is later, as of June 24, 2016 (the effective date of AD 2016–10–08): Within 12 months after June 24, 2016, but without exceeding 20,000 total flight cycles.

(3) For a THSA that has accumulated less than 16,000 total flight cycles since first installation on an airplane, or since the most recent NBB replacement, whichever is later, as of June 24, 2016 (the effective date of AD 2016–10–08): At the applicable time specified in paragraph (i) of this AD.

Note 1 to paragraph (h): This note applies to paragraphs (h) and (i) of this AD. The THSA life limits specified in Part 4-Aging System Maintenance of the Airbus A330 Airworthiness Limitations Sections are still relevant, as applicable to airplane model and THSA part number.

(i) Retained Replacement Times for Model A330–200 Freighter, A330–200, and A330–300 Series Airplanes With THSAs Having Less Than 16,000 Total Flight Cycles as of the Effective Date of This AD, With Removed References to Certain Models and Service Information

This paragraph restates the requirements of paragraph (i) of AD 2016–10–08, with removed references to certain models and service information. The requirements of this paragraph apply to Model A330–200 Freighter, A330–200, and A330–300 series airplanes having a THSA with a part number specified in paragraph (g) of this AD that has accumulated less than 16,000 total flight cycles since first installation on an airplane, or since the most recent NBB replacement, whichever is later, as of June 24, 2016 (the effective date of AD 2016–10–08). Not later than the date specified in paragraphs (i)(1), (2), or (3) of this AD, as applicable: For any THSA having reached or exceeded on that date the corresponding number of total flight cycles as specified in paragraphs (i)(1), (2), or (3) of this AD, as applicable, replace the THSA with a serviceable unit, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–27–3199, dated July 15, 2014. Accomplishing the revision of the existing maintenance or inspection program required by paragraph (o) of this AD terminates the requirements of this paragraph.

(1) As of 12 months after June 24, 2016 (the effective date of AD 2016–10–08): The THSA flight-cycle limit (since first installation on an airplane, or since last NBB replacement, whichever occurs later) is 16,000 total flight cycles.

(2) As of July 31, 2017: The THSA flight cycle limit (since first installation on an airplane, or since last NBB replacement, whichever occurs later) is 14,000 total flight cycles.

(3) As of July 31, 2018: The THSA flight cycle limit (since first installation on an airplane, or since last NBB replacement, whichever occurs later) is 12,000 total flight cycles.

(j) Retained THSA Replacement Intervals for Model A330–200 Freighter, A330–200, and A330–300 Series Airplanes, With Removed Service Information

This paragraph restates the requirements of paragraph (k) of AD 2016–10–08, with removed service information. For Model

A330–200 Freighter, A330–200, and A330–300 series airplanes with any part installed, as required by paragraph (h) or (i) of this AD, having a part number identified in paragraph (g) of this AD: From the dates specified in paragraph (i) of this AD, as applicable, and prior to exceeding the accumulated number of total flight cycles corresponding to each time, replace each affected THSA with a serviceable part, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–27–3199, dated July 15, 2014. Accomplishing the revision of the existing maintenance or inspection program required by paragraph (o) of this AD terminates the requirements of this paragraph.

(k) Retained Definition of Serviceable THSA, With Updated Paragraph References

This paragraph restates the requirements of paragraph (l) of AD 2016–10–08, with updated paragraph references. For the purposes of paragraphs (g) through (j) and (l) of this AD, a serviceable THSA is a THSA:

(1) Having a part number identified in paragraph (g) of this AD that has not exceeded any of the total accumulated flight cycles identified in paragraphs (i)(1) through (3) of this AD; or

(2) Having a part number that is not identified in paragraph (g) of this AD.

(l) Retained Parts Installation Limitation, With Updated Paragraph References

This paragraph restates the requirements of paragraph (m) of AD 2016–10–08, with updated paragraph references. For Model A330–200 Freighter, A330–200, and A330–300 series airplanes: From each date specified in paragraphs (i)(1) through (3) of this AD, a THSA having a part number identified in paragraph (g) of this AD may be installed on any airplane, provided the THSA has not exceeded the corresponding number of accumulated total flight cycles. Accomplishing the revision of the existing maintenance or inspection program required by paragraph (o) of this AD terminates the requirements of this paragraph.

(m) Retained Revision of the Existing Maintenance or Inspection Program, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2019–20–13, with no changes. For Model A330–200 Freighter, A330–200, and A330–300 series airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before October 15, 2018: Within 90 days after November 26, 2019 (the effective date of AD 2019–20–13), revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Revision 07, dated October 15, 2018. The component life limits and the initial compliance time for doing the tasks are at the times specified in Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Revision 07, dated October 15, 2018, or within 90 days after November 26, 2019, whichever occurs later. Accomplishing the revision of the existing maintenance or inspection program required by paragraph (o) of this AD terminates the requirements of this paragraph.

(n) Retained Restrictions on Alternative Actions and Intervals, With a New Exception

This paragraph restates the requirements of paragraph (h) of AD 2019–20–13, with a new exception. Except as required by paragraph (o) of this AD, after the existing maintenance or inspection program has been revised as required by paragraph (m) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (s)(1) of this AD.

(o) New Revision of the Existing Maintenance or Inspection Program

Except as specified in paragraph (p) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2021–0250, dated November 17, 2021 (EASA AD 2021–0250). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraphs (g) through (j), (l), and (m) of this AD.

(p) Exceptions to EASA AD 2021–0250

(1) Where EASA AD 2021–0250 refers to its effective date, this AD requires using the effective date of this AD.

(2) The requirements specified in paragraphs (1) and (2) of EASA AD 2021–0250 do not apply to this AD.

(3) Paragraph (3) of EASA AD 2021–0250 specifies to ''revise the AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA 2021–0250 is at the applicable ''limitations and associated thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2021–0250, or within 90 days after the effective date of this AD, whichever occurs later.

(5) The provisions specified in paragraphs (4) and (5) of EASA AD 2021–0250 do not apply to this AD.

(6) The ''Remarks'' section of EASA AD 2021–0250 does not apply to this AD.

(q) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (o) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2021–0250.

(r) Terminating Action for AD 2014–16–22 and AD 2017–25–13

(1) Accomplishing the action required by task number 213100–00001–1–E of Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Revision 07, dated October 15, 2018, or using ''The ALS'' as specified in EASA AD 2021–0250, within the compliance time specified for that task terminates all requirements of AD 2014–16–22 for Airbus SAS Model A330–200, –200 Freighter, and –300 series airplanes only.

(2) Accomplishing the action required by task number 274400–000041–E of Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Revision 07, dated October 15, 2018, or using ''The ALS'' as specified in EASA AD 2021–0250, within the compliance time specified for that task terminates all requirements of AD 2017–25–13 for Airbus SAS Model A330–200, –200 Freighter, and –300 series airplanes only.

(s) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation 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 responsible Flight Standards Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (t) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (s)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(t) Additional Information

For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3229; email *vladimir.ulyanov@faa.gov.*

(u) 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 this AD specifies otherwise.

(3) The following service information was approved for IBR on December 22, 2022.

(i) European Union Aviation Safety Agency (EASA) AD 2021–0250, dated November 17, 2021.

(ii) [Reserved]

(4) The following service information was approved for IBR on June 24, 2016 (81 FR 31844, May 20, 2016).

(i) Airbus Service Bulletin A330–27–3199, dated July 15, 2014.

(ii) [Reserved]

(5) The following service information was approved for IBR on November 26, 2019 (84 FR 56378, October 22, 2019).

(i) Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Revision 07, dated October 15, 2018.

(ii) [Reserved]

(6) For EASA AD 2021–0250, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

(7) For Airbus SAS service information, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *airbus.com.*

(8) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued on September 2, 2022.

Christina Underwood,

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

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–371]

Schedules of Controlled Substances: Placement of Amineptine in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: With the issuance of this final rule, the Drug Enforcement Administration places amineptine (chemical name: 7-[(10,11-dihydro-5*H*-dibenzo[*a,d*]cyclohepten-5-yl)amino]heptanoic acid), including its salts, isomers, and salts of isomers, in schedule I of the Controlled Substances Act. This action is being taken to enable the United States to meet its obligations under the 1971 Convention on Psychotropic Substances. This action imposes the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess), or propose to handle amineptine.

DATES: Effective date: December 19, 2022.

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

SUPPLEMENTARY INFORMATION:

Legal Authority

The United States is a party to the 1971 United Nations Convention on Psychotropic Substances (1971 Convention), February 21, 1971, 32 U.S.T. 543, 1019 U.N.T.S. 175, as amended. Procedures respecting changes in drug schedules under the 1971 Convention are governed domestically by 21 U.S.C. 811(d)(2)–(4). When the United States receives notification of a scheduling decision pursuant to Article 2 of the 1971 Convention adding a drug or other substance to a specific schedule, the Secretary of the Department of Health and Human Services (HHS),[1] after consultation with the Attorney General, shall first determine whether existing legal controls under subchapter I of the Controlled Substances Act (CSA) and the Federal Food, Drug, and Cosmetic Act meet the requirements of the schedule specified in the notification with respect to the specific drug or substance.[2] In the event that the Secretary of HHS (Secretary) did not so consult with the Attorney General, and the Attorney General did not issue a temporary order, as provided under 21 U.S.C. 811(d)(4), the procedures for permanent scheduling are set forth in 21 U.S.C. 811(a) and (b). Pursuant to 21 U.S.C. 811(a)(1), the Attorney General may, by rule, add to such a schedule or transfer between such schedules any drug or other substance, if he finds that such drug or other substance has a potential for abuse, and makes with respect to such drug or other substance the findings prescribed by 21 U.S.C. 812(b) for the schedule in which such drug or other substance is to be placed. The Attorney General has delegated this scheduling authority to the Administrator of the Drug Enforcement Administration (Administrator).[3]

Background

Amineptine (chemical name: 7-[(10,11-dihydro-5*H*-dibenzo[*a,d*]cyclohepten-5-yl)amino]heptanoic acid) is a synthetic tricyclic antidepressant with central nervous system (CNS) stimulating properties.

In April 2003, the United Nations Commission on Narcotic Drugs (CND), on the advice of the Director-General of the World Health Organization (WHO), added amineptine to Schedule II of the 1971 Convention, thus notifying all parties to the 1971 Convention.

DEA and HHS Eight Factor Analyses

On November 8, 2011, in accordance with 21 U.S.C. 811(b), and in response to the Drug Enforcement Administration's (DEA) August 12, 2008 request, HHS provided to DEA a scientific and medical evaluation and a scheduling recommendation for amineptine. DEA subsequently reviewed HHS' evaluation and recommendation for schedule I placement and all other relevant data, and conducted its own analysis under the eight factors stipulated in 21 U.S.C.

[1] As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), FDA acts as the lead agency within HHS in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518 (March 8, 1985). The Secretary of HHS has delegated to the Assistant Secretary for Health of HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460 (July 1, 1993).

[2] 21 U.S.C. 811(d)(3).

[3] 28 CFR 0.100.

811(c). DEA found, under 21 U.S.C. 812(b)(1), that this substance warrants control in schedule I. Both DEA and HHS analyses are available in their entirety under ''Supporting and Related Material'' of the public docket for this rule at *https://www.regulations.gov* under docket number DEA–371.

Notice of Proposed Rulemaking to Schedule Amineptine

On July 22, 2021, DEA published a notice of proposed rulemaking (NPRM) entitled ''Schedules of Controlled Substances: Placement of amineptine in schedule I.'' [4] The NPRM provided an opportunity for interested persons to file a request for a hearing in accordance with DEA regulations on or before August 23, 2021. No requests for such a hearing were received by DEA. The NPRM also provided an opportunity for interested persons to submit comments on the proposed rule on or before September 20, 2021.

Comments Received

DEA received three comments on the proposed rule to control amineptine in schedule I of the CSA.

Support for rulemaking: Two commenters recognized the dangers and public health risks, and supported the placement of amineptine in schedule I.

DEA Response: DEA appreciates the comments in support of this rulemaking.

Opposition to rulemaking: One commenter opposed the placement of amineptine in schedule I due to the lack of abuse in the United States, and contended it showed potential as an ''anti-addictive agent and antidepressant'' in clinical settings.

DEA Response: DEA does not agree. As discussed in DEA and HHS eight-factor analyses which accompanied the published NPRM, amineptine is not approved by the Food and Drug Administration for use in the United States. While amineptine has previously been used in Europe and Asia as an antidepressant, its use has been withdrawn from the market in 49 of 66 countries. Strong evidence of abuse, severe adverse effects including hepatotoxicity, pancreatic injury, and severe acne eruption that required hospitalization, and overconsumption, have been documented by the WHO's Expert Committee on Drug Dependence report [5] and HHS in their scientific and medical evaluation where amineptine was recommended for control in schedule I of the CSA.[6]

In addition, DEA conducted an eight-factor analysis pursuant to 21 U.S.C. 811(c), and based its scheduling determination on a comprehensive evaluation of all available data. As stated in the proposed rulemaking, after careful review of all data, DEA concurred with HHS' assessment that amineptine has a high potential for abuse, and it has no currently accepted medical use in treatment in the United States and lacks accepted safety for use under medical supervision. Congress established only one schedule, schedule I, for drugs of abuse with ''no currently accepted medical use in treatment in the United States'' and ''lack of accepted safety for use under medical supervision.'' [7] DEA is therefore promulgating this final rule placing amineptine in schedule I under the CSA.

Scheduling Conclusion

After consideration of the public comments, the scientific and medical evaluation and accompanying recommendation of HHS, and conducting an independent eight-factor analysis, DEA finds substantial evidence of potential for abuse of amineptine. As such, DEA is permanently scheduling amineptine as a controlled substance under the CSA.

Determination of Appropriate Schedule

The CSA establishes five schedules of controlled substances known as schedules I, II, III, IV, and V. The CSA also outlines the findings required to place a drug or other substance in any particular schedule.[8] After consideration of the analysis and recommendation of the Assistant Secretary for HHS and review of all other available data, the Administrator, pursuant to 21 U.S.C. 811(a) and 812(b)(1), finds that:

(1) Amineptine has a high potential for abuse. This potential is comparable to certain schedule II substances (*e.g.,* amphetamine or cocaine);

(2) Amineptine has no currently accepted medical use in treatment in the United States; [9] and

(3) There is a lack of accepted safety for use of amineptine under medical supervision.

Based on these findings, the Administrator concludes that amineptine, including its salts, isomers, and salts of isomers, warrants control in schedule I of the CSA.[10]

Requirements for Handling Amineptine

Amineptine is subject to the CSA's schedule I regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, dispensing, importing, exporting, research, and conduct of instructional activities, including the following:

1. *Registration.* Any person who handles (manufactures, distributes, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses) amineptine, or who desires to handle amineptine, must be registered with DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312. Any person who currently handles amineptine and is not registered with DEA must submit an application for registration and may not continue to handle amineptine, unless DEA has approved that application, pursuant to 21 U.S.C. 822, 823, 957, and 958 and in accordance with 21 CFR parts 1301 and 1312.

2. *Disposal of stocks.* Any person unwilling or unable to obtain a schedule I registration must surrender all quantities of currently held amineptine, or may transfer all quantities of currently held amineptine to a person registered with DEA. Amineptine is required to be disposed of in accordance with 21 CFR part 1317, in addition to all other applicable Federal, State, local, and tribal laws.

3. *Security.* Amineptine is subject to schedule I security requirements and

[4] 86 FR 38619.

[5] World Health Organization (WHO) Critical Review of Psychoactive Substances prepared for evaluation by the 33rd Meeting of the WHO Expert Committee on Drug Dependence. Annex, 2002.1–14.

[6] While HHS's Secretary is the expert on scientific and medical matters in scheduling decisions of this type, DEA is not bound by HHS's recommendation to schedule a substance. DEA's Administrator is obligated to determine ''that these facts and all other relevant data constitute substantial evidence of potential for abuse such as to warrant control'' prior to following set rulemaking proceedings for control. 21 U.S.C. 811(b); *see* 76 FR 77330, 77334–77335, Dec. 12, 2011. This is what DEA is doing in this rulemaking.

[7] 21 U.S.C. 812(b).

[8] 21 U.S.C. 812(b).

[9] Although there is no evidence suggesting that amineptine has a currently accepted medical use in treatment in the United States, it bears noting that a drug cannot be found to have such medical use unless DEA concludes that it satisfies a five-part test. Specifically, with respect to a drug that has not been approved by FDA, to have a currently accepted medical use in treatment in the United States, all of the following must be demonstrated: i. the drug's chemistry must be known and reproducible; ii. there must be adequate safety studies; iii. there must be adequate and well-controlled studies proving efficacy; iv. the drug must be accepted by qualified experts; and v. the scientific evidence must be widely available. 57 FR 10499 (1992), *pet. for rev. denied, Alliance for Cannabis Therapeutics* v. *DEA,* 15 F.3d 1131, 1135 (D.C. Cir. 1994).

[10] 21 U.S.C. 812(b)(1).

must be handled and stored pursuant to 21 U.S.C. 821 and 823 and in accordance with 21 CFR parts 1301.71–1301.76. Non-practitioners handling amineptine must also comply with the employee screening requirements of 21 CFR parts 1301.90–1301.93.

4. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of amineptine must comply with 21 U.S.C. 825 and 958(e), and be in accordance with 21 CFR part 1302.

5. *Quota.* Only registered manufacturers are permitted to manufacture amineptine in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303.

6. *Inventory.* Every DEA registrant who possesses any quantity of amineptine must take an inventory of amineptine on hand pursuant to 21 U.S.C. 827 and 958 and in accordance with 21 CFR parts 1304.03, 1304.04, and 1304.11(a) and (d).

Any person who registers with DEA must take an initial inventory of all stocks of controlled substances (including amineptine) on hand on the date the registrant first engages in the handling of controlled substances, pursuant to 21 U.S.C. 827, 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11(a) and (b).

After the initial inventory, every DEA registrant must take an inventory of all controlled substances (including amineptine) on hand every two years, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR parts 1304.03, 1304.04, and 1304.11.

7. *Records and Reports.* Every DEA registrant must maintain records and submit reports with respect to amineptine, pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR 1301.74(b) and (c) and parts 1304, 1312, and 1317. Manufacturers and distributors must submit reports regarding amineptine to the Automation of Reports and Consolidated Order System pursuant to 21 U.S.C. 827 and in accordance with 21 CFR parts 1304 and 1312.

8. *Order Forms.* Every DEA registrant who distributes amineptine must comply with the order form requirements, pursuant to 21 U.S.C. 828 and in accordance with 21 CFR part 1305.

9. *Importation and Exportation.* All importation and exportation of amineptine must comply with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312.

10. *Liability.* Any activity involving amineptine not authorized by, or in violation of, the CSA or its implementing regulations, is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

In accordance with 21 U.S.C. 811(a), this final scheduling action is subject to formal rulemaking procedures performed ''on the record after opportunity for a hearing,'' which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order (E.O.) 12866 and the principles reaffirmed in E.O. 13563.

Executive Order 12988, Civil Justice Reform

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

Executive Order 13132, Federalism

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

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

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

Regulatory Flexibility Act

The Administrator, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–612, has reviewed this final rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities.

DEA is placing the substance amineptine, including its salts, isomers, and salts of isomers, in schedule I of the CSA. This action is being taken to enable the United States to meet its obligations under the 1971 Convention. This action imposes the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis with, or possess), or propose to handle amineptine.

Based on the review of HHS' scientific and medical evaluation and all other relevant data, DEA determined that amineptine has a high potential for abuse, has no currently accepted medical use in treatment in the United States, and lacks accepted safety for use under medical supervision. DEA's research confirms that there is no legitimate commercial market for amineptine in the United States. DEA is not aware of any availability or source of amineptine in the United States. Therefore, DEA estimates that no United States entity currently handles amineptine and does not expect any United States entity to handle amineptine in the foreseeable future. DEA concludes that no legitimate United States entity would be affected by this rule. As such, this rule will not have a significant effect on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.,* DEA has determined and certifies that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year * * *.'' Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act (CRA), 5 U.S.C. 804. However, pursuant to the CRA, DEA is submitting a copy of this final rule to the Government Accountability Office, the House, and the Senate under the CRA.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information under the Paperwork Reduction Act of 1995.[11]

[11] 44 U.S.C. 3501–3521.

This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR part 1308 is amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. Amend § 1308.11 by re-designating paragraphs (f)(1) through (f)(9) as paragraphs (f)(2) through (f)(10), and adding a new paragraph (f)(1) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(f) * * *

(1) Amineptine (7-[(10,11-dihydro-5*H*-dibenzo[*a,d*]cyclohepten-5-yl)amino]heptanoic acid)	1219

* * * * *

Signing Authority

This document of the Drug Enforcement Administration was signed on November 9, 2022, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2022–25003 Filed 11–16–22; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9947]

RIN 1545–BO90

Section 199A Rules for Cooperatives and Their Patrons; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to Treasury Decision 9947, published in the **Federal Register** on Tuesday, January 19, 2021. Treasury Decision 9947 contained final regulations under the qualified business income provisions of the Internal Revenue Code regarding the deduction for income attributable to domestic production activities of specified agricultural or horticultural cooperatives.

DATES: These corrections are effective on *November 17, 2022* and applicable after January 19, 2021.

FOR FURTHER INFORMATION CONTACT: Jason Deirmenjian at (202) 317–4470 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9947) subject to this correction are issued under sections 1381 through 1388 and section 199A(g) of the Internal Revenue Code.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.199A–7 is amended by:

■ a. Revising the first sentence of paragraph (c)(1).

■ b. Revising the second sentence of paragraph (c)(2) introductory text.

■ c. Revising paragraphs (c)(2)(ii) and (iii).

■ d. Revising the first sentence of paragraph (c)(3).

■ e. Revising the first sentence of paragraph (d)(1).

■ f. Revising the first sentence of paragraph (d)(3)(i).

■ g. Redesignating paragraph (d)(3)(ii)(B)(i*2*) as paragraph (d)(3)(ii)(B)(*2*).

The revisions read as follows:

§ 1.199A–7 Section 199A(a) Rules for Cooperatives and their patrons.

* * * * *

(c) * * *

(1) * * * QBI means the net amount of qualified items of income, gain, deduction, and loss with respect to any trade or business as determined under the rules of section 199A(c)(3) and § 1.199A–3(b). * * *

(2) * * * In situations where the patron receives distributions described in paragraph (c)(1) of this section, the Cooperative must determine whether those distributions include qualified items of income, gain, deduction, and loss as determined under rules of section 199A(c)(3) and § 1.199A–3(b). * * *

* * * * *

(ii) The distributions are qualified items of income, gain, deduction, and loss as determined under rules of section 199A(c)(3) and § 1.199A–3(b) at the Cooperative's trade or business level;

(iii) The distributions are not items from an SSTB as defined in section 199A(d)(2) at the Cooperative's trade or business level (except as permitted by the threshold rules in section 199A(d)(3) and § 1.199A–5(a)(2)); and

* * * * *

(3) * * * In the case of a Cooperative that makes distributions described in paragraph (c)(1) of this section to a patron, the Cooperative must determine the amount of qualified items of income, gain, deduction, and loss as determined under the rules of section 199A(c)(3) and § 1.199A–3(b) in those distributions. * * *

(d) * * *

(1) * * * This section provides guidance on the determination of SSTBs as defined in section 199A(d)(2) and § 1.199A–5. * * *

* * * * *

(3) * * *

(i) * * * In the case of a Cooperative that makes distributions described in paragraph (c)(1) of this section to a

patron, the Cooperative must determine the amount of qualified items of income, gain, deduction, and loss as determined under the rules of section 199A(c)(3) and § 1.199A–3(b) with respect to SSTBs directly conducted by the Cooperative. * * *

* * * * *

■ **Par. 3.** Section 1.199A–8 is amended by:
■ a. Adding a heading to paragraph (d)(1).
■ b. Revising the first sentence of paragraph (d)(2)(i).
■ c. Revising the fourth sentence of paragraph (d)(3).
■ d. Revising the second sentence of paragraph (e)(3)(ii).
■ e. Revising the second sentence of paragraph (e)(4)(ii).
■ f. Revising the third sentence of paragraph (e)(6)(i).
■ g. Revising the second through fourth and sixth sentences of paragraph (e)(6)(ii).
■ h. Revising the second and fourth through sixth sentences of paragraph (e)(7)(i).
■ i. Revising the first and second sentences of paragraph (e)(7)(ii).
■ j. Revising the second and third sentences of paragraph (e)(8)(i).
■ k. Revising the first through third sentences of paragraph (e)(8)(ii).
■ l. Revising the first sentence of paragraph (f).

The revisions read as follows:

§ 1.199A–8 Deduction for income attributable to domestic production activities of specified agricultural or horticultural cooperatives.

* * * * *

(d) * * *

(1) *Permitted amount*— * * *

(2) * * *

(i) * * * A Specified Cooperative is permitted to pass through an amount equal to the portion of the Specified Cooperative's section 199A(g) deduction that is allowed with respect to the portion of the cooperative's QPAI that is attributable to the qualified payments the Specified Cooperative distributed to the patron during the taxable year and identified on the notice required in § 1.199A–7(f)(3) on an attachment to or on the Form 1099–PATR, Taxable Distributions Received From Cooperatives (Form 1099–PATR), (or any successor form) issued by the Specified Cooperative to the patron, unless otherwise provided by the instructions to the Form 1099–PATR. * * *

* * * * *

(3) * * * The Specified Cooperative must report the amount of section 199A(g) deduction passed through to the patron on an attachment to or on the Form 1099–PATR (or any successor form) issued by the Specified Cooperative to the patron, unless otherwise provided by the instructions to the Form 1099–PATR.

* * * * *

(e) * * *

(3) * * *

(ii) * * * C's QPAI and taxable income both equal $1,000 ($1,800 − $800). * * *

(4) * * *

(ii) * * * C's section 199A(g) deduction attributable to patronage sources is the same as the deduction calculated by the nonexempt Specified Cooperative in *Example 3* in paragraph (e)(3) of this section.

* * * * *

(6) * * *

(i) * * * D pays $300,000 for its patrons' corn at the time the grain was delivered in the form of per-unit retain allocations and its W–2 wages (as defined in § 1.199A–11) for 2020 total $300,000. * * *

(ii) * * * D's QPAI and taxable income is $1,200,000. D's section 199A(g) deduction for its taxable year 2020 is $108,000 (.09 × $1,200,000). Because this amount is less than 50% of D's W–2 wages, the entire amount is allowed as a section 199A(g) deduction. * * * The section 199A(g) deduction of $108,000 is applied to, and reduces, D's taxable income.

(7) * * *

(i) * * * D declares a patronage dividend for its 2020 taxable year of $900,000, which it pays on March 15, 2021. * * * On March 15, 2021, Patron A receives a $9,000 patronage dividend that is a qualified payment under paragraph (d)(2)(ii) of this section from D. In the notice that accompanies the patronage dividend, Patron A is designated a $1,080 section 199A(g) deduction. Under paragraph (a) of this section, Patron A may claim a $1,080 section 199A(g) deduction for the taxable year ending December 31, 2021, subject to the limitations set forth under paragraph (d)(4) of this section. * * *

(ii) Under paragraph (d)(7) of this section, D is required to reduce its section 1382 deduction of $1,200,000 by the $108,000 section 199A(g) deduction passed through to patrons (whether D pays patronage dividends on book or Federal income tax net earnings). As a consequence, D is entitled to a section 1382 deduction for the taxable year ending December 31, 2020, in the amount of $1,092,000 ($1,200,000 − $108,000) and to a section 199A(g) deduction in the amount of $108,000 ($1,200,000 × .09). * * *

(8) * * *

(i) * * * In 2020, D pays its patrons a $400,000 ($900,000 − $500,000 already paid) patronage dividend in cash or a combination of cash and qualified written notices of allocation. Under paragraph (d)(7) of this section and section 1382, D is allowed a deduction of $1,092,000 ($1,200,000 − $108,000 section 199A(g) deduction), whether patronage net earnings are distributed on book or Federal income tax net earnings.

(ii) The patrons will have received a gross amount of $1,200,000 in qualified payments under paragraph (d)(2)(ii) of this section from Cooperative D ($300,000 paid as per-unit retain allocations, $500,000 paid during the taxable year as advances, and the additional $400,000 paid as patronage dividends). If D passes through its entire section 199A(g) deduction to its patrons by providing the notice required by paragraph (d)(3) of this section, then the patrons will be allowed a $108,000 section 199A(g) deduction, resulting in a net $1,092,000 taxable distribution from D. Pursuant to paragraph (d)(8) of this section, any of the $1,200,000 received by patrons that are Specified Cooperatives from D is not taken into account for purposes of calculating the patrons' section 199A(g) deduction. * * *

(f) * * * In the case described in section 199A(g)(5)(B), where a Specified Cooperative is a partner in a partnership, the partnership must separately identify and report on the Schedule K–1 of the Form 1065, U.S. Return of Partnership Income (or any successor form) issued to the Specified Cooperative partner the cooperative's share of gross receipts and related deductions, W–2 wages, and COGS, unless otherwise provided by the instructions to the Form. * * *

* * * * *

■ **Par. 4.** Section 1.199A–9 is amended by:
■ a. Revising the first sentence of paragraph (c)(3)(ii).
■ b. Redesignating paragraphs (j)(3)(i)(B)(1) introductory text and (j)(3)(i)(B)(1)(i) and (ii) as paragraphs (j)(3)(i)(B)(*1*) introductory text and (j)(3)(i)(B)(*1*)(*i*) and (*ii*).
■ c. Revising newly redesignated paragraph (j)(3)(i)(B)(*1*)(*ii*).
■ d. Redesignating paragraphs (j)(3)(i)(B)(2) introductory text and (j)(3)(i)(B)(2)(i) and (ii) as paragraphs (j)(3)(i)(B)(*2*) introductory text and (j)(3)(i)(B)(*2*)(*i*) and (*ii*).
■ e. Redesignating paragraphs (j)(3)(i)(B)(3) introductory text and (j)(3)(i)(B)(3)(i) through (iii) as

paragraphs (j)(3)(i)(B)(*3*) introductory text and (j)(3)(i)(B)(*3*)(*i*) through (*iii*).

■ f. Redesignating paragraphs (j)(3)(i)(B)(4) introductory text and (j)(3)(i)(B)(4)(i) and (ii) as paragraphs (j)(3)(i)(B)(*4*) introductory text and (j)(3)(i)(B)(*4*)(*i*) and (*ii*).

■ g. Redesignating paragraph (j)(3)(i)(B)(5) as paragraph (j)(3)(i)(B)(*5*).

The revisions read as follows:

§ 1.199A–9 Domestic production gross receipts.

* * * * *

(c) * * *

(3) * * *

(ii) * * * A Specified Cooperative's applicable gross receipts as provided in § 1.199A–8(b) and/or (c) may be treated as non-DPGR if less than 10 percent of the Specified Cooperative's total gross receipts are DPGR. * * *

* * * * *

(j) * * *

(3) * * *

(i) * * *

(B) * * *

(*1*) * * *

(*ii*) The warranty is neither separately offered by the Specified Cooperative nor separately bargained for with customers (that is, a customer cannot purchase the agricultural or horticultural products without the warranty).

* * * * *

■ **Par. 5.** Section 1.199A–12 is amended by:

■ a. Redesignating paragraphs (e)(i) and (ii) as paragraph (e)(1) and (2).

■ b. Further redesignating newly redesiganted paragraphs (e)(2)(A) and (B) as paragraphs (e)(2)(i) and (ii).

■ c. Revising the last sentence of newly redesignated paragraph (e)(2)(ii).

The revision reads as follows:

§ 1.199A–12 Expanded affiliated groups.

* * * * *

(e) * * *

(2) * * *

(ii) * * * Accordingly, P is allocated $1,080 ($1,350 × $16,000/$20,000) and S is allocated $270 ($1,350 × $4,000/$20,000).

* * * * *

Oluwafunmilayo A. Taylor,

Branch Chief, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2022–24576 Filed 11–16–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF EDUCATION

34 CFR Parts 600, 668, and 690

[Docket ID ED–2022–OPE–0062]

RIN 1840–AD54, 1840–AD55, 1840–AD66, 1840–AD69

Pell Grants for Prison Education Programs; Determining the Amount of Federal Education Assistance Funds Received by Institutions of Higher Education (90/10); Change in Ownership and Change in Control

Correction

In Rule Document 2022–23078, appearing on pages 65426–65498 in the issue of Friday, October 28, 2022, make the following corrections:

■ 1. On page 65486, in the second column, on the twentieth line, the section heading titled ''§ 600. Institution of higher education.'' is corrected to read as set forth below.

§ 600.4 Institution of higher education. [Corrected]

* * * * *

■ 2. On page 65490, in the first column, on the thirty-sixth line, the section heading titled ''§ 668.1 Program participation agreement.'' is corrected to read as set forth below.

§ 668.14 Program participation agreement. [Corrected]

* * * * *

■ 3. On page 65495, in the second column, on the seventeenth line, in the ''contents section'' listing, the entry titled ''668.23 Scope and purpose.'' is corrected to read ''668.234 Scope and purpose.''

* * * * *

■ 4. On the same page, in the same column, the section heading titled ''§ 668.23 Scope and purpose.'' is corrected to read as set forth below.

§ 668.234 Scope and purpose. [Corrected]

* * * * *

[FR Doc. C1–2022–23078 Filed 11–14–22; 2:00 pm]

BILLING CODE 0099–10–D

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. PTO–P–2017–0011]

RIN 0651–AD21

Date of Receipt of Electronic Submissions of Patent Correspondence

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) is amending the patent rules of practice to provide that the receipt date of correspondence officially submitted electronically by way of the USPTO patent electronic filing system is the date in the Eastern time zone of the United States (Eastern Time) when the USPTO received the correspondence rather than the date on which the correspondence is received at the correspondence address in Alexandria, Virginia. This change is necessary because the USPTO is expecting to provide servers for receiving electronic submissions in locations that are separate from the USPTO headquarters in Alexandria, Virginia. This change will ensure consistency and predictability with respect to correspondence receipt dates, as the date of receipt accorded to correspondence submitted electronically will not depend on the location of USPTO servers. The USPTO is also amending the patent rules of practice to make other clarifying changes regarding the receipt of electronic submissions, including providing a definition for Eastern Time. These changes harmonize the patent rules with the trademark rules and provide clarity regarding the date of receipt of electronic submissions.

DATES: This rule is effective on December 19, 2022.

FOR FURTHER INFORMATION CONTACT: For patent-related inquiries, please contact Mark O. Polutta, Senior Legal Advisor, Office of Patent Legal Administration, at 571–272–7709; or Kristie M. Kindred, Legal Advisor, Office of Patent Legal Administration, at 571–272–9016; or you can send inquiries to *patentpractice@uspto.gov*.

SUPPLEMENTARY INFORMATION: The USPTO's servers that receive electronic submissions are currently located in Alexandria, Virginia. However, to enhance resiliency, the USPTO is in the

process of providing servers in Manassas, Virginia, and in the future, may provide servers outside of the Eastern time zone. Once the USPTO begins receiving electronically submitted patent correspondence at locations other than Alexandria, Virginia, the rule language that defines the receipt date as the date the correspondence is received at the correspondence address in Alexandria, Virginia, would be inapplicable. Thus, the USPTO is revising 37 CFR 1.6(a)(4) to specify that the receipt date of correspondence that is officially submitted electronically by way of the USPTO patent electronic filing system is the date in Eastern Time when the USPTO received the correspondence, regardless of the physical location of the USPTO server that receives the correspondence. Other clarifying changes regarding the receipt date of electronic submissions, including providing a definition for Eastern Time, are also being made.

In addition, the changes align the patent rules with the Legal Framework for the Patent Electronic System (October 23, 2019) (Legal Framework), available at *www.uspto.gov/patents/apply/filing-online/legal-framework-efs-web* and incorporated in the Manual of Patent Examining Procedure (9th ed., Rev. 10.2019) (MPEP) section 502.05, subsection I. The Legal Framework indicates that the time and date of receipt of an application filed via the USPTO patent electronic filing system is the local time and date (Eastern Time) at the USPTO headquarters in Alexandria, Virginia, when the USPTO received the submission. The date of receipt is recorded after the user clicks the ''Submit'' button on the ''Confirm and Submit'' screen. This is the date shown on the Electronic Acknowledgement Receipt. Similarly, follow-on documents filed in a patent application after the initial filing of the application are also accorded the date (Eastern Time) when the document is received at the USPTO as the date of receipt under existing practice. See MPEP section 502.05, subsection I.C.

With respect to patent correspondence, any reference to the USPTO patent electronic filing system (EFS) in this final rule (including in 37 CFR part 1) includes EFS-Web and Patent Center. Patent Center is a new tool for the electronic filing and management of patent applications. Patent Center is available for all users. Patent Center has replaced the public Patent Application Information Retrieval (PAIR) system and, once fully developed, will replace EFS-Web and the private PAIR system as well. Users of Patent Center are required to abide by the Legal Framework to the extent applicable and the Patent Electronic System Subscriber Agreement. See the Patent Center information web page available at *www.uspto.gov/patents/apply/patent-center.* In the future, as Patent Center gets closer to full development, the Legal Framework will be revised to expressly refer to and more specifically cover electronic submissions via Patent Center. The rules use generic terminology to refer to the system for electronically filing patent applications and patent correspondence in order to accommodate any name changes to the system that may occur in the future.

The rules of practice in trademark cases already provide that filing dates of electronic submissions are based on Eastern Time. See 37 CFR 2.195(a). Therefore, it is unnecessary to amend the trademark rules of practice.

Discussion of Specific Rules

The following is a discussion of the amendments to 37 CFR part 1.

Section 1.1: Section 1.1(a) is amended to clarify the appropriate address information for patent-related correspondence. In particular, the clause ''[e]xcept as provided in paragraphs (a)(3)(i) and (a)(3)(ii) of this section'' is being changed to ''[e]xcept for correspondence submitted via the USPTO patent electronic filing system in accordance with § 1.6(a)(4).'' Further, the phrase ''to specific areas within the Office as set out in paragraphs (a)(1) and (a)(3)(iii) of this section'' is being replaced with ''to specific areas within the Office as provided in this section.'' Since the USPTO does not strictly require the provision of an address when patent-related correspondence is submitted via the USPTO patent electronic filing system, it is appropriate to exclude such correspondence from the address marking requirements of § 1.1(a). Applicants may continue to provide an address on correspondence submitted via the USPTO patent electronic filing system consistent with § 1.1(a), but it is not mandatory. The removal of references to specific paragraphs (a)(3)(i) and (ii) from the introductory text of paragraph (a) is a technical correction in view of the remaining language in this section.

Section 1.6: Section 1.6(a)(4) is amended to remove the reference to the physical location where correspondence must be received, and to provide that the receipt date of patent correspondence submitted using the USPTO patent electronic filing system is the date in Eastern Time when the correspondence is received in the USPTO. Specifically, the phrase ''Correspondence submitted to the Office by way of the Office electronic filing system will be accorded a receipt date, which is the date the correspondence is received at the correspondence address for the Office set forth in § 1.1 when it was officially submitted'' has been changed to ''Correspondence officially submitted to the Office by way of the USPTO patent electronic filing system will be accorded a receipt date, which is the date in Eastern Time when the correspondence is received in the Office.'' In view of the relocation of the servers, it is appropriate to eliminate the reference to the correspondence address set forth in § 1.1 in connection with the receipt date of correspondence being filed electronically. Correspondence submitted via the USPTO patent electronic filing system will be accorded a receipt date based on the local time and date at the USPTO headquarters in Alexandria, Virginia, when the correspondence is received in the USPTO. Specifically, the USPTO patent electronic filing system will record the receipt date in Eastern Time after the user officially submits the correspondence by clicking the ''Submit'' button on the ''Confirm and Submit'' screen and the correspondence is fully, successfully, and officially received in the USPTO. Furthermore, the phrase ''regardless of whether that date is a Saturday, Sunday, or Federal holiday within the District of Columbia'' is being added to provide clarity in the rule. This is not a change in practice. See MPEP section 502.05, subsection I.C3.

One should note that the Legal Framework does not permit certain patent correspondence to be officially submitted via the USPTO patent electronic filing system. See MPEP section 502.05, subsection I.B2. Such correspondence will not be accorded a date of receipt or considered officially filed in the USPTO when submitted via the USPTO patent electronic filing system. For example, notices of appeal to a court, district court complaints, or other complaints or lawsuits involving the USPTO may not be filed via the USPTO patent electronic filing system. See MPEP section 1216 for instructions on how to properly serve and/or file documents seeking judicial review of a decision by the Patent Trial and Appeal Board.

Section 1.9: Section 1.9 is amended to add a new paragraph (o) to set forth a definition for Eastern Time. In particular, Eastern Time is defined as meaning Eastern Standard Time or

Eastern Daylight Time in the United States, as appropriate.

Changes to standardize references to the USPTO patent electronic filing system: 37 CFR part 1 is amended to revise all references to ''Office's electronic filing system'' and ''Office electronic filing system'' to ''USPTO patent electronic filing system.''

Comments and Responses

The USPTO published a notice of proposed rulemaking on December 7, 2021, at 86 FR 69195, soliciting public comments on the proposed amendments to 37 CFR part 1 being adopted in this final rule. The USPTO received written input from three commenters on the proposed rule. Summaries of the comments and the Office's responses to the written comments follow.

Comment 1: One commenter expressed support for the rule changes.

Response: The USPTO appreciates the feedback from the commenter.

Comment 2: One commenter questioned whether the new definition of filing in the Eastern time zone will have any effect on the use of a certificate of transmission based on the local time zone for patent filings.

Response: There is no change being made to certificate of mailing or transmission practice under 37 CFR 1.8. Applicants may still use a certificate of mailing or transmission in accordance with the provisions of 37 CFR 1.8 for the filing of patent correspondence in patent applications where permitted. One should note that the certificate of mailing or transmission practice under 37 CFR 1.8 is not applicable to the filing of new patent applications or other patent correspondence necessary for the purpose of obtaining an application filing date.

Comment 3: One commenter stated that the definition in the notice of proposed rulemaking of the ''Office electronic filing system'' as including EFS-Web and Patent Center was ambiguous since it was unclear whether it applies to other Office electronic filing systems in addition to EFS-Web and Patent Center.

Response: This final rule amends 37 CFR part 1 to replace all references to ''Office electronic filing system'' to ''USPTO patent electronic filing system.'' The only electronic filing systems for filing new patent applications or correspondence in existing patent applications are EFS-Web and Patent Center. While other electronic systems exist, such as the Electronic Patent Assignment System for recording assignment documents or the Certified Copy Center for ordering patent and trademark documents, these are not electronic filing systems encompassed by the phrase ''Office electronic filing system'' or ''USPTO patent electronic filing system'' as used in the notice of proposed rulemaking or in this final rule. These other electronic systems are not used for filing new patent applications or correspondence in existing patent applications. While it is possible to indicate on the cover sheet for the assignment document that the document also serves as the inventor's oath or declaration under 37 CFR 1.63, and the USPTO will then place a copy of the document in the application file, this is not a situation in which an applicant is filing correspondence directly into an existing application. The rules use generic terminology to refer to the electronic filing system because the system name(s) may change over time. As mentioned in this final rule, EFS-Web is being phased out and will be replaced by Patent Center.

Comment 4: One commenter stated that the notice of proposed rulemaking is inconsistent with 35 U.S.C. 111(a)(4) regarding filing dates for patent applications. The commenter noted that the statute does not state that the filing date is the date after the user clicks the ''Submit'' button on the ''Confirm and Submit'' screen, and the statute does not state that the filing date is the date shown on the Electronic Acknowledgement Receipt. The commenter also noted that the USPTO server may delay generating ''the date shown on the Electronic Acknowledgement Receipt.'' The commenter further stated that the filing date for an application should be the date a specification, with or without claims, is received by a USPTO server, which occurs prior to the USPTO server acknowledging receipt, and prior to the filer pressing the ''Submit'' button.

Response: As noted by the commenter, 35 U.S.C. 111(a)(4) provides that ''[t]he filing date of an application shall be the date on which a specification, with or without claims, is received in the United States Patent and Trademark Office.'' Similarly, 35 U.S.C. 111(b)(4) provides that ''[t]he filing date of a provisional application shall be the date on which a specification, with or without claims, is received in the United States Patent and Trademark Office.'' The regulations at 37 CFR 1.6 define what ''received in the U.S. Patent and Trademark Office'' in the statute means, and it is consistent with the statute. Contrary to the argument made by the commenter, it would be inconsistent with the statute for the USPTO to accord a filing date to an application on the date it was sent or transmitted to the USPTO (except as permitted by 35 U.S.C. 21(a) and provided for in 37 CFR 1.10) rather than received in the USPTO, or the date an application was uploaded to a server without the user having completed the filing process. The Legal Framework sets forth what must occur in order for an electronic filing to be completed and for the submission to be accorded a receipt date. The filer must press the ''Submit'' button to actually file an application or document and complete the filing process. Users can upload documents and save submissions for later review and filing for up to 7 days in EFS-Web and for up to 14 days in Patent Center. Accordingly, until the filer actually clicks on the ''Submit'' button on the ''Confirm and Submit'' screen, the application or document has not been filed in the USPTO. The receipt date on the Electronic Acknowledgement Receipt reflects the date that the application or document was actually received in the USPTO. While there may be a delay in the sending of an Electronic Acknowledgement Receipt in some cases, that does not mean there has been a delay in recording the actual date of receipt.

Rulemaking Considerations

A. Administrative Procedure Act: The changes in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. See *Bachow Commc'ns Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (rules for handling appeals are procedural where they do not change the substantive standard for reviewing claims); *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive).

Accordingly, prior notice and opportunity for public comment for the changes in this rulemaking were not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. See *Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice-and-comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'' (quoting 5 U.S.C. 553(b)(A))). However, the USPTO chose to seek public comment before implementing the rule to benefit from the public's input.

B. Regulatory Flexibility Act: For the reasons set forth in this final rule, the Senior Counsel for Regulatory and Legislative Affairs, Office of General Law, of the USPTO has certified to the Chief Counsel for Advocacy of the Small Business Administration that the changes in this rule will not have a significant economic impact on a substantial number of small entities (see 5 U.S.C. 605(b)).

This rulemaking amends the rules of practice to provide that the receipt date of correspondence officially submitted electronically by way of the USPTO patent electronic filing system is the date in Eastern Time when the Office received the correspondence. The USPTO is also amending the patent rules of practice to make other clarifying changes regarding the receipt of electronic submissions. These changes are procedural in nature and do not result in a change in the burden imposed on any patent applicant, including a small entity.

For the reasons described above, the changes will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The USPTO has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, the USPTO has, to the extent feasible and applicable: (1) made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across Government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism): This rulemaking does not contain policies with federalism implications sufficient to warrant the preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

F. Executive Order 13175 (Tribal Consultation): This rulemaking will not: (1) have substantial direct effects on one or more Indian tribes, (2) impose substantial direct compliance costs on Indian tribal governments, or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

G. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

I. Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

J. Executive Order 12630 (Taking of Private Property): This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

K. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the USPTO will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this rulemaking are not expected to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rulemaking is not expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995: The changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of $100 million (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of $100 million (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1501 *et seq.*

M. National Environmental Policy Act of 1969: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. See 42 U.S.C. 4321 *et seq.*

N. National Technology Transfer and Advancement Act of 1995: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

O. Paperwork Reduction Act of 1995: The Paperwork Reduction Act of 1995 requires that the USPTO consider the impact of paperwork and other information collection burdens imposed on the public. This rulemaking does not involve any new information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information has a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Biologics, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, 37 CFR part 1 is amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

■ 2. In 37 CFR part 1, remove ''Office's electronic filing system'' and ''Office electronic filing system'' wherever they appear and add in their place ''USPTO patent electronic filing system.''

■ 3. Section 1.1 is amended by revising paragraph (a) introductory text to read as follows:

§ 1.1 Addresses for non-trademark correspondence with the United States Patent and Trademark Office.

(a) *In general.* Except for correspondence submitted via the U.S. Patent and Trademark Office (USPTO) patent electronic filing system in accordance with § 1.6(a)(4), all correspondence intended for the USPTO must be addressed to either ''Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450'' or to specific areas within the Office as provided in this section. When appropriate, correspondence should also be marked for the attention of a particular office or individual.

* * * * *

■ 4. Section 1.6 is amended by revising paragraph (a)(4) to read as follows:

§ 1.6 Receipt of correspondence.

(a) * * *

(4) Correspondence may be submitted using the USPTO patent electronic filing system only in accordance with the USPTO patent electronic filing system requirements. Correspondence officially submitted to the Office by way of the USPTO patent electronic filing system will be accorded a receipt date, which is the date in Eastern Time when the correspondence is received in the Office, regardless of whether that date is a Saturday, Sunday, or Federal holiday within the District of Columbia.

* * * * *

■ 5. Section 1.9 is amended by:

■ a. Adding paragraph (o); and

■ b. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 1.9 Definitions.

* * * * *

(o) *Eastern Time* as used in this chapter means Eastern Standard Time or Eastern Daylight Time in the United States, as appropriate.

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2022–24335 Filed 11–16–22; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

Instruction of the Secretary and General Policy Statement on the Administration of Benefits for Particular Same-Sex Surviving Spouses

AGENCY: Department of Veterans Affairs.

ACTION: General policy statement.

SUMMARY: The Department of Veterans Affairs (VA) announces that the Secretary of Veterans Affairs issued Instruction 01–22 on October 11, 2022, which addresses the legal impediment that exists for certain same sex-surviving spouses to qualify for Survivors Pension or Dependency and Indemnity Compensation (DIC) benefits due to not meeting the duration of marriage requirements for those benefits because they were prevented from marrying at an earlier date by reason of laws that have been found to be unconstitutional. Additionally, VA announces Pension and Fiduciary Service's general policy statement on the administration of Veterans Benefits Administration (VBA) benefits for particular same-sex surviving spouses.

DATES: The Pension and Fiduciary Service's general policy statement is effective November 17, 2022.

FOR FURTHER INFORMATION CONTACT: Kevin Baresich, Program Analyst, Pension and Fiduciary Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, 202–632–8863. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Instruction of the Secretary 01–22

Notice is given that the Secretary of Veterans Affairs issued Instruction of the Secretary 01–22—Instructions for Determining Whether Same-Sex Surviving Spouses Satisfy Duration of Marriage Requirements, on October 11, 2022. The text of Instruction 01–22 appears at the end of this **Federal Register** document.

Background

On June 26, 2015, the Supreme Court held in *Obergefell* v. *Hodges* that the Fourteenth Amendment of the U.S. Constitution requires a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state. Accordingly, on October 16, 2015, VBA issued VBA Letter 20–15–16 which recognized that same-sex marriages will be accepted in benefit determinations without regard to a Veteran's state of residence. This guidance remains in effect.

VBA administers benefits and programs for the surviving spouse of a Veteran which incorporate evaluations to determine the legality and duration of a marriage. Determining the duration of a marriage is required to establish entitlement to Survivors Pension, DIC, or the higher rate of DIC benefits under 38 U.S.C. 1311(a)(2) (heretofore referred to as the 8x8 allowance). The rules in 38 U.S.C. 1541(f)(2), 1304(2), and 1318(c)(1) are the foundational statutory sources providing 1-year duration of marriage requirements for a surviving spouse to qualify for Survivors Pension and DIC. The requirement for the 8x8 allowance under 38 U.S.C. 1311(a)(2) further stipulates that a surviving spouse must have been married to a Veteran for at least a continuous 8-year period immediately preceding the Veteran's death during which a Veteran was rated totally disabled for a service-connected disability. This increase for DIC benefits originated from section 102 of Public Law 102–568 passed on October 29, 1992, and the governing statute has maintained the same 8-year duration requirement since that time.

As a result, under statutory requirements currently in effect, a same-sex surviving spouse who was only able to marry after the Supreme Court's decision in *Obergefell* would be unable to meet the 1-year marriage duration requirement until June 26, 2016, for Survivors Pension and DIC benefits, and would similarly be unable to satisfy the 8-year marriage duration requirement for the 8x8 allowance until June 26, 2023, at the earliest. This results in potential disparate treatment for same-sex surviving spouses who may have otherwise qualified for Survivors Pension, DIC, or the additional 8x8 allowance if they were not prevented from marrying at an earlier date by reason of laws that have been found to be unconstitutional.

As provided within VBA Letter 20–15–16, VBA updated procedures on

processing benefit claims involving same-sex marriages following the June 26, 2015, Supreme Court decision in *Obergefell* v. *Hodges.* Since that time, entitlement to VBA benefits has been granted based on the legal authorization of same-sex marriages. However, in some cases, there is a legal impediment for a same-sex surviving spouse to qualify for Survivors Pension or DIC benefits due to not meeting the corresponding marriage duration requirements. A more pronounced impediment exists for the higher rate of DIC benefits for the 8x8 allowance due to a marriage duration requirement that is currently wholly unattainable for those individuals who were unable to marry prior to *Obergefell.* In Instruction 01–22, issued on October 11, 2022, the Secretary instructed the Department to interpret the laws governing duration of marriage requirements in a manner that avoids unfairness to certain same-sex claimants by not giving effect to State laws that have been determined to be unconstitutional. The Instruction explained that while 38 U.S.C. 103 directs VA to look to State law, the Secretary presumes that Congress did not intend VA to apply those laws that have been determined to be unconstitutional to a survivor's detriment. Therefore, based on the Instruction, VBA is establishing this general policy statement, which provides instructions and procedures for processing Survivors Pension, DIC, or the 8x8 allowance determinations for particular same-sex surviving spouses.

Instructions for Determining Whether Same-Sex Surviving Spouses Satisfy Duration of Marriage Requirements

Under 38 U.S.C. 5124(a), VBA may accept the written statement of a claimant's marriage to another individual as proof of the existence of the relationship. This statute is implemented under 38 CFR 3.204(a). To establish marriage under § 3.204(a), VBA requires only a statement by the claimant that includes the date and place of marriage and the name and social security number of the person the claimant has identified as their spouse.

The only instances when VBA will not accept a claimant's statement that they are married as being sufficient evidence to establish the claimant's marriage is when the claimant's statement on its face raises a question of validity, the claimant's statement conflicts with other evidence in the record, or there is a reasonable indication of fraud or misrepresentation. In these instances, VBA requires more information, per 38 CFR 3.204(a)(2).

As previously stated, the Supreme Court's decision in *Obergefell,* which allowed VBA to provide spousal benefits to same-sex couples, has impacted survivor benefit claims. Therefore, for survivors claims, current VBA policy allows the acceptance of a written statement asserting the marital relationship but requires a determination on whether the same-sex marriage satisfies the requirements of 38 CFR 3.50(b)(1) and (2) and 3.54. Proof of marriage requirements can also be satisfied by including the types of evidence outlined in 38 CFR 3.205(a). Thus, in keeping with these regulatory provisions, VBA will first determine eligibility for benefits by determining the existence of a marriage pursuant to 38 CFR 3.204, and then, as described in more detail below, by calculating the duration of a same-sex marriage in a liberal manner, including the application of 38 CFR 3.205(a)(6) and (7).

Qualifying for Survivors Pension, DIC, or the 8x8 Allowance

The acceptance of a valid marriage for a same-sex surviving spouse is currently not an obstacle to establishing basic entitlement for benefits. In accordance with the instructions provided in Instruction 01–22, this general policy statement addresses the marriage duration legal impediment for a same-sex surviving spouse seeking Survivors Pension, DIC, or the 8x8 allowance which exists due to now unconstitutional laws within U.S. states and territories that prevented an earlier marriage. In particular, a same-sex surviving spouse may be unable to meet the duration requirement of being married to a Veteran for 1 year or more prior to the Veteran's death under 38 CFR 3.54 to qualify for Survivors Pension or DIC benefits; or may be unable to fulfill 38 U.S.C. 1311(a)(2) for the 8x8 allowance due to the inability of establishing a marriage for a consecutive 8-year time period. U.S. states and territories maintained varying same-sex marriage provisions prior to *Obergefell.* In seeking an approach that prevents disparate impact and enables a consistent and equitable application, VBA will utilize the date for the precedential *Obergefell* decision, June 26, 2015, as the general delimiting date for policy determinations for particular same-sex marriage duration situations. VBA also acknowledges that it may have been impracticable for same-sex couples to have entered a marriage immediately after *Obergefell* was decided. As such, VBA will apply these policy considerations in the case of any same-sex surviving spouse who married a Veteran within two years of *Obergefell, i.e.,* by June 26, 2017.

The Secretary signed Instruction 01–22 to address the concerns noted above, while ensuring maximum consistency with the statutory requirement regarding duration of marriage, by requiring VBA to consider a marriage duration requirement to be satisfied when there is satisfactory evidence that a same-sex surviving spouse was effectively in a marital relationship for the specified period, supporting a conclusion that they would have been legally married for that period but for the unconstitutional laws of U.S. states or territories.

In applying the standard set by the Instruction, VBA's general policy statement will follow the same evidentiary rules applicable in establishing any marital relationship. A same-sex surviving spouse will be required to provide verification that they were legally married to the Veteran at the time of the Veteran's death; that they held themselves out to the public as being in a committed relationship akin to that of marriage; and that they cohabitated, as evidenced through statements of persons in the community who knew the parties as akin to spouses and documents which show that the parties represented themselves as being in a committed relationship akin to that of marriage (see evidence requirements in 38 CFR 3.205(a)), for a minimum of 1 year prior to the Veteran's death for Survivors Pension and DIC entitlement.

The Secretary's instructions will similarly be applied in the general policy statement by awarding the 8x8 allowance if the surviving spouse is able to provide the same verification for a period of 8 consecutive years prior to the Veteran's death during which time the Veteran was rated totally disabled for a service-connected disability. The Instruction outlines that verification of the status of the relationship to establish entitlement to Survivors Pension, DIC, or the 8x8 allowance will utilize pertinent existing procedural requirements for establishing the validity of a marriage relationship. Under those procedures, VA requires the claimant to provide the following:

- VA Form 21–4170,
- Two copies of VA Form 21P–4171 to be completed by two persons who know, as the result of personal observation, the relationship that existed between the parties, and
- Document(s) which show that the parties represented themselves as in a relationship akin to that of marriage.

The verification requirements decreed by the Secretary in Instruction 01–22, which serves as the basis for this general

policy statement, afford a relaxed application of the standard within 38 U.S.C. 1541(f)(1), 1304(2), and 1318(c)(1), as well as 38 CFR 3.54 used to grant Survivors Pension and DIC will be applicable for same-sex marriages which occurred up through June 26, 2017. This same principle will be applied to 38 U.S.C. 1311(a)(2) to grant the 8x8 allowance, and thus the liberalized standard with respect to claims under that provision based on deaths occurring on or before June 26, 2025, will be applied.

In some cases, such as those involving domestic partnerships or civil unions, VBA cannot recognize a marriage in a survivor's claim under 38 U.S.C. 103(c), but the case may raise the question of whether the marriage may be considered a ''deemed valid'' marriage under 38 U.S.C. 103(a). VBA will apply the same rules stated in the general policy statement for determining whether a marital relationship satisfies the duration requirements for Survivors Pension, DIC, or the 8x8 allowance for a same-sex domestic partnership or civil union if it was considered a ''deemed valid'' marriage under 38 U.S.C. 103(a).

In a similar treatment, if the surviving spouse indicates that their same-sex marriage is a common-law marriage, claims processors must determine whether the same-sex relationship qualifies as a common-law marriage. See evidence requirements in 38 CFR 3.205(a). Claims processors may seek guidance from district counsel as needed. VBA will apply the same rules stated in the general policy statement for determining whether a marital relationship satisfies the duration requirements for Survivors Pension, DIC, or the 8x8 allowance for a same-sex common-law marriage that meets the verification requirements identified within 38 CFR 3.205(a).

Text of Instruction of the Secretary 01–22

Subject: Instructions for Determining Whether Same-Sex Surviving Spouses Satisfy Duration of Marriage Requirements

Purpose

1. In some cases, there is a legal impediment for a same-sex surviving spouse to qualify for Survivors Pension or Dependency and Indemnity Compensation (DIC) benefits due to not meeting the corresponding marriage duration requirements. A more pronounced impediment exists for the higher rate of DIC benefits under 38 U.S.C. 1311(a)(2) (hereinafter referred to as the 8x8 allowance) due to a marriage duration requirement that is wholly unattainable for some individuals who were unable to marry prior to the United States Supreme Court's decision in *Obergefell* v. *Hodges.* Recognizing that certain same-sex surviving spouses were prevented from marrying at an earlier date by reason of laws that have been found to be unconstitutional, I am instructing Department of Veterans Affairs (VA or the Department) employees to adjudicate claims in a manner that will avoid unfairness to those individuals by not giving effect to those unconstitutional laws. This Instruction provides directions and procedures for making Survivors Pension, DIC, or the 8x8 allowance determinations for particular same-sex surviving spouses.

Background

2. On September 4, 2013, the United States Attorney General announced that the President had directed the Executive Branch to cease enforcement of 38 U.S.C. 101(3) and 101(31), which defined the terms ''surviving spouse'' and ''spouse'' for purposes of Veterans benefits as referring only to a person of the opposite sex, to the extent they precluded provision of Veterans' benefits to same-sex married couples. Accordingly, VA ceased to enforce 38 U.S.C. 101(3) and 101(31) and the implementing regulation (38 CFR 3.50), to the extent that they precluded provision of Veterans' benefits to same-sex married couples. The Attorney General's announcement allowed VA to administer spousal and survivors' benefits to same-sex married couples, provided their marriages otherwise met the requirements of 38 U.S.C. 103(c).

3. On June 26, 2015, the Supreme Court held in *Obergefell* v. *Hodges* that the Fourteenth Amendment of the U.S. Constitution requires a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state. Accordingly, on October 16, 2015, the Veterans Benefits Administration (VBA) issued VBA Letter 20–15–16 which updated procedures on processing benefit claims involving same-sex marriages and recognized that same-sex marriages will be accepted in benefit determinations without regard to a Veteran's state of residence. This guidance remains in effect.

4. VA administers benefits and programs for the surviving spouse of a Veteran which incorporate evaluations to determine the legality and duration of a marriage. VA must determine the duration of a marriage in order to establish entitlement to Survivors Pension, DIC, or the 8x8 allowance. 38 U.S.C. 1541(f)(2), 1304(2), and 1318(c)(1) are the foundational statutory sources containing one-year duration of marriage requirements for a surviving spouse to qualify for Survivors Pension and DIC. The requirement for the 8x8 allowance under 38 U.S.C. 1311(a)(2) further stipulates that a surviving spouse must have been married to a Veteran for at least a continuous eight-year period immediately preceding the Veteran's death during which a Veteran was rated totally disabled for a service-connected disability.

5. As a result, under statutory requirements currently in effect, a same-sex surviving spouse who was only able to marry after the Supreme Court's decision in *Obergefell* would have been unable to meet the one-year marriage duration requirement until June 26, 2016, for Survivors Pension and DIC benefits, and would similarly have been unable to satisfy the eight-year marriage duration requirement for the 8x8 allowance until June 26, 2023, at the earliest. This results in potential disparate treatment for same-sex surviving spouses who may have otherwise qualified for Survivors Pension, DIC, or the additional 8x8 allowance if they were not prevented from marrying at an earlier date by reason of laws that have been found to be unconstitutional.

6. Under 38 U.S.C. 103(c), ''[i]n determining whether or not a person is or was the spouse of a veteran, the marriage shall be proven as valid for the purposes of all laws administered by the Secretary according to the law of the place where the parties resided at the time of the marriage or the law of the place where the parties resided when the right to benefits accrued.'' While the statute refers to two specific points in time for determining whether the parties attained married status, it is unclear how it should be applied in determining the duration of a marriage over a period of time, particularly when the laws of the relevant place (*e.g.,* a State) have been found to have been unconstitutional for a portion of such period.

7. The Supreme Court has stated that ''where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress.'' *Edward J. DeBartolo Corp.* v. *Fla. Gulf Coast Bldg. & Constr. Trades Council,* 485 U.S. 568, 575 (1988). VA will follow that approach in interpreting and applying section 103(c) to duration-of-marriage determinations in cases

where unconstitutional State laws potentially could affect such determinations.

8. After consulting with the Department of Justice, through this Instruction, I am instructing the Department not to give effect to unconstitutional laws that prevented same-sex couples from marrying when adjudicating duration of marriage issues for purposes of Survivors Pension and DIC benefits, including the 8x8 allowance. This Instruction addresses the legal impediment which a same-sex couple may face in fulfilling the marriage duration requirement under 38 U.S.C. 1541(f)(2), 1304(2), 1318(c)(1), and 1311(a)(2) as well as 38 CFR 3.10(c) and (f)(1) and 3.54. In doing so, the Department will interpret the statutes governing duration of marriage issues based on the inference that Congress did not intend VA to apply unconstitutional laws to Veterans' detriment. Thus, this Instruction will align policy and procedures applying to particular same-sex surviving spouses' situations for Survivors Pension, DIC, or the 8x8 allowance to better conform with the Supreme Court decision in *Obergefell* and to adjudicate claims in a manner that will avoid unfairness to those individuals.

Qualifying for Survivors Pension, DIC, or 8x8 Allowance

9. The issue this Instruction addresses is the legal impediment which exists for a same-sex surviving spouse seeking Survivors Pension, DIC, or the 8x8 allowance while being unable to meet marriage duration requirements due to a legal impediment that existed under laws now recognized as unconstitutional within U.S. states and territories. In particular, a same-sex surviving spouse may be unable to meet the duration requirement of being married to a Veteran for one year or more prior to the Veteran's death under 38 CFR 3.54 to qualify for Survivors Pension or DIC benefits, or a same-sex surviving spouse may be unable to fulfill 38 U.S.C. 1311(a)(2) for the 8x8 allowance due to the inability to establish a marriage for a consecutive eight-year time period. Recognizing that U.S. states and territories maintained varying same-sex marriage provisions prior to *Obergefell* and seeking an approach that prevents disparate impact and enables a consistent and equitable application, I have decided to utilize the date of the precedential *Obergefell* decision, June 26, 2015, as the general date that same-sex couples were no longer prevented from marrying for purposes of this Instruction. VA also acknowledges that it may have been impracticable for same-sex couples to have entered a marriage immediately after *Obergefell* was decided. As such, I am instructing VA to similarly apply this Instruction in the case of any same-sex surviving spouse who married a Veteran up through two years after *Obergefell, i.e.,* by June 26, 2017.

10. To address the concerns noted above, while ensuring maximum consistency with the statutory requirements regarding duration of marriage, VA will consider a marriage duration requirement to be satisfied when there is satisfactory evidence that a same-sex surviving spouse was effectively in a marital relationship for the specified period, supporting a conclusion that they would have been legally married for that period but for the unconstitutional state laws. In applying this standard, VA generally will follow the same evidentiary rules applicable in establishing any marital relationship. A same-sex surviving spouse will be required to provide verification that they were legally married to the Veteran at the time of the Veteran's death; that they held themselves out to the public as being in a committed relationship akin to that of marriage; and that they cohabitated, as evidenced through statements of persons in the community who knew the parties as akin to spouses and documents which show that the parties represented themselves as being in a committed relationship akin to that of marriage (see evidence requirements in 38 CFR 3.205(a)), for a minimum of one year prior to the Veteran's death for Survivors Pension and DIC. This Instruction will similarly be applied for awarding the 8x8 allowance if the surviving spouse is able to provide the same verification for a period of eight consecutive years prior to the Veteran's death during which time the Veteran was rated totally disabled for a service-connected disability.

11. The verification requirements in this Instruction to afford a relaxed application of the standard within 38 U.S.C. 1541(f)(1), 1304(2), and 1318(c)(1), as well as 38 CFR 3.54 used to grant Survivors Pension and DIC, will be applicable for same-sex marriages which occurred up through June 26, 2017. This same principle will be applied to 38 U.S.C. 1311(a)(2) for purposes of the 8x8 allowance, and thus the Instruction will be applied with respect to claims under that provision based on deaths occurring on or before June 26, 2025.

Applicability

12. This Instruction applies to all claims that are pending and nonfinal on the date of this instruction, and any original, supplemental, or other claims filed on or after the date of this Instruction, in which a same-sex surviving spouse seeks Survivors Pension and DIC based upon a marriage occurring no later than June 26, 2017. This same principle applies to a same-sex surviving spouse who seeks the additional 8x8 allowance based on deaths occurring on or before June 26, 2025.

Effective Dates

13. Effective dates for VA benefits are governed by 38 U.S.C. 5110. Benefits generally are paid from the date of the claim. However, pursuant to 38 U.S.C. 5110(g), the effective date of an award based upon a liberalizing ''administrative issue'' may be up to one year prior to the date of the claim, but in no event prior to the effective date of the administrative issue. With respect to the marriage duration requirements of 38 U.S.C. 1541(f)(2), 1304(2), 1318(c)(1), and 1311(a)(2) for same-sex surviving spouses who were married to the Veteran and fulfill the relationship verification standards for establishing that they were effectively in a marital relationship, this Instruction may be characterized as a liberalizing administrative issue, such that associated effective dates may be governed by 38 U.S.C. 5110(g).

14. Therefore, the effective date to grant Survivors Pension, DIC, or the 8x8 allowance for a same-sex surviving spouse who married the Veteran and met the verification requirements outlined within this Instruction should be assigned as follows:

a. If the claim was pending and nonfinal on October 11, 2022, VA will apply 38 U.S.C. 5110(g) and 38 CFR 3.114 to assign an effective date, fixed in accordance with the facts found, as early as October 11, 2022.

b. If the claim was received after October 11, 2022, VA will apply 38 U.S.C. 5110(g) and 38 CFR 3.114 to assign an effective date, fixed in accordance with the facts found, as early as October 11, 2022, if the claimant files a claim within one year of the date of this Instruction. However, the effective date may not be retroactive for more than one year from the date of receipt of the claim. To be entitled to benefits for up to one year prior to the date of the claim under 38 CFR 3.114, the claimant must have met all eligibility criteria on the date of the liberalizing change in law or liberalizing issue. For these purposes, the date of the liberalizing change in law is October 11, 2022, and a claimant may be considered to have met the basic entitlement to

Survivors Pension or DIC or the additional 8x8 allowance eligibility criteria on that date if they fulfill the relationship verification standards for establishing that they were effectively in a marital relationship.

c. If a claim was previously and finally decided prior to October 11, 2022, and the claimant was either denied benefits or a DIC benefit was awarded without the additional 8x8 allowance which would have been granted under the procedures identified within this Instruction, then the surviving spouse is required to file a new claim in a timely manner to satisfy the effective date requirements under 38 CFR 3.114, as noted above. In such cases, apply the effective date guidelines identified in paragraph b. above.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on November 3, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2022–24865 Filed 11–16–22; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Parts 3 and 6

Bylaws of the Board of Governors of the United States Postal Service

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: This document includes several amendments to the Bylaws of the Board of Governors. Additions have been made to conform the Bylaws to existing law. Technical edits have also been made to clarify the language of the Bylaws. Amendments include the addition of decisions to be made by the Board of Governors and changes to the voting and quorum requirements for actions to be taken by the Board of Governors.

DATES: *Effective date:* November 17, 2022.

FOR FURTHER INFORMATION CONTACT: Michael J. Elston, Secretary of the Board of Governors, *michael.j.elston@usps.gov,* 202–268–7432.

SUPPLEMENTARY INFORMATION: On October 4, 2022, the Board of Governors approved amendments to its Bylaws to address a variety of issues. Additions have been made to conform the Bylaws to existing law. Technical edits have been made to clarify the language of the Bylaws. The amendments include the addition of decisions that are reserved for the Board of Governors including consideration of and potential adjustment of funding requested in the Postal Regulatory Commission's budget for succeeding fiscal years as well as approval of programs established under 39 U.S.C. 3703. Amendments also include edits to clarify and expand upon the quorum and voting requirements for the Board of Governors.

List of Subjects

39 CFR Part 3

Board of Governors (Article III).

39 CFR Part 6

Meetings (Article VI).

For the reasons stated in the preamble, the Postal Service amends 39 CFR chapter I as set forth below:

PART 3—BOARD OF GOVERNORS (ARTICLE III)

■ 1. The authority citation for part 3 is revised to read as follows:

Authority: 39 U.S.C. 202, 203, 205, 401 (2), (10), 402, 404(b), 414, 416, 504, 1003, 2005, 2011, 2802–2804, 3013, 3622, 3632, 3642, 3652, 3654, 3691, 3703; 5 U.S.C. 552b(g), (j); 5 U.S.C. App.; Pub. L. 107–67, 115 Stat. 514 (2001).

§ 3.4 Matters reserved for decision by the Governors.

■ 2. Amend § 3.4 by:

■ a. Revising paragraph (i) to read as follows:

(i) Appointment and removal (in conjunction with Commissioners of the Postal Regulatory Commission) of the Inspector General under 39 U.S.C. 202(e).

■ b. Adding paragraphs (o) and (p) to read as follows:

(o) Consideration and potential adjustment of the funding requested in the Postal Regulatory Commission's budget for the succeeding fiscal year as required by 39 U.S.C. 504(d).

(p) Approval of any program established under 39 U.S.C. 3703 to enter into agreements with agencies of state, local or tribal governments to provide property or non-postal services to the public on behalf of such agencies for non-commercial purposes.

PART 6—MEETINGS (ARTICLE VI)

■ 1. The authority citation for part 6 is revised to read as follows:

Authority: 39 U.S.C. 202, 205, 401(2), (10), 504, 1003, 3622, 3632, 3703; 5 U.S.C. 552b(e), (g).

§ 6.6. Quorum and voting.

■ 2. Amend § 6.6 by:

■ a. Revising the introductory text to read as follows:

Except for matters considered through the notation voting process described in § 6.7, the Board acts by resolution upon a vote of those members who attend a meeting in accordance with § 6.4. No proxies are allowed in any vote of the members of the Board. As provided by 39 U.S.C. 205(c), any six (6) members constitute a quorum for the transaction of business by the Board, and a resolution requires a favorable vote of a majority of those members who are present, except as follows:

■ b. Removing the semicolons at the end of paragraphs (a), (b), and (c) and adding a period in their respective places.

■ c. Removing ''and;'' at the end of paragraph (d) and adding a period in its place.

■ d. Revising paragraph (g) to read as follows:

(g) In the appointment of the Inspector General, 39 U.S.C. 202(e) requires a favorable vote of a majority of the Governors then in office and of a majority of the Commissioners of the Postal Regulatory Commission then in office.

■ e. Adding paragraphs (h), (i), and (j) to read as follows:

(h) In removing the Inspector General for cause, 39 U.S.C. 202(e) requires the written concurrence of at least 7 Governors and 3 Commissioners of the Postal Regulatory Commission.

(i) In adjusting the funding requested in the Postal Regulatory Commission's budget for the succeeding fiscal year, 39 U.S.C. 504(d) requires a unanimous written decision of the Governors then holding office, issued no later than 30 days after receiving the budget.

(j) In approving a program established under 39 U.S.C. 3703 to enter into agreements with agencies of state, local or tribal governments to provide property or non-postal services to the public on such agencies' behalf, 39 U.S.C. 3703(c) requires a recorded and publicly available vote of a majority of the Governors then holding office.

Michael J. Elston,

Secretary of the Board of Governors.

[FR Doc. 2022–24285 Filed 11–16–22; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2021–0203; FRL–10212–01–OCSPP]

Sulfur Dioxide; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of sulfur dioxide in or on blueberry. Interregional Research Project Number 4 (IR–4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective November 17, 2022. Objections and requests for hearings must be received on or before January 17, 2023, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2021–0203, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Daniel Rosenblatt, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1030; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action apply to me?

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

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Office of the Federal Register's e-CFR site at *https://www.ecfr.gov/current/title-40.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2021–0203 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before January 17, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2021–0203, by one of the following methods:

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

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of June 28, 2021 (86 FR 33922) (FRL–10025–08), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0E8894) by IR–4, North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606. The petition requested to amend 40 CFR part 180 by establishing tolerances for residues of sulfur dioxide, including its metabolite and degradates, in or on blueberry at 9 parts per million (ppm). That document referenced a summary of the petition prepared by IR–4, the petitioner, which is available in the docket, *https://www.regulations.gov.* Two comments were received on the notice of filing from the United States Department of Agriculture and the North American Blueberry Council. Both were in support of the action.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on

aggregate exposure for sulfur dioxide including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with these inorganic sulfites follow.

A. Toxicological Profile

There is a large volume of published data detailing the toxicity of sulfur dioxide and sodium metabisulfite, and consequently the toxicity of these pesticides has been well established. Sodium metabisulfite pads generate sulfur dioxide gas which then reacts with foods to quickly form sulfite. In addition to the use of sodium metabisulfite pads, direct application of sulfur dioxide gas is proposed for blueberry treatments. For both treatments, sulfite is the residue of concern in food and is determined by the analytical enforcement method. EPA's Office of Air Quality Planning and Standards (OAQPS) has worked extensively on sulfur dioxide, including setting national ambient air quality standards (NAAQS) for sulfur dioxide, a gaseous air pollutant. The U.S. Food and Drug Administration (FDA) has also performed an extensive review of sulfiting agents (including sulfur dioxide, sodium metabisulfite, and sodium bisulfite) that have been added to any food or to any ingredient in any food. For the dietary assessment, EPA is relying on the established FDA regulatory value for sulfite.

Sulfiting agents are used to add sulfites to foods and include sulfur dioxide, sodium metabisulfite, sodium bisulfite, sodium sulfite, potassium metabisulfite, and potassium bisulfite. Humans may experience sensitivity reactions following exposure to sulfites including, but not limited to, diarrhea, headache, difficulty breathing, vomiting and nausea, and abdominal pain and cramps. Asthmatics account for many, but not necessarily all, of the individuals who have a sensitivity to sulfites. Given the known effects to certain individuals within the population, the FDA requires that any food that contains a sulfiting agent at ≥ 10 ppm or mg/kg be declared as such on the food label.

Additional information on the toxicological profile can be found at *https://www.regulations.gov* in the document titled ''Inorganic Sulfites. Human Health Risk Assessment in Support of a Section 3 Registration for Postharvest Fumigation of Blueberry'' (hereinafter ''Sulfur Dioxide Human Health Risk Assessment'') in docket ID number EPA–HQ–OPP–2021–0203.

B. Toxicological Points of Departure/ Levels of Concern

No appropriate toxicological endpoints were selected for sulfur dioxide. The Agency is relying on the FDA-established regulatory level of up to 10 ppm sulfite residues in foods.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to sulfur dioxide, EPA compared exposure from residues on blueberries to the FDA-established regulatory level. EPA assessed dietary exposures from these inorganic sulfites in food as follows:

Sulfite is the residue of concern for consumption of treated blueberries. A quantitative dietary assessment was not conducted for sulfite since no appropriate toxicological endpoints were selected. The Agency is relying on the FDA-established regulatory level of up to 10 ppm sulfite residues in foods. Residues of sulfites in blueberry from sulfur dioxide and sodium metabisulfite applications are expected to be below the 10 ppm level when applied as tested in the blueberry residue trials.

EPA did not use anticipated residue or PCT information in the dietary assessment for sulfur dioxide.

2. *Dietary exposure from drinking water.* No residues are expected in drinking water based on the current use pattern, which includes post-harvest fumigant treatment in a chamber and slow release or dual release pads that are placed in the clamshells used to distribute blueberries.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

There are no uses of sulfur dioxide or sodium metabisulfite resulting in direct residential exposures; therefore, residential exposure is not expected.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to the inorganic sulfites and any other substances and the inorganic sulfites do not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that the inorganic sulfites have a common mechanism of toxicity with other substances.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act Safety Factor (FQPA)(SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

Consistent with the factors specified in FFDCA section 408(b)(2)(D), EPA has also reviewed the available scientific data and other relevant information in support of regulations establishing the 10 ppm maximum permissible level for residues of sulfur dioxide to support a time-limited tolerance of sulfur dioxide residues in or on fig (September 14, 2011; 76 FR 56644) (FRL–8887–2). EPA also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including sulfite sensitive individuals, infants, and children. EPA has concluded that there is sufficient toxicological information for sulfur dioxide to address risks to infants and children. In addition, the available information indicated that there is no evidence of increased quantitative or qualitative susceptibility of the offspring after in utero or postnatal exposure. Based on the lack of observed susceptibility, and since the current regulatory value for sulfites (10 ppm) takes into account the potential for sensitive populations, including infants and children, these regulatory values are considered protective, and no additional FQPA safety factor is required.

E. Aggregate Risks and Determination of Safety

In accordance with the FQPA, the Agency must consider and aggregate pesticide exposures and risks from three

major sources: food, drinking water, and residential exposures. There are no residential uses of sulfur dioxide or sodium metabisulfite, and exposures through drinking water are not expected based on the use pattern. Dietary exposures resulting from the proposed uses on blueberries are expected to be below the 10 ppm FDA-established regulatory level; therefore, there are no dietary risks of concern from these uses on blueberries.

Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from exposure to inorganic sulfites resulting from the application of sulfur dioxide and sodium metabisulfite.

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate liquid chromatography method with tandem mass spectrometry detection (LC/MS/MS) method is available for enforcing sulfite tolerances in blueberries.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4).

There are no Codex MRLs for sulfur dioxide in or on blueberry.

V. Conclusion

Therefore, a tolerance is established for residues of sulfur dioxide in or on blueberry at 9 ppm. EPA is also removing the expired time-limited tolerance in paragraph (b) and reserving paragraph (b) as a housekeeping measure.

VI. Statutory and Executive Order Reviews

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

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: November 4, 2022.

Jennifer Saunders,

Acting Director, Registration Division, Office of Pesticide Programs.

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

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

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

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

■ 2. In § 180.444:

■ a. Amend paragraph (a) by:

■ i. Designating the table as ''Table 1 to paragraph (a)''.

■ ii. Adding in alphabetical order the entry ''Blueberry''.

■ b. Removing and reserving paragraph (b).

The addition reads as follows:

§ 180.444 Sulfur Dioxide; tolerances for residues.

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
Blueberry	9
* * * * *	

(b) [Reserved]

* * * * *

[FR Doc. 2022–25014 Filed 11–16–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 493

[CMS–3355–F2]

RIN 0938–AT55

Clinical Laboratory Improvement Amendments (CLIA) Proficiency Testing Related to Analytes and Acceptable Performance; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Final rule; correction.

SUMMARY: In the July 11, 2022 issue of the **Federal Register**, we published a final rule that updated proficiency testing (PT) regulations under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) to address current analytes (that is, substances or constituents for which the laboratory conducts testing) and newer technologies. The effective date was August 10, 2022, except for the amendments in amendatory instructions 2 and 5 through 21, which are effective July 11, 2024. This document corrects one technical error identified in the July 11, 2022 final rule.

DATES: This document is effective July 11, 2024, and is applicable beginning August 10, 2022.

FOR FURTHER INFORMATION CONTACT: Sarah Bennett, CMS, (410) 786–3531; or Heather Stang, CDC, (404) 498–2769.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2022–41513 (87 FR 41240), the final rule entitled ''Clinical Laboratory Improvement Amendments of 1988 (CLIA) Proficiency Testing Regulations Related to Analytes and Acceptable Performance'' (hereinafter referred to as the July 11, 2022 final rule), there was a technical error that is identified and corrected in the regulation text of this correction. The provision of this correction revises a regulation that become effective on July 11, 2024.

II. Summary of Errors

On page 41240 of the July 11, 2022 final rule, we made a technical error in ''Table 2 to Paragraph (c)(2)'' of § 493.933. In this table, we inadvertently noted the units for ''Carcinoembryonic antigen (CEA)'' as ''ng/dL'' when the correct units are ''ng/mL.'' Accordingly, we are revising ''Table 2 to Paragraph (c)(2)'' of § 493.933.

III. Waiver of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the rulemaking.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

This correction merely corrects an error in one analyte unit of measurement in the regulation text of the July 11, 2022 final rule. We are correcting this technical error to ensure that the table accurately reflects the policy adopted in the final rule. Therefore, we find that undertaking further notice and comment procedures to incorporate this minor technical correction into the final rule is unnecessary and contrary to the public interest.

For the same reasons, we are also waiving the 30-day delay in effective date for this correction. We believe that it is in the public interest to ensure that the July 11, 2022 final rule accurately states the correct units. Thus delaying the effective date of this correction would be contrary to the public interest. Therefore, we also find good cause to waive the 30-day delay in effective date.

Correction

■ Effective July 11, 2024, in FR Doc. 2022–41513, appearing at 87 FR 41194 in the **Federal Register** of July 22, 2022, on page 41240, in amendatory instruction 18 for § 493.933, in table 2 to paragraph (c)(2), the entry for ''Carcinoembryonic antigen (CEA)'' is corrected to read as follows:

§ 493.933 [Corrected]

* * * * *

(c) * * *

(2) * * *

TABLE 2 TO PARAGRAPH (c)(2)—CRITERIA FOR ACCEPTABLE PERFORMANCE

The criteria for acceptable performance are—Analyte or test	Criteria for acceptable performance
* * * * * * *	
Carcinoembryonic antigen (CEA)	Target value ±15% or ±1 ng/mL (greater).
* * * * * * *	

* * * * *

Elizabeth J. Gramling,

Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2022–24990 Filed 11–15–22; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 223

[Docket No. FRA–2020–0058; Notice No. 2]

RIN 2130–AC76

Safety Glazing Standards; Codifying Existing Waivers and Adding Test Flexibility

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is amending its Safety Glazing Standards for exterior windows on railroad equipment to codify long-standing waivers, add a new testing option to improve consistency of glazing testing, and revise outdated section headings. The changes update and clarify existing requirements to maintain and, in some cases, enhance safety, while reducing unnecessary costs. Codification of the waivers is also consistent with the Infrastructure Investment and Jobs Act and will enable FRA to use its inspection resources more efficiently.

DATES: This final rule is effective November 17, 2022.

ADDRESSES: *Docket:* For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Gary Fairbanks, Staff Director, Office of Railroad Safety, telephone: 202–493–6322, email: *gary.fairbanks@dot.gov;* or Michael Masci, Senior Attorney, Office of the Chief Counsel, telephone: 202–493–6037, email: *michael.masci@dot.gov.*

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

Purpose of the Regulatory Action

FRA periodically reviews, and proposes amendments to, its regulations to identify ways to enhance safety and streamline and update regulatory requirements. Various Executive orders also encourage or require such reviews with an emphasis on cost-savings.[1] This rule will maintain and, in some cases, enhance safety, while allowing FRA to make better use of its inspection resources, and reducing unnecessary costs.

This rule also responds to the mandate of section 22411 of the Infrastructure Investment and Jobs Act (IIJA; Pub. L. 117–58). Section 22411 requires the Secretary to review and analyze existing waivers issued under 49 U.S.C. 20103 that have been in continuous effect for a 6-year period to determine whether issuing a rule consistent with the waiver is in the public interest and consistent with railroad safety. The Secretary has delegated authority to implement section 22411 to FRA.[2] The notice of proposed rulemaking (NPRM) contained FRA's analysis of the waivers and FRA has concluded that it is in the public interest and consistent with railroad safety to incorporate into the regulations the relevant aspects of the waivers analyzed.

FRA is adopting this rule as effective on date of publication consistent with 5 U.S.C. 553(d)(1), as it is ''a substantive rule which grants or recognizes an exemption or relieves a restriction.''

Summary of the Regulatory Action

The Safety Glazing Standards (or part 223) contain minimum safety requirements for glazing materials in the windows of locomotives, passenger cars, and cabooses. FRA issued an NPRM on April 18, 2022,[3] proposing to codify long-standing waivers, add a new testing option to improve consistency of glazing testing, and revise outdated section headings. APTA submitted the only comment in response to the NPRM. APTA's comment expressed support for FRA's proposal to incorporate the identified waivers into the regulations and, generally, for the new testing option. APTA raised a technical concern, however, about the new testing option (discussed in more detail in Section III below). After carefully considering APTA's comment, FRA is issuing this final rule substantially as proposed, with only minor modifications to FRA's proposed revisions to appendix A to part 223 (appendix A) to make clear that the use of any structurally sound cinder block, meeting the required dimensions of the appendix, is allowable for the large object impact test.

As proposed in the NPRM, this rule codifies sixty-eight long-standing waivers[4] that have provided certain older railroad equipment relief from FRA's glazing requirements. Specifically, this final rule excludes from compliance with part 223 all locomotives, cabooses, and passenger cars built or rebuilt prior to July 1, 1980, that are operated at speeds not exceeding 30 mph, and are used only where the risk of propelled or fouling objects striking the equipment is low. Codifying these waivers through this rulemaking proceeding[5] continues the high level of safety achieved under the waivers. It also allows FRA additional flexibility to use its inspection resources and reduces the regulatory burden on the railroad industry by eliminating the need to continue to use the waiver process for relief, while providing the railroad industry with regulatory certainty as to the applicability of part 223 to certain older equipment.

This rule also adopts the NPRM's proposal to revise appendix A to allow the use of a steel ball as an alternative to a cinder block for conducting the large object impact test appendix A requires. As explained in the NPRM, appendix A contains the performance criteria and the testing methodology for required glazing materials. Specifically, appendix A requires glazing materials to be subjected to two tests: ballistic impact and large object impact. Historically, the large object impact test in appendix A has required the use of a 24-lb cinder block of specific dimensions. As noted in the NPRM, in the early 2000s, FRA became aware that cinder blocks of the weight and dimensions appendix A requires were

[1] *See, e.g.,* Executive Order 13610, Identifying and Reducing Regulatory Burdens, 77 FR 28469, May 10, 2012; Executive Order 13563, Improving Regulation and Regulatory Review, 76 FR 3821, Jan. 21, 2011.

[2] 49 CFR 1.89(a).

[3] 87 FR 22847.

[4] FRA currently oversees 68 glazing-related waivers issued to 58 different railroads that involve equipment built or rebuilt before July 1, 1980, that will be codified by this rule. For review, FRA placed a list of these waivers in the rulemaking docket. FRA monitors a railroad's compliance with each waiver and every five years upon the railroad's request, FRA reviews existing waivers for possible renewal. Table F, Government Administrative Net Benefits by Year, provides the number of waivers by year that absent this rule FRA would expect to review from 2021 to 2031 or over a 10-year period of analysis.

[5] Existing waivers could potentially be codified through the rulemaking process, as here, or they could be codified through legislation.

no longer being manufactured and accordingly were becoming harder for the glazing manufacturing and railroad industries to find. Because, as discussed in detail in Section III.B of the NPRM's preamble, and in Section III below, the steel ball test is at least equivalent to the existing cinder block test appendix A has historically required, safety will be maintained, and in some respects, enhanced, by the standardization the steel ball test provides.

As relevant to the existing cinder block test appendix A has historically required, in the NPRM FRA proposed to incorporate by reference two American Society for Testing and Materials [6] (ASTM) specifications (ASTM specifications C33/C33M–18 and C90–16a) to ensure proper cement construction and integrity of the blocks. Upon further review and consideration, however, FRA recognizes that other concrete compositions can be used to construct structurally sound cinder blocks. Accordingly, FRA is not adopting the NPRM's proposal to incorporate by reference the two ASTM standards, which would have required cinder blocks to meet those standards to be used for testing under appendix A. Instead, FRA is revising appendix A to make clear that any structurally sound cinder blocks may be used to meet the testing requirements of appendix A and ASTM specifications C33/C33M–18 and C90–16a are merely examples of compositions known to be structurally sound.

Finally, FRA is revising several section headings in part 223 to replace terms that have become outdated. As noted in the NPRM, since 1979, when FRA first published part 223, use of the terms ''new'' and ''existing'' in various section headings has become confusing. Accordingly, for clarity, FRA is amending the section headings to refer to the relevant compliance dates for each section.

Costs and Benefits of the Regulatory Action

This final rule will result in three quantifiable benefits. First, this final rule will eliminate the need for certain railroads to submit waiver petitions from part 223. Second, this final rule revises appendix A to allow manufacturers to use a steel ball as an alternative to a cinder block when conducting the large object impact test. Lastly, this final rule will result in net benefits to FRA because FRA subject matter experts no longer need to review renewal glazing standards waivers made unnecessary by the final rule.

FRA estimates there are no costs associated with implementing this final rule. As shown in the following table, FRA's estimates that this final rule will result in a net benefits of $946,000 (Present Value (PV), 3%) or $769,000 (PV, 7%).

TOTAL NET BENEFITS, 10-YEAR PERIOD OF ANALYSIS, ROUNDED TO $1,000

[2020 dollars]

Type of benefit	Undiscounted	Present value		Annualized	
		3%	7%	3%	7%
Railroads (Waiver Submissions)	$43,000	$37,000	$30,000	$4,000	$4,000
Manufacturers (Steel Ball Option)	77,000	65,000	54,000	8,000	8,000
Government (FRA Waiver Review)	1,000,000	844,000	685,000	99,000	98,000
Total Net Benefits	1,121,000	946,000	769,000	111,000	109,000

II. Background

The NPRM discussed in detail the background of FRA's existing glazing requirements, from FRA's initial issuance of the requirements in 1979 through amendments made in 2016 to exclude certain equipment that is more than 50 years old and, except for incidental freight service, used only for excursion, educational, recreational, or private transportation purposes. The NPRM also explained in detail FRA's waiver process and described the scope of existing glazing-related waivers under which individual railroads currently operate. Since 1998, FRA granted conditional relief from part 223 to approximately 200 small railroads that operate older equipment under certain circumstances (*i.e.,* at low speeds and in geographical locations with no history of broken windows and low risk of future vandalism to railroad equipment). As of the date of the NPRM, FRA oversaw 68 glazing-related waivers. In granting these waivers, the NPRM explained FRA's Railroad Safety Board (Board) reviewed available records and found the specific railroad operations and operating environment of each railroad demonstrated no history of injuries resulting from windows breaking on their equipment and low risk of any future injuries (*i.e.,* no or few reported incidents of vandalism, no history of windows broken from propelled or fouling objects). In addition, as noted in the NPRM, the Board consistently found that, due to rising prices for materials and labor, and modifications that are necessary to adapt the window frames in the older equipment to support the increased thickness and weight of glazing in modern window designs, requiring railroads with older equipment and limited operations (such as those railroads that are party to the existing glazing waivers referenced in footnote 9 (87 FR 22848)) to install certified glazing would be cost-prohibitive and of limited benefit. See the discussion of Executive Order 12866 in Section V below.

Given the rail industry's long-term success in safely operating under these waivers, and considering APTA's comment in support, FRA is incorporating the regulatory flexibility provided by the waivers into part 223. This change will eliminate the need for further waivers and the associated employee hours spent on their documentation and renewal every five years, as well as remove any industry uncertainty as to whether FRA would renew the waivers.

III. Discussion of APTA's Comment

In its comment, APTA expressed general support for FRA's proposal to exclude from part 223 older equipment operated at only low speeds in locations with low risk of objects striking equipment, recognizing the regulatory relief it will provide for its members. Based on an analysis of data in FRA's publicly available Railroad Accident/Incident Reporting System, APTA also

[6] The organization is currently known as ASTM International.

expressed the view that the current 24-lb cinder block test ''appears to be adequate'' to prevent serious incidents resulting from glazing being compromised. However, APTA expressed concern that the proposed steel ball test is more stringent than the cinder block test. APTA asserted that the ''proposed 12-pound steel sphere test is more demanding than the current cinder block testing because not all the kinetic energy is imparted to the glazing sample being tested since the cinder block itself consumes some of the kinetic energy as it breaks apart upon contact with the glazing.''

Given their premise that the steel ball test is more stringent than the cinder block test, APTA also expressed concern that if a railroad qualifies glazing using the cinder block test method, instead of the more stringent steel ball method, a railroad may be held liable for damages or injuries if the glazing is compromised.

Additionally, APTA generally asserted that the proposed alternative steel ball test will require railroad equipment to be re-designed or retrofitted to potentially accommodate thicker glass to pass the more stringent steel ball test. Although APTA generally asserted that equipment will need to be redesigned and retrofitted because a ''thicker piece of glazing may be required,'' APTA's comment did not provide any evidence or analysis to support this assertion. The comment did not specify what adjustments to railroad equipment or glazing material APTA believes would potentially be needed. APTA noted, however, that it has an industry working group currently working on establishing a method to scale the kinetic energy for the large object impact test to account for the kinetic energy that is typically absorbed by the cinder block when the block impacts the glazing. In other words, FRA understands that APTA has a working group charged with researching and developing an equivalent testing method to the cinder block test.

Accordingly, for each of the reasons outlined in its comment, APTA recommended that FRA reconsider its methodology and identify an alternative test method that provides an equivalent, not more stringent, level of safety, potentially incorporating results from its working group.

As acknowledged in the NPRM, FRA agrees with APTA that the steel ball test may be more stringent than the cinder block test.[7] However, that is not a reason, in itself, to forgo adding the proposed steel ball test as an alternative testing methodology. FRA's primary purpose for adding the steel ball test is to ensure safety is not diminished, and, where possible, to enhance safety. Adding a test option that is potentially more stringent will ensure the current level of safety is maintained or enhanced. In addition, FRA finds that adding the proposed steel ball test provides needed flexibility for manufacturers, and any others, responsible for testing glazing material, particularly given that cinder blocks of the weight and dimensions required by part 223 are no longer being manufactured. FRA expects glazing manufacturers may use the steel ball test because the steel ball is easier to acquire than a conforming cinder block and the steel ball test will result in net benefits as compared to the cinder block test. If a glazing manufacturer decides not to use the steel ball test, because it is too stringent or for any other reason, the cinder block test will remain in part 223 as an acceptable means to qualify glazing materials. As such, while the steel ball test may be more stringent than the cinder block test, it will not have any significant impact on manufacturing.

The precise legal nature of APTA's liability concerns is unclear. FRA's allowance of an alternative testing methodology would not create a difference in liability based on the use of one test over another. Part 223 does not provide for a private right of action for damages for non-compliance.[8] Additionally, negligence *per se* is available as a legal claim only when a regulation is violated.[9] As proposed in the NPRM, a manufacturer could comply with part 223 by qualifying glazing material using either the cinder block or steel ball test. If a manufacturer chose to comply using the cinder block test, there would be no violation to support a negligence *per se* claim. Thus, it is unclear how using a compliant test would result in undue liability as APTA alleges in its comments.[10] However, according to the general principles of tort law, negligence may be available as a claim if either test is performed incorrectly, and a resulting injury occurs; these principles are true regardless of this rule.[11]

FRA also determined that APTA's general comment about the need for the redesign or retrofitting of equipment to accommodate thicker glass is without merit. APTA's comment does not provide evidence or detailed analysis to support this assertion. The comment does not specify what adjustments to railroad equipment would be needed, and APTA does not provide an estimate for how thick the glass would need to be or dimensions for railroad equipment designed to secure the glass. Moreover, as APTA acknowledges in its comment, it is not clear that the glass would need to be thicker.[12] Based on the results of the Volpe Center report referenced in the NPRM, FRA does not expect that any retrofitting will be required.[13]

FRA appreciates and looks forward to the results of APTA's working group addressing glazing on railroad equipment, but for the reasons noted above, FRA finds that allowing for the alternative steel ball testing methodology as proposed in the NPRM is in the best interests of safety at this time. The alternative testing methodology will provide industry flexibility needed to continue testing in a standardized and repeatable way

[7] 87 FR 22852 (noting that the results of testing by the John A. Volpe National Transportation Systems Center (Volpe Center) indicated that the steel ball test is ''potentially a more stringent test than the cinder block test'').

[8] *See Touche Ross & Co. V. Redington,* 442 U.S. 560, 568 (1979) (finding that a private right of action is not automatically available following a Federal statutory violation unless the legislature intended to create such a right); *FDIC* v. *Schuchmann,* 235 F.3d 1217, 1223 (10th Cir. 2000) (finding that a statutory violation could not provide the basis for negligence per se if it is contrary to legislative intent); *Schwartzman, Inc. V. Atchison, T.& S.F. Ry.,* 857 F.Supp. 838, 847 (D.N.M. 1994) (listing legislative intent as a factor used by courts to establish whether a private right of action like negligence per se may be properly brought).

[9] *See, e.g., Schwartzman, Inc.,* 857 F.Supp. at 847 (''The doctrine of negligence *per se* dictates that applicable statutes constitute the governing standard of care, and violation of those statutes is negligence as a matter of law.'').

[10] In fact, although an FRA grant of a waiver petition often results in two separate Federal standards, FRA is not aware of such liability concerns adhering to the Federal standard established by the waiver grant. FRA has authority to waive regulatory requirements if such waiver is in the public's interest and consistent with railroad safety (49 U.S.C. 20103). To ensure waivers are consistent with railroad safety, FRA typically includes conditions to any granted waiver petition, and these conditions may include alternative methods for compliance. At times, FRA has waived regulatory requirements to approve and monitor a test/pilot program to help establish a safe alternative—the alternative being the governing Federal standard.

[11] *See, e.g., Palsgraf* v. *Long Island R.R. Co.,* Ct. of App. of N.Y., 248 N.Y. 339, 162 NE 99 (N.Y. 1928); *Greenman* v. *Yuba Power Products, Inc.,* 59 Cal.2d 57 (1963).

[12] APTA comment at page 2 (asserting that a thicker piece of glazing ''may'' be required as a result of the steel ball test).

[13] The Volpe Center report, summarized in the NPRM, shows that the glazing samples tested that withstood the cinder block test also withstood the steel ball test when a spall shield was added. The spall shield was less than a millimeter thick. Based on the Volpe Center research, if a manufacturer adds a spall shield to glazing material that passes the cinder block test, it will pass the steel ball test and have no impact on its installation on railroad equipment, whether or not it would otherwise require a spall shield to pass the steel ball test.

under appendix A, and accordingly, this final rule adopts the alternative steel ball testing methodology as proposed in the NPRM.

IV. Section-by-Section Analysis

As noted above, with one exception (noted in the analysis of appendix A below), FRA is adopting the proposals set forth in the NPRM without change.

This section-by-section analysis is intended to explain the rationale for each revised or new provision of the rule. The regulatory changes are organized by section number and with the exception of the analysis of appendix A, the analyses below are consistent with those included in the NPRM.

223.3 Application

Section 223.3 sets forth the scope and applicability of part 223. Former paragraph (b) excluded from part 223's applicability certain types of equipment and operations. For the reasons explained in the NPRM, this final rule adds new paragraph (b)(5) to exclude locomotives, cabooses, and passenger cars built or rebuilt prior to July 1, 1980, that are operated at speeds not exceeding 30 mph, and used only where there is low risk of propelled or fouling objects striking the equipment. Risk factors include reported incidents of propelled or fouling objects striking rail equipment, or infrastructure conditions or other operating environment conditions that have led or are likely to lead to objects striking rail equipment in operation. Paragraph (b)(5) provides that risk is presumed low, unless the railroad operating the equipment has knowledge, or FRA makes a showing, that specific risk factors exist. As explained in the NPRM, FRA will determine whether there is low risk primarily based on FRA's observations during routine inspections and from any reported incidents of propelled or fouling objects striking rail equipment in operation, and FRA expects the operating railroad to inform FRA of any such incidents known to the railroad. If FRA has reason to believe there have been incidents of propelled or fouling objects striking equipment in operation, FRA may investigate further. As part of its investigation, FRA may contact local law enforcement for more information, in determining the risk level.

223.9 Requirements for Equipment Built or Rebuilt After June 30, 1980

As proposed in the NPRM, this final rule revises the heading of this section to reflect the requirements of the section more accurately (*i.e.,* to reflect that the section applies to equipment built or rebuilt after June 30, 1980).

223.11 Requirements for Locomotives Built or Rebuilt Prior to July 1, 1980

Similar to the revisions to § 223.9 discussed directly above, this final rule revises the heading of this section to reflect the requirements of the section more accurately (*i.e.,* to reflect that the section applies to locomotives built or rebuilt prior to July 1, 1980).

223.13 Requirements for Cabooses Built or Rebuilt Prior to July 1, 1980

Similar to the revisions to §§ 223.9 and 223.11 discussed directly above, this final rule revises the heading of this section to reflect the requirements of the section more accurately (*i.e.,* to reflect that the section applies to cabooses built or rebuilt prior to July 1, 1980).

223.15 Requirements for Passenger Cars Built or Rebuilt Prior to July 1, 1980

Similar to the revisions to §§ 223.9, 223.11, and 223.13 discussed directly above, this final rule revises the heading of this section to reflect the requirements of the section more accurately (*i.e.,* to reflect that the section applies to passenger cars built or rebuilt prior to July 1, 1980).

Appendix A to Part 223—Certification of Glazing Materials

As discussed above, and as proposed in the NPRM, FRA is revising this appendix to provide the option to use a 12-lb steel ball as an alternative to a 24-lb cinder block for large object impact testing when certifying glazing under part 223. In doing so, FRA is making miscellaneous, conforming changes to existing requirements. A detailed analysis of those changes is included in the NPRM document, with the only difference being the changes to paragraphs b.(10) and (11) adopted in this final rule.

In the NPRM, FRA proposed to revise paragraphs b.(10) and (11), to incorporate by reference ASTM standards C90–16a, ''Standard Specification for Loadbearing Concrete Masonry Units,'' 2016, and ASTM C33/33M–18, ''Standard Specification for Concrete Aggregates,'' 2018. In proposing to incorporate these standards by reference, FRA noted that both specifications ''provide options for the precise cinder block makeup used in the large object impact tests.'' After further consideration, however, FRA recognizes that other concrete compositions can be used to construct structurally sound cinder blocks. Accordingly, FRA is not adopting the NPRM's proposal to incorporate by reference ASTM standards C90–16A and C33/C33M–18. Instead, FRA is revising paragraphs b.(10) and (11) to make clear that any structurally sound cinder blocks may be used to meet the testing requirements of appendix A and to identify the two ASTM standards as examples of compositions known to be structurally sound.

V. Regulatory Impact and Notices

A. Executive Order 12866

This final rule is a nonsignificant regulatory action under Executive Order 12866, ''Regulatory Planning and Review.'' FRA made this determination by finding that the economic effects of this final rule will not exceed the $100 million annual threshold defined by Executive Order 12866. FRA estimates that over a ten-year period of analysis this final rule will at least maintain, and possibly enhance, safety, while also providing net benefits for both the industry and FRA.

This final rule amends part 223 in two substantive ways. First, this final rule codifies long-standing waivers that exclude old rail equipment from the certified safety window glazing requirements, provided the railroads that use such equipment comply with FRA-required operating conditions. Second, this final rule adds a steel ball test option to appendix A that a manufacturer may use in lieu of the currently specified cinder block test option.

FRA complied with Office of Management and Budget (OMB) Circular A–4 when accounting for benefits, costs, and net benefits relative to a baseline condition. Typically, a baseline condition represents a best judgement about what the world would look like in absence of the regulatory intervention.[14] Without this final rule, small railroads that operate under part 223 waiver exemption would every five years need to apply for a renewal of their part 223 waiver exemption. Also, without this final rule manufacturers would continue using a customized cinder block when performing Type I and Type II large object impact tests to certify that new window glazing materials are part 223 complaint.

Waivers From Part 223

As discussed above in ''II. Background,'' the Safety Board found that mandating railroads with older equipment install certified glazing

[14] ''Circular A–4: Regulatory Analysis'' (Sep. 17, 2003), available at *https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4. See Section E(2) Developing a Baseline.*

would be cost-prohibitive. Such costs would include materials and labor costs, including the costs to remove existing window frames in older equipment and replace them with new frames that are compatible with compliant glazing to support the increased thickness and weight of glazing in modern window designs. The cost to install certified glazing may exceed the value of the rail equipment itself. Moreover, FRA expects that even if such installation took place, limited safety-related benefits would follow, because older equipment generally operates at low speeds and in areas with low safety risk. For these reasons, FRA previously granted these part 223 waiver requests.

When estimating benefits and costs that comes from the final rule, this analysis assumed a baseline where FRA's approval of part 223 waivers resembles historical practice. Historically, FRA reviews two types of waivers: (1) ongoing or long-standing waivers [15] and (2) test, pilot waivers, or waivers that FRA approved for a period of time less than 10 years. Long-standing waivers cover more familiar and proven technology and have previously undergone the renewal process. Renewal requests for long-standing waivers require less effort for applicants and FRA, as compared to renewal requests for waivers. For this economic analysis, FRA defines long-standing waivers as any active waiver that FRA approved for a period of time of 10 years or longer. Test or pilot waivers, or waivers that FRA approved for a period of time less than 10 years, require extensive technical analysis and investigation by stakeholders during the initial waiver application and first waiver renewal.

A waiver's benefits and costs are based on industry application of technologies and procedures, which are presumably less restrictive than the underlying regulation. However, continuation of a waiver (and the associated net benefits and regulatory relief) is subject to the uncertainty regarding whether FRA will approve the waiver renewal request during the periodic waiver review process. Currently, only Class III railroads operated rail equipment under waiver from part 223. Based upon previous requests of waiver from part 223, FRA estimates the final rule will provide net benefits to 58 of the 733 (8 percent) Class III railroads.[16]

Long-standing waivers (*i.e.,* active waivers that FRA initially approved more than 10 years ago) from part 223 reflect familiar uncertified glazing technologies and safe operating conditions for which FRA has granted short line railroads waiver renewals. Because railroads operated under uncertified window glazing permitted by waivers under FRA-required operating conditions for a long time, they have essentially ''built-in'' these waivers into their business practices. FRA historic inspection data indicates that railroads have operated safely with these waivers for approximately 25 years, so it is reasonable to assume that FRA would continue to approve any such waiver renewal request going forward. In a world without this final rule, or the baseline condition, the continuation of these long-standing waivers is a reasonable estimation. Therefore, a net benefit that comes from this final rule is the reduced burden on Class III railroads to submit part 223 waiver renewal requests for long-standing waivers and the reduced burden on FRA to process such waiver renewal requests.

Costs for railroads to renew more recent waivers (*i.e.,* test, pilot waivers, or waivers that FRA approved for less than 10 years) are higher than the costs for renewing long-standing waivers. First, more recent waivers are subject to more extensive review and analysis. FRA may also modify conditions of more recent waivers by imposing restrictions to maintain and in some cases enhance safety. Second, more recent waiver renewal requests include a degree of uncertainty, because FRA's renewal of more recent waivers is not assured. Therefore, this analysis estimates the impact from codifying more recent waivers as the costs and benefits that result from the waiver application process and safety procedures in lieu of the regulatory requirements absent this final rule. This analysis also estimates the reduced burden on FRA associated with processing waiver renewal requests.

Addition of Steel Ball Test Option in Appendix A

This final rule revises appendix A to allow manufacturers to use a steel ball in lieu of a cinder block when conducting Type I and Type II large object impact tests. This revision will not result in any costs, because stakeholders may still use a cinder block when complying with the large object impact test requirements. However, this analysis determined that after the implementation of this final rule that all manufacturers will use the steel ball test option, as the steel ball test option costs less relative to the existing cinder block test option.

Overall, this analysis found that the final rule will codify window glazing waivers, reduce window glazing manufacturers' window glazing certification costs, and eliminate the Federal Government's requirement to review and approve these waivers. As shown in Table A, issuing the final rule will result in net benefits of $946,000 (Present Value (PV), 3%) and $769,000 (PV, 7%).

TABLE A—SUMMARY OF TOTAL NET BENEFITS OVER THE 10-YEAR PERIOD, ROUNDED $1,000

[2020 dollars]

Type of benefit	Undiscounted	Present value		Annualized	
		3%	7%	3%	7%
Railroads (Waiver Submissions)	$43,000	$37,000	$30,000	$4,000	$4,000
Manufacturers (Steel Ball Option)	77,000	65,000	54,000	8,000	8,000
Government (FRA Waiver Review)	1,000,000	844,000	685,000	99,000	98,000
Total Net Benefits	1,121,000	946,000	769,000	111,000	109,000

[15] FRA has recently used the term ''long-standing'' waivers in the rule on ''Miscellaneous Amendments to Brake System Standards and Codification of Waivers,'' 85 FR 80544 (Dec. 11, 2020). See also the rule's corresponding regulatory impact analysis (RIA) in *www.regulations.gov,* docket no. FRA–2018–0093, notice no. 2, document ''2130–AC67 final rule RIA to 12–10–2020.''

[16] Based on the railroads that are required to report accident/incidents to FRA under part 225, as of 2021 FRA estimates there are approximately 768 Class III railroads, with 733 of them operating on the general system.

Railroad Net Benefits

In 1979, FRA issued part 223 and generally established minimum safety requirements for glazing materials in the windows of locomotives, passenger cars, and cabooses. FRA has traditionally granted waiver requests to small railroads that operate such vehicles in existence at the time the regulation was promulgated, at speeds up to 30 mph, on rail tracks located in areas where railroad reports and FRA observations, as well as police records, show little risk of objects, such as cinder blocks and bullets, striking rail equipment. Once initial waiver requests are approved, recipients must resubmit waiver requests to FRA every five years to continue to operate such vehicles. During the waiver approval process, FRA field inspectors verify safe conditions and contact local police, if appropriate.[17] FRA historical records of the part 223 waiver approval process confirm that, from 1998 to April 2020, no railroad operating under waiver from part 223's requirements reported any incident resulting from use of windows not conforming to part 223's requirements. Based on this documented safety history and FRA's standard practice for evaluating waiver requests,[18] FRA is confident that codifying window glazing waivers serves the public interest by providing small railroads permanent regulatory relief while preserving safety on the general railroad system. The final rule also adds a steel ball test option to the window glazing certification process. FRA expects this amendment will reduce glazing certification costs.

Immediately prior to this final rule, 58 railroads operated rolling stock under 68 waivers from part 223. Absent this final rule, in order to continue to operate under waiver to part 223, these railroads had to resubmit waiver applications every 5 years. Based on historical waiver application submissions, FRA expects the annual number of part 223 waiver submission would vary over a 10-year period of analysis. For example, there were 8 waiver submissions in 2021 (originated in 2001, 2006, and 2011) and FRA expects that railroads would submit 11 waiver renewal requests in 2022 (originated in 2002, 2007, 2012, and 2017). Over the next 10 years, this analysis estimates that railroads would submit two waiver renewal requests for each active part 223 waiver, or 136 waiver renewal requests over the 10-year period of analysis.[19] For the purpose of estimating net benefits that would come from codifying part 223 waivers, this analysis assumes that year 1 net benefits would follow from the observed number of waiver renewal applications in calendar year 2021. Continuing, this analysis assumes that year 2 net benefits related to codifying part 223 waivers would follow from the anticipated reduction in wavier renewal applications expected to occur in calendar year 2022. In Table B, FRA presents the railroad industry's net benefits based upon the following inputs.[20]

- There are 68 active waiver exemptions to the glazing standards.
- Over the 10-year period of analysis, railroads will submit two waiver exemption requests for each active waiver exemption to the glazing standards.
- This analysis assumes that Class III railroad administrative burden follows similarly to Class I railroad administrative burden. As such, this analysis used Surface Transportation Board (STB) wage data to estimate the railroad administrative burdened [21] wage rate of $77.44 per hour.[22]
- Each railroad waiver submission requires 4 hours of railroad administrative labor.
- The copying and mailing cost for a waiver renewal submission is $10 per waiver renewal submission.
- Total cost per waiver equals $319.75.[23]

Over the 10-year period of analysis, these Class III railroads will realize a net benefit of about $37,000 (PV, 3%) and $30,000 (PV, 7%).

TABLE B—RAILROAD NET BENEFITS BY YEAR

[2020 dollars]

Year	Number of waivers	Undiscounted	Discount rate	
			3%	7%
Year 1	8	$2,558	$2,483	$2,391
Year 2	11	3,517	3,315	3,072
Year 3	14	4,477	4,097	3,654
Year 4	18	5,756	5,114	4,391
Year 5	17	5,436	4,689	3,876
Year 6	8	2,558	2,142	1,705
Year 7	11	3,517	2,860	2,190
Year 8	14	4,477	3,534	2,605
Year 9	18	5,756	4,411	3,131
Year 10	17	5,436	4,045	2,763
Total	136	44,000	37,000	30,000
Annualized	.....	.....	4,300	4,200

[17] District inspectors verify safe conditions with the police if they find any evidence window glazing has been damaged or replaced.

[18] Standard operating procedures include periodic updates of the FRA Motive Power and Equipment Compliance Manual, which will be expected with the issuance of this rule.

[19] Total number of waiver renewals: 10-year period = Number of existing waivers (68) * number of waiver renewal requests per waiver (2) = 136.

[20] Inputs are based on expertise drawn from FRA's Motive Power and Equipment Division, unless otherwise noted.

[21] The ''burdened'' wage rate multiplies the STB wage rate by a factor of 1.75 to account for fringe and overhead benefits.

[22] Source: STB, 2020, professional and administrative employees, group #200; burdened wage rate = $44.25 * 1.75 benefits rate = $77.44, *https://www.stb.gov/reports-data/economic-data/quarterly-wage-ab-data/*.

[23] Total costs per waiver renewal submission = 4 (labor hours per waiver) * $77.44 (hourly labor burdened wage rate) + $10 (mailing costs) = $319.75.

Manufacturer Net Benefits

This analysis concluded that the amendment of appendix A that allows manufacturers to use a steel ball when conducting Type I and Type II large object impact tests will reduce manufacturers' testing costs and technical development costs. Previously, these tests required the rectangular edge of an 8″ by 8″ by 16″ cinder block weighing 24 lbs to strike a glazed window under specified conditions without penetrating the back side of the glass. Cinder blocks meeting these part 223 specification parameters are no longer manufactured. Therefore, in order to perform the large impact tests using a cinder block, materials engineers need to customize currently available cinder blocks. This additional customization step increases the testing labor burden by two hours, and increases the testing burden beyond what was anticipated when part 223 was promulgated.

The Volpe Center report discussed in the NPRM,[24] verified that a 12-lb steel ball can achieve the same kinetic energy as the cinder block. In addition, manufacturers may use the same steel ball for all glazing certification tests that they perform, while they must replace each cinder block after one glazing certification test because a cinder block's rectangular edge becomes damaged beyond repair during each Type I and Type II large object impact test. When estimating the manufacturers' labor and material net benefits that come from amending appendix A to allow for the steel ball test option, this analysis made the following assumptions: [25]

- Worldwide there are five railroad vehicle glazing manufacturers; three domestic and two foreign manufacturers.[26]
- Each domestic manufacturer will conduct five tests per year and will save approximately $500 per test. In total, the 3 domestic manufacturers will conduct 15 tests per year and save approximately $7,500 per year.
- Each cinder block is damaged and rendered unusable after each Type I and Type II large object impact test.
- Manufacturers will purchase and prepare four cinder blocks per test pass. Two cinder blocks per test pass are required; one cinder block for the Type I test and one cinder block for the Type II test. However, this analysis included two additional cinder blocks per test to ensure that manufacturers had extra cinder blocks on hand in case issues arose with the initial test pass.
- The cost of a cinder block is $1.50 or $6 for four cinder blocks.
- Each cinder block test requires 10 labor hours, *e.g.,* 2 hours to customize the cinder block and 8 hours to run the cinder block test.
- After FRA implements this final rule, when conducting the Type I and Type II large object impact tests, all glazing manufacturers will use the steel ball option.
- Each steel ball costs $75. This analysis assumes each of the three domestic manufacturers will purchase one steel ball at the beginning of the first year of the analysis for a combined cost of $225. These one-time costs are subtracted from the year 1 net benefits shown in Table D. Steel ball costs are not included in Table C per test net benefits. FRA assumes that manufacturers will continue to use the steel ball test option after year 10, but this analysis does not assign any residual value to the steel ball after the 10-year period of analysis.
- Materials engineers conduct the certification tests at a burdened hourly wage of $84.60.[27]

As shown in Table C, this analysis expects that each domestic window glazing manufacturer will save approximately $500 per test by using the steel ball test option in lieu of the existing cinder block test. Over the 10-year period of analysis, the three domestic manufacturers will realize a net benefit of about $65,000 (PV, 3%) or $54,000 (PV, 7%). The final rule will also result in unquantified environmental benefits as glazing manufacturers reduce the purchase and landfill disposal of cinder blocks, yet FRA lacks sufficient data to quantify these environmental benefits.

TABLE C—MANUFACTURER NET BENEFITS

[2020 dollars]

Expense	Large object costs per test	Labor hours per test	Labor costs per test	Total costs per test	Large object costs 15 tests	Labor costs 15 tests	Total costs per year
Cinder block	$6	10	$847	$853	$90	$12,700	[28] $12,790
Steel Ball after first year	0	4	339	339	0	5,080	[29] 5,080
Annual net benefits							7,710
Net benefits per test							514

TABLE D—MANUFACTURER NET BENEFITS BY YEAR

[2020 dollars]

Year	Number of tests	Undiscounted	Present value	
			3%	7%
Year 1	15	$7,474	$7,256	$6,985
Year 2	15	7,699	7,257	6,725
Year 3	15	7,699	7,046	6,285

[24] 87 FR 22852.

[25] Assumptions are based on expertise from FRA's Motive Power and Equipment Division.

[26] This analysis does not consider the impact on foreign manufacturers.

[27] United States Bureau of Labor Statistics, Occupational Employment and Wages, May 2020, 17–2131 Materials Engineer, Materials engineer wage rate = $48.34. Materials engineer burdened rate = 1.75 * $48.34 = $84.60. Source: *https://www.bls.gov/oes/2020/may/oes_nat.htm.*

[28] Total cinder block tests cost per year = 15 * ($6 + $847) = $12,790, where $6.00 is the per test cinder block cost and $847 is the per test labor cost.

[29] The steel ball costs per test include 4 hours of labor. Four labor hours * $84.60 = $339. There are 15 tests per year. Labor cost of steel ball tests per year = 15 tests * $339 = $5,080.

TABLE D—MANUFACTURER NET BENEFITS BY YEAR—Continued

[2020 dollars]

Year	Number of tests	Undiscounted	Present value	
			3%	7%
Year 4	15	7,699	6,841	5,874
Year 5	15	7,699	6,641	5,489
Year 6	15	7,699	6,448	5,130
Year 7	15	7,699	6,260	4,795
Year 8	15	7,699	6,078	4,481
Year 9	15	7,699	5,901	4,188
Year 10	15	7,699	5,729	3,914
Total	150	76,766	65,456	53,865

Potential Industry Cost Due to Legal Liability and Equipment Redesign or Retrofitting

FRA received one public comment about the economic impact that the proposed rule may have on the industry. APTA's comment expressed support for FRA's proposal to incorporate the identified waivers into the regulations and generally for the new steel ball testing option. However, APTA also expressed concern that the proposed steel ball test is more stringent than the existing cinder block test method. APTA asserted that, in order to pass the more stringent steel ball test, an entity may need to re-design or retrofit its railroad equipment in order to accommodate a thicker piece of glazing material. APTA's comment did not provide any evidence or analysis to support this assertion, nor did it specify the type of adjustments that an entity would need to make to railroad equipment or glazing material. Based on input from FRA subject matter experts, this analysis concluded that APTA's general comment about the need to redesign or retrofit equipment to accommodate thicker glass is without merit.

Proposal to Incorporate by Reference Two American Society for Testing and Materials Specifications

As relevant to the existing cinder block test in appendix A that FRA has historically required, in the proposed rule FRA planned to incorporate by reference two ASTM specifications (ASTM specifications C33/C33M–18 and C90–16a) to ensure proper cement construction and integrity of the blocks. Had FRA required manufacturers to comply with ASTM specification standards, manufacturers may have had a *de minimis* cost associated with purchasing the aforementioned ASTM standards, if the manufacturers did not currently subscribe to ASTM's standards subscription service. Upon further review and consideration, however, FRA recognizes that other concrete compositions can be used to construct structurally sound cinder blocks. Accordingly, FRA is not adopting the NPRM's proposal to incorporate by reference the two ASTM standards so that only cinder blocks meeting those standards could be used under appendix A. Rather, FRA is revising appendix A to make clear that any structurally sound cinder blocks may be used to meet the testing requirements of appendix A. Therefore, ASTM specifications C33/C33M–18 and C90–16a are merely examples of compositions known to be structurally sound. Because this change from the NPRM to the final rule removes the proposed incorporation by reference of specific ASTM standards, there is no related cost. Also, the removal of the proposed incorporation by reference adds an unquantified benefit of additional flexibility to manufacturers with regard to where they may source cinder blocks.

Federal Government Net Benefits

Table E and Table F, below, estimate the Federal Government net benefits expected from this final rule. FRA will no longer receive numerous petitions from railroads requesting waiver from compliance with the window glazing requirements, which will save time and expense FRA previously spent on the waiver review and decision process. Specifically, as noted above, FRA currently oversees 68 glazing-related waivers, subject to renewal every five years. As part of the waiver process, an FRA inspector spends one to two days investigating each glazing waiver renewal request and reporting the findings. Additionally, an FRA subject matter expert spends one to two days reviewing the inspector's report and drafting a recommendation memorandum to the Safety Board and a notice to publish in the **Federal Register** for each waiver renewal request.

FRA estimates the net benefit from eliminating one railroad window glazing waiver review and decision is approximately $7,400 at the burdened wage rate. FRA net benefits estimates are based on the reduction of labor hours at the 2020 Office of Personnel Management (OPM) pay grade levels as shown below.[30] Hours were considered at the burdened wage rate by multiplying the actual wage rate by 175 percent.

FRA's waiver review and decision typically require contributions from employees earning salaries at General Schedule (GS) pay grades 12, 14, and 15, and employees earning Senior Executive Service (SES) salaries. Table E shows the hours and wage rates for Government employees reviewing and issuing decisions for part 223 waiver requests.

[30] U.S. Office of Personnel Management (OPM), 2020 Salaries & Wages. OPM general wage rates are listed here: GS 12 District Staff from Rest of the US (RUS) *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2020/RUS_h.pdf*; GS 12, 13, 15 DOT Headquarters Staff from DC Metropolitan Area (DCB): *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2020/DCB_h.pdf*; SES from Mid-Level III: *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2020/EX.pdf*.

TABLE E—FRA WAIVER REVIEW WAGE RATES BY GENERAL SCHEDULE PAY GRADES

		Burdened wage rate (wage * 1.75)	Hours	Total unburden	Total burden
GS–12 (RUS)	$41.66	$72.91	12	$500	$875
GS–12 (DCB)	46.88	82.04	4	188	328
GS–14 (DCB)	65.88	115.29	36	2,372	4,150
GS–15 (DCB)	77.49	135.61	8	620	1,085
SES	87.26	152.71	6	524	916
Total cost per waiver				4,200	7,400

Table F provides the yearly net benefits of eliminating the Federal Government's burden of reviewing 136 waivers over the next 10 years. Codifying the active glazing waivers will allow FRA inspectors to perform other essential inspection duties and will also allow headquarters staff to spend their time on other issues that may have a larger impact on maintaining and improving safety on the general railroad system.

TABLE F—GOVERNMENT ADMINISTRATIVE NET BENEFITS BY YEAR

Year	Number of waivers	Burdened wage rate undiscounted	Discount rate	
			3%	7%
Year 1	8	$58,836	$57,123	$54,987
Year 2	11	80,900	76,256	70,661
Year 3	14	102,964	94,226	84,049
Year 4	18	132,382	117,620	100,994
Year 5	17	125,027	107,850	89,143
Year 6	8	58,836	49,275	39,205
Year 7	11	80,900	65,779	50,380
Year 8	14	102,964	81,280	59,926
Year 9	18	132,382	101,460	72,007
Year 10	17	125,027	93,032	63,558
Total	136	1,000,219	844,000	685,000
Annualized			99,000	97,500

Over the 10-year period of analysis, the final rule will codify window glazing waivers, reduce window glazing manufacturers' window glazing certification costs, and eliminate the Federal Government's requirement to review and approve these waivers. The final rule will result in net benefits of $946,000 (PV, 3%) or $769,000 (PV, 7%).

TABLE G—SUMMARY OF TOTAL NET BENEFITS OVER THE 10-YEAR PERIOD, ROUNDED $1,000

[2020 dollars]

Type of benefit	Undiscounted	Present value		Annualized	
		3%	7%	3%	7%
Railroads (Waiver Submissions)	$43,000	$37,000	$30,000	$4,000	$4,000
Manufacturers (Steel Ball Option)	77,000	65,000	54,000	8,000	8,000
Government (FRA Waiver Review)	1,000,000	844,000	685,000	99,000	98,000
Total Net Benefits	1,121,000	946,000	769,000	111,000	109,000

B. Regulatory Flexibility Act and Executive Order 13272; Certification

The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 *et seq.*) and Executive Order 13272 (67 FR 53461, Aug. 16, 2002) require agency review of proposed and final rules to assess their impacts on small entities. When an agency issues a rulemaking proposal, the RFA requires the agency to ''prepare and make available for public comment an initial regulatory flexibility analysis'' which will ''describe the impact of the proposed rule on small entities.'' [31] Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Out of an abundance of caution, FRA prepared an initial regulatory flexibility analysis (IRFA) to accompany the NPRM, which noted no expected significant economic impact on a substantial number of small entities. FRA made the IRFA available for public comment and did not receive any comments that related to small entities.

This final rule is amending Safety Glazing Standards for exterior windows

[31] 5 U.S.C. 603(a).

on railroad equipment to codify long-standing waivers and add a new testing option to improve consistency of glazing testing. This final rule will apply to 58 of the 733 (8 percent) Class III railroads that are small entities and three manufacturers that are not small entities.[32] As enumerated in the IRFA and in the full Regulatory Impact and Notices section of this final rule, over the 10-year period of analysis, issuing this final rule will result in 136 fewer waiver requests by Class III railroads. The net benefit from this final rule that comes to Class III railroads is $30,000 (PV, 7%). Per year on average, this final rule will result in a net benefit of $51 for each affected Class III railroad. The final rule also includes a steel ball test method that manufacturers may use instead of the existing cinder block test method. However, the three domestic manufacturers impacted by this final rule are not small businesses.[33]

When developing the final rule, FRA considered the impact that the final rule would have on small entities. To provide flexibility in cinder block method testing, FRA made a change from the NPRM to the final rule. In appendix A, FRA removed the proposed incorporation by reference of specific ASTM standards and made it clear that the use of any structurally sound cinder block meeting the required dimensions of appendix A is allowable for the large object impact test. This change provides additional flexibility in the sourcing of cinder blocks and also reduces the burden of manufacturers to obtain the stated ASTM specifications standard.

FRA received one public comment from APTA that relates to the impact that the NPRM may have on small entities. As stated above, FRA did not make any changes from the NPRM stage to the final rule stage in response to APTA's comment because APTA did not provide sufficient support for its claim that window frames would require retrofitting or redesigning as a result of this rule. Additionally, with regard to concerns about legal liability that APTA raised in its comment, FRA notes that a manufacturer may comply with the glazing test by using either the cinder block or steel ball.

Consistent with the findings of the IRFA, and a determination that the economic impact of the rule will not be significant, the FRA Administrator hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

C. Paperwork Reduction Act

FRA submitted the information collection requirements in this rule to OMB for approval under the Paperwork Reduction Act of 1995.[34] Please note that any revised requirements, as specified in this rule, are marked by asterisks (*) in the table below. The sections that contain the new and former information collection requirements under OMB Control No. 2130–0525 and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses (A)	Average time per response (B)	Total annual burden hours (C) = A * B	Total cost equivalent (D) = C * wage rate[35]
223.3—Application—Locomotives, passenger cars, and cabooses built after 1945 used only for excursion, educational, recreational, or private transportation purposes.	733 railroads	400 marked tools (small hammers with instructions).	30 minutes	200.00 hours	$11,978.00
223.11(c)—Requirements for locomotives built or rebuilt prior to July 1, 1980, equipped with certified glazing in all locomotive cab windows (*Note: Revised requirement.*).	The rule will eliminate the need for railroads to submit waiver petitions (and repeated extensions of those waivers every 5 years) from part 223 for certain older railroad equipment and eliminate the Federal Government's need to review and approve the waiver petitions and extension requests.				
—(d)(1) Locomotive placed in designated service due to a damaged or broken cab window—Stenciled ''Designated Service—DO NOT OCCUPY''.	733 railroads	15 stencilings	3 minutes	.75 hour	$44.92
—(d)(2) Locomotives removed from service until broken or damaged windows are replaced with certified glazing.	Glazing certification for locomotive replacement windows is done at the time of manufacturing. Consequently, there is no additional burden associated with this requirement.				
223.13(c)—Requirements for cabooses built or rebuilt prior to July 1, 1980, equipped with certified glazing in all windows (*Note: Revised requirement.*).	The rule will eliminate the need for railroads to submit waiver petitions (and repeated extensions of those waivers every 5 years) from part 223 for certain older railroad equipment and eliminate the Federal Government's need to review and approve the waiver petitions and extension requests.				

[32] Based on the railroads that are required to report accident/incidents to FRA under part 225, FRA estimates there are approximately 768 Class III railroads, with 733 of them operating on the general system.

[33] North American Industry Classification System (NAICS) Code 327211 signifies the Flat Glass and Glazing Manufacturing Firms that would be affected by this proposal. Per SBA, any firm under NAICS code 327211 that employs more than 1,000 employees cannot qualify as a small business. See U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification Codes, effective January 1, 2017. *https://www.sba.gov/sites/default/files/2019/08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019.pdf.*

[34] 44 U.S.C. 3501 *et seq.*

[35] The dollar equivalent cost is derived from the STB's 2020 Full Year Wage A&B data series using the appropriate employee group hourly wage rate that includes a 75-percent overhead charge.

CFR section	Respondent universe	Total annual responses (A)	Average time per response (B)	Total annual burden hours (C) = A * B	Total cost equivalent (D) = C * wage rate [35]
—(d) Cabooses removed from service until broken or damaged windows are replaced with certified glazing.	Glazing certification for caboose replacement windows is done at the time of manufacturing. Consequently, there is no additional burden associated with this requirement.				
223.15(c)—Requirements for passenger cars built or rebuilt prior to July 1, 1980, equipped with certified glazing in all windows plus four emergency windows (*Note: Revised requirement. Those passenger cars operating at Class 3 speeds (or higher) will need still need to submit a waiver; for those operating below Class 3 speeds, the rule will eliminate the need for the passenger railroads to submit waiver petitions.*).	733 railroads	1 renewal waiver ...	4 hours	4.00 hours	$309.76
—(d) Passenger cars removed from service until broken/damaged windows are replaced with certified glazing.	Glazing certification for passenger car replacement windows is done at the time of manufacturing. Consequently, there is no additional burden associated with this requirement.				
Appendix A—(b)(16)—Certification of Glazing Materials—Manufacturers to certify in writing that glazing material meets the requirements of this section.	3 manufacturers	10 certifications	30 minutes	5.00 hours	$387.20
—(c) Identification and marking of each unit of glazing material.	3 manufacturers	25,000 marked pieces.	480 pieces per hour.	52.08 hours	$3,119.07
Total	733 railroads + 3 manufacturers.	25,426 responses	N/A	262 hours	$15,839

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. For information or a copy of the paperwork package submitted to OMB, contact Ms. Hodan Wells, Information Collection Clearance Officer, at 202–868–9412, or at *Hodan.Wells@dot.gov*.

OMB is required to make a decision concerning the collection of information requirements contained in this rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA is not authorized to impose a penalty on persons for violating information collection requirements that do not display a current OMB control number, if required. The current OMB control number is 2130–0525.

D. Federalism Implications

Executive Order 13132, Federalism,[36] requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA has analyzed this rule in accordance with the principles and criteria contained in Executive Order 13132. FRA has determined that this rule has no federalism implications, other than the possible preemption of State laws under 49 U.S.C. 20106. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply, and preparation of a federalism summary impact statement for this final rule is not required.

E. International Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. This rule is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

F. Environmental Impact

FRA has evaluated this rule consistent with the National Environmental Policy

[36] 64 FR 43255 (Aug. 10, 1999).

Act (NEPA; 42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality's NEPA implementing regulations at 40 CFR parts 1500–1508, and FRA's NEPA implementing regulations at 23 CFR part 771 and determined that it is categorically excluded from environmental review and therefore does not require the preparation of an environmental assessment (EA) or environmental impact statement (EIS). Categorical exclusions (CEs) are actions identified in an agency's NEPA implementing regulations that do not normally have a significant impact on the environment and therefore do not require either an EA or EIS.[37] Specifically, FRA has determined that this rule is categorically excluded from detailed environmental review pursuant to 23 CFR 771.116(c)(15), ''[p]romulgation of rules, the issuance of policy statements, the waiver or modification of existing regulatory requirements, or discretionary approvals that do not result in significantly increased emissions of air or water pollutants or noise.''

The main purpose of this rule is to revise FRA's Safety Glazing Standards to maintain and in some cases enhance safety, while reducing unnecessary costs and providing regulatory flexibility. This rule will not directly or indirectly impact any environmental resources and will not result in significantly increased emissions of air or water pollutants or noise. In analyzing the applicability of a CE, FRA must also consider whether unusual circumstances are present that would warrant a more detailed environmental review.[38] FRA has concluded that no such unusual circumstances exist with respect to this rule, and it meets the requirements for categorical exclusion under 23 CFR 771.116(c)(15).

Pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations, FRA has determined this undertaking has no potential to affect historic properties.[39] FRA has also determined that this rule does not approve a project resulting in a use of a resource protected by Section 4(f).[40]

G. Executive Order 12898 (Environmental Justice)

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' and DOT Order 5610.2C require DOT agencies to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations. The DOT Order instructs DOT agencies to address compliance with Executive Order 12898 and requirements within the DOT Order in rulemaking activities, as appropriate, and also requires consideration of the benefits of transportation programs, policies, and other activities where minority populations and low-income populations benefit, at a minimum, to the same level as the general population as a whole when determining impacts on minority and low-income populations. FRA has evaluated this rule under Executive Order 12898 and the DOT Order and has determined it will not cause disproportionately high and adverse human health and environmental effects on minority populations or low-income populations.

H. Unfunded Mandates Reform Act of 1995

Under section 201 of the Unfunded Mandates Reform Act of 1995,[41] each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. This rule will not result in the expenditure, in the aggregate, of $100,000,000 or more (as adjusted annually for inflation) in any one year, and thus preparation of such a statement is not required.

I. Energy Impact

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.''[42] FRA evaluated this rule under Executive Order 13211 and determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

List of Subjects in 49 CFR Part 223

Glazing standards, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

For the reasons discussed in the preamble, FRA is amending part 223 of title 49, Code of Federal Regulations, as follows:

PART 223—SAFETY GLAZING STANDARDS—LOCOMOTIVES, PASSENGER CARS AND CABOOSES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20133, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461 note; and 49 CFR 1.89.

■ 2. Amend § 223.3 by:
■ a. Removing the semicolon at the end of paragraph (b)(1) and adding a period in its place; and
■ b. Adding paragraph (b)(5).

The addition reads as follows:

§ 223.3 Application.

* * * * *

(b) * * *

(5) Locomotives, cabooses, and passenger cars built or rebuilt prior to July 1, 1980, that are operated at speeds not exceeding 30 mph, and used only where the risk of propelled or fouling objects striking the equipment is low. Risk is presumed low, unless the railroad operating the equipment has knowledge, or FRA makes a showing, that specific risk factors exist. Risk factors include reported incidents of propelled or fouling objects striking rail equipment, or infrastructure conditions or other operating environment conditions that have led or are likely to lead to objects striking rail equipment in operation.

* * * * *

■ 3. Amend § 223.9 by revising the section heading to read as follows:

§ 223.9 Requirements for equipment built or rebuilt after June 30, 1980.

* * * * *

[37] 40 CFR 1508.4.

[38] 23 CFR 771.116(b).

[39] *See* 54 U.S.C. 306108.

[40] *See* Department of Transportation Act of 1966, as amended (Pub. L. 89–670, 80 Stat. 931); 49 U.S.C. 303.

[41] Public Law 104–4, 2 U.S.C. 1531.

[42] 66 FR 28355 (May 22, 2001).

■ 4. Amend § 223.11 by revising the section heading to read as follows:

§ 223.11 Requirements for locomotives built or rebuilt prior to July 1, 1980.

* * * * *

■ 5. Amend § 223.13 by revising the section heading to read as follows:

§ 223.13 Requirements for cabooses built or rebuilt prior to July 1, 1980.

* * * * *

■ 6. Amend § 223.15 by revising the section heading to read as follows:

§ 223.15 Requirements for passenger cars built or rebuilt prior to July 1, 1980.

* * * * *

■ 7. Amend appendix A to part 223 by revising paragraphs b.(6), (10), (11), (13), and (15) to read as follows:

Appendix A to Part 223—Certification of Glazing Materials

* * * * *

b. * * *

(6) The Witness Plate shall be an unbacked sheet of maximum 0.006-inch, alloy 1100 temper O, aluminum stretched within the perimeter of a suitable frame to provide a taut surface. If a steel ball is used for Large Object Impact testing, the Witness Plate shall be an unbacked sheet of maximum 0.002-inch, alloy 1145 temper H19 or equivalent, aluminum stretched within the perimeter of a suitable frame to provide a taut surface.

* * * * *

(10) The Test Specimen for glazing material that is intended for use in end facing glazing locations shall be subjected to a Type I test regimen consisting of the following tests:

(i) Ballistic Impact: A standard 22 caliber long rifle lead bullet of 40 grains in weight impacts at a minimum velocity of 960 feet per second.

(ii) Large Object Impact:

(A) A cinder block weighing a minimum of 24 lbs with dimensions of 8 inches by 8 inches by 16 inches nominally impacts the glazing surface at the corner of the block at a minimum velocity of 44 feet per second. The cinder block must be of composition making it structurally sound, such as referenced in ASTM, International (ASTM) Specification C33 or ASTM C90; or

(B) A steel ball (*e.g.,* ball bearing or shot put) weighing a minimum of 12 lbs impacts the glazing surface at a minimum velocity of 62.5 feet per second.

(11) The Test Specimen for glazing material that is intended for use only in sidefacing glazing locations shall be subjected to a Type II test regimen consisting of the following tests:

(i) Ballistic Impact: A standard 22 caliber long rifle lead bullet of 40 grains in weight impacts at a minimum velocity of 960 feet per second.

(ii) Large Object Impact:

(A) A cinder block weighting a minimum of 24 lbs with dimensions of 8 inches by 8 inches by 16 inches nominally impacts the glazing surface at the corner of the block at a minimum velocity of 12 feet per second. The cinder block must be of composition making it structurally sound, such as referenced in ASTM C33–18 or ASTM C90; or

(B) A solid steel ball (*e.g.,* ball bearing or shot put) weighing a minimum of 12 lbs impacts the glazing surface at a minimum velocity of 17 feet per second.

* * * * *

(13) Except as provided in paragraphs b.(10)(ii)(B) and b.(11)(ii)(B) of this appendix, two different test specimens must be subjected to the large object impact portion of the tests. For purposes of paragraphs b.(10)(ii)(B) and b.(11)(ii)(B), four different test specimens shall be subjected to each impact test.

* * * * *

(15) Except as provided in paragraphs b.(10)(ii)(B) and b.(11)(ii)(B) of this appendix, test specimens must consecutively pass the required number of tests at the required minimum velocities. Individual tests resulting in failures at greater than the required minimum velocities may be repeated but a failure of an individual test at less than the minimum velocity shall result in termination of the total test and failure of the material. For purposes of paragraphs b.(10)(ii)(B) and b.(11)(ii)(B), three out of four test specimens must pass the test for the glazing material to be acceptable. Individual tests resulting in a failure at velocities above the prescribed range may be repeated.

* * * * *

Issued in Washington, DC.

Amitabha Bose,

Administrator.

[FR Doc. 2022–24469 Filed 11–16–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 221110–0237]

RIN 0648–BL43

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Amendment 22 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan

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

ACTION: Final rule.

SUMMARY: This action implements approved measures for Amendment 22 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan. Amendment 22 was developed by the Mid-Atlantic Fishery Management Council to revise summer flounder, scup, and black sea bass commercial and recreational sector allocations. Amendment 22 is intended to ensure that the best available science is used to determine commercial and recreational sector allocations.

DATES: Effective January 1, 2023.

ADDRESSES: Copies of Amendment 22, including the Environmental Assessment, the Regulatory Impact Review, and the Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared in support of this action are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. The supporting documents are also accessible via the internet at: *https://www.mafmc.org/s/SFSBSB_com_rec_allocation_EA-final_6-24-22.pdf.*

FOR FURTHER INFORMATION CONTACT: Emily Keiley, Fishery Policy Analyst, (978) 281–9116.

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission) cooperatively manage the summer flounder, scup, and black sea bass fisheries. The Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) outlines the allocation of quota, for each species, between the commercial and recreational fisheries. Amendment 22 reevaluated and recommended revisions to the commercial and recreational sector allocations in the Summer Flounder, Scup, and Black Sea Bass FMP. Amendment 22 was initiated, in part, to address the allocation-related impacts of the revised recreational catch and landings data provided by the Marine Recreational Information Program (MRIP). Specifically, Amendment 22 considered:

1. Changing the allocations between the commercial and recreational sectors for summer flounder, scup, and black sea bass;

2. Adding an option to transfer a portion of the allowable landings each year between the commercial and recreational sectors, in either direction, based on the needs of each sector; and

3. Adding the option for future additional changes to the commercial/recreational allocation and transfer provisions to be considered through an FMP addendum/framework action, as opposed to an amendment.

Amendment 22 was approved by the Council and Commission in December 2021. A notice of availability (NOA) for the amendment published in the **Federal Register** on August 12, 2022 (87 FR 49796), with a comment period ending on October 11, 2022. We published a proposed rule in the **Federal Register** on August 11, 2022 (87 FR 49573), with a comment period ending on September 12, 2022.

When a Council approves and then transmits a fishery management plan or amendment to NMFS, NMFS publishes a notice of availability in the **Federal Register** announcing a 60-day comment period. Within 30 days of the end of the comment period, NMFS must approve, disapprove, or partially approve the plan or amendment based on consistency with law. After considering public comment on the NOA and proposed rule, we approved Amendment 22 on November 7, 2022. This final rule implements the management measures in Amendment 22. The details of the development of the measures in Amendment 22 were described in the NOA and proposed rule, and are not repeated here.

Approved Measures

This action implements changes to the commercial and recreational allocations for summer flounder, scup, and black sea bass. The original commercial and recreational allocations for all three species were established in the mid-1990s, based on historical proportions of landings (for summer flounder and black sea bass) and catch (for scup) from each sector.

In July 2018, MRIP released revised time series of catch and harvest estimates based on adjustments to its angler intercept methodology, which is used to estimate recreational catch rates, as well as changes to its effort estimation methodology, namely, a transition from a telephone-based effort survey to a mail-based effort survey for the private/rental boat and shore-based fishing modes. These revisions collectively resulted in higher recreational catch estimates compared to previous estimates, affecting the entire time series of data going back to 1981. The revised MRIP estimates were incorporated into the stock assessments for summer flounder in 2018 and for scup and black sea bass in 2019. This impacted the estimated stock biomass and resulting catch limits for these species.

The revised MRIP time series created a mismatch between the data that were used to set the allocations and the data currently used in fishery management for setting catch limits. Changes to commercial catch data have also been made since the allocations were established. The allocation changes approved through Amendment 22 seek to ensure that the best available data is used to determine commercial and recreational sector allocations.

Amendment 22 considered a range of allocation alternatives, with options that would have maintained the current allocations and a variety of options to revise the allocations based on updated data using the same or modified ''base years'' (the time periods used to set the current allocations). The Council and Board ultimately decided to revise the allocations using the original base years updated with new data. This approach allows for consideration of fishery characteristics in years prior to influence by the commercial/recreational allocations, while also using the best scientific information available to understand the fisheries in those base years.

For all three species, these changes result in a shift in allocation from the commercial to the recreational sector. However, because the summer flounder and black sea bass fisheries are transitioning from landings-based to catch-based allocations, the original and revised allocations for those species are not directly comparable. The approved commercial and recreational sector allocations are shown in Table 1.

TABLE 1—APPROVED COMMERCIAL/RECREATIONAL ALLOCATIONS

Species	Base years	Commercial allocation percentage (%)	Recreational allocation percentage (%)
Summer Flounder	1980–1989	55	45
Scup	1988–1992	65	35
Black Sea Bass	1983–1992	45	55

Revised Framework Provisions

This action would also allow future changes to commercial/recreational allocations, annual quota transfers between sectors, and other measures addressed in Amendment 22 to be made through framework actions.

Comments and Responses

We received 10 comments, from 9 unique commenters, on the NOA and the proposed rule, including comments from Scandinavian Fisheries Incorporated, Viking Yacht Company, and the American Sportfishing Association. One comment was not relevant to the proposed rule and is not discussed further. One comment supported the changes in allocations, and eight opposed the allocation changes. Those opposed to the allocation changes were split; four did not think any additional quota should be allocated to the recreational fisheries, two felt that the allocations should be more reflective of recent catch proportions (which would result in more allocation shifting to the recreational fishery), and two comments, from one individual, had other concerns about the data used.

Comment 1: Four commenters opposed the change in commercial and recreational allocations. These commenters did not want the commercial allocations to be reduced. One commenter cited high fuel costs and low fish prices and the need to have as much allocation as possible. One commenter suggested that allocations should remain status quo. Other commenters cited the need for more recreational accountability and reporting standards, which are outside the scope of this action.

Response: Maintaining the status quo allocations between the commercial and recreational sectors would mean that those allocations were not based on the best available science. The MRIP transition and updated time series resulted in significantly different estimates of recreational catch. Updates have also been made to the commercial fisheries data since the original allocations were made. The revised recreational and commercial data have been incorporated into the stock assessments and, as a result, the recent quotas for both the commercial and recreational fisheries. Leaving the allocations unchanged would have created a mismatch between the data

used to set the allocation of quotas and the data used in the stock assessment to set the quotas. Allocations based on data now known to be incorrect would be inconsistent with National Standard 2. Therefore, we approved the allocation changes that the Council and Board recommended to ensure allocations are based on the best scientific information available.

Comment 2: One comment supported the allocation changes, stating that it was a more ''accurate reflection of reality.''

Response: We have approved the proposed allocation changes for summer flounder, scup, and black sea bass.

Comment 3: Two commenters opposed the revised allocations. These commenters suggested that the new allocations do not reflect the needs of the recreational fishery and that the base years selected are not fair, equitable, or based on the best available science. One commenter stated that anything less than 50 percent of the summer flounder allocation is not enough for the recreational sector. Both commenters stated that a different approach should have been used and imply that the recreational allocations should have been increased more than they were in this action.

Response: This action increases the recreational allocations for summer flounder, scup, and black sea bass, and reduces the commercial fisheries' share. The Council and Board considered a range of allocation alternatives for all three species, including options that would have shifted more quota from the commercial sector to the recreational sector. The selected alternative retains the original allocation base years but uses the revised (current) catch or landings data from those years. The Council and Board agreed that the original base years are the most appropriate basis for the allocations, as they are years before the fisheries were notably impacted by management measures. Catch and landings percentages from more recent years are influenced by many management measures, including the allocations and the associated quotas. Basing the allocations on more recent trends in catch or landings also raised concerns about fairness due to differences in how well the commercial and recreational sectors have stayed within their respective quota limits in past years. The Council and Board also agreed that the allocations should be updated to reflect the most recent available data from the base years, especially as other parts of the management process, including the stock assessment and catch accounting systems, now rely on newer, improved data compared to when the allocations were first established.

Comment 4: One comment stated that we should disapprove the amendment because it was not based on the best scientific information available; specifically stating that MRIP data are not reliable.

Response: The revised MRIP data are the best scientific data available for recreational catch and effort. MRIP, including the recent transition to the Fishing Effort Survey (FES), has undergone a number of peer reviews, including those conducted by the National Academy of Sciences, Engineering and Medicine and the Center for Independent Experts, as well as reviewers selected by the Atlantic States Marine Fisheries Commission and the New England, Mid-Atlantic, South Atlantic, and Gulf of Mexico Fishery Management Councils. The FES was designed to increase response rates, reduce the potential for reporting and recall errors, and achieve a more representative sample than the survey it replaced. With any sampling methodology there is uncertainty, but evidence suggests the FES is a more accurate and efficient way of estimating marine recreational fishing trips and are the best available data we have for estimating recreational catch and effort for these species.

Comment 5: One comment cited the use of landings for black sea bass and summer flounder in the years when complete catch data were not available. This comment suggested that the use of more recent data would have eliminated this issue, allowed for the consideration of discards and, therefore, constitutes the best available science.

Response: Although the allocation percentages under the preferred alternative are based on landings data for two species, they will be applied as catch-based allocations. Reliable dead discard data for the summer flounder and black sea bass during the selected base years are not available. As discussed in the response to Comment 3, the Council and Board decided to maintain the original base years for a number of reasons. More recent years considered by the Council and Board, when discard data are available for both sectors, also correspond to years when allocations, and constraining management measures were in place. Given the influence of these management measures on fishery catches it would be difficult to determine the actual unconstrained needs of each fishery. This is further complicated in years when one sector exceeded its quota and the other did not. This was a significant point of discussion for the Council and Board, given the concerns about such new allocations ''rewarding'' recreational sector overages, and whether such a result would be fair and equitable. A recent court case, *Guindon* v. *Pritzker,* 240 F. Supp. 3d 181, (D.D.C. 2017), involving the reallocation of red snapper between the commercial and recreational fisheries, addresses these concerns. Specifically, the Court's decision concluded that NMFS failed to demonstrate that the allocations were fair and equitable as required by National Standard 4 where the recreational sector was given an increased allocation of red snapper based on years of recreational quota overages, while the commercial sector's catch during those years remained within its quota limits and the commercial allocation was reduced.

The Council and Board also agreed that catch-based allocations are preferable to landings-based allocations for all three species because the calculations of sector-specific catch and landings limits allows for separation and accounting of sector-specific discards. Because the management process has moved toward catch accounting and greater consideration of discards since the original allocations were set, changing the allocations to be catch-based simplifies the specifications process and decreases the influence of discards from one sector on the other sector's Annual Catch Limit (ACL). For example, the original summer flounder allocation was landings-based. This has resulted in each sector receiving a varying percentage of the Acceptable Biological Catch (ABC), depending on annual sector discard trends, meaning that a sector may have received a percentage of the ABC that may have been more, or less than their allocation in a given year.

For the reasons stated about, and in the response to Comment 3, given the data constraints during the selected base years, the use of landings for summer flounder and black sea bass constitutes the best available science, and a reasonable proxy for use in the calculation of the allocation percentages.

Comment 6: One comment in opposition to the amendment questioned when managers would start managing fish for food, not fun. This comment implied that the allocations would benefit one segment of the recreational fishery (private boat anglers) more than shore-side ''subsistence'' recreational anglers.

Response: This amendment shifts quota from the commercial fishery to

the recreational fishery for all three species. The recreational fishery is inclusive of shore-side anglers, private boat anglers, and for-hire vessels. Increasing recreational allocations are likely to benefit all anglers including shore-side anglers.

Comment 7: One comment stated that the amendment should be disapproved because we did not provide the number of recreational anglers that would benefit from the action. This comment asserts that providing the number of saltwater anglers was required by the 2006 reauthorization of the Magnuson-Stevens Act.

Response: There is no survey or database that counts the exact total number of saltwater anglers. The National Saltwater Angler Registry and State Exemption Program was developed over 10 years ago in a transparent process that involved a national team that included representatives of the States, Councils, Interstate Commissions, and stakeholders (the Registry Team). The program the Registry Team developed is implemented by Federal rule at 50 CFR 500 Subpart P, and was subject to the standard process of Federal rulemaking, including public notice and comment. The final rule (73 FR 79585, December 30, 2008) includes background information that lays out the rationale for the program as designed and how it conforms to the requirements of Section 401(g)(1) of the Magnuson-Stevens Act. Currently, all of the Atlantic coast states are sending NMFS updated lists of their license holders monthly. Therefore, all of those currently-state-licensed anglers are exempt from Federal registration. The purpose of the section of the Magnuson-Stevens Act that established the national saltwater angler registry was not to create a count of all anglers. Rather, it was to establish a list of anglers and associated contact information for use as a sample frame for surveys of fishing activity, as recommended by the National Academies of Science in the 2006 review of the Marine Recreational Fisheries Statistics Survey. The license-holder lists that the states send monthly are sufficient for that purpose and are being used as part of the sample frame for the MRIP Fishing Effort Survey.

Comment 8: One comment suggested that data prior to 1981, as early as 1965, was available and demonstrates a greater historical use by the recreational fisheries and that the original base years do not, and never did, reflect true historical participation by the recreational fisheries.

Response: In 1955, the United States Fish and Wildlife Service (USFWS) added questions about saltwater angling to their survey of freshwater fishing and hunting in the United States. These surveys, conducted every 5 years, collected data on number of anglers, angler expenditures, and fishing activity level. In 1960, 1965, and 1970, adjunct surveys also collected information about catch, effort and participation. However, when analyzing the results of these surveys, peer reviews found response bias and sampling errors. In addition, because of the long interval between surveys, it was impossible to detect or analyze possible seasonal variation in catch, effort, or participation (sampling error). Due to these issues, NMFS developed its own recreational survey, the Marine Recreational Fishery Statistics Survey (MRFSS). It was not until 1981 that data from this survey were widely available. Therefore, while there may be information on recreational fisheries effort and catch prior to 1981, and prior to the original base years, these data are likely not appropriate to use for developing allocations given the known biases and sampling issues.

Changes From the Proposed Rule

There are no changes to the measures in this final rule from the proposed rule.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant

Administrator has determined that this final rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

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

A final regulatory flexibility analysis (FRFA) was prepared for this action. The FRFA incorporates the IRFA and a summary of the analyses completed to support the action. NMFS did not receive any comments that were specifically in response to the IRFA. The FRFA incorporates sections of the preamble (**SUPPLEMENTARY INFORMATION**) and analyses supporting this rulemaking, including the Amendment 22 EA (see **ADDRESSES**). A description of the action, why it is being considered, and the objectives of and the legal basis for this rule are contained in the Amendment 22 EA and preamble to the proposed rule, and are not repeated here.

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

Our responses to all of the comments received on the proposed rule, including those that raised significant issues with the proposed action can be found in the Comments and Responses section of this rule. In the proposed rule, we solicited comments on a revised allocation formula for distributing commercial and recreational summer flounder, scup and black sea bass quota. There were no comments that specifically addressed the IRFA, and no changes from the proposed rule.

Description and Estimate of the Number of Small Entities to Which This Rule Would Apply

The entities (*i.e.,* the small and large businesses) that may be affected by this action include fishing operations with Federal moratorium (commercial) permits and/or Federal party/charter permits for summer flounder, scup, and/or black sea bass. Private recreational anglers are not considered ''entities'' under the Regulatory Flexibility Act (RFA). For RFA purposes only, NMFS established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (50 CFR 200.2). A business primarily engaged in commercial fishing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million, for all its affiliated operations worldwide.

Vessel ownership data were used to identify all individuals who own fishing vessels. Vessels were then grouped according to common owners. The resulting groupings were then treated as entities, or affiliates, for purposes of identifying small and large businesses which may be affected by this action.

Commercial and recreational for-hire affiliates potentially regulated by this action include all those with valid commercial fishery permits for summer flounder, scup, and black sea bass and any for-hire affiliates that reported landing summer flounder, scup, or black sea bass in any year between 2018 and 2020, which is the most recent calendar year with complete data. A total of 1,522 affiliates were identified as being potentially regulated by this action, 1,513 (99 percent) of which were

identified as small businesses and 9 (1 percent) of which were identified as large businesses based on their average annual revenues for 2018–2020.

Of the total affiliates potentially regulated by this action, 455 affiliates reported that the majority of their revenues in 2020 came from for-hire fishing. Some of these affiliates may have also participated in commercial fishing. All 455 of these for-hire affiliates were categorized as small businesses based on their average annual revenues for 2018–2020. It is not possible to determine what proportion of their revenues came from fishing for an individual species. Nevertheless, given the popularity of summer flounder, scup, and black sea bass as recreational species, revenues generated from these species are likely important for many of these affiliates at certain times of the year.

Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements of This Proposed Rule

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

Federal Rules Which May Duplicate, Overlap, or Conflict With This Proposed Rule

The action does not duplicate, overlap, or conflict with other Federal rules.

Description of Significant Alternatives to the Rule Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities

The approved measures (*i.e.,* the suite of preferred alternatives) includes implementation of a revised commercial/recreational quota allocation system for the summer flounder, scup, and black sea bass fisheries.

When considering the economic impacts of the alternatives under the Regulatory Flexibility Act, consideration should also be given to those non-preferred alternatives which would result in higher net benefits or lower costs to small entities while still achieving the stated objective of the action.

For summer flounder and scup, only the no action alternatives (alternatives 1a–4 and 1b–1, respectively) had greater positive expected impacts for the commercial sector than the preferred alternatives; however, those alternatives had greater negative impacts for the recreational sector than the preferred alternatives. For black sea bass, both the no action alternative (alternative 1c–4) and alternative 1c–5 were expected to have greater positive impacts for the commercial sector than the preferred alternative. However, as with summer flounder and scup, those alternatives had greater negative impacts for the recreational sector than the preferred alternative. In addition, alternative 1c–5 would have maintained a landings-based allocation for black sea bass, and the Council and Board supported switching to a catch-based allocation. Catch-based allocations were supported because they eliminate the current discard apportionment process and hold each sector accountable for their own discards.

All alternatives that had a greater potential for positive impacts, or a lesser potential for negative impacts, to the recreational sector than the preferred alternatives had a greater magnitude of negative expected impacts for the commercial sector. The no action alternative, for all three species, did not meet the stated objectives given the notable changes in data that have occurred since these allocations were first established, and that leaving the allocations unchanged would not be based on the best scientific information available.

The non-preferred alternatives for phase-in, transfers, and frameworks/addenda are not expected to have notably different socioeconomic impacts than the preferred alternatives.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 10, 2022.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, NMFS amends 50 CFR part 648 as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.100, revise paragraph (a)(1) to read as follows:

§ 648.100 Summer flounder Annual Catch Limit (ACL).

(a) * * *

(1) *Sector allocations.* The commercial and recreational fishing sector ACLs will be established based on the allocations defined in the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP).

* * * * *

■ 3. In § 648.110, revise paragraph (a)(1) to read as follows:

§ 648.110 Summer flounder framework adjustments to management measures.

(a) * * *

(1) *Adjustment process.* The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear restrictions; gear requirements or prohibitions; permitting restrictions; recreational possession limit; recreational seasons; closed areas; commercial seasons; commercial trip limits; commercial quota system including commercial quota allocation procedure and possible quota set asides to mitigate bycatch; recreational harvest limit; specification quota setting process; commercial/recreational allocations; transfer provisions between the commercial and recreational sectors; FMP Monitoring Committee composition and process; description and identification of essential fish habitat (and fishing gear management measures that impact EFH); description and identification of habitat areas of particular concern; regional gear restrictions; regional season restrictions (including option to split seasons); restrictions on vessel size (LOA and GRT) or shaft horsepower; operator permits; changes to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs; any other commercial or recreational management measures; any other management measures currently included in the FMP; and set aside quota for scientific research. Issues that require significant departures from previously contemplated measures or that are

otherwise introducing new concepts may require an amendment of the FMP instead of a framework adjustment.

* * * * *

■ 4. In § 648.120, revise paragraph (a)(1) to read as follows:

§ 648.120 Scup Annual Catch Limit (ACL).

(a) * * *

(1) *Sector allocations.* The commercial and recreational fishing sector ACLs will be based on the allocations defined in the Summer Flounder, Scup, and Black Sea Bass FMP.

* * * * *

■ 5. In § 648.130, revise paragraph (a)(1) to read as follows:

§ 648.130 Scup framework adjustments to management measures.

(a) * * *

(1) *Adjustment process.* The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rules; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear restrictions; gear restricted areas; gear requirements or prohibitions; permitting restrictions; recreational possession limits; recreational seasons; closed areas; commercial seasons; commercial trip limits; commercial quota system including commercial quota allocation procedure and possible quota set asides to mitigate bycatch; recreational harvest limits; annual specification quota setting process; commercial/recreational allocations; transfer provisions between the commercial and recreational sectors; FMP Monitoring Committee composition and process; description and identification of EFH (and fishing gear management measures that impact EFH); description and identification of habitat areas of particular concern; regional gear restrictions; regional season restrictions (including option to split seasons); restrictions on vessel size (LOA and GRT) or shaft horsepower; operator permits; changes to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs; any other commercial or recreational management measures; any other management measures currently included in the FMP; and set aside quota for scientific research.

* * * * *

■ 6. In § 648.140, revise paragraph (a)(1) to read as follows:

§ 648.140 Black sea bass Annual Catch Limit (ACL).

(a) * * *

(1) *Sector allocations.* The commercial and recreational fishing sector ACLs will be based on the allocations defined in the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan.

* * * * *

[FR Doc. 2022–24997 Filed 11–16–22; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 221
Thursday, November 17, 2022

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

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2022–BT–STD–0017]

RIN 1904–AF41

Energy Conservation Program: Energy Conservation Standards for Miscellaneous Gas Products

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

ACTION: Notification of data availability and request for comment.

SUMMARY: On June 14, 2022, the U.S. Department of Energy (''DOE'') published a request for information (''RFI'') regarding energy conservation standards for miscellaneous gas products (''MGPs''). In that RFI, DOE specifically sought stakeholder input and data on a variety of topics including, but not limited to, product categories, energy use, shipments, and technology options. Based on the information that DOE collected in response to stakeholder input, data that has been identified and collected by DOE, and data collected during confidential manufacturer interviews, DOE is publishing this notification of data availability (''NODA'') to provide stakeholders with additional information and to provide an additional opportunity for public input. DOE requests comments, data, and information on all aspects of the NODA.

DATES: Written comments and information will be accepted on or before December 19, 2022.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov* under docket number EERE–2022–BT–STD–0017. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2022–BT–STD–0017, by any of the following methods:

Email: MscGasProds2022STD0017@ee.doe.gov. Include the docket number EERE–2022–BT–STD–0017 in the subject line of the message.

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

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

No telefacsimiles (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on this process, see section IV of this document.

Docket: The docket for this activity, 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, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *www.regulations.gov/docket/EERE–2022–BT–STD–0017.* The docket web page contains instructions on how to access all documents, including public comments in the docket. See section IV of this document for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Ms. Julia Hegarty, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: 202–586–0729. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Pete Cochran, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: 202–586–9496. Email: *peter.cochran@hq.doe.gov.*

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

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I. Background

The Energy Policy and Conservation Act, Public Law 94–163, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B of EPCA [2] established the Energy Conservation Program for Consumer Products Other Than Automobiles. EPCA also grants DOE authority to establish coverage and prescribe energy conservation standards for additional consumer products. (*See* 42 U.S.C. 6295(l)(1))

On June 14, 2022, the U.S. Department of Energy (''DOE'') published a request for information (''RFI'') regarding potential energy conservation standards for

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

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

miscellaneous gas products (''MGPs''). In that RFI, DOE solicited information from the public to help DOE determine whether potential standards for miscellaneous gas products would result in significant energy savings and whether such standards would be technologically feasible and economically justified. DOE noted that such information would prove useful in the event DOE moved forward with a final coverage determination. Subsequently, in a final determination published on September 6, 2022 (''September 2022 Final Coverage Determination''), DOE determined that MGPs, which are comprised of decorative hearths and outdoor heaters, qualify as covered products under EPCA. 87 FR 54330.

DOE is publishing this NODA to get additional comment and input on the extensive data that has been collected to date and to help inform DOE as to whether energy conservation standards for MGPs would result in significant conservation of energy and be economically justified and technologically feasible, consistent with its obligations under EPCA.

II. Deviation From Appendix A

In accordance with section 3(a) of 10 CFR part 430, subpart C, appendix A (''appendix A''), DOE notes that it is deviating from the provision in appendix A regarding the length of comment periods for the pre-NOPR stages for an energy conservation standards rulemaking. Section 6(d)(2) of appendix A specifies that the length of the public comment period for pre-NOPR rulemaking documents will not be less than 75 calendar days. For this NODA, DOE has opted instead to provide a 30-day comment period. In the June 2022 RFI, DOE initiated a review to determine whether potential energy conservation standards would satisfy the relevant requirements of EPCA for miscellaneous gas products. 87 FR 35925. The June 2022 RFI provided 30 days for submitting written comment, data, and information. In light of the previous 30-day comment period associated with the June 2022 RFI, DOE believes a 30-day comment period is appropriate and would provide interested parties a meaningful opportunity to comment on the clarifications, data, and accompanying analyses presented in this NODA.

III. Discussion

This NODA presents various data that DOE has collected to date, through the June 2022 RFI, confidential manufacturer interviews, and other efforts. DOE intends to use this information to help determine whether energy conservation standards for MGPs would result in significant conservation of energy and be economically justified and technologically feasible.

A. Scope

In the September 2022 Final Coverage Determination, DOE established coverage for miscellaneous gas products and codified definitions for ''miscellaneous gas products'', ''decorative hearth product'', and ''outdoor heater'' in 10 CFR 430.2. 87 FR 54330. Specifically, DOE defined ''miscellaneous gas products'' to mean decorative hearth products and outdoor heaters. Further, DOE provided definitions for both decorative hearth products and outdoor heaters. A ''decorative hearth product'' means a gas fired appliance that—

(1) Simulates a solid-fueled fireplace or presents a flame pattern;

(2) Includes products designed for indoor use, outdoor use, or either indoor or outdoor use;

(3) Is not for use with a thermostat;

(4) For products designed for indoor use, is not designed to provide space heating to the space in which it is installed; and

(5) For products designed for outdoor use, is not designed to provide heat proximate to the unit.

And an ''outdoor heater'' means a gas-fired appliance designed for use in outdoor spaces only, and which is designed to provide heat proximate to the unit. 10 CFR 430.2.

In response to the June 2022 RFI, several commenters expressed confusion and/or concern related to the scope of a potential MGP energy conservation standard rulemaking.[3] (The American Public Gas Association, National Propane Gas Association, and American Gas Association (''Gas Associations''), No. 8 at p. 2; Hearth and Home Technologies and the Outdoor GreatRoom Company, No. 6 at p. 1; Hearth, Patio, & Barbecue Association (''HPBA'', No. 7 at pp. 3–4) For example, the Gas Associations stated that the June 2022 RFI did not provide enough information to determine which products would potentially be subject to a future energy conservation standard rulemaking.

DOE recognizes that a wide range of products meeting the definitions of decorative hearth product or outdoor heater (collectively, miscellaneous gas products) are available on the market, including, for example, vented gas log sets, gas fire pits, gas stoves, and gas fireplace inserts. And, while MGPs share similarities in form, function, and operation, DOE also recognizes that the different products that comprise MGPs may have different design characteristics, usage patterns, installation environments, and may offer differing utility for consumers. These factors can significantly influence an analysis of whether potential energy conservation standards would result in significant energy savings and would be technologically feasible and economically justified. In order to both provide more certainty for stakeholders regarding which MGPs would potentially be subject to energy conservation standards and ensure that DOE's analysis reflects the differences between certain types of MGPs, DOE has tentatively identified four distinct groups of MGPs for the purpose of conducting its energy conservation standard rulemaking analysis. The products within each representative group tend to have similar (or in some cases identical) ignition systems and are often certified to the same industry safety standards. The four groups of representative products are:

- Indoor vented gas log sets;
- Other indoor vented decorative hearth products (includes all other decorative hearth products that are not gas logs, including gas fireplaces, gas stoves, and gas fireplace inserts);
- Outdoor decorative hearth products (which includes outdoor decorative fireplaces, fire pits, fire bowls, fire columns, and fire tables); and,
- Outdoor patio heaters (which includes pyramid-style patio torch heaters, radiant patio torch heaters, and infrared heaters).

The first three representative product groups fall under the definition of ''decorative hearth product'' while the final group meets the definition of an ''outdoor heater.'' Performing separate analyses on each representative product group will enable DOE to better account for the differences among the products that comprise MGPs.

In addition to the general comments about the scope of potential energy conservation standards discussed in the prior paragraphs, commenters also had comments and questions about specific MGPs. For instance, some commenters

[3] The comments received in response to the June 2022 RFI will be addressed in a subsequent rulemaking stage. However, select comments are referenced in this discussion in order to address commenters' confusion and concerns about the scope of this rulemaking. A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record. Specifically, the parenthetical references provide a reference for information located in Docket No. EERE–2022–BT–STD–0017, which is maintained at *www.regulations.gov*. The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

requested additional clarity regarding the distinction between outdoor heaters and hearth heaters, especially in cases where a heater has a dual indoor and outdoor certification. (The Air-Conditioning, Heating, and Refrigeration Institute, No. 9 at p. 1; Madison Indoor Air Quality, No. 5 at pp. 1–2). In response, DOE notes that the definition for an outdoor heater requires that the appliance be ''designed for use in outdoor spaces only'', and therefore a product that is certified for use both indoors and outdoors would not meet the definition of an outdoor heater. DOE also notes that hearth heaters, which are similar to decorative hearth products except that they are designed to provide heat to the indoor space in which they are used,[4] are not included within the scope of this NODA. Hearth heaters are addressed as part of a separate rulemaking process.[5]

Commenters also sought clarification on whether gas lights would meet the definition of decorative hearth products because they present a flame pattern, are designed for outdoor use (at least), are not designed to be operated with a thermostat, and are not designed to provide heat proximate to the unit. (Hearth, Patio, & Barbecue Association, No. 7 at pp. 3–4) However, DOE has tentatively excluded gas lights from the current analysis due to a lack of information pertaining specifically to these products. Absent sufficient data, DOE has tentatively concluded not to analyze standards for these products at this time. Commenters also stated that if products with propane tanks include a continuous pilot, the pilot would not be left on because doing so would drain the fuel tank. (Hearth and Home Technologies and the Outdoor GreatRoom Company, No. 6 at p. 10) DOE agrees that continuous pilot lights are unlikely to be left on for products with propane tanks. DOE has tentatively concluded that portable propane products should not be included in this analysis because there would be minimal energy savings associated with removing standing pilots from these products.

Issue 1: DOE requests comment regarding these four representative product groups.

Issue 2: DOE requests comment on its tentative decision to exclude gas lights and portable propane products from the current analysis. DOE also requests comment on an appropriate definition for gas lights in order to distinguish them from other miscellaneous gas products, as well as data specific to gas lights. DOE also requests comment on whether any other products should be excluded from the current rulemaking.

B. Analysis

1. Market and Technology Assessment

DOE generally develops information in a market and technology assessment that provides an overall picture of the market for the products concerned, including general characteristics of the products, the industry structure, manufacturers, market characteristics, and technologies used in the products. This activity includes both quantitative and qualitative assessments, based primarily on publicly available information. The subjects addressed in the market and technology assessment include: (1) a determination of the scope of the rulemaking and product classes, (2) manufacturers and industry structure, (3) existing efficiency programs, (4) shipments information, (5) market and industry trends, and (6) technologies or design options that could improve the energy efficiency of the product. In this NODA, DOE presents initial findings from its review of the market and technologies for MGPs, as well as findings related to the design options that could improve the energy efficiency or reduce the energy consumption of MGPs.

a. Market Assessment

As an initial step in analyzing the market for MGPs, DOE reviewed the market to identify the MGPs currently available and constructed a database of these products that includes information on their characteristics, such as whether the main burner is lit by a pilot ignition system or the main burner is lit directly without a pilot, ignition methods of the pilot (if applicable) or main burner (*e.g.,* electronic ignition, piezo ignition, etc.), pilot light control system (if applicable) (*e.g.,* continuous pilot, intermittent pilot, or pilot on demand), the main burner input rate, and other characteristics. Additional details about DOE's definitions of these features are discussed in section III.C.1.b. of this document. As a starting point in constructing a database for the current analysis, DOE reviewed the list of manufacturers identified in the technical support document (''TSD'') for a NOPR for hearth products published on February 9, 2015 (''February 2015 NOPR'').[6] (*See* Docket EERE–2014–BT–STD–0036.) Although the scope of the February 2015 NOPR differed from the scope of MGPs, as defined in 10 CFR 430.2, DOE notes that many of the manufacturers identified for that analysis also manufacture MGPs. DOE collected information on MGPs available from many of these manufacturers from brochures, specification sheets, installation manuals, and other manufacturer literature available on manufacturer websites. DOE also reviewed the Natural Resources Canada (''NRCan'') database for gas fireplaces to identify additional manufacturers and models of MGPs.[7] Before adding any products from NRCan's database, DOE first ensured these products are available for sale in the United States. DOE supplemented data from NRCan's database with data gathered directly from manufacturer websites. Lastly, DOE reviewed retailer websites and conducted internet searches for MGPs to identify any additional manufacturers that were not identified in either the February 2015 NOPR or in NRCan's database and gathered information on their models. DOE notes that the scope of the February 2015 NOPR was different than the scope of this NODA,[8] and similarly, the definitions and scope of this NODA are not the same as the models listed in the NRCan database, which includes fireplace heaters. Therefore, DOE assessed each model individually and only included models in its database that meet the definition of MGPs. DOE's product database for MGPs currently includes information on over 3,500 models and 64 brands, but DOE is continuing to research additional manufacturers and models. To provide further context for the MGP market, the following paragraphs discuss the relevant domestic and international manufacturers of MGPs that DOE has currently identified.

The 64 brands of MGPs that DOE identified from its current database were found to be associated with 36 manufacturers. Many of these

[4] *See* 87 FR 36249, 36253.

[5] *See* Docket No. EERE–2022–BT–STD–0018, available at: *www.regulations.gov/docket/eere-2022-bt-std-0018.*

[6] On December 31, 2013, DOE published a notice of proposed determination of coverage (''NOPD'') for hearth products in the **Federal Register**. 78 FR 79638 (''December 2013 NOPD''). In the December 2013 NOPD, DOE proposed to define ''hearth product'' as a gas-fired appliance that simulates a solid-fueled fireplace or presents a flame pattern (for aesthetics or other purpose) and that may provide space heating directly to the space in which it is installed. However, DOE later withdrew the December 2013 NOPD in the bi-annual publication of the Regulatory Agenda and the February 2015 NOPR was never finalized. 82 FR 40270, 40274.

[7] NRCan's database of gas fireplaces is available here: *oee.nrcan.gc.ca/pml-lmp/index.cfm?action=app.search-recherche&appliance=FIREPLACE_G.* (Last accessed October 5, 2022.)

[8] The scope of the February 2015 NOPR included ''hearth heaters'' which are not included within the scope of MGPs.

manufacturers import or privately label MGPs. From this list of manufacturers, DOE has so far identified 19 original equipment manufacturers (''OEMs'') with domestic manufacturing facilities for MGPs sold in the United States. Of those 19 OEMs with domestic manufacturing, 12 offer indoor vented gas log sets; 6 offer other indoor vented decorative hearths; 3 offer outdoor patio heaters; and 16 offer outdoor decorative hearths. DOE understands that many companies are OEM for key products but also source portions of their product offerings. Publicly available information was insufficient to consistently discern which specific product lines at a company are made versus private labeled.

Based on the DOE-compiled product database, DOE identified the manufacturers in Table III.1. DOE identifies OEMs with domestic manufacturing facilities with an asterisk.

TABLE III.1—MANUFACTURERS BY PRODUCT GROUP

Manufacturer	Indoor vented gas log sets	Other indoor vented decorative hearth products	Outdoor patio heaters	Outdoor decorative hearth products
Aei, Corporation			X	
American Gas Log, LLC *	X			
Arizona Fasteners Corporation *	X			X
AZ Patio Heaters, LLC			X	X
Cal Spas Inc				X
Crown Verity			X	
Empire Comfort Systems, Inc *	X	X		X
Enerco Group, Inc			X	
Ferrellgas Partners, L.P				X
Gas-Fired Products, Inc *			X	
Golden Blount *	X	X		X
Hargrove Manufacturing Co *	X			X
Hearth Products Controls Co *				X
Heatmaster, LLC *	X			X
HNI Corporation *	X	X		X
Infrared Dynamics, Inc			X	
IR Energy			X	
Island Industrial Services *		X		X
Ksp Group, Inc *				X
Lava Heat Italia			X	
Lennox *	X	X		X
Lume Fire, LLC				X
Mr. Bar-B-Q Products LLC			X	X
Napoleon Systems & Developments Ltd	X	X		X
Novacap Industries				X
Procom Heating, Inc *	X		X	X
R.H. Peterson Co *	X			X
Rasmussen Iron Works, Inc *	X		X	
R-Co Inc *	X			X
Sólas *				X
Spark Modern Fires, LLC				X
The Home Depot Inc			X	X
The Outdoor Greatroom Company LLP *				X
Travis Industries, Inc *		X		X
Wayfair Inc		X	X	X
Well Traveled Imports, Inc			X	X

* OEMs with domestic manufacturing.

Issue 3: DOE requests comment on the OEMs identified for each representative group: indoor vented gas log sets; other indoor vented decorative hearths; outdoor patio heaters; and outdoor decorative hearths. Additionally, DOE requests data on the number of OEMs with domestic production facilities for each group. DOE also requests comment on names of OEMs of MGPs that DOE did not identify in Table III.1.

b. Description of Pilot and Ignition Systems Identified on the Market

DOE has identified several ignition system and pilot light technologies available on the market, which DOE has tentatively defined in order to provide a common understanding of these technologies between stakeholders and DOE for the purposes of this analysis.

DOE is aware of the following types of main burner ignition systems:

- *Pilot ignition,* in which the main burner is ignited by a pilot light; and
- *Direct Main Burner Ignition,* in which the main burner is ignited directly (*i.e.* the absence of a pilot light).

Additionally, DOE is aware of the following ignition methods that can be utilized with either pilot ignition or direct main burner ignition:

- *Electronic Ignition,* in which an electronic spark automatically lights the pilot or main burner and which uses line power connection and/or battery power;
- *Push-button Battery Ignition,* in which a spark is manually generated by pushing a button to light the pilot or

main burner and which uses energy from a battery to create the spark;

- *Manually-lit Ignition,* in which the pilot or main burner is manually lit using a match or lighter;
- *Piezo Ignition,* in which a piezo material creates a spark to ignite the pilot or main burner without the need for a battery or connection to line power; and,
- *Hot Surface Ignition,* in which a material that is heated through electricity is used to ignite the pilot or main burner.

Issue 4: DOE seeks comment regarding whether there are any ignition methods that are not captured in this section, or if any of the listed methods are not applicable to MGPs. DOE also seeks comment on whether the above descriptions for each ignition method accurately reflect the industry's understanding.

Additionally, DOE has observed the following types of pilot lights:

- *Continuous pilot* (or ''*standing pilot*''), in which the pilot is capable of burning indefinitely until manually turned off;
- *Intermittent* or *interrupted pilot,* in which the pilot is automatically lit when it is needed to light the main burner, and it turns off automatically once the main burner turns off again or once the main burner is lit; and,
- *Pilot on-demand,* in which the pilot is automatically lit and burns continuously as long as the main burner is operated within a preprogrammed period of time (*e.g.,* 7 days) and the pilot is automatically shut off if the main burner is not operated within the preset time period.

Finally, DOE has found that some products are capable of using more than one of the ignition method or pilot light types described above. For example, DOE has observed products that provide an option to switch between intermittent pilot ignition, continuous pilot ignition, and/or on-demand pilot ignition. However, DOE notes that an MGP with an ignition system that features an option to select a continuous pilot mode, regardless of whether it can also operate in intermittent pilot and/or pilot on demand modes, meets DOE's definition of a continuous pilot system since it is capable of operating continuously until the pilot is manually extinguished. Further, such product would not meet the definition of an intermittent pilot or pilot on demand because the pilot will not necessarily turn off automatically when operating in continuous pilot mode.

Issue 5: DOE seeks comment regarding whether there are any pilot light technologies that are not captured in this section, or if any of the listed technologies are not applicable to MGPs. DOE also requests comment about any subsets of MGPs in which it would not be feasible to implement the aforementioned technologies. DOE also seeks comment on whether the above descriptions for each pilot light technology accurately reflect the industry's understanding. Finally, DOE seeks comment on the potential combinations of ignition systems and pilot lights that are available on the market, and on the prevalence of these combinations in each product group.

c. Technology Options

In its initial review of the market and technology, DOE has identified seven technology options that would be expected to improve the efficiency or reduce the energy consumption of MGPs, which include the following:

- *Optimized air-to-fuel ratio.* The mixture of air and fuel for combustion determines key flame aspects for many MGPs, in particular the flame color, height, and heat output. In order to achieve flame characteristics that mimic wood-burning flames, gas-fired MGPs utilize a ''rich'' mixture, that is, the ratio of air to fuel is low. For many natural gas products, primary air is in fact not pre-mixed, and what is burned is nearly 100 percent natural gas. This results in a tall yellow flame. For propane products, air is pre-mixed with fuel prior to combustion.
- *Optimized burner port design.* Gas burners for many MGPs comprise tubes with holes or slots through which the gas exits and combusts. The holes or slots are designed with particular sizes and patterns in order to achieve the desired flame pattern or aesthetic. While the primary objective of optimizing gas burner ports is to achieve the desired flame pattern, the ports could also be optimized to deliver an acceptable flame aesthetic while reducing the amount of fuel consumed.
- *Improved simulated log design.* Many MGPs incorporate cement, fiber, or ceramic logs that are designed to simulate the look of wood logs. The log shapes are optimized in conjunction with the burner design. The combination of the burner design and log shape, size, and placement results in the overall aesthetic for the product. Additionally, logs must be designed in conjunction with the burner to ensure that flames do not impinge on the logs themselves, as this causes the flame to cool and form soot. The log shape, size, placement, and material may be optimized to potentially impact the energy efficiency and/or energy use of products that include these design elements.
- *Improved pan burner media/bead type.* Many MGPs include an ember material that glows and radiates when heated. In pan type burners, sand is used to cover the burner and results in a flame pattern. In some products, glass beads may be used in place of simulated logs for effect. These media could potentially be selected to produce a satisfactory flame pattern while reducing the required gas consumption.
- *Reflective walls and/or other components inside combustion zone.* For MGPs that include a firebox or other enclosure, the interior walls could potentially be painted with a reflective coating. This could potentially give the illusion of more or taller flames, thereby reducing the fuel required to achieve a satisfactory aesthetic. This technology would only apply to the subset of products that include an enclosure surrounding the flame.
- *Intermittent pilot.* Intermittent pilot ignition systems are described in section III.C.1.b of this document and reduce the amount of fuel burned by the pilot when the main burner is not in use.
- *Pilot on-demand.* Pilot on-demand ignition systems are described in section III.C.1.b of this document and reduce the amount of fuel burned by the pilot when the main burner is not in use.

Issue 6: DOE requests comment regarding whether these technology options would impact the energy efficiency and/or energy use of MGPs. In addition, DOE requests comment on whether any other technologies are available to reduce the energy consumption of MGPs.

2. Screening Analysis

DOE uses the following five screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

(1) *Technological feasibility.* Technologies that are not incorporated in commercial products or in commercially viable, existing prototypes will not be considered further.

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production of a technology in commercial products and reliable installation and servicing of the technology could not be achieved on the scale necessary to serve the relevant market at the time of the projected compliance date of the standard, then that technology will not be considered further.

(3) *Impacts on product utility.* If a technology is determined to have a significant adverse impact on the utility

of the product to subgroups of consumers, or result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not be considered further.

(4) *Safety of technologies.* If it is determined that a technology would have significant adverse impacts on health or safety, it will not be considered further.

(5) *Unique-pathway proprietary technologies.* If a technology has proprietary protection and represents a unique pathway to achieving a given efficiency level, it will not be considered further, due to the potential for monopolistic concerns.

10 CFR part 430, subpart C, appendix A, sections 6(b)(3) and 7(b).

If DOE determines that a technology, or a combination of technologies, fails to meet one or more of the listed five criteria, it will be excluded from further consideration in the engineering analysis.

DOE tentatively expects to screen out optimized air-to-fuel ratio, optimized burner report design, improved simulated log design, improved pan burner media/bead type, and reflective walls and/or other components inside combustion zone because of the potential negative impact on the aesthetics, and therefore utility, of MGPs. In contrast, DOE has tentatively determined not to screen out intermittent pilot ignition or pilot on-demand ignition.

Issue 7: DOE seeks comment regarding its tentative conclusion that only intermittent pilot ignition and on-demand ignition pass the screening criteria. DOE also requests comment on whether any other technology options should pass the screening analysis.

3. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the efficiency and cost of MGPs. There are two elements to consider in the engineering analysis; the selection of efficiency levels to analyze (*i.e.,* the ''efficiency analysis'') and the determination of product cost at each efficiency level (*i.e.,* the ''cost analysis''). In determining the performance of higher-efficiency products, DOE considers technologies and design option combinations not eliminated by the screening analysis. For each product class (or in this case, each representative product group), DOE estimates the manufacturer production cost (''MPC'') for the baseline as well as higher efficiency levels. The output of the engineering analysis is a set of cost-efficiency ''curves'' that are used in downstream analyses (*i.e.,* the life-cycle cost (''LCC'') and payback period (''PBP'') analyses and the national impact analysis (''NIA'')). In this NODA, DOE presents initial inputs and outputs for the engineering analysis and solicits relevant data and information.

a. Design Options

As discussed in the June 2022 RFI, DOE is considering whether a prescriptive design requirement would be appropriate for MGPs. 87 FR 35925, 35929. As noted in section III.C.2 of this document, DOE has tentatively found that only intermittent pilot ignition and pilot on-demand ignition would pass the screening criteria. For this NODA, DOE tentatively focused its initial engineering analysis on the impacts of a prescriptive design requirement that would prohibit the use of a continuous pilot or pilot on-demand, as opposed to a performance-based design standard and associated test procedure, because an intermittent pilot ignition can reduce energy consumption of MGPs as compared to continuous pilot and pilot on-demand ignition systems.

Additionally, as discussed in section III.B of this document, for this analysis, DOE has tentatively divided MGPs into four representative groups for analysis. For each of these groups, DOE identified a baseline design that represents the most energy-consumptive designs typical of that group. Specifically, for each MGP product group, DOE has tentatively identified a standing pilot ignition system as a baseline design characteristic. DOE has received feedback from stakeholders that outdoor propane heaters which are not permanently installed should not be included in its analysis because the pilot on those units are not intended to stay lit when the product is not in use. In its market research, DOE did identify propane-burning products which provided instruction to extinguish the pilot when the unit is not in use. However, DOE notes that the tentative description of standing pilots which DOE is considering for this rulemaking (as discussed in section III.C.1.b) considers a standing pilot to be a pilot which is capable of burning indefinitely until manually turned off. DOE notes that pilot systems for outdoor propane heaters which provide additional instructions to extinguish the pilot light do not match the description of an intermittent pilot because the pilot is not necessarily extinguished automatically when the main burner is shut off. Therefore, DOE has tentatively included outdoor propane heaters in the analysis because they often include ignition systems that meet the description of standing pilots.

Additionally, for each of the four product groups, DOE conducted market research to evaluate what design options are often incorporated in conjunction with standing pilot ignition that provides basic functionality. Any components that are necessary for the product to ignite the main burner and provide the necessary functionality are included, while components that provide remote on/off functionality, variable flame height, etc. are not included. These design options are outlined in Table III.2.

TABLE III.2—BASELINE DESIGN CHARACTERISTICS OF EACH PRODUCT GROUP

Product group	Typical design characteristics for products including standing pilot
Indoor vented gas log sets	Standing pilot with manually-lit pilot, on/off switch, and millivolt gas valve.
Other indoor vented decorative hearth products.	Standing pilot with piezo ignition for pilot, on/off switch, and millivolt gas valve.
Outdoor patio heaters	Standing pilot with manually-lit pilot and on/off switch.
Outdoor decorative hearths	Standing pilot with piezo pilot igniter and on/off switch.

Issue 8: DOE requests comment regarding the baseline design characteristics identified for each product group. DOE also requests comment regarding whether additional clarity is needed regarding the baseline design characteristics and the components in each design.

DOE then identified an alternative design for each product group that could reduce the energy consumption of a standing pilot light. As discussed,

DOE tentatively focused its initial engineering analysis for this NODA on the impacts of a prescriptive design requirement that would prohibit the use of a continuous pilot or pilot on-demand ignition systems. Therefore, direct main burner ignition designs and other designs that do not include pilots would not be affected by this rulemaking. The design options typically found in products that include intermittent pilot ignition and that offer similar consumer utility as comparable products with constant pilot ignition systems are listed in Table III.3 for each of the four aforementioned product groups.

TABLE III.3—DESIGN CHARACTERISTICS ASSOCIATED WITH PRODUCTS THAT DO NOT USE CONTINUOUS PILOT OR PILOT ON-DEMAND

Product group	Alternate design characteristics for products without standing pilot
Indoor vented gas log sets	Intermittent pilot with electronic ignition, on/off switch, and battery backup.
Other indoor vented decorative hearth products.	Intermittent pilot with electronic ignition, on/off switch, and battery backup.
Outdoor patio heaters	Intermittent pilot with electronic ignition and on/off switch.
Outdoor decorative hearths	Intermittent pilot with electronic ignition and on/off switch.

Issue 9: DOE requests comment regarding the alternate design characteristics identified for each product group.

b. Teardown Analysis

For the current analysis, DOE plans to use physical teardowns to estimate the cost to replace a continuous pilot with an intermittent pilot. A physical teardown is an approach wherein DOE physically dismantles a commercially available product, component-by-component, to develop a detailed bill of materials (''BOM'') for the product. The BOMs incorporate all materials, components, and fasteners (classified as either raw materials or purchased parts and assemblies, and characterize the materials and components by weight, manufacturing processes used, dimensions, material, and quantity.

DOE uses the BOMs from the teardowns as inputs to calculate the MPC for the representative product for each product type and for each ignition type discussed in section. The materials and components in the BOMs are converted into dollar values using a computer cost model. DOE collects information on labor rates, tooling costs, raw material prices, and other factors as inputs into the cost estimates.

For this NODA, DOE has developed draft MPCs using teardowns of models from each of the for representative product groups. To compare only the cost difference between standing pilot and intermittent pilot models in each product group, DOE assessed the differences in major components including the gas valve, the pilot assembly (pilot, sparker, flame sensor, ignitor, thermocouple, etc.), the power supply, and the battery pack, as applicable. DOE did not include costs for additional features such as remote controls and accompanying remote receivers. Remote control functionality may be found more commonly on intermittent pilot ignition systems than on continuous pilot ignition systems, but are not necessary for either type of ignition system, and therefore DOE did not account for costs associated with such features.

For purchased parts, DOE estimates the purchase price based on volume-variable price quotations and detailed discussions with manufacturers and component suppliers. For parts fabricated in-house, the prices of the underlying ''raw'' metals (*e.g.,* tube, sheet metal) are estimated on the basis of 5-year averages to smooth out spikes in demand. Other ''raw'' materials, such as plastic resins, insulation materials, etc., are estimated on a current-market basis. The costs of raw materials are based on manufacturer interviews, quotes from suppliers, and secondary research. Past results are updated periodically and/or inflated to present-day prices using indices from resources such as MEPS Intl.,[9] PolymerUpdate,[10] the U.S. geologic survey (''USGS''),[11] and the Bureau of Labor Statistics (''BLS'').[12] The cost of transforming the intermediate materials into finished parts is estimated based on current industry pricing.

The MPC is, in part, a function of the annual production volume since the production volume typically impacts the price the manufacture pays for sourced components. The production volumes used in this analysis are intended to reflect an average manufacturer in each product group and are shown in Table III.4.

TABLE III.4—ESTIMATED PRODUCT VOLUMES FOR MGPS

Product group	Annual production volume
Indoor vented gas log sets	8,750
Other indoor vented decorative hearth products	17,500
Outdoor patio heaters	8,750
Outdoor decorative hearths	8,750

The results of the engineering analysis performed for this NODA are shown in Table III.5. The MPCs of the ''baseline design'' reflect the cost to manufacture a basic design of a product that utilizes a continuous pilot in each category, while the MPC for the ''alternate ignition system'' reflects the MPC to manufacture an identical product that utilizes an intermittent pilot ignition system rather than a continuous pilot system. The MPC difference accounts for all design changes necessary to replace the continuous pilot system with the intermittent system.

[9] For more information on MEPS Intl, please visit: *www.meps.co.uk/* (Last accessed Sept. 23, 2022).

[10] For more information on PolymerUpdate, please visit: *www.polymerupdate.com* (Last accessed Sept. 23, 2022).

[11] For more information on the USGS metal price statistics, please visit *www.usgs.gov/centers/nmic/commodity-statistics-and-information* (Last accessed Sept. 23, 2022).

[12] For more information on the BLS producer price indices, please visit: *www.bls.gov/ppi/* (Last accessed Sept. 23, 2022).

TABLE III.5—ESTIMATED TYPICAL MANUFACTURER PRODUCTION COSTS

Product group	Baseline design	Baseline MPC	Alternate ignition system	Alternate MPC
Indoor vented gas log sets	Standing pilot with manually-lit pilot, on/off switch and millivolt gas valve.	$223.95	Intermittent pilot with electronic ignition, on/off switch, and battery backup.	$274.42
Other indoor decorative hearth products.	Standing pilot with piezo ignition for pilot, on/off switch, and millivolt gas valve.	340.30	Intermittent pilot with electronic ignition, on/off switch, and battery backup.	365.80
Outdoor patio heaters	Standing pilot with manually-lit pilot and on/off switch.	235.32	Intermittent pilot with electronic ignition and on/off switch.	294.45
Outdoor decorative hearths.	Standing pilot with piezo igniter (for lighting the pilot) and on/off switch.	167.17	Intermittent pilot with electronic ignition and on/off switch.	252.99

Issue 10: DOE seeks comment regarding the estimated MPCs for each product group. Further, DOE seeks specific cost information and data about MGP ignition system components. These components include the gas valves, the pilot assembly, the power supply, and the battery pack.

Issue 11: DOE seeks feedback regarding the average production volumes used in this analysis, and whether these values are representative of the MGP market.

DOE converts MPC to the manufacturer selling price (''MSP'') by multiplying by the manufacturer markup. MSP is the price the manufacturer charges its first customer, when selling into product distribution channels. MSPs include direct manufacturing production costs (*i.e.,* labor, materials, and overhead estimated in MPCs), non-production costs (*i.e.,* SG&A, R&D, and interest), and profit.

The manufacturer markup accounts for manufacturer non-production costs and profit. DOE multiplied MPCs by an industry average manufacturer markup of 1.5 to estimate MSPs.

Issue 12: DOE requests feedback on the industry average manufacturer markup of 1.5 and whether this value is representative of the MGP market. Additionally, DOE requests feedback on whether the average manufacturer markups varies significantly across four groups: indoor vented gas log sets, other indoor vented decorative hearths, outdoor patio heaters; and outdoor decorative hearths.

4. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of MGPs at different efficiencies in representative U.S. single-family homes, and multi-family residences, and to assess the energy savings potential of increased MGP efficiency. The energy use analysis estimates the range of energy use of MGPs in the field (*i.e.,* as they are actually used by consumers). The energy use analysis provides the basis for other analyses DOE performed, particularly assessments of the energy savings and the savings in consumer operating costs that could result from adoption of amended or new standards.

In order to estimate the energy consumption of standing pilot lights in MGPs, DOE must estimate the fraction of consumers that leave their standing pilots on all year long vs. those that shut off the standing pilot during some portion of the year. Table III.6 presents standing pilot usage data from a survey of hearth products in U.S. homes.[13] The average operating hours for standing pilot lights from this survey are 4593 hours per year. The survey primarily included respondents with indoor fireplaces, log sets, or stoves, although a small fraction of survey respondents had outdoor units. For outdoor decorative products, DOE does not have any data suggesting that standing pilot usage behavior is substantially different. For outdoor heaters, DOE assumed in the proposed and final coverage determination that standing pilot usage is 50 percent that of outdoor decorative hearth products. 87 FR 6786, 6791. For portable propane outdoor units, such as portable outdoor patio heaters, DOE assumes that standing pilots are never left on as that would quickly drain the portable tank.

TABLE III.6—STANDING PILOT USAGE

Standing pilot use	Fraction of consumers
Always on	35%
Off when hearth is off	33%
Off in summer	32%
Total	100%

As discussed in section III.C.1.b, an on-demand pilot will turn off automatically after a certain period of time (typically one week), but not immediately after the unit is turned off. Survey data[14] suggest that MGP users use their products at least once a week on average during the heating season and therefore the average period between last use and automatic turn-off is one week. As a result, on-demand pilot lights operate for a similar amount of time during the heating season as standing pilots.

Issue 13: DOE seeks comment regarding the estimated MGP operating hours for standing pilots.

5. Life-Cycle Cost and Payback Period Analyses

The effect of new or amended energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost. DOE used the following two metrics to measure consumer impacts:

- The LCC is the total consumer expense of an appliance or product over the life of that product, consisting of total installed cost (manufacturer selling price, distribution chain markups, sales tax, and installation costs) plus operating costs (expenses for energy use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product.
- The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost at higher efficiency levels by the change in annual operating cost for the year that amended or new standards are assumed to take effect.

In order to estimate the LCC and PBP for MGPs, DOE must estimate several input parameters including average product lifetime, repair and maintenance costs, and the distribution of different ignition types in the market.

[13] Siap, D. et al. (2017), ''Survey of Hearth Products in U.S. Homes'', Lawrence Berkeley National Laboratory. (Available at: *ees.lbl.gov/publications/survey-hearth-products-us-homes*) (last accessed Oct. 4, 2022).

[14] *Id.*

In the February 2015 NOPR, DOE estimated that the average lifetime of MGPs was 15 years, with a minimum lifetime of 5 years and a maximum lifetime of 30 years.[15] This lifetime estimate was the same across all product categories. DOE continues to estimate the same average lifetime for MGPs.

In the February 2015 NOPR, DOE estimated repair costs for standing pilot lights and intermittent ignition systems.[16] These estimates are presented in Table III.7 and Table III.8, corrected to 2021$ using the Consumer Price Index. Labor hours are estimated from RSMeans 2022 data.

TABLE III.7—REPAIR COST ESTIMATES

Repair description	Group	Total labor hours	Cost
Standing Pilot Ignition	Indoor Vented Gas Log Sets	1.50	$39.10
	Indoor Other Decorative Hearth Products	1.50	62.40
	Outdoor Patio Heaters	1.50	107.73
	Outdoor Decorative Hearths	1.50	107.73
Intermittent Ignition	Indoor Vented Gas Log Sets	1.50	127.80
	Indoor Other Decorative Hearth Products	1.50	97.57
	Outdoor Patio Heaters	1.50	177.75
	Outdoor Decorative Hearths	1.50	177.75

TABLE III.8—LABOR COST ESTIMATES

Crew type	Crew description	Laborers per crew	Cost per labor-hour	
			Bare costs	Incl. O&P *
Q1 *	1 Plumber, 1 Plumber Apprentice	2	$37.70	$61.50

In the February 2015 NOPR, DOE estimated that approximately 14 percent of MGPs would experience an ignition system failure over the lifetime of the product. If the failure occurred in the first year, DOE assumed that the cost was covered by warranty; if the failure occurred between 2 and 5 years, the consumer only paid labor costs; and if the failure occurred after 5 years, the consumer paid labor and material costs for the repair.[17] DOE continues to estimate these same repair costs for MGPs.

In order to estimate the fraction of consumers impacted by an energy conservation standard at a given efficiency level, DOE must estimate the distributions across different efficiency levels in the market. A 2017 survey on hearth products in U.S. homes found that, at the time, most consumers had MGPs with a standing pilot, as seen in Table III.9.[18] A more recent examination of models available on the market (from retailer/manufacturer websites and product literature from manufacturers of MGPs, as discussed in section III.C.1.a) shows some variation among product groupings. In particular, there are fewer of Other Indoor Vented Decorative Hearths, Outdoor Decorative Hearths, and Outdoor Patio Heaters with a standing pilot. In particular, portable propane units that fall within outdoor decorative hearths and outdoor patio heaters do not have a standing pilot as that would quickly drain the propane tank. DOE does not intend to analyze these portable propane products. The updated estimates based on DOE's recent market research are shown in Table III.10.

TABLE III.9—IGNITION TYPE DISTRIBUTION IN THE NO-NEW-STANDARDS CASE FROM 2017 SURVEY

Ignition type	Market share (percent)
Standing Pilot	67
Intermittent Pilot	19
Manually-lit	14
Total	100

TABLE III.10—IGNITION TYPE DISTRIBUTION IN THE NO-NEW-STANDARDS CASE FROM AVAILABLE MODELS ON THE MARKET IN DOE'S CURRENT DATABASE

Product group	Pilot type by category	Share (percent)
Indoor Vented Gas Log Sets	Intermittent or On Demand Pilot	23
	Standing Pilot	72
	Direct Main Burner Ignition	5
Other Indoor Vented Decorative Hearth Products	Intermittent or On Demand Pilot	64
	Standing Pilot	36
	Direct Main Burner Ignition	0
Outdoor Decorative Hearths	Intermittent or On Demand Pilot	28
	Standing Pilot	27
	Direct Main Burner Ignition	45
Outdoor Patio Heaters	Intermittent or On Demand Pilot	8
	Standing Pilot	22

[15] See chapter 8 of the Technical Support Document for the February 2015 NOPR. (Available at: *www.regulations.gov/document/EERE-2014-BT-STD-0036-0002*) (last accessed Oct. 4, 2022).

[16] Id.

[17] *Id.*

[18] Siap, D. et al. (2017), ''Survey of Hearth Products in U.S. Homes'', Lawrence Berkeley National Laboratory. (Available at: *ees.lbl.gov/publications/survey-hearth-products-us-homes*) (last accessed Oct. 4, 2022).

TABLE III.10—IGNITION TYPE DISTRIBUTION IN THE NO-NEW-STANDARDS CASE FROM AVAILABLE MODELS ON THE MARKET IN DOE'S CURRENT DATABASE—Continued

Product group	Pilot type by category	Share (percent)
	Direct Main Burner Ignition	70

Issue 14: DOE seeks comment regarding the estimated MGP lifetime, particularly if there are differences among product categories (such as indoor/outdoor products).

Issue 15: DOE seeks comment regarding the estimated MGP repair costs.

Issue 16: DOE seeks comment regarding the estimated distribution of ignition types among MGPs and the estimated fraction of products with main burners that are manually lit.

6. National Impact Analysis

The NIA estimates the national energy savings (''NES'') and the net present value (''NPV'') of total consumer costs and savings expected to result from new standards at specific efficiency levels (referred to as candidate standard levels).[19] DOE calculates the NES and NPV for the potential standard levels considered based on projections of annual product shipments, along with the annual energy consumption and total installed cost data from the energy use and LCC analyses. For the present analysis, DOE projected the energy savings, operating cost savings, product costs, and NPV of consumer benefits over the lifetime of MGPs sold from 2029–2058.

DOE evaluates the impacts of new or amended standards by comparing a case without such standards with standards-case projections (''no-new-standards case''). The no-new-standards case characterizes energy use and consumer costs for each product class in the absence of new or amended energy conservation standards. For this projection, DOE considers historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. DOE compares the no-new-standards case with projections characterizing the market for each product class if DOE adopted new or amended standards at specific energy efficiency levels for that class. For each efficiency level, DOE considers how a given standard would likely affect the market shares of product with efficiencies greater than the standard.

In order to estimate national impacts from 30 years of MGP shipments, DOE must project future MGP shipments for each product grouping based on historical shipments. For the February 2015 NOPR, DOE received total historical shipment data from HPBA, however these data included product categories that are not part of the current MGP analysis.[20] DOE notes that patio heaters were not included in the submitted shipment data. DOE received additional data from HPBA to clarify the categorization of some product groupings. From these data, DOE estimated the market shares of various product types as shown in Table III.12. Some of these product categories do not fall under the definition of MGP, therefore the corrected market shares of MGP product categories from the shipment data is shown in Table III.12. From these market share and historical shipment data, DOE estimates total historical MGP shipments as shown in Table III.13. DOE notes that outdoor portable propane units are included in these market share estimates and requests comment on their market share, so that they may be excluded from the analysis.

TABLE III.11—MARKET SHARE OF PRODUCT CATEGORIES FROM SUBMITTED SHIPMENT DATA

Product type	Market share (percent)
Vented Fireplace	50.4
Unvented Fireplace	4.1
Vented Stove	4.1
Unvented Stove	0.5
Vented Insert	7.2
Unvented Insert	0.2
Vented Gas Log	6.7
Unvented Gas Log	20.1
Outdoor Units (Excluding Patio Heaters)	6.7
Total	100.0

TABLE III.12—MARKET SHARE OF MGP PRODUCT CATEGORIES ESTIMATED FROM PREVIOUS DATA

Product group	Market share (percent)
Indoor Vented Gas Log Sets	8.2
Indoor Other Decorative Hearth Products	75.8
Outdoor Patio Heaters	7.8
Outdoor Decorative Hearths	8.2
Total	100.0

TABLE III.13—ESTIMATED HISTORICAL SHIPMENTS OF MGPS

Year	Total historical shipments of MGPs
2005	1,338,749
2006	1,029,272
2007	892,789
2008	621,562
2009	365,983
2010	385,108
2011	334,687
2012	345,119
2013	464,216
2014	319,885
2015	412,812
2016	379,017
2017	416,992
2018	406,917
2019	377,377
2020	395,499
2021	455,259

A more recent examination of models available on the market (from retailer/manufacturer websites and product literature from manufacturers of MGPs) based on DOE's current market database (as discussed in section III.C.1.a) shows some variation from the above market shares. These market shares are shown in Table III.14. DOE again notes that outdoor portable propane units are included in these market share estimates and requests comment on their market share, so that they may be excluded from the analysis.

TABLE III.14—MARKET SHARE BREAKDOWN OF MGP PRODUCT GROUPS IN CURRENT DATABASE

Product group	Market share (percent)
Indoor Vented Gas Log Sets	48

[19] The NIA accounts for impacts in the 50 states and U.S. territories.

[20] See chapter 9 of the Technical Support Document for the February 2015 NOPR. (Available at: *www.regulations.gov/document/EERE–2014–BT–STD–0036–0002*) (last accessed Oct. 4, 2022).

TABLE III.14—MARKET SHARE BREAKDOWN OF MGP PRODUCT GROUPS IN CURRENT DATABASE—Continued

Product group	Market share (percent)
Other Indoor Vented Decorative Hearth Products	6
Outdoor Patio Heaters	8
Outdoor Decorative Hearths	38

Issue 17: DOE seeks comment regarding the estimated shipments of MGPs and the market shares of different MGP product categories. In particular, DOE requests comment on the market share of portable propane outdoor units so that they may be excluded from the analysis.

7. Manufacturer Impact Analysis

The purpose of the manufacturer impact analysis (''MIA'') is to identify and quantify the impacts of any potential new and/or amended energy conservation standards on manufacturers. DOE conducts the MIA in three phases, and further tailors the analytical framework based on the comments it receives. In Phase I, DOE creates an industry profile to characterize the industry and identify important issues that require consideration. In Phase II, DOE prepares an industry cash-flow model and considers what information it might gather in manufacturer interviews. In Phase III, DOE's contractors interview manufacturers and assesses the impacts of standards both quantitatively and qualitatively.

As part of DOE's rulemaking process, DOE's contractors reached out to MGP manufacturers to conduct confidential manufacturer interviews in 2022. The interviews covered a range of topics, including manufacturer key concerns, technology options, production costs, conversion costs, financial metrics, market shares, shipment levels, manufacturer markup, and competitive concerns. Given the sensitive nature of these topics, the interviews were conducted under nondisclosure agreement with DOE's contractors to ensure attributable data and sensitive business information was maintained as confidential. Only aggregate information was provided to the Department. DOE's contractors conducted interviews with manufacturers that sell product in each of the groups: indoor vented gas log sets, other indoor decorative hearth products, outdoor patio heaters, and outdoor decorative hearths. The interviews provided broadest coverage of indoor vented gas log set manufacturers. The interviews included manufacturers that account for 39% of indoor vented gas log sets models in the DOE-compiled product database.

IV. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding this NODA no later than the date provided in the **DATES** section at the beginning of this document. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

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Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (''faxes'') will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

B. Issues on Which DOE Seeks Comment

Issue 1: DOE requests comment on its tentative decision to exclude gas lights and portable propane products from the current analysis. DOE also requests comment on an appropriate definition for gas lights in order to distinguish them from other miscellaneous gas products. DOE also requests comment on whether any other products should be excluded from the current rulemaking.

Issue 2: DOE requests comment regarding these four representative product groups.

Issue 3: DOE requests comment on the OEMs identified for each representative group: indoor vented gas log sets; other indoor vented decorative hearths; outdoor patio heaters; and outdoor decorative hearths. Additionally, DOE requests data on the number of OEMs with domestic production facilities for each group. DOE also requests comment on names of OEMs of MGPs that DOE did not identify in Table III.1.

Issue 4: DOE seeks comment regarding whether there are any ignition methods that are not captured in this section, or if any of the listed methods are not applicable to MGPs. DOE also seeks comment on whether the above descriptions for each ignition method accurately reflect the industry's understanding.

Issue 5: DOE seeks comment regarding whether there are any pilot light technologies that are not captured in this section, or if any of the listed technologies are not applicable to MGPs. DOE also requests comment about any subsets of MGPs in which it would not be feasible to implement the aforementioned technologies. DOE also seeks comment on whether the above descriptions for each pilot light technology accurately reflect the industry's understanding. Finally, DOE seeks comment on the potential combinations of ignition systems and pilot lights that are available on the market, and on the prevalence of these combinations in each product group.

Issue 6: DOE requests comment regarding whether these technology options would impact the energy efficiency and/or energy use of MGPs. In addition, DOE requests comment on whether any other technologies are available to reduce the energy consumption of MGPs.

Issue 7: DOE seeks comment regarding its tentative conclusion that only intermittent pilot ignition and on-demand ignition pass the screening criteria. DOE also requests comment on whether any other technology options should pass the screening analysis.

Issue 8: DOE requests comment regarding the baseline design characteristics identified for each product group. DOE also requests comment regarding whether additional clarity is needed regarding the baseline design characteristics and the components in each design.

Issue 9: DOE requests comment regarding the alternate design characteristics identified for each product group.

Issue 10: DOE seeks comment regarding the estimated MPCs for each product group. Further, DOE seeks specific cost information and data about MGP ignition system components. These components include the gas valves, the pilot assembly, the power supply, and the battery pack.

Issue 11: DOE seeks feedback regarding the average production volumes used in this analysis, and whether these values are representative of the MGP market.

Issue 12: DOE requests feedback on the industry average manufacturer markup of 1.5 and whether this value is representative of the MGP market. Additionally, DOE requests feedback on whether the average manufacturer markups varies significantly across four groups: indoor vented gas log sets, other indoor vented decorative hearths, outdoor patio heaters; and outdoor decorative hearths.

Issue 13: DOE seeks comment regarding the estimated MGP operating hours for standing pilots.

Issue 14: DOE seeks comment regarding the estimated MGP lifetime, particularly if there are differences among product categories (such as indoor/outdoor products).

Issue 15: DOE seeks comment regarding the estimated MGP repair costs.

Issue 16: DOE seeks comment regarding the estimated distribution of ignition types among MGPs and the estimated fraction of products with main burners that are manually lit.

Issue 17: DOE seeks comment regarding the estimated shipments of MGPs and the market shares of different MGP product categories. In particular, DOE requests comment on the market share of portable propane outdoor units so that they may be excluded from the analysis.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notification of the availability of the preliminary technical support document and request for comment.

Signing Authority

This document of the Department of Energy was signed on November 7, 2022, by Francisco Alejandro Moreno, Acting 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 November 10, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–24925 Filed 11–16–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2022–0349; Notice No. 25–22–05–SC]

Special Conditions: Airbus Model A321neo XLR Airplane; Flight-Envelope Protection Functions—General

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the the Airbus Model A321neo XLR airplanes. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is an electronic flight-control system that provides flight-envelope protections. The applicable airworthiness regulations do not contain

adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send comments on or before January 3, 2023.

ADDRESSES: Send comments identified by Docket No. FAA–2022–0349 using any of the following methods:

- *Federal eRegulations Portal:* Go to *https://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC, 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in title 14, Code of Federal Regulations (14 CFR) 11.35, the FAA will post all comments received without change to *https://www.regulations.gov/,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about these special conditions.

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to these special conditions contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to these special conditions, 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 the indicated comments will not be placed in the public docket of these special conditions. Send submissions containing CBI to Troy Brown, Performance and Environment Section, AIR–625, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 1801 S. Airport Rd., Wichita, KS 67209–2190; telephone and fax 405–666–1050; email *troy.a.brown@faa.gov.* Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for these special conditions.

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

FOR FURTHER INFORMATION CONTACT: Troy Brown, Performance and Environment Section, AIR–625, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 1801 S. Airport Rd., Wichita, KS 67209–2190; telephone and fax 405–666–1050; email *troy.a.brown@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

The FAA will consider all comments received by the closing date for comments. The FAA may change these special conditions based on the comments received.

Background

On September 16, 2019, Airbus applied for an amendment to Type Certificate No. A28NM to include the new Model A321neo XLR airplanes, which include the Model A321–271NY and A321–253NY airplanes. These airplanes are twin-engine, transport-category airplanes with seating for 244 passengers and a maximum takeoff weight of 222,000 pounds.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Airbus must show that the Model A321neo XLR airplanes meet the applicable provisions of the regulations listed in Type Certificate No. A28NM, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Airbus Model A321neo XLR airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A321neo XLR airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in § 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Airbus Model A321neo XLR airplanes will incorporate the following novel or unusual design feature:

An electronic flight-control system that provides flight envelope protections.

Discussion

Many new transport-category airplanes use advanced electronic flight-control systems (EFCS), which incorporate flight-envelope protection (limiting) designed to prevent the pilot from inadvertently or intentionally exceeding any number of flight-envelope parameters. Depending on a particular EFCS design, these limiting features may or may not be active in all normal and alternate flight-control modes, and may or may not be capable of being overridden by the pilot.

The FAA currently applies 14 CFR 25.143 to airplanes incorporating EFCS. The purpose of § 25.143 is to verify that operational maneuvers conducted within the operational envelope can be accomplished smoothly with average piloting skill, and without encountering a stall warning or other characteristics that might interfere with normal maneuvering, or without exceeding

structural limits. The airplane response to control input should be predictable to the pilot. However, § 25.143 does not adequately ensure that airplanes incorporating EFCS with flight-envelope protections will have a level of safety equivalent to that of existing standards.

Envelope-protection functions are intended to reduce the likelihood of excursions, either commanded or uncommanded, to unintended or potentially hazardous airplane operating states. As a consequence of preventing excursions, these functions can also restrict aircraft maneuverability, and may introduce non-traditional behavior. The proposed special conditions will ensure that flight-envelope protection functions support safe operation, and do not interfere with required maneuvering in normal and emergency operations, and in forseeable atmospheric conditions.

The FAA previously issued separate special conditions for general limiting, normal load-factor limiting, high-speed limiting, and pitch and roll limiting for airplanes incorporating flight-envelope protection features. However, the FAA tasked the Aviation Rulemaking Advisory Committee (ARAC) in April 2014 (79 FR 20295) to develop recommended standards for fly-by-wire flight controls for general flight-envelope protection (limiting) similar to those provided for conventional control functions in 14 CFR 25.143. The ARAC recommended,[1] among other things, performance-based requirements that would encompass general limiting, normal load-factor limiting, high-speed limiting, and pitch and roll limiting which the FAA previously issued as separate special conditions. These proposed special conditions are based on that ARAC recommendation.

These proposed special conditions provide the same level of safety as the prescriptive, design-specific special conditions the FAA has issued in the past for general limiting, normal load-factor limiting, high-speed limiting, and pitch and roll limiting, thus the FAA need not issue separate special conditions to address each of these areas.

These proposed special conditions are in addition to the requirements of § 25.143. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

[1] FAA Aviation Rulemaking Advisory Committee, FTHWG Topic 1 Envelope Protection, Recommendation Report–Rev. A, March, 2017, *https://www.faa.gov/regulations_policies/rulemaking/committees/documents/media/09%20-%20FTHWG_Final_Report_Phase_2_RevA__Apr_2017.pdf.*

Applicability

As discussed above, these proposed special conditions apply to Airbus Model A321neo XLR airplanes. Should Airbus apply later for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Airbus Model A321neo XLR airplanes equipped with EFCS.

In addition to § 25.143, the following requirements apply:

(a) Envelope protection functions must not unduly limit the maneuvering capability of the airplane, nor interfere with its ability to perform maneuvers required for normal and emergency operations.

(b) Onset characteristics of each flight-envelope protection function must be appropriate to the phase of flight and type of maneuver, and must not conflict with the ability of the pilot to satisfactorily control the airplane flight path, speed, and attitude.

(c) Excursions of a limited flight parameter beyond its nominal design-limit value due to dynamic maneuvering, airframe and system tolerances, and non-steady atmospheric conditions must not result in unsafe flight characteristics or conditions.

(d) Operation of flight-envelope protection functions must not adversely affect aircraft control during expected levels of atmospheric disturbances, nor impede the application of recovery procedures in case of wind shear.

(e) Simultaneous action of flight-envelope protection functions must not result in adverse coupling or adverse priority.

(f) In case of abnormal attitude or excursion of flight parameters outside the protected boundaries, operation of flight-envelope protection functions must not hinder airplane recovery.

Issued in Kansas City, Missouri, on November 8, 2022.

Patrick R. Mullen,

Manager, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2022–24772 Filed 11–16–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 259, 260, 399

[Docket No. DOT–OST–2022–0089]

RIN 2105–AF04

Airline Ticket Refunds and Consumer Protections

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT or the Department).

ACTION: Extension of comment period on proposed rule.

SUMMARY: The U.S. Department of Transportation (Department or DOT) is extending through December 16, 2022, the period for interested persons to submit comments to its proposed rule on Airline Ticket Refunds and Consumer Protections.

DATES: Comments should be filed by December 16, 2022. Late-filed comments will be considered to the extent practicable. Petitions for a hearing pursuant to 14 CFR 399.75(b)(1) must also be filed by December 16, 2022.

ADDRESSES: You may file comments identified by the docket number DOT–OST–2022–0089 by any of the following methods:

- *Federal eRulemaking Portal:* go to *https://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor, Room W12–140, Washington, DC, 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Instructions: You must include the agency name and docket number DOT–OST–2022–0089 or the Regulatory

Identification Number (RIN 2105–AF04) for the rulemaking at the beginning of your comment. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

Docket: For access to the docket to read background documents and comments received, go to *https://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Clereece Kroha or Blane Workie, Office of Aviation Consumer Protection, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC, 20590, 202–366–9342 (phone), *clereece.kroha@dot.gov* or *blane.workie@dot.gov* (email).

SUPPLEMENTARY INFORMATION: On August 22, 2022, The Department of Transportation (DOT or Department) published in the **Federal Register** a notice of proposed rulemaking (NPRM) that proposes to codify its longstanding interpretation that it is an unfair business practice for a U.S. air carrier, a foreign air carrier, or a ticket agent to refuse to provide requested refunds to consumers when a carrier has cancelled or made a significant change to a scheduled flight to, from, or within the United States, and consumers found the alternative transportation offered by the carrier or the ticket agent to be unacceptable (87 FR 51550). The NPRM proposes to define, for the first time, the terms significant change and cancellation. It would also require U.S. and foreign airlines and ticket agents inform consumers that they are entitled to a refund if that is the case before making an offer for travel credits, vouchers, or other compensation in lieu of refunds. The Department further proposes to require that U.S. and foreign air carriers and ticket agents provide non-expiring travel vouchers or credits to consumers holding non-refundable tickets for scheduled flights to, from, or within the United States who are unable to travel as scheduled in certain circumstances related to a serious communicable disease. If the carrier or ticket agent received significant financial assistance from the government as a result of a public health emergency, the Department proposes to require U.S. and foreign air carriers and ticket agents provide refunds, in lieu of non-expiring travel vouchers or credits. The NPRM proposes to allow carriers and ticket agents to require consumers provide evidence to support their assertion of entitlement to a travel voucher, credit, or refund. The NPRM provided for a comment period of 90 days after publication of the NPRM in the **Federal Register***, i.e.,* November 21, 2022.

On September 6, 2022, Airlines for America (A4A) and International Air Transportation Association (IATA) (jointly ''Airline Petitioners'') requested an extension of 60 days for the comment period of this rulemaking. According to Airline Petitioners, the Department's proposals would significantly change airline ticket refund regulations, affecting refund and voucher rights and obligations of not only airlines but also ticket agents, booking entities, and consumers, which require a thorough and careful consideration of all potential impacts and unintended consequences of this rule for the traveling public. Airline Petitioners state that additional time is needed to adequately collect and consider all the relevant and necessary information to finalize this critical rule. Furthermore, Airline Petitioners point out that the NPRM asks comments on various scenarios in addition to the proposed rule and the additional questions posed by the Department warrant an in-depth analysis that will reasonably require more than 90 days to collect from all interested parties, and to review and comment.

On September 27, 2022, the Travel Technology Association, the American Society of Travel Advisors, and Travel Management Coalition (jointly ''Distribution Petitioners'') requested an extension of 30 days for the comment period of this rulemaking. Distribution Petitioners states that the NPRM raises over 100 substantial issues for comments and the issues pertaining to public health emergencies are particularly novel in terms of the regulatory response proposed. Distribution Petitioners state that additional time is needed to allow each of their members to develop and prepare comments that would be most useful for the Department in reaching a fully informed decision.

Through this notice, the Department grants an extension of 25 days, or until December 16, 2022, for the public to comment on the NPRM. In doing so, the Department acknowledges that the NPRM raises numerous important issues, including the alternatives to the proposals that the Department is seeking information on, which requires in-depth analysis and consideration by stakeholders. The Department believes that granting a 25-day extension of the original 90-day comment period, is sufficient to allow stakeholders to conduct a thorough and careful consideration of all potential impacts and prepare comments. The Department has also taken into consideration the work of the Aviation Consumer Protection Advisory Committee (ACPAC) in relation to this rulemaking. Following the issuance of the NPRM, the ACPAC devoted a full day to discuss the NPRM and listen to public comments. The ACPAC is scheduled to meet again on December 9, 2022, to deliberate on what, if any, recommendations it will make to the Department regarding this rulemaking. The Department believes that extending the comment period for the NPRM until one week after the ACPAC meeting would provide the public an opportunity to consider the discussions and any recommendation of the ACPAC and provide further comments to the Department. Accordingly, the Department extends the time for comments on the proposed rule from November 21, 2022, to December 16, 2022.

In the request for extension of comment period, Airline Petitioners seek clarifications from the Department on various issues raised in the NPRM. Distribution Petitioners also state that several issues raised by Airline Petitioners are of particular interest to Distribution Petitioners and the Department's clarifications on those issues are needed for them to prepare comments on those issues. The Department's responses to the list of questions raised by Airline Petitioners have been posted in the rulemaking docket.

Signed in Washington, DC, on or around this 7th day of November 2022, under authority delegated at 49 U.S.C. 1.27n.

John E. Putnam,

General Counsel.

[FR Doc. 2022–24615 Filed 11–16–22; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 2

[OGC–2022–0885; FRL 5630–02–OGC]

RIN 2025–AA38

Freedom of Information Act Regulations Update; Phase II

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or agency) proposes revisions to the agency's regulations under the Freedom of Information Act (FOIA or Act). This action supports the agency's mission by updating the process by which the public may access information about EPA actions and activities.

DATES: Comments must be received on or before December 19, 2022.

ADDRESSES: You may send comments, identified by Docket ID No. OGC–2022–0885, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Office of General Counsel Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday through Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Christopher T. Creech, Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, (2310A), Washington, DC 20460; telephone, 202–564–4286; email, *creech.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Public Participation

Submit your comments, identified by Docket ID No. OGC–2022–0885, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). Please visit *https://www.epa.gov/dockets/commenting-epa-dockets* for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

II. Does this action apply to me?

This discussion is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This discussion includes the types of entities that the EPA is now aware could potentially be regulated by this action. Other types of entities not included could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria found in 40 CFR part 2. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

III. Scope of This Action

This action proposes changes to EPA's FOIA regulations at 40 CFR part 2. The proposed changes would alter the process by which individuals and entities request records from EPA under the Act. EPA proposes changes to clarify certain provisions and align with the FOIA and with EPA and government-wide policy.

In the 2019 ''Freedom of Information Act Regulations Update,'' 84 FR 30028, July 26, 2019 (Phase I Rule), EPA stated its intention to propose a second rulemaking phase to make discretionary and modernizing changes. Consistent with that statement, EPA is seeking public comment on the changes proposed in this document.

IV. Background

This action is the second phase in a two-phase process to update the agency's FOIA regulations. On July 26, 2019, EPA issued the Phase I Rule to ''bring EPA's regulations into compliance with nondiscretionary provisions of the amended statute and reflect changes in the agency's organization, procedure, or practice.'' 84 FR 30028.

V. Proposals for Clarity

A. Clarifying Reasonably Described Requests

EPA proposes to modify existing section 2.102(c) and move it to section 2.102(b), first, to define more clearly what it means for a FOIA request to reasonably describe the records sought and, second, to clarify how EPA would treat a FOIA request that does not reasonably describe the records sought. For the latter, this includes providing a clear timeline during which a requester may modify a submission that does not reasonably describe the records sought.

First, EPA proposes replacing ''A request should reasonably describe the records the requester seeks in a way that will permit EPA employees to identify and locate them'' with ''Requesters should reasonably describe the records sought in sufficient detail to enable agency personnel to locate them with a reasonable amount of effort'' to more clearly define a request that is reasonably described. 5 U.S.C. 552(a)(3)(A) requires agencies to respond to ''any request for records which (i) reasonably describes such records.'' The D.C. Circuit has recognized that a FOIA request reasonably describes the records sought ''if it enabled a professional employee of the agency who was familiar with the subject area of the request to locate the record with a reasonable amount of effort.'' *Truitt* v. *Department of State,* 897 F.2d 540, 545 n.36 (D.C. Cir. 1990), quoting H.R. Rep. No. 93–876, 93d Cong., 2d Sess. 5–6 (1974).

Incorporating this definition, which is used in legislative history and supported in caselaw, would provide clarity to FOIA requesters about how EPA reviews FOIA requests and applies the FOIA's requirements. EPA does not intend that this proposal would affect the EPA's existing processes or alter the FOIA's requirements.

Request for Comment 1: EPA seeks comment on whether the addition to 2.102(c) provides sufficient clarity.

Second, EPA proposes 20 calendar days as the time in section 2.102(c) a requester would be given to respond to EPA's notice that the requester has not reasonably described the records sought. The existing regulations state that EPA will afford a requester with an opportunity to modify the request if EPA determines that the submission did not reasonably describe the records sought. However, the existing regulations do not specify how long a requester may take to modify their request before EPA closes the request. *See* 40 CFR 2.102(c) (''A request should reasonably describe the records the requester seeks in a way that will permit EPA employees to identify and locate them.''). The agency believes that this change would provide requesters with additional guidance during this process, facilitate cooperation between the EPA and the requester, and clarify EPA's process for reviewing FOIA requests.

Based on EPA's experience, the proposed 20 calendar days timeline would be sufficient for requesters to review and modify their requests as appropriate. Although not required by the FOIA, EPA's regulations allow requesters an opportunity to modify a request that does not reasonably describe the records sought. EPA further notes that a requester may resubmit a new request reasonably describing the records sought, even after EPA closes a request upon the aforementioned 20-day deadline expiring.

Request for Comment 2: EPA seeks comments on providing a 20 calendar day timeline for a requester to modify their request after EPA has provided notice that EPA has determined that their request does not reasonably describe the records sought.

B. Readability and Useful Information

EPA also proposes and seeks comment on several provisions that EPA believes would enhance the readability, clarity, and usability of EPA's FOIA regulations.

First, EPA proposes reorganizing, but not making substantive changes to, 40 CFR 2.100(a) by moving to separate paragraphs the sentences describing other regulations relevant to the release of information. Those sentences relate to the access to confidential business information and requests made under the Privacy Act of 1974. Both sentences are purely informational. EPA believes this change would improve readability by separately listing information that is useful but unrelated to each other. This proposal would not change EPA's processing of records under the FOIA.

Second, EPA proposes to create a new paragraph (f) in section 2.100 to direct the public to the agency's website (*epa.gov/foia*) for records made publicly available in compliance with 5 U.S.C. 522(a)(2)(D)(ii)(II). This change would inform the public where they may access publicly available information. EPA notes that this change would not alter the agency's practices or responsibilities under the FOIA.

Third, EPA proposes to consolidate the provisions in EPA's FOIA regulations that discuss the timing of EPA's response to FOIA requests to simplify and accurately represent EPA's obligations under the FOIA. This change would combine into section 2.104(a) existing sections 2.101(c) and 2.102(a), and EPA proposes to directly incorporate into 2.104(a), the FOIA's language on timing of response from 5 U.S.C. 552(a)(6)(A)(i). EPA believes that allowing the statutory language to speak for itself is the clearest statement of EPA's obligations and clarifies ambiguities in the regulatory text. EPA also proposes to highlight in the regulatory text that EPA will work with requesters to come to an agreement regarding alternative timeframes for processing the request when EPA provides notice pursuant to 5 U.S.C. 552(a)(6)(B)(i) and (ii).

In addition, EPA proposes to add to section 2.104(a)(2) that requests submitted after 5:00 p.m. Eastern Time would be considered received on the next business day. Existing section 2.101(d) says that ''Requesters submitting requests electronically must do so before 5:00 p.m. Eastern Time for the agency to consider the request as received on that date.'' EPA would add on to this existing sentence, explaining how EPA would treat a request a request submitted at or after 5:00 p.m. EPA is not seeking feedback and does not propose to make changes to the existing language regarding requests and appeals received *before* 5:00 p.m. Eastern Time. This addition is intended to clarify the existing regulatory language and provide additional transparency to the public. Parallel to this proposal, EPA proposes modifying section 2.108(b) to state that appeals submitted after 5:00 p.m. Eastern Time would be considered received on the next business day.

Request for Comment 3: EPA seeks comment on whether the proposed reorganization, informational addition, and consolidation is clear.

C. Consistency With Government-Wide Policy

EPA proposes three changes that are intended to more closely align with the Department of Justice's *Template for Agency FOIA Regulations. See* Department of Justice, *Template for Agency FOIA Regulations* at sections VIII and IX, *https://www.justice.gov/oip/template-agency-foia-regulations* (last updated February 22, 2017). These proposed changes are found at sections 2.106, 2.108(d)(3), and 2.108(e)(1), which discuss the preservation of records, handling appeals after FOIA litigation, and the contents of adverse administrative appeals decisions. EPA does not intend that these proposals would make any substantive changes to EPA's practices or the regulatory requirements in those provisions. These proposed changes are intended to reflect existing best practices and ensure clarity of EPA's processes.

EPA proposes correcting 40 CFR 2.107(b), which discusses how requesters make fee payments. The existing regulations state that checks or money orders should be made out to the U.S. Environmental Protection Agency. The updated language would say that requesters should make checks and money orders out to the Treasury of the United States. This proposal would only affect where FOIA requesters make certain FOIA fee payments and is purely administrative in nature.

Finally, EPA also proposes revising all references to EPA's electronic submission website, FOIAonline (*www.FOIAonline.gov*), to a more general location, EPA's FOIA website (*www.epa.gov/foia*). EPA proposes this change to ensure that the location of the platform to receive FOIA submissions remains clear even after the decommissioning of FOIA Online. Instead, EPA proposes to use its FOIA web page (*epa.gov/foia*) to identify for requesters the new electronic FOIA request submission platform, providing a prominent and easily accessible link. Please note also that the sunsetting of FOIA online is not a part of this rulemaking, and EPA is neither proposing nor asking for comments on that process here.

Request for Comment 4: EPA seeks comment on whether the changes detailed above improve the readability, usefulness, and clarity of those provisions.

VI. 2019 Phase I FOIA Regulations

Citizens for Responsibility and Ethics in Washington (CREW) and Center for Biological Diversity (CBD) filed lawsuits against EPA challenging aspects of the 2019 FOIA Regulations Update. *Citizens for Responsibility and Ethics in Washington* v. *EPA,* 1:19–cv–02181. As part of the agreement to settle those claims, EPA agreed to seek comment on 40 CFR 2.103(b) and on whether to reinstate methods of submissions previously listed at 40 CFR 2.101(a).

A. Description of Determinations Under the FOIA

EPA proposes and seeks comment on removing the clause in 40 CFR 2.103(b) describing the term ''determinations required by 5 U.S.C. 552(a)(6)(A).'' Existing section 2.103(b) states, ''[Listed positions within the EPA] are authorized to make determinations required by 5 U.S.C. 522(a)(6)(A), including to issue final determinations whether to release or withhold a record or a portion of a record on the basis of responsiveness or under one or more of the exemptions under the FOIA, and to issue 'no records' responses.'' There has been some confusion regarding the meaning of this clause, which has led to inaccurate understandings of EPA's authority regarding FOIA determination. EPA believes that removing this clause would ensure clarity and allow the Act to speak for itself.

Request for Comment 5: EPA seeks comment on whether to remove the explanatory clause in 40 CFR 2.103(b) that begins with ''including'' and ends with ''responses.''

B. Previous Methods of Submission

EPA seeks comment on whether to reinstate any methods of FOIA request submission that the EPA removed through the issuance of the 2019 FOIA Regulations Update. *See* 2019 FOIA Regulations Update, 84 FR 30028 at 30030. EPA does not propose changes to 40 CFR 2.101(a).

The 2019 FOIA rule removed submission methods previously allowed via U.S. mail and email to the Regions, and email requests to EPA headquarters. *Id.* The 2019 FOIA Rule removed those methods of submission to ''reduce the number of misdirected requests'' because the ''2007 Amendments also decreased the amount of time an agency may take to route a request to the appropriate component . . . .'' 2019 FOIA Regulations Update, 84 FR 30028 at 30030. The 2019 FOIA Rule designated the National FOIA Office as the location to which mailed FOIA requests must be submitted; the Rule did not centralize FOIA processing in that office.

Since the 2019 FOIA Regulations Update was implemented, EPA's National FOIA Office has efficiently implemented centralized intake of FOIA requests providing enhanced transparency and clarity to requesters. As a result, EPA more fully realized its goal to provide first-rate service and communication to the FOIA requester community.

Request for Comment 6: EPA requests comment on whether EPA should reinstate any of the methods of submission, located at 40 CFR 2.101(a), that were removed by the 2019 FOIA Rule.

VII. General Processing Changes

A. Ordinary Search Cut-Off Date

EPA proposes to change the ''ordinary'' search cut-off date identified in section 2.103(a) from the date ''the request was received'' to ''the Agency begins its search for responsive records.'' A ''cut-off'' date delineates the scope of a FOIA request by treating records created after that date as not responsive to the FOIA request. *See Bonner* v. *U.S. Dep't of State,* 928 F.2d 1148, 1152 (D.C. Cir. 1991) (observing that ''[t]o require an agency to adjust or modify its FOIA responses based on post-response occurrences could create an endless cycle of judicially mandated reprocessing''). Under EPA's FOIA regulations, the ordinary cut-off date identified in 40 CFR 2.103(a) informs requesters of the cut-off date that the agency most typically uses. ''The Agency will inform the requester if any other date is used.'' 40 C.F.R 2.103(a).

Nothing in the existing or proposed FOIA regulations precludes the agency from evaluating the FOIA request for the most appropriate cut-off date or a FOIA requester from identifying a date range for the records sought.

Request for Comment 7: EPA seeks comment on whether to change the ordinary search cut-off date from the date the FOIA request is received to the date the agency begins the search for responsive records.

B. Aggregation of Requests

EPA proposes adding a provision stating that EPA may aggregate FOIA requests when EPA reasonably believes that multiple requests—submitted either by a requester or by a group of requesters acting in concert—constitute a single request that would otherwise give rise to unusual circumstances and the requests involve related matters.

5 U.S.C. 552(a)(6)(B)(iv) provides authority for such a provision, stating ''Each agency may promulgate regulations . . . providing for the aggregation of certain requests . . . if the agency reasonably believes that such requests actually constitute a single request[.]'' Mirroring the Act, EPA would only aggregate requests that are submitted by the same requester or group of requesters and the requests involve related manners. EPA is not proposing changes to the existing provision at 40 CFR 2.107(i), which allows for aggregation for fee-avoidance reasons.

Request for Comment 8: EPA requests comment on whether to add the request aggregation provision allowed for in 5 U.S.C. 552(a)(6)(B)(iv).

C. Assigning Tracking Numbers

EPA proposes a provision stating that EPA may assign multiple tracking numbers to a request with distinct parts that will be processed by separate regions or program offices. EPA would notify the requester of the separate tracking numbers for the distinct parts of the request, which thereafter would be processed and responded to separately.

This provision would reduce unnecessary coordination on unrelated records among different EPA offices and regions when processing a single request with multiple unrelated parts. This includes communicating with the requester to clarify the request, seeking fee assurance, conducting the records search and review, and issuing interim and final responses.

D. Revised Methods of Submission of Administrative Appeals

EPA proposes modifying the methods of submission of FOIA appeals, located in the existing regulations at 40 CFR 2.104(j) and 2.108(a) in the proposed regulations, to match the methods of submission of FOIA requests. This change would streamline EPA's receipt and handling of FOIA appeals.

VIII. Environmental Justice Expedited Processing Criteria

EPA proposes a provision to allow requesters to seek expedited processing of their request if the records sought pertain to an environmental justice-related need and will be used to inform an affected community. 5 U.S.C. 552(a)(6)(E)(i) provides that EPA may issue regulations ''providing for expedited processing of requests for records (I) in cases in which the person requesting the records demonstrates a compelling need; *and* (II) in other cases determined by the agency.'' (emphasis added). The Act defines what constitutes a ''compelling need,'' *id.* at

section 552(a)(6)(E)(v), and does not limit the ''other cases'' that they agency may determine merit expedited processing.

EPA has recognized environmental justice concerns for many decades and has defined 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 recognizes the role timely access to information contained in EPA records may play in the opportunity for meaningful involvement by communities that potentially experience disproportionately high and adverse human health or environmental effects.

This provision would be in addition to and not modify the expedited processing for requests demonstrating a ''compelling need,'' which the FOIA provides at 5 U.S.C. 552(a)(6)(E)(i)(I). This proposed new expedited processing category would target an understood need for timely access for communities with environmental justice concerns to information, which may not be met by the statutorily provided ''compelling need'' categories.

Request for Comment 9: EPA seeks comment on whether to include a new expedited processing category for requests seeking environmental justice-related information and whether there is an unmet need for prompt access to information in communities affected by environment justice concerns. For example, EPA requests comment on the frequency and types of contact that occur with members of communities affected by environmental justice concerns and how information for which there is a pressing need is typically utilized by members of those communities.

EPA proposes narrowly tailored criteria to achieve the intended goal. To qualify for expedited processing under this proposed provision, a requester would need to show: (1) a pressing need; (2) to inform a community potentially experiencing disproportionately high and adverse human health or environmental effects; (3) about those effects; (4) affecting, or potentially affecting, that community.

Request for Comment 10: EPA seeks comment on whether EPA should further define or use another definition or term to more accurately identify communities for which there is a need for more rapid access to EPA records containing information regarding environmental harms affecting those communities.

In evaluating requests for expedited processing under this expedited processing category, EPA would consider the requester's intent to effectively convey the information to members of the community that is potentially experiencing disproportionately high and adverse human health or environmental effects. EPA would not require that a requester be a member of the affected community, although membership in the community may be relevant to the requester's intent and ability to convey the information to the community. EPA would consider the requester's ability to effectively convey the information received about the community back to the community within a timeframe sufficient to meet the identified pressing need. EPA proposes that a requester would not have to be a formal member of the news media to qualify for this expedited processing category.

EPA further proposes that the need to inform the affected community would not include a request where the disclosure is primarily in the commercial interest of the requester. EPA intends that this criterion would help tailor the provision by focusing on requests for which the purpose of the request is to share information with members of the affected community.

Request for Comment 11: EPA seeks feedback on whether the proposed criteria properly target EPA's stated intent.

To implement this provision, EPA could use EJScreen's ''Supplemental Indexes'' tool to assess a requester's claim that a particular community may be experiencing disproportionately high and adverse human health or environmental effects. EJScreen is an environmental justice mapping and screening tool that provides EPA with a nationally consistent dataset and approach for combining environmental and demographic indicators. EJScreen provides a way to display this information and includes a method for combining environmental and demographic indicators into EJ indexes. EJScreen's ''Supplemental Indexes'' are twelve indexes calculated by combing twelve environmental indicators and a five-factor demographic index. The five socioeconomic indicators considered are percent low-income, percent limited English-speaking, percent less than high school education, percent unemployed, and low life expectancy. EJScreen may also be a valuable tool for requesters to assess whether the community about which they are seeking records may be affected by disproportionately high and adverse human health or environmental effects. More information regarding EJScreen is available here: *https://www.epa.gov/ejscreen/environmental-justice-indexes-ejscreen.*

Request for Comment 12: EPA seeks comment on whether EPA should require requesters to identify in a particular manner the relevant community with environmental justice concerns. EPA also seeks comment on methods and approaches to evaluating whether a particular community is potentially experiencing disproportionately high and adverse human health or environmental effects.

EPA also proposes that if the agency grants a request for expedited processing under the environmental justice expedited processing category, the agency will also grant the requester a fee waiver for the request under 5 U.S.C. 552(a)(4)(A)(iii), and EPA's FOIA regulations, at section 2.107(l) of the existing regulations and section 2.107(n) of the proposed regulations. EPA believes that meeting the standard and factors provided in the proposed new expedited processing criteria would result in the requester having met the burden set forth by the FOIA to qualify for a waiver of fees. 5 U.S.C. 552(a)(4)(A)(iii) (''[D]isclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.''). EPA also recognizes the potential efficiencies for both requesters and the agency in this approach.

Request for Comment 13: EPA seeks comment on whether EPA should provide fee waivers to requests that qualify for the proposed environmental justice expedited processing provision.

IX. Fee-Related Changes

A. Fee Rates Update

EPA proposes modernizing its fee rates by establishing fee rates tied to the U.S. Office of Personnel and Management's General Schedule (GS) scale. EPA proposes two rates for agency personnel time spent processing FOIA requests, with one rate for grades GS–12 and below and a second rate for those with grades GS–13 and above, both adjusted for the value of benefits, expressed in quarter-hour rates, and rounded to the nearest $1 increment. As of the date of signature, the proposed rates would be calculated as such:

Employees GS–12 and Below

Average Quarter-Hour Rate for GS–9 to 12 ($8.83) + Benefits (16% or $1.41) = $10.24 = (rounded to the nearest $1 increment) $10.00/quarter hour

Employees GS–13 and Above
Average Quarter-Hour Rate for GS–13 to 15 ($15.24) + Benefits (16% or $2.43) = $17.67 = (rounded to the nearest $1 increment) $18.00/quarter-hour

The FOIA directs agencies to issue FOIA regulations ''specifying the schedule of fees applicable to the processing of requests[.]'' 5 U.S.C. 522(a)(4)(A)(i). The Office of Management and Budget's (OMB's) Fee Guidelines provide that agencies may charge for the direct costs of expenditures that the agency incurs, including staff time spent on search, duplication, and review of records. *See* OMB, *Uniform Freedom of Information Act Fee Schedule Guidelines,* 52 FR 10012, 10017, March 27, 1987 (hereinafter OMB Fee Guidelines). The OMB Fee Guidelines also provide that staff time can be quantified by using the salary of the employee plus 16% to cover benefits. *Id.*

Raising the fee rates and tying them to the GS-scale will more accurately reflect the EPA's costs and align with the OMB Fee Guidelines. *Id.* at 10018 (''Agencies should charge fees that recoup the full allowable direct costs they incur.''). Fee rates in existing EPA's regulations include three categories: clerical ($4/quarter-hour); professional ($7/quarter-hour); and managerial ($10.25/quarter-hour). *See* 40 CFR 2.107(c)(2)(i)(B). EPA's existing fee rates have not been updated since at least 2002. Consequently, the existing rates no longer recoup the cost of processing a FOIA request and the clerical rate is obsolete as it is rarely used given the substantial transition to digital records and electronic processing and response mechanisms.

EPA proposes that its fee rates would automatically update with OPM's publication in the **Federal Register** of new GS-scale rates. *See* OPM, *January 2022 Pay Schedules,* 87 FR 26376, May 4, 2022. This practice is consistent with the OMB Fee Schedule and the practices of other Federal agencies. EPA anticipates that this approach would be a predictable and efficient approach to establishing a fee rate. Alternatively, EPA could set a stagnant rate that would not automatically update with changes to the GS-scale. EPA expects that the stagnant rate alternative would be more burdensome than the proposed approach because EPA would need to update its FOIA regulations regularly to ensure that it is charging FOIA fees to recoup its costs. EPA recognizes that the stagnant rate approach may provide more clarity for requesters by not requiring a calculation of the adjustment. To mitigate this, if it finalizes the automatically adjusting rate as proposed, EPA intends to publish the current fee rate on its FOIA website (*epa.gov/foia*) and will update that publication as the GS-scale changes.

Request for Comment 14: EPA requests comment on whether to modernize the fee schedule to two categories based on average GS levels.

B. Minimum Fee Threshold

EPA proposes increasing the minimum fee threshold to an amount calculated by formula, which, as of the publication of this rulemaking is $250. The formula would enable the minimum fee threshold to reflect EPA's costs as they increase in the futures. FOIA prohibits collection of fees if processing the payment is costlier than the fee itself. *See* 5 U.S.C. 552(a)(4)(A)(iv)(I). Existing EPA regulations, section 2.107(d)(4), have a minimum fee threshold of $14, meaning that EPA will charge FOIA fees if the total chargeable fees sum to more than $14. However, EPA calculates that the existing cost to process a payment is around $90. Thus, raising the minimum fee threshold will ensure that EPA is only charging for fees that are more than EPA's cost to process the fees.

Raising the minimum fee threshold to $250 would reduce the burden and tasks associated with processing fees and seeking assurance of payment and advanced payment. Alternatively, EPA could set a minimum fee threshold to an amount calculated by formula, which, as of the publication of this rulemaking is $90, the estimated cost of processing payment.

To achieve an automatically adjusting minimum fee threshold, which is currently calculated as $250, EPA proposes to utilize a formula that applies a fourteen (14) times multiplier to the rate set in 40 CFR 2.107(e)(2)(ii)(B). This ties the minimum fee threshold to the fee rate, which is itself based on the GS-scale. OPM adjusts the GS-scale annually. This proposal would allow for a minimum fee threshold that is sustainable and remains effective as fee rates and personnel costs increase, without the need to publish updates to the regulations. This number will be on the EPA website and updated as there are increases to the GS-scale. For more information about how the fee rate is calculated see section VII.A. of this preamble. As of the date of signature, the proposed minimum fee threshold would be calculated as follows:

Fee rate listed in 40 CFR 2.107(f)(2)(ii)(B) ($18.00) × 14 = $252 = (rounded to the nearest $5 increment) $250

Request for Comment 15: EPA requests comment on whether to increase the minimum fee threshold to an amount calculated by formula, which, as of the publication of this rulemaking is $250.

C. Automatic Agreement To Pay Fees

EPA proposes removing the automatic agreement to pay fees provision from the EPA's FOIA regulations. Submission of a request is considered an agreement to pay fees up to $25 in the existing EPA FOIA regulations. Because of the proposal to raise the minimum fee threshold to an amount calculated by formula, which, as of the publication of this rulemaking is $250, EPA would also need to adjust the existing automatic agreement to pay fees threshold.

EPA proposes to remove the automatic agreement to pay fees provision and instead seek assurance of payments from requesters if the actual or anticipated fees for the request equal or exceed the minimum fee threshold. EPA notes that the FOIA does not require agency FOIA regulations to include an automatic agreement to pay fees provision.

Alternatively, EPA could consider the submission of a FOIA request an automatic agreement to pay fees up to some amount above $250. EPA recognizes that an automatic agreement to pay $250 or some higher amount may be a deterrent to submitting a FOIA request for some members of the public, whether or not they are ultimately charged fees, and that a better practice will be for EPA to notify requesters when EPA's chargeable costs are anticipated to go above the minimum fee threshold and to seek an assurance of payment as described below.

Request for Comment 16: EPA requests comment on whether to remove the automatic agreement to pay fees provision from the FOIA regulations. EPA also requests comment on whether to increase the automatic agreement to pay fees commensurate with the minimum fee threshold.

D. Assurance of Payment Threshold

EPA proposes raising the assurance of payment threshold to an amount calculated by formula, which, as of the publication of this rulemaking is $250. When EPA estimates fees or accumulates actual fees equaling or exceeding the assurance of payment threshold, EPA seeks from a requester an assurance that the requester will pay the fees associated with the FOIA request.

Existing EPA regulations require assurance of payment when the estimated or actual fees are at or above $25. As noted above, EPA also proposes to raise the minimum fee threshold to $250. As such, keeping an assurance of payment threshold of $25 would be inconsistent with that proposal.

EPA proposes tying the assurance of payment threshold to the minimum fee threshold. EPA would directly referencing the minimum fee threshold citation to accomplish this. The intent of this approach would be to ensure that, as explained above, the assurance of payment threshold rises commensurate with the minimum fee threshold and the fee rate. This proposal could reduce confusion for the requester and set clear steps and guideposts for assessing fees.

Request for Comment 17: EPA requests comment on whether to set the assurance of payment threshold to the same amount as the minimum fee threshold.

E. Advanced Payment Threshold

EPA proposes increasing the advanced payment threshold to an amount that would currently calculate to $425 and proposes a formula for calculating the advance payment threshold that will be self-escalating as EPA's costs increase in future years. When EPA estimates fees or accumulates actual fees equaling or exceeding the advanced payment threshold, EPA may seek advanced payment from a requester of the estimated or actual fees associated with the FOIA request.

The FOIA provides that agencies can establish guidelines for when and describes when agencies can require advanced payment of fees from requesters. *See* 5 U.S.C. 552(a)(4)(A)(v)(c). The FOIA specifies two situations in which an agency may require advanced payment: ''the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.'' *Id.* The advanced payment threshold, as described here, references that second criteria, the estimated or actual fee. EPA is not proposing modification to the advanced payment requirements for requesters who have failed to pay fees in a timely fashion.

Similar to the minimum fee threshold, EPA would tie the advanced payment threshold to the fee rate and round that amount to the nearest $5 increment. This means that the advance payment threshold would be calculated based on the fee rate, which is itself based on the GS-scale that is adjusted annually.

EPA chose a twenty-five (25) times multiplier to achieve an initial advanced payment threshold of $450. $450 represents a proportional increase with the fee rate. The fee rate, as explained above, reflects agency personnel costs. The proposed advanced payment threshold thus represents a level at which EPA believes it would begin to see administrative burdens in processing a request that continues to accumulate uncollected fees.

As of the date of signature, the proposed advanced payment threshold would be calculated as follows:

Fee rate listed in proposed 40 CFR 2.107(f)(2)(ii)(B) ($18.00) × 25 = $450

Request for Comment 18: EPA requests comment on whether to increase the minimum fee threshold to an amount calculated by formula, which, as of the publication of this rulemaking is $450, and automatically adjusting with the proposed fee rate.

EPA proposes to reorganize the 40 CFR 2.107. EPA does not intend that this reorganization make any substantive modifications to the regulatory or statutory requirements. The intent of these changes is to consolidate duplicative information and place related provisions in close proximity to improve readability and provide clarity. For example, EPA's proposal would move information regarding the type of fees, the types of requests, what fees the agency may assess for types of requests, and how EPA calculates those fees into two subsections: (1) types of requests and types of fees that may be assessed to those requests and (2) types of fees and how EPA calculates those fees.

Request for Comment 19: EPA requests comment on reorganizing and removing duplicative information from EPA's FOIA regulations.

F. Estimated or Actual Fee Assessment

EPA proposes adding language stating that EPA's reassessment of actual or estimated fees may result in EPA re-seeking assurance of payment or advanced payment. Adding this provision would provide clarity and inform the public regarding EPA's practices. The intent of this proposal is to describe a scenario where EPA has previously informed the requester of the amount of actual or estimated fees and, after further processing, EPA has updated its actual or estimated fee assessment.

EPA notes that providing a requester with the most up-to-date fee calculations leads to transparency for the requester. Advancement through processing steps may result in new or revised circumstances. For example, EPA may perform a search that returns more or less records than initially estimated. If this is the case, EPA would inform the requester of the changed circumstances and latest information and accordingly, if appropriate, seek additional fee guarantees from the requester.

Request for Comment 20: EPA requests comment on whether to state that a reassessment of actual or estimated fees may trigger a need for advanced payment or assurance of payment.

G. Failure To Pay Charged Fees

EPA proposes editing for clarity and revising the provisions applicable to delinquent requesters. Existing EPA regulations discuss failure to pay fees in several separate locations. EPA would consolidate these provisions into 40 CFR 2.107(k). EPA would also add a sentence stating that the agency may share information regarding delinquent requesters with other Federal agencies.

Request for Comment 21: EPA requests comments on editing for clarity and revising the provisions applicable to delinquent requesters.

H. Requests for Waiver and Reduction of Fees

EPA proposes to incorporate a requirement that a requester must submit a statement, certified to be true and correct to the best of the requester's knowledge and belief, explaining in detail the basis for the fee waiver request. Existing EPA regulations require that requests for expedited processing must be made through a statement certified to be true and correct. *See* 5 U.S.C. 552(a)(6)(E)(vi). Aligning these requirements could streamline the practice and ensure the information a requester submits to EPA presents an accurate representation.

Request for Comment 22: EPA requests comments on incorporating a requirement that a requester must submit a statement, certified to be true and correct to the best of the requester's knowledge and believe, explaining in detail the basis for the fee waiver request.

X. Statutory and Executive Orders Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

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

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. Submission of a FOIA request is a voluntary action that any member of the public, including small entities, can elect to do and the rule relates to the procedures for submitting and processing a FOIA request for EPA records.

D. Unfunded Mandates Reform Act (UMRA)

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

E. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on Indian Tribal governments or on the relationship between the national government and the Indian Tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

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

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

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

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

The EPA believes that this type of action does not concern human health or environmental conditions and therefore cannot be evaluated with respect to potentially disproportionate and adverse effects on people of color, low-income populations and/or Indigenous peoples. Although this action does not concern human health or environmental conditions, the EPA identifies and addresses environmental justice concerns by proposing a provision to allow requesters to seek expedited processing of their request if the records sought pertain to an environmental justice-related need and will be used to inform an affected community. See section VII of this preamble.

List of Subjects in 40 CFR Part 2

Environmental protection, Administrative practice and procedure, Confidential business information, Freedom of information, Government employees.

Michael S. Regan,

Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations, part 2, is proposed to be amended as follows.

PART 2—PUBLIC INFORMATION

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 552, 552a, 553; 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717.

■ 2. Subpart A of Part 2 is revised to read as follows:

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

Sec.

2.100 General provisions.
2.101 Where to file requests for records.
2.102 Procedures for making requests.
2.103 Responsibility for responding to requests.
2.104 Responses to requests.
2.105 [Reserved]
2.106 Preservation of records.
2.107 Fees.
2.108 Administrative appeals.
2.109 Other rights and services.

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

§ 2.100 General provisions.

(a) General. This Subpart contains the rules that the Environmental Protection Agency (EPA or Agency) follows in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552. Information routinely provided to the public as part of a regular EPA activity may be provided to the public without following this Subpart.

(b) *Other Regulatory Provisions.* (1) 40 CFR Subpart B contains requirements pertaining to the confidentiality of business information.

(2) 40 CFR part 16 contains requirements pertaining to Privacy Act requests.

(c) *Statutory-based fee schedule programs.* EPA will inform the requester of the steps necessary to obtain records from agencies operating statutory-based fee schedule programs, such as, but not limited to, the Government Printing Office or the National Technical Information Service.

(d) *National FOIA Office.* The Chief FOIA Officer designates the office that performs the duties of the National FOIA Office. The National FOIA Office reports to the Chief FOIA Officer.

(e) *FOIA Public Liaison.* The Chief FOIA Officer designates the FOIA Public Liaisons. The FOIA Public Liaisons report to the Chief FOIA Officer. A FOIA Public Liaison is responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes. A FOIA Public Liaison is an official to whom a requester can raise concerns about the service the requester received from the FOIA Requester Service Center. The public can find more information about the FOIA Public Liaisons at EPA's website.

(f) *Other record availability.* Records required by FOIA to be made available for public inspection and copying are accessible through EPA's FOIA website, *http://www.epa.gov/foia.* EPA also proactively discloses records and information through the Agency's website, *www.epa.gov.*

§ 2.101 Where to file requests for records.

(a) Requesters must submit all requests for records from EPA under the FOIA in writing and by one of the following methods:

(1) EPA's FOIA submission website, linked to at *www.epa.gov/foia;*

(2) An electronic government submission website established pursuant to 5 U.S.C. 552(m), such as *FOIA.gov*;

(3) U.S. Mail sent to the following address: National FOIA Office, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW (2310A), Washington, DC 20460; or

(4) Overnight delivery service to National FOIA Office, U.S. Environmental Protection Agency, 1200 Pennsylvania NW, Room 7309C, Washington, DC 20460.

(b) EPA will not treat a request submitted by any method other than those listed in § 2.101(a) as a FOIA request, and the Agency will not re-route such a request.

(c) The requester or requester organization must include the full name of their point of contact and their mailing address for EPA to process the request. For all requests, requesters should provide an email address and daytime telephone number whenever possible. For requests submitted through EPA's FOIA submission website or as provided by an electronic government submission website established pursuant to 5 U.S.C. 552(m), requesters must include an email address. For requests submitted through U.S. Mail, the requester must mark both the request letter and envelope ''Freedom of Information Act Request.''

(d) EPA provides access to all records that the FOIA requires an agency to make regularly available for public inspection and copying. Each office is responsible for determining which of the records it generates are required to be made publicly available and for providing access by the public to them. The Agency will also maintain and make available for public inspection and copying a current subject matter index of such records and provide a copy or a link to the respective website for Headquarters or the Regions. Each index will be updated regularly, at least quarterly, with respect to newly-included records.

(e) All records created by EPA on or after November 1, 1996, which the FOIA requires an agency to make regularly available for public inspection and copying, will be made available electronically through EPA's website, located at *http://www.epa.gov,* or, upon request, through other electronic means. EPA will also include on its website the current subject matter index of all such records.

§ 2.102 Procedures for making requests.

(a) EPA employees may attempt in good faith to comply with oral requests for inspection or disclosure of EPA records that are publicly available under § 2.201(a) and (b), but such requests are not subject to the FOIA or this Part.

(b)(1) Requesters should reasonably describe the records sought in sufficient detail to enable agency personnel to locate them with a reasonable amount of effort.

(2) If EPA determines that the request does not reasonably describe the requested records, EPA will tell the requester either what additional information the requester needs to provide or why the request is otherwise insufficient. EPA will also give the requester an opportunity to discuss and modify the request to meet the requirements of § 2.102(b)(1). If the requester fails to modify the request to reasonably describe the requested records sought within 20 calendar days, EPA will not process the submission and close the request. If the requester does modify the submission to reasonably describe the requested records, EPA will consider the request received as of the date the modification is received by EPA.

(3) Whenever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter. If known, the requester should include any file designations or descriptions for the records that the requester wants. The more specific the requester is about the records or type of records that the requester wants, the more likely EPA will be able to identify and locate records responsive to the request.

§ 2.103 Responsibility for responding to requests.

(a) *In general.* Upon receipt of a FOIA request under § 2.101(a), the National FOIA Office will assign the request to an appropriate office within the Agency for processing. To determine which records are within the scope of a request, an office will ordinarily include only those records in the Agency's possession as of the date that the Agency begins its search. The Agency will inform the requester if any other date is used.

(b) *Authority to issue final determinations.* The Administrator, Deputy Administrators, Assistant Administrators, Deputy Assistant Administrators, Regional Administrators, Deputy Regional Administrators, General Counsel, Deputy General Counsels, Regional Counsels, Deputy Regional Counsels, and Inspector General or those individuals' delegates, are authorized to make determinations required by 5 U.S.C. 552(a)(6)(A).

(c) *Authority to grant or deny fee waivers or requests for expedited processing.* EPA's Chief FOIA Officer or EPA's Chief FOIA Officer's delegates are authorized to grant or deny requests for fee waivers or requests for expedited processing.

(d) *Consultations and referrals.* When a request to EPA seeks records in EPA's possession that originated with another Federal agency, the EPA office assigned to process the request shall either:

(1) In coordination with the National FOIA Office, consult with the Federal agency where the record or portion thereof originated and then respond to the request, or

(2) With the concurrence of the National FOIA Office, refer any record to the Federal agency where the record or portion thereof originated. The National FOIA Office will notify the requester whenever all or any part of the responsibility for responding to a request has been referred to another agency.

(e) *Law enforcement information.* Whenever a requester makes a request for a record containing information that relates to an investigation of a possible violation of law and the investigation originated with another agency, the assigned office, with the concurrence of the National FOIA Office, will refer the record to that other agency or consult with that other agency prior to making any release determination.

(f) *Assigning tracking numbers.* EPA may assign multiple tracking numbers to a FOIA request that contains unrelated parts that will be processed separately by multiple regions or headquarters program offices.

§ 2.104 Responses to requests.

(a) *Timing of response.* (1) Consistent with 5 U.S.C. 552(a)(6)(A) and upon any request for records made pursuant to this subpart, EPA shall determine within 20 working days after receipt of any such request whether to comply with such request and shall immediately notify the person according to this section.

(2) A requester submitting a request electronically must do so before 5:00 p.m. Eastern Time for the Agency to consider the request as received on that date, and a request submitted electronically at or after 5:00 p.m. Eastern Time will be considered received by the National FOIA Office on the next business day.

(3) The timeframe for response may be extended if unusual circumstances exist per paragraph (f) of this section, including when EPA asserts unusual circumstances and arranges an alternative timeframe with the requester, or exceptional circumstances exist per paragraph (g) of this section. The timeframe for response may be tolled per paragraph (e) of this section.

(b) *Agency failure to respond.* If EPA fails to respond to the request within the statutory time-period, or any authorized extension of time, the requester may seek judicial review to obtain the records without first making an administrative appeal.

(c) *Acknowledgment of request.* On receipt of a request, the National FOIA Office ordinarily will send a written acknowledgment advising the requester of the date the Agency received the request and of the processing number assigned to the request for future reference.

(d) *Multitrack processing.* The Agency uses three or more processing tracks by distinguishing between simple and complex requests based on the amount of work, time needed to process the request, or both, including limits based on the number of pages involved. The Agency will advise the requester of the processing track in which the Agency placed the request and the limits of the different processing tracks. The Agency may place the request in a slower track while providing the requester with the opportunity to limit the scope of the request to qualify for faster processing within the specified limits of a faster track. If the Agency places the request in a slower track, the Agency will contact the requester.

(e) *Tolling the request.* EPA shall not toll the processing time-period except:

(1) The Agency may toll the processing time-period one time while seeking clarification from the requester; or

(2) The Agency may toll the processing time-period as many times as necessary to resolve fee issues.

(f) *Unusual circumstances.* (1) When the Agency cannot meet statutory time limits for processing a request because of ''unusual circumstances,'' as defined in the FOIA, and the time limits are extended on that basis, the Agency will notify the requester in writing, as soon as practicable, of the unusual circumstances and of the date by which processing of the request should be completed.

(2) If the 20 working-day period is extended, EPA will give the requester an opportunity to limit the scope of the request, modify the request, or agree to an alternative time-period for processing, as described by the FOIA.

(3) EPA will provide contact information for its FOIA Public Liaison to assist in the resolution of any disputes between the requester and the Agency, and the Agency will notify the requester of their right to seek dispute resolution services from the Office of Government Information Services within the National Archives and Records Administration.

(g) *Expedited processing.* (1) EPA will take requests or appeals out of order and give expedited treatment whenever EPA determines that such requests or appeals involve a compelling need, an environmental justice-related need, or both.

(i) A compelling need is defined as either:

(A) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(B) An urgency to inform the public about an actual or alleged Federal government activity, if the information is requested by a person primarily engaged in disseminating information to the public.

(ii) For purposes of this provision, an environmental justice-related need means a pressing need to inform a community that is potentially experiencing disproportionately high and adverse human health or environmental effects.

(A) The Agency will consider whether the requested records relate to actual or alleged Federal government activity, including environmental information or data.

(B) The Agency will consider the requester's ability and intention to effectively convey the information to members of the affected community, taking into account, for example, the requester's relationship to the community or its members, expertise in the subject matter, or other relevant knowledge and experiences.

(C) A pressing need to inform an affected community does not include requests where the disclosure is primarily in the commercial interest of the requester.

(D) If the Agency grants a request for expedited processing under paragraph (g)(1)(ii) of this section, the Agency will also waive fees established under § 2.107(f) for the request.

(2) Requesters must make a written request for expedited processing at the time of the initial request for records or at the time of appeal.

(3) If the requester seeks expedited processing, the requester must submit a statement, certified to be true and correct to the best of the requester's knowledge and belief, explaining in detail the basis for the request.

(i) For example, if the requester fits within the category described in paragraph (g)(1)(i)(B) of this section and is not a full-time member of the news media, the requester must establish that they are a person whose primary professional activity or occupation is information dissemination, although it need not be the requester's sole occupation.

(ii) If the requester fits within the category described in paragraph (g)(1)(i)(B) of this section, the requester must also establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally.

(4) Within 10 calendar days from the date of the request for expedited processing, the Chief FOIA Officer, or the Chief FOIA Officer's delegates, will decide whether to grant the request and will notify the requester of the decision. If the Agency grants the request for expedited processing, the Agency will give the request priority and will process the request as soon as practicable. If the Agency denies the request for expedited processing, the Agency will act on any appeal of that decision expeditiously.

(h) *Grants of requests.* Once the Agency determines to grant a request in whole or in part, it will release the records or parts of records to the requester and notify the requester of any

applicable fee charged under § 2.107. The office will annotate records released in part, whenever technically feasible, with the applicable FOIA exemption or exemptions at that part of the record from which the exempt information was deleted.

(i) *Adverse determinations of requests.* When the Agency makes an adverse determination, the Agency will notify the requester of that determination in writing. Adverse determinations include:

(1) A decision that the requested record is exempt from disclosure, in whole or in part;

(2) A decision that the information requested is not a record subject to the FOIA;

(3) A decision that the requested record does not exist or cannot be located;

(4) A decision that the requested record is not readily reproducible in the form or format sought by the requester;

(5) A determination on any disputed fee matter, including a denial of a request for a fee waiver; or

(6) A denial of a request for expedited processing.

(j) *Content of final determination letter.* The appropriate official will issue the final determination letter in accordance with § 2.103(b) and will include:

(1) The name and title or position of the person responsible for the determination;

(2) A brief statement of the reason or reasons for the denial, including an identification of records being withheld (either individually or, if a large number of similar records are being denied, described by category) and any FOIA exemption applied by the office in denying the request;

(3) An estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through annotated deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption;

(4) A statement that an adverse determination may be appealed under § 2.108 and description of the requirements for submitting an administrative appeal; and

(5) A statement that the requester has the right to seek dispute resolution services from an EPA FOIA Public Liaison or the Office of Government Information Service.

§ 2.105 [Reserved]

§ 2.106 Preservation of records.

The Agency will preserve all correspondence pertaining to the FOIA requests that it receives, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 4.2. Records shall not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

§ 2.107 Fees.

(a) *In general.* The Agency will charge for processing requests under the FOIA in accordance with this section, except where fees are limited under paragraph (g) of this section or where a waiver or reduction of fees is granted under paragraph (n) of this section.

(b) *How to pay fees.* Requesters must pay fees electronically at *https://www.pay.gov/* by check or money order made payable to the Treasury of the United States.

(c) *Contractor rates.* When any search, review, or duplication task is performed by a contractor, EPA will charge for staff time at the contractor's actual pay rate, but not exceeding the rates set under paragraph (f)(2)(ii) of this section.

(d) *Rounding staff time.* Billable staff time is calculated by rounding to the nearest quarter-hour.

(e) *Types of requests for fee purposes.* For purposes of this section, the five types of request categories are defined in paragraphs (e)(1) through (5) of this section. These request categories will be charged for the types of fees as noted, subject to the restrictions in paragraph (g) of this section and unless a fee waiver has been granted under paragraph (n) of this section. Paragraph (f) of this section defines and explains how the Agency calculates each type of fee.

(1) *Commercial-use Request.* (i) Commercial use request means a request from or on behalf of a person who seeks information for a use or purpose that furthers the requester's commercial, trade, or profit interests, which can include furthering those interests through litigation. The Agency will determine, whenever reasonably possible, the use to which a requester will put the requested records. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because the Agency has reasonable cause to doubt a requester's stated use, the Agency will provide the requester a reasonable opportunity to submit further clarification.

(ii) For a commercial-use request, the Agency will charge the requester for search, review, and duplication.

(2) *Educational institution request.* (i) Educational institution means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by, and is made under the auspices of, a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research.

(ii) For an educational institution request, the Agency will charge the requester for duplication, except that the Agency will furnish the first 100 pages of duplication at no charge.

(3) *Noncommercial scientific institution request.* (i) Noncommercial scientific institution means an institution not operated on a ''commercial'' basis, as defined in paragraph (e)(1) of this section, and that is operated solely for conducting scientific research that is not intended to promote any particular product or industry. To be in this category, a requester must show that a qualifying institution authorizes the request, that the requester makes the request under the auspices of the qualifying institution, and that the requester does not seek the records for a commercial use but to further scientific research.

(ii) For a noncommercial scientific institution request, the Agency will charge the requester for duplication, except that the Agency will furnish the first 100 pages of duplication at no charge.

(4) *Representative of the news media requests.* (i) Representative of the news media has the meaning provided at 5 U.S.C. 552(a)(4)(A)(ii).

(ii) For representative of the news media requests, the Agency will charge a requester for duplication, except that the Agency will furnish the first 100 pages of duplication at no charge.

(5) *Other requests.* (i) Other requesters are requesters that are not commercial-use requesters, educational institutions, noncommercial scientific institutions, or representatives of the news media.

(ii) The Agency will charge other requesters for search and duplication, except that the Agency will furnish without charge the first two hours of search time and the first 100 pages of duplication.

(f) *Types of fees.* Paragraphs (f)(1) through (4) of this section are definitions of the types of fees and explanations of how the Agency calculates each type of fee.

(1) *Direct costs.* Direct costs means those expenses that the Agency actually incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work and the cost of operating duplication equipment. Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(2) *Search.* (i) Search means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. Offices will ensure that searches are done in the most efficient and least expensive manner reasonably possible. For example, offices will not search line-by-line where duplicating an entire document would be quicker and less expensive. The Agency will charge for time spent searching even if no responsive records are found or if the records are located but are determined to be exempt from disclosure.

(ii) Search fees will equal the direct costs of search. Personnel will bill their time at the following rates using the current Office of Personnel Management General Schedule (GS) pay table for Washington-Baltimore-Arlington, DC–MD–VA–WV–PA. The current calculations of these rates may be found at *www.epa.gov/foia.*

(A) GS–12 level or below (or equivalent pay scale): The average of GS–9 to GS–12 (Step 5), plus 16 percent, rounded to the nearest $1 increment per quarter hour.

(B) GS–13 level or above (or equivalent pay scale): The average of GS–13 to GS–15 (Step 5), plus 16 percent, rounded to the nearest $1 increment per quarter hour.

(iii) For requests that require the retrieval of records stored by an agency at a Federal Records Center operated by NARA, additional costs will be charged in accordance with the Transactional Billing Rate Schedule established by NARA.

(3) *Review.* (i) Review means the examination of a record located in response to a request to determine whether any portion of it is exempt from disclosure. It also includes processing any record for disclosure (for example, doing all that is necessary to redact it and prepare it for disclosure). Review costs are recoverable even if a record ultimately is not disclosed. Review time includes time spent considering any formal objection to disclosure made by a business submitter requesting confidential treatment but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(ii) The Agency will charge review fees only for the initial record review (that is, the review done when an office is deciding whether an exemption applies to a particular record or portion of a record at the initial request level). The Agency will not charge for review at the administrative appeal level for an exemption already applied. However, the Agency may again review records or portions of records withheld under an exemption that the Agency subsequently determines not to apply to determine whether any other exemption not previously considered applies; the Agency will charge costs of that review when a change of circumstances makes it necessary. The Agency will charge review fees at the same rates as those charged for a search under paragraph (f)(2)(ii) of this section.

(4) *Duplication.* (i) Duplication means the making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, microform, audiovisual materials, or electronic records (for example, magnetic tape, disk, or compact disk), among others. The Agency will honor a requester's specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format.

(ii) For either a photocopy or a computer-generated printout of a record (no more than one copy of which need be supplied), the fee will be fifteen (15) cents per page. For electronic forms of duplication, other than a computer-generated printout, offices will charge the direct costs of that duplication. Such direct costs will include the costs of the requested electronic medium on which the copy is to be made and the actual operator time and computer resource usage required to produce the copy, to the extent they can be determined. The Agency will charge operator time at the same rates as those charged for search under paragraph (f)(2)(ii) of this section.

(g) *Limitations on charging fees.*

(1) The Agency will charge no fee when a total fee calculated under paragraph (c) of this section is less than fourteen times the rate in paragraph (f)(2)(ii)(B) of this section rounded to the nearest $5.00 increment for any request. The current calculation of this threshold may be found at *www.epa.gov/foia.*

(2) The restrictions in paragraphs (e)(1)(ii), (2)(ii), (3)(ii), (4)(ii), and (5)(ii) and minimum fee threshold in (g)(1) of this section work together. This means that for requesters other than those seeking records for a commercial use, the Agency will charge no fee unless the cost of search more than two hours plus the cost of duplication in excess of 100 pages totals more than fourteen times the rate in paragraph 2.107(f)(2)(ii)(B) of this section rounded to the nearest $5.00 increment. The current calculation of this threshold may be found at *www.epa.gov/foia.*

(3) If EPA fails to comply with the FOIA's time limits for responding to a request, EPA will not charge search fees, or, in the instance of requesters described in paragraphs (e)(1) through (5) of this section, duplication fees, except as follows:

(i) If EPA determined that unusual circumstances as defined by the FOIA apply and the Agency provided timely written notice to the requester in accordance with the FOIA, a failure to comply with the time limit shall be excused for an additional 10 working days;

(ii) If EPA determined that unusual circumstances as defined by the FOIA apply and more than 5,000 pages are necessary to respond to the request, EPA may charge search fees, or, in the case of requesters described in paragraphs (e)(1) through (5) of this section, may charge duplication fees, if the following steps are taken: EPA must have provided timely written notice of unusual circumstances to the requester in accordance with the FOIA and the EPA must have discussed with the requester by written mail, email, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii), which includes notification to the requester of the availability of the FOIA Public Liaison and the right to seek dispute resolution services from the Office of Government Information Services. If this exception is satisfied, EPA may charge all applicable fees incurred in the processing of the request; or

(iii) If a court determines that exceptional circumstances exist, as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(h) *Assurance of payment and advanced payment of fees.* (1) If EPA determines that the actual or estimated fees exceed the amount in paragraph

(g)(1) of this section, the Agency will notify the requester of the actual or estimated amount, toll the processing clock, and will do no further work on the request until the requester agrees in writing to pay the anticipated total fee.

(2) If EPA determines that the actual or estimated fees exceed twenty-five times the amount in paragraph (f)(2)(ii)(B) of this section, the Agency will notify the requester of the actual or estimated amount, and may toll the processing clock and do no further work on the request until the requester pays the estimated or actual fee. The current calculation of this amount may be found at *www.epa.gov/foia.*

(3) After providing the requester with estimated fee amounts, EPA will provide the requester with an opportunity to discuss with the Agency how to modify the request to meet the requester's needs at a lower cost.

(4) EPA calculates the estimated or actual fee cumulatively for multi-component requests. If only a part of the fee can be estimated readily, the Agency will advise the requester that the estimated fee may be only a portion of the total fee.

(5) If, after the requester provided an assurance of payment or paid an initially estimated or actual amount of fees, the Agency increases the estimated or actual amount of fees, the Agency will notify the requester, stop further processing of the request, and toll any deadline for responding to the request. Once the requester provides assurance of payment or pays the fees, the time to respond to the request will resume from where it was at the date of the tolling notification.

(i) *Charges for other services.* Although not required to provide special services, if EPA chooses to do so as a matter of administrative discretion, the direct costs of providing the service will be charged to the requester. Examples of such services include certifying that records are true copies, sending records by other than EPA's electronic FOIA management system or U.S. Mail, or providing multiple copies of the same document.

(j) *Charging interest.* EPA may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. The Agency will assess interest charges at the rate provided in 31 U.S.C. 3717 and will accrue from the date of the billing until the Agency receives payment. EPA will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset. The Agency will assess no penalty against FOIA requesters for exercising their statutory right to ask the Agency to waive or reduce a fee or to dispute a billing. If a fee is in dispute, the Agency will suspend penalties upon notification.

(k) *Delinquent requesters.* (1) If a requester fails to pay all fees charged to the requester under the FOIA by EPA or any other Federal agency within 60 calendar days of the date the fees were billed, the Agency will treat the requester as delinquent. The Agency may share information regarding delinquent requesters with other Federal agencies.

(2) Before EPA continues processing a pending FOIA request or begins processing any new FOIA requests from a delinquent requester, the delinquent requester must pay the full amount due, plus any applicable interest, on that prior request and make an advance payment of the full amount of any anticipated fee.

(3) When the Agency requires payment under paragraph (h)(2) of this section, the request will not be considered received until the required payment is made. If the requester does not pay the outstanding balance and the advance payment within 30 calendar days after the date of EPA's fee determination, the request will be closed.

(l) *Aggregating requests.* If a requester or a group of requesters acting in concert submit two or more requests that involve related matters and paragraphs (l)(1), (l)(2), or both of this section, apply then the Agency may aggregate those requests and charge fees accordingly, Multiple FOIA requests involving unrelated matters shall not be aggregated. An aggregated group of FOIA requests will be treated as a single FOIA request under this subpart, including evaluation of whether unusual circumstances exist.

(1) The Agency reasonably believes that if the requests constituted a single request, such a request would result in unusual circumstances pursuant to § 2.104(f); or

(2) The Agency reasonably believes that the requester or requesters acting together are attempting to divide a request into a series of requests for the purpose of avoiding fees. The Agency may presume that such requests have been submitted to avoid fees if submitted within a 30-day period. When requests are submitted by a period greater than 30 days, the Agency will aggregate them only if there exists a solid basis for determining that aggregation is warranted under all the circumstances involved.

(m) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any other statute that specifically requires an agency to set and collect fees for particular types of records. When records responsive to requests are maintained for distribution by agencies operating such statutorily based fee schedule programs, EPA will inform requesters of the steps for obtaining records from those sources so that they may do so most economically.

(n) *Waiver or reduction of fees.* (1) A request for a waiver or reduction of FOIA fees must be made at the time of the initial submission of a FOIA request. An untimely request for a waiver or reduction of fees will be denied. If the requester seeks a waiver or reduction of fees, the requester must submit a statement, certified to be true and correct to the best of the requester's knowledge and belief, explaining in detail the basis for making the request for such a fee waiver or reduction.

(2) Requests for the waiver or reduction of fees must address the factors listed in paragraphs (n)(4) through (6) of this section, as far as they apply to each request. EPA components will exercise their discretion to consider the cost-effectiveness of their investment of administrative resources in deciding whether to grant waivers or reductions of fees and will consult the appropriate EPA components as needed. Requesters must submit requests for the waiver or reduction of fees along with the request.

(3) When only some of the requested records satisfy the requirements for a waiver of fees, the Agency will grant a waiver for only those records.

(4) Records responsive to a request will be furnished without charge or at a charge reduced below that established under paragraph (c) of this section when the Agency determines, based on all available information, that disclosure of the requested information is in the public interest because it is:

(i) Likely to contribute significantly to public understanding of the operations or activities of the government, and

(ii) Is not primarily in the commercial interest of the requester.

(5) To determine whether the request meets the first fee waiver requirement, the Agency will consider the following factors:

(i) *The subject of the request.* Whether the subject of the requested records concerns ''the operations or activities of the government.'' The subject of the requested records must concern identifiable operations or activities of the Federal government, with a

connection that is direct and clear, not remote.

(ii) *The informative value of the information to be disclosed.* Whether the disclosure is ''likely to contribute'' to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be ''likely to contribute'' to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to contribute to such understanding when nothing new would be added to the public's understanding.

(iii) The contribution to an understanding of the subject by the public is likely to result from the disclosure. Whether disclosure of the requested information will contribute to ''public understanding.'' The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. The Agency will consider a requester's expertise in the subject area and ability and intention to effectively convey information to the public. The Agency presumes that a representative of the news media will satisfy this consideration.

(iv) *The significance of the contribution to public understanding.* Whether the disclosure is likely to contribute ''significantly'' to public understanding of government operations or activities. The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent. The Agency will not make value judgments about whether information that would contribute significantly to public understanding of the operations or activities of the government is ''important'' enough to be made public.

(6) To determine whether the request meets the second fee waiver requirement, the Agency will consider the following factors:

(i) *The existence and magnitude of a commercial interest.* Whether the requester has a commercial interest that would be furthered by the requested disclosure. The Agency will consider any commercial interest of the requester (with reference to the definition of ''commercial use request'' in paragraph (e)(1) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. The Agency will give the requester an opportunity in the administrative process to provide explanatory information regarding this consideration.

(ii) *The primary interest in disclosure.* Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is ''primarily in the commercial interest of the requester.'' A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. The Agency ordinarily will presume that when a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. The Agency will not presume that disclosure to data brokers or others who merely compile and market government information for direct economic return is to primarily serve the public interest.

§ 2.108 Administrative appeals.

(a) *Appeals of adverse determinations.* To appeal an adverse determination, a requester must submit an appeal in writing within 90-calendar days from the date of the letter communicating the Agency's adverse determination, and by one of the following methods:

(1) EPA's FOIA submission website, linked to at *www.epa.gov/foia;*

(2) U.S. Mail sent to the following address: National FOIA Office, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW (2310A), Washington, DC 20460; or

(3) Overnight delivery service to National FOIA Office, U.S. Environmental Protection Agency, 1200 Pennsylvania NW, Room 7309C, Washington, DC 20460.

(b) Requesters submitting appeals electronically must do so before 5:00 p.m. Eastern Time for the Agency to consider the appeal as received on that date, and appeals submitted electronically at or after 5:00 p.m. Eastern Time will be considered received by the National FOIA Office on the next business day.

(c) The appeal letter may include as much or as little related information as the requester wishes. The appeal letter must clearly identify the office's determination that is being appealed and the assigned request tracking number. For quickest handling, the requester must mark their appeal letter and its envelope with ''Freedom of Information Act Appeal.''

(d) *Authority to make decision on appeal.* Unless the Administrator directs otherwise, the General Counsel or the General Counsel's delegate will act on behalf of the Administrator on all appeals under this section, except that:

(1) The Counsel to the Inspector General will act on any appeal where the Inspector General or the Inspector General's delegate has made the final adverse determination; however, if the Counsel to the Inspector General has signed the final adverse determination, the General Counsel or the General Counsel's delegate will act on the appeal;

(2) An adverse determination by the Administrator on an initial request will serve as the final action of the Agency; and

(3) An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(e) *Timing of decision on appeal.* EPA will make the decision on the appeal in writing, normally within 20 working days of its receipt by the National FOIA Office.

(1) A decision affirming an adverse determination in whole or in part will contain a statement of the reason or reasons for the decision, including any FOIA exemption or exemptions applied, inform the requester of dispute resolution services offered by the Office of Government Information Service of the National Archives and Records Administration, and inform the requester of the FOIA provisions for judicial review of the decision.

(2) If the Agency reverses or modifies the adverse determination on appeal, the Agency will attach the requested information that the Agency determined on appeal to be releasable, or the Agency will return the request to the appropriate office so that the office may reprocess the request in accordance with the appeal decision.

(f) *When appeal is required.* If the requester wishes to seek judicial review of any adverse determination, the requester must first appeal that adverse determination under this section, except when EPA has not responded to the request within the applicable time-period. In such cases, the requester may seek judicial review without making an administrative appeal.

§ 2.109 Other rights and services.

Nothing in this Subpart shall be construed to entitle any person, as a right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

[FR Doc. 2022–24678 Filed 11–16–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2020–0053; FRL–9410–07–OCSPP]

Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities October 2022

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petition and request for comment.

SUMMARY: This document announces the Agency's receipt of an initial filing of a pesticide petition requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before December 19, 2022.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2020–0053, 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: Dan Rosenblatt, Registration Division (RD) (7505T), main telephone number: (202) 566–2875, email address: *RDFRNotices@epa.gov*. The mailing address is Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets*.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the request before responding to the petitioner. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petition described in this document contains data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this document, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available at *https://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

A. Notice of Filing—Amended Tolerance Exemptions for Inerts (Except PIPS)

PP IN–11655. EPA–HQ–OPP–2022–0850. Corteva Agriscience, 9330 Zionsville Road, Indianapolis, IN 46268, requests to amend the tolerance descriptor under 40 CFR 180.560 for residues of cloquintocet-mexyl acetic acid, 5-chloro-8-quniolinyl oxy-, 1-methylhexyl ester (CAS Reg. No. 99607–70–2) and its acid metabolite 5-chloro-8-quinlinoxyacetic acid under 40 CFR 180.560, to include the use of these chemicals in combination with the active ingredient, tolpyralate. This action will not change the magnitude of the residues already established for this safener, but instead would now permit its use in combination with the active ingredient tolpyralate. Adequate enforcement methodologies have already been published in the **Federal Register** on June 29, 2011 (76 FR 38035) (FRL–8877–2). The two enforcement methods available are: High performance liquid chromatography with ultraviolet detection (HPLC–UV) method REM 138.01 for the determination of cloquintocet-mexyl parent and the HPLC–UV method REM 138.10, which allows for determination of its acid metabolite. *Contact:* RD

B. New Tolerance Exemptions for Inerts (Except PIPS)

1. *PP IN–11699.* EPA–HQ–OPP–2022–0844. Ingredion Incorporated, 5 Westbrook Corporate Center, Westchester, IL 60154, requests to

establish an exemption from the requirement of a tolerance for residues of dextrin, hydrogen 1-octenylbutanedioate (CAS Reg. No. 68070–94–0), when used as an inert ingredient in pesticide formulations under 40 CFR 180.920 for use as a seed treatment only. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD

2. *PP IN–11696.* EPA–HQ–OPP–2022–0848. Rosen's Inc., 700 SW 291 Hwy, Suite 204, Liberty, MO 64068, requests to establish an exemption from the requirement of a tolerance for residues of the inert ingredient potassium polyaspartate (CAS Reg. No. 64723–18–8) when used as a complexing agent at no more than 10% in pesticide formulations under 40 CFR 180.920. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD

3. *PP IN–11715.* EPA–HQ–OPP–2022–0841. Ingredion Incorporated, 5 Westbrook Corporate Center, Westchester, IL 60154, requests to establish an exemption from the requirement of a tolerance for residues of amylopectin, 2-hydroxypropyl ether, acid-hydrolyzed (CAS Reg. No. 2756130–86–4), when used as an inert ingredient in pesticide formulations under 40 CFR 180.920 for use as a seed treatment only. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD

C. New Tolerances for Non-Inerts

1. *PP 1E8951.* EPA–HQ–OPP–2021–0658. Interregional Research Project Number 4, IR–4, IR–4 Project Headquarters, North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606, requests to establish a tolerance in 40 CFR 180.658 for residues of penthiopyrad *N*-2-1,3-dimethylbutyl-3-thienyl-1-methyl-3-trifluoromethyl-1H-pyrazole-4-carboxamide including its metabolites and degradates, in or on banana at 2 parts per million (ppm). A high-performance liquid chromatography method with tandem mass spectrometry (LC–MS/MS) detection, is used to measure and evaluate the chemical. *Contact:* RD.

2. *PP 0F8890.* EPA–HQ–OPP–2021–0529. Syngenta Crop Protection, LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27410, requests to establish a tolerance in 40 CFR part 180 for inadvertent residues of the fluazifop-p-butyl metabolite 5-Trifluoromethyl-2-Pyridone TFP in or on corn forage and grain at 0.01 ppm and corn stover at 0.015 ppm. The methods GRM044.09A, MRMT Multi Residue Method Test using QuEChERS, ILV, and Radiovalidation of GRM044.09A are used to measure and evaluate the chemical fluazifop-p-butyl metabolite TFP. *Contact:* RD.

3. *PP 1F8979.* EPA–HQ–OPP–2022–0452. Gowan Company, LLC., 370 South Main Street, Yuma, AZ 85364, requests to establish a tolerance in 40 CFR part 180 for residues of the miticide acynonapyr, 3-*endo*-2-propoxy-4-trifluoromethyl phenoxy-9-5-trifluoromethyl-2-pyridyloxy-9-azabicyclo 3.3.1 nonane and its metabolites AP, 3-*endo*-2-propoxy-4-trifluoromethyl phenoxy-9-azabicyclo 3.3.1 nonane, and AY, 5-trifluoromethyl-2-pyridinol in or on almond at 0.03 ppm; almond, hulls at 4.0 ppm; crop group 10-10; citrus fruits at 0.3 ppm; citrus, oil at 15.0 ppm; orange, dried pulp at 0.7 ppm; grape at 0.6 ppm; raisins at 3.0 ppm; hops at 50.0 ppm; crop group 11-10, pome fruits at 0.2 ppm; and apple, wet pomace at 0.4 ppm. LC–MS/MS detection is used to measure and evaluate the chemical acynonapyr and its metabolites AP, AP-2, AY, AY-3, and AY-1-Glc. *Contact:* RD.

Authority: 21 U.S.C. 346a.

Dated: November 8, 2022.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2022–25071 Filed 11–16–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 20–299; FCC 22–77; FR ID 111067]

Sponsorship Identification Requirements for Foreign Government-Provided Programming

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on a certification requirement proposal for broadcasters, which would strengthen and fortify the foreign sponsorship identification rules in light of the D.C. Circuit's recent decision that vacated the verification component of the Commission's rules.

DATES: Comments due on or before December 19, 2022; reply comments due on or before January 3, 2023.

ADDRESSES: You may submit comments, identified by MB Docket No. 20–299, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020). *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* (mail to: *fcc504@fcc.gov*) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

FOR FURTHER INFORMATION CONTACT: Radhika Karmarkar, Media Bureau, Industry Analysis Division, *Radhika.Karmarkar@fcc.gov,* (202) 418–1523.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Notice of Proposed Rulemaking (*Second NPRM*), FCC 22–77, in MB Docket No. 20–299, adopted on October 4, 2022, and released on October 6, 2022. The complete text of this document is available electronically via the search function on the FCC's website at *https://*

www.fcc.gov/document/fcc-proposes-modifications-foreign-sponsorship-id-requirements.

Synopsis

1. With this Second Notice of Proposed Rulemaking (*Second NPRM*), we take the next step to ensure that we have strong foreign sponsorship identification rules. On April 22, 2021, the Commission released a Report and Order (*Order*) in the above captioned proceeding adopting a requirement that radio and television stations broadcast clear disclosures for programming that is provided by a foreign governmental entity and setting forth the procedures for exercising reasonable diligence to determine whether such a disclosure is needed. The *Order* defined the term ''foreign governmental entity'' to include those entities or individuals that would trigger a disclosure pursuant to the foreign sponsorship identification rules. This Second Notice of Proposed Rulemaking accords to the term ''foreign governmental entity'' the definition established in the *Order.* We adopted the requirements in response to reports of undisclosed foreign government programming being transmitted by U.S. broadcast stations. The principle that the public has a right to know the identity of those soliciting their support is a fundamental and long-standing tenet of broadcast regulation. We promulgated the foreign sponsorship identification rules against the backdrop of regulation that has evolved over ninety years to ensure that the public is informed when airtime has been purchased on broadcast stations in an effort to persuade audiences, enabling the public to distinguish between paid content and material chosen by the broadcaster itself.

2. On August 13, 2021, the National Association of Broadcasters (NAB), the Multicultural Media, Telecom and internet Council (MMTC), and the National Association of Black Owned Broadcasters (NABOB) (collectively, Petitioners) filed a Petition for Review of the *Order* with the U.S. Court of Appeals for the District of Columbia Circuit challenging one step in our reasonable diligence requirement, established to ensure that broadcasters independently confirm the lessee's status when determining whether programming is provided by a foreign governmental entity. The Petitioners alleged that the Commission lacked statutory authority to adopt such a requirement and also contended that such a requirement violated the First Amendment and the Administrative Procedure Act.

3. On July 12, 2022, the D.C. Circuit ruled on the Petition for Review, leaving untouched the bulk of the foreign sponsorship identification requirements and vacating only the provision that broadcasters check two federal sources to verify whether a lessee is a ''foreign governmental entity,'' as defined in the rules.

4. This *Second NPRM* seeks to fortify the rules in the wake of the court's decision. Specifically, pursuant to section 317(e), which directs the Commission to prescribe rules and regulations to carry out the provisions of section 317, we propose that, in order to comply with the ''reasonable diligence'' requirement regarding foreign sponsorship identification, a licensee must certify that it has informed its lessee of the foreign sponsorship identification rules and obtained, or sought to obtain, a certification from its lessee stating whether the lessee is or is not a ''foreign governmental entity.'' In turn, we propose that the lessee submit a certification in response to a licensee's request. These new certification requirements would subsume the duty of licensees under § 73.1212(j)(3)(v) of our rules to memorialize and retain their reasonable diligence inquiries. As this *Second NPRM* proposes to establish standardized certification language for licensees and lessees, the time and cost associated with compliance should be minimal. This *Second NPRM* also seeks comment on an alternative approach to the certification requirement. This alternative approach was raised as a hypothetical by the D.C. Circuit during the oral argument in *NAB* v. *FCC.* Under this approach, in the event that a lessee states it is not a ''foreign governmental entity'' a licensee must obtain from the lessee appropriate documentation (*e.g.,* a screen shot(s)) showing that the lessee's name does not appear on either of the two federal government websites which we identified in the *Order* as reference points for determining whether a given individual/entity is a ''foreign governmental entity.'' Finally, this *Second NPRM* provides interested parties an additional opportunity to comment on a pending Petition for Clarification ''regarding the applicability of the foreign sponsorship identification rules to advertisements sold by local broadcast stations.''

Background

5. The *Order* amended the Commission's long-standing sponsorship identification rules by establishing new foreign sponsorship identification rules designed to identify foreign government-provided programming airing on broadcast radio and television stations. In this *Second NPRM,* our use of the term ''foreign government-provided programming'' refers to all programming that is provided by an entity or individual that falls into one of the four categories listed in § 73.1212(j)(2) of our rules. The foreign sponsorship identification rules seek to increase transparency and ensure that audiences of broadcast stations are aware when a foreign government, or its representatives, are seeking to persuade the American public. The rules require a specific disclosure at the time of broadcast if material aired pursuant to the lease of time on a licensee's station has been sponsored, paid for, or furnished by a foreign governmental entity. Consistent with section 317(a)(2) of the Communications Act of 1934, as amended (Act) and the pre-existing sponsorship identification rules, the foreign sponsorship identification rules also require disclosure of political programming or programming involving the discussion of a controversial issue if such programming is provided by a foreign governmental entity for free, or for nominal compensation, as an inducement to air. Hence, the phrase ''provided by'' when used in relation to ''foreign government programming'' covers both the broadcast of programming in exchange for consideration *and* the furnishing of any ''political program or any program involving the discussion of a controversial issue'' for free as an inducement to broadcast the programming.

6. The requirements apply to leased programming because the record in the underlying proceeding identified leased airtime as the primary means by which foreign governmental entities are accessing U.S. airwaves to persuade the American public without adequately disclosing the true sponsor. The foreign sponsorship identification rules established a definition of ''foreign governmental entity'' based on existing definitions, statutes, or determinations by the U.S. government. Pursuant to the foreign sponsorship identification rules, to meet the ''reasonable diligence'' standard of section 317(c) of the Act, with regard to foreign government-provided programming, a licensee must at a minimum:

(1) Inform the lessee at the time of agreement and at renewal of the foreign sponsorship disclosure requirement;

(2) Inquire of the lessee at the time of agreement and at renewal whether it falls into any of the categories that qualify it as a ''foreign governmental entity;''

(3) Inquire of the lessee at the time of agreement and at renewal whether it knows if any individual/entity further back in the chain of producing/distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a foreign governmental entity and has provided some type of inducement to air the programming;

(4) Independently confirm the lessee's status, at the time of agreement and at renewal by consulting the Department of Justice's FARA website and the Commission's semi-annual U.S.-based foreign media outlets reports for the lessee's name. This need not be done if the lessee has already disclosed that it falls into one of the covered categories and/or that there is a separate need for a disclosure because an individual/entity further back in the chain of producing/transmitting the programming falls into one of the covered categories and has provided some form of service, consideration, or, in the case of political programming the programming itself, as an inducement to broadcast the programming;

(5) Memorialize the above-listed inquiries and investigations and retain such memorialization in its records for the remainder of the then current license term or one year, whichever is longer.

7. The requirements listed above apply to licensees in the case of leased programming when ''money, service or other valuable consideration'' is provided pursuant to section 317(a)(1) of the Act. Likewise, the requirements apply to licensees, pursuant to section 317(a)(2), in the case of political programming or programming involving a controversial issue even when the programming itself has been provided as an inducement to air such programming.

8. While the ''reasonable diligence'' requirements of section 317(c) apply to licensees, as noted in the *Order,* lessees have an obligation, pursuant to section 507 of the Act, to communicate information to the licensee relevant to determining whether a sponsorship identification disclosure is required. Pursuant to section 507, the lessee's obligation to communicate information to the licensee is not limited to just programming provided in exchange for consideration. As stated in the *Order,* the provision of any ''political program or any program involving the discussion of a controversial issue'' by a foreign governmental entity to a party in the distribution chain for no cost and as an inducement to air that material on a broadcast station is a ''service of other valuable consideration'' under the terms of section 507. Thus, under this section, if an individual/entity involved in the production, preparation, or supply of programming that is intended to be aired on a station has received any ''political program or any program involving the discussion of a controversial issue'' from a foreign governmental entity for free, or at nominal charge, as an inducement for its broadcast, this individual/entity must disclose this fact to its employer, the person for whom the program is being produced, or the licensee of the station. In addition, this programming will require an appropriate identification.

9. Further, the *Order* established requirements concerning the format and frequency of the disclosure that must accompany foreign government-provided programming. The foreign sponsorship identification rules apply to all new leases and renewals of existing leases as of March 15, 2022. Lease agreements that were in place prior to March 15, 2022, were given an additional six months to come into compliance—*i.e.,* by September 15, 2022. On June 17, 2021, a summary of the *Order* was published in the **Federal Register**, and thirty days after publication, the rules adopted became effective, although compliance with the information-collection and recordkeeping portions was not required until after review by the Office of Management and Budget (OMB). On March 7, 2022, OMB approved the information collection requirements associated with the foreign sponsorship identification and public inspection filing rules. On March 15, 2022, the Media Bureau announced that the notice of the compliance date for the rule changes was published in the **Federal Register** on March 15, 2022, and thus the compliance date for the Commission's foreign sponsorship identification rules is March 15, 2022. Sponsorship Identification Requirements for Foreign Government-Provided Programming, 87 FR 14404 (Mar. 15, 2022) (to be codified at 47 CFR part 73).

10. As stated above, following the Petitioners' challenge to the *Order,* the D.C. Circuit vacated the fourth reasonable diligence requirement itemized above, leaving all other elements of the rules in place. The court held that the Commission lacked authority under section 317(c) of the Act to require licensees to review two federal government websites to ascertain a lessee's status. The D.C. Circuit stated that the ''reasonable diligence'' requirement contained in section 317(c) of the Act imposes on licensees only ''a duty of inquiry, not a duty of investigation.'' The court looked to prior precedent in asserting that ''Section 317(c) 'is satisfied by appropriate inquiries made by the station to the party that pays it for the broadcast.' ''

11. Before the Commission's *Order* was appealed, on July 19, 2021, the ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates (collectively, ''the Affiliates'') filed a Petition for Clarification. The Affiliates asked us to clarify what constitutes ''traditional, short-form advertising,'' which we exempted from the foreign sponsorship identification requirements adopted in the *Order.* In their petition, the Affiliates recommended that the foreign sponsorship identification rules not apply when a licensee ''sells time to advertisers in the normal course of business, no matter the length of the advertisement.'' The petition resulted in just two responses from commenters, each requesting the Commission to clarify that all forms of advertising for commercial goods and services are not subject to the foreign sponsorship rules. The petition remains pending.

Discussion

A. Certification Requirement for the Foreign Sponsorship Identification Rules

12. With this *Second NPRM,* we seek to strengthen the process supporting the foreign sponsorship identification rules in the wake of the D.C. Circuit's vacatur of the requirement that licensees search two government websites to verify a lessee's assertion that it is not a foreign governmental entity. As stated above, the foreign sponsorship identification rules require licensees to notify their lessees of the disclosure requirement pertaining to foreign government-provided programming at the time of entering into a lease agreement or at renewal of such an agreement. In addition, the licensee must inquire whether the lessee is a foreign governmental entity and if the lessee is aware of any individual/entity further back in the chain of production or distribution of the programming that may qualify as a foreign governmental entity and has provided compensation (including the programming itself, in the case of political programming or programming involving a controversial issue) as an inducement to air the programming. Finally, the licensee must memorialize these inquiries in writing and retain such documentation for a set time period. The rules do not, however,

establish a format for this memorialization.

13. With the court's elimination of the obligation that a licensee verify the lessee's status independently using two federal government websites, the exchange between a licensee and lessee about the lessee's status takes on heightened importance in ensuring that the necessary disclosure is made, if needed. It is now even more imperative that the licensee inform any lessee in as clear a manner as possible about the foreign sponsorship identification rules and obtain a complete response in return regarding whether the lessee is, or is not, a foreign governmental entity or is aware of one further back in the chain that has produced/provided the programming in question.

14. Accordingly, in this *Second NPRM,* we seek comment on establishing a transparent mechanism to determine whether the licensee made the requisite inquiries of each lessee and that each lessee responded in a complete manner regarding whether it qualifies as a foreign governmental entity (or is aware of one further back in the chain) pursuant to our rules. We tentatively conclude that the optimal mechanism for achieving this outcome is to require both licensee and lessee to certify their respective parts in this critical inquiry regarding the lessee's status and lessee's knowledge of any individual/entity further back in the programming production or distribution chain who may qualify as a foreign governmental entity. Specifically, we propose that the licensee certify that it has made the appropriate inquiry of each lessee and sought a certification from the lessee regarding its status. Likewise, we propose that the lessee certify as to whether it is or is not a foreign governmental entity and whether it knows of any entity or individual further back in the programming production or distribution chain that qualifies as a foreign governmental entity and has provided some form of compensation, or, in some cases the programming itself, as an inducement to air the programming. In the case of political programming or programming concerning a controversial issue, provision of the programming itself as an inducement to air the programming triggers the disclosure requirement. We tentatively conclude that the proposed certification requirement for the licensee would subsume the licensee's duty to memorialize its inquiry of its lessee pursuant to § 73.1212(j)(3)(v) of the Commission's rules. We seek comment on our proposed rule and approach.

15. As these certifications would formalize an inquiry process that, under our current foreign sponsorship identification rules, occurs at the time that parties either enter into or renew a lease agreement, we tentatively conclude that this certification process should occur at those same times. Further, we tentatively conclude that a certification, in particular one containing standardized language, as proposed below, provides the most efficient means of gauging a licensee's compliance with both the disclosure to a lessee of the foreign sponsorship identification rules and the request for lessee's certification. Likewise, a certification from the lessee provides increased assurance that it has taken the time to fully understand licensee's query and given due consideration to its own response. Moreover, the proposed certifications provide the Commission with a straightforward mechanism to monitor compliance with the inquiry requirements contained in the foreign sponsorship identification rules. It will also provide the information necessary for the Commission to independently confirm the certification, should an investigatory need arise. We seek comment on these tentative conclusions and our proposed approach of requiring certifications by the parties involved in a leasing agreement.

16. We recognize that there may be rare instances in which a lessee declines to make the necessary certification or fails to submit the certification regarding its status to the licensee. We seek comment on whether, in these limited instances, the licensee's own certification is sufficient to demonstrate that the licensee has complied with its obligation to inform the lessee of the foreign sponsorship identification rules and to seek a certification from lessee. In these instances, should the licensee be permitted to move forward with the lease agreement, or has lessee's refusal to complete the certification as to its status raised sufficient questions about the involvement of a foreign governmental entity such that further action is required on the licensee's part? What additional actions, if any, could the licensee undertake consistent with section 317(c) of the Act to verify a lessee's status? In this regard, we note that § 73.1212(e) of our rules requires the licensee to disclose the ''true identity of the person'' who has sponsored the programming. Would notifying the Commission about the lessee's failure to certify alleviate some of the concerns associated with lessee's lack of response? Absent such a response, if the licensee decides to proceed with the lease agreement, should we require the licensee to notify the Media Bureau, via a designated email box, about a lessee's failure to certify? Should such notification include the lessee's full name and contact information (such as address, email address, and/or telephone number)? Such a notification with the contact information could enable the Media Bureau, perhaps in conjunction with the Enforcement Bureau, to conduct its own inquiry regarding the lessee's status and whether the lessee has violated its obligations pursuant to section 507 of the Act. Would such a notification alleviate the licensee of its responsibility under § 73.1212(e) of our rules to disclose the ''true identity of the person'' who has sponsored the programming?

17. *Submission of Certifications to the Commission.* With regard to oversight, we tentatively conclude that submission of licensee and lessee certifications to the Commission provides an efficient and transparent means of verifying compliance with the certification requirement. Given that a licensee must already upload copies of its lease agreements to its online public inspection file (OPIF), and that this certification process will essentially occur at the time of entering into, or renewing a lease, we tentatively conclude that the licensee should upload both its own and the lessee's certifications into the same designated public inspection file subfolder in which it places its lease agreements. In addition, we tentatively conclude that such certifications should be conspicuous, clear, and arranged in such a manner that the parties' certifications are readily discernable. While we do not propose to require that the certifications be incorporated into a lease agreement itself, we observe that incorporation into the lease, or attachment as an appendix to the lease, could be the most efficient means of facilitating oversight and ensuring the certification process is completed. In this regard, we note that a number of broadcasters already incorporate into their leases provisions concerning compliance with various Commission requirements. We seek comment on this proposed approach for memorializing and submitting the certifications and our tentative conclusions outlined above.

18. Further, we tentatively conclude that the transparency we seek regarding a licensee's inquiries of its lessee(s) depends, in part, upon the licensee placing the certifications into its public file in a timely manner. Thus, in accordance with current requirements

for licensees to place their lease agreements into their OPIFs within 30 days of execution, we also propose that licensees place the certifications into their OPIFs within 30 days of execution. We expect that this filing period will impose minimal additional burden on licensees given that licensees should, under existing rules, be accustomed to placing copies of their agreements in their public file. Consistent with the guidance regarding lease agreements in the *Order,* for licensees that do not have obligations to maintain OPIFs, we propose that such licensees retain a record of the certifications in their station files within 30 days of execution. We seek comment on these proposals and proposed timing.

19. *Time Period for Retaining Certifications.* We recognize there is a divergence between the time period for which licensees must retain their leases in their public file and the time period that licensees are required, under the foreign sponsorship identification rules, to maintain their documentation memorializing their inquiries of the lessee. Pursuant to § 73.3526(e)(14) of our rules, a lease must be retained in the public file for as long as the agreement is in force; however, pursuant to § 73.1212(j)(3)(v) of our rules, the licensee must retain its memorialization for the remainder of the then current license term or one year, whichever is longer. We propose above that the certification requirement set forth herein would replace the licensee's duty to memorialize its inquiries of the lessee and tie the documentation memorializing such inquiries more closely to the lease agreement itself (*i.e.,* by requiring that the certifications be filed along with the lease in the public file). In the event that we adopt this proposal, we seek comment on whether to align the requirement to retain the certifications with the current time period mandated in § 73.3526(e)(14) for retention of the lease in the public file (*i.e.,* for the life of the lease agreement). We tentatively conclude that such an alignment would simplify compliance for licensees by conforming the time period for retaining a lease with the time period for retaining the licensee's documentation of its inquiries of the lessee.

20. *Application of Certification Requirements on a Prospective Basis.* We recognize that beginning on March 15, 2022, licensees had to comply with the new foreign sponsorship identification rules with respect to new lease agreements and renewals. The *Order,* however, gave licensees an additional six months to bring existing lease agreements into compliance (*i.e.,* by September 15, 2022). With respect to the certification requirement we propose today, we similarly propose to apply the requirement on a going forward basis with a six-month grace period for existing lease agreements to come into compliance. We seek comment on this proposal and on any alternative approaches.

B. Standardized Language To Be Included in Certification Requirement

21. We tentatively conclude that establishing standardized certification language would both minimize the compliance burden on licensees and lessees and bring greater uniformity to the certification process. In this regard, we note that, in previous filings in this proceeding, certain broadcaster groups had asserted that ''they would have to expend extensive time and resources to alter their lease agreements so as to obtain certifications from lessees regarding their status.'' The establishment of standardized certification language would eviscerate any need for licenses or lessees to seek outside assistance in crafting or reviewing certifications. Licensees and lessees can cut and paste the standardized certification language into the relevant documents and fill in simple details, such as the name of the licensee or lessee, whether the lessee is or is not a foreign governmental entity, and the name of any foreign governmental entity further back in the programming chain. Accordingly, we tentatively conclude that the adoption of standardized certification language should reduce any time and cost licensees have to expend on compliance.

22. *Proposed Licensee Certification.* We propose that broadcast licensees use the following standardized language when making the required certifications:

I am authorized on behalf of [Licensee] to certify the following: I certify that in accordance with 47 CFR 73.1212(j), [Licensee] has:

(1) Informed [Lessee] at the time of [entering into OR renewal of] this agreement of the foreign sponsorship disclosure requirement contained in 47 CFR 73.1212(j);

(2) Inquired of [Lessee] at the time of [entering into OR renewal of] this agreement whether [Lessee] falls into any of the categories listed in the Federal Communications Commission's (FCC) rules at 47 CFR 73.1212(j) such that the [Lessee] qualifies as a ''foreign governmental entity,'';

The FCC's rules state that term ''foreign governmental entity'' includes a ''government of a foreign country,'' ''foreign political party,'' an ''agent of a foreign principal,'' and a ''United States-based foreign media outlet.'' 47 CFR 73.1212(j)(2). The FCC's rules, at 47 CFR 73.1212(j)(2)(i) through (iv), define these terms in the following manner:

(i) The term ''government of a foreign country'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 22 U.S.C. 611(e);

(ii) The term ''foreign political party'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 22 U.S.C. 611(f);

(iii) The term ''agent of a foreign principal'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. 611(c)), and who is registered as such with the Department of Justice, and whose ''foreign principal'' is a ''government of a foreign country,'' a ''foreign political party,'' or directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized by a ''government of a foreign country'' or a ''foreign political party'' as defined in § 73.1212(j)(2)(i) and (ii), and that is acting in its capacity as an agent of such ''foreign principal;''

(iv) The term ''United States-based foreign media outlet'' has the meaning given such term in Section 722(a) of the Communications Act of 1934 (47 U.S.C. 624(a)).

(3) Inquired of [Lessee] at the time of [entering into OR renewal of] this agreement whether it knows if any individual/entity in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a ''foreign governmental entity,'' as that term is defined above, and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself;

(4) Sought and obtained from [Lessee] a certification stating that [Lessee] [is OR is not] a ''foreign governmental entity,'' as that term is defined above;

(5) Sought and obtained from [Lessee] a certification about whether it knows if any individual/entity in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a ''foreign governmental entity,'' as that term is defined above, and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself; and

(6) If [Lessee] qualifies, or knows of an individual/entity further back in the

chain of producing and distributing the programming that qualifies, as a ''foreign governmental entity,'' as defined above, then [Licensee] obtained from [Lessee] the information needed to append the following disclosure to lessee's programming consistent with 47 CFR 73.1212(j)(1)(i):

''The [following/preceding] programming was [sponsored, paid for, or furnished], either in whole or in part, by [name of foreign governmental entity] on behalf of [name of foreign country].''

I, [insert name of person/entity authorized to certify on behalf of Licensee] by my signature attest to the truth of the statements listed above.

23. *Proposed Lessee Certification.* We propose that lessees use the following language when making the required certifications:

I am authorized on behalf of [Lessee] to certify to the following:

(1) [Licensee] has informed [Lessee] at the time of [entering into OR renewal of] this agreement of the foreign sponsorship disclosure requirement contained in 47 CFR 73.1212(j);

(2) [Licensee] has inquired of [Lessee] at the time of [entering into OR renewal of] this agreement whether [Lessee] falls into any of the categories listed in the Federal Communications Commission's (FCC) rules at 47 CFR 73.1212(j) such that the [Lessee] qualifies as a ''foreign governmental entity,'';

The FCC's rules state that term ''foreign governmental entity'' includes a ''government of a foreign country,'' ''foreign political party,'' an ''agent of a foreign principal,'' and a ''United States-based foreign media outlet.'' 47 CFR 73.1212(j)(2). The FCC's rules, at 47 CFR 73.1212(j)(2)(i) through (iv), defines these terms in the following manner:

(i) The term ''government of a foreign country'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 22 U.S.C. 611(e);

(ii) The term ''foreign political party'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 22 U.S.C. 611(f);

(iii) The term ''agent of a foreign principal'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. 611(c)), and who is registered as such with the Department of Justice, and whose ''foreign principal'' is a ''government of a foreign country,'' a ''foreign political party,'' or directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized by a ''government of a foreign country'' or a ''foreign political party'' as defined in § 73.1212(j)(2)(i) and (ii), and that is acting in its capacity as an agent of such ''foreign principal;''

(iv) The term ''United States-based foreign media outlet'' has the meaning given such term in Section 722(a) of the Communications Act of 1934 (47 U.S.C. 624(a)).

(3) [Licensee] has inquired of [Lessee] at the time of [entering into OR renewal of] this agreement whether [Lessee] knows if any individual/entity further back in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a ''foreign governmental entity,'' as that term is defined above, and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself;

(4) [Lessee] certifies that it [is OR is not] a ''foreign governmental entity,'' as that term is defined above;

(5) If applicable: [Lessee] certifies that to its knowledge [Individual/Entity] qualifies as a ''foreign governmental entity,'' as that term is defined above, and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself;

(6) If applicable: [Lessee] certifies that to its knowledge there is no individual/entity further back in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or sub-lease, that qualifies as a ''foreign governmental entity,'' as that term is defined above, and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself;

(7) If applicable: [Lessee] certifies that to its knowledge there is an individual/entity further back in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or sub-lease, that qualifies as a ''foreign governmental entity,'' as that term is defined above, and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself. The name, address, phone number, and email address, if known, of such individual/entity is [individual/entity name, address, phone number, and email address, if known];

(8) To the extent applicable, [Lessee] has provided [Licensee] the information needed to append the following disclosure to lessee's programming consistent with the FCC's rules, found at 47 CFR 73.1212(j)(1)(i):

''The [following/preceding] programming was [sponsored, paid for, or furnished], either in whole or in part, by [name of foreign governmental entity] on behalf of [name of foreign country].''

(9) [Lessee] certifies that during the course of the lease agreement, [Lessee] commits to notify [Licensee] if [Lessee's] status as a ''foreign governmental entity'' changes or if [Lessee] learns that there is an individual/entity further back in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or sub-lease, that qualifies as a ''foreign governmental entity,'' as that term is defined above, and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself.

I, [insert name of individual/entity authorized to certify on behalf of Lessee] by my signature attest to the truth of the statements listed above.

24. We seek comment both on the utility of providing standardized language for licensees and lessees to use for their respective certifications and on the specific language laid out above. Should the standard certification language be modified in any way to better suit the needs of licensees or lessees, including licensees and lessees that are small entities?

C. Section 325(c) Permits

25. A section 325(c) permit is required when an entity produces programming in the United States but, rather than broadcasting the programming from a U.S.-licensed station, transmits or delivers the programming from a U.S. studio to a non-U.S. licensed station in a foreign country for broadcast by the foreign station into the United States. Given the nature of the section 325(c) permits, pursuant to § 73.1212(k) of the Commission rules, the foreign sponsorship identification disclosure requirements apply to any programming permitted to be delivered to foreign broadcast stations under an authorization pursuant to section 325(c) of the Act if the material has been (i) sponsored by a foreign governmental entity; (ii) paid for by a foreign governmental entity; (iii) furnished for free by a foreign governmental entity to the section 325(c) permit holder as an

inducement to air the material on the foreign station; or (iv) provided by the section 325(c) permit holder to the foreign station where the section 325(c) permit holder is a foreign governmental entity. Where the section 325(c) permit holder itself is a foreign governmental entity, the disclosure requirements apply to all programming provided by the permit holder to a foreign station.

26. In proposing § 73.1212(k), the Commission noted that applying foreign sponsorship identification disclosures to programs permitted to be delivered to foreign broadcast stations under an authorization pursuant to section 325(c) of the Act would level the playing field between programming aired by non-U.S. and U.S. broadcasters in the same geographic area within the United States and would eliminate any potential loophole in our regulatory framework with respect to the identification of foreign government-provided programming that may result from this proceeding. Under § 73.1212(j), if a content provider, including one that also holds a section 325(c) permit, meets the definition of foreign governmental entity and provides its content to a U.S. broadcaster under a lease agreement, its content is subject to foreign sponsorship identification disclosures. If such a content provider provides the same content to a foreign broadcast station under its section 325(c) permit, such content also is subject to foreign sponsorship identification disclosures. The disclosure requirements in that situation apply to materials permitted to be delivered to a foreign broadcast station under an authorization pursuant to section 325(c) of the Act regardless of the nature of the arrangement, if any, between the permit holder and the foreign broadcast station. In the context of section 325(c) permits, leasing of airtime is not a relevant prerequisite for application of the foreign sponsorship identification rules because section 325(c) permit holders' foreign broadcast arrangements can be struck in various ways, not just through leasing of airtime, under the laws of foreign countries. In this context, our rules ensure that no material provided by a permit holder that is a foreign governmental entity is broadcast into the United States through the use of section 325(c) permits without the appropriate disclosures. To provide greater clarity regarding the application of these disclosure requirements in the context of programming subject to a section 325(c) permit, we propose to modify § 73.1212(k) as shown in Appendix A. Pending a determination as to whether the proposed due diligence modifications to 47 CFR 73.1212(j) should apply to section 325(c) permittees, our proposed revisions to subsection (k) reflect the subsection (j) duty to memorialize due diligence efforts.

27. We expect that a section 325(c) permit holder would have direct knowledge of whether it is a foreign governmental entity as that term is defined in § 73.1212(j) of the rules and whether disclosures are required on that basis. However, even if a permit holder is not itself a foreign governmental entity, the disclosure requirements apply to any part of its programming that is sponsored, paid for, or furnished for free by a foreign governmental entity either directly to the permit holder or to an entity farther back in the content production chain. We seek comment on whether there is a need to apply any due diligence requirements proposed in this *Second NPRM* to any programming permitted to be delivered to a foreign station pursuant to a section 325(c) permit and, if applicable, whether the proposed certifications or other due diligence documentation should be placed in the IBFS by section 325(c) permit holders and for how long.

D. Proposed Certification Requirement Is Consistent With the Act and NAB v. FCC

28. We tentatively conclude that the certification requirements we propose above are consistent with both the Act and the court's decision in *NAB* v. *FCC.* Section 317(c) of the Act states that the licensee of each radio station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any program or program matter for broadcast, information to enable such licensee to make the announcement required by this section. Section 317(e), in turn, directs the Commission to prescribe appropriate rules and regulations to carry out the provisions of section 317. We tentatively conclude that sections 317(c) and (e) together provide ample authority to implement our proposed requirement that a licensee make inquiries of a lessee in the form of a certification and seek a lessee's response in the form of a reciprocal certification. We tentatively conclude that such an inquiry requirement for the licensee is entirely consistent with its statutory reasonable diligence obligation to discern the lessee's status as a ''foreign governmental entity'' and what the lessee knows about those further back in the chain of producing and distributing the programming. The licensee must ask these questions of lessee to obtain the information needed ''to enable such licensee to make the announcement required by [section 317(c)].'' We seek comment on these tentative conclusions.

29. Consistent with the court's holding that section 317(c) imposes only a duty of inquiry for licensees, rather than a duty to investigate and verify, the proposal contained in this *Second NPRM* merely requires licensees to certify to inquiries they must already undertake pursuant to the existing foreign sponsorship identification rules and formalizes the existing requirement to memorialize such inquiries. Accordingly, we tentatively conclude that our proposed certification requirements are consistent with the D.C. Circuit's vacatur of the prior requirement that a licensee independently verify whether a lessee is a ''foreign governmental entity'' by consulting two federal government sources. The court did not question the Commission's authority to require inquiries and memorialize responses, as we propose to do more formally today. Further, the proposed certification requirements do not require, or have the effect of requiring, licensees to engage in any ''investigation'' regarding the lessee's status nor to consult with any person or source other than that with whom it deals directly, namely, the lessee. We seek comment on these tentative conclusions.

30. With regard to the lessee specifically, we note that sections 507(b)–(c) impose an obligation on the lessee to disclose information relevant to determining whether a sponsorship identification is required. Section 507(c) states that any person who supplies to any other person program or program matter which is intended for broadcasting over any radio station shall, in advance of such broadcast, disclose to such other person any information of which he has knowledge, or which has been disclosed to him, as to any money, service or other valuable consideration which any person has paid or accepted, or has agreed to pay or accept, for the inclusion of any matter as a part of such program. As the individual/entity providing the programming to the licensee, the lessee is subject to the strictures of section 507(c). Likewise, section 507(b) imposes the same obligations on those involved in the production or preparation of programming and would similarly apply to the lessee if the lessee were involved in the production or preparation of the programming. The significance of lessee's transmission of relevant information is highlighted by the fact that section 317(b) of the Act requires

the licensee to take note of information received pursuant to the section 507 disclosure requirement. We seek comment on the analysis laid out above with regard to section 507 of the Act.

E. Alternative Approach

31. We also seek comment on an alternative approach raised by the D.C. Circuit. At oral argument, the court asked whether it would be consistent with the Act and accomplish the same goal as the requirement that the court ultimately vacated to instead require a licensee to ask its lessee to provide the licensee with appropriate documentation (*e.g.,* the relevant FARA page showing that its sponsors are not listed there). In accord with the court's question, would it be consistent with the Commission's authority under section 317 to define licensees' reasonable diligence obligation by requiring them to seek or obtain such proof from lessees (*e.g.,* by a screen shot)? Should a licensee have to seek or obtain from its lessee proof that the lessee's name does not appear in either the FARA database or the Commission's U.S.-based foreign media outlet reports? Would this approach accomplish the same purpose as the vacated rule requirement? What would be the burdens of this approach on licensees and lessees? Would it have any benefits or drawbacks as compared to requiring the licensee to obtain a certification from the lessee?

F. Petition for Clarification

32. As stated above, on July 19, 2021, the Affiliates filed a Petition for Clarification regarding the meaning of the phrase ''traditional, short-form advertising'' as it appeared in the *Order.* In their Petition, the Affiliates seek a clarification that the foreign sponsorship identification rules, and in particular the inquiries associated with these rules, do not apply when a station ''sells time to advertisers in the normal course of business,'' in contrast to when it leases airtime on the station. According to the Affiliates, the reference to ''traditional short-form advertising'' as an exception to the foreign sponsorship identification requirements has caused confusion amongst the Affiliates' members about what type of programming arrangements are subject to the requirements. As stated, the Affiliates' Petition generated minimal response. We seek comment on whether experience with these rules has provided licensees or others with additional insight regarding the issues raised in the Petition and specifically what criteria the Commission might adopt to distinguish between advertising and programming arrangements for the lease of airtime in a way that does not jeopardize the Commission's goals in this proceeding. For example, we seek comment on whether there are key characteristics that could assist in distinguishing advertising spots from a lease of airtime on a station, such as duration, content, editorial control, or differences in the nature of the contractual relationship between the licensee and the entity that purchases an advertising spot versus leasing airtime for programming. What criteria might we adopt to ensure that the concept of ''advertising'' does not subsume ''leased time'' or vice versa? Might the establishment of a safe harbor assist in this regard? For example, could we establish a presumption that any broadcast matter that is two minutes or less in length, absent any other indicia, will be considered ''short-form advertising'' for purposes of the foreign sponsorship identification rules?

G. Digital Equity and Inclusion

33. Finally, the Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

Procedural Matters

34. *Ex Parte Rules—Permit-But-Disclose.* This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written in *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

35. *Filing Requirements—Comments and Replies.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.1415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

36. *Initial Regulatory Flexibility Act Analysis.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) is independently owned and operated; (2) is not dominated in its field of operations; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

37. With respect to this Second Notice of Proposed Rulemaking, an Initial Regulatory Flexibility Analysis (IRFA)

under the RFA is contained in the Appendix. Written public comments are required on the IRFA and must be filed in accordance with the same filing deadlines as comments on this Notice of Proposed Rulemaking, with a distinct heading designating them as responses to the IRFA. In addition, a copy of this Notice of Proposed Rulemaking and the IRFA will be sent to the Chief Counsel for Advocacy of the SBA and will be published in the **Federal Register**.

38. *Paperwork Reduction Act.* This document seeks comment on whether the Commission should adopt new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens and pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, invites the general public and the Office of Management and Budget (OMB) to comment on these information collection requirements. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Initial Regulatory Flexibility Act Analysis

39. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this Second Notice of Proposed Rulemaking (*Second NPRM*). The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments specified in the *Second NPRM*. The Commission will send a copy of the *Second NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *Second NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

40. On April 22, 2021, the Commission released a Report and Order adopting a requirement that radio and television stations broadcast clear disclosures for programming that is provided by a foreign governmental entity and setting forth the procedures whereby stations must exercise reasonable diligence to determine whether such a disclosure is required. The Commission promulgated these foreign sponsorship identification rules in response to reports of undisclosed foreign government programming being transmitted by U.S. broadcast stations. The Commission's rules established a definition of ''foreign governmental entity'' based on existing definitions, statutes, or determinations by the U.S. government. The Commission's requirements apply to leased programming because the record in the underlying proceeding identified leased airtime as the primary means by which foreign governmental entities are accessing U.S. airwaves to persuade the American public without adequately disclosing the true sponsor. The Commission promulgated the foreign sponsorship identification rules based on a fundamental and long-standing tenet of broadcast regulation; namely, that the public has a right to know the identity of those soliciting their support.

41. On August 13, 2021, the National Association of Broadcasters (NAB) and two public interest groups (collectively, ''Petitioners'') filed a Petition for Review of the Commission's *Order* with the U.S. Court of Appeals for the District of Columbia Circuit challenging the Commission's reasonable diligence requirements, alleging that the Commission lacked statutory authority to adopt such requirements. On July 12, 2022, the D.C. Circuit ruled on the Petition for Review, upholding the core of the foreign sponsorship identification rules but vacating the requirement that broadcasters check two federal sources to verify whether a lessee is a ''foreign governmental entity,'' as that term is defined in the Commission's rules.

42. The Second Notice of Proposed Rulemaking (*Second NPRM*) seeks to fortify the Commission's rules in the wake of the court's decision by proposing that, in order to comply with the ''reasonable diligence'' requirement regarding foreign sponsorship identification, a licensee must certify that it has informed its lessee of the foreign sponsorship identification rules and sought, or obtained, a certification from its lessee stating whether the lessee is or is not a foreign governmental entity pursuant to the rules. The *Second NPRM* also proposes that the lessee submit a certification in response to licensee's request. These new certification requirements would subsume the duty of licensees under § 73.1212(j)(3)(v) of our rules to memorialize and retain their reasonable diligence inquiries. The *Second NPRM* also seeks comment on an alternative approach to the certification requirement. This alternative approach was raised as a hypothetical during the oral argument before the D.C. Circuit in *NAB* v. *FCC*. Under this approach, in the event that a lessee states it is not a ''foreign governmental entity'' a licensee must obtain from the lessee appropriate documentation (*e.g.,* a screen shot(s)) showing that the lessee's name does not appear on either of the two federal government websites which the Commission identified in the *Order* as reference points for determining whether a given individual/entity is a ''foreign governmental entity.'' Finally, the *Second NPRM* provides interested parties an additional opportunity to comment on a pending Petition for Clarification regarding the applicability of the foreign sponsorship identification rules to broadcast stations when they sell time to advertisers in the normal course of business.

B. Legal Basis

43. The proposed action is authorized under sections 1, 2, 4(i), 4(j), 303(r), 307, 317, 325(c), 403, and 507 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 303(r), 307, 317, 325(c), 403, and 508.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

44. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rule revisions, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act (SBA). A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

45. *Television Broadcasting.* This industry is comprised of ''establishments primarily engaged in broadcasting images together with sound.'' These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule.

Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies businesses having $41.5 million or less in annual receipts as small. 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire year. Of that number, 657 firms had revenue of less than $25,000,000. Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

46. As of June 2022, there were 1,373 licensed commercial television stations. Of this total, 1,280 stations (or 93.2%) had revenues of $41.5 million or less in 2021, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on June 1, 2022, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of June 2022, there were 384 licensed noncommercial educational (NCE) television stations, 383 Class A TV stations, 1,865 LPTV stations and 3,224 TV translator stations. The Commission, however, does not compile and otherwise does not have access to financial information for these television broadcast stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of these television station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

47. *Radio Broadcasting.* This industry is comprised of ''establishments primarily engaged in broadcasting aural programs by radio to the public.'' Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies firms having $41.5 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 2,963 firms operated in this industry during that year. Of this number, 1,879 firms operated with revenue of less than $25 million per year. Based on this data and the SBA's small business size standard, we estimate a majority of such entities are small entities.

48. The Commission estimates that as of June 30, 2022, there were 4,498 licensed commercial AM radio stations and 6,689 licensed commercial FM radio stations, for a combined total of 11,187 commercial radio stations. Of this total, 11,185 stations (or 99.98%) had revenues of $41.5 million or less in 2021, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Database (BIA) on June 1, 2022, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates that as of June 30, 2022, there were 4,184 licensed noncommercial (NCE) FM radio stations, 2,034 low power FM (LPFM) stations, and 8,951 FM translators and boosters. The Commission however does not compile, and otherwise does not have access to financial information for these radio stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of these radio station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

49. We note, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of ''small business'' requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and is therefore possibly over-inclusive. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. Because it is difficult to assess these criteria in the context of media entities, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and similarly may be over-inclusive.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

50. The *Order* had established certain requirements that licensees had to meet to comply with the ''reasonable diligence'' standard of section 317(c) of the Act, with regard to foreign government-provided programming. Specifically, pursuant to the *Order,* a licensee had to, at a minimum:

(1) Inform the lessee at the time of agreement and at renewal of the foreign sponsorship disclosure requirement;

(2) Inquire of the lessee at the time of agreement and at renewal whether it falls into any of the categories that qualify it as a ''foreign governmental entity;''

(3) Inquire of the lessee at the time of agreement and at renewal whether it knows if anyone further back in the chain of producing/distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a foreign governmental entity and has provided some type of inducement to air the programming;

(4) Independently confirm the lessee's status, at the time of agreement and at renewal by consulting the Department of Justice's FARA website and the Commission's semi-annual U.S.-based foreign media outlets reports for the lessee's name. This need not be done if the lessee has already disclosed that it falls into one of the covered categories and/or that there is a separate need for a disclosure because an entity/individual further back in the chain of producing/transmitting the programming falls into one of the covered categories and has provided some form of service, consideration, or, in the case of political programming the programming itself, as an inducement to broadcast the programming; and

(5) Memorialize the above-listed inquiries and investigations and retain such memorialization in its records for the remainder of the then current license term or one year, whichever is longer.

51. Following the Petitioners' challenge to the *Order,* the D.C. Circuit decision vacated the fourth reasonable diligence requirement itemized above, leaving all other elements of the Commission's rules in place. The *Second NPRM* seeks to fortify the rules in the wake of the court's decision by proposing that a licensee must certify it has informed its lessee of the foreign sponsorship identification rules and obtained, or sought to obtain, a certification from its lessee stating whether the lessee is or is not a ''foreign governmental entity,'' as that term is defined in the Commission's rules. The *Second NPRM* also proposes that the lessee submit a certification in response to the licensee's request. These new certification requirements, if adopted by the Commission, would replace the duty of a licensee, as laid out above in items (1), (2), and (3) to inquire of its lessee whether it, or anyone further back in the

chain of distributing/producing the programming, qualifies as a ''foreign governmental entity,'' and has provided some type of inducement (*e.g.,* compensation) to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself. The proposed certifications themselves would replace the memorialization requirement contained in item (5) above.

52. The *Second NPRM* recognizes that there may be rare instances in which a lessee declines to make the necessary certification or fails to submit the certification regarding its status to the licensee. The *Second NPRM* seeks comment on whether, in these limited instances, the licensee's own certification is sufficient to demonstrate that the licensee has complied with its obligation to inform the lessee of the foreign sponsorship identification rules and to seek a certification from lessee. The *Second NPRM* asks whether requiring the licensee to notify the Commission about lessee's failure to certify would alleviate some of the concerns associated with lessee's lack of response. In the event that the licensee decides to proceed with the lease agreement, the *Second NPRM* seeks comment on whether to require the licensee to notify the Commission's Media Bureau, via a designated email box, about a lessee's failure to certify along with the lessee's full name and contact information (such as address, email address, and/or telephone number).

53. *Submission of Certifications to the Commission.* The *Second NPRM* tentatively concludes that submission of licensee's and lessee's certifications to the Commission provides an efficient and transparent means of verifying compliance with the certification requirement. Given that a licensee must already upload copies of its lease agreements to its online public inspection file (OPIF), and that this certification process will essentially occur at the time of entering into, or renewing a lease, the *Second NPRM* tentatively concludes that the licensee should upload both its own and the lessee's certifications into the same public inspection file in which it places its lease agreements. While the *Second NPRM* does not propose to require that the certifications be incorporated into the lease agreement, it notes that incorporation into the lease, or attachment as an appendix to the lease, could be the most efficient means of ensuring the certification process is completed. The *Second NPRM* notes that a number of broadcasters already incorporate into their leases provisions concerning compliance with various Commission requirements.

54. In accordance with the current requirements for licensees to place their lease agreements into their OPIFs within 30 days of execution, the *Second NPRM* proposes that licensees place the certifications into their OPIFs within 30 days of execution. This filing period will impose minimal additional burden on licensees given that licensees should, under existing rules, be accustomed to placing copies of their agreements in their public files. For licensees that do not have obligations to maintain OPIFs, the *Second NPRM* proposes that such licensees retain a record of the certifications in their station files within 30 days of execution.

55. *Time Period for Retaining Certifications.* The *Second NPRM* proposes to align the time period for retaining the certifications with the current time period for retaining lease agreements in the licensees' OPIFs. Specifically, the *Second NPRM* proposes that, just as a licensee must retain its lease agreement in the public file for as long as the agreement is in force, the certifications should also be retained for this same time period. The *Second NPRM* tentatively concludes that such an alignment will simplify compliance for licensees by conforming the time period for retaining a lease with the time period for retaining the licensee's documentation of its inquiries of the lessee.

56. *Standardized Language to be Included in Certification Requirement.* The *Second NPRM* tentatively concludes that establishing standardized certification language would both minimize the compliance burden on licensees and lessees and bring greater uniformity to the certification process. In this regard, the *Second NPRM* notes that, in previous filings in this proceeding, certain broadcaster groups had asserted that they would have to expend extensive time and resources to alter their lease agreements so as to obtain certifications from lessees regarding their status. Accordingly, the *Second NPRM* tentatively concludes that the adoption of standardized certification language should reduce any time and cost licensees have to expend on compliance.

57. *Proposed Licensee Certification.* The *Second NPRM* proposes that broadcast licensees use the following standardized language when making the required certifications:

I am authorized on behalf of [Licensee] to certify the following: I certify that in accordance with 47 CFR 73.1212(j), [Licensee] has:

(1) Informed [Lessee] at the time of [entering into OR renewal of] this agreement of the foreign sponsorship disclosure requirement contained in 47 CFR 73.1212(j);

(2) Inquired of [Lessee] at the time of [entering into OR renewal of] this agreement whether [Lessee] falls into any of the categories listed in the Federal Communication's (FCC) rules at 47 CFR 73.1212(j) such that the [Lessee] qualifies as a ''foreign governmental entity,'';

The FCC's rules state that term ''foreign governmental entity'' includes a ''government of foreign country,'' ''foreign political party,'' an ''agent of a foreign principal,'' and a ''United States-based foreign media outlet.'' 47 CFR 73.1212(j)(2). The FCC's rules, at 47 CFR 73.1212(j)(2)(i) through (iv), define these terms in the following manner:

(i) The term ''government of a foreign country'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 47 U.S.C. 611(e);

(ii) The term ''foreign political party'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 47 U.S.C. 611(f);

(iii) The term ''agent of a foreign principal'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. 611(c)), and who is registered as such with the Department of Justice, and whose ''foreign principal'' is a ''government of a foreign country,'' a ''foreign political party,'' or directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized by a ''government of a foreign country'' or a ''foreign political party'' as defined in § 73.1212(j)(2)(i) and (ii), and that is acting in its capacity as an agent of such ''foreign principal;''

(iv) The term ''United States-based foreign media outlet'' has the meaning given such term in Section 722(a) of the Communications Act of 1934 (47 U.S.C. 624(a)).

(3) Inquired of [Lessee] at the time of [entering into OR renewal of] this agreement whether it knows if any individual/entity in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a ''foreign governmental entity,'' as that term is defined in 47 U.S.C. 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself;

(4) Sought and obtained from [Lessee] a certification stating whether [Lessee] [is OR is not] a ''foreign governmental entity,'' as that term is defined in 47 U.S.C. 73.1212(j)(2);

(5) Sought and obtained from [Lessee] a certification about whether it knows if any individual/entity in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a ''foreign governmental entity,'' as that term is defined in 47 U.S.C. 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself; and

(6) If [Lessee] qualifies, or knows of an individual/entity further back in the chain of producing or distributing the programming that qualifies, as a ''foreign governmental entity,'' pursuant to 47 CFR 73.1212(j)(2), then [Licensee] obtained from [Lessee] the information needed to append the following disclosure to lessee's programming consistent with 47 CFR 73.1212(j)(1)(i):

''The [following/preceding] programming was [sponsored, paid for, or furnished], either in whole or in part, by [name of foreign governmental entity] on behalf of [name of foreign country].''

I, [insert name of individual/entity authorized to certify on behalf of Licensee] by my signature attest to the truth of the statements listed above.

58. *Proposed Lessee Certification.* The *Second NPRM* proposes that lessees use the following language when making the required certifications:

I am authorized on behalf of [Lessee] to certify to the following:

(1) [Licensee] has informed [Lessee] at the time of [entering into OR renewal of] this agreement of the foreign sponsorship disclosure requirement contained in 47 CFR 73.1212(j);

(2) [Licensee] has inquired of [Lessee] at the time of [entering into OR renewal of] this agreement whether [Lessee] falls into any of the categories listed in the Federal Communications Commission's (FCC) rules at 47 CFR 73.1212(j) such that the [Lessee] qualifies as a ''foreign governmental entity,'';

The FCC's rules state that the term ''foreign governmental entity'' includes a ''government of foreign country,'' ''foreign political party,'' an ''agent of a foreign principal,'' and a ''United States-based foreign media outlet.'' 47 CFR 73.1212(j)(2). The FCC's rules, at 47 CFR 73.1212(j)(2)(i) through (iv), defines these terms in the following manner:

(i) The term ''government of a foreign country'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 47 U.S.C. 611(e);

(ii) The term ''foreign political party'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 47 U.S.C. 611(f);

(iii) The term ''agent of a foreign principal'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. 611(c)), and who is registered as such with the Department of Justice, and whose ''foreign principal'' is a ''government of a foreign country,'' a ''foreign political party,'' or directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized by a ''government of a foreign country'' or a ''foreign political party'' as defined in § 73.1212(j)(2)(i) and (ii), and that is acting in its capacity as an agent of such ''foreign principal;''

(iv) The term ''United States-based foreign media outlet'' has the meaning given such term in Section 722(a) of the Communications Act of 1934 (47 U.S.C. 624(a)).

(3) [Licensee] has inquired of [Lessee] at the time of [entering into OR renewal of] this agreement whether [Lessee] knows if any individual/entity further back in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a ''foreign governmental entity,'' as that term is defined in 47 CFR 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself;

(4) [Lessee] certifies that it [is OR is not] a ''foreign governmental entity,'' as that term is defined in 47 CFR 73.1212(j)(2);

(5) If applicable: [Lessee] certifies that to its knowledge [Individual/Entity] qualifies as a ''foreign governmental entity,'' as that term is defined in 47 CFR 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself;

(6) If applicable: [Lessee] certifies that to its knowledge there is no individual/entity further back in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or sub-lease, that qualifies as a ''foreign governmental entity,'' as that term is defined in 47 CFR 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself;

(7) If applicable: [Lessee] certifies that to its knowledge there is an individual/entity further back in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or sub-lease, that qualifies as a ''foreign governmental entity,'' as that term is defined in 47 CFR 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself. The name, address, phone number, and email address, if known, of such individual/entity is [individual/entity name, address, phone number, and email address, if known];

(8) To the extent applicable, [Lessee] has provided [Licensee] the information needed to append the following disclosure to lessee's programming consistent with the FCC's rules, found at 47 CFR 73.1212(j)(1)(i):

''The [following/preceding] programming was [sponsored, paid for, or furnished], either in whole or in part, by [name of foreign governmental entity] on behalf of [name of foreign country].''

(9) [Lessee] certifies that during the course of the lease agreement, [Lessee] commits to notify [Licensee] if [Lessee's] status as a ''foreign governmental entity'' changes or if [Lessee] learns that there is an individual/entity further back in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or sub-lease, that qualifies as a ''foreign governmental entity,'' as that term is defined in 47 CFR 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself.

I, [insert name of individual/entity authorized to certify on behalf of Lessee] by my signature attest to the truth of the statements listed above.

59. *Section 325(c) Permits.* A section 325(c) permit is required when an entity produces programming in the United States but, rather than broadcasting the programming from a U.S.-licensed station, transmits or delivers the programming from a U.S. studio to a non-U.S. licensed station in a foreign country for broadcast by the foreign station into the United States. The

Second NPRM seeks to clarify under § 73.1212 of the Commission's rules that the foreign sponsorship identification disclosure requirements apply to any programming permitted to be delivered to foreign broadcast stations under an authorization pursuant to section 325(c) of the Act if the material has been (i) sponsored by a foreign governmental entity; (ii) paid for by a foreign governmental entity; (iii) furnished for free by a foreign governmental entity to the section 325(c) permit holder as an inducement to air the material on the foreign station; or (iv) provided by the section 325(c) permit holder to the foreign station where the section 325(c) permit holder is a foreign governmental entity. Where the section 325(c) permit holder itself is a foreign governmental entity, the disclosure requirements apply to all programming provided by the permit holder to a foreign station. The *Second NPRM* also seeks comment on whether there is a need to apply any reasonable diligence requirements proposed in this *Second NPRM* to any programming permitted to be delivered to a foreign station pursuant to a section 325(c) permit and if applicable whether the proposed certifications or other due diligence documentation should be placed in the IBFS by section 325(c) permit holders.

60. The *Second NPRM* proposes the following language to replace the existing language of § 73.1212(k):

Where any material delivered to foreign broadcast stations under an authorization pursuant to section 325(c) of the Communications Act (47 U.S.C. 325(c)) has been sponsored by a foreign governmental entity; paid for by a foreign governmental entity; furnished for free by a foreign governmental entity to the section 325(c) permit holder as an inducement to air the material on the foreign station; or provided by the section 325(c) permit holder to the foreign station where the section 325(c) permit holder is a foreign governmental entity, the material must include, at the time of broadcast, the following disclosure, in conformance with the terms of paragraphs (j)(4)–(6): ''The [following/preceding] programming was [sponsored, paid for, or furnished], either in whole or in part, by [name of foreign governmental entity] on behalf of [name of foreign country].'' A section 325(c) permit holder shall ensure that the foreign station will broadcast the disclosures along with the material and shall place copies of the disclosures required along with the name of the program to which the disclosures were appended in the International Bureau's public filing system (IBFS) under the relevant IBFS section 325(c) permit file. The filing must state the date and time the program aired. In the case of repeat airings of the program, those additional dates and times should also be included. Where an aural announcement was made, its contents must be reduced to writing and placed in the IBFS in the same manner. The section 325(c) permit holder shall exercise reasonable diligence to ascertain whether the foreign sponsorship disclosure requirements of paragraphs (j)(1) and (j)(4)–(6) apply to any material delivered to a foreign broadcast station, including obtaining from its employees, and from other persons with whom it deals directly in connection with any matter for broadcast, and in the same manner prescribed for broadcast stations in paragraph (j)(3), information to enable the permit holder to include the announcement required by this section; memorializing its conduct of such reasonable diligence; and retaining such documentation in its records for either the remainder of the then-current permit term or one year, whichever is longer, so as to respond to any future Commission inquiry. The term ''foreign governmental entity'' shall have the meaning set forth in paragraph (j)(2).

61. *Alternative Approach.* The *Second NPRM* also seeks comment on an alternative approach raised by the D.C. Circuit. At oral argument, the court asked whether it would be consistent with the Act and accomplish the same goal as the requirement that the court ultimately vacated to instead require licensees to ask lessees to provide appropriate documentation (*e.g.,* the relevant FARA page showing that their sponsors are not listed there). In accord with the court's question, the *Second NPRM* asks whether would it be consistent with the Commission's authority under section 317 of the Act to require licensees to seek or obtain such proof from lessees (*e.g.,* by a screen shot)? Should a licensee have to seek or obtain from its lessee proof that the lessee's name does not appear in either the FARA database or the Commission's U.S.-based foreign media outlet reports? Would this approach accomplish the same purpose as the vacated rule requirement? What would be the burdens of this approach on licensees and lessees? Would it provide greater assurance of ensuring identification of any foreign governmental entity sponsorship of the programming at issue compared to requiring the licensee to obtain a certification from the lessee?

62. *Petition for Clarification.* Finally, the *Second NPRM* provides interested parties an additional opportunity to comment on a pending Petition for Clarification ''regarding the applicability of the foreign sponsorship identification rules to advertisements sold by local broadcast stations.'' The *Second NPRM* seeks comment on whether experience with these rules has provided broadcasters or others with additional insight regarding the issues raised in the Petition and specifically what criteria the Commission might adopt to distinguish between advertising and programming arrangements for the lease of airtime. For example, are there key characteristics that could assist in distinguishing advertising spots from a lease of airtime on a station, such as duration, content, editorial control, or differences in the nature of the contractual relationship between the licensee and the entity that purchases an advertising spot versus leasing airtime for programming. What criteria might the Commission adopt to ensure that the concept of ''advertising'' does not subsume ''leased time'' or vice versa? Additionally, might the establishment of a safe harbor assist in this regard? For example, could the Commission establish a presumption that any broadcast matter that is two minutes or less in length, absent any other indicia, will be considered ''short-form advertising'' for purposes of the foreign sponsorship identification rules?

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

63. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

64. In proposing certification requirements, the Commission has carefully considered the resources available to radio and television broadcast stations, many of which are small entities. The *Second NPRM* proposes a certification process for licensees and lessees using proposed standardized certification language, which should significantly reduce the cost, time, and effort that licensees and lessees have to expend to comply with the ''reasonable diligence'' standard

contained in section 317(c) of the Act with regard to foreign government-provided programming. The establishment of standardized certification language would eviscerate any need for licenses or lessees to seek outside assistance in crafting or reviewing certifications. Licensees and lessees can cut and paste the standardized certification language into the relevant documents and fill in simple details such as the name of the licensee or lessee, whether the lessee is or is not a foreign governmental entity, and the name of any foreign governmental sponsor further back in the programming chain. Separately, by seeking comment on the alternative approach offered by the D.C. Circuit, as described in paragraph 22, we seek feedback on other mechanisms that could potentially streamline the process for small broadcasters tasked with satisfying their reasonable diligence requirements under the Commission's rules. Additionally, the *Second NPRM* proposes and seeks comment on the harmonization of the time period for retaining certifications within the licensee's OPIF and the time period for retaining lease agreements. As stated in the *Second NPRM,* such an alignment can further simplify compliance for licensees.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

65. None.

Ordering Clauses

66. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 303(r), 307, 317, 325(c), 403, and 507 of the Communications Act, 47 U.S.C. 151, 152, 154(i), 154(j), 303(r), 307, 317, 325(c), 403, and 508 this Second Notice of Proposed Rulemaking *is adopted.*

67. *It is further ordered* that, pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on the Second Notice of Proposed Rulemaking in MB Docket No. 20–299 on or before thirty (30) days after publication in the **Federal Register** and reply comments on or before sixty (45) days after publication in the **Federal Register**.

68. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Second Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 73

Radio, Reporting and recordkeeping requirements, Television.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rules

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

PART 73—RADIO BROADCAST SERVICE

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

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

■ 2. Amend § 73.1212 by:
■ a. Revising paragraphs (j)(3)(iv) and (v);
■ b. Adding paragraphs (j)(3)(vi) and (vii) and (j)(8); and
■ c. Revising paragraph (k).

The revisions and additions read as follows:

§ 73.1212 Sponsorship identification; list retention; related requirements.

* * * * *

(j) * * *

(3) * * *

(iv) Certifying that it has informed lessee about paragraph (j)(1) of this section, foreign sponsorship disclosure requirement, and made inquiries of lessee in conformance with paragraphs (j)(3)(ii) and (iii) of this section. Licensee shall incorporate the following language in its certification:

(A) I am authorized on behalf of [Licensee] to certify the following: I certify that in accordance with 47 CFR 73.1212(j), [Licensee] has:

(*1*) Informed [Lessee] at the time of [entering into OR renewal of] this agreement of the foreign sponsorship disclosure requirement contained in 47 CFR 73.1212(j);

(*2*) Inquired of [Lessee] at the time of [entering into OR renewal of] this agreement whether [Lessee] falls into any of the categories listed in the Federal Communications Commission's (FCC) rules at 47 CFR 73.1212(j) such that the [Lessee] qualifies as a ''foreign governmental entity,'';

The FCC's rules state that term ''foreign governmental entity'' includes a ''government of a foreign country,'' ''foreign political party,'' an ''agent of a foreign principal,'' and a ''United States-based foreign media outlet.'' 47 CFR 73.1212(j)(2). The FCC's rules, at 47 CFR 73.1212(j)(2)(i) through (iv), define these terms in the following manner:

(*i*) The term ''government of a foreign country'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 22 U.S.C. 611(e);

(*ii*) The term ''foreign political party'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 22 U.S.C. 611(f);

(*iii*) The term ''agent of a foreign principal'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. 611(c)), and who is registered as such with the Department of Justice, and whose ''foreign principal'' is a ''government of a foreign country,'' a ''foreign political party,'' or directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized by a ''government of a foreign country'' or a ''foreign political party'' as defined in 47 CFR 73.1212(j)(i) and (ii), and that is acting in its capacity as an agent of such ''foreign principal;''

(*iv*) The term ''United States-based foreign media outlet'' has the meaning given such term in section 722(a) of the Communications Act of 1934 (47 U.S.C. 624(a)).

(*3*) Inquired of [Lessee] at the time of [entering into OR renewal of] this agreement whether it knows if any individual/entity in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a ''foreign governmental entity,'' as that term is defined in 47 CFR 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself;

(*4*) Sought and obtained from [Lessee] a certification stating whether [Lessee] [is OR is not] a ''foreign governmental entity,'' as that term is defined in 47 CFR 73.1212(j)(2);

(*5*) Sought and obtained from [Lessee] a certification about whether it knows if any individual/entity in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a ''foreign governmental entity,'' as that term is defined in 47 CFR 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself; and

(*6*) If [Lessee] qualifies, or knows of an individual/entity further back in the chain of producing or distributing the programming that qualifies, as a

''foreign governmental entity,'' pursuant to 47 CFR 73.1212(j)(2), then [Licensee] obtained from [Lessee] the information needed to append the following disclosure to lessee's programming consistent with 47 CFR 73.1212(j)(1)(i):

''The [following/preceding] programming was [sponsored, paid for, or furnished], either in whole or in part, by [name of foreign governmental entity] on behalf of [name of foreign country].''

(*7*) I, [insert name of individual/entity authorized to certify on behalf of Licensee] by my signature attest to the truth of the statements listed above.

(v) Requesting that lessee provide a certification responding to the inquiries contained in paragraphs (j)(3)(ii) and (iii) of this section. Lessee shall incorporate the following language in its certification:

(1) I am authorized on behalf of [Lessee] to certify to the following:

(A) [Licensee] has informed [Lessee] at the time of [entering into OR renewal of] this agreement of the foreign sponsorship disclosure requirement contained in 47 CFR 73.1212(j);

(B) [Licensee] has inquired of [Lessee] at the time of [entering into OR renewal of] this agreement whether [Lessee] falls into any of the categories listed in the Federal Communications Commission's (FCC) rules at 47 CFR 73.1212(j) such that the [Lessee] qualifies as a ''foreign governmental entity,'';

(*1*) The term ''government of a foreign country'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 22 U.S.C. 611(e);

(*2*) The term ''foreign political party'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 22 U.S.C. 611(f);

(*3*) The term ''agent of a foreign principal'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. 611(c)), and who is registered as such with the Department of Justice, and whose ''foreign principal'' is a ''government of a foreign country,'' a ''foreign political party,'' or directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized by a ''government of a foreign country'' or a ''foreign political party'' as defined in 47 CFR 73.1212(j)(i) and (ii), and that is acting in its capacity as an agent of such ''foreign principal;''

(*4*) The term ''United States-based foreign media outlet'' has the meaning given such term in Section 722(a) of the Communications Act of 1934 (47 U.S.C. 624(a)).

(C) [Licensee] has inquired of [Lessee] at the time of [entering into OR renewal of] this agreement whether [Lessee] knows if any individual/entity further back in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a ''foreign governmental entity,'' as that term is defined in 47 CFR 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself;

(D) [Lessee] certifies that it [is OR is not] a ''foreign governmental entity,'' as that term is defined in 47 CFR 73.1212(j)(2);

(E) If applicable: [Lessee] certifies that to its knowledge [Individual/Entity] qualifies as a ''foreign governmental entity,'' as that term is defined in 47 CFR 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself;

(F) If applicable: [Lessee] certifies that to its knowledge there is no individual/entity further back in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or sub-lease, that qualifies as a ''foreign governmental entity,'' as that term is defined in 47 CFR 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself;

(G) If applicable: [Lessee] certifies that to its knowledge there is an individual/entity further back in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or sub-lease, that qualifies as a ''foreign governmental entity,'' as that term is defined in 47 CFR 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself. The name, address, phone number, and email address, if known, of such individual/entity is [individual/entity name, address, phone number, and email address, if known];

(H) To the extent applicable, [Lessee] has provided [Licensee] the information needed to append the following disclosure to lessee's programming consistent with the FCC's rules, found at 47 CFR 73.1212(j)(1)(i):

''The [following/preceding] programming was [sponsored, paid for, or furnished], either in whole or in part, by [name of foreign governmental entity] on behalf of [name of foreign country].''

(I) [Lessee] certifies that during the course of the lease agreement, [Lessee] commits to notify [Licensee] if [Lessee's] status as a ''foreign governmental entity'' changes or if [Lessee] learns that there is an individual/entity further back in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or sub-lease, that qualifies as a ''foreign governmental entity,'' as that term is defined in 47 CFR 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself.

(J) I, [insert name of individual/entity authorized to certify on behalf of Lessee] by my signature attest to the truth of the statements listed above.

(vi) Retaining the certifications, described above in paragraphs (j)(3)(iv) and (v) of this section, within the station's online public inspection file for a period equal to the time that the lease agreement remains in force.

(vii) In the event lessee does not provide a certification responding to the inquiries contained in paragraphs (j)(3)(ii) and (iii) of this section and licensee proceeds with the lease agreement, notifying the Media Bureau at [email address] about lessee's failure to submit a certification and providing the Media Bureau with lessee's contact information, including, to the extent known, lessee's name, postal address, email address, and phone number.

* * * * *

(8) A station shall place copies of the certifications required by paragraphs (j)(3)(iv) and (v) of this section in its online public inspection file within 30 days of the execution of the lease agreement with which the certifications are associated.

* * * * *

(k) Where any material delivered to foreign broadcast stations under an authorization pursuant to section 325(c) of the Communications Act (47 U.S.C. 325(c)) has been sponsored, by a foreign governmental entity; paid for by a foreign governmental entity; furnished for free by a foreign governmental entity to the section 325(c) permit holder as an inducement to air the material on the foreign station; or provided by the section 325(c) permit holder to the foreign station where the section 325(c)

permit holder is a foreign governmental entity, the material must include, at the time of broadcast, the following disclosure, in conformance with the terms of paragraphs (j)(4) through (6) of this section: ''The [following/preceding] programming was [sponsored, paid for, or furnished], either in whole or in part, by [name of foreign governmental entity] on behalf of [name of foreign country].'' A section 325(c) permit holder shall ensure that the foreign station will broadcast the disclosures along with the material and shall place copies of the disclosures required along with the name of the program to which the disclosures were appended in the International Bureau's public filing System (IBFS) under the relevant IBFS section 325(c) permit file. The filing must state the date and time the program aired. In the case of repeat airings of the program, those additional dates and times should also be included. Where an aural announcement was made, its contents must be reduced to writing and placed in the IBFS in the same manner. The section 325(c) permit holder shall exercise reasonable diligence to ascertain whether the foreign sponsorship disclosure requirements of paragraphs (j)(1) and (j)(4) through (6) of this section apply to any material delivered to a foreign broadcast station, including obtaining from its employees, and from other persons with whom it deals directly in connection with any matter for broadcast, and in the same manner prescribed for broadcast stations in paragraph (j)(3) of this section, information to enable the permit holder to include the announcement required by this section; memorializing its conduct of such reasonable diligence; and retaining such documentation in its records for either the remainder of the then-current permit term or one year, whichever is longer, so as to respond to any future Commission inquiry. The term ''foreign governmental entity'' shall have the meaning set forth in paragraph (j)(2) of this section.

■ 3. Amend § 73.3526 by revising paragraph (e)(19) to read as follows:

§ 73.3526 Online public inspection file of commercial stations.

* * * * *

(e) * * *

(19) *Foreign sponsorship disclosures and certifications.* Documentation sufficient to demonstrate that the station is continuing to meet the requirements set forth at § 73.1212(j)(7) and (8).

* * * * *

■ 6. Amend § 73.3527 by revising paragraph (e)(15) to read as follows:

§ 73.3527 Online public inspection file of noncommercial educational stations.

* * * * *

(e) * * *

(15) *Foreign sponsorship disclosures and certifications.* Documentation sufficient to demonstrate that the station is continuing to meet the requirements set forth at § 73.1212(j)(7) and (8).

* * * * *

[FR Doc. 2022–24393 Filed 11–16–22; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–IA–2021–0099; FXIA16710900000–223–FF09A30000]

RIN 1018–BG66

Endangered and Threatened Wildlife and Plants; Revision to the Section 4(d) Rule for the African Elephant

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service or FWS), propose to revise the rule for the African elephant (*Loxodonta africana*) promulgated under section 4(d) of the Endangered Species Act of 1973, as amended (ESA). The intended purposes are threefold: To increase protection for African elephants in light of the recent rise in international trade of live African elephants by establishing ESA enhancement permit requirements for international trade in live elephants and specific enhancement requirements for the import of wild-sourced elephants, as well as requirements to ensure that proposed recipients of live African elephants are suitably equipped to house and care for them; to clarify the existing enhancement requirement during our evaluation of an application for a permit to import African elephant sport-hunted trophies; and to incorporate a Party's designation under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) National Legislation Project into the decision-making process for the import of live African elephants, African elephant sport-hunted trophies, and African elephant parts and products other than ivory and sport-hunted trophies. We anticipate these measures will affect implementation in foreign countries of management measures that enhance African elephant conservation.

DATES: We will accept comments on the proposed rule and the draft environmental assessment received or postmarked on or before January 17, 2023. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below), must be received by 11:59 p.m. eastern time on the closing date.

Public hearing: On January 5, 2023, we will hold a virtual public hearing via ZOOM (*https://zoom.us*) from 1 p.m. to 4 p.m., Eastern Time.

Information collection requirements: If you wish to comment on the information collection requirements in this proposed rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this proposed rule in the **Federal Register**. Therefore, comments should be submitted to OMB (see ''Information Collection'' section below under **ADDRESSES**) by January 17, 2023.

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–HQ–IA–2021–0099, which is the docket number for this rulemaking. Then click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Comment.'' Please ensure that you have found the correct rulemaking before submitting your comment.

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–HQ–IA–2021–0099, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

(3) *By public hearing:* Submit during the public hearing, described above under **DATES**.

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).

Document availability: This proposed rule and supporting documentation, including the draft environmental assessment and economic analysis, are available on *https://www.regulations.gov* in Docket No. FWS–HQ–IA–2021–0099.

Information collection requirements: Written comments and suggestions on

the information collection requirements should be submitted by the date specified above in DATES to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, by email to *Info_Coll@fws.gov*; or by mail to 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803. Please reference ''OMB Control Number 1018–African Elephant'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Mary Cogliano, Manager, Branch of Permits, Division of Management Authority; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: IA; Falls Church, VA 22041 (telephone (703) 358–2104). 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:

Executive Summary

Why We Need To Publish a Proposed Rule. When a species is listed as threatened, section 4(d) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), gives discretion to the Secretary of the Interior (Secretary) to issue regulations that the Secretary deems necessary and advisable to provide for the conservation of such species. In light of the rise in international trade of live elephants, particularly of wild-sourced elephants, we have reevaluated the provisions of the regulations that were issued under section 4(d) of the ESA for the African elephant. We propose to revise the 4(d) rule (in part 17 of title 50 of the Code of Federal Regulations at 50 CFR 17.40(e)) by adopting measures that are necessary and advisable for the current conservation needs of the species, based on our evaluation of the current threats to the African elephant. This proposed 4(d) rule would remove from 50 CFR 17.40(e)(2) the exception from prohibitions for import, export, interstate commerce, and foreign commerce in live African elephants, except when a permit can be issued under 50 CFR part 17. The proposed rule would also establish the standards used to evaluate ''enhancement'' under the ESA for the import of wild-sourced live African elephants under a new proposed 50 CFR 17.40(e)(10). That provision would establish an annual certification requirement for range countries that allow for export of live African elephants destined for the United States to provide the Service with information about the management and status of African elephants in their country.

This proposed rule would also clarify our evaluation of the existing enhancement requirement regarding applications for the import of sport-hunted trophies by adding a new provision to 50 CFR 17.40(e)(6). That provision would establish an annual certification requirement for range countries that allow for export of sport-hunted trophies destined for the United States to provide the Service with information about the management and status of African elephants and the hunting programs in their country. This proposal would not change the enhancement requirement for the import of sport-hunted trophies under the current 4(d) rule but would clarify how that requirement can be met.

The proposed rule would also include incorporating the CITES National Legislation Project category designations (see 50 CFR 23.7 and *http://www.cites.org*) into the acceptance of imports under 50 CFR 17.40(e)(2), (e)(6), and (e)(10) under a new proposed 50 CFR 17.40(e)(11).

Need for Regulatory Action

We have reevaluated the provisions of the current 4(d) rule and considered other administrative actions in light of the rise in international trade of live African elephants. In addition, we have received a rulemaking petition under the Administrative Procedure Act specifically relating to the import of African elephant sport-hunted trophies. The petition is a request to initiate an expedited rulemaking to reinstate negative enhancement findings for African elephant sport-hunted trophies taken in Zimbabwe (Friends of Animals (FOA), received May 17, 2021).

We are responding to the petition and information provided with it through the proposed revisions in this document to the 4(d) rule for the African elephant.

In the petition described above, FOA requests the Service to: (1) repeal or amend the memorandum dated March 1, 2018, in which the Service withdrew certain findings for ESA-listed species taken as sport-hunted trophies; (2) reinstate the Enhancement Finding for African Elephants Taken as Sport-hunted Trophies in Zimbabwe On or After January 1, 2015 (Mar. 26, 2015); and (3) enact an immediate moratorium on the importation of African elephant sport-hunted trophies from Zimbabwe. Additional information can be found below in *Basis for Proposed Regulatory Changes;* however, in summary, the Service previously issued enhancement findings for the import of African elephant sport-hunted trophies on a country-by-country basis (*i.e.,* on a ''countrywide'' basis). In response to a D.C. Circuit Court opinion, *Safari Club Int'l* v. *Zinke,* 878 F.3d 316 (D.C. Cir. 2017), on March 1, 2018, the Service revised its procedure for assessing applications to import certain hunted species, including African elephants. We withdrew our countrywide enhancement findings for elephants across several countries including Zimbabwe and now make findings for trophy imports on an application-by-application basis. On June 16, 2020, the D.C. Circuit upheld the Service's withdrawal of the countrywide findings and implementation of the application-by-application approach in *Friends of Animals* v. *Bernhardt,* 961 F.3d 1197 (D.C. Cir. 2020).

This proposed rule clarifies the enhancement criteria for our assessment of an application for the import of an African elephant sport-hunted trophy. Under the proposed rule, applications will continue to be evaluated on an application-by-application basis, but the clarified enhancement criteria include the requirement to obtain information on the status and management of the African elephant within the range country on an annual basis. The clarified enhancement criteria will assist the Service in ensuring that any import of an African elephant sport-hunted trophy contributes to enhancing the conservation of the species and that the import does not contribute to the decline in populations of the species.

Ultimately, under this proposed 4(d) rule, we have determined that there is a conservation need to (1) establish permitting requirements under the ESA for trade in live African elephants, enhancement standards under the ESA for the import of wild-sourced live African elephants, and requirements to ensure proposed recipients of live African elephants are suitably equipped to house and care for the elephants; (2) clarify the enhancement standards for the import of African elephant sport-hunted trophies; and (3) incorporate the CITES National Legislation Project designations into the requirements for certain imports.

We find it is appropriate for the United States to propose requirements

under the ESA to ensure that activities with live African elephants under U.S. jurisdiction contribute to enhancing the conservation of the species and that live African elephants are well cared for, so that any domestic demand for live African elephants enhances the conservation of the species and does not contribute to the decline in populations of the species in the wild. In addition, clarifying the enhancement requirement for the import of African elephant sport-hunted trophies and receiving information from the range countries will enable us to ensure that authorized imports contribute to enhancing the conservation of the species and do not contribute to the decline in populations of the species. Clarifying the enhancement standards for the import of African elephant sport-hunted trophies would also increase transparency with stakeholders in the decision-making process. In order to support U.S. African elephant conservation efforts, we propose to allow certain types of imports only from countries that have achieved a Category One designation under the CITES National Legislation Project, which is accomplished by meeting the basic requirements to implement CITES through the Party's adoption of national laws to implement the treaty.

Background

African elephants are a ''keystone species'' (a species on which other species in an ecosystem largely depend, such that if it were removed the ecosystem would change drastically) and have a unique role in the ecosystem. The species inhabits a wide variety of habitat types, such as savannahs, forests, deserts, and grasslands, and can migrate long distances, depending upon resource availability. African elephants modify habitat through numerous means, such as through bulk processing of plant materials, preventing the encroachment of woodlands onto grasslands, dispersing seeds, and maintaining waterways, among others. As a result of this habitat modification, the species has the potential to alter fire regimes, influence the spatial distribution of other species, and change species richness. Because of the numerous and often complex relationships between African elephants and (1) other African elephants, (2) other species on the landscape, and (3) their environment, the removal of African elephants from the wild has the potential to have large-scale ramifications on the composition and, in turn, health of the ecosystem. According to the International Union for Conservation of Nature, the principal threat to African elephants has been poaching for ivory, but increasingly, development for agriculture, coupled with associated human-elephant conflict as suitable elephant habitat is gradually reduced.

The Service has a responsibility to conserve both domestic and foreign species, and the ESA makes no distinction between foreign species and domestic species in listing species as threatened or endangered. The protections of the ESA, including section 9 and 4(d), generally apply to both listed foreign species and domestic species, and section 8 of the ESA provides authorities for international cooperation on foreign species. However, some significant differences in the Service's authorities result in differences in our ability to affect conservation for foreign and domestic species under the ESA. The major differences are that the Service has no regulatory jurisdiction over take of a listed species in a foreign country, or of trade in listed species outside the United States by persons not subject to the jurisdiction of the United States. 50 CFR 17.21. The Service also does not designate critical habitat within foreign countries or in other areas outside of the jurisdiction of the United States. 50 CFR 424.12(g). The protections of the ESA through listing are likely to have their greatest conservation effect for foreign species with regard to regulating trade to, from, through, or within the United States, and other activities with foreign species in the United States.

Accordingly, we find it is necessary and advisable to propose requirements under the ESA to ensure that activities with live African elephants under U.S. jurisdiction contribute to enhancing the conservation of the species, and that live African elephants are well cared for, so that any demand for live African elephants in the United States enhances the conservation of the species and does not contribute to the decline in populations of the species in the wild. We also evaluated our current process for making ESA enhancement findings related to permit applications requesting the import of sport-hunted trophies of African elephants. We considered how our permitting process and resulting decisions could be more transparent so that applicants, the public, and stakeholders understand the requirements under the ESA. In order to clarify and improve this process, we are proposing to add new provisions to 50 CFR 17.40(e)(6) and 50 CFR 17.40(e)(10) that would establish an annual certification requirement for African elephant range countries that export sport-hunted African elephant trophies or live, wild-sourced African elephants to the United States to provide the Service with information about the management and status of African elephants and the hunting programs in their country. This requirement and the information from the range countries will be a part of our decision-making on applications to permit the import of African elephant sport-hunted trophies or live, wild-sourced African elephants. It will enable us to ensure that authorized imports contribute to enhancing the conservation of the species and that the imports do not contribute to the decline in populations of the species.

Clarifying the enhancement standards and improving this process for the import of African elephant sport-hunted trophies or live, wild-sourced African elephants would also increase transparency with stakeholders and more efficient evaluations of applications. This proposed change to the 4(d) rule would not have any effect on the ability of U.S. citizens to travel to countries that allow hunting of African elephants and engage in sport hunting. The import of any associated sport-hunted trophy into the United States would continue to be regulated and require an enhancement finding and threatened species import permit. The proposed measures are also anticipated to support development and implementation of effective management measures in foreign countries that enhance African elephant conservation.

Further, we find it necessary to ensure that we allow African elephant imports only from countries that have met the basic requirement to implement CITES under their national laws. Thus, we propose to incorporate a requirement that certain African elephant imports, including live elephants, sport-hunted trophies, and parts or products other than ivory and sport-hunted trophies, be considered only when the country of origin and export or re-export has achieved a Category One designation under the CITES National Legislation Project. Making this proposed regulatory change would further ensure that authorized imports of African elephants are not detrimental to the survival of the species.

Regulatory Background

In the United States, the African elephant is protected under the ESA, the African Elephant Conservation Act (AfECA) (16 U.S.C. 4201 *et seq.*), and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or Convention) (27

U.S.T. 1087), as implemented in the United States through the ESA.

Endangered Species Act. Under the ESA, species may be listed either as ''endangered'' or ''threatened.'' When a species is listed as endangered under the ESA, certain actions are prohibited under section 9 (16 U.S.C. 1538), as specified at 50 CFR 17.21. With respect to endangered species of fish or wildlife, these include prohibitions on import; export; take within the United States, within the territorial seas of the United States, or upon the high seas; possession and other acts with unlawfully taken specimens; delivery, receipt, carriage, transport, or shipment in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity; and sale or offer for sale in interstate or foreign commerce of the species and their parts and products. It is also unlawful to attempt to commit, to solicit another to commit, or to cause to be committed any such conduct. However, under certain circumstances, permits may be issued that authorize exceptions to prohibited activities.

Section 4(d) of the ESA contains two sentences. The first sentence states that the Secretary shall issue such regulations as he or she deems necessary and advisable to provide for the conservation of species listed as threatened species. The U.S. Supreme Court has noted that statutory language like ''necessary and advisable'' demonstrates a large degree of deference to the agency (see *Webster* v. *Doe,* 486 U.S. 592 (1988)). ''Conservation'' is defined in the ESA to mean the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the ESA are no longer necessary [16 U.S.C. 1532(3)]. Additionally, the second sentence of section 4(d) of the ESA states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, with respect to endangered species. Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld rules developed under section 4(d) as a valid exercise of agency authority where they prohibited take of threatened wildlife or include a limited taking prohibition (see *Alsea Valley Alliance* v. *Lautenbacher,* 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the ESA was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to [her] with regard to the permitted activities for those species. [She] may, for example, permit taking, but not importation of such species, or [she] may choose to forbid both taking and importation but allow the transportation of such species'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

The African elephant was listed as threatened under the ESA, effective June 11, 1978 (43 FR 20499, May 12, 1978). A review of the status of the species at that time showed that the African elephant was declining in many parts of its range and that habitat loss, illegal killing of elephants for their ivory, and inadequacy of existing regulatory mechanisms were factors contributing to the decline. At the same time the African elephant was designated as a threatened species, the Service promulgated a 4(d) rule to regulate import and certain interstate commerce of the species in the United States (43 FR 20499, May 12, 1978). The 1978 4(d) rule for the African elephant stated that the prohibitions at 50 CFR 17.31 applied to any African elephant, alive or dead, and to any part, product, or offspring thereof, with certain exceptions.

Specifically, under the 1978 rule, the prohibition at 50 CFR 17.31 against importation did not apply to African elephant specimens that had originated in the wild in a country that was a Party to CITES if they had been exported or re-exported in accordance with Article IV of the Convention and had remained in customs control in any country not party to the Convention that they transited enroute to the United States (at that time, the only African elephant range states that were Parties to CITES were Botswana, Ghana, Niger, Nigeria, Senegal, South Africa, and Zaire [now the Democratic Republic of the Congo].) The 1978 rule allowed for the Service to issue a special purpose permit in accordance with the provisions of 50 CFR 17.32 to authorize any activity otherwise prohibited with regard to the African elephant, upon receipt of proof that the specimens were already in the United States on June 11, 1978, or that the specimens were imported under the exception described above.

The 4(d) rule has been amended four times, in part in response to the population decline of African elephants and the increase in illegal trade in elephant ivory, and to more closely align U.S. requirements with actions taken by the CITES Parties. On September 20, 1982, the Service amended the 4(d) rule for the African elephant (47 FR 31384, July 20, 1982) to ease restrictions on domestic activities and to align its requirements more closely with provisions in CITES Resolution Conf. 3.12, *Trade in African elephant ivory,* adopted by the CITES Parties at the third meeting of the Conference of the Parties (CoP3, 1981). The 1982 rule applied only to import and export of ivory (and not other elephant specimens) and eliminated the prohibitions under the ESA against taking, possession of unlawfully taken specimens, and certain activities for the purpose of engaging in interstate and foreign commerce, including the sale and offer for sale in interstate commerce of African elephant specimens. At that time, the Service concluded that the restrictions on interstate commerce contained in the 1978 rule were unnecessary and that the most effective means of utilizing limited resources to control ivory trade was through enforcement efforts focused on imports.

The ESA 4(d) rule for the African elephant was revised on September 9, 1992 (57 FR 35473, August 10, 1992), following establishment of the 1989 moratorium under the African Elephant Conservation Act on the import of African elephant ivory into the United States, and again on June 26, 2014 (79 FR 30400, May 27, 2014), associated with an update of U.S. CITES implementing regulations. In the 2014 revision of the 4(d) rule, we removed the CITES marking requirements for African elephant sport-hunted trophies. At the same time, these marking requirements were updated and incorporated into our CITES regulations at 50 CFR 23.74. The purpose of this regulatory change was to make clear what is required under CITES (at 50 CFR part 23) for trade in sport-hunted trophies and what is required under the ESA (at 50 CFR part 17).

In response to the alarming rise in poaching to fuel the growing illegal trade in ivory, the Service again revised the 4(d) rule on July 6, 2016 (81 FR 36388, June 6, 2016). The revised rule prohibited the import and export of

African elephant ivory with limited exceptions for musical instruments, items that are part of a traveling exhibition, and items that are part of a household move or inheritance when specific criteria are met and ivory for law enforcement or genuine scientific purposes. The revised rule amended the exception for import of sport-hunted trophies with an enhancement finding by adding a requirement that a threatened species import permit be issued under 50 CFR 17.32. The revised rule also limited the number of sport-hunted African elephant trophies imported into the United States to two per hunter per year. Interstate and foreign commerce in African elephant ivory was prohibited except for items that qualify as ESA antiques and certain manufactured or handcrafted items that contain a small (*de minimis*) amount of ivory and meet specific criteria. The revised rule also prohibited take of live African elephants in the United States to help ensure that elephants held in captivity receive an appropriate standard of care. For example, live elephants in the United States cannot be used for sport hunting. Killing or otherwise hunting an elephant in the United States would be prohibited take. The revised rule did not amend exceptions allowing for trade in live African elephants and African elephant parts and products other than ivory and sport-hunted trophies. Specifically, under the current 4(d) rule, live African elephants and African elephant parts and products other than ivory and sport-hunted trophies may be imported into or exported from the United States; sold or offered for sale in interstate or foreign commerce; and delivered, received, carried, transported, or shipped in interstate or foreign commerce in the course of a commercial activity without a threatened species permit issued under 50 CFR 17.32, provided the requirements in 50 CFR parts 13, 14, and 23 have been met. Under the current 4(d) rule, it is unlawful to sell or offer for sale in interstate or foreign commerce or to deliver, receive, carry, transport, or ship in interstate or foreign commerce and in the course of a commercial activity any sport-hunted African elephant trophy.

In summary, under the current provisions of the 4(d) rule, at 50 CFR 17.40(e), all of the prohibitions and exceptions in 50 CFR 17.31 (incorporating 50 CFR 17.21) and 17.32 apply to the African elephant, with certain exceptions for qualifying activities provided in 50 CFR 17.40(e)(2) through (e)(9). Other than activities that qualify for an exception, the prohibitions make it illegal for any person subject to the jurisdiction of the United States to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any African elephant. In addition, it is unlawful to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) African elephants within the United States or on the high seas. It is also illegal to possess, sell, deliver, carry, transport, or ship, by any means whatsoever any African elephant that has been taken illegally.

We note that the Service has been petitioned to reclassify the African elephant as endangered and to recognize two species of African elephants and classify them both as endangered. Review of those petitions, through a process separate from this rulemaking, is ongoing.

African Elephant Conservation Act. The AfECA was enacted in 1988 to ''perpetuate healthy populations of African elephants'' by regulating the import and export of certain African elephant ivory to and from the United States. Building from and supporting existing programs under CITES, the AfECA called on the Service to establish moratoria on the import of raw and worked ivory from both African elephant range countries and intermediary countries (those that export ivory that does not originate in that country) that failed to meet certain statutory criteria. The statute also states that it does not provide authority for the Service to establish a moratorium that prohibits the import of sport-hunted trophies that meet certain standards. This limitation is specific to the AfECA and does not limit agency authority under the ESA.

In addition to authorizing establishment of the moratoria and prohibiting any import in violation of the terms of any moratorium, the AfECA prohibits: The import of raw African elephant ivory from any country that is not a range country; the import of raw or worked ivory exported from a range country in violation of that country's laws or applicable CITES programs; the import of worked ivory, other than certain personal effects, unless the exporting country has determined that the ivory was legally acquired; and the export of all raw (but not worked) African elephant ivory. While the AfECA comprehensively addresses the import of ivory into the United States, it does not address other uses of ivory or African elephant specimens other than ivory and sport-hunted trophies. The AfECA does not regulate the use of ivory within the United States and, other than the prohibition on the export of raw ivory, does not regulate export of ivory from the United States. The AfECA also does not regulate the import or export of live African elephants.

Following enactment of the AfECA (in October 1988), the Service established, on December 27, 1988, a moratorium on the import into the United States of African elephant ivory from countries that were not parties to CITES (53 FR 52242). On February 24, 1989, the Service established a second moratorium on all ivory imports into the United States from Somalia (54 FR 8008). On June 9, 1989, the Service put in place a moratorium that banned the import of ivory other than sport-hunted trophies from both range and intermediary countries (54 FR 24758).

Convention on International Trade in Endangered Species of Wild Fauna and Flora (*CITES*). CITES entered into force in 1975 and currently has 184 Parties (183 countries and 1 regional economic integration organization that have ratified the Convention), including the United States. The aim of CITES is to regulate international trade in listed animal and plant species, including their parts and products, to ensure the trade is legal and does not threaten the survival of species. CITES regulates both commercial and noncommercial international trade through a system of permits and certificates that must be presented when leaving and entering a country with CITES specimens. Species are listed in one of three appendices, which provide different levels of protection. In some circumstances, different populations of a species are listed at different levels. Appendix I includes species that are threatened with extinction and are or may be affected by trade. The Convention states that Appendix I species must be subject to ''particularly strict regulation'' and trade in specimens of these species should be authorized only ''in exceptional circumstances.'' Appendix II includes species that are not necessarily threatened with extinction now but may become so if international trade is not regulated. Appendix III includes species that a range country has identified as being subject to regulation within its jurisdiction and as needing cooperation of other Parties in the control of international trade.

Import and export of CITES species is prohibited unless accompanied by any required CITES documents. Documentation requirements vary depending on the CITES Appendix in which the species or population is

included and other factors. CITES documents cannot be issued until specific biological and legal findings have been made. U.S. CITES implementing regulations are found in 50 CFR part 23. The CITES Appendices are found on the CITES website (see *www.cites.org; https://cites.org/eng/app/appendices.php;* 50 CFR 23.7, 23.91).

Ghana first listed the African elephant in CITES Appendix III on February 26, 1976. Later that year, the CITES Parties agreed to add African elephants to Appendix II, effective February 4, 1977. In October 1989, all populations of African elephants were transferred from CITES Appendix II to Appendix I (effective in January 1990), which ended much of the legal commercial trade in African elephant ivory.

In 1997, based on proposals submitted by Botswana, Namibia, and Zimbabwe and the report of a panel of experts (which concluded, among other things, that populations in these countries were stable or increasing and that poaching pressure was low), the CITES Parties agreed to transfer the African elephant populations in these three countries to CITES Appendix II. The Appendix II listing included an annotation that allowed noncommercial export of hunting trophies, export of live animals to appropriate and acceptable destinations, export of hides from Zimbabwe, and noncommercial export of leather goods and some ivory carvings from Zimbabwe. It also allowed for a one-time export of raw ivory to Japan (which took place in 1999), once certain conditions had been met. All other African elephant specimens from these three countries were deemed to be specimens of a species listed in Appendix I and regulated accordingly.

The African elephant population of South Africa was transferred from CITES Appendix I to Appendix II in 2000, with an annotation that allowed trade in hunting trophies for noncommercial purposes, trade in live animals for reintroduction purposes, and trade in hides and leather goods. At that time, the panel of experts reviewing South Africa's proposal concluded, among other things, that South Africa's elephant population was increasing, that there were no apparent threats to the status of the population, and that the country's anti-poaching measures were ''extremely effective.'' Since then, the CITES Parties have revised the Appendix II listing annotation.

The current annotation covers the Appendix-II populations of Botswana, Namibia, South Africa, and Zimbabwe for the exclusive purpose of allowing trade in:

- sport-hunted trophies for noncommercial purposes;
- live animals to appropriate and acceptable destinations, as defined in Resolution Conf. 11.20 (Rev. CoP18), for Botswana and Zimbabwe and for in situ conservation programs for Namibia and South Africa;
- hides;
- hair;
- trade in leather goods for commercial or noncommercial purposes for Botswana, Namibia, and South Africa and for noncommercial purposes for Zimbabwe;
- certain ivory carvings from Namibia and Zimbabwe for noncommercial purposes; and
- a one-time export of specific quantities of raw ivory, once certain conditions had been met (this export, to China and Japan, took place in 2009).

These specimens can be traded under CITES as Appendix II specimens. As in previous versions of the annotation, all other African elephant specimens from these four populations are deemed to be specimens of species included in Appendix I, and the trade in them is regulated accordingly.

With regard to live African elephants, as noted above, African elephants are included in CITES Appendix I, except for the annotated African elephant populations of Botswana, Namibia, South Africa, and Zimbabwe that are included in CITES Appendix II. Live African elephants exported from Botswana and Zimbabwe under the annotation are for trade to ''appropriate and acceptable destinations'' as defined in Resolution Conf. 11.20 (Rev. CoP18) on *Definition of the term 'appropriate and acceptable destinations',* while live African elephants exported from Namibia and South Africa under the annotation are for ''in situ conservation programs.'' Under the annotation, all other live African elephant specimens from these four populations shall be deemed to be specimens of species included in Appendix I, and the trade in them shall be regulated accordingly. The annotation reads, in relevant part, as follows:

Populations of Botswana, Namibia, South Africa and Zimbabwe (listed in Appendix II):

For the exclusive purpose of allowing:

* * * * *

(b) trade in live animals to appropriate and acceptable destinations, as defined in Resolution Conf. 11.20 (Rev. CoP18), for Botswana and Zimbabwe and for *in situ* conservation programmes for Namibia and South Africa;

* * * * *

All other specimens shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly.

Appendix I specimens require a CITES permit from both the exporting and importing countries. In the United States, the Service, as the U.S. Management Authority, issues Appendix I import permits if required CITES findings are made, including: That the import is not for primarily commercial purposes (made by the Management Authority); that the import is for purposes that are not detrimental to the survival of the species (made by the Scientific Authority); and that the facility is suitably equipped to care for and house the specimens to be imported (made by the Scientific Authority). Requirements for an import permit are found at 50 CFR 23.35. With limited exceptions, an Appendix-I specimen may only be used for noncommercial purposes after import, 50 CFR 23.55. These same requirements would apply to a live African elephant specimen from the Appendix II populations if the trade does not meet the requirements of the annotation, because the specimen would be treated as an Appendix I specimen, and subject to Article III requirements.

Live elephants from Botswana and Zimbabwe traded in accordance with the annotation are traded as Appendix II specimens under Article IV requirements and require a CITES export permit where the legal acquisition and non-detriment findings are made by the exporting country. The ''appropriate and acceptable destination'' finding is made by the importing country's Scientific Authority in consultation with the exporting country. For example, elephants from Botswana or Zimbabwe imported into the United States would require prior findings by FWS under the ''appropriate and acceptable destination'' annotation to be regulated pursuant to the requirements of Article IV as an Appendix II specimen. Again, if the requirements of the annotation are not met, the specimen is treated as an Appendix-I specimen and subject to Article III requirements.

Live elephants from Namibia and South Africa traded in accordance with the annotation are traded as Appendix II specimens under Article IV requirements and require a CITES export permit where the legal acquisition and non-detriment findings are made by the exporting country. Under the annotation, these live elephants may be traded only within the native range of the African elephant for ''in-situ conservation programs.'' Again,

if the requirements of the annotation are not met, the specimen is traded as an Appendix I specimen and subject to Article III requirements. For example, elephants from Namibia or South Africa imported into the United States are regulated pursuant to the requirements of Article III as an Appendix I specimen. Accordingly, no import of an African elephant to the United States can occur without either a prior import permit issued by FWS in accordance with Article III, or in the case of elephants originating from Zimbabwe or Botswana, if FWS has made prior findings under the ''appropriate and acceptable destination'' annotation.

At CITES CoP18, in discussion of the definition of ''appropriate and acceptable destinations,'' the Parties adopted amendments to Resolution Conf. 11.20 (Rev. CoP18) that would not allow trade in live African elephants from Botswana and Zimbabwe outside their native range under the annotation, except in an exceptional circumstance (defined in the resolution). This amendment is the subject of ongoing discussion in CITES.

The United States, as a Party to CITES, will attend the nineteenth regular meeting of the Conference of the Parties to CITES (CoP19) in Panama City, Panama, from November 14 through November 25, 2022. We announced the provisional agenda for CoP19 and solicited public comments on the items on the provisional agenda, which are available at *https://www.regulations.gov/docket/FWS-HQ-IA-2021-0008.*

CITES National Legislation Project. In accordance with CITES Resolution Conf. 8.4 (Rev. CoP15) on *National laws for the implementation of the Convention,* and with oversight from the CITES Standing Committee, the CITES Secretariat identifies Parties whose domestic measures do not provide them with the authority to:

(i) Designate at least one Management Authority and one Scientific Authority,

(ii) Prohibit trade in specimens in violation of the Convention,

(iii) Penalize such trade, or

(iv) Confiscate specimens illegally traded or possessed.

All four requirements must be met by the national laws of a Party in order for the Party to meet the minimum requirements to implement CITES. It is an obligation of each Party under CITES to have national legislation in place that meets these requirements in order to engage in trade in compliance with CITES (CITES Article VIII(1), IX. See also Article II(4)). For example, in the United States, the ESA meets these requirements. The Secretariat, under the CITES National Legislation Project and in consultation with the concerned Party, analyzes national legislation for the four aforementioned requirements and designates each Party into one of three categories:

(1) Category One, defined as legislation that is believed generally to meet the requirements for implementation of CITES [all of provisions (i)–(iv) in the list above are met];

(2) Category Two, defined as legislation that is believed generally not to meet all of the requirements for the implementation of CITES [some of provisions (i)–(iv) in the list above are met]; and

(3) Category Three, defined as legislation that is believed generally not to meet the requirements for the implementation of CITES [none of provisions (i)–(iv) in the list above are met].

The Secretariat maintains a legislative status table, which is periodically revised, and includes the category in which each Party's legislation is placed and whether the Party has been identified by the Standing Committee as requiring attention as a priority. The CITES National Legislation Project designations are available with other official CITES documents on the CITES Secretariat website (see 50 CFR 23.7 and *https://cites.org/eng/legislation/parties*).

Range countries of the African elephant are currently classified as follows:

Category One: Angola, Cameroon, the Democratic Republic of the Congo, Ethiopia, Equatorial Guinea, Guinea-Bissau, Malawi, Namibia, Nigeria, Senegal, South Africa, and Zimbabwe;

Category Two: Benin, Botswana, Burkina Faso, Chad, Republic of the Congo, Eritrea, Gabon, Guinea, Kenya, Mali, Mozambique, Sudan, United Republic of Tanzania (other than Zanzibar), Togo, and Zambia; and

Category Three: The Central African Republic, Côte d'Ivoire, Eswatini, Ghana, Liberia, Niger, Rwanda, Sierra Leone, Somalia, and Uganda.

The Standing Committee has identified the following Parties that are also range countries of the African elephant as requiring priority attention for review under the National Legislation Project: Botswana, Republic of the Congo, Guinea, Kenya, Liberia, Mozambique, Rwanda, Somalia, and the United Republic of Tanzania (Zanzibar). As noted above, these categories are periodically revised as Parties enact CITES-implementing legislation, and therefore each Party in Category Two or Three can and is expected to achieve Category One. Additionally, the legislation of a Party currently placed in Category One may be subject to a revised legislative analysis at any time following relevant legislative developments, such as repealing of CITES-implementing legislation. The Secretariat reports on progress and issues are reviewed at regular meetings of the Conference of the Parties and the Standing Committee.

Basis for Proposed Regulatory Changes

Exercising the Secretary's authority under section 4(d), we have developed a proposed rule that is designed to address the African elephant's conservation needs. We find that this rule satisfies the requirement in section 4(d) of the ESA to issue regulations deemed necessary and advisable to provide for the conservation of the African elephant.

The Service recognizes that some have suggested the possibility of promulgating a ban or moratorium on the import of live African elephants, elephant sport-hunted trophies, or parts and products other than ivory and sport-hunted trophies, with no permitting exceptions. We have not pursued such an option in this proposal, and we note that there has not previously been such a ban promulgated under the ESA for African elephants or for any other ESA-listed endangered or threatened species. For example, although section 9(a)(1)(A) of the ESA and the Service's regulations in 50 CFR 17.21 prohibit import or export of any endangered wildlife, section 10(a)(1)(A) of the ESA and the Service's regulations at 50 CFR 17.22 provide exceptions by permit when certain issuance criteria are met. We are unconvinced that a conservation case has been made for considering taking such an unprecedented step for a threatened species. As referenced above, for an endangered species, all imports and exports are prohibited, with the exception of those accompanied by section 10(a)(1)(A) permits issued for scientific purposes or to enhance the propagation or survival of the species.

In this proposal, we are not considering a ban on imports of threatened African elephants with no permitting exceptions. A ban could require institutions exhibiting African elephants to rely on captive breeding programs to replenish their stock, which could affect opportunities for genetic material exchanges. In addition, since elephants may face human-elephant conflict as a result of their impact on local agriculture, some amount of culling could continue to occur despite a ban, such that banning sport hunting could deprive range countries of revenue without necessarily affecting

the number of animals removed from herds. A proposed ban of this nature would conflict with efforts to encourage positive elephant conservation efforts by range countries that are engaged in this trade and ensure that it is well-managed.

Rather, our proposed amendments to the 4(d) rule presented below are intended to continue to encourage African countries and people living with elephants to enhance their survival, and provide incentives to take meaningful actions to conserve the species and put much-needed revenue back into elephant conservation. Our proposal also ensures that we do not allow imports in circumstances where elephants are not well-managed and better ensures that any live elephants in trade and their offspring are well taken care of throughout their lifetimes.

General Provisions

We propose to revise the 4(d) rule for the African elephant in 50 CFR 17.40(e) to:

- remove from 50 CFR 17.40(e)(2) the exception from prohibitions for import, export, interstate commerce, and foreign commerce in live African elephants, except when a permit can be issued under 50 CFR part 17;
- establish requirements for the import of live African elephants under a new proposed 50 CFR 17.40(e)(10)(i);
- establish the standards used to evaluate ''enhancement'' under the ESA for the import of wild-sourced live African elephants under a new proposed 50 CFR 17.40(e)(10)(ii), including an annual certification requirement for range countries that allow for export of live African elephants destined for the United States; and
- require ''suitably equipped to house and care for'' findings for permitted transfers after import to ensure live elephants are going only to facilities that are suitably equipped to house and care for them.

This proposed rule would also improve and clarify our evaluation of the existing enhancement requirement during our evaluation of an application for the import of sport-hunted trophies by adding a new provision to 50 CFR 17.40(e)(6) that would establish an annual certification requirement for range countries that export sport-hunted trophies to the United States to provide the Service with information about the management and status of African elephants and the hunting programs in these countries. The proposed rule would also include incorporating the CITES National Legislation Project category designations into the acceptance of imports under current 50 CFR 17.40(e)(2) and (e)(6) and proposed paragraph (e)(10) under a new proposed paragraph (e)(11). We explain below the protections that this proposed rule would provide to African elephants. Nothing in this proposed rule would affect other legal requirements applicable to African elephants and their parts and products.

Import of Live Elephants

As noted above, we propose to establish new requirements for trade in live African elephants. Much work regarding trade in live elephants under CITES has occurred in recent years and helps to inform this proposal. At CoP17 (Johannesburg, 2016), Resolution Conf. 11.20 on *Definition of the term 'appropriate and acceptable destinations'* was amended, clarifying the definition of ''appropriate and acceptable destinations.'' The new language stated that ''where the term 'appropriate and acceptable destinations' appears in an annotation to the listing of a species in Appendix II of the Convention with reference to the trade in live animals, this term shall be defined to mean destinations where:

(a) The Scientific Authority of the State of import is satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it; and

(b) The Scientific Authorities of the State of import and the State of export are satisfied that the trade would promote *in situ* conservation.

Also, at CoP17, Decisions 17.178 to 17.180 were adopted on the implementation of the definition of the term ''appropriate and acceptable destinations'' and Article III, paragraphs 3(b) and 5(b), of the Convention regarding findings that recipients of living specimens of CITES Appendix I species are suitably equipped to house and care for them, with a view to developing recommendations and guidance for consideration by the Standing Committee and the 18th meeting of the Conference of Parties.

At the 30th meeting of the Animals Committee (AC30, Geneva, July 2018), the Committee developed and recommended general nonbinding guidance on factors that should be considered when evaluating whether the proposed recipient of a living specimen is suitably equipped to house and care for it, such as: Climate conditions of the recipient, space to display normal behavior, dietary needs, and social well-being of the living specimens, among others. This guidance for determining whether a proposed recipient of a living specimen is suitably equipped to house and care for the specimen was subsequently presented to CITES CoP18 in CoP18 Doc. 44.1 and adopted along with Decisions 18.152–18.156.

To carry out the work called for in these decisions, the Animals Committee established an intersessional working group on appropriate and acceptable destinations. The United States was a member of this working group. One mandate of the working group was to focus on preparing draft nonbinding best practice guidance on how to determine whether ''the trade would promote in situ conservation'' in line with the provisions of paragraph 2 b) of Resolution Conf. 11.20 (Rev. CoP18). Another mandate of the working group was to develop more detailed species-specific guidance on how to determine whether the proposed recipient is suitably equipped to house and care for living specimens of African elephants, building on the guidance adopted at CoP18. The Animals Committee concluded this work at the 31st Meeting of the Animals Committee, and its recommendations for guidance on these issues and suggestions for future work were discussed at the 74th meeting of the Standing Committee (SC74) and endorsed for submission to and consideration by the Nineteenth Conference of the Parties (CoP19) in November 2022 (Panama). The Standing Committee (SC) agreed to submit the following to the Nineteenth meeting of the Conference of the Parties (CoP19) in November 2022 (Panama): (1) the nonbinding best practice guidance on how to determine whether ''the trade would promote in situ conservation'' contained in Annex 1 to document SC74 Doc. 50 with a minor amendment to refer to both the Scientific Authority and the Management Authority throughout the guidance, and (2) the nonbinding guidance for determining whether a proposed recipient of a living specimen of African elephant and/or southern white rhinoceros is suitably equipped to house and care for it, contained in Annex 2 to document SC74 Doc. 50. The Committee did not propose revisions to Resolution Conf. 11.20 (Rev. CoP18) or to any other relevant Resolution. After debating concerns raised about the export of live African elephants by Namibia and Zimbabwe, including concerns expressed by the United States, SC74 noted the concerns and invited Parties to propose to the Conference of the Parties a clear legal framework for trade in live African elephants.

In addition, SC74 agreed to propose draft decisions to CoP19 to replace Decisions 18.152 to 18.156. If adopted,

the new decisions would direct an intersessional review process to invite feedback on experience with using the guidance contained in Notification to the Parties No. 2019/070 on ''Non-binding guidance for determining whether a proposed recipient of a living specimen is suitably equipped to house and care for it'' as well as the information provided on the CITES web page ''Appropriate and acceptable destinations.'' The Secretariat would submit a report on this feedback to the Animals Committee and the Standing Committee for their consideration and recommendations to CoP20, as appropriate.

The continued work and development of nonbinding best practice guidance on how to determine whether ''the trade would promote in situ conservation'' is in line with the provisions of paragraph 2 b) of Resolution Conf. 11.20 (Rev. CoP18). More detailed species-specific guidance on how to determine whether the proposed recipient of a living specimen is suitably equipped to house and care for living specimens of African elephants will aid Parties in making these complex findings, helping to maintain the scientific integrity of CITES. These guidance documents will enable CITES Parties to allocate resources more effectively and aid in providing needed examples of biological and management information.

In parallel to the efforts described above, at the 69th meeting of the Standing Committee (SC69), Burkina Faso and Niger, on behalf of several nongovernmental organizations, submitted an Information Document (SC69 Inf. 36) on challenges to CITES regulation of the international trade in live, wild-caught African elephants. The document presented a detailed analysis of information on the legal implications, biological impacts, and welfare effects of the trade in live African elephants, including case studies. It concluded that, emergencies aside, the only recipients that should be regarded as ''appropriate and acceptable'' for wild-caught African elephants are in situ conservation programs or secure areas in the wild within the species' natural range. The International Union for Conservation of Nature (IUCN) Species Survival Commission African Elephant Specialist Group has opposed the removal of African elephants from the wild for any captive use for many years. This position was reaffirmed at the group's meeting in Pretoria, South Africa, in July 2019.

The African Elephant Coalition (AEC), representing 30 countries of the African elephant range, held a summit in Addis Ababa June 1–3, 2018. Among the issues discussed concerning protecting elephants was the continued international trade of live wild elephants and the conditions under which these animals are caught and traded. The AEC reaffirmed its position that the only ''appropriate and acceptable'' destinations for live wild elephants are in situ conservation programs within their wild natural range, and the AEC decided to submit a document at the 70th meeting of the Standing Committee (SC70) expressing its views and recommendations. At SC70 (Sochi, October 2018), Burkina Faso and Niger submitted SC70 Doc. 38.3 on ''Definition of the term 'appropriate and acceptable destinations': trade in live elephants.'' In part, this document recommended the Standing Committee ask that CoP18 reconsider and take decisions on the particular issues connected with trade in live wild elephants, including an option to amend Resolution Conf. 11.20 (Rev. CoP17) and include a recommendation that the only appropriate and acceptable destinations for live wild African elephants are in situ conservation programs within their wild natural range, and that the only certain way to promote in situ conservation is through in situ conservation programs within their wild natural range. The Standing Committee noted the concerns raised in document SC70 Doc. 38.3 and did not act on this particular recommendation.

The proposal was again submitted to CoP18 in CoP18 Doc. 44.2, proposing that Resolution Conf. 11.20 (Rev. CoP17) be amended to stipulate that the only ''appropriate and acceptable destinations'' for wild-caught live African elephants was within their natural habitat. As explained above, the ''appropriate and acceptable destinations'' annotation applies to elephants originating from Botswana or Zimbabwe. There was much discussion of this sensitive topic, and, after the debate, the Conference of the Parties adopted amendments to the resolution with language put forward by the European Union (EU) to allow trade outside their natural habitat under ''exceptional circumstances.'' This debate is summarized in the official records of the meeting at CoP18 Com. I Rec. 2; CoP18 Plen. Rec. 2 (Rev. 2); CoP18 Plen. Rec. 3 (Rev. 1). The EU explained that its suggested compromise was intended to ensure that the export of the live elephants under the annotation was conducted in a transparent and inclusive manner until the process described in Decisions 18.152–18.156 has been concluded and the issue is potentially revisited at the next meeting of the Conference of the Parties. After a vote, CoP18 adopted the following definition:

> ''where the term 'appropriate and acceptable destinations' appears in an annotation to the listing of *Loxodonta africana* in Appendix II of the Convention with reference to the trade in live elephants [1] taken from the wild, this term shall be defined to mean in situ conservation programmes or secure areas in the wild, within the species' natural and historical range in Africa, except in exceptional circumstances where, in consultation with the Animals Committee, through its Chair with the support of the Secretariat, and in consultation with the IUCN elephant specialist group, it is considered that a transfer to ex situ locations will provide demonstrable in situ conservation benefits for African elephants, or in the case of temporary transfers in emergency situations.''

The ambiguity of the language adopted at CoP18 has led to multiple interpretations as to its scope and effect, and to date the Parties' implementation has not been uniform. The controversial nature of the decision also led a number of southern African range states to submit communications to the effect that they would not implement these amendments to the resolution. The United States opposed and voted against the amendments to the resolution in both Committee I and in Plenary, advocating for the process on development of guidance under Decisions 18.152–18.156 to be completed first, so that science could drive decision-making. For the international trade of live elephants under CITES, we respect decisions of the Conference of the Parties, and through this rulemaking we are proposing to improve our ability to regulate U.S. activities with live elephants for the conservation of the species, while also providing greater clarity to the public. The U.S. Government's understanding of the process established by Resolution Conf. 11.20 (Rev. CoP18), paragraph 1, is that, under the resolution, the Animals Committee has a consultative role, meaning it is given an opportunity to advise the Parties involved (the exporting country and the importing country) on whether or not the proposed trade meets the exception. In its role, the Animals Committee does not make the decision—the Animals Committee's advice does not allow or disallow the trade—and the Animals Committee does not need to agree with the Parties'

[1] Excluding elephants that were in ex situ locations at the time of the adoption of this Resolution at the 18th meeting of the Conference of the Parties.

decision. It is for the Parties concerned to consider any advice offered by the Animals Committee and any other relevant information that may be available to them and make their own decisions on whether or not to allow the trade.

The relevant criterion for the proposed trade under the exception is: ''exceptional circumstances where . . . it is considered that a transfer to ex situ locations will provide demonstrable in situ conservation benefits for African elephants.'' In the CITES context, ex situ means outside the natural range of the species, and in situ means inside the natural range of the species. Under the exception, the Parties concerned may allow the trade if they both conclude that a transfer to an ex situ location will provide demonstrable in situ conservation benefits for African elephants, and if the other relevant CITES requirements are met. The United States expects that, given the different interpretations of the CoP18 amendments to Resolution Conf. 11.20, this issue may be raised again at CoP19 in November 2022. At SC74, it was noted that concerns were raised about the export of live African elephants by both Namibia and Zimbabwe, and CITES Parties were invited to propose a clear legal framework for trade in live African elephants at CoP19.

This CITES history and activity surrounding the export and import of live African elephants from range countries underscores the need for the United States to address these issues in our proposed rulemaking, and to establish clear regulatory requirements for U.S. activities with live elephants to enhance the conservation of African elephants in all range countries.

The total number of records (instances of trade by Parties, each of which can document trade in one or more than one specimen) reported in the CITES trade database (*https://trade.cites.org/*) for live African elephants of any origin (*e.g.,* sourced from the wild, captive-bred, or when the source was unknown) decreased from 2014 through 2019 (46 records) when compared to 2008 through 2013 (91 records). However, the instances of trade reflected in these records can cover multiple elephants, and the total number of live African elephants traded in these instances increased from 376 to 674. Seventeen were captive bred. The subset of these traded live African elephants that were exported from a range country (a country that exercises jurisdiction over part of the natural geographic range of the African elephant) also increased from 103 to 527. The proportion of wild-sourced live elephants traded has also increased in the more recent years (from 27 percent to 78 percent). Moreover, the number of exported or re-exported wild-sourced live African elephants between any two Parties increased in the more recent years, even when excluding records for reintroduction purposes, which included upwards of 70 live elephants per record (262 versus 151). There has been an increase of approximately 51 percent in the international trade of live elephants since 2016. Although the CITES Trade Database is incomplete, contains traded elephants of an unknown source, and may double-count elephants in instances where trade occurred for the same elephant more than once within the allotted timeframe, the available trade data demonstrates that live African elephants, particularly wild-sourced elephants, are being traded in higher numbers in recent years.

The Service is also aware of a recent auction of live elephants in 2020–2021 by the Ministry of Environment Forestry and Tourism of Namibia in order to generate funds for wildlife conservation and to mitigate human-elephant conflict. The auction advertised the sale of 170 live elephants and ultimately sold 57. Fifteen of those elephants sold were moved to a private reserve in Namibia and will remain there. Thirteen elephants were sold to the United Arab Emirates; of which four are at Sharjah Safari Park, and nine elephants are at Al-Ain Zoo. At this time, 20 elephants are still to be taken from the wild, and their ultimate destination is not yet publicly known.

We propose to amend the current 4(d) rule to remove from 50 CFR 17.40(e)(2) the exception from prohibitions for import, export, interstate commerce, and foreign commerce in live African elephants, except when a permit can be issued under 50 CFR part 17. We consider the specific elements of the elephant(s) to be imported from the applications once received. We also propose to establish the standards used to evaluate ''enhancement'' under the ESA for the import of wild-sourced live African elephants under 50 CFR 17.40(e)(10). Specifically, we are proposing that an enhancement determination for import of wild-sourced live African elephants will require prior receipt of properly documented and verifiable annual certification provided by the government of the range country to the Service that:

(A) African elephant populations in the range country are stable or increasing, as well as sufficiently large to sustain removal of live elephants at the level authorized by the country;

(B) Regulating authorities have the capacity to obtain sound data on these populations using scientifically-based methods consistent with peer-reviewed literature;

(C) Regulating authorities recognize these populations as a valuable resource and have the legal and practical capacity to manage them for their conservation;

(D) regulating governments follow the rule of law concerning African elephant conservation and management;

(E) The current viable habitat of these populations is secure and is not decreasing or degrading;

(F) Regulating authorities can ensure that the involved live animals have in fact been legally taken from the specified populations, and family units were kept intact to the maximum extent practicable;

(G) Regulating authorities can ensure that no live African elephants to be imported are pregnant;

(H) Funds derived from the import are applied primarily to African elephant conservation, including reporting on how those funds have been or will be used for African elephant conservation activities; and

(I) The elephants have been considered for in situ conservation programs, and consideration has been given to moving elephants to augment extant wild populations or reintroduce to extirpated ranges.

Note that the proposed rule text contains a proposed list of factors, including the reporting of funds to be spent towards conservation of the species. The Service invites public comments on that list as well as on how to more generally ensure that funds derived from the import are applied primarily to African elephant conservation.

We note that our proposal would apply to import of live African elephants from all countries of origin, regardless of country of export or re-export and, therefore, would require import permits for African elephants from both Appendix I and Appendix II populations. The country of origin/country of export is the country where the animal is taken from the wild or bred in captivity. Under section 9(c)(2) (16 U.S.C. 1538(c)(2)) and our regulations at 50 CFR 17.8, the ESA provides a limited exemption for the import of some threatened species. Importation of threatened species that are also listed under CITES Appendix II are presumed not to be in violation of the ESA if the importation is not made in the course of a commercial activity, all CITES requirements have been met, and all general wildlife import

requirements under 50 CFR part 14 have been met. This presumption can be overcome, however, through issuance of a 4(d) rule requiring ESA authorization prior to import, which rebuts the presumptive legality of otherwise qualifying imports (see *Safari Club Int'l* v. *Zinke,* 878 F.3d 316, 328–29 (D.C. Cir. 2017)). For example, the Service retained the requirement for ESA enhancement findings prior to the import of sport-hunted trophies in 1997 and 2000, when the four populations of African elephants were transferred from CITES Appendix I to CITES Appendix II subject to an annotation. We amended the African elephant 4(d) rule in 2014 and 2016 and again maintained the requirement for an ESA enhancement finding prior to allowing the import of African elephant sport-hunted trophies. As the D.C. Circuit held in *Safari Club,* ''[s]ection 9(c)(2) in no way constrains the Service's section 4(d) authority to condition the importation of threatened Appendix II species on an affirmative enhancement finding. Under section 4(d) of the ESA, the Service 'shall issue such regulations as [it] deems necessary and advisable to provide for the conservation of [threatened] species' and may 'prohibit with respect to any threatened species any act prohibited . . . with respect to endangered species.' 16 U.S.C. 1533(d). Because the Service may generally bar imports of endangered species, *see id.* § 1538(a)(1)(A), it may do the same with respect to threatened species under section 4(d), *see id.* § 1533(d).'' The D.C. Circuit went on to explain that ''promulgation of a blanket ban would be permissible and rebut the presumptive legality of elephant imports. If the Service has the authority to completely ban imports of African elephants by regulation under section 4(d), it logically follows that it has authority to allow imports subject to reasonable conditions, as provided in the [4(d) rule for African elephants].''

African elephant range states are increasingly interested in selling live African elephants as a means to reduce overpopulation of some elephants in some areas and to generate revenue. Accordingly, in order to effectively implement the ESA, the United States must have sufficient regulatory safeguards in place to ensure that the United States is not a demand country for illegal or unsustainable African elephant trade. Further, if the United States is a destination for trade in live African elephants, then we need to ensure that the trade is not only legal and sustainable, but also enhances the survival of the species in the wild, including by ensuring that revenue generated by the trade is going back into elephant conservation to address human–elephant conflict, habitat loss, poaching, and other threats to the survival of African elephants.

Our proposal to require an enhancement finding for the issuance of threatened species permits under 50 CFR 17.32 for the import and export of any live African elephant would enhance the species' conservation and survival by allowing us to more carefully evaluate all live African elephant imports and exports consistently in accordance with legal standards and the conservation needs of the species. Additionally, the issuance of threatened species enhancement permits under 50 CFR 17.32 would mean that the standards under 50 CFR part 13 would also be in effect for imports of all elephants from all populations. Examples of such standards include the requirement that an applicant submit complete and accurate information during the application process and the ability of the Service to deny permits in situations where the applicant has been assessed a civil or criminal penalty under certain circumstances, failed to disclose material information, or made false statements. Therefore, we have determined that the additional safeguard of requiring the issuance of threatened species enhancement permits under 50 CFR 17.32 prior to the import and export of live African elephants is warranted.

Care of Live Elephants After Import and Other Permitted Transfers

As explained previously, the Division of Scientific Authority (DSA) evaluates facilities importing African elephants to determine if the facility is suitably equipped to house and care for the live elephants to be imported. These ''suitably equipped to house and care for'' findings for live specimens are made in accordance with the criteria and requirements in our CITES implementing regulations at 50 CFR 23.65. Currently, the known total of live African elephants (*Loxodonta africana*) in the United States is 146. The Service does not currently regulate or maintain data on the number and location of captive-held African elephants once within the United States. All data are from a voluntary database submitted by zoos (Species360 Zoological Information Management System (ZIMS), 2021). Elephant sanctuaries and other elephant-holding institutions including zoos may exist in the United States but not participate in Species360 and are, therefore, not listed in this database. As a result, the reported number of 146 elephants is a minimum number.

These 146 elephants are located across 33 institutions. This captive population consists of 33 males and 113 females with 1 birth in the last 12 months (Species360 ZIMS, 2021). In recent years, from 2013 to 2019, the United States imported 23 live elephants (LEMIS database). The Service concludes there is a need to provide oversight of such transfers to ensure live elephants are going only to facilities that are suitably equipped to house and care for them. Such oversight would help ensure the conservation and long-term survival of elephants in the United States, thereby helping reduce the pressure on elephants from the wild and increasing the long-term conservation and survival of elephants in the wild.

In addition, many of the elephants imported into the United States may not remain in the initial facility that has been determined to be suitably equipped to care for and house the animal(s). These animals and their offspring may be moved for breeding purposes, public display, space requirements, or other reasons. Currently, once these animals have been imported, the Service does not evaluate the facilities to which they or their offspring are being moved and receives no assurance that the facilities can adequately house and care for the animals they are receiving. Additionally, in Resolution Conf. 11.20 (Rev. CoP18), the CITES Conference of the Parties recommends that all Parties have in place legislative, regulatory, enforcement, or other measures to: Prevent illegal and detrimental trade in live elephants; minimize the risk of negative impacts on wild populations and injury, damage to health, or cruel treatment of live elephants in trade; and promote the social well-being of these animals. These recommendations were first adopted at CoP17 and then revised at CoP18, CITES meetings that took place subsequent to our finalization of amendments to the 4(d) rule for African elephants in 2016, and present new reasons to reconsider our domestic regulation of live African elephants under the ESA.

In furtherance of these CITES recommendations and to enhance the conservation of African elephants, we propose to address these gaps in our domestic regulation of live African elephants by requiring that live African elephants may be sold or offered for sale in interstate commerce and delivered, received, carried, transported, or shipped in interstate commerce in the course of a commercial activity only if

authorized by a special purpose permit issued under 50 CFR 17.32. Entirely intrastate sale or transfer of African elephants already in the United States is regulated by State law, and in some cases subject to a permit condition and CITES use after import requirements, 50 CFR 23.55. We also propose that each permit issued by the Service for a live African elephant will include a condition that the elephant and its offspring will not be sold or otherwise transferred to another person unless authorized by a special purpose permit issued under 50 CFR 17.32. Each special purpose permit issued for a live African elephant will require a finding that the proposed recipient is suitably equipped to house and care for the live elephant. The evaluation would consider the same criteria and requirements found in 50 CFR 23.65 and applied during import of a live African elephant. These criteria include considering the following factors found in 50 CFR 23.65(c) in evaluating suitable housing and care for wildlife:

(1) Enclosures constructed and maintained so as to provide sufficient space to allow each animal to make normal postural and social adjustments with adequate freedom of movement. Inadequate space may be indicated by evidence of malnutrition, poor condition, debility, stress, or abnormal behavior patterns.

(2) Appropriate forms of environmental enrichment, such as nesting material, perches, climbing apparatus, ground substrate, or other species-specific materials or objects.

(3) If the wildlife is on public display, an off-exhibit area, consisting of indoor and outdoor accommodations, as appropriate, that can house the wildlife on a long-term basis if necessary.

(4) Provision of water and nutritious food of a nature and in a way that is appropriate for the species.

(5) Staff who are trained and experienced in providing proper daily care and maintenance for the species being imported or introduced from the sea, or for a closely related species.

(6) Readily available veterinary care or veterinary staff experienced with the species or a closely related species, including emergency care.

In addition to the wildlife-specific provisions in 50 CFR 23.65(c), we also consider the following general factors in evaluating suitable housing and care for a live specimen found in 50 CFR 23.65(e):

(1) Adequate enclosures or holding areas to prevent escape or unplanned exchange of genetic material with specimens of the same or different species outside the facility.

(2) Appropriate security to prevent theft of specimens and measures taken to rectify any previous theft or security problem.

(3) A reasonable survival rate of specimens of the same species or, alternatively, closely related species at the facility, mortalities for the previous 3 years, significant injuries to wildlife or damage to plants, occurrence of significant disease outbreaks during the previous 3 years, and measures taken to prevent similar mortalities, injuries, damage, or diseases. Significant injuries, damage, or disease outbreaks are those that are permanently debilitating or reoccurring.

(4) Sufficient funding on a long-term basis to cover the cost of maintaining the facility and the specimens imported.

Together, these proposed permitting requirements for any person subject to the jurisdiction of the United States that engages in activities with live African elephants are necessary and advisable to provide for the conservation of the species because they would help prevent illegal and detrimental trade in live elephants; to minimize the risk of negative impacts on wild populations and avoid injury, damage to health, or cruel treatment of live elephants in trade; and promote the social well-being of these animals, as recommended by the CITES Conference of the Parties. As part of our CITES findings we examine the facilities where the live elephants are proposed to be imported to address whether the facilities are suitably equipped to house and care for live elephants, and for other transfers covered under this proposal we would also examine the facilities where live elephants are proposed to be transferred. U.S. facilities that have previously been authorized to import live elephants under CITES have been in compliance with these requirements. The Service expects that any facility wishing to be transferred a live elephant would be in compliance with these standards. For any facility that is in compliance with these standards, these new permitting requirements would impose a small recordkeeping and fee burden on these facilities and would ensure that any subsequent transfer of the live elephant or its offspring from these facilities is also only to facilities that are suitably equipped to house and care for live elephants.

Import of Personally Sport-Hunted Trophies

Trophy hunting can generate funds to be used for conservation, including for habitat protection, population monitoring, wildlife management programs, mitigation efforts for human-wildlife conflict, and law enforcement efforts. The IUCN Guiding Principles on Trophy Hunting as a Tool for Creating Conservation Incentives (Ver.1.0, August 2012) note that well-managed trophy hunting can ''assist in furthering conservation objectives by creating the revenue and economic incentives for the management and conservation of the target species and its habitat, as well as supporting local livelihoods'' and, further, that well-managed trophy hunting is ''often a higher value, lower impact land use than alternatives such as agriculture or tourism.'' When a trophy hunting program incorporates the following guiding principles, the IUCN recognizes that trophy hunting can serve as a conservation tool: Biological sustainability; net conservation benefit; socio-economic-cultural benefit; adaptive management—planning, monitoring, and reporting; and accountable and effective governance. The ESA enhancement standards that we are describing in this proposed rule are consistent with this IUCN guidance and are necessary and advisable to ensure that trophies authorized for import into the United States are only from well-managed hunting. Not all trophy hunting is part of a well-managed or well-run program, and we evaluate import of sport-hunted trophies carefully to ensure that all CITES and ESA requirements are met. Where the applicant has not met their burden to provide sufficient information for the Service to make its findings, including sufficient information to demonstrate that the trophy to be imported is from well-managed hunting, the import would not meet the criteria for an enhancement finding, and, consistent with both the current regulation and this proposal, cannot and would not be authorized for import into the United States. Under this proposed rule, we would continue to carefully evaluate African elephant trophy import applications in accordance with legal standards and the conservation needs of the species.

Under the current 4(d) rule for the African elephant, issuance of an ESA threatened species permit to import a sport-hunted trophy of an African elephant first requires that the Service determine that the killing of the trophy animal would enhance the survival of the species (known as an ''enhancement finding''). We evaluated our current process for making ESA enhancement findings related to permit applications requesting the import of sport-hunted trophies of African elephants. We reviewed information within our permit application files related to the

investment of hunting fees that go into the conservation of these species and how they improve local communities and contribute to survival and recovery of elephant populations. We also evaluated how the Service's technical assistance to elephant range countries supports local communities and contributes to sustainable elephant populations. Additionally, we considered how we could improve our permitting process and resulting decisions to ensure that they are consistent with the purpose and intent of the ESA and, as a result, that permits we issue enhance the survival of the species in the wild.

In making ESA enhancement findings, we review all relevant information available to us, including information submitted with the individual permit applications, information received in response to inquiries we make of the range country, and all other reliable information we receive from interested parties, such as species experts, hunting organizations, community groups, and nongovernmental organizations. For decades, the Service periodically issued enhancement findings for the import of African elephant sport-hunted trophies on a country-by-country (or ''countrywide'') basis, based on the scientific and management information available to the Service. In response to a D.C. Circuit Court opinion, *Safari Club Int'l* v. *Zinke,* 878 F.3d 316 (D.C. Cir. 2017), on March 1, 2018, the Service revised its procedure for assessing applications to import certain hunted species, including African elephants. We withdrew our countrywide enhancement findings for elephants across several countries including Zimbabwe, Tanzania, South Africa, Botswana, Namibia, and Zambia. We now make findings for trophy imports on an application-by-application basis. On June 16, 2020, the D.C. Circuit upheld the Service's withdrawal of the countrywide findings and use of the application-by-application approach in *Friends of Animals* v. *Bernhardt,* 961 F.3d 1197 (D.C. Cir. 2020).

The application-by-application process involves additional information requirements, time, and staff resources to complete the review of each application. We used to rely only on information concerning the national-level management of a species to produce a single enhancement finding for all permit applications specific to a species, country, and time period. We now make enhancement findings for every individual permit application, considering not only national-level species management but also species management on a smaller scale (*e.g.,* on a regional or concession/conservancy-area basis), as well as information about each hunter's individual circumstances, such as the specific hunting dates and locations.

Factors Considered by the Service

In our individual application reviews and enhancement assessments for range countries, we consider factors that can contribute to African elephant conservation by improving the management and status of African elephants in the wild, including:

- Establishing and using science-based sustainable quotas, including use of a sex- and age-based harvest system;
- Investing hunting fees into conservation (*e.g.,* anti-poaching, managing human-wildlife conflict, population monitoring, community benefits that provide incentives for conservation of the species in the wild, etc.);
- Implementing and enforcing, and compliance with, wildlife laws and regulations;
- Implementing management plans and use of adaptive management;
- Implementing an effective anti-poaching program;
- Implementing measures to reduce human-wildlife conflict;
- Monitoring populations of the hunted species and their food source; and
- Protecting and improving the habitat of the hunted species (*e.g.,* creating water holes, habitat management, etc.).

Additional Considerations

In our analysis, we consider the available information on:

(1) Whether the range country of the hunt has regulations, infrastructure, and standard processes in place to ensure an effective transfer of hunting revenues back into conservation of the species;

(2) Whether the range country has effective governance and strong compliance and enforcement measures, particularly with regard to their ability to implement the wildlife management regulations developed for the hunted species;

(3) Whether the hunting operator is in compliance with the range country's regulatory requirements;

(4) Whether the hunting property owner, concessionaire, and/or community are effectively investing the revenue to elicit community incentives for protection of the species; and

(5) Whether the hunter is in compliance with the hunting laws, regulations, and operator requirements.

An evaluation of these factors allows the Service to assess how the range-country government manages the hunted species and how hunting serves to enhance the survival of the species in the context of the management system; how hunting serves to enhance the survival of the species in the context of the management unit at the hunting-operator, concessionaire, conservancy, or private-reserve level; and how the individual hunter has contributed (where the hunt has already taken place) or will contribute (where the hunt has not yet taken place) to enhancement of survival of that species through their hunting activities and any associated contributions to the survival of the species. Our process for making enhancement findings encourages conservation investments and sustainability of elephant populations. We evaluate not only national conservation efforts, but also how the hunting operator for the applicant's hunt works to address threats to the hunted species (*e.g.,* making habitat improvements, conducting anti-poaching and other activities, etc.).

The Service's ESA enhancement evaluation includes an analysis of whether the revenue generated through hunting fees is used to support conservation of the species. It is the responsibility of the entity that collects the hunting fees to reinvest those funds back into conservation of the species, including addressing threats to the species that are specific to that area or elephant population. For example, if an agency of the range country's government collects hunting fees, then we would expect the government to have standard processes and infrastructure in place to ensure an effective transfer of hunting revenues back into the country's management of the species. If a smaller management unit such as an operator, private property owner, or conservancy is responsible for collecting hunting fees, then we would expect a portion of those fees to be reinvested into conservation of the hunted species. The Service invites public comments on how to ensure an effective transfer of hunting revenues back into conservation of the species, including the kinds of regulations, infrastructure, or standard processes the range country of the hunt should have in place to ensure that hunting revenues add to and do not simply substitute for other existing funding for conservation.

When practicable, the Service conducts site visits or other outreach during which we engage with the national, provincial, and regional governments, as well as communities, to establish whether activities are achieving enhancement of the species.

The Service also provides assistance to range countries to explain U.S. requirements for import of personal sport-hunted African elephant trophies and supports capacity-building in range countries. The Service's complementary approach to leveraging conservation of elephants through both its ESA regulatory permitting requirement of enhancement of the species, combined with our technical assistance to support capacity-building in range countries, effectively contributes to creating incentives for local communities to protect elephant populations and sustaining elephant populations within the range country.

By considering whether the revenues from elephant hunts are effectively reinvested in conservation programs for the species and community benefits, we are able to determine whether these targeted investments improve the survival of elephants and improve local communities that are working to conserve the species. It can be challenging to obtain the information for a robust analysis, which involves consultation with the range country and often with those involved in various aspects of the hunt, a process that requires a great deal of staff time and other resources. In sum, enhancement findings can be an effective tool for conservation, as trophy hunters are able to help conserve elephant populations and their habitats and provide protection incentives to communities that live alongside these species by complying with our enhancement requirements.

Historically, the Service has issued enhancement findings for *Loxodonta africana* on a countrywide basis, as was the practice for a number of other threatened sport-hunted species. On March 1, 2018, however, in response to a D.C. Circuit Court opinion (*Safari Club Int'l* v. *Zinke,* 878 F.3d 316 (D.C. Cir. 2017)), the Service withdrew its countrywide enhancement findings for a range of species, including African elephants, across several countries, and began assessing applications to import sport-hunted trophies of these species on an application-by-application basis. These withdrawals were upheld in a D.C. Circuit Court opinion (*Friends of Animals* v. *Bernhardt,* No. 19–5147 (D.C. Cir. June 16, 2020); *Center for Biological Diversity* v. *Bernhardt,* No. 19–5152 (D.C. Cir. June 16, 2020)). No countrywide ESA enhancement findings are currently in effect. Therefore, since March 1, 2018, the Service has been making ESA enhancement findings to support permitting decisions on the import of sport-hunted trophies of African elephants on an application-by-application basis, ensuring consistent application of the regulatory criteria across all permit application adjudications and ensuring that each permit decision is based on the best scientific and management information available. As a matter of policy, the Service continues to have the option of issuing countrywide enhancement findings through a rule-making process; however, to date, the Service has not chosen this option due to the challenges of keeping the findings current in light of a lengthy rule-making process.

Annual Certification for Range Countries

To clarify and improve this process, we are proposing adding to 50 CFR 17.40(e)(6) a new provision that would establish an annual certification requirement for range countries that export sport-hunted trophies destined for the United States to provide the Service with information about the management and status of African elephants and the hunting programs in their country. This requirement and the information from the range countries will enable us to ensure that authorized imports contribute to enhancing the conservation of the species and do not contribute to the decline in populations of the species. In addition, any quotas set by range countries for sport-hunted trophies are typically established on an annual basis. Reviewing information on an annual basis will allow for monitoring of these yearly quotas and the ability to evaluate adaptive management approaches in meaningful timeframes.

Clarifying the enhancement standards and improving this process for the import of African elephant sport-hunted trophies would also increase transparency with stakeholders and more efficient evaluations of applications. Although findings for the import of African elephant sport-hunted trophies will continue to be made under an application-by-application basis, application evaluations can be more efficient under the revised proposed rule because nationwide management information for the species must be provided on an annual basis by the range country. This proposed change to the 4(d) rule would not have any effect on the ability of U.S. citizens to travel to countries that allow hunting of African elephants and engage in sport hunting. Additionally, the import of any associated sport-hunted trophy into the United States would continue to be regulated and require an enhancement finding and threatened species import permit. We are proposing that an enhancement determination for African elephant sport-hunted trophies under 50 CFR 17.40(e)(6)(i)(B) and 50 CFR 17.32 will require prior receipt of properly documented and verifiable certification provided by the government of the range country to the Service on an annual basis that:

(A) African elephant populations in the range country are stable or increasing, as well as sufficiently large to sustain sport hunting at the level authorized by the country;

(B) Regulating authorities have the capacity to obtain sound data on these populations using scientifically based methods consistent with peer-reviewed literature;

(C) Regulating authorities recognize these populations as a valuable resource and have the legal and practical capacity to manage them for their conservation;

(D) Regulating governments follow the rule of law concerning African elephant conservation and management;

(E) The current viable habitat of these populations is secure and is not decreasing or degrading;

(F) Regulating authorities can ensure that the involved trophies have in fact been legally taken from the specified populations; and

(G) Funds derived from the involved sport hunting are applied primarily to African elephant conservation, including reporting on how those funds have been or will be utilized for African elephant conservation activities.

The Service will consider these factors as part of the determination if the import of an African elephant sport-hunted trophy meets the enhancement standard. We welcome comment on whether these factors are appropriate and whether others should be added. We note that the proposed rule text includes a reporting of funds to be spent towards conservation of the species. The Service invites public comments on that report as well as on how to more generally ensure that funds derived from the import are applied primarily to African elephant conservation.

Under the proposed 4(d) rule, we will continue to require an ESA enhancement finding and issuance of a threatened species permit for import of each African elephant sport-hunted trophy, which will continue to allow us to carefully evaluate each trophy import in accordance with legal standards and the conservation needs of the species.

Elephant Imports and the CITES National Legislation Project

The provisions of CITES and the ESA and their respective requirements for the issuance of permits for African elephants are distinct and

complementary in furthering African elephant conservation. While the United States, alone, implements the ESA, CITES is implemented by the United States and other national governments. The ability of each Party to fully implement CITES underpins international efforts to conserve and enhance African elephant conservation. For U.S. African elephant conservation efforts to be successful, it is imperative that other Parties have national legislation in place that meets the basic requirements to implement CITES. We therefore propose to amend the current 4(d) rule to make each exception to the prohibition on import in the 4(d) rule that applies to live African elephants, African elephant sport-hunted trophies, and African elephant parts and products other than ivory and sport-hunted trophies, contingent on being accompanied by a valid CITES document issued by the Management Authority of a Party with a CITES Category One designation under the CITES National Legislation Project (50 CFR 23.7; *http://www.cites.org*). We will thereby prohibit these imports from any Party that does not meet the basic requirements to implement CITES, and at the same time encourage CITES Parties to amend their national legislation to achieve a CITES Category One designation.

The United States is a strong proponent of the National Legislation Project, and has provided assistance to countries to help them achieve Category One. For example, in recent years the legislation of Angola and Jordan has been placed in Category One. The United States provided support to Angola and Jordan in their efforts toward these achievements. This provision is designed to have decreasing effect over time, and to ensure countries that wish to trade in African elephants with the United States enact and continue to maintain Category One national legislation as a Party to CITES. The CITES National Legislation Project is designed to encourage and assist every Party to achieve Category One designation. When each country achieves CITES Category One designation, by enacting sufficient national legislation to meet the basic requirements of CITES, as required of each Party under the Convention, then this provision will have no effect with regard to that country. For countries that have already achieved Category One, this provision will have no effect, so long as the country remains a Party to CITES and maintains Category One national legislation.

Proposed Regulatory Changes

The rule portion of this document sets forth the new regulatory provisions that we are proposing to add to 50 CFR 17.40(e). For reasons explained below, the rule text also includes some current regulatory text that we are not proposing to change. We are accepting public comments on only the proposed new regulatory text in this document, and on paragraph (e)(2) as described in the draft environmental assessment (see the National Environmental Policy Act section below in the preamble), and not on any other current regulatory provisions in paragraph (e).

In paragraph (e)(1), which sets forth definitions used in the regulations in paragraph (e), we propose to add a definition for ''range country.'' We also propose to reformat the paragraph so that it follows current style requirements for the Code of Federal Regulations. As such, we are proposing to divide the current single paragraph into an indented list, and we have set forth the proposed new term and definition in alphabetic order in a list of the current terms and definitions. However, we are proposing no changes to the current terms and definitions in that paragraph.

In paragraph (e)(2), we are proposing to remove both references, which appear in the paragraph heading and the first sentence, to live African elephants because we are proposing regulatory provisions regarding live African elephants in a new paragraph (e)(10) as described below.

The primary new regulatory provisions that we are proposing, as described earlier in this document, are as follows: In a new paragraph (e)(6)(ii), we are proposing regulations pertaining to making enhancement determinations that are required by the current 4(d) rule for the importation of African elephant sport-hunted trophies. In a new paragraph (e)(10), we are proposing regulatory provisions regarding activities with live African elephants. Finally, we are proposing to incorporate the CITES National Legislation Project designations into the requirements for certain imports in a new paragraph (e)(11) and, consequently, we are proposing to add cross-references to proposed paragraph (e)(11) in paragraphs (e)(2), (e)(6)(i)(D), and (e)(10)(i).

Public Comments

We are seeking comments on the proposed rule and on the draft environmental assessment and economic analysis. While we have given careful consideration to these proposed regulatory changes, we seek comments on the impact of the proposed regulatory changes in this proposed rule on the conservation of African elephants and on the affected public. We also seek comment on the impact of not including some or all of these requirements in the rule and whether these requirements are clearly understandable. We also seek comment from the public on what viable opportunities exist for even more robust conservation of African elephants and supporting evidence that such viable opportunities will provide even more robust conservation of African elephants.

We are also particularly seeking public comments on the following specific requirements we have proposed:

- Our proposed specific enhancement requirements for the import of wild-sourced live African elephants, including the list of factors proposed to be included in a range-country certification statement, and how to more generally ensure that funds derived from the import are applied primarily to African elephant conservation.
- Our proposed specific enhancement requirements for the import of sport-hunted trophies of African elephants, including the list of factors proposed to be included in a range-country certification, and how to more generally ensure that funds derived from the import are applied primarily to African elephant conservation.
- How to ensure an effective transfer of hunting revenues back into conservation of the species, including the kinds of regulations, infrastructure, or standard processes the range country of the hunt should have in place to ensure that hunting revenues add to and do not simply substitute for other existing funding for conservation.

We seek comments concerning whether we should consider including any other prohibitions, conditions, or exceptions in our proposed paragraphs (e)(2), (e)(6)(ii), (e)(10), and (e)(11) in 50 CFR 17.40(e), pertaining to activities with live African elephants, pertaining to activities with African elephant parts and products other than ivory and sport-hunted trophies, pertaining to making enhancement determinations that will continue to be required by the 4(d) rule for the importation of African elephant sport-hunted trophies, and pertaining to limiting trade in African elephants to Parties with a CITES Category One designation under the CITES National Legislation Project.

The Service requests public comment and supporting evidence on the analysis and on the alternatives explored in this rule's draft environmental assessment

and economic analysis. In addition to the preferred alternative (Alternative 2) discussed in this proposed rule, the Service has evaluated two other alternatives. Alternative 1 is the ''no action'' alternative and would maintain the 4(d) rule as it is currently written. Alternative 3 would revise the 4(d) rule by removing 50 CFR 17.40(e)(2), the provision in the current 4(d) rule that does not require an ESA permit under 50 CFR 17.32 for otherwise prohibited activities with live African elephants, and parts and products other than ivory and sport-hunted trophies, when the Service's regulatory requirements implementing CITES (50 CFR part 23), general permits procedures (50 CFR part 13), and general procedures for the importation, exportation, and transportation of wildlife (50 CFR part 14) have been met. In addition to deletion of 50 CFR 17.40(e)(2), Alternative 3 would also limit trade in live African elephants, sport-hunted trophies, and parts and products other than ivory and sport-hunted trophies to Parties with a CITES Category One designation under the CITES National Legislation Project.

You may submit your comments and materials concerning this proposed rule by one of the methods listed under **ADDRESSES**. We will not accept comments sent by email or fax or to an address not listed under **ADDRESSES**. We will post your entire comment—including your personal identifying information—on *https://www.regulations.gov.* If you provide personal identifying information in your written comments, you may request at the top of your document that we withhold this information from public review. Additionally, if you provide personal identifying information in your oral comments during the public hearing, you may request at that time that we withhold this information from public review on *https://www.regulations.gov.* However, we cannot guarantee that we will be able to do so. Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *https://www.regulations.gov.*

Required Determinations

Regulatory Planning and Review: Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is significant. The Service has assessed the expected direction of change in benefits, costs, and transfers from this rulemaking and has evaluated alternatives in the draft environmental assessment and economic analysis (see the Federal eRulemaking Portal in **ADDRESSES**).

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

The Service has prepared a draft environmental assessment, as part of our review under the National Environmental Policy Act (NEPA), which is available for review and comment (see the National Environmental Policy Act section below in the preamble). The proposed rule would revise the 4(d) rule that regulates trade of African elephants (*Loxodonta africana*). We propose to revise the 4(d) rule to more strictly control U.S. trade in live African elephants, African elephant sport-hunted trophies, and African elephant parts and products other than ivory and sport-hunted trophies. The proposed rule does not affect the regulations for African elephant ivory.

Regulatory Flexibility Act: Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions) (5 U.S.C. 601 *et seq.*). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

The U.S. Small Business Administration (SBA) defines a small business as one with annual revenue or employment that meets or is below an established size standard for industries described in the North American Industry Classification System (NAICS). To assess the effects of the proposed rule on small entities, we focus on entities (zoos and travelling exhibits) that are equipped to care for and feed a captive-held elephant, entities that sell parts and products (furniture, luggage and leather goods, gifts and souvenirs, and used merchandise) other than ivory and sport-hunted trophies, and entities that provide guide services for trophy hunting. The industries most likely to be directly affected are listed in the table below along with the relevant SBA size standards. As shown in table 1, most businesses within these industries are small entities (U.S. Census). The following analysis is supported by the economic analysis in the draft environmental assessment.

TABLE 1—POTENTIAL INDUSTRIES AFFECTED BY THE PROPOSED RULE TO REVISE THE REGULATIONS UNDER SECTION 4(d) OF THE ESA FOR AFRICAN ELEPHANTS

Industry	NAICS code	Size standards in millions of dollars	Number of businesses	Number of small businesses
Zoos and botanical gardens	712130	$30.0	646	531
Traveling exhibits	712110	30.0	5,140	4,621

TABLE 1—POTENTIAL INDUSTRIES AFFECTED BY THE PROPOSED RULE TO REVISE THE REGULATIONS UNDER SECTION 4(d) OF THE ESA FOR AFRICAN ELEPHANTS—Continued

Industry	NAICS code	Size standards in millions of dollars	Number of businesses	Number of small businesses
Furniture stores	442110	22.0	23,628	20,945
Luggage and leather goods stores	448320	30.0	988	615
Gift, novelty, and souvenir stores	453220	8.0	21,687	16,398
Used merchandise stores	453310	8.0	20,301	15,407
All other amusement and recreation industries (includes hunting guide services)	713390	8.0	18,405	7,629

Under the proposed rule, entities (zoos and traveling exhibits) would potentially be impacted if they import/export a live African elephant or transfer/move an African elephant after import. The draft environmental assessment and economic analysis shows that total industry imports could decrease by, at most, one shipment annually if the importer does not choose to substitute a Category One designated country.

Under the proposed rule, entities that sell parts and products (furniture, luggage and leather goods, gifts and souvenirs, and used merchandise) other than ivory and sport-hunted trophies would potentially be impacted if they import their products from a non-Category One country and do not choose to substitute a Category One country. The number of businesses importing parts and products other than ivory and sport-hunted trophies is unknown. However, we know that shipments from non-Category One countries averaged 60 shipments annually from 2010 to 2019. Assuming each shipment represents one small business would result in 0.1 percent of small businesses affected (including furniture, luggage and leather goods, gifts, and used merchandise stores). Due to the niche market for these types of products, we expect a small number of small businesses to be impacted under the proposed rule. The Service is requesting data about the number of small businesses that would be impacted by the proposed rule.

Under the proposed rule, U.S. entities that provide guide services for hunting African elephants would potentially be impacted if they provide these services in a non-Category One designated country and do not choose to or cannot provide those services in a Category One designated country. The number of U.S. businesses providing guide services for hunting African elephants is unknown. Due to the niche market for this service, we expect few small businesses to be impacted under the proposed rule. The Service is requesting data about the number of small businesses that provide guide services for hunting African elephants in non-Category One designated countries and whether these businesses would incur increased costs if they change from a non-Category One designated country to a Category One designated country.

In addition to determining whether a substantial number of small entities are likely to be affected by this proposed rule, we must also determine whether the proposed rule is anticipated to have a significant economic effect on those small entities. As noted in the draft environmental assessment and economic analysis, for businesses importing/exporting live African elephants (zoos and travelling exhibits), the incremental changes of submitting an additional form (with a $100 permit application processing fee) or a decrease of at most one shipment out of total industry imports is expected to be negligible. Therefore, the proposed rule would not have a significant economic effect on zoos and travelling exhibits. For all industries, it is possible that some importers would substitute a Category One designated country, and the impacts of the proposed rule would be reduced.

Therefore, we certify that this proposed rule would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial regulatory flexibility analysis is not required. Accordingly, a small entity compliance guide is not required.

Small Business Regulatory Enforcement Fairness Act: This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Will not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, Tribal, or local government agencies; or geographic regions.

c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act: Under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This proposed rule would not significantly or uniquely affect small governments. A small government agency plan is not required. The proposed rule imposes no unfunded mandates. Therefore, this proposed rule would have no effect on small governments' responsibilities.

b. This proposed rule would not produce a Federal requirement of $100 million or greater in any year and is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings: Under Executive Order 12630, this proposed rule does not have significant takings implications. While certain activities that were previously unregulated would now be regulated, possession would remain unregulated, except with regard to illegally taken or illegally traded specimens. A takings implication assessment is not required.

Federalism: These proposed revisions to part 17 do not contain significant federalism implications. A federalism summary impact statement under Executive Order 13132 is not required.

Civil Justice Reform: Under Executive Order 12988, the Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act (44 U.S.C. 3501 et seq.): This proposed rule contains new information collections requiring approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. We will request OMB approval of the new reporting and recordkeeping requirements identified below:

(1) New Permit Application (Form 3–200–37h), ''*Transfer/Transport/Export of Captive-Held African Elephants under the U.S. Endangered Species Act (ESA)*'' 50 CFR 17.40—We propose a new permit application, Form 3–200–37h, which will cover activities involving the export and/or transport and/or interstate or foreign commerce of captive-held African elephants. The application form applies to both wild-sourced and captive-bred live African elephants. The information provided in the application form will be used to determine whether a permit can be issued to the applicant under the relevant Federal regulations pertaining to the requested activity.

We are also requesting OMB approval to develop this application form in the Service's ePermits system to reduce public burden. Upon request, we will provide the public with paper-based (or PDF) versions if they do not have reliable access to the internet.

Information proposed to be collected from domestic entities (*i.e.,* individuals, private sector, State/local/Tribal governments) is listed below, noting applicants may need to provide information from the foreign entity as part of their application submission:

- Standardized identifier information required in 50 CFR 13.12.
- Name and address where the permit is to be mailed, if different from physical address.
- Name, phone number, and email of individual(s) for the Service to contact with questions.
- Whether the applicant or any of the owners of the business (if applying as a business, corporation, or institution) have been assessed a civil penalty or convicted of any criminal provision of any statute or regulation relating to the activity for which the application is filed; been convicted, or entered a plea of guilty or nolo contendere, for a felony violation of the Lacey Act, the Migratory Bird Treaty Act, or the Bald and Golden Eagle Protection Act; forfeited collateral; or are currently under charges for any violation of the laws.
- Type of activity requested (export or interstate commerce or transport).
- The current location of the animal(s) (if different from the physical address).
- Name and physical address of the recipient of the specimen.
- For each animal involved in the export/transport, the applicant must provide the following information:

—Scientific name (genus, species, and if applicable, subspecies);
—Common name;
—Approximate birth date (mm/dd/yyyy);
—Wild or captive-born;
—Quantity;
—Sex (males, females, *e.g.,* 10, 2); and
—Permanent markings or identification (microchip #, leg band #, tattoos, studbook #, etc.).

- Information regarding source of specimen(s);
- A description and justification for the requested activity;
- Information regarding technical expertise and facilities;
- Information confirming the receiving facility meets the CITES ''appropriate and acceptable destination''; and
- The transportation/shipment condition of the live animals.

(2) Range Country Certification Requirements—As described above, the proposed rule establishes an annual certification requirement for range countries to provide the Service with information about the management and status of African elephants and their habitat, within their country. This is not part of the application form itself, but a separate certification document/report/letter from the foreign country's government. The foreign government may provide the certification and information directly to the Service or the applicant may provide it to the Service. The certification and information would be subject to verification by the Service. This annual certification from the range country will be kept on file and made available to the public. Without this properly documented and verifiable annual certification, the Service would be unable to issue the requested import permit. This annual certification is specifically for requests to import live, wild-sourced African elephants or African elephant sport-hunted trophies. Information to be collected from the range country for the import of live, wild-sourced elephants includes specific information on whether family units were kept intact and whether any of the animals collected are pregnant. Alternatively, information collected for the import of sport-hunted trophies includes specific information on the use of the meat of the animal.

(3) Recordkeeping Requirements—Records regarding details on the identification of the elephants, as well as regarding its acquisition, original source, and subsequent transfers are needed to complete the new application form. In addition, records needed include staff technical expertise and facility information for the species.

(4) Permit Fee—The newly proposed Form 3–200–37h will impose a new nonhour burden cost of $100 per application. Amendments will incur a $50 processing fee.

All Service permit applications are in the 3–200 series of forms, each tailored to a specific activity based on the requirements for specific types of permits. We collect standard identifier information for all permits, such as the name of the applicant and the applicant's address, telephone numbers, tax identification number, email address, and website address, if applicable. Standardization of general information common to the application forms makes the filing of applications easier for the public, as well as expediting our review of applications.

The information that we collect on applications and reports is the minimum necessary for us to determine if the applicant meets/continues to meet issuance requirements for the particular activity. Respondents submit application forms periodically as needed; submission of reports is generally on an annual basis, or as identified conditionally as part of an issued permit. We examined applications in this collection, focusing on questions frequently misinterpreted or not addressed by applicants. We have made clarifications to many of our applications to make it easier for the applicant to know what information we need and to accommodate future electronic permitting. Use of these forms:

- Reduces burden on applicants.
- Improves customer service.
- Allows us to process applications and finalize reviews quickly.

A copy of the proposed Form 3–200–37h, ''*Interstate Commerce of Transfer of Captive-Held African Elephants under the U.S. Endangered Species Act (ESA)*'' is available to the public by submitting a request to the Service Information Collection Clearance Officer using one of the methods identified in **ADDRESSES**. Form 3–200–37h is also uploaded to the Federal eRulemaking Portal as a supporting document.

Title of Collection: Federal Fish and Wildlife Permit Applications and Reports—Requirements for African Elephants.

OMB Control Number: 1018—New.

Form Numbers: FWS Form 3–200–37h (New).

Type of Review: New.

Respondents/Affected Public: Individuals (including hunters); private sector (including biomedical companies, circuses, zoological parks, botanical gardens, nurseries, museums, universities, antique dealers, exotic pet industry, taxidermists, commercial importers/exporters of wildlife and plants, freight forwarders/brokers);

State, local, Tribal, and Federal governments; and foreign governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion or annually, depending on activity.

Total Estimated Annual Nonhour Burden Cost: $2,800 for costs associated with application processing fees, which range from $0 to $250. State, local, Tribal, and Federal government agencies and those acting on their behalf are exempt from processing fees.

Requirement	Average number of annual respondents	Average number of responses each	Average number of annual responses	Average completion time per response	Estimated annual burden hours *
Application—Interstate Commerce or Transfer of Captive-Held African Elephants under the U.S. Endangered Species Act (ESA) (Form 3–200–37h) 50 CFR 17.40(e) NEW					
Individuals	1	1	1	6	6
Private Sector	10	1	10	6	60
Government	5	1	5	6	30
ePermits Application—Interstate Commerce or Transfer of Captive-Held African Elephants under the U.S. Endangered Species Act (ESA) (Form 3–200–37h) 50 CFR 17.40(e) NEW					
Individuals	1	1	1	5.25	5
Private Sector	10	1	10	5.25	53
Government	5	1	5	5.25	26
Amendment—Interstate Commerce or Transfer of Captive-Held African Elephants under the U.S. Endangered Species Act (ESA) (Form 3–200–37h) 50 CFR 17.40(e) NEW					
Individuals	1	1	1	4	4
Private Sector	5	1	5	4	20
Government	3	1	3	4	12
ePermits Amendment—Interstate Commerce or Transfer of Captive-Held African Elephants under the U.S. Endangered Species Act (ESA) (Form 3–200–37h) 50 CFR 17.40(e) NEW					
Individuals	1	1	1	3.5	4
Private Sector	5	1	5	3.5	18
Government	3	1	3	3.5	11
Range Country Certification Requirements 50 CFR 17.40(e) NEW					
Foreign Government	37	1	37	10	370
Totals:	87		87		619

* Rounded.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Written comments and recommendations for the proposed information collection should be sent within 60 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W); Falls Church, VA 22041–3803; or by email to *Info_Coll@fws.gov.* Please reference ''OMB Control Number 1018—African Elephant'' in the subject line of your comments.

National Environmental Policy Act (NEPA): This proposed rule is being analyzed under the criteria of the National Environmental Policy Act, the Department of the Interior procedures for compliance with NEPA (Departmental Manual (DM) and 43 CFR part 46), and Council on Environmental Quality regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508). We have prepared a draft environmental assessment to determine whether this rule will have a significant impact on the quality of the human environment under the National Environmental Policy Act of 1969. The draft environmental assessment is available online at *https://www.regulations.gov* at Docket Number FWS–HQ–IA–2021–0099.

Government-to-Government Relationship with Tribes: The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this proposed rule under

the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian Tribes and that consultation under the Department's Tribal consultation policy is not required. Individual Tribal members must meet the same regulatory requirements as other individuals who trade in African elephants, including African elephant parts and products.

Energy Supply, Distribution, or Use: Executive Order 13211 pertains to regulations that significantly affect energy supply, distribution, or use. This proposed rule would revise the current regulations in 50 CFR part 17 regarding trade in African elephants and African elephant parts and products. This proposed rule would not significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action, and no statement of energy effects is required.

Clarity of the Rule: We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;
(b) Use the active voice to address readers directly;
(c) Use clear language rather than jargon;
(d) Be divided into short sections and sentences; and
(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, please send us comments by one of the methods listed under **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.40 amend paragraph (e) by:
■ a. In the introductory text, removing the reference ''paragraphs (e)(2) through (9)'' and adding in its place the reference ''paragraphs (e)(2) through (11)'';
■ b. Revising paragraphs (e)(1), (e)(2), and (e)(6)(i)(D);
■ c. Redesignating paragraphs (e)(6)(ii) and (iii) as paragraphs (e)(6)(iii) and (iv) and adding a new paragraph (e)(6)(ii); and
■ d. Adding paragraphs (e)(10) and (e)(11).

The revisions and additions read as follows:

§ 17.40 Special rules—mammals.

* * * * *

(e) * * *

(1) *Definitions.* In this paragraph (e), the following terms have these meanings:

Antique means any item that meets all four criteria under section 10(h) of the Endangered Species Act (16 U.S.C. 1539(h)).

Ivory means any African elephant tusk and any piece of an African elephant tusk.

Range country means a country that exercises jurisdiction over part of the natural geographic range of the African elephant including the following: Angola; Benin; Botswana; Burkina Faso; Cameroon; Central African Republic; Chad; Congo, Republic of the; Congo, The Democratic Republic of the; Côte d'Ivoire; Equatorial Guinea; Eritrea; Eswatini; Ethiopia; Gabon; Ghana; Guinea; Guinea-Bissau; Kenya; Liberia; Malawi; Mali; Mozambique; Namibia; Niger; Nigeria; Rwanda; Senegal; Sierra Leone; Somalia; South Africa; South Sudan; Tanzania, United Republic of; Togo; Uganda; Zambia; and Zimbabwe.

Raw ivory means any African elephant tusk, and any piece thereof, the surface of which, polished or unpolished, is unaltered or minimally carved.

Worked ivory means any African elephant tusk, and any piece thereof, that is not raw ivory.

(2) *Parts and products other than ivory and sport-hunted trophies.* African elephant parts and products other than ivory and sport-hunted trophies may be imported into or exported from the United States; sold or offered for sale in interstate or foreign commerce; and delivered, received, carried, transported, or shipped in interstate or foreign commerce in the course of a commercial activity without a threatened species permit issued under § 17.32, provided the requirements in 50 CFR parts 13, 14, and 23 and paragraph (e)(11) of this section have been met.

* * * * *

(6) * * *

(i) * * *

(D) The requirements in 50 CFR parts 13, 14, and 23 and paragraph (e)(11) of this section have been met; and

* * * * *

(ii) To make an enhancement determination for African elephant sport-hunted trophies under paragraph (e)(6)(i)(B) of this section and § 17.32, the Service must possess a properly documented and verifiable certification by the government of the range country dated no earlier than 1 year prior to the date the following determinations are made:

(A) African elephant populations in the range country are stable or increasing, as well as sufficiently large to sustain sport hunting at the level authorized by the country.

(B) Regulating authorities have the capacity to obtain sound data on these populations using scientifically based methods consistent with peer-reviewed literature.

(C) Regulating authorities recognize these populations as a valuable resource and have the legal and practical capacity to manage them for their conservation.

(D) Regulating governments follow the rule of law concerning African elephant conservation and management.

(E) The current viable habitat of these populations is secure and is not decreasing or degrading.

(F) Regulating authorities can ensure that the involved trophies have in fact been legally taken from the specified populations.

(G) Funds derived from the involved sport hunting are applied primarily to African elephant conservation, including funds used for:

(1) Managing protected habitat, securing additional habitat, or restoring habitat to secure long-term populations of elephants in their natural ecosystems and habitats, including corridors between protected areas;

(2) Improving the quality and carrying capacity of existing habitats;

(3) Helping range state governments to produce or strengthen regional and national elephant conservation strategies and laws;

(4) Developing capacity within the range country to survey, census, and monitor elephant populations;

(5) Conducting elephant population surveys;

(6) Supporting enforcement efforts to combat poaching of African elephants;

(7) Supporting local communities to help conserve the species in the wild through protecting, expanding, or restoring habitat or other methods used to prevent or mitigate human–elephant conflict; and

(8) Supporting local communities by ensuring that 100 percent of the available meat from the African elephant hunt will be donated to local communities.

* * * * *

(10) *Live African elephants.* (i) Live African elephants may be imported into the United States, provided the Service determines that the activity will enhance the survival of the species, the Service finds that the proposed recipient is suitably equipped to house and care for the live elephant (see criteria in § 23.65 of this chapter), the animal is accompanied by a threatened species permit issued under § 17.32, and the requirements in 50 CFR parts 13, 14, and 23 and paragraph (e)(11) of this section have been met.

(ii) To make an enhancement determination for the import of wild-sourced live African elephants under paragraph (e)(10)(i) of this section and § 17.32, the Service must possess a properly documented and verifiable certification by the government of the range country dated no earlier than 1 year prior to the date the following determinations are made:

(A) African elephant populations in the range country are stable or increasing, as well as sufficiently large to sustain removal of live elephants at the level authorized by the country.

(B) Regulating authorities have the capacity to obtain sound data on these populations using scientifically based methods consistent with peer-reviewed literature.

(C) Regulating authorities recognize these populations as a valuable resource and have the legal and practical capacity to manage them for their conservation.

(D) Regulating governments follow the rule of law concerning African elephant conservation and management.

(E) The current viable habitat of these populations is secure and is not decreasing or degrading.

(F) Regulating authorities can ensure that the involved live animals have in fact been legally taken from the specified populations and family units were kept intact to the maximum extent practicable.

(G) Regulating authorities can ensure that no live African elephants to be imported are pregnant.

(H) Funds derived from the import are applied primarily to African elephant conservation, including funds used for:

(1) Managing protected habitat, securing additional habitat, or restoring habitat to secure long-term populations of African elephants in their natural ecosystems and habitats, including corridors between protected areas;

(2) Improving the quality and carrying capacity of existing habitats;

(3) Helping range state governments to produce or strengthen regional and national African elephant conservation strategies and laws;

(4) Developing capacity within the range country to survey, census, and monitor African elephant populations;

(5) Conducting African elephant population surveys;

(6) Supporting enforcement efforts to combat poaching of African elephants; and

(7) Supporting local communities to help conserve the species in the wild through protecting, expanding, or restoring habitat or other methods used to prevent or mitigate human–elephant conflict.

(I) The government of the range country first considers any live elephants that it approves for export for both in situ conservation programs and for transportation to other locations to augment extant wild populations or reintroduce elephants to extirpated ranges.

(iii) Live African elephants may be sold or offered for sale in interstate commerce, and delivered, received, carried, transported, or shipped in interstate commerce in the course of a commercial activity, provided the Service finds that the proposed recipient is suitably equipped to house and care for the live elephant (see criteria in § 23.65 of this chapter), and a special purpose permit is issued under § 17.32 or a captive-bred wildlife registration is issued under § 17.21(g).

(iv) Each permit issued to authorize activity with a live African elephant under 50 CFR parts 17 or 23 must include a condition that the elephant and its offspring will not be sold or otherwise transferred to another person without a special purpose permit issued under § 17.32. Each special purpose permit for a live African elephant must also include the same condition. Each special purpose permit issued for a live African elephant will require a finding by the Service that the proposed recipient is suitably equipped to house and care for the live elephant (see criteria in § 23.65 of this chapter).

(11) *CITES National Legislation Project and African elephants.* African elephants and their parts and products may not be imported into the United States under the exceptions for import provided in § 17.32 or paragraphs (e)(2), (e)(6), or (e)(10) of this section except when all trade in the specimen has been and is accompanied by a valid CITES document issued by the Management Authority of a Party with a CITES Category One designation under the CITES National Legislation Project (see § 23.7 of this chapter, *http://www.cites.org*).

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2022–25010 Filed 11–16–22; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 87, No. 221
Thursday, November 17, 2022

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

Forest Service

Jefferson National Forest; Monroe County, West Virginia; Giles and Montgomery County, Virginia. Mountain Valley Pipeline and Equitrans Expansion Project Supplemental Environmental Impact Statement

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: The USDA Forest Service (Forest Service) is preparing a Supplemental Environmental Impact Statement (SEIS) to the 2017 Federal Energy Regulatory Commission (FERC) Final Environmental Impact Statement (FEIS) for the Mountain Valley Pipeline (MVP) and Equitrans Expansion Project and its subsequent 2020 Forest Service Final Supplemental Environmental Impact Statement (2020 FSEIS). The MVP project proposed action that is specific to National Forest System (NFS) lands is to construct and operate a buried 42-inch natural gas pipeline across approximately 3.5 miles of the Jefferson National Forest (JNF). The Forest Service, as the lead agency, and the Bureau of Land Management (BLM), as the Federal cooperating agency, have decisions to be made based on a review of the 2017 FERC FEIS, the 2020 FSEIS, and this supplemental analysis.

DATES: The draft supplemental environmental impact statement is expected by January 2023, with a 45-day comment period immediately following. The final supplemental environmental impact statement is expected by Summer of 2023.

FOR FURTHER INFORMATION CONTACT: For further information on this project, please contact Joby Timm, Forest Supervisor for the George Washington and Jefferson National Forests, by leaving a voicemail at 1–888–603–0261 or an email at *SM.FS.GWJNF-PA@usda.gov.* For inquiries for the Bureau of Land Management, contact Robert Swithers, District Manager, BLM Southeastern States District Office, by phone at 601–919–4650 or by email at *BLM_ES_SSDO_Comments@blm.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The Forest Service's purpose and need for the proposed action is to respond to a proposal from Mountain Valley, LLC to construct and operate a buried 42-inch interstate natural gas pipeline that would cross NFS lands on the JNF along a proposed 3.5-mile corridor. A Forest Service decision is needed because the project as proposed is inconsistent with several Land Management Plan standards without an amendment to the JNF Land Management Plan. Relatedly, there is a need to determine what terms and conditions, or stipulations, should be provided to the BLM in order to protect resources and the public interest consistent with the Mineral Leasing Act (MLA), 30 U.S.C. 185(h).

A supplemental analysis and new decision from the Forest Service are needed because the United States Court of Appeals for the Fourth Circuit (Court) vacated both the 2017 and 2021 Forest Service Records of Decision (RODs). In its opinion published on January 25, 2022, the Court identified National Forest Management Act (NFMA) and National Environmental Policy Act (NEPA) issues. To resolve the issues identified by the Court, there is a need, at a minimum, to consider information about actual sedimentation and erosion impacts, consider FERC's 2021 Environmental Assessment of the use of trenchless boring for crossing streams, and comply with the Forest Service 2012 Planning Rule soil and riparian resources requirements at 36 CFR 219.8. Additionally, there may be relevant new information or changed environmental conditions to consider since the development of the 2020 FSEIS and the Forest Service ROD was signed in January 2021.

The Bureau of Land Management is required to respond to Mountain Valley, LLC's amended MLA right-of-way (ROW) application for the MVP project to construct and operate a natural gas pipeline across NFS and U.S. Army Corps of Engineers lands consistent with the MLA, 30 U.S.C. 185, and BLM's implementing regulations, 43 CFR part 2880. Under the MLA, the BLM has responsibility for reviewing Mountain Valley, LLC's ROW application and authority to issue a decision on whether to approve, approve with modifications, or deny the application.

The BLM previously approved the portion of the ROW crossing Corps of Engineers lands in 2017, and that portion of the BLM's decision remains in effect; the BLM's remaining decision involves only the portion of the ROW crossing NFS lands. Like the Forest Service, the BLM will base its decision on a review of the 2017 FERC FEIS, the 2020 FSEIS, and this supplemental analysis. The Bureau of Land Management will work as a cooperating agency with the Forest Service to complete the necessary environmental analysis to address the issues identified by the Court.

Proposed Action

In response to the purpose and need, the Forest Service's proposed action is to amend the Jefferson National Forest Land Management Plan as necessary to allow for the MVP to cross the Jefferson National Forest. The Forest Service would provide construction and operation terms and conditions, or stipulations as needed for the actions listed below. The terms and conditions, or stipulations would be submitted to the BLM for inclusion in the ROW grant. The Forest Service would also provide concurrence to the BLM to issue the ROW grant. The construction, operation and maintenance actions that need terms and conditions, or stipulations, and Forest Service concurrence include:

- Construction of a 42-inch pipeline across 3.5 miles of the JNF.
- The use of a 125-foot-wide temporary construction ROW for pipeline installation and trench spoil. The width would be reduced to approximately 75 feet to cross most wetlands. Once construction is complete, the MVP would retain an approximately 50-foot permanent ROW to operate the pipeline.

• Installation of surface pipeline markers to advise the public of pipeline presence and cathodic pipeline protection test stations that are required by Department of Transportation.

An integral part of the proposed action is adherance to the Plan of Development (POD) that guides the pipeline's construction, operation, and maintenance. The POD includes resource mitigation for reducing or eliminating impacts to resources. See the 2017 FERC FEIS, Sec. 1.5 for a complete list of requirements for the MVP that is managed by the FERC.

Consistent with the Forest Service's proposed action to amend the Plan and concur on the ROW grant, the BLM's proposed action is to grant a ROW under the MLA, 30 U.S.C. 185, for the project to cross the JNF.

Preliminary Alternatives

For this project, two preliminary alternatives have been identified for analysis: a No Action alternative will consider effects if the JNF Land Management Plan were not amended as necessary to allow for the MVP to cross the JNF, if BLM did not issue a ROW grant, and if the Forest Service provided no concurrence to BLM, and therefore no terms, conditions, or stipulations.

The Proposed Action alternative will consider effects of the Forest Service proposed action to amend the JNF Land Management Plan as necessary to allow for the MVP to cross the JNF, for the BLM to issue a ROW grant for the project to cross the JNF, and for the Forest Service to provide concurrence with construction and operation terms and conditions, or stipulations.

Expected Impacts

This SEIS will address the deficiencies identified by the Court; specifically by addressing impacts to soil and water from the proposed pipeline construction and from the proposed Land Management Plan amendment. Short-term adverse impacts to soil and water are expected from the proposed pipeline and Land Management Plan amendment. Impacts are expected to be similar to those disclosed in the 2017 FERC FEIS and the 2020 FSEIS. This SEIS will also consider relevant new information and changed environmental conditions in its analysis of effects beyond those disclosed in the 2017 FERC FEIS and the 2020 FSEIS.

Lead and Cooperating Agencies

The Forest Service is the lead agency for this supplemental environmental impact statement, and the BLM is a cooperating agency. Each agency has a separate decision to be made.

Responsible Officials

For the Forest Service, the responsible official is the Under Secretary, Natural Resources and Environment, U.S. Department of Agriculture. The expected responsible official for the Bureau of Land Management is the Eastern States State Director.

Scoping, Public Comment, and Administrative Review

Scoping will not be repeated, and this SEIS will focus on the topics identified by the Court. Additional opportunities for public comment will be provided when the draft SEIS is available. The responsible official is the Under Secretary, Natural Resources and Environment, U.S. Department of Agriculture, therefore a Forest Service decision to amend the Land Management Plan would not be subject to either the 36 CFR 218 or 36 CFR 219 pre-decisional administrative review (36 CFR 218.13(b); 36 CFR 219.13(b)).

Permits, Licenses or Other Authorizations Required

Section 1.5 of the 2017 FERC FEIS contains a description of the permits, approvals, and regulatory requirements that must be met or be obtained by Mountain Valley, LLC., including a ROW to be issued by BLM as part of the proposed action for this SEIS. The Certificate (FERC 2017d) also contains detailed language about required permits, licenses, and agency approvals associated with construction, operation, and maintenance of the project.

Nature of Decision To Be Made

Forest Service

The Responsible Official will review the proposed action including alternatives, proposed terms and conditions, stipulations, the POD, environmental consequences that would be applicable to NFS lands, public comments, and the project record in order to make the following decisions: (1) Whether to approve a Land Management Plan amendment that would modify eleven standards in the JNF's Land Management Plan; (2) Determine what terms and conditions, or stipulations, should apply to a BLM ROW grant; (3) Whether to issue a written letter of concurrence to BLM if the decision is to assent to the project on NFS lands; and, (4) Whether to adopt all or portions 2017 FERC FEIS that is relevant to NFS lands.

While the Equitrans Expansion project was included in the FERC FEIS, it is not on NFS lands. Therefore, no analysis will be prepared or decision made on that project.

Bureau of Land Management

Consistent with the MLA, 30 U.S.C. 185, and BLM's implementing regulations, 43 CFR part 2880, the BLM will review Mountain Valley's amended MLA ROW application, the FERC FEIS, the 2020 SEIS, and the Forest Service supplemental analysis to determine whether to approve, approve with modifications, or deny the ROW application through the NFS lands. As a cooperating agency, the BLM intends to rely on and adopt the Forest Service supplemental analysis for its decision, as long as the analysis provides sufficient evidence to support the decision and the Forest Service addresses the BLM's comments and suggestions to the BLM's satisfaction. Before issuing a decision on Mountain Valley's application, the BLM would need the Forest Service's written concurrence.

Through the concurrence process, if the BLM's decision is to approve the ROW, the Forest Service would submit to the BLM any stipulations for inclusion in the ROW grant that are deemed necessary to protect the environment and otherwise protect the public interest consistent with 30 U.S.C. 185(h); 43 CFR 2885.11. The BLM decision would be documented in a separate ROD.

Substantive Provisions

An amendment to the Jefferson National Forest Land Management Plan would exempt the project from compliance with the following eleven Land Management Plan standards in order to allow the BLM to grant a ROW: FW–248 (utility corridors); FW–5 (revegetation); FW–8 (soil compaction in water saturated areas); FW–9 (soil impacts from heavy equipment use); FW–13 and FW14 (exposed soil and residual basal area within the channeled ephermal zone); 11–003 (exposed soil within the riparian corridor); 6C–007 and 6C–026 (tree clearing and utility corridors in the old growth management area); 4A–028 (Appalachian National Scenic Trail and utility corridors); and FW–184 (scenic integrity objectives).

The Forest Service's Planning Rule at 36 CFR 219.13(b)(2) requires responsible officials to provide notice of which substantive requirements of 36 CFR 219.8 through 219.11 are likely to be directly related to the amendment. The substantive Planning Rule provisions that are likely to be directly related to the amendments are: § 219.8(a)(1) (terrestrial ecosystems); § 219.8(a)(2)(ii) (soils and water

productivity); § 219.8(a)(2)(iv) (water resources); § 219.8(a)(3)(i) (ecological integrity of riparian areas); § 219.9(b) (contributions to recovery of threatened and endangered species); § 219.10(a)(3) (utility corridors); § 219.10(b)(1)(vi) (other designated areas); § 219.10(b)(1)(i) (scenic character); and § 219.11(c) (timber harvesting for purposes other than timber production).

Homer Wilkes,

Under Secretary, Natural Resources and Environment, U.S. Department of Agriculture.

[FR Doc. 2022–24994 Filed 11–16–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–851–805]

Emulsion Styrene-Butadiene Rubber From the Czech Republic: Final Affirmative Determination of Sales at Less Than Fair Value

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that imports of emulsion styrene-butadiene rubber (ESBR) from the Czech Republic are being, or are likely to be, sold in the United States at less than fair value (LTFV) for the period of investigation (POI) October 1, 2020, through September 30, 2021.

DATES: Applicable November 17, 2022.

FOR FURTHER INFORMATION CONTACT: Leo Ayala, 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) 482–3945.

SUPPLEMENTARY INFORMATION:

Background

On June 27, 2022, Commerce published in the **Federal Register** the preliminary affirmative determination in the LTFV investigation of ESBR from the Czech Republic, in which it also postponed the final determination until November 9, 2022.[1] We invited interested parties to comment on the *Preliminary Determination.* A summary of the events that occurred since Commerce published the *Preliminary Determination* may be found in the Issues and Decision Memorandum.[2]

Scope of the Investigation

The product covered by this investigation is ESBR from the Czech Republic. For a complete description of the scope of this investigation, *see* Appendix I.

Analysis of Comments Received

All the issues raised in the case and rebuttal briefs that were submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is attached to this notice as Appendix II. 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.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Verification

Commerce conducted verification of the information relied upon in making its final determination in this investigation with respect to Synthos Kralupy a.s. (Synthos), in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act).[3] Specifically, Commerce conducted on-site verifications of the home market sales, U.S. sales, and cost of production responses submitted by Synthos.

Changes Since the Preliminary Determination

Based on our analysis of the comments received, we have made certain changes to the margin calculations for Synthos. For a discussion of these changes, *see* the Issues and Decision Memorandum.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping margin for all other producers and exporters not individually investigated shall be equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding rates that are zero, *de minimis,* or determined entirely under section 776 of the Act (*i.e.,* facts otherwise available).

Commerce calculated an individual estimated weighted-average dumping margin for Synthos, the only individually-examined exporter/producer in this investigation. Because the only individually calculated dumping margin is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for Synthos is the margin assigned to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

Final Determination

Commerce determines that the following estimated weighted-average dumping margins exist for the period October 1, 2020, through September 30, 2021:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Synthos Kralupy a.s	8.04
All Others	8.04

Disclosure

We intend to disclose to interested parties the calculations and analysis performed in this final determination within five days of 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).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct U.S. Customs and Border Protection (CBP) to continue to suspend the liquidation of all appropriate entries of subject merchandise, as described in Appendix I of this notice, entered, or withdrawn from warehouse, for consumption on or after June 27, 2022, the date of publication of the affirmative *Preliminary Determination* in the **Federal Register**. These suspension of liquidation instructions will remain in effect until further notice.

[1] *See Emulsion Styrene-Butadiene Rubber from the Russian Federation: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures,* 87 FR 38060 (June 27, 2022) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Decision Memorandum for the Final Determination in the Less-Than-Fair-Value Investigation of Emulsion Styrene-Butadiene Rubber from the Czech Republic,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memoranda, ''Verification of the Cost Responses of Synthos Kralupy a.s. in the Antidumping Duty Investigation of Emulsion Styrene-Butadiene Rubber from the Czech Republic,'' dated August 1, 2022; and ''Less-Than-Fair-Value Investigation of Emulsion Styrene-Butadiene Rubber from the Czech Republic: Verification of Sales Responses of Synthos Kralupy a.s.,'' dated September 20, 2022.

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), upon publication of this notice, we will instruct CBP to require a cash deposit for estimated antidumping duties for such entries as follows: (1) the cash deposit rate for Synthos is the company-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not a company identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be the all-others estimated weighted-average dumping margin listed above.

U.S. International Trade Commission Notification

In accordance with section 735(d) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of the final determination of sales at LTFV. Because the final determination in this investigation is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of ESBR no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, and all cash deposits posted will be refunded and suspension of liquidation will be lifted. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed in the ''Continuation of Suspension of Liquidation'' section above.

Administrative Protective Order

This notice will serve as the only reminder to the parties subject to an 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). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: November 9, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are cold-polymerized emulsion styrene-butadiene rubber (ESB rubber). The scope of the investigation includes, but is not limited to, ESB rubber in primary forms, bales, granules, crumbs, pellets, powders, plates, sheets, strip, *etc.* ESB rubber consists of non-pigmented rubbers and oil-extended non-pigmented rubbers, both of which contain at least one percent of organic acids from the emulsion polymerization process.

ESB rubber is produced and sold in accordance with a generally accepted set of product specifications issued by the International Institute of Synthetic Rubber Producers (IISRP). The scope of the investigation covers grades of ESB rubber included in the IISRP 1500 and 1700 series of synthetic rubbers. The 1500 grades are light in color and are often described as ''Clear'' or ''White Rubber.'' The 1700 grades are oil-extended and thus darker in color, and are often called ''Brown Rubber.''

Specifically excluded from the scope of this investigation are products which are manufactured by blending ESB rubber with other polymers, high styrene resin master batch, carbon black master batch (*i.e.,* IISRP 1600 series and 1800 series) and latex (an intermediate product).

The products subject to this investigation are currently classifiable under subheadings 4002.19.0015 and 4002.19.0019 of the Harmonized Tariff Schedule of the United States (HTSUS). ESB rubber is described by Chemical Abstracts Services (CAS) Registry No. 9003–55–8. This CAS number also refers to other types of styrene butadiene rubber. Although the HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of the Investigation
V. Changes Since the *Preliminary Determination*
VI. Affiliation
VII. Discussion of the Issues
Comment 1: Whether to Apply Adverse Facts Available (AFA) to Synthos
Comment 2: Synthos' Reported Date of Sale
Comment 3: Whether to Cap Freight Revenue in the U.S. and Home Markets
Comment 4: Whether to Use Synthos' Actual Short-Term Borrowing Rate
VIII. Recommendation

[FR Doc. 2022–25049 Filed 11–16–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–840]

Certain Frozen Warmwater Shrimp From India: Partial Rescission of Antidumping Duty Administrative Review; 2021–2022

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

SUMMARY: On April 12, 2022, the Department of Commerce (Commerce) initiated an administrative review of the antidumping duty (AD) order on certain frozen warmwater shrimp (shrimp) from India for the period February 1, 2021, through January 31, 2022, for 261 companies. Because all interested parties timely withdrew their requests for administrative review for certain companies, we are rescinding this administrative review with respect to those companies. For a list of the companies for which we are rescinding this review, *see* Appendix I to this notice. For a list of the companies for which the review is continuing, *see* Appendix II to this notice.

DATES: Applicable November 17, 2022.

FOR FURTHER INFORMATION CONTACT: Terre Keaton Stefanova or Adam Simons, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202–482 1280 or (202) 482–6172, respectively.

Background

On February 8, 2022, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on frozen warmwater shrimp from India for the period February 1, 2021, through January 31, 2022.[1] In February 2022, Commerce received timely requests, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), to conduct an administrative review of

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 87 FR 7112 (February 8, 2022).

this antidumping duty order from the Ad Hoc Shrimp Trade Action Committee (the petitioner), the American Shrimp Processors Association (ASPA), and certain individual companies. Based upon these requests, on April 12, 2022, in accordance with section 751(a) of the Act, Commerce published in the **Federal Register** a notice of initiation listing 261 companies for which Commerce received timely requests for review.[2]

In July 2022, all interested parties timely withdrew their requests for an administrative review of certain companies.[3] These companies are listed in Appendix I.

Partial Rescission

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. As noted above, certain parties withdrew their requests for review by the 90-day deadline. Accordingly, we are rescinding this administrative review with respect to the companies listed in Appendix I.

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 21619 (April 12, 2022) (*Initiation Notice*).

[3] *See* Devi Fisheries Limited's Letter, ''Withdrawal of our request for Administrative Review for the period 02/01/21–01/31/22,'' dated July 7, 2022; Nekkanti Sea Foods Limited's Letter, ''Withdrawal of our request for Administrative Review for the period 02/01/21–01/31/22,'' dated July 7, 2022; Magnum Export's Letter, ''Withdrawal of our request for Administrative Review for the period 02/01/21–01/31/22,'' dated July 7, 2022; ASPA's Letter, ''American Shrimp Processors Association's Withdrawal of Review Requests,'' dated July 7, 2022; Sea Foods Private Limited's Letter, ''Withdrawal of our request for Administrative Review for the period 02/01/21–01/31/22,'' dated July 7, 2022; Z.A. Sea Foods Pvt Ltd's Letter, ''Withdrawal of our request for Administrative Review for the period 02/01/21–01/31/22,'' dated July 7, 2022; Fourteen Indian Producers' Letter, ''Withdrawal of Requests for Administrative Reviews for 14 Indian Producers/Exporters (02/01/21–01/31/22),'' dated July 8, 2022; Petitioner's Letter, ''Domestic Producers' Partial Withdrawal of Review Requests,'' dated July 8, 2022; B-One Business House Pvt. Ltd.'s Letter, ''B-One Withdrawal of Request for Review of the Antidumping Duty Order for period of February 01, 2021 to January 31, 2022,'' dated July 11, 2022; Royal Oceans' Letter, ''Royal Oceans Withdrawal of Request for Review of the Antidumping Duty Order for period of February 01, 2021 to January 31, 2022,'' dated July 11, 2022; RSA Marines' Letter, ''RSA Marines Withdrawal of Request for Review of the Antidumping Duty Order for period of February 01, 2021 to January 31, 2022,'' dated July 11, 2022; Summit Marine Exports Private Limited's Letter, ''Summit Marine Export Withdrawal of Request for Review of the Antidumping Duty Order for period of February 01, 202 to January 31, 2022,'' dated July 11, 2022; and Magnum Sea Foods Limited's Letter, ''Magnum's Withdrawal of Request for Review of the Antidumping Duty Order for period of February 01, 2021 to January 31, 2022,'' dated July 11, 2022.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP no earlier than 35 days after publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This notice is issued and published in accordance with section 751(a)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: November 10, 2022.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix I

Akshay Food Impex Private Limited
Alashore Marine Exports (P) Ltd.
Alpha Marine
Ananda Enterprises (India) Private Limited
Ananda Group (comprised of Ananda Aqua Applications; Ananda Aqua Exports (P) Limited; and Ananda Foods)
Apex Frozen Foods Private Limited
Aquatica Frozen Foods Global Pvt. Ltd.
Arya Sea Foods Private Limited
Asvini Fisheries Ltd./Asvini Fisheries Private Ltd.
Avanti Frozen Foods Private Limited
BMR Exports
BMR Industries Private Limited
B-One Business House Pvt. Ltd.
C.P. Aquaculture (India) Pvt. Ltd.
Castlerock Fisheries Ltd.
Choice Trading Corporation Pvt. Ltd.
Coastal Aqua Private Limited
Coastal Corporation Ltd.
Devi Fisheries Group (comprised of Devi Fisheries Limited; Satya Seafoods Private Limited;
Usha Seafoods; and Devi Aquatech Private Limited)
DSF Aquatech Private Limited
Falcon Marine Exports Limited/KR Enterprises
Five Star Marine Exports Private Limited
Forstar Frozen Foods Pvt. Ltd.
Geo Seafoods
Godavari Mega Aqua Food Park Private Limited
Growel Processors Private Limited
IFB Agro Industries Limited
ITC Ltd.
Jagadeesh Marine Exports
Jaya Lakshmi Sea Foods Pvt. Ltd.
KNC Agro Limited
The Kadalkanny Group (comprised of Diamond Seafoods Exports; Edhayam Frozen Foods Pvt.
Ltd.; Kadalkanny Frozen Foods; and Theva & Company)
Kalyan Aqua & Marine Exp. India Pvt. Ltd.
Liberty Group (comprised of Devi Marine Food Exports Private Ltd.; Kader Exports Private Limited; Kader Investment and Trading Company Private Limited; Liberty Frozen Foods Private Limited; Liberty Oil Mills Limited; Premier Marine Products Private Limited; and Universal Cold Storage Private Limited)
LNSK Green House Agro Products LLP
Magnum Export/Magnum Exports Pvt. Ltd.
Magnum Seafoods Limited/Magnum Estates Private Limited
Mangala Marine Exim India Pvt. Ltd.
Mangala Seafoods (AKA Mangala Sea Foods)
Milesh Marine Exports Private Limited
Monsun Foods Pvt. Ltd.
Mourya Aquex Pvt. Ltd.
Munnangi Seafoods (Pvt) Ltd.
Naga Hanuman Fish Packers
Neeli Aqua Private Limited
Nekkanti Mega Food Park Private Limited
Nekkanti Sea Foods Limited
Nezami Rekha Sea Foods Private Limited
Nila Sea Foods Exports/Nila Sea Food Pvt. Ltd.
Pasupati Aquatics Private Limited
Penver Products (P) Ltd.
Razban Seafoods Ltd.
Royal Imports and Exports
Royale Marine Impex Pvt. Ltd
RSA Marines/Royal Oceans
S.A. Exports
Sagar Grandhi Exports Pvt. Ltd.
Sai Marine Exports Pvt. Ltd.
Sai Sea Foods
Sandhya Aqua Exports Pvt. Ltd.
Sandhya Marines Limited
Sea Foods Private Limited
Sharat Industries Ltd.
Shree Datt Aquaculture Farms Pvt. Ltd.
Southern Tropical Foods Pvt. Ltd.
Sprint Exports Pvt. Ltd.
Summit Marine Exports Private Limited

Sunrise Seafoods India Private Limited
Suryamitra Exim Pvt. Ltd.
V V Marine Products
Vasista Marine
Veerabhadra Exports Private Limited
Wellcome Fisheries Limited
Z.A. Sea Foods Pvt. Ltd.

Appendix II

Abad Fisheries
Accelerated Freeze Drying Co.
ADF Foods Ltd.
Albys Agro Private Limited
Al-Hassan Overseas Private Limited
Allana Frozen Foods Pvt. Ltd.
Allanasons Ltd.
Alps Ice & Cold Storage Private Limited
Amaravathi Aqua Exports Private Limited
Amarsagar Seafoods Private Limited
Amulya Seafoods
Anantha Seafoods Private Limited
Anjaneya Seafoods
Asvini Agro Exports
Ayshwarya Sea Food Private Limited
B R Traders
Baby Marine Eastern Exports
Baby Marine Exports
Baby Marine International
Baby Marine Sarass
Baby Marine Ventures
Balasore Marine Exports Private Limited
BB Estates & Exports Private Limited
Bell Exim Private Limited
Bhatsons Aquatic Products
Bhavani Seafoods
Bhimraj Exports Private Limited
Bijaya Marine Products
Blue-Fin Frozen Foods Private Limited
Blue Water Foods & Exports P. Ltd.
Bluepark Seafoods Pvt. Ltd.
Britto Seafood Exports Pvt Ltd.
Calcutta Seafoods Pvt. Ltd./Bay Seafood Pvt. Ltd./Elque & Co.
Canaan Marine Products
Capithan Exporting Co.
Cargomar Private Limited
Chakri Fisheries Private Limited
Chemmeens (Regd)
Cherukattu Industries (Marine Div)
Cochin Frozen Food Exports Pvt. Ltd.
Cofoods Processors Private Limited
Continental Fisheries India Private Limited
Coreline Exports
Corlim Marine Exports Private Limited
CPF (India) Private Limited
Crystal Sea Foods Private Limited
Danica Aqua Exports Private Limited
Datla Sea Foods
Deepak Nexgen Foods and Feeds Pvt. Ltd.
Delsea Exports Pvt. Ltd.
Devi Sea Foods Limited [4]
Dwaraka Sea Foods
Empire Industries Limited
Entel Food Products Private Limited
Esmario Export Enterprises
Everblue Sea Foods Private Limited
Febin Marine Foods Private Limited
Fedora Sea Foods Private Limited
Food Products Pvt., Ltd./Parayil Food Products Pvt., Ltd.
Fouress Food Products Private Limited
Frontline Exports Pvt. Ltd.
G A Randerian Ltd.
Gadre Marine Exports (AKA Gadre Marine Exports Pvt. Ltd.)
Galaxy Maritech Exports P. Ltd.
Geo Aquatic Products (P) Ltd.
Grandtrust Overseas (P) Ltd.
GVR Exports Pvt. Ltd.
Hari Marine Private Limited
Haripriya Marine Export Pvt. Ltd.
HIC ABF Special Foods Pvt. Ltd.
Highland Agro
Hiravati Exports Pvt. Ltd.
Hiravati International Pvt. Ltd.
Hiravati Marine Products Private Limited
HMG Industries Ltd
HN Indigos Private Limited
Hyson Exports Private Limited
Hyson Logistics and Marine Exports Private Limited
Indian Aquatic Products
Indo Aquatics
Indo Fisheries
Indo French Shellfish Company Private Limited
International Freezefish Exports
Jinny Marine Traders
Jude Foods India Private Limited
K.V. Marine Exports
Karunya Marine Exports Private Limited
Kaushalya Aqua Marine Product Exports Pvt. Ltd.
Kay Kay Exports
Kings Infra Ventures Limited
Kings Marine Products
Koluthara Exports Ltd.
Libran Foods
Lito Marine Exports Private Limited
Mangala Sea Products
Marine Harvest India
Megaa Moda Pvt. Ltd.
Milsha Agro Exports Pvt. Ltd.
Milsha Sea Products
Minaxi Fisheries Private Limited
Mindhola Foods LLP
Minh Phu Group
MMC Exports Limited
MTR Foods
Naik Frozen Foods Private Limited
Naik Oceanic Exports Pvt. Ltd./Rafiq Naik Exports Pvt. Ltd
Naik Seafoods Ltd.
NAS Fisheries Pvt. Ltd
Nine Up Frozen Foods
N.K. Marine Exports LLP
Nutrient Marine Foods Limited
Oceanic Edibles International Limited
Paragon Sea Foods Pvt. Ltd.
Paramount Seafoods
Pesca Marine Products Pvt., Ltd.
Pijikay International Exports P Ltd.
Poyilakada Fisheries Private Limited
Pravesh Seafood Private Limited
Premier Exports International
Premier Marine Foods
Premier Seafoods Exim (P) Ltd.
Protech Organo Foods Private Limited
Raju Exports
Rajyalakshmi Marine Exports [5]
Ram's Assorted Cold Storage Limited
Raunaq Ice & Cold Storage
RDR Exports
RF Exports Private Limited
Rising Tide
Riyarchita Agro Farming Private Limited
Rupsha Fish Private Limited
R V R Marine Products Private Limited
S Chanchala Combines
Safera Food International
Sagar Samrat Seafoods
Sahada Exports
Sai Aquatechs Private Limited
Salet Seafoods Pvt. Ltd.
Samaki Exports Private Limited
Sanchita Marine Products Private Limited
Sasoondock Matsyodyog Sahakari Society Ltd.
Sea Doris Marine Exports
Seagold Overseas Pvt. Ltd.
Seasaga Enterprises Private Limited/Seasaga Group
Shimpo Exports Private Limited
Shimpo Seafoods Private Limited
Shiva Frozen Food Exp. Pvt. Ltd.
Shroff Processed Food & Cold Storage P Ltd.
Sigma Seafoods
Silver Seafood
Sita Marine Exports
Sonia Fisheries
Sreeragam Exports Private Limited
Sri Sakkthi Cold Storage
Srikanth International
SSF Ltd.
Star Agro Marine Exports Private Limited
Star Organic Foods Private Limited
Stellar Marine Foods Private Limited
Sterling Foods
Sun Agro Exim
Supran Exim Private Limited
Suvarna Rekha Exports Private Limited
Suvarna Rekha Marines P Ltd.
TBR Exports Private Limited
Teekay Marines Private Limited
Tej Aqua Feeds Private Limited
The Waterbase Limited
Torry Harris Seafoods Ltd.
Triveni Fisheries P Ltd.
U & Company Marine Exports
Ulka Sea Foods Private Limited
Uniloids Biosciences Private Limited
Uniroyal Marine Exports Ltd.
Unitriveni Overseas Private Limited
Vaisakhi Bio-Marine Private Limited
Varma Marine
Vasai Frozen Food Co.
Veronica Marine Exports Private Limited
Victoria Marine & Agro Exports Ltd.
Vinner Marine
Vitality Aquaculture Pvt. Ltd.
VKM Foods Private Limited
VRC Marine Foods LLP
West Coast Fine Foods (India) Private Limited
West Coast Frozen Foods Private Limited
Zeal Aqua Limited

[FR Doc. 2022–25053 Filed 11–16–22; 8:45 am]

BILLING CODE 3510–DS–P

[4] Shrimp produced and exported by Devi Sea Foods Limited (Devi) was excluded from the order effective February 1, 2009. *See Certain Frozen Warmwater Shrimp from India: Final Results of the Antidumping Duty Administrative Review, Partial Rescission of Review, and Notice of Revocation of Order in Part,* 75 FR 41813, 41814 (July 19, 2010). Accordingly, we initiated this administrative review with respect to Devi only for shrimp produced in India where Devi acted as either the manufacturer or exporter (but not both).

[5] We note that this company's name was incorrectly listed as Rajyalaksmi Marine Exports in the *Initiation Notice* and subsequently corrected. *See Initiation Notice,* 87 FR at 21621; *see also Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 29280, 29282 (May 13, 2022).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–835]

Emulsion Styrene-Butadiene Rubber From the Russian Federation: Final Affirmative Determination of Sales at Less Than Fair Value and Classification of the Russian Federation as a Non-Market Economy

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that imports of emulsion styrene-butadiene rubber (ESBR) from the Russian Federation (Russia) are being, or are likely to be, sold in the United States at less than fair value (LTFV) for the period of investigation (POI) October 1, 2020, through September 30, 2021. Commerce has also reconsidered Russia's market economy status and has determined to treat Russia as a non-market economy in forthcoming proceedings.

DATES: Applicable November 17, 2022.

FOR FURTHER INFORMATION CONTACT: Caitlin Monks or Zachary Le Vene, 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) 482–2670 or (202) 482–0056, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 27, 2022, Commerce published in the **Federal Register** the preliminary affirmative determination in the LTFV investigation of ESBR from Russia, in which it also postponed the final determination until November 9, 2022.[1] We invited interested parties to comment on the *Preliminary Determination.* A summary of the events that occurred since Commerce published the *Preliminary Determination* may be found in the Issues and Decision Memorandum.[2]

Scope of the Investigation

The product covered by this investigation is ESBR from Russia. For a complete description of the scope of this investigation, *see* Appendix I.

Analysis of Comments Received

All the issues raised in the case and rebuttal briefs that were submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is attached to this notice as Appendix II. 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.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Verification

Commerce conducted verification of the information relied upon in making its final determination in this investigation with respect to Public Joint Stock Company SIBUR Holding, Joint Stock Company Voronezhsintezkauchuk, SIBUR LLC, and SIBUR International GmbH (collectively, SIBUR) in Vienna, Austria,[3] as well as Public Joint Stock Company TATNEFT, LLC TATNEFT–AZS Center, LLC Togliattikauchuk (alternatively, LLC Tolyattikauchuk), and Tolyattisintez (collectively, TATNEFT) in Zug, Switzerland, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act).[4] Specifically, Commerce conducted on-site verifications of the home market, U.S. sales, and cost of production responses submitted by SIBUR and TATNEFT.

Changes Since the Preliminary Determination

Based on our analysis of the comments received, we have made certain changes to the margin calculations for SIBUR and TATNEFT. For a discussion of these changes, *see* the Issues and Decision Memorandum.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping margin for all other producers and exporters not individually investigated shall be equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding rates that are zero, *de minimis,* or determined entirely under section 776 of the Act (*i.e.,* facts otherwise available).

Commerce calculated individual estimated weighted-average dumping margins for both SIBUR and TATNEFT, the two respondents selected for individual examination in this investigation, that are not zero, *de minimis,* or based entirely on facts otherwise available. Commerce calculated the all-others rate using a weighted average of the estimated weighted-average dumping margins calculated for the individually examined respondents using the publicly ranged total values of each respondent's sales of the merchandise under consideration to the United States during the POI.[5]

[1] *See Emulsion Styrene-Butadiene Rubber from the Russian Federation: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures,* 87 FR 38057 (June 27, 2022) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Decision Memorandum for the Final Determination in the Less-Than-Fair-Value Investigation of Emulsion Styrene-Butadiene Rubber from the Russian Federation, and Classification of the Russian Federation as a Non-Market Economy'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memoranda, ''Less-Than-Fair-Value Investigation of Emulsion Styrene-Butadiene Rubber from the Russian Federation: Verification of Sales Responses of SIBUR,'' dated October 5, 2022; and ''Verification of the Cost Responses of PJSC SIBUR Holding and JSC Voronezhsintezkauchuk in the Antidumping Duty Investigation of Emulsion Styrene-Butadiene Rubber from the Russian Federation,'' dated September 23, 2022.

[4] *See* Memoranda, ''Less-Than-Fair-Value Investigation of Emulsion Styrene-Butadiene Rubber from the Russian Federation: Verification of Sales Responses of SIBUR,'' dated October 5, 2022; ''Verification of the Cost Responses of PJSC SIBUR Holding and JSC Voronezhsintezkauchuk in the Antidumping Duty Investigation of Emulsion Styrene-Butadiene Rubber from the Russian Federation,'' dated September 23, 2022; and ''Verification of the Sales Response of TATNEFT in the Antidumping Investigation of Emulsion Styrene-Butadiene Rubber from the Russian Federation,'' dated September 30, 2022; and ''Verification of the Cost Response of PJSC TATNEFT and LLC Tolyattikauchuk in the Antidumping Duty Investigation of Emulsion Styrene-Butadiene Rubber from Russia,'' dated October 6, 2022.

[5] With two respondents under examination, Commerce normally calculates: (A) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents; (B) a simple average of the estimated weighted-average dumping margins calculated for the examined respondents; and (C) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly-ranged U.S. sale values for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010). For a complete analysis of the data, *see* Memorandum, ''Final Determination Calculation for All-Others,'' dated concurrently with this notice.

Final Determination

The final estimated weighted-average dumping margins are as follows:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Public Joint Stock Company SIBUR Holding/Joint Stock Company Voronezhsintezkauchuk/SIBUR International GmbH/SIBUR LLC [6]	17.47
Public Joint Stock Company TATNEFT/LLC TATNEFT–AZS Center/LLC Togliattikauchuk/Tolyattisintez [7]	8.15
All Others	11.90

Russia's Market Economy Status

For this final determination, Commerce has reconsidered Russia's market economy status and has determined to treat Russia as a non-market economy in forthcoming proceedings. Because this determination applies to future proceedings, Commerce has relied on its market economy methodology in determining the antidumping duty margins for this final determination. A detailed explanation for this determination along with discussion of all comments and factual information submitted concerning this determination can be found in the decision memorandum, ''Reconsideration of Russia's Status as a Market Economy,'' issued concurrently with this memorandum.

For new segments of antidumping duty proceedings with a POI or period of review (POR) starting after November 1, 2022, Commerce will use its non-market economy methodology to calculate the antidumping duty rates. If the POI or POR falls entirely before November 1, 2022, Commerce will use its market economy methodology to calculate the rates. Finally, if the POI or POR straddles the time periods where Commerce considered Russia to be a market and non-market economy country, Commerce will determine the appropriate approach to follow on a case-by-case basis.

Disclosure

We intend to disclose the calculations and analysis performed to interested parties in this final determination within five days of public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct U.S. Customs and Border Protection (CBP) to continue to suspend the liquidation of all appropriate entries of subject merchandise, as described in Appendix I of this notice, entered, or withdrawn from warehouse, for consumption on or after June 27, 2022, the date of publication in the **Federal Register** of the affirmative *Preliminary Determination.* These suspension of liquidation instructions will remain in effect until further notice.

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), we will instruct CBP to require a cash deposit for estimated antidumping duties for such entries as follows: (1) the cash deposit rate for the companies listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this final determination; (2) if the exporter is not a company identified above, but the producer is identified above, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

U.S. International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the U.S. International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of ESBR no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, and all cash deposits posted will be refunded and suspension of liquidation will be lifted. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Administrative Protective Order

This notice will serve as a final reminder to the parties subject to an 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). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination and this notice are issued and published pursuant to sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

[6] Commerce determines that Public Joint Stock Company SIBUR Holding (SIBUR Holding)/SIBUR International GmbH (SIBUR International)/SIBUR LLC/Joint Stock Company Voronezhsintezkauchuk (VSK) are a single entity. *See* Issues and Decision Memorandum; *see also* Memorandum, ''SIBUR Affiliation and Single Entity Memorandum,'' dated June 14, 2022; and Memorandum, ''SIBUR Final Analysis Memorandum,'' dated concurrently with this notice.

[7] Commerce determines that Public Joint Stock Company TATNEF,T LLC TATNEFT–AZS Center/LLC Togliattikauchuk/and Tolyattisintez are a single entity. *See* Issues and Decision Memorandum; *see also* Memorandum, ''TATNEFT Affiliation and Single Entity Memorandum,'' dated June 14, 2022.

Dated: November 9, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The products covered by this investigation are cold-polymerized emulsion styrene-butadiene rubber (ESB rubber). The scope of the investigation includes, but is not limited to, ESB rubber in primary forms, bales, granules, crumbs, pellets, powders, plates, sheets, strip, *etc.* ESB rubber consists of non-pigmented rubbers and oil-extended non-pigmented rubbers, both of which contain at least one percent of organic acids from the emulsion polymerization process.

ESB rubber is produced and sold in accordance with a generally accepted set of product specifications issued by the International Institute of Synthetic Rubber Producers (IISRP). The scope of the investigation covers grades of ESB rubber included in the IISRP 1500 and 1700 series of synthetic rubbers. The 1500 grades are light in color and are often described as ''Clear'' or ''White Rubber.'' The 1700 grades are oil-extended and thus darker in color, and are often called ''Brown Rubber.''

Specifically excluded from the scope of this investigation are products which are manufactured by blending ESB rubber with other polymers, high styrene resin master batch, carbon black master batch (*i.e.,* IISRP 1600 series and 1800 series) and latex (an intermediate product).

The products subject to this investigation are currently classifiable under subheadings 4002.19.0015 and 4002.19.0019 of the Harmonized Tariff Schedule of the United States (HTSUS). ESB rubber is described by Chemical Abstracts Services (CAS) Registry No. 9003–55–8. This CAS number also refers to other types of styrene butadiene rubber. Although the HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of the Investigation
V. Russia's Market Economy Status
VI. Changes Since the *Preliminary Determination*
VII. Use of Facts Available, and Adverse Inferences
VIII. Final Determinations of Affiliation and Single Entity Treatment
IX. Discussion of the Issues
Comment 1: How to Treat SIBUR's Sales of Expired ESBR and Sales Without Production Date Data Found at Verification
Comment 2: SIBUR's Inventory Carrying Costs and Total Sales Quantity and Value (Q&V) Reconciliation
Comment 3: Whether to Apply Total Adverse Facts Available (AFA) to SIBUR
Comment 4: How to Treat SIBUR's Affiliated Party Transactions
Comment 5: SIBUR's Cost Verification Adjustments
Comment 6: SIBUR's and TATNEFT's Payment Dates and Credit Expenses
Comment 7: TATNEFT's U.S. Sales Destinations
Comment 8: TATNEFT's General and Administrative (G&A) and Financial Expense—Packing Cost
Comment 9: TATNEFT and TTK's G&A Expense Rate—Other Income and Expenses
X. Recommendation

[FR Doc. 2022–25050 Filed 11–16–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–857]

Certain Softwood Lumber Products From Canada: Initiation of Antidumping Duty Changed Circumstances Review

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

SUMMARY: In response to a request from GreenFirst Forest Products Inc. (GFFP) and GreenFirst Forest Products (QC) Inc. (GFFP (QC)) (collectively, GreenFirst), the Department of Commerce (Commerce) is initiating a changed circumstances review (CCR) of the antidumping duty (AD) order on certain softwood lumber products from Canada. This review will determine whether GFFP (QC) is the successor-in-interest to Rayonier A.M. Canada G.P. (RYAM).

DATES: Applicable November 17, 2022.

FOR FURTHER INFORMATION CONTACT: Zachary Shaykin, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2638.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 2022, Commerce published in the **Federal Register** the final results of the third administrative review of the AD *Order*[1] on certain softwood lumber products from Canada.[2] As a result of this administrative review, Commerce assigned a cash deposit rate of 4.76 percent to RYAM based on the non-selected respondent rate (*i.e.,* the weighted-average of the mandatory respondents' weighted-average dumping margins).[3]

The CCR Request explains that on August 28, 2021, GFFP (QC) acquired six lumber mills and one newsprint mill from RYAM. The CCR Request further explains that RYAM previously held an ownership stake in GreenFirst but that, in May 2022, RYAM sold all of its shares in GreenFirst, and as a result RYAM no longer has ties to the lumber industry. Thus, GreenFirst requests that Commerce initiate an expedited CCR to determine that GFFP (QC) is the successor-in-interest to RYAM and, thus, that the AD margin in effect for RYAM under the *Order* should be applied to entries from GFFP (QC).[4]

In its October 18, 2022, submission the Committee Overseeing Action for Lumber International Trade Investigations or Negotiations (COALITION, the petitioner) argues that Commerce should reject GreenFirst's request to conduct an expedited CCR of GFFP (QC) pursuant to 19 CFR 351.216(e).[5] The petitioner contends that GFFP (QC) is not the successor-in-interest to RYAM because the lumber assets RYAM sold to GFFP (QC) experienced significant changes to their ownership and management prior to their sale to GFFP (QC).[6] Further, the petitioner argues that the CCR Request improperly treated the names of certain GFFP (QC) officials as business proprietary information and for this reason the CCR Request should be rejected by Commerce.

On October 20, 2022, Commerce held an *ex-parte* meeting with certain government officials from the Government of Canada (GOC) in which Canadian government officials expressed their support for GreenFirst's CCR Request[7] and, on October 24, 2022, the GOC submitted a letter to Commerce expressing its support for GreenFirst's CCR Request.[8]

[1] *See Certain Softwood Lumber Products from Canada: Antidumping Duty Order and Partial Amended Final Determination,* 83 FR 350 (January 3, 2018) (*Order*).

[2] *See Certain Softwood Lumber Products from Canada: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2020,* 87 FR 48465 (August 9, 2022) (*Lumber V AR3*).

[3] *See Order,* 83 FR at 351.

[4] *See* GreenFirst's letter, ''Softwood Lumber from Canada: GreenFirst Forest Products Request for Changed Circumstances Review,'' dated September 29, 2022 (CCR Request), at 3 and 4.

[5] *See* Petitioner's letter, ''Certain Softwood Lumber Products from Canada: Comments on GreenFirst's Request for Changed Circumstances Review,'' dated October 18, 2022 (Petitioner Comments), at 3.

[6] *See* Petitioner Comments at 9 and 10.

[7] *See* Memorandum, ''*Ex Parte* Meeting with the Government of Canada,'' dated October 21, 2022.

[8] *See* GOC's Letter submitted on October 24, 2022 (ACCESS Barcode: 4303828–01).

Scope of the Order

The merchandise covered by the *Order* is softwood lumber, siding, flooring and certain other coniferous wood (softwood lumber products). The scope includes:

- Coniferous wood, sawn, or chipped lengthwise, sliced or peeled, whether or not planed, whether or not sanded, or whether or not finger-jointed, of an actual thickness exceeding six millimeters.
- Coniferous wood siding, flooring, and other coniferous wood (other than moldings and dowel rods), including strips and friezes for parquet flooring, that is continuously shaped (including, but not limited to, tongued, grooved, rebated, chamfered, V-jointed, beaded, molded, rounded) along any of its edges, ends, or faces, whether or not planed, whether or not sanded, or whether or not end-jointed.
- Coniferous drilled and notched lumber and angle cut lumber.
- Coniferous lumber stacked on edge and fastened together with nails, whether or not with plywood sheathing.
- Components or parts of semi-finished or unassembled finished products made from subject merchandise that would otherwise meet the definition of the scope above.

Finished products are not covered by the scope of this *Order.* For the purposes of this scope, finished products contain, or are comprised of, subject merchandise and have undergone sufficient processing such that they can no longer be considered intermediate products, and such products can be readily differentiated from merchandise subject to this *Order* at the time of importation. Such differentiation may, for example, be shown through marks of special adaptation as a particular product. The following products are illustrative of the type of merchandise that is considered ''finished'' for the purpose of this scope: I-joists; assembled pallets; cutting boards; assembled picture frames; garage doors.

The following items are excluded from the scope of this *Order:*

- Softwood lumber products certified by the Atlantic Lumber Board as being first produced in the Provinces of Newfoundland and Labrador, Nova Scotia, or Prince Edward Island from logs harvested in Newfoundland and Labrador, Nova Scotia, or Prince Edward Island.
- U.S.-origin lumber shipped to Canada for processing and imported into the United States if the processing occurring in Canada is limited to one or more of the following: (1) Kiln drying; (2) planing to create smooth-to-size board; or (3) sanding.
- Box-spring frame kits if they contain the following wooden pieces—two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails must be radius-cut at both ends. The kits must be individually packaged and must contain the exact number of wooden components needed to make a particular box-spring frame, with no further processing required. None of the components exceeds 1″ in actual thickness or 83″ in length.
- Radius-cut box-spring-frame components, not exceeding 1″ in actual thickness or 83″ in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantially cut so as to completely round one corner.

Softwood lumber product imports are generally entered under Chapter 44 of the Harmonized Tariff Schedule of the United States (HTSUS). This chapter of the HTSUS covers ''Wood and articles of wood.'' Softwood lumber products that are subject to this *Order* are currently classifiable under the following ten-digit HTSUS subheadings in Chapter 44: 4406.91.0000; 4407.10.01.01; 4407.10.01.02; 4407.10.01.15; 4407.10.01.16; 4407.10.01.17; 4407.10.01.18; 4407.10.01.19; 4407.10.01.20; 4407.10.01.42; 4407.10.01.43; 4407.10.01.44; 4407.10.01.45; 4407.10.01.46; 4407.10.01.47; 4407.10.01.48; 4407.10.01.49; 4407.10.01.52; 4407.10.01.53; 4407.10.01.54; 4407.10.01.55; 4407.10.01.56; 4407.10.01.57; 4407.10.01.58; 4407.10.01.59; 4407.10.01.64; 4407.10.01.65; 4407.10.01.66; 4407.10.01.67; 4407.10.01.68; 4407.10.01.69; 4407.10.01.74; 4407.10.01.75; 4407.10.01.76; 4407.10.01.77; 4407.10.01.82; 4407.10.01.83; 4407.10.01.92; 4407.10.01.93; 4407.11.00.01; 4407.11.00.02; 4407.11.00.42; 4407.11.00.43; 4407.11.00.44; 4407.11.00.45; 4407.11.00.46; 4407.11.00.47; 4407.11.00.48; 4407.11.00.49; 4407.11.00.52; 4407.11.00.53; 4407.12.00.01; 4407.12.00.02; 4407.12.00.17; 4407.12.00.18; 4407.12.00.19; 4407.12.00.20; 4407.12.00.58; 4407.12.00.59; 4407.13.0000; 4407.14.0000; 4407.19.0001; 4407.19.0002; 4407.19.0054; 4407.19.0055; 4407.19.0056; 4407.19.0057; 4407.19.0064; 4407.19.0065; 4407.19.0066; 4407.19.0067; 4407.19.0068; 4407.19.0069; 4407.19.0074; 4407.19.0075; 4407.19.0076; 4407.19.0077; 4407.19.0082; 4407.19.0083; 4407.19.0092; 4407.19.0093; 4409.10.05.00; 4409.10.10.20; 4409.10.10.40; 4409.10.10.60; 4409.10.10.80; 4409.10.20.00; 4409.10.90.20; 4409.10.90.40; 4418.30.0100; 4418.50.0010; 4418.50.0030; 4418.50.0050; and 4418.99.10.00.

Subject merchandise as described above might be identified on entry documentation as stringers, square cut box-spring-frame components, fence pickets, truss components, pallet components, flooring, and door and window frame parts. Items so identified might be entered under the following ten-digit HTSUS subheadings in Chapter 44: 4415.20.40.00; 4415.20.80.00; 4418.99.9105; 4418.99.9120; 4418.99.9140; 4418.99.9195; 4421.99.70.40; and 4421.99.9880.

Although these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this *Order* is dispositive.

Initiation of CCR

Pursuant to section 751(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216(d), Commerce will conduct a CCR upon receipt of a request from an interested party for a review of an AD order which shows changed circumstances sufficient to warrant a review of the order. In the past, Commerce has used CCRs to address the applicability of cash deposit rates after there have been changes in the name or structure of a respondent, such as a merger or spinoff (successor-in interest or successorship determinations).[9] The information submitted by GreenFirst supporting its claim that GFFP (QC) is the successor-in-interest to RYAM demonstrates changed circumstances sufficient to warrant such a review.[10] Therefore, in accordance with section 751(b)(1)(A) of the Act and 19 CFR 351.216(d) and (e), we are initiating this CCR based on the information contained in the GreenFirst's CCR Request.[11]

Commerce will issue a questionnaire requesting additional information for the review, and will publish in the **Federal Register** a notice of the

[9] *See, e.g., Diamond Sawblades and Parts Thereof from the People's Republic of China: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review,* 82 FR 51605 and 51606 (November 7, 2017), unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review,* 82 FR 60177 (December 19, 2017).

[10] *See* 19 CFR 351.216(d).

[11] *See* CCR Request.

preliminary results, in accordance with 19 CFR 351.221(b)(2) and (4), and 19 CFR 351.221(c)(3)(i). The notice will set forth the factual and legal conclusions upon which our preliminary results are based and a description of any action proposed based on those results. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results. In accordance with 19 CFR 351.216(e), Commerce intends to issue the final results no later than 270 days after the date on which the review is initiated. Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information until July 17, 2020, unless extended.[12]

Notification to Interested Parties

This notice is published in accordance with sections 751(b)(1) and 777(i)(1) of the Act, and 19 CFR 351.216(b), 351.221(b), and 351.221(c)(3).

Dated: November 14, 2022.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2022–25075 Filed 11–16–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC532]

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of public hybrid meeting (in-person/virtual).

SUMMARY: The Caribbean Fishery Management Council (CFMC) will hold the 180th public hybrid meeting to address the items contained in the tentative agenda included in the **SUPPLEMENTARY INFORMATION.**

DATES: The 180th CFMC public hybrid meeting will be held on December 6, 2022, from 9 a.m. to 5 p.m., and on December 7, 2022, from 9 a.m. to 4:45 p.m., AST.

ADDRESSES:

Meeting address: The meeting will be held at the Embassy Suites Hotel, Tartak Street, Carolina, Puerto Rico 00979.

You may join the 180th CFMC public hybrid meeting via Zoom, from a computer, tablet or smartphone by entering the following address: Join Zoom Meeting, *https://us02web.zoom.us/j/83060685915?pwd=VmVsc1orSUtKck8xYk1XOXNDY1ErZz09.*

Meeting ID: 830 6068 5915.

Passcode: 995658.

One tap mobile:

+17879451488,,83060685915#,,,,,,0#,,995658# Puerto Rico

+17879667727,,83060685915#,,,,,,0#,,995658# Puerto Rico

Dial by your location:

+1 787 945 1488 Puerto Rico

+1 787 966 7727 Puerto Rico

+1 939 945 0244 Puerto Rico

Meeting ID: 830 6068 5915.

Passcode: 995658.

In case there are problems and we cannot reconnect via Zoom, the meeting will continue using GoToMeeting.

You can join the meeting from your computer, tablet or smartphone. *https://global.gotomeeting.com/join/971749317.* You can also dial in using your phone. United States: +1 (408) 650–3123 Access Code: 971–749–317.

FOR FURTHER INFORMATION CONTACT: Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903, telephone: (787) 398–3717.

SUPPLEMENTARY INFORMATION: The following items included in the tentative agenda will be discussed:

December 6, 2022

9 a.m.–9:30 a.m.

—Call to Order
—Roll Call
—Adoption of Agenda
—Consideration of 179th Council Meeting Verbatim Transcriptions
—Executive Director's Report

9:30 a.m.–10:45 a.m.

—Updates on Island Based Fishery Management Plans (FMPs) and Current Amendments (Spiny Lobster Amendment, Buoy Gear Amendment)
—Trawl and Net Gear and Descending Devices Amendment to the Island-Based FMPs

10:45 a.m.–11 a.m.

—Break

11 a.m.–12 p.m.

—Pelagic Fish Amendment to the Island-Based FMPs
—Dolphinfish Issues

12 p.m.–1:30 p.m.

—Lunch

1:30–2:30

—Managing Trap Fisheries in the USVI: Review of Pertinent State and Federal Regulations

2:30 p.m.–3:30 p.m.

—NMFS Protected Resources Updates -Southeast Regional Office (SERO)
—Proposed Rule to List the Queen Conch as Threatened Under the Endangered Species Act
—Proposed Rule to Designate Critical Habitat for the Threatened Nassau Grouper

3:30 p.m.–3:45 p.m.

—Break

3:45 p.m.–4:15 p.m.

—Scientific and Statistical Committee (SSC) Report—Richard Appeldoorn, Chair
—SEDAR 80 Queen Triggerfish
—Spiny Lobster Update—SEDAR 57 Update

4:15 p.m.–4:45 p.m.

—Southeast Fisheries Science Center (SEFSC) Update

4:45 p.m.–5 p.m.

—Public Comment Period (5-minute presentations)

5 p.m.

—Adjourn for the Day

5:15 p.m.–5:45 p.m.

—Closed Session

December 7, 2022

9 a.m.–10 a.m.

—Caribbean Fishery Management Council, Scientific and Statistical Committee Practices and Procedures Concerning Objectivity and Conflicts of Interest—K. Zamboni, NOAA–GC

10 a.m.–10:30 a.m.

—Descending Devices Presentation and Discussion—Melissa Crouch

10:30 a.m.–10:45 a.m.

—Break

10:45 a.m.–11 a.m.

—Recreational Fisheries—Russell Dunn, NOAA National Policy Advisor on Recreational Fisheries

11 a.m.–12 p.m.

— Outreach and Education Advisory Panel Report—Alida Ortiz, Chair
—Social Network Activities Report—Cristina Olán

12 p.m.–1:30 p.m.

—Lunch Break

[12] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 29615 (May 18, 2020).

1:30 p.m.–2:15 p.m.

—Liaison Officers Reports (15 minutes each)
—St. Croix, U.S.V.I.—Mavel Maldonado
—St. Thomas/St. John, U.S.V.I.—Nicole Greaux
—Puerto Rico—Wilson Santiago

2:15 p.m.–3 p.m.

—NMFS/NOAA Office of Law Enforcement—Activities U.S. Caribbean

3 p.m.–3:45 p.m.

—Enforcement Reports (15-Minutes Each)
—Puerto Rico—DNER
—USVI—DPNR
—U.S. Coast Guard

3:45 p.m.–4:15 p.m.

—CFMC Advisory Bodies Membership
—Other Business

4:15 p.m.–4:45 p.m.

—Public Comment Period (5-Minute Presentations)
—Next Meetings
—Adjourn

NOTE (1): Other than starting time and dates of the meetings, the established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. To further accommodate discussion and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice. Changes in the agenda will be posted to the CFMC website, Facebook, Twitter and Instagram as practicable.

NOTE (2): Financial disclosure forms are available for inspection at this meeting, as per 50 CFR part 601.

The order of business may be adjusted as necessary to accommodate the completion of agenda items. The meeting will begin on December 6, 2022, at 9 a.m. AST, and will end on December 7, 2022 at 4:45 p.m. AST. Other than the start time on the first day of the meeting, interested parties should be aware that discussions may start earlier or later than indicated in the agenda, at the discretion of the Chair.

Special Accommodations

Simultaneous interpretation will be provided.

For simultaneous interpretation English-Spanish-English follow your Zoom screen instructions. You will be asked which language you prefer when you join the meeting.

For any additional information on this public virtual meeting, please contact Diana Martino, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918–1903, telephone: (787) 226–8849.

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

Dated: November 14, 2022.

Diane M. DeJames-Daly,

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

[FR Doc. 2022–25058 Filed 11–16–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Establishment of the Marine and Coastal Area-Based Management Advisory Committee and Solicitation of Nominations for Membership

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of establishment of the Marine and Coastal Area-based Management Advisory Committee and solicitation of nominations for membership.

SUMMARY: Pursuant to the Federal Advisory Committee Act, the Under Secretary of Commerce for Oceans and Atmosphere (Under Secretary) announces the establishment of the Marine and Coastal Area-based Management Advisory Committee (MCAM AC). The MCAM AC shall advise the Under Secretary on science-based approaches to area-based protection, conservation, restoration, and management in coastal and marine areas, including the Great Lakes. The scope of the Committee's advice will include, but not be limited to, efforts consistent with the America the Beautiful initiative, as well as other relevant issues that may be requested by the Under Secretary. The MCAM AC shall terminate 2 years from the date of its charter's filing with the appropriate U.S. Senate and House of Representatives committees unless earlier terminated or renewed by the proper authority. This notice also requests nominations for membership on the MCAM AC (see ''Structure'' and ''Nominations and Applications'' below for more detail).

DATES: Nominations and applications to serve on the inaugural membership of the MCAM AC should be sent to the web address specified below and must be received on or before January 17, 2023. Nominations and applications will continue to be accepted on an ongoing basis for a period of 1 year and may be considered in case of vacancies.

ADDRESSES: Nominations and applications should be submitted electronically to Lauren Wenzel, National Ocean Service, NOAA, at *lauren.wenzel@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Lauren Wenzel, National Ocean Service, NOAA, at *lauren.wenzel@noaa.gov* or (240) 533–0652. For additional information, visit *noaa.gov/marine-area-based-management-committee.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

The MCAM AC is governed by the FACA, 5 U.S.C. app., and its implementing regulations, 41 CFR part 102–3, which sets forth standards for the formation and use of advisory committees.

The establishment of the MCAM AC is necessary and in the public interest. The Committee would provide a forum for discussion to advise NOAA on area-based management, including opportunities to enhance conservation of biodiversity, promote climate resilience, and expand access to nature for underserved communities. The scope of the Committee's advice will include, but not be limited to, efforts consistent with the America the Beautiful/Conserving Our Nation's Lands and Waters initiative called for by section 216(a) of Executive Order 14008 on Tackling the Climate Crisis at Home and Abroad, as well as other relevant issues that may be requested by the Under Secretary. No other Federal program or advisory committee has the mandate or scope to address all types of area-based management, including sites that are managed under different authorities and for differing purposes.

II. Structure

The MCAM AC shall consist of not more than 20 non-Federal voting members with diverse perspectives and expertise. Membership shall include knowledgeable individuals that serve in a representative capacity for such perspectives as: resource managers for coastal and marine areas and the Great Lakes (such as representatives from states, territories, and localities and members of regional fishery management councils, members of regional ocean councils, and interstate fisheries commissions); Indigenous communities involved in coastal and ocean resource issues, including representatives from Indian tribes, Alaska Native corporations, Alaska Native organizations, tribal organizations, and Native Hawaiian organizations; conservation, philanthropic, and other non-

governmental organizations involved in coastal and ocean resource issues, as well as youth-serving organizations, education and outreach interests, and environmental justice organizations; and affected interest groups, such as representatives from the offshore minerals, energy, marine transportation, fishing (recreational and commercial), boating, diving, recreational, tourism, and maritime communities. These representative members serve as representatives of their respective group or viewpoint and are not Special Government Employees (SGEs) as defined in title 18 of United States Code, section 202(a).

Membership on the Committee shall also include scientists and other experts in disciplines that study the structure, function, human use, and management of coastal and ocean ecosystems, such as ecologists, oceanographers, fisheries scientists, geologists, economists, engineers, anthropologists, archeologists, maritime historians, sociologists, educators, and others. Members appointed for their expertise in the scientific or other disciplines identified here will be designated as SGEs and are subject to conflict of interests laws and regulations (such as annually completing ethics training and a New Entrant Confidential Financial Disclosure Report (OGE Form 450)).

Members of the MCAM AC will be appointed by the Under Secretary. In order to provide for staggered membership to ensure continuity, half of the members shall be appointed to a 2 year term and half shall be appointed to a four-year term, as selected by the Under Secretary. Thereafter, all members will serve one 4 year, nonrenewable term. The Under Secretary shall appoint a chair and vice chair from among the Committee members. An appointment may be terminated if a member misses two consecutive meetings, unless excused for good cause by the chair or vice chair. In addition to the Department of Commerce, one official from each of the following Federal departments and agencies may serve on the Committee as Regular Government Employee non-voting members: the Department of the Interior, the Department of Defense, the Department of State, the Department of Homeland Security, the Environmental Protection Agency, the Department of Agriculture, and the National Science Foundation. Such membership may be granted to other pertinent Federal agencies by the Under Secretary.

The MCAM AC is expected to meet at least once each year, which may be conducted in person or by teleconference, webinar, or other means. Members will not be compensated for their services but may, upon request and at the discretion of NOAA, be allowed travel and per diem expenses as allowed by 5 U.S.C. 5701 *et seq.* and 5 U.S.C. app., section 7(d)(l)(B). As a Federal advisory committee, the MCAM AC's membership is required to be balanced in terms of perspectives and expertise for the functions to be performed, and appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, or cultural, religious, or socioeconomic status. NOAA will consider geographic diversity, leadership on marine management/conservation issues, and experience working with committees and workgroups (*e.g.,* fishery management councils, sanctuary advisory councils, and, where possible, NOAA will also consider the ethnic, racial, gender, and various abilities of the United States population.

III. Nominations and Applications

Interested persons may nominate themselves or third parties. An application is required to be considered for MCAM AC membership, regardless of whether a person is nominated by a third party or self-nominated. The application package must include: (1) the nominee's full name, title, institutional affiliation (if any), and contact information; (2) identification of the nominee's area(s) of representation (if the nominee is applying to be a representative member as described above) or expertise (if the nominee is applying to be an SGE as described above); (3) a short description of their qualifications relative to the scope of the MCAM AC as described in this Notice; and (4) a current resume (maximum length four [4] pages). If nominated by a third party, the nomination should include a statement that the nominated individual agrees to be nominated. All nomination information should be provided in a single, complete package, and should be sent to the electronic address provided above.

Privacy Act Statement

Authority. The collection of information concerning nominations to the MCAM AC is authorized under the FACA, 5 U.S.C. app. and its implementing regulations, 41 CFR part 102–3, and in accordance with the Privacy Act of 1974, as amended, (Privacy Act) 5 U.S.C. 552a.

Purpose. The collection of names, contact information, resumes, professional information, and qualifications is required in order for the Under Secretary to appoint members to the MCAM AC.

Routine Uses. NOAA will use the nomination information for the purpose set forth above. The Privacy Act of 1974 authorizes disclosure of the information collected to NOAA staff for work-related purposes and for other purposes only as set forth in the Privacy Act and for routine uses published in the Privacy Act System of Records Notice COMMERCE/DEPT–11, Candidates for Membership, Members, and Former Members of Department of Commerce Advisory Committees, available at *https://www.osec.doc.gov/opog/PrivacyAct/SORNs/dept-11.html,* and the System of Records Notice COMMERCE/DEPT–18, Employees Personnel Files Not Covered by Notices of Other Agencies, available at *https://www.osec.doc.gov/opog/PrivacyAct/SORNs/DEPT-18.html.*

Disclosure. Furnishing the nomination information is voluntary; however, if the information is not provided, the individual would not be considered for appointment as a member of the MCAM AC.

Dated: November 9, 2022.

Richard W. Spinrad,

Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator.

[FR Doc. 2022–24940 Filed 11–16–22; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC540]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a one-day in person meeting of its Spiny Lobster Advisory Panel (AP).

DATES: The meeting will take place Wednesday, December 7, 2022, from 9 a.m. to 4 p.m., EST.

ADDRESSES: The meeting will be held at the Gulf Council Office. Registration information for listening in will be available on the Council's website by visiting *www.gulfcouncil.org* and clicking on the Meetings Tab and selecting Advisory Panel meetings, then CMP AP meeting.

Council address: Gulf of Mexico Fishery Management Council, 4107 W

Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Natasha Mendez-Ferrer, Fishery Biologist, Gulf of Mexico Fishery Management Council; *Natasha.mendez@gulfcouncil.org;* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Wednesday, December 7, 2022; 9 a.m.–4 p.m., EST

The meeting will begin with Introductions of Members, Election of Chair and Vice Chair, Adoption of Agenda, Approval of Minutes of Joint GMFMC and SAFMC *Spiny Lobster* APs' November 13, 2019 Meeting and Joint *Coral, Shrimp,* and *Spiny Lobster* APs' September 12, 2022 Meeting; and Scope of Work.

The APs will receive a presentation on the Florida Keys National Marine Sanctuary (FKNMS) Expansion Proposal. Background materials include the FKNMS Proposed Rule and Interactive Map and Council Comments to the Draft Environment Impact Statement (DEIS). The AP can provide recommendations.

The AP will hold a discussion on Capping the *Spiny Lobster* Recreational Permit and on Hurricane Ian Impacts to *Spiny Lobster* Fishery.

The AP will receive Public Comment and discuss any Other Business items.

—Meeting Adjourns

The meeting will be in-person. You may register to listen in to the webinar by visiting *www.gulfcouncil.org* and clicking on the Advisory Panel meeting on the calendar. The Agenda is subject to change, and the latest version along with other meeting materials will be posted on *www.gulfcouncil.org* as they become available.

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

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid or accommodations should be directed to Kathy Pereira, *kathy.pereira@gulfcouncil.org,* at least 5 days prior to the meeting date.

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

Dated: November 14, 2022.

Diane M. DeJames-Daly,

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

[FR Doc. 2022–25060 Filed 11–16–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC527]

South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold meetings of the following: Snapper Grouper Committee; Mackerel Cobia Committee; and Outreach and Communication Committee. The meeting week will also include a formal public comment session and a meeting of the Full Council.

DATES: The Council meeting will be held from 8:30 a.m. on Monday, December 5, 2022, until 12 p.m. on Friday, December 9, 2022.

ADDRESSES:

Meeting address: The meeting will be held at the Blockade Runner Hotel, 275 Waynick Boulevard, Wrightsville Beach, NC 28480; phone: (877) 684–8009. The meeting will also be available via webinar. Registration is required. See **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 302–8440 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: Meeting information, including agendas, overviews, and briefing book materials will be posted on the Council's website at: *http://safmc.net/safmc-meetings/council-meetings/.* Webinar registration links for the meeting will also be available from the Council's website.

Public comment: Public comment on agenda items may be submitted through the Council's online comment form available from the Council's website at: *http://safmc.net/safmc-meetings/council-meetings/.* Comments will be accepted from November 18, 2022, until December 9, 2022. These comments are accessible to the public, part of the Administrative Record of the meeting, and immediately available for Council consideration.

The items of discussion in the individual meeting agendas are as follows:

Council Session I, Monday, December 5, 2022, 8:30 a.m. Until 10:30 a.m. (CLOSED Session)

The Council will meet in Closed Session to review applicants for open seats on its advisory panels and address other issues relative to the Council's advisory panel policy as needed.

Council Session I, Monday, December 5, 2022, 10:30 a.m. Until 12 p.m. (Open Session)

The Council will receive reports from state agencies, Council liaisons, NOAA Office of Law Enforcement, and the U.S. Coast Guard. The Council will receive updates on the Commercial Electronic Logbook Amendment, the proposed Hudson Canyon National Marine Sanctuary, and review initial draft comments on the Florida Keys National Marine Sanctuary Proposed Rule. The Council will also review the Acceptable Biological Catch (ABC) Control Rule Amendment and consider approving the amendment for Secretarial review. The Council will also discuss the East Coast Climate Change Scenario Planning Initiative and provide recommendations and key discussion topics for the 2023 Climate Change Scenario Planning Summit Meeting.

Snapper Grouper Committee, Tuesday, December 6, 2022, 8:30 a.m. Until 5 p.m. and Wednesday, December 7, 2022, From 8:30 a.m. Until 3:45 p.m.

The Committee will receive input from the Snapper Grouper Advisory Panel (AP) and the Council's Scientific and Statistical Committee (SSC) relative to Snapper Grouper Regulatory Amendment 35 (Release Mortality Reduction and Red Snapper Catch Levels) and consider approving the amendment for public hearings.

The Committee will receive feedback on the Management Strategy Evaluation for the Snapper Grouper fishery from the Snapper Grouper AP and the SSC. The Committee will review the Recreational Permitting and Reporting Amendment (Snapper Grouper Amendment 46), consider reports from the Snapper Grouper Recreational Permitting and Reporting Technical Advisory Panel and the Section 102 Workgroup, and consider approving the amendment for scoping. Management

measures for gag grouper and black grouper will be discussed as included in Snapper Grouper Amendment 53 and input from the Snapper Grouper AP considered. The Committee will review Snapper Grouper Amendment 51 addressing management of snowy grouper and Snapper Grouper Amendment 52, addressing management of golden tilefish and blueline tilefish, and consider approving both amendments for Secretarial review.

Finally, the Committee will consider recommendations from the Snapper Grouper AP not on the agenda.

Formal Public Comment, Wednesday, December 7, 2022, 4 p.m..—Public comment will be accepted from individuals attending the meeting in person and via webinar on all items on the Council meeting agenda. The Council Chair will determine the amount of time provided to each commenter based on the number of individuals wishing to comment.

Council Session II, Thursday, December 8, 2022, 8 a.m. Until 9 a.m. (CLOSED Session)

The Council will meet in Closed Session for a performance review of the Executive Director.

Mackerel Cobia Committee, Thursday, December 8, 2022, 9 a.m. Until 12 p.m.

The Committee will receive a report from the Mackerel Cobia AP, an update of Amendment 33 to the Coastal Migratory Pelagic Fishery Management Plan (FMP) for the Gulf of Mexico and South Atlantic affecting Gulf of Mexico king mackerel and consider recent actions by the Gulf of Mexico Fishery Management Council. The Committee will also receive recommendations from the SSC regarding Atlantic Spanish mackerel and consider using the Allocation Decision Tool for the fishery. The Committee will review a white paper addressing false albacore management issues and also discuss port meetings for the mackerel fishery.

Outreach and Communications Committee, Thursday, December 8, 2022, 1:30 p.m. Until 2:30 p.m.

The Committee will receive a report from the Outreach and Communications AP and review the draft Best Fishing Practices Outreach Program (to inform Snapper Grouper Regulatory Amendment 35).

Council Session III, Thursday, December 8, 2022, 2:30 p.m. Until 5 p.m. and Friday, December 9, 2022, 8:30 a.m. Until 12 p.m.

The Council will receive staff reports, receive an update on Council Member Ongoing Development (CMOD), a report from the Habitat Protection and Ecosystem-Based Management AP, an update from the Atlantic Large Whale Take Reduction Team, and SSC recommendations not addressed in Committee meetings.

The Council will receive reports from NOAA Fisheries Southeast Regional Office and the Southeast Fisheries Science Center. The Council will receive Committee reports, review its workplan for the next quarter, upcoming meetings, and take action as necessary. The Council will discuss any other business as needed.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

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

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

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

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

Dated: November 14, 2022.

Diane M. DeJames-Daly,

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

[FR Doc. 2022–25057 Filed 11–16–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC538]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a meeting of its Outreach and Education Technical Committee.

DATES: The meeting will convene on Tuesday, December 6, 2022, from 9 a.m. to 5 p.m., EST.

ADDRESSES: The meeting will take place at the Gulf Council Office. Please visit the Gulf Council website at *www.gulfcouncil.org* for meeting materials and webinar registration information.

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Emily Muehlstein, Public Information Officer, Gulf of Mexico Fishery Management Council; *emily.muehlstein@gulfcouncil.org,* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Tuesday, December 6, 2022; 9 a.m. Until 5 p.m., EST

The Meeting will begin with welcome, member and staff introductions, adoption of agenda, approval of August 1, 2022 meeting summary, and scope of work.

The Committee will review the 2022 Communication Improvement Plan, 2022 Communications Analytics and Communications Guidelines/SOPPs Review; including Presentations, Discussion/Recommendations and Regulations.

The Committee will review the MRIP Story Map, 2023 In-Person Event Outreach Plan Review, Fishery Ecosystem Plan Outreach Ideas, and Committee Recommendations and Presentations.

The Committee will discuss ideas for the 2023 Communications Improvement Plan and Other Business: Stony Coral Tissue Loss Disease. The Committee will take Public Comment before the meeting adjourns.

—Meeting Adjourns

The Agenda is subject to change, and the latest version along with other

meeting materials will be posted on *www.gulfcouncil.org.*

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

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid or accommodations should be directed to Kathy Pereira, *kathy.pereira@gulfcouncil.org,* at least 5 days prior to the meeting date.

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

Dated: November 14, 2022.

Diane M. DeJames-Daly,

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

[FR Doc. 2022–25059 Filed 11–16–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Patent Law Treaty

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of information collection; request for comment.

SUMMARY: The United States Patent and Trademark Office (USPTO), as required by the Paperwork Reduction Act of 1995, invites comments on the extension and revision of an existing information collection: 0651–0073 Patent Law Treaty. The purpose of this notice is to allow 60 days for public comment preceding submission of the information collection to OMB.

DATES: To ensure consideration, comments regarding this information collection must be received on or before January 17, 2023.

ADDRESSES: Interested persons are invited to submit written comments by any of the following methods. Do not submit Confidential Business Information or otherwise sensitive or protected information.

- *Email: InformationCollection@uspto.gov.* Include ''0651–0073 comment'' in the subject line of the message.
- *Federal Rulemaking Portal: http://www.regulations.gov.*
- *Mail:* Justin Isaac, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Parikha Mehta, Senior Legal Advisor, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–3248; or by email at *parikha.mehta@uspto.gov* with ''0651–0073 comment'' in the subject line. Additional information about this information collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

SUPPLEMENTARY INFORMATION:

I. Abstract

The Patent Law Treaties Implementation Act of 2012 (PLTIA) implements the provisions of the Patent Law Treaty (PLT) in title II. PLT Article 13 provides for the restoration of the right of priority where there is a failure to timely claim priority to the prior application, and also where there is a failure to file the subsequent application within 12 months of the filing date of the priority application.

The United States Patent and Trademark Office (USPTO) rules of practice are consistent with the PLT and title II of the PLTIA. Section 201(c) of the PLTIA amended 35 U.S.C. 119 to provide that the 12 month periods set forth in 35 U.S.C. 119(a) and (e) may be extended by an additional 2 months if the delay in filing an application claiming priority to a foreign application or the benefit of a provisional application within that 12-month period was unintentional.

The information in this information collection is necessary so that patent applicants and/or patentees may seek restoration of the right of priority to a prior-filed foreign application or of the right to the benefit of a prior-filed provisional application. The USPTO will use the petition to restore the right of priority to a prior filed foreign application or the right to the benefit of a prior-filed provisional application to determine whether the applicant has satisfied the conditions of the applicable statute (35 U.S.C. 119) and regulation (37 CFR 1.55(c) or 1.78(b)).

II. Method of Collection

Electronically via the USPTO's patent electronic filing system, by mail or hand delivery to the USPTO.

III. Data

OMB Control Number: 0651–0073.

Forms: (SB = Specimen Book).

- PTO/SB/459 (Petition to Restore the Right of Priority under 37 CFR 1.55(c) or Petition to Restore the Benefit of a Prior-Filed Provisional Application under 37 CFR 1.78(b)).

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: Private sector; individuals or households.

Respondent's Obligation: Required to obtain or retain benefits.

Estimated Number of Annual Respondents: 800 respondents.

Estimated Number of Annual Responses: 800 responses.

Estimated Time per Response: The USPTO estimates that the responses in this information collection will take the public approximately 1 hour to complete. This includes the time to gather the necessary information, create the document, and submit the completed item to the USPTO.

Estimated Total Annual Respondent Burden Hours: 800 hours.

Estimated Total Annual Respondent Hourly Cost Burden: $348,000.

TABLE 1—TOTAL BURDEN HOURS AND HOURLY COSTS TO PRIVATE SECTOR RESPONDENTS

Item No.	Item	Estimated annual respondents (a)	Responses per respondent (b)	Estimated annual responses (a) × (b) = (c)	Estimated time for response (hours) (d)	Estimated burden (hour/year) (c) × (d) = (e)	Rate [1] ($/hour) (f)	Estimated annual respondent cost burden (e) × (f) = (g)
1	Petition to Restore the Right of Priority under 37 CFR 1.55(c) Or Petition to Restore the Benefit of a Prior-Filed Provisional Application under 37 CFR 1.78(b). PTO/SB/459	780	1	780	1	780	$435	$339,300
	Totals	780	.....	780	.....	780	.....	339,300

TABLE 2—TOTAL BURDEN HOURS AND HOURLY COSTS TO INDIVIDUALS OR HOUSEHOLDS RESPONDENTS

Item No.	Item	Estimated annual respondents (a)	Responses per respondent (b)	Estimated annual responses (a) × (b) = (c)	Estimated time for response (hours) (d)	Estimated burden (hour/year) (c) × (d) = (e)	Rate [2] ($/hour) (f)	Estimated annual respondent cost burden (e) × (f) = (g)
1	Petition to Restore the Right of Priority under 37 CFR 1.55(c) Or Petition to Restore the Benefit of a Prior-Filed Provisional Application under 37 CFR 1.78(b). PTO/SB/459	20	1	20	1	20	$435	$8,700
	Totals	20	.....	20	.....	20	.....	8,700

Estimated Total Annual Respondent Non-hourly Cost Burden: $1,464,824.

There are no maintenance costs, capital start-up costs, or recordkeeping costs associated with this information collection. However, the USPTO estimates that the total annual (non-hour) cost burden for this information collection, in the form of filing fees and postage, is $1,464,824.

Filing Fees

The items with filing fees are listed in the table below.

TABLE 3—FILING FEES

Item No.	Information collection instrument	Estimated annual responses (a)	Amount (b)	Totals (a) × (b) = (c)
1	Grantable Petition to Restore the Right of Priority under 37 CFR 1.55(c) (undiscounted entity)	310	$2,100	$651,000
1	Grantable Petition to Restore the Right of Priority under 37 CFR 1.55(c) (small entity)	65	1,050	68,250
1	Grantable Petition to Restore the Right of Priority under 37 CFR 1.55(c) (micro entity)	25	525	13,125
1	Grantable Petition to Restore the Benefit of a Prior-Filed Provisional Application under 37 CFR 1.78(b) (undiscounted entity).	310	2,100	651,000
1	Grantable Petition to Restore the Benefit of a Prior-Filed Provisional Application under 37 CFR 1.78(b) (small entity).	65	1,050	68,250
1	Grantable Petition to Restore the Benefit of a Prior-Filed Provisional Application under 37 CFR 1.78(b) (micro entity)..	25	525	13,125
	Total Fees	.....	.....	1,464,750

Postage

Customers may incur postage costs when submitting some of the items covered by this information collection to the USPTO by mail. The USPTO estimates that the average postage cost for a paper submission will be $9.25 (USPS Priority Mail flat rate envelope) and that approximately 8 submissions will be mailed to the USPTO per year, for a total of $74.

IV. Request for Comments

The USPTO is soliciting public comments to:

(a) Evaluate whether the collection of information is necessary for the proper performance of the functions of the

[1] 2021 Report of the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association (AIPLA); pg. F–27. The USPTO uses the average billing rate for intellectual property attorneys in private firms which is $435 per hour.

[2] Ibid.

Agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected; and

(d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

All comments submitted in response to this notice are a matter of public record. USPTO will include or summarize each comment in the request to OMB to approve this information collection. Before including an address, phone number, email address, or other personally identifiable information (PII) in a comment, be aware that the entire comment— including PII—may be made publicly available at any time. While you may ask in your comment to withhold PII from public view, USPTO cannot guarantee that it will be able to do so.

Justin Isaac,

Information Collections Officer, Office of the Chief Adminstrative Officer, United States Patent and Trademark Office.

[FR Doc. 2022–25000 Filed 11–16–22; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Extend Collection 3038–0076: Requirements for Derivatives Clearing Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed renewal of a collection of certain information by the agency. Under the Paperwork Reduction Act (''PRA''), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or renewal of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on renewal of the information collection that includes reporting requirements for applicants for registration as a derivatives clearing organization, and reporting and recordkeeping requirements for derivatives clearing organizations.

DATES: Comments must be submitted on or before January 16, 2023.

ADDRESSES: You may submit comments, and ''OMB Control No. 3038–0076'' by any of the following methods:

- The Agency's website, at *http://comments.cftc.gov/.* Follow the instructions for submitting comments through the website.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method.

FOR FURTHER INFORMATION CONTACT: Eileen Chotiner, Division of Clearing and Risk, Commodity Futures Trading Commission, (202) 418–5467; email: *echotiner@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501 *et seq.,* Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of Information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 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 provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the Commission is publishing notice of the proposed extension of the collection listed below. 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.[1]

Title: Requirements for Derivatives Clearing Organizations (OMB Control No. 3038–0076). This is a request for extension of a currently approved information collection.

Abstract: Commission Regulations 39.10, 39.11, 39.12, 39.13, 39.14, 39.15, 39.16, 39.18, 39.19, 39.21, 39.24 and 39.27 establish reporting requirements for registered derivatives clearing organizations (''DCOs''). Regulation 39.3 requires any person seeking to register as a DCO to submit a completed Form DCO as provided in Appendix A to part 39, accompanied by all applicable exhibits. Subpart C of part 39 includes additional requirements for systemically important DCOs and DCOs that elect to be subject to Subpart C. The rules establish reporting and recordkeeping requirements that implement Section 5b of the Commodity Exchange Act (CEA), and are necessary for the Commission to assess compliance of DCOs and DCO applicants with requirements prescribed in the CEA and Commission regulations.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[2]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on

[1] 44 U.S.C. 3512, 5 CFR 1320.5(b)(2)(i) and 1320.8 (b)(3)(vi).

[2] 17 CFR 145.9.

the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The Commission anticipates that there will continue to be approximately 86 respondents and the hourly burden will remain the same as in the 2020 renewal. The respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 86.

Estimated Average Burden Hours per Respondent: 736.

Estimated Total Annual Burden Hours: 63,311.

Frequency of Collection: Daily, monthly, quarterly, annually, and on occasion.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: November 14, 2022.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2022–25054 Filed 11–16–22; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–25–000.

Applicants: Public Service Company of Oklahoma, Rock Falls Wind Farm LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Rock Falls Wind Farm LLC et al.

Filed Date: 11/9/22.

Accession Number: 20221109–5144.

Comment Date: 5 p.m. ET 11/30/22.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL23–8–000.

Applicants: Cubit Power One, Inc. v. *Consolidated Edison Company of New York, Inc.*

Description: Complaint of Cubit Power One, Inc. v. *Consolidated Edison Company of New York, Inc.*

Filed Date: 11/9/22.

Accession Number: 20221109–5110.

Comment Date: 5 p.m. ET 11/29/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER21–2329–003.

Applicants: Minonk Stewardship Wind LLC.

Description: Compliance filing: Compliance Filing for FERC Order in Docket ER21–2329 to be effective 9/1/2021.

Filed Date: 11/10/22.

Accession Number: 20221110–5001.

Comment Date: 5 p.m. ET 12/1/22.

Docket Numbers: ER23–40–001.

Applicants: Midcontinent Independent System Operator, Inc., Otter Tail Power Company.

Description: Tariff Amendment: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.17(b): 2022–11–10_SA 3913 OTP–NSP Substitute FCA (Forman-Canby-Fergus MPFP) to be effective 12/7/2022.

Filed Date: 11/10/22.

Accession Number: 20221110–5123.

Comment Date: 5 p.m. ET 11/21/22.

Docket Numbers: ER23–402–000.

Applicants: New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: Nov 2022 Membership Filing II to be effective 11/10/2022.

Filed Date: 11/9/22.

Accession Number: 20221109–5114.

Comment Date: 5 p.m. ET 11/30/22.

Docket Numbers: ER23–403–000.

Applicants: Grain Belt Express LLC.

Description: Request for Prospective Tariff Waiver, et al. of Grain Belt Express LLC.

Filed Date: 11/9/22.

Accession Number: 20221109–5134.

Comment Date: 5 p.m. ET 11/23/22.

Docket Numbers: ER23–404–000.

Applicants: Shullsburg Wind Farm LLC, Grant County Solar, LLC, Red Barn Energy, LLC.

Description: Request for One-Time Limited Waiver of Shullsburg Wind Farm LLC, et al.

Filed Date: 11/9/22.

Accession Number: 20221109–5135.

Comment Date: 5 p.m. ET 11/30/22.

Docket Numbers: ER23–405–000.

Applicants: ISO New England Inc. & New England Power Pool.

Description: ISO New England Inc. submits Installed Capacity Requirement, Hydro Quebec Interconnection Capability Credits and Related Values for the 17 FCA Associated with the 2026/2027 Capacity Commitment Period.

Filed Date: 11/8/22.

Accession Number: 20221108–5168.

Comment Date: 5 p.m. ET 11/29/22.

Docket Numbers: ER23–406–000.

Applicants: FirstEnergy Service Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: FirstEnergy Service Company submits tariff filing per 35.13(a)(2)(iii: FirstEnergy Service Co. submits SA No. 6622 Construction Agreement to be effective 1/10/2023.

Filed Date: 11/10/22.

Accession Number: 20221110–5087.

Comment Date: 5 p.m. ET 12/1/22.

Docket Numbers: ER23–407–000.

Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: Generator Replacement Coordinator Agreement to be effective 1/10/2023.

Filed Date: 11/10/22.

Accession Number: 20221110–5109.

Comment Date: 5 p.m. ET 12/1/22.

Docket Numbers: ER23–408–000.

Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: OATT Existing Generator Replacement Procedures to be effective 1/10/2023.

Filed Date: 11/10/22.

Accession Number: 20221110–5111.

Comment Date: 5 p.m. ET 12/1/22.

Docket Numbers: ER23–409–000.

Applicants: Puget Sound Energy, Inc.

Description: § 205(d) Rate Filing: Cost-Based Rate Tariff Filing to be effective 6/17/2022.

Filed Date: 11/10/22.

Accession Number: 20221110–5114.

Comment Date: 5 p.m. ET 12/1/22.

Docket Numbers: ER23–410–000.

Applicants: Sandy Ridge Wind, LLC.

Description: § 205(d) Rate Filing: Co-Tenancy and Shared Facilities Agreement with Waivers to be effective 11/11/2022.

Filed Date: 11/10/22.

Accession Number: 20221110–5128.

Comment Date: 5 p.m. ET 12/1/22.

Docket Numbers: ER23–411–000.

Applicants: Sandy Ridge Wind 2, LLC.

Description: Baseline eTariff Filing: Certificate of Concurrence and Request for Waiver and Blanket Approval to be effective 11/11/2022.

Filed Date: 11/10/22.

Accession Number: 20221110–5132.

Comment Date: 5 p.m. ET 12/1/22.

Docket Numbers: ER23–412–000.

Applicants: National Grid Generation LLC.

Description: § 205(d) Rate Filing: A&R PSA Amendment No. 4 to be effective 2/1/2023.

Filed Date: 11/10/22.

Accession Number: 20221110–5135.

Comment Date: 5 p.m. ET 12/1/22.

Docket Numbers: ER23–413–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2022–11–10_Generation Stability Limits

and other limitations to be effective 1/10/2023.

Filed Date: 11/10/22.

Accession Number: 20221110–5141.

Comment Date: 5 p.m. ET 12/1/22.

Docket Numbers: ER23–414–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Amendment to Service Agreement FERC No. 808 to be effective 10/24/2022.

Filed Date: 11/10/22.

Accession Number: 20221110–5172.

Comment Date: 5 p.m. ET 12/1/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 10, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–25026 Filed 11–16–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF22–10–000]

Corpus Christi Liquefaction, LLC, CCL Midscale 8–9, LLC; Notice of Scoping Period Requesting Comments on Environmental Issues for the Planned Corpus Christi Liquefaction Midscale Trains 8 & 9 Project, and Notice of Public Scoping Session

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document that will discuss the environmental impacts of the Corpus Christi Liquefaction Midscale Trains 8 & 9 Project involving construction and operation of facilities by Corpus Christi Liquefaction, LLC and CCL Midscale 8–9, LLC (collectively referred to as ''CCL'') in San Patricio County, Texas. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public interest.

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 an authorization. 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 December 12, 2022. Comments may be submitted in written or oral 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 or oral 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 August 19, 2022, you will need to file those comments in Docket No. PF22–10–000 to ensure they are considered.

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 planned project and encourage them to comment on their areas of concern.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' 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 links to Natural Gas Questions or Landowner Topics.

Public Participation

There are four 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 (PF22–10–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

(4) In lieu of sending written comments, the Commission invites you to attend the public scoping session its staff will conduct in the project area, scheduled as follows:

Date and time	Location
Thursday, December 1, 2022, 5:00 p.m. to 8:00 p.m.	Gregory Community Center, 310 Ayers Street, Gregory, TX 78359, 361–643–6562.

The primary goal of the scoping session is to have you identify the specific environmental issues and concerns that should be considered in the environmental document. Individual oral comments will be taken on a one-on-one basis with a court reporter. This format is designed to receive the maximum amount of oral comments in a convenient way during the timeframe allotted.

The scoping session is scheduled from 5:00 p.m. to 8:00 p.m. Central Time. You may arrive at any time after 5:00 p.m. There will not be a formal presentation by Commission staff when the session opens. If you wish to speak, the Commission staff will hand out numbers in the order of your arrival. Comments will be taken until 8:00 p.m. However, if no additional numbers have been handed out and all individuals who wish to provide comments have had an opportunity to do so, staff may conclude the session up to an hour before the end times listed above. Please see appendix 1 for additional information on the session format and conduct.[1]

Your scoping comments will be recorded by a court reporter (with FERC staff or representative present) and become part of the public record for this proceeding. Transcripts will be publicly available on FERC's eLibrary system (see the last page of this notice for instructions on using eLibrary). If a significant number of people are interested in providing oral comments in the one-on-one settings, a time limit of 5 minutes may be implemented for each commentor.

It is important to note that the Commission provides equal consideration to all comments received, whether filed in written form or provided orally at a scoping session. Although there will not be a formal presentation, Commission staff will be available throughout the scoping session to answer your questions about the environmental review process. Representatives from CCL will also be present to answer project-specific questions.

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.

Summary of the Planned Project

CCL plans to construct and operate two midscale liquification trains; on-site refrigerant storage; and an increase in the authorized LNG ship loading rate. The Project facilities would be interconnected with the existing Liquefaction Project and Stage 3 Project facilities (authorized under Docket Nos. CP12–507–000 and CP18–512–000, respectively, and collectively referred to as ''CCL Terminal''), which would require minor modifications for purposes of interconnection and integration of the expansion facilities. According to CCL, its Project would provide expanded capability to liquefy domestic natural gas for export as LNG while utilizing land that historically has been used for industrial purposes.

The general location of the project facilities is shown in appendix 2.

Land Requirements for Construction

Construction of the planned facilities would disturb about 1,940 acres of land. Following construction, CCL would maintain about 1,647 acres for permanent operations for the Project. The remaining 293 acres were previously approved for temporary use in association with the CCL Terminal authorization, of which 135 acres are leased from the Port of Corpus Christi and would not be restored per landowner request. About 84 percent of the total land use would include land previously authorized for construction of the CCL Terminal.

NEPA Process and the Environmental Document

Any environmental document issued by Commission staff will discuss impacts that could occur as a result of the construction and operation of the planned project under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- socioeconomics and environmental justice;
- land use;
- air quality and noise; and
- reliability and safety.

Commission staff will also evaluate reasonable alternatives to the planned 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.

Although no formal application has been filed, Commission staff have already initiated a NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the Commission receives an application. As part of the pre-filing review, Commission staff will contact federal and state agencies to discuss their involvement in the scoping process and the preparation of the environmental document.

If a formal application is filed, Commission staff will then 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 environmental 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 determination on the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/Notice of Schedule* will be issued once an application is filed, which will open an additional public comment period. Staff will then prepare a draft EIS that 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

[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. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

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 related to 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. Currently, the U.S. Department of Energy, U.S. Department of Transportation, and U.S. Coast Guard have expressed their intention to participate as a cooperating agency in the preparation of the environmental document to satisfy their NEPA responsibilities related to this project.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's 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 our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes 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 planned 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 PF22–10–000 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 3).

Becoming an Intervenor

Once CCL files its application with the Commission, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Only intervenors have the right to seek rehearing of the Commission's decision and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Motions to intervene are more fully described at *https://www.ferc.gov/resources/guides/how-to.asp.* Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project, after which the Commission will issue a public notice that establishes an intervention deadline.

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 (*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 toll free at (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: November 10, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–25044 Filed 11–16–22; 8:45 am]

BILLING CODE 6717–01–P

[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, Part 1501.8.

[4] The Advisory Council on Historic Preservation 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.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–401–000]

CED Timberland Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of CED Timberland Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 30, 2022.

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.

Dated: November 10, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–25027 Filed 11–16–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–8–000]

Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on October 31, 2022, Columbia Gas Transmission, LLC (Columbia), 700 Louisiana Street, Suite 1300, Houston, Texas 77002, filed in the above referenced docket, a prior notice pursuant to Section 157.205, 157.208 and 157.216 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act and the blanket certificate issued by the Commission in Docket No. CP83–76–000,[1] seeking authorization to replace a segment of its existing Line 1360 and related facilities in Beaver County, Pennsylvania. Specifically, Columbia proposes to replace approximately 2.78 miles of 16-inch bare steel and coated pipeline with 16-inch coated pipeline. The Project is necessary to remediate an area of identified vulnerability on Line 1360, to ensure compliance with the Pipeline and Hazardous Materials Safety Administration. The proposed construction is estimated to cost approximately $18,000,000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application should be directed to David A. Alonzo, Manager, Project Authorizations, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, Texas 77002, by telephone (832) 320–5477, or by email *david_alonzo@tcenergy.com.*

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on January 9, 2023. How to file protests, motions to intervene, and comments is explained below.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[2] any person [3] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[4] and must be submitted by the protest deadline, which is January 9, 2023. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [5] and the regulations under the NGA [6] by the intervention deadline for the project, which is January 9, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by

[1] *Columbia Gas Transmission Corporation* (predecessor to Columbia Gas Transmission, LLC), 22 FERC ¶ 62,029 (1983).

[2] 18 CFR 157.205.

[3] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[4] 18 CFR 157.205(e).

[5] 18 CFR 385.214.

[6] 18 CFR 157.10.

operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before January 9, 2023. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP23–8–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing.'' The Commission's eFiling staff are available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

(2) You can file a paper copy of your submission. Your submission must reference the Project docket number CP23–8–000.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To mail via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: David A. Alonzo, Manager, Project Authorizations, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, Texas 77002, by telephone (832) 320–5477, or by email *david_alonzo@tcenergy.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: November 10, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–25045 Filed 11–16–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–141–000]

Great Basin Gas Transmission Company; Notice of Availability of the Environmental Assessment for the Proposed 2023 Mainline Replacement Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the 2023 Mainline Replacement Project (Project) proposed by Great Basin Gas Transmission Company (Great Basin) in the above-referenced docket. Great Basin proposes to abandon in-place or abandon by removal approximately 20.4 miles of its existing 16-inch-diameter steel pipeline and construct as replacement approximately 20.4 miles of new 16-inch-diameter steel pipeline in Humboldt County, Nevada. According to Great Basin, the replacement is needed to address indications that the subject segment is approaching the end of its useful life, as demonstrated by preventative integrity assessments, including inline inspections and direct assessments. The Project would provide no new transportation capacity.

The EA assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The Bureau of Land Management (BLM) and Environmental Protection Agency participated as cooperating agencies in the preparation of the EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis.

The proposed Project includes the following activities and facilities:

- abandonment in-place or by removal of 20.4 miles of existing 16-inch-diameter steel pipeline;
- construction of 20.4 miles of new 16-inch-diameter steel pipeline to replace the abandoned pipeline; and
- removal of existing valves and replace with new valves and associated appurtenances within Great Basin's existing Elko Lateral Tap yard.

The Commission mailed a copy of the *Notice of Availability* of the EA to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*), select ''General Search'' and enter the docket number in

the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP22–141). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The EA is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Any person wishing to comment on the EA may do so. Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before 5:00 p.m. Eastern Time on December 12, 2022.

For your convenience, there are three methods you can use to file your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature 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 must select the type of filing you are making. If you are filing a comment on a particular project, please select ''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 (CP22–141–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered. Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. At this point in this proceeding, the timeframe for filing timely intervention requests has expired. Any person seeking to become a party to the proceeding must file a motion to intervene out-of-time pursuant to Rule 214(b)(3) and (d) of the Commission's Rules of Practice and Procedures (18 CFR 385.214(b)(3) and (d)) and show good cause why the time limitation should be waived. Motions to intervene are more fully described at *https://www.ferc.gov/ferc-online/ferc-online/how-guides.*

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: November 10, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–25042 Filed 11–16–22; 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: PR23–6–000.

Applicants: Questar Gas Company.

Description: § 284.123 Rate Filing: Baseline Refile SOC to be effective 12/1/2022.

Filed Date: 11/10/22.

Accession Number: 20221110–5043.

Comment Date: 5 p.m. ET 12/1/22.

Docket Numbers: RP23–178–000.

Applicants: Rockies Express Pipeline LLC.

Description: § 4(d) Rate Filing: REX 2022–11–09 Negotiated Rate Agreement to be effective 11/9/2022.

Filed Date: 11/9/22

Accession Number: 20221109–5095

Comment Date: 5 p.m. ET 11/21/22.

Docket Numbers: RP23–179–000.

Applicants: Trailblazer Pipeline Company LLC.

Description: § 4(d) Rate Filing: TPC 2022–11–09 Negotiated Rate Agreement to be effective 11/9/2022.

Filed Date: 11/9/22.

Accession Number: 20221109–5096.

Comment Date: 5 p.m. ET 11/21/22.

Docket Numbers: RP23–180–000.

Applicants: Eastern Shore Natural Gas Company.

Description: § 4(d) Rate Filing: ESNG Operational Purchases and Sales to be effective 12/10/2022.

Filed Date: 11/10/22.

Accession Number: 20221110–5079.

Comment Date: 5 p.m. ET 11/22/22.

Docket Numbers: RP23–181–000.

Applicants: Trailblazer Pipeline Company LLC.

Description: § 4(d) Rate Filing: TPC 2022–11–10 Negotiated Rate Agreement to be effective 11/10/2022.

Filed Date: 11/10/22.

Accession Number: 20221110–5094.

Comment Date: 5 p.m. ET 11/22/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP22–824–000.

Applicants: Young Gas Storage Company, Ltd.

Description: Refund Report: Refund Report in Docket No. RP22–824 to be effective N/A.

Filed Date: 11/9/22.

Accession Number: 20221109–5103.

Comment Date: 5 p.m. ET 11/21/22.

Docket Numbers: RP22–825–000.

Applicants: Colorado Interstate Gas Company, L.L.C.

Description: Refund Report: Refund Report in Docket No. RP22–825–000 to be effective N/A.

Filed Date: 11/10/22.
Accession Number: 20221110–5039.
Comment Date: 5 p.m. ET 11/22/22.
Docket Numbers: RP22–825–002.
Applicants: Colorado Interstate Gas Company, L.L.C.
Description: Compliance filing: Correction to Settlement Implementation Compliance Filing to be effective 4/1/2022.
Filed Date: 11/10/22.
Accession Number: 20221110–5090.
Comment Date: 5 p.m. ET 11/22/22.

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.

Dated: November 10, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–25025 Filed 11–16–22; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of Intent To Terminate Receiverships

Notice is hereby given that the Federal Deposit Insurance Corporation (FDIC or Receiver), as Receiver for the institutions listed below, intends to terminate its receivership for said institutions.

NOTICE OF INTENT TO TERMINATE RECEIVERSHIPS

Fund	Receivership name	City	State	Date of appointment of receiver
10019	FREEDOM BANK	BRADENTON	FL	10/31/2008
10036	FIRSTBANK FINANCIAL SERVICES	MCDONOUGH	GA	02/06/2009
10053	AMERICAN SOUTHERN BANK	KENNESAW	GA	04/24/2009
10115	PLATINUM COMMUNITY BANK	ROLLING MEADOWS	IL	09/04/2009
10120	IRWIN UNION BANK AND TRUST COMPANY	COLUMBUS	IN	09/18/2009
10163	NEW SOUTH FEDERAL SAVINGS BANK	IRONDALE	AL	12/18/2009
10205	DESERT HILLS BANK	PHOENIX	AZ	03/26/2010
10217	TAMALPAIS BANK	SAN RAFAEL	CA	04/16/2010
10224	WHEATLAND BANK	NAPERVILLE	IL	04/23/2010
10234	THE BANK OF BONIFAY	BONIFAY	FL	05/07/2010
10251	FIRST NATIONAL BANK	SAVANNAH	GA	06/25/2010
10257	IDEAL FEDERAL SAVINGS BANK	BALIMORE	MD	07/09/2010
10296	WAKULLA BANK	CRAWFORDVILLE	FL	10/01/2010
10306	FIRST ARIZONA SAVINGS, FSB	SCOTTSDALE	AZ	10/22/2010
10317	EARTHSTAR BANK	SOUTHAMPTON	PA	12/10/2010
10380	BANK OF CHOICE	GREELEY	CO	07/22/2011
10402	COUNTRY BANK	ALEDO	IL	10/14/2011
10412	COMMUNITY BANK OF ROCKMART	ROCKMART	GA	11/10/2011
10425	SCB BANK	SHELBYVILLE	IN	02/10/2012
10433	FORT LEE FEDERAL SAVINGS BANK	FORT LEE	NJ	04/20/2012
10488	FIRST NATIONAL BANK	EDINBURG	TX	09/13/2013

The liquidation of the assets for each receivership has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receiverships will serve no useful purpose. Consequently, notice is given that the receiverships shall be terminated, to be effective no sooner than thirty days after the date of this notice. If any person wishes to comment concerning the termination of any of the receiverships, such comment must be made in writing, identify the receivership to which the comment pertains, and be sent within thirty days of the date of this notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Section, 600 North Pearl, Suite 700, Dallas, TX 75201.

No comments concerning the termination of the above-mentioned receiverships will be considered which are not sent within this timeframe.

(Authority: 12 U.S.C. 1819)

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on November 14, 2022.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–25072 Filed 11–16–22; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Thursday, November 17, 2022 at 10:00 a.m.

PLACE: Hybrid meeting: 1050 First Street NE, Washington, DC (12th Floor) and Virtual.

Note: For those attending the meeting in person, current COVID–19 safety protocols for visitors, which are based on the CDC COVID–19 Community Level in Washington, DC, will be updated on the Commission's contact page by the Monday before the meeting. See the contact page at *https://www.fec.gov/contact/.* If you would like to virtually access the meeting, see the instructions below.

STATUS: This meeting will be open to the public, subject to the above-referenced guidance regarding the COVID–19

Community Level and corresponding health and safety procedures. To access the meeting virtually, go to the Commission's website, *www.fec.gov,* and click on the banner to be taken to the meeting page.

MATTERS TO BE CONSIDERED:

REG 2011–02 Draft Final Rule and Explanation and Justification on internet Communications Disclaimers
REG 2021–01 Draft Notice of Proposed Rulemaking on Candidate Salaries
Management and Administrative Matters

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Individuals who plan to attend in person and who require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Laura E. Sinram, Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Vicktoria J. Allen,

Acting Deputy Secretary of the Commission.

[FR Doc. 2022–24992 Filed 11–15–22; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than December 2, 2022.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Maureen Beck, Carroll, Iowa, and Jeffrey Renner, Bellevue, Nebraska;* to join the White Family Control Group, and the Dennis Family Control Group, respectively, both groups acting in concert, to acquire voting shares of Halbur Bancshares, Inc., and thereby indirectly acquire voting shares of Westside State Bank, both of Westside, Iowa.

In addition, Matthew N. Lujano, Carroll, Iowa; a member of the White Family Control Group, to acquire additional voting shares of Halbur Bancshares, Inc., and thereby indirectly acquire voting shares of Westside State Bank.

B. Federal Reserve Bank of St. Louis (Holly A. Rieser, Senior Manager) P.O. Box 442, St. Louis, Missouri. *Comments.applications@stls.frb.org* comments:

1. *Luanne Caryl Cundiff; James Raymond Droste; Christopher Anthony Goellner; John Wesley McClure, IV; and David Paul Strautz, all of St. Charles, Missouri;* to acquire control of voting shares of First State Bancshares, Inc. (Bancshares), by becoming co-trustees of the First State Bank of St. Charles Employee Stock Ownership Plan, which owns voting shares of Bancshares, and thereby indirectly owns voting shares of First State Bank of St. Charles, Missouri, all of Saint Charles, Missouri.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–25069 Filed 11–16–22; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this document have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than December 2, 2022.

A. Federal Reserve Bank of Cleveland (Bryan S. Huddleston, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566. Comments can also be sent electronically to *Comments.applications@clev.frb.org:*

1. *Fifth Third Bancorp, Cincinnati, Ohio;* to engage in community development activities up to 15 percent of total consolidated capital and surplus pursuant to section 225.28(b)(12) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–25064 Filed 11–16–22; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2022–0014]

Record of Decision for the Final Supplemental Environmental Impact Statement for the Roybal Campus 2025 Master Plan

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: General notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS), announces the Record of Decision (ROD) for the Final Supplemental Environmental Impact Statement (SEIS) for CDC's Roybal Campus in Atlanta, Georgia.

DATES: The ROD was signed on November 14, 2022.

FOR FURTHER INFORMATION CONTACT: Thayra Riley, NEPA Coordinator, Office of Safety, Security, and Asset Management, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H20–4, Atlanta, Georgia 30329. Email: *cdc-roybalga-seis@cdc.gov.* Telephone: 770–488–8170.

SUPPLEMENTARY INFORMATION: In accordance with the National Environmental Policy Act of 1969 (NEPA), as implemented by the Council on Environmental Quality regulations (40 CFR 1507.3) and HHS General Administration Manual Part 30 environmental procedures, CDC is issuing a ROD based on the Final SEIS that analyzed the effects of additional proposed components that were not analyzed in the 2014 Final Environmental Impact Statement.

Public Participation

On January 28, 2022, CDC published a Notice of Intent to prepare a SEIS in the **Federal Register** (87 FR 4603). CDC announced a Notice of Availability (NOA) of the Draft SEIS on July 8, 2022 (87 FR 40844) and the public comment period ended August 22, 2022. During the public comment period, a virtual public meeting was held on July 27, 2022. Two participants attended the meeting. CDC received five public comments. CDC made minor revisions to the Final SEIS based on these comments. The comments and CDC's responses are included in Appendix A of the Final SEIS found in the Supporting Materials tab of the docket. On October 14, 2022, CDC published the NOA for the Final SEIS in the **Federal Register** (87 FR 62413).

Decision

Based on the Final SEIS, CDC has decided to implement Alternative 1 (Preferred Alternative) as the selected alternative. This Alternative includes the construction and operation of a new Hazardous/Medical/Infectious Waste Incinerator in a new laboratory building, the operation of two proposed emergency standby power diesel generators to support that laboratory, and annual testing of the generators. According to the analysis, no potential significant impacts were identified for the selected alternative.

CDC's decision is based on an analysis of the potential impacts of the alternatives considered in the SEIS weighed against CDC's continuing need to fulfill its unique and critical public health mission and its ability to mitigate in whole or in part the adverse impacts. CDC also considered the input from the public and agencies, such as the U.S. Fish and Wildlife Service, Georgia Department of Natural Resources, Georgia Environmental Protection Division (EPD), and Georgia Historic Preservation Division.

Compliance Requirements

The ROD includes these additional compliance requirements: CDC will obtain an updated Title V Operating Air Permit from Georgia EPD and treat and dispose of waste in accordance with Georgia EPD, Biomedical Waste (Rule 391–3–4–.15).

Availability of the ROD: The ROD is available in the Supplemental Materials tab of the docket found on the Federal eRulemaking Portal: *https://www.regulations.gov,* identified by Docket No. CDC–2022–0014.

The public is being notified of the ROD through this **Federal Register** publication and the NOA has been provided to interested parties via electronic mail.

Dated: November 14, 2022.

Angela K. Oliver,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2022–25047 Filed 11–16–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–IP–23–006, Developing a Public Health Tool to Predict the Virality of Vaccine Misinformation Narratives; and RFA–IP–23–007, Collaborative Surveys to Provide Inputs into Vaccine-Related Economic Evaluations.

Date: March 7, 2023.

Time: 10:00 a.m.–5:00 p.m., EST.

Place: Teleconference, Centers for Disease Control and Prevention, Room 1080, 8 Corporate Boulevard, Atlanta, Georgia 30329.

Agenda: To review and evaluate grant applications.

FOR FURTHER INFORMATION CONTACT: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, National Center for HIV, Viral Hepatitis, STD, and TB Prevention, CDC, 1600 Clifton Road NE, Mailstop US8–1, Atlanta, Georgia 30329–4027; Telephone: (404) 718–8833; Email: *GAnderson@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and

Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–25062 Filed 11–16–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day—23–1273]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Pregnancy Risk Assessment Monitoring System (PRAMS)'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on July 5, 2022, to obtain comments from the public and affected agencies. CDC received two comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Pregnancy Risk Assessment Monitoring System (PRAMS) (OMB Control No. 0920–1273, Exp. 11/30/2022)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Pregnancy Risk Assessment Monitoring System (PRAMS) is a surveillance project of the Centers for Disease Control and Prevention (CDC) and jurisdiction (*e.g.,* state, city, territory) health departments. Developed in 1987, PRAMS collects jurisdiction-specific, population-based data on maternal attitudes and experiences before, during, and shortly after pregnancy.

PRAMS provides data on the experiences of women with a recent live or stillbirth not available from other sources. These data can be used to identify groups of women and infants at high risk for health problems, to monitor changes in health status, and to measure progress towards goals in improving the health of mothers and infants. PRAMS data are used by researchers to investigate emerging issues in the field of reproductive health and by federal, state and local governments to plan and review programs and policies aimed at reducing health problems among mothers and babies.

PRAMS is a jurisdiction-customized survey conducted in 50 sites and covers 81% of all live births in the United States. Because PRAMS uses standardized data collection methods, it allows data to be compared among sites. Jurisdictions can implement the survey on an ongoing basis or as a point-in-time survey. In participating jurisdictions, a sample of women who have recently given birth to a live born or stillborn infant is selected from birth certificates or fetal death files. The sample is stratified based on the site's population of interest to ensure high-risk populations are adequately represented in the data.

The PRAMS survey instrument for live births is based on a core set of questions common across all jurisdictions that remain the same throughout each phase of data collection. In addition, CDC provides optional standardized modules (pre-grouped questions on a select topic) that a jurisdiction may use to customize survey content at the beginning of each phase of data collection. Topics for both the core and standard modules include health conditions (which includes chronic conditions such as diabetes, hypertension, mental health, oral health, cancer, as well as pregnancy-induced health conditions and family history of select conditions); health behaviors (including tobacco and alcohol use, substance use [licit and illicit], injury prevention and safety, nutrition, and physical activity); health care services (such as preconception care, prenatal care, postpartum care, contraceptive care, vaccinations, access to care and insurance coverage, receipt of recommended services and provider counseling received); infant health and development; infant care practices (such as breastfeeding, safe sleep practices); social services received (such as WIC or home visiting); the social context of childbearing (such as intimate partner violence, social support, adverse childhood experiences, stressful life experiences and racism); attitudes and feeling about the pregnancy including pregnancy intentions.

PRAMS Phase 8 includes births that occur/will have occurred during calendar years 2016–2022. Phase 8 data collection will cease for December 2022 births by the end of June 2023. For calendar year 2023 births, PRAMS will transition to Phase 9 (data collection for January 2022 births to begin in April 2023). The Phase 9 survey will include the same question topics and most of the same questions for core and standard modules listed above from Phase 8. The content on some topics will be expanded, for example, questions related to social determinants of health have been broadened with new questions such as those on experiences of racism and food, housing, and transportation insecurity. For Phase 9, some Phase 8 questions have been modified (*e.g.,* by reducing the number of response choices). Additionally, some questions from the Phase 8 core

modules will not be included in the Phase 9 core modules. These questions are still available for jurisdictions to use as part of the standard modules.

The PRAMS infrastructure is uniquely suited for rapid adaption for information collection that would not be feasible with other surveillance methods. At times, jurisdictions may choose to implement (funded or unfunded) CDC-developed supplemental modules (pre-grouped questions on a select topic) to address emerging topics of interest. Supplemental modules for continued collection during Phase 8 of PRAMS include disabilities, marijuana use, prescription and illicit opioid use, COVID–19 experience, COVID–19 vaccine, and social determinants of health. Jurisdictions may elect to include these supplements during Phase 9, except for the disability supplement which is now integrated into the core. These supplements can be added for one or more birth years but can be discontinued at the end of a year of data collection. Core and standard questions remain the same for the entire questionnaire phase. New supplemental modules may be developed to address other emergent issues as they arise during implementation of Phase 9.

PRAMS can also be adapted to do call back surveys. Women who respond to the PRAMS survey may be re-contacted (opt-out consent process used) later (six months or more post-birth) to collect additional information about post-pregnancy experiences and infant and toddler health. No call back survey is currently being fielded or planned but call back surveys may be developed to address other emergent issues as they arise.

The stillbirth survey is currently administered just in the state of Utah. It only includes one survey instrument.

As part of the questionnaire development process, cognitive and field testing will be conducted prior to implementation of new supplemental modules and call back surveys, as well as before adding or substantively revising questions prior to a new phase of the PRAMS survey. Cognitive testing will be handled under a separate approval mechanism. Field testing will be conducted among women with infants one year or younger. Field testing is conducted to identify issues that may affect implementation or quality of the data collected.

For Phase 8 (which is in the final data collection year), information is collected 2–6 months after live birth or stillbirth by mail survey with telephone follow-up for non-responders. In 2022, five jurisdictions implemented an additional web mode for data collection for women with recent live birth. The web mode was collected simultaneously with the mail mode, with telephone follow up for non-responders. Based on data from the five jurisdictions, PRAMS plans to implement the additional web mode of data collection in all jurisdictions in 2023 (Phase 9).

OMB approval is requested for three years. The total estimated annual burden is 31,268 hours which is an increase of 1,503 hours. The change in overall burden results from: (1) a slightly reduced estimate of the number of responses to the PRAMS survey (core questions plus jurisdiction selected standard module) based on responses received in 2019 (decrease of 223 hours); (2) an increase in the anticipated number of supplemental modules and the time to complete each module from 5 to 8 min (increase of 1,959 hours) based on current supplemental modules being implemented by jurisdictions; (3) a decrease in the estimated annual burden for call back surveys (decrease of 586 hours) with current estimates based on responses to the most recent call back survey; (4) the addition of time spent by jurisdictions in creating the survey sample and uploading the sampled women's information; and (5) an increase in the amount of time allotted for each field testing interview resulting in an overall increase for field testing from 20 to 40 minutes (increase of 50 hours). There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Women who recently delivered a live birth.	PRAMS Phase 8/Phase 9 (Core Questions plus state selected standard modules).	51,556	1	26/60
	Supplemental Modules	52,984	1	8/60
	Call Back Surveys	2,790	1	30/60
	Field Testing	150	1	40/60
Women who recently delivered a stillbirth.	PRAMS Stillbirth Questionnaire	160	1	25/60
Jurisdictions	Submission of data file to CDC	50	12	30/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–25007 Filed 11–16–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10556]

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 December 19, 2022.

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:* Medical Necessity and Contract Amendments Under Mental Health Parity; *Use:* Upon request, regulated entities must provide a medical necessity disclosure. Receiving this information will enable potential and current enrollees to make more educated decisions given the choices available to them through their plans and may result in better treatment of their mental health or substance use disorder (MH/SUD) conditions. States use the information collected and reported as part of its contracting process with managed care entities, as well as its compliance oversight role. In states where a Medicaid Managed Care Organization (MCO) is responsible for providing the full scope of medical/surgical and MH/SUD services to beneficiaries, the state will review the parity analysis provided by the MCO to confirm that the MCO benefits are compliant. CMS uses the information collected and reported in an oversight role of State Medicaid managed care programs. *Form Number:* CMS–10556 (OMB control number: 0938–1280); *Frequency:* Once and occasionally; *Affected Public:* Individuals and households, the Private sector, and State, Local, or Tribal Governments; *Number of Respondents:* 71,104,769; *Total Annual Responses:* 426,628; *Total Annual Hours:* 71,294. (For policy questions regarding this collection contact Matthew Rodriguez at 303–844–4724.)

Dated: November 11, 2022.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–25008 Filed 11–16–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Privacy Act of 1974; System of Records

AGENCY: Administration for Children & Families, Department of Health and Human Services.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of Health and Human Services (HHS) is modifying an existing system of records maintained by the Administration for Children & Families (ACF), Office of Child Support Enforcement (OCSE): System No. 09–80–0389, ''OCSE Data Center General Support System, HHS/ACF/OCSE.''

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this Notice is applicable November 17, 2022, subject to a 30-day period in which to comment on the routine uses, described below. Please submit any comments by December 19, 2022.

ADDRESSES: The public should address written comments by mail or email to: Anita Alford, Senior Official for Privacy, Administration for Children & Families, 330 C St. SW, Washington, DC 20201, or *anita.alford@acf.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: General questions about this system of records should be submitted by mail or email to Venkata Kondapolu, Director, Division of Federal Systems, Office of Child Support Enforcement, at 330 C St. SW, 5th Floor, Washington, DC 20201, or *Venkata.Kondapolu@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Explanation of Changes to System of Records 09–80–0389

This system of records covers information maintained in a secure gateway system (the OCSE Data Center General Support System) established by OCSE. OCSE and (at their option) external partners use the system to facilitate electronic exchanges of information between (1) a state child support enforcement agency and (2) another external child support program partner, such as an employer, a health plan administrator, a financial institution, or a central authority in a foreign treaty country or a foreign country that is the subject of a declaration under 42 U.S.C. 659a, through OCSE. The system maintains information about individual participants in child support cases, including income withholding order information, medical support information, financial institution account information, levy file information, and details of child support disbursements transmitted between the United States and the authorized entity of the foreign treaty country or foreign country subject of a declaration under 42 U.S.C. 659a for distribution of the support payment by the foreign authority in accordance with the terms of the order. The following modifications have been made:

- The System Manager section has been revised to change the email address of the official serving as the System Manager, and to change the title of the official from ''Acting Commissioner'' to ''Director.''

- The Authority section has been revised to include 42 U.S.C. 654, 654a, 654b, and 659a.
- The Purpose(s) section has been updated as follows:
  - To include an additional purpose for which OCSE may use the OCSE Data Center General Support System; *i.e.,* to support the Central Authority Payment (CAP) program, that exchanges details of child support disbursements transmitted between the United States and the authorized entity of the foreign treaty country or foreign country subject of a declaration under 42 U.S.C. 659a for distribution of the support payment by the foreign authority in accordance with the terms of the order;
  - To add the CAP program to the bulleted list of programs supported by the gateway system;
  - To add the new purpose to the list of reasons for which state child support enforcement agencies use the system; and
  - To add, at the end of the section, reasons for which U.S. states use the system.
- The Categories of Records section has been revised to add a new category 4: child support case information used to administer the Central Authority Payment (CAP) program, which includes:
  - Obligor/non-custodial parent's name and Social Security Number (SSN).
  - Foreign authority name, FIPS locator code, and foreign authority's child support case identifier.
  - U.S. state name and state child support agency's case number.
  - Amount and date of payment.
  - Medical support indicator.
  - Employment termination indicator.
- In the Record Source Categories section, the description of the first record source category has been changed from ''[s]tate child support enforcement agencies initiating e-IWO, eNMSN, and FAST Levy program transactions'' to ''[s]tate child support enforcement agencies *transmitting payment information to the CAP program for foreign authorities, and* initiating e-IWO, e-NMSN, and FAST Levy program transactions *in domestic child support cases.*''
- The Routine Uses section has been updated to add new routine use 11 to allow disclosure of child support case information involving residents of the United States and residents of foreign treaty countries or foreign countries that are the subject of a declaration under 42 U.S.C. 659a to the foreign authority.
- The Policies and Practices for Retention and Disposal of Records section has been updated to insert, in the description of various retention periods that OCSE plans to propose to the National Archives and Records Administration (NARA) for the records, ''up to 120 days to correct errors, and up to one year to reconcile information with external partners.''

Venkata Kondapolu,

Director, Division of Federal Systems, Office of Child Support Enforcement, Administration for Children & Families, U.S. Department of Health and Human Services.

SYSTEM NAME AND NUMBER:

OCSE Data Center General Support System, HHS/ACF/OCSE, 09–80–0389.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The address of the agency component responsible for the system of records is Office of Child Support Enforcement, Administration for Children & Families, 330 C St. SW, 5th Floor, Washington, DC 20201.

SYSTEM MANAGER(S):

Director, Division of Federal Systems, Office of Child Support Enforcement, Administration for Children & Families, Department of Health and Human Services, 330 C St. SW, 5th Floor, Washington, DC 20201, or *Venkata.Kondapolu@acf.hhs.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 652, 654, 654a, 654b, 659, 659a, 666, 669a.

PURPOSE(S) OF THE SYSTEM:

The purpose of the system of records is to support the enforcement of child support obligations, by providing a secure gateway (the OCSE Data Center General Support System, or any successor system) that OCSE will use to facilitate electronic exchanges of information about individual participants in child support cases, between state child support enforcement agencies and other external partners such as employers, health plan administrators, financial institutions, and central authorities in foreign treaty countries or foreign countries that are the subject of a declaration under 42 U.S.C. 659a. The child support enforcement agencies and other external partners will use the gateway system to electronically submit information to and receive information from each other, through OCSE.

The gateway system will support, for example:

- The Electronic Income Withholding Order (e-IWO) program, that provides the means to electronically exchange income withholding order information between state child support enforcement agencies and employers.
- The Electronic National Medical Support Notice (e-NMSN) program, that allows state child support enforcement agencies, employers, and health plan administrators to electronically send and receive National Medical Support Notices used to enroll children in medical insurance plans pursuant to child support orders.
- The Federally Assisted State Transmitted (FAST) Levy program, that allows states and financial institutions to exchange information about levy actions through an electronic process.
- The Central Authority Payment (CAP) program, that allows states and foreign authorities to exchange details of child support disbursements transmitted between the United States and the authorized entity of the foreign treaty country or foreign country subject of a declaration under 42 U.S.C. 659a for distribution of the support payment by the foreign authority in accordance with the terms of the order.

Multiple child support program partners will utilize the gateway system to electronically send and receive information:

State child support enforcement agencies will use the system to transmit e-IWOs to employers and e-NMSNs to employers and health plan administrators. State child support enforcement agencies will also use the system to create levy actions for distribution to multiple financial institutions, and to transmit information about child support disbursements between U.S. states and foreign authorities through the CAP program.

Employers will use the system to respond to state child support enforcement agencies regarding e-IWOs and to provide information about health insurance coverage provided by the employer. Employers and health plan administrators will use the system to respond to state child support enforcement agencies regarding e-NMSNs.

Financial institutions will use the system to receive and respond to levy actions from multiple state child support enforcement agencies.

U.S. states will use the system to transmit information about child support disbursements transmitted from the United States to a foreign authority through the CAP program.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records in the system of records are about custodial and noncustodial parents, legal guardians, and third-party caretakers who are participants in child

support program cases and whose names and Social Security numbers (SSNs) are used to retrieve the records. Children's personal identifiers are not used to retrieve records in this system of records, so children are not subject individuals for purposes of this system of records.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records exchanged in the gateway system include:

1. Child support case information used to populate an e-IWO, which may include:

a. Name of state, tribe, territory, or private individual entity issuing an e-IWO;

b. Order ID and Case ID;

c. Remittance ID;

d. Employer/income withholder name, address, federal employer identification number (FEIN), telephone number, FAX number, email, or website;

e. Employee/obligor's name, Social Security number (SSN), date of birth;

f. Custodial parent's/obligee's name;

g. Child(ren)'s name(s) and date(s) of birth;

h. Income withholding amounts for current child support, past-due child support, current cash medical support, past-due cash medical support, current spousal support, past-due spousal support;

i. Child support state disbursement unit or tribal order payee name and address;

j. Judge/issuing official's name, title, and signature; and

k. Employee/obligor termination date, last known telephone number, last known address, new employer/income withholder's name and address.

2. Child support case information used to populate an e-NMSN, and medical insurance information included in e-NMSN responses from employers and health plan administrators, which may include:

a. Custodial parent/obligee's name and mailing address;

b. Substituted official/agency name and address (if custodial parent/obligee's address is left blank);

c. Name, telephone number, and mailing address of representative of child(ren);

d. Child(ren)'s name(s), gender, date of birth, and SSN;

e. Employee's name, SSN, and mailing address;

f. Plan administrator name, contact person, FAX number and telephone number;

g. Employer and/or employer representative name, FEIN, and telephone number;

h. Date of medical support termination, reason for termination, and child(ren) to be terminated from medical support;

i. Medical insurance provider name, group number, policy number, address;

j. Dental insurance provider name, group number, policy number, address;

k. Vision insurance provider name, group number, policy number, address;

l. Prescription drug insurance provider name, group number, policy number, address;

m. Mental health insurance provider name, group number, policy number, address;

n. Other insurance, specified by name, group number, policy number, address; and

o. Plan administrator name, title, telephone number and address.

3. Child support case information used to administer the FAST Levy program, which includes:

a. Requesting state agency name, address, and state Federal Information Processing Standard (FIPS) code;

b. Financial institution's name and FEIN;

c. Obligor's name, SSN, and date of birth;

d. Account number of account from which to withhold funds;

e. Withholding amount; and

f. Contact name, phone number, and email for point of contact in requesting state.

4. Child support case information used to administer the CAP program, which includes:

a. Obligor/non-custodial parent's name and SSN;

b. Foreign authority name, FIPS locator code, and foreign authority's child support case identifier;

c. U.S. state name and state child support agency's case number;

d. Amount and date of payment;

e. Medical support indicator; and

f. Employment termination indicator.

RECORD SOURCE CATEGORIES:

The sources of the information in the system of records include:

- State child support enforcement agencies transmitting payment information to the CAP program for foreign authorities, and initiating e-IWO, e-NMSN, and FAST Levy program transactions in domestic child support cases.
- Employers or authorized third parties responding to e-IWOs and e-NMSNs.
- Health plan administrators responding to e-NMSNs.
- Financial institutions responding to FAST Levy requests.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to the disclosures authorized directly in the Privacy Act at 5 U.S.C. 552a(b)(1)–(b)(2) and (b)(4)–(b)(11), these routine uses specify circumstances under which the agency may disclose information from this system of records to a non-HHS officer or employee without the consent of the data subject. ACF will prohibit redisclosures, or may permit only certain redisclosures, as required or authorized by law. Each proposed disclosure or redisclosure of information permitted directly in the Privacy Act or under these routine uses will be evaluated to ensure that the disclosure or redisclosure is legally permissible.

Any information defined as ''return''' or ''return information'' under 26 U.S.C. 6103 (Internal Revenue Code) is not disclosed unless authorized by a statute, the Internal Revenue Service (IRS), or IRS regulations.

1. *Disclosure to Financial Institution to Collect Past-Due Support.*

Pursuant to 42 U.S.C. 652(l), information pertaining to an individual owing past-due child support may be disclosed to a financial institution doing business in two or more states to identify an individual who maintains an account at the institution for the purpose of collecting past-due support. Information pertaining to requests by the state child support enforcement agencies for the placement of a lien or levy of such accounts may also be disclosed.

2. *Disclosure of Financial Institution Information to State Child Support Enforcement Agency for Assistance in Collecting Past-Due Support.*

Pursuant to 42 U.S.C. 652(l), the results of a comparison between information pertaining to an individual owing past-due child support and information provided by multistate financial institutions may be disclosed to a state child support enforcement agency for the purpose of assisting the state agency in collecting past-due support. Information pertaining to responses to requests by a state child support enforcement agency for the placement of a lien or levy of such accounts may also be disclosed.

3. *Disclosure to Employer to Enforce Child Support Obligations.*

Pursuant to 42 U.S.C. 666(b), information pertaining to an individual owing current or past-due child support may be disclosed to an employer for the purpose of collecting current or past-due support by way of an e-IWO.

4. *Disclosure of Employer Information to State Child Support Enforcement Agency in Response to an e-IWO.*

Information pertaining to a response by an employer to an e-IWO issued by a state child support enforcement agency for the collection of child support may be disclosed to the state child support enforcement agency.

5. *Disclosure to Employer and Health Plan Administrator to Enforce Medical Support Obligations.*

Pursuant to 42 U.S.C. 666(a)(19), information pertaining to participants in a child support case may be disclosed to an employer or a health plan administrator for the purpose of enforcing medical support for a child by way of an e-NMSN.

6. *Disclosure of Employer and Health Plan Administrator Information to State Child Support Enforcement Agency in Response to an e-NMSN.*

Information pertaining to a response by an employer or a health plan administrator to an e-NMSN issued by a state child support enforcement agency for the enforcement of medical support may be disclosed to the state child support enforcement agency.

7. *Disclosure to Department of Justice or in Proceedings.*

Records may be disclosed to the Department of Justice (DOJ) or to a court or other adjudicative body in litigation or other proceedings when HHS or any of its components, or any employee of HHS acting in the employee's official capacity, or any employee of HHS acting in the employee's individual capacity where the DOJ or HHS has agreed to represent the employee, or the United States Government, is a party to the proceedings or has an interest in the proceedings and, by careful review, HHS determines that the records are both relevant and necessary to the proceedings.

8. *Disclosure to Congressional Office.*

Information may be disclosed to a congressional office from the record of an individual in response to a written inquiry from the congressional office made at the written request of the individual.

9. *Disclosure to Contractor to Perform Duties.*

Records may be disclosed to a contractor performing or working on a contract for HHS and who has a need to have access to the information in the performance of its duties or activities for HHS in accordance with law and with the contract.

10. *Disclosure in the Event of a Security Breach.*

a. Information may be disclosed to appropriate agencies, entities, and persons when (1) HHS suspects or has confirmed that there has been a breach of the system of records; (2) HHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HHS (including its information systems, programs, and operations), the federal government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

b. Information may be disclosed to another federal agency or federal entity, when HHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the federal government, or national security, resulting from a suspected or confirmed breach.

11. *Disclosure to a Foreign Reciprocating Country and Foreign Treaty Country for Child Support Purposes.*

Pursuant to 42 U.S.C. 652(n), 653(a)(2), 653(c)(5) and 659a(c)(2), child support case information involving residents of the United States and residents of foreign treaty countries or foreign countries that are the subject of a declaration under 42 U.S.C. 659a may be disclosed to the foreign authority.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The records are stored electronically.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by the parent's, guardians, or third-party caretaker's name or SSN.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Upon approval of a disposition schedule by the National Archives and Records Administration (NARA), the records will be deleted when eligible for destruction under the schedule, if the records are no longer needed for administrative, audit, legal, or operational purposes. ACF anticipates requesting NARA's approval of retention periods of approximately 90 days for the information contained in the transmission files (*i.e.,* long enough to confirm receipt or to resend if necessary), up to 120 days to correct errors, up to a year to reconcile information with external partners, and up to seven years for the audit log records. Approved disposal methods for electronic records and media include overwriting, degaussing, erasing, disintegration, pulverization, burning, melting, incineration, shredding, or sanding.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The system leverages cloud service providers that maintain an authority to operate in accordance with applicable laws, rules, and policies, including Federal Risk and Authorization Management Program (FedRAMP) requirements. Specific administrative, technical, and physical controls are in place to ensure that the records collected, maintained, and transmitted using the OCSE Data Center General Support System are secure from unauthorized access. Access to the records within the system is restricted to authorized personnel who are advised of the confidentiality of the records and the civil and criminal penalties for misuse, and who sign a nondisclosure oath to that effect. Agency personnel are provided privacy and security training before being granted access to the records and annually thereafter. Additional safeguards include protecting the facilities where records are stored or accessed with security guards, badges and cameras; limiting access to electronic databases to authorized users based on roles and either two-factor authentication or user ID and password (as appropriate); using a secured operating system protected by encryption, firewalls, and intrusion detection systems; reviewing security controls on a periodic basis; and using secure destruction methods prescribed in NIST SP 800–88 to dispose of eligible records. All safeguards conform to the HHS Information Security and Privacy Program, *https://www.hhs.gov/ocio/securityprivacy/index.html.*

RECORD ACCESS PROCEDURES:

To request access to a record about you in this system of records, submit a written access request to the System Manager identified in the ''System Manager'' section of this System of Records Notice (SORN), in accordance with the Department's Privacy Act implementation regulations in 45 CFR. The request must reasonably describe the record sought and must include (for contact purposes and identity verification purposes) your full name, current address, telephone number and/or email address, date and place of birth, and signature, and (if needed by

the agency) sufficient particulars contained in the records (such as, your SSN) to enable the System Manager to distinguish between records on subject individuals with the same name. In addition, to verify your identity, your signature must be notarized, or the request must include your written certification that you are the individual who you claim to be and that you understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense subject to a fine of up to $5,000. You may request that copies of the records be sent to you, or you may request an appointment to review the records in person (including with a person of your choosing, if you provide written authorization for agency personnel to discuss the records in that person's presence). You may also request an accounting of disclosures that have been made of records about you, if any.

CONTESTING RECORD PROCEDURES:

To request correction of a record about you in this system of records, submit a written amendment request to the System Manager identified in the ''System Manager'' section of this SORN, in accordance with the Department's Privacy Act implementation regulations in 45 CFR. The request must contain the same information required for an access request and include verification of your identity in the same manner required for an access request. In addition, the request must reasonably identify the record and specify the information contested, the corrective action sought, and the reasons for requesting the correction; and should include supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

NOTIFICATION PROCEDURES:

To find out if the system of records contains a record about you, submit a written notification request to the System Manager identified in the ''System Manager'' section of this SORN, in accordance with the Department's Privacy Act implementation regulations in 45 CFR. The request must identify this system of records, contain the same information required for an access request, and include verification of your identity in the same manner required for an access request.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

86 FR 72245 (Dec. 21, 2021).

[FR Doc. 2022–25017 Filed 11–16–22; 8:45 am]

BILLING CODE 4184–42–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–2672]

Draft Amended Environmental Assessment for Production of AquAdvantage Salmon at the Bay Fortune and Rollo Bay Facilities on Prince Edward Island, Canada; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is hosting a virtual public meeting entitled ''Draft Amended Environmental Assessment for Production of AquAdvantage Salmon at the Bay Fortune and Rollo Bay Facilities on Prince Edward Island, Canada.'' The purpose of the public meeting is to obtain public input on a draft amended environmental assessment (EA) prepared by FDA in support of an approved new animal drug application (NADA 141–454) concerning AquAdvantage Salmon (AAS), in response to an order by the U.S. District Court, Northern District of California.

DATES: The virtual public meeting will be held on December 15, 2022. Either electronic or written comments on this public meeting must be submitted by January 17, 2023. See the **SUPPLEMENTARY INFORMATION** section for registration dates and information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 17, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked, and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–N–2672 for ''Draft Amended Environmental Assessment for Production of AquAdvantage Salmon at the Bay Fortune and Rollo Bay Facilities on Prince Edward Island, Canada.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including

the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments, and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–492–7500.

FOR FURTHER INFORMATION CONTACT: Holly Zahner, Center for Veterinary Medicine (HFV–162), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0834, *CVMamendedEA@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

The Agency will be hosting a virtual public meeting on December 15, 2022, entitled ''Public Meeting on Draft Amended Environmental Assessment for Production of AquAdvantage Salmon at the Bay Fortune and Rollo Bay Facilities on Prince Edward Island, Canada,'' to gather public comment. In preparation for this meeting, elsewhere in this issue of the **Federal Register** we are providing notice of the availability of a draft amended EA entitled ''Draft Amended Environmental Assessment for Production of AquAdvantage Salmon at the Bay Fortune and Rollo Bay Facilities on Prince Edward Island, Canada,'' and are requesting public comment on questions posed regarding that document. This draft amended EA has been prepared by FDA in support of the approved application (NADA 141–454) concerning AAS, in response to an order by the U.S. District Court, Northern District of California, issued on November 5, 2020; *Inst. for Fisheries Res.* v. *U.S. Food and Drug Admin.,* 499 F. Supp. 3d 657, 660 (N.D. Cal. 2020) and is available in the docket or at *https://www.fda.gov/animal-veterinary/workshops-conferences-meetings/virtual-public-meeting-aquadvantage-salmon-draft-amended-environmental-assessment-12152022.* The purpose of the virtual public meeting is to obtain input from the public on the draft amended EA, and whether the information and analysis presented therein is accurate and complete.

On November 19, 2015, FDA approved NADA 141–454 concerning AAS, owned by AquaBounty Technologies (ABT). AAS are triploid, hemizygous, all-female Atlantic salmon (*Salmo salar*) bearing a single copy of the α-form of the *opAFP–GHc2* recombinant DNA (rDNA) construct at the α-locus in the E.O.-1α lineage. AAS is designed to exhibit a rapid-growth phenotype. The November 19, 2015, NADA approval allowed for AAS to be produced at a facility on Prince Edward Island (PEI), Canada, and grown at a facility in Panama (that has subsequently closed) and allowed for sale of food harvested from AAS in the United States.

As part of the NADA review process under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, *et seq.*), and consistent with the mandates in the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*) and FDA's Environmental Impact Considerations regulations (21 CFR part 25), FDA's Center for Veterinary Medicine prepared an EA dated November 12, 2015, for the original approval of the rDNA construct as integrated in the genome of AAS. Based on the 2015 EA and the specific conditions that were established in the NADA, FDA determined the action would not individually or cumulatively have a significant effect on the quality of the human environment in the United States. Therefore, FDA prepared a finding of no significant impact (FONSI). Based on the findings in the 2015 EA, FDA also made a ''no effect'' determination under the Endangered Species Act (ESA) (16 U.S.C. 1531, *et seq.*), concluding that AAS, when produced and reared under the conditions in the application, and as described in the 2015 EA, would not jeopardize the continued existence of U.S. populations of threatened or endangered Atlantic salmon, or result in the destruction or adverse modification of their critical habitat.

Subsequently, several organizations filed suit in the U.S. District Court, Northern District of California, challenging, among other things, FDA's evaluations under NEPA and the ESA for the 2015 NADA approval. On November 5, 2020, the Court found that ''FDA did not . . . meaningfully analyze what might happen to normal salmon in the event the engineered salmon did survive and establish themselves in the wild. Even if this scenario was unlikely, the FDA was still required to assess the consequences of it coming to pass.'' The Court ordered FDA to complete the analysis and reconsider its ''no effect'' determination under the ESA together with a revised NEPA evaluation (see *Inst. for Fisheries Res.* v. *U.S. Food and Drug Admin.,* 499 F. Supp. 3d 657, 660 (N.D. Cal. 2020). However, the Court did not vacate the approval; the approval is still in effect.

To address the November 5, 2020, Court opinion, we have prepared a draft amended EA entitled ''Draft Amended Environmental Assessment for Production of AquAdvantage Salmon at the Bay Fortune and Rollo Bay Facilities on Prince Edward Island, Canada.'' We request that the public review the draft amended EA, attend the virtual public meeting on December 15, 2022, and submit comments either at the public meeting or to the docket.

In this draft amended EA, we have expanded our assessment beyond that in the 2015 EA to include an exhaustive analysis of the likelihood and severity of harms that could occur if AAS and AquAdvantage broodstock (collectively referred to in the amended EA as AquaBounty Technology (ABT) Salmon) are assumed to be present in the U.S. aquatic environment. We outline the pathways necessary for ABT Salmon to escape confinement from the PEI facilities and migrate to and establish a persistent population in the United States. We also evaluate the potential pathways for disease (including pathogen and parasite) transmission from ABT Salmon and from the production of ABT Salmon at facilities on PEI to wild fish populations. In addition, we identify and evaluate the potential harms (consequences) to the U.S. environment and the endangered Atlantic salmon of the Gulf of Maine Distinct Population Segment if these highly unlikely scenarios were to occur. Finally, we revisit whether there is a potential for significant impacts on the U.S. environment under NEPA, and whether the action could result in effects on threatened and endangered Atlantic salmon and their critical habitat in the United States under the ESA. Ultimately, this analysis will aid the Agency in the decision of whether to prepare a FONSI or an environmental impact statement.

We note that the information and analyses in the draft amended EA reflect comments and input received from the National Marine Fisheries Service and the Fish and Wildlife Service (collectively referred to as the Services) during a recent ESA technical assistance review initiated in June 2022 with initial discussions beginning in March 2021. FDA intends to initiate an Informal Consultation with the Services after the close of the public comment period if the current conclusions with respect to the ESA are not altered.

II. Topics for Comment Regarding the Draft Amended EA

The Agency is placing the draft amended EA on public display at the Dockets Management Staff (see **ADDRESSES**) and at *https://www.fda.gov/animal-veterinary/workshops-conferences-meetings/virtual-public-meeting-aquadvantage-salmon-draft-amended-environmental-assessment-12152022* for public review and comment for 60 days.

Comments at the public meeting should be limited to the draft amended EA only, as described below. We will not review comments on topics outside of the scope of the draft amended EA. Given that FDA must comply with a court order and that the public can comment both by submitting comments to the docket and by participating in the public meeting, FDA believes that a 60-day comment period is appropriate and does not intend to grant requests for extension of the comment period.

The virtual public meeting will focus on the draft amended EA only and will not include discussion about AAS generally or the approved application. We are particularly interested in receiving comments from the public on the following:

1. Is the expanded conceptual model for risk assessment (Figure 4–1) in the draft amended EA complete?

2. Are the risk-related questions (Section 4.4) appropriate given the new expanded conceptual model?

3. Are there any exposure pathways to the U.S. environment that were not identified or evaluated in the draft amended EA?

4. Are there any potential harms (adverse consequences, effects, or impacts) to the U.S. environment from ABT Salmon that were not identified or evaluated in the draft amended EA?

5. Are there any potential environmental impacts on endangered Atlantic salmon or their critical habit in the United States that were not identified or evaluated in the draft amended EA?

III. Participating in the Public Meeting

Registration: Persons interested in attending this public meeting must register no later than 11:59 p.m. Eastern Time on December 9, 2022. Interested persons can register online at *https://www.fda.gov/animal-veterinary/workshops-conferences-meetings/virtual-public-meeting-aquadvantage-salmon-draft-amended-environmental-assessment-12152022* and will need to provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone. Early registration is recommended. Registrants will receive confirmation when their registration has been accepted and will be provided the webcast link.

If you need special accommodations due to a disability, please contact *CVMamendedEA@fda.hhs.gov* no later than December 9, 2022.

Requests for Oral Presentations: During online registration, you may indicate if you wish to make an oral presentation during the public meeting. To facilitate agenda development, registrants requesting to present will be contacted to provide information regarding which topics they intend to address and the title of their presentation. We will do our best to accommodate requests to make an oral presentation. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations and request time for a joint presentation or submit requests for designated representatives to participate. All requests to make oral presentations must be received by November 28, 2022.

We will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin, and we will notify participants by December 1, 2022. Selected presenters planning to use an electronic slide deck must submit an electronic copy of their PowerPoint presentation to *CVMamendedEA@fda.hhs.gov* with the subject line ''Draft Amended Environmental Assessment for Production of AquAdvantage Salmon at the Bay Fortune and Rollo Bay Facilities on Prince Edward Island, Canada'' on or before December 8, 2022. If presenters choose not to use a slide deck, they are requested to submit a single slide with their name, affiliation, title of their presentation, and contact information. No commercial or promotional material will be permitted to be presented or distributed at the public meeting.

Transcripts: A transcript of the public meeting will be accessible at *https://www.regulations.gov* and on the FDA website at: *https://www.fda.gov/animal-veterinary/workshops-conferences-meetings/virtual-public-meeting-aquadvantage-salmon-draft-amended-environmental-assessment-12152022* approximately 30 days after the meeting. It may be viewed at the Dockets Management Staff (see **ADDRESSES**).

Dated: November 10, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–25002 Filed 11–16–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–2672]

Draft Amended Environmental Assessment for Production of AquAdvantage Salmon at the Bay Fortune and Rollo Bay Facilities on Prince Edward Island, Canada; Availability; Request for Comments

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Notice of availability; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the availability of a document entitled ''Draft Amended Environmental Assessment for Production of AquAdvantage Salmon at the Bay Fortune and Rollo Bay Facilities on Prince Edward Island, Canada.'' This draft amended environmental assessment (EA) has been prepared by FDA in support of the approved new animal drug application (NADA 141–454) concerning AquAdvantage Salmon (AAS), in response to an order by the U.S. District Court, Northern District of California.

DATES: Submit either electronic or written comments on the draft amended EA by January 17, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 17, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked, and identified as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–N–2672 for ''Draft Amended Environmental Assessment for Production of AquAdvantage Salmon at the Bay Fortune and Rollo Bay Facilities on Prince Edward Island, Canada.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–492–7500.

FOR FURTHER INFORMATION CONTACT: Holly Zahner, Center for Veterinary Medicine (HFV–162), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0834, *CVMamendedEA@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

FDA is announcing the availability of a document entitled ''Draft Amended Environmental Assessment for Production of AquAdvantage Salmon at the Bay Fortune and Rollo Bay Facilities on Prince Edward Island, Canada.'' This draft amended EA has been prepared by FDA in support of the approved application (NADA 141–454) concerning AAS, in response to an order by the U.S. District Court, Northern District of California, issued on November 5, 2020; *Inst. for Fisheries Res.* v. *U.S. Food and Drug Admin,* 499 F. Supp. 3d 657, 660 (N.D. Cal. 2020) and is available in the docket or at *https://www.fda.gov/animal-veterinary/workshops-conferences-meetings/virtual-public-meeting-aquadvantage-salmon-draft-amended-environmental-assessment-12152022.*

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As a part of the NADA review process under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, *et seq.*), and consistent with the mandates in the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*) and FDA's environmental impact considerations regulations (21 CFR part 25), FDA's Center for Veterinary Medicine prepared an EA dated November 12, 2015, for the original approval of the rDNA construct as integrated in the genome of AAS. Based on the 2015 EA and the specific conditions that were established in the NADA, FDA determined the action would not individually or cumulatively have a significant effect on the quality of the human environment in the United States. Therefore, FDA prepared a finding of no significant impact (FONSI). Based on the findings in the 2015 EA, FDA also made a ''no effect'' determination under the Endangered Species Act (ESA) (16 U.S.C. 1531, *et seq.*), concluding that AAS, when produced and reared under the conditions in the application, and as described in the 2015 EA, would not jeopardize the continued existence of U.S. populations of threatened or endangered Atlantic salmon or result in the destruction or adverse modification of their critical habitat.

Subsequently, several organizations filed suit in the U.S. District Court, Northern District of California, challenging, among other things, FDA's evaluations under NEPA and the ESA for the 2015 NADA approval. On November 5, 2020, the Court found that ''FDA did not . . . meaningfully analyze what might happen to normal salmon in the event the engineered salmon did survive and establish themselves in the wild. Even if this scenario was unlikely, the FDA was still required to assess the consequences of it coming to pass.'' The

Court ordered FDA to complete the analysis and reconsider its ''no effect'' determination under the ESA together with a revised NEPA evaluation. See *Inst. for Fisheries Res.* v. *U.S. Food and Drug Admin,* 499 F. Supp. 3d 657, 660. However, the Court did not vacate the approval; the approval is still in effect.

To address the November 5, 2020, Court opinion, we have prepared a draft amended EA, entitled ''Draft Amended Environmental Assessment for Production of AquAdvantage Salmon at the Bay Fortune and Rollo Bay Facilities on Prince Edward Island, Canada.'' We request that the public review the draft amended EA and submit comments to the docket.

In this draft amended EA, we have expanded our assessment beyond that in the 2015 EA to include an exhaustive analysis of the likelihood and severity of harms that could occur if AAS and AquAdvantage broodstock (collectively referred to in the amended EA as AquaBounty Technology (ABT) Salmon) are assumed to be present in the U.S. aquatic environment. We outline the pathways necessary for ABT Salmon to escape confinement from the PEI facilities and migrate to and establish a persistent population in the United States. We also evaluate the potential pathways for disease (including pathogen and parasite) transmission from ABT Salmon and from the production of ABT Salmon at facilities on PEI to wild fish populations. In addition, we identify and evaluate the potential harms (consequences) to the U.S. environment and the endangered Atlantic salmon of the Gulf of Maine Distinct Population Segment if these highly unlikely scenarios were to occur. Finally, we revisit whether there is a potential for significant impacts on the U.S. environment under NEPA, and whether the action could result in effects on threatened and endangered Atlantic salmon and their critical habitat in the United States under the ESA. Ultimately, this analysis will aid the Agency in the decision of whether to prepare a FONSI or an environmental impact statement.

We note that the information and analyses in the draft amended EA reflect comments and input received from the National Marine Fisheries Service and the Fish and Wildlife Service during a recent ESA technical assistance review initiated in June 2022 with initial discussions beginning in March 2021. FDA intends to initiate an informal consultation with the services after the close of the public comment period if the current conclusions with respect to the ESA are not altered.

Elsewhere in this issue of the **Federal Register**, we are providing notice of a virtual public meeting on December 15, 2022. Further information, including the time the meeting will start, the agenda, and how to register to attend the meeting, can be found at *https://www.fda.gov/animal-veterinary/workshops-conferences-meetings/virtual-public-meeting-aquadvantage-salmon-draft-amended-environmental-assessment-12152022.*

II. Topics for Comment Regarding the Draft Amended EA

The Agency is placing the draft amended EA on public display at the Dockets Management Staff (see **DATES** and **ADDRESSES**) and at *https://www.fda.gov/animal-veterinary/workshops-conferences-meetings/virtual-public-meeting-aquadvantage-salmon-draft-amended-environmental-assessment-12152022* for public review and comment for 60 days.

Comments should be limited to the draft amended EA only, as described below. We will not review comments outside of the scope of the draft amended EA such as AquAdvantage Salmon generally or the approved application. Given that FDA must comply with a court order and that the public can comment both by submitting comments to the docket and by participating in the public meeting, FDA believes that a 60-day comment period is appropriate and does not intend to grant requests for extension of the comment period.

We are particularly interested in receiving comments from the public on the following:

1. Is the expanded conceptual model for risk assessment (Figure 4–1) in the draft amended EA complete?

2. Are the risk-related questions (Section 4.4) appropriate given the new expanded conceptual model?

3. Are there any exposure pathways to the U.S. environment that were not identified or evaluated in the draft amended EA?

4. Are there any potential harms (adverse consequences, effects, or impacts) to the U.S. environment from ABT Salmon that were not identified or evaluated in the draft amended EA?

5. Are there any potential environmental impacts on endangered Atlantic salmon or their critical habitat in the United States that were not identified or evaluated in the draft amended EA?

Dated: November 10, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–25001 Filed 11–16–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Findings of research misconduct have been made against Romina Mizrahi, M.D., Ph.D. (Respondent), who was a Clinician Scientist, Positron Emission Tomography Centre, Centre for Addiction and Mental Health (CAMH), and an Associate Professor, Department of Psychology, University of Toronto (UT). Respondent engaged in research misconduct in research reported in a grant application submitted for U.S. Public Health Service (PHS) funds, specifically National Institute of Mental Health (NIMH), National Institutes of Health (NIH), grant application R01 MH118495–01. The administrative actions, including supervision for a period of one (1) year, were implemented beginning on November 3, 2022, and are detailed below.

FOR FURTHER INFORMATION CONTACT: Wanda K. Jones, Dr.P.H., Acting Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 240, Rockville, MD 20852, (240) 453–8200.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Romina Mizrahi, M.D., Ph.D., Centre for Addiction and Mental Health and University of Toronto: Based on the report of an investigation conducted by CAMH and analysis conducted by ORI in its oversight review, ORI found that Dr. Romina Mizrahi, former Clinician Scientist, Positron Emission Tomography Centre, CAMH, and an Associate Professor, Department of Psychology, UT, engaged in research misconduct in research reported in a grant application submitted for PHS funds, specifically NIMH, NIH, grant application R01 MH118495–01.

ORI found that Respondent engaged in research misconduct by intentionally, knowingly, or recklessly falsifying data in the following grant application:

- R01 MH118495–01, ''Imaging nociceptin receptors in clinical high risk

and first episode psychosis,'' submitted to NIMH, NIH, on February 2, 2018.

Specifically, ORI finds that Respondent knowingly, intentionally, or recklessly falsified the Positron Emission Tomography (PET) data of the binding of radiopharmaceutical [^{11}C]NOP–1A (NOP) in brain regions between the patient group and healthy volunteer (HV) group. Respondent selectively included one (1) and excluded three (3) participants with their PET data in the HV group and selectively excluded four (4) participants with their PET data in the patient group, to falsely state that the NOP binding in the patient group was statistically higher than that in the HV group in Figure 3, right panel, and the corresponding text in grant application R01 MH118495–01.

Dr. Mizrahi entered into a Voluntary Settlement Agreement (Agreement) and voluntarily agreed to the following:

(1) Respondent will have her research supervised for a period of one (1) year beginning on November 3, 2022 (the ''Supervision Period''). Prior to the submission of an application for PHS support for a research project on which Respondent's participation is proposed and prior to Respondent's participation in any capacity in PHS-supported research, Respondent will submit a plan for supervision of Respondent's duties to ORI for approval. The supervision plan must be designed to ensure the integrity of Respondent's research. Respondent will not participate in any PHS-supported research until such a supervision plan is approved by ORI. Respondent will comply with the agreed-upon supervision plan.

(2) The requirements for Respondent's supervision plan are as follows:

i. A committee of 2–3 senior faculty members at the institution who are familiar with Respondent's field of research, but not including Respondent's supervisor or collaborators, will provide oversight and guidance for a period of one (1) year from the effective date of the Agreement. The committee will review primary data from Respondent's laboratory on a quarterly basis and submit a report to ORI at six (6) month intervals setting forth the committee meeting dates and Respondent's compliance with appropriate research standards and confirming the integrity of Respondent's research.

ii. The committee will conduct an advance review of each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved. The review will include a discussion with Respondent of the primary data represented in those documents and will include a certification to ORI that the data presented in the proposed application, report, manuscript, or abstract are supported by the research record.

(3) During the Supervision Period, Respondent will ensure that any institution employing her submits, in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved, a certification to ORI that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported and not plagiarized in the application, report, manuscript, or abstract.

(4) If no supervision plan is provided to ORI, Respondent will provide certification to ORI at the conclusion of the Supervision Period that her participation was not proposed on a research project for which an application for PHS support was submitted and that she has not participated in any capacity in PHS-supported research.

(5) During the Supervision Period, Respondent will exclude herself voluntarily from serving in any advisory or consultant capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee.

Dated: November 14, 2022.

Wanda K. Jones,

Acting Director, Office of Research Integrity, Office of the Assistant Secretary for Health.

[FR Doc. 2022–25031 Filed 11–16–22; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR22–171: NIDDK Central Repository Non-Renewable Sample Access (X01) Review.

Date: December 15, 2022.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, 2 Democracy, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Najma S. Begum, Ph.D., Scientific Review Officer Review Branch, DEA, NIDDK, National Institutes of Health, Room 7349, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov*.

Information is also available on the Institute's/Center's home page: *www.niddk.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 14, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–25023 Filed 11–16–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special

Emphasis Panel; AMP–PD Extracellular RNA Sequencing Research Resource Review (R24).

Date: December 9, 2022.

Time: 12:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Mir Ahamed Hossain, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223, *mirahamed.hossain@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Clinical Trials and Biomarker Studies in Stroke.

Date: December 12, 2022.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Shanta Rajaram, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–435–6033, *rajarams@mail.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Clinical Trial Readiness for Rare Neurological and Neuromuscular Diseases.

Date: December 12, 2022.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Ana Olariu, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223, *Ana.Olariu@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: November 10, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–25018 Filed 11–16–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Resource Related Research Projects (R24 Clinical Trial Not Allowed).

Date: December 12, 2022.

Time: 9:30 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G11A, Rockville, MD 20892 (Virtual Meeting).

Contact Person: J. Bruce Sundstrom, Ph.D. Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G11A Rockville, MD 20852 240–669–5045 *sundstromj@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 10, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–25022 Filed 11–16–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request Application and Impact of Clinical Research Training on Healthcare Professionals in Academia and Clinical Research (Office of the Director)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

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: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Anne Zajicek, Deputy Director, Office of Clinical Research, OD, NIH, Building 1, Room 208A, 1 Center Drive, Bethesda, MD 20892, or call non-toll-free number (301) 480–9913 or Email your request, including your address to: *zajiceka@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on Tuesday, August 30, 2022, Volume 87, pages 52979–52980 (87 FR 52979) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The Office of Clinical Research, Office of the Director, National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: Application and Impact of Clinical Research Training on Healthcare Professionals in Academia and Clinical Research, 0925–0764-expiration date, 11/30/2022, EXTENSION, Office of Clinical Research (OCR), National Institutes of Health (NIH), Office of the Director (OD).

Need and Use of Information Collection: The purpose of this survey is to assess the long-term impact and outcomes of clinical research training programs provided by the Office of Clinical Research located in the NIH Office of the Director (OD) over a ten-year follow-up period. The information received from respondents will provide insight on the following: impact of the courses on (a) promotion of professional competence, (b) research productivity and independence, and (c) future career development within clinical, translational and academic research settings. These surveys will provide preliminary data and guidance in (1) developing recommendations for collecting outcomes to assess the effectiveness of the training courses, and (2) tracking the impact of the curriculum on participants' ability to perform successfully in academic, non-academic, research, and non-research settings.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 3,674.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondents	Estimated number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
OCR Learning Portal Registration (Attachment 1).	Healthcare Professionals	2,000	1	10/60	333
	Students	3,000	1	10/60	500
	General Public	1,000	1	10/60	167
IPPCR Lecture Evaluation (Attachment 2)	Healthcare Professionals	1,000	1	10/60	167
	Students	2,000	1	10/60	333
	General Public	1,000	1	10/60	167
IPPCR Final Course Evaluation (Attachment 4).	Healthcare Professionals	1,000	1	10/60	167
	Students	2,000	1	10/60	333
	General Public	1,000	1	10/60	167
PCP Lecture Evaluation (Attachment 3)	Healthcare Professionals	1,000	1	10/60	167
	Students	2,000	1	10/60	333
	General Public	1,000	1	10/60	167
PCP Final Course Evaluation (Attachment 5).	Healthcare Professionals	1,000	1	10/60	167
	Students	2,000	1	10/60	333
	General Public	1,000	1	10/60	167
NIH Summer Course in Clinical and Translational Research Course Evaluation (Attachment 6).	Healthcare Professionals	20	1	10/60	3
Sabbatical in Clinical Research Management Course Evaluation (Attachment 7).	Healthcare Professionals	20	1	10/60	3
Total			22,040		3,674

Dated: November 7, 2022.

Tara A. Schwetz,

Acting Principal Deputy Director, National Institutes of Health.

[FR Doc. 2022–24983 Filed 11–16–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2022–N064; FXES11140400000–223–FF04E00000]

Endangered Species; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits, permit renewals, and/or permit amendments to conduct activities intended to enhance the propagation or survival of endangered species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive written data or comments on the applications by December 19, 2022.

ADDRESSES:

Reviewing Documents: Submit requests for copies of applications and other information submitted with the applications to Karen Marlowe (see **FOR FURTHER INFORMATION CONTACT**). All requests and comments should specify the applicant name and application number (*e.g.,* Mary Smith, ESPER0001234).

Submitting Comments: If you wish to comment, you may submit comments by one of the following methods:

- *Email (preferred method): permitsR4ES@fws.gov.* Please include your name and return address in your email message. If you do not receive a confirmation from the U.S. Fish and Wildlife Service that we have received your email message, contact us directly at the telephone number listed in **FOR FURTHER INFORMATION CONTACT.**
- *U.S. mail:* U.S. Fish and Wildlife Service Regional Office, Ecological Services, 1875 Century Boulevard, Atlanta, GA 30345 (Attn: Karen Marlowe, Permit Coordinator).

FOR FURTHER INFORMATION CONTACT: Karen Marlowe, Permit Coordinator, 404–679–7097 (telephone) or *karen_marlowe@fws.gov* (email). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite review and comment from the public and local, State, Tribal, and Federal agencies on applications we have received for permits to conduct certain activities with endangered and threatened species under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17. Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act of 1974, as amended (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552).

Background

With some exceptions, the ESA prohibits take of listed species unless a Federal permit is issued that authorizes such take. The ESA's definition of ''take'' includes hunting, shooting, harming, wounding, or killing, and also such activities as pursuing, harassing, trapping, capturing, or collecting.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to take endangered or threatened species while engaging in activities that are conducted for scientific purposes that promote recovery of species or for enhancement of propagation or survival of species. These activities often include the capture and collection of species, which would result in prohibited take if a permit were not issued. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies, and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies. Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild.

Permit application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ES03305C–1	U.S. Army Corps of Engineers, Memphis District; Memphis, TN.	Chipola slabshell (*Elliptio chipolaensis*), clubshell (*Pleurobema clava*), Curtis pearlymussel (*Epioblasma florentina curtisii*), fanshell (*Cyprogenia stegaria*), fat pocketbook (*Potamilus capax*), fat threeridge (*Amblema neislerii*), Higgins eye (*Lampsilis higginsii*), inflated heelsplitter (*Potamilus inflatus*), Louisiana pearlshell (*Margaritifera hembeli*), northern riffleshell (*Epioblasma rangiana*), orangefoot pimpleback (*Plethobasus cooperianus*), Ouachita rock pocketbook (*Arcidens wheeleri*), oval pigtoe (*Pleurobema pyriforme*), ovate clubshell (*Pleurobema perovatum*), pink mucket (*Lampsilis abrupta*), purple bankclimber (*Elliptoideus sloatianus*), rabbitsfoot (*Quadrula cylindrica cylindrica*), rayed bean (*Villosa fabalis*), ring pink (*Obovaria retusa*), rough pigtoe (*Pleurobema plenum*), scaleshell (*Leptodea leptodon*), sheepnose (*Plethobasus cyphyus*), snuffbox (*Epioblasma triquetra*), southern clubshell (*Pleurobema decisum*), spectaclecase (*Cumberlandia monodonta*), white wartyback (*Plethobasus cicatricosus*), and winged mapleleaf (*Quadrula fragosa*).	Alabama. Arkansas, Florida, Illinois, Iowa, Kentucky, Louisiana, Mississippi, Missouri, Tennessee, and Wisconsin.	Presence/probable absence surveys.	Capture, handle, identify, and release.	Renewal and amendment.
ES55292B–3	University of Florida; Gainesville, FL.	Everglade snail kite (*Rostrhamus sociabilis plumbeus*).	Florida	Demographic and movement studies, genetic analyses, and avian vacuolar myelinopathy research.	Install cameras at nests and collect deceased individuals, unviable eggs, and eggshells.	Amendment.
ES011542–11 ...	Conservation Fisheries, Inc.; Knoxville, TN.	Barrens topminnow (*Fundulus julisia*)	Tennessee	Presence/probable absence surveys.	Capture, handle, identify, and release.	Amendment.

Permit application No.	Applicant	Species	Location	Activity	Type of take	Permit action
PER0055231–0	Matthew A. Bolton; Gainesville, GA.	Fishes: amber darter (*Percina antesella),* blue shiner (*Cyprinella caerulea*), Cherokee darter (*Etheostoma scotti*), Conasauga logperch (*Percina jenkinsi*), Etowah darter (*Etheostoma etowahae*), goldline darter (*Percina aurolineata*), snail darter (*Percina tanasi*), and trispot darter (*Etheostoma trisella*); Mussels: Alabama moccasinshell (*Medionidus acutissimus*), Altamaha spinymussel (*Elliptio spinosa*), Atlantic pigtoe (*Fusconaia masoni*), Coosa moccasinshell (*Medionidus parvulus*), fat threeridge (*Amblema neislerii*), finelined pocketbook (*Hamiota altilis*), Georgia pigtoe (*Pleurobema hanleyianum*), Gulf moccasinshell (*Medionidus penicillatus*), Ochlockonee moccasinshell (*Medionidus simpsonianus*), ovate clubshell (*Pleurobema perovatum*), oval pigtoe (*Pleurobema pyriforme*), purple bankclimber (*Elliptoideus sloatianus*), shinyrayed pocketbook (*Hamiota subangulata*), southern acornshell (*Epioblasma othcaloogensis*), southern clubshell (*Pleurobema decisum*), southern pigtoe (*Pleurobema georgianum*), Suwannee moccasinshell (*Medionidus walkeri*), and triangular kidneyshell (*Ptychobranchus greenii*).	Georgia	Presence/probable absence surveys.	Fishes: Capture, handle, identify, and release; Mussels: Remove from substrate, handle, identify, release, and salvage relic shells.	New.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. 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. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue a permit to an applicant listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

John Tirpak,

Deputy Assistant Regional Director, Ecological Services, Southeast Region.

[FR Doc. 2022–25021 Filed 11–16–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX.23.ZQ00.G402A.00; OMB Control Number 1028–0048]

Agency Information Collection Activities: Did You Feel It? Earthquake Questionnaire

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the U.S. Geological Survey (USGS) is proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before January 17, 2023.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–0048 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Sara McBride by email at *skmcbride@usgs.gov* or by telephone at 650–750–5270. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), all information collections require approval. We may not conduct or sponsor, nor are you required to respond to, a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: The USGS is required to collect, evaluate, publish, and distribute information concerning earthquakes. Respondents have an opportunity to voluntarily supply information concerning the effects of shaking from an earthquake—on themselves, buildings, other man-made structures—as well as on ground effects such as faulting or landslides. Respondents' observations are interpreted in terms of numbers that measure the strength of shaking, and the resulting numbers are displayed on maps that are viewable from USGS earthquake websites. Observations are submitted via the Felt Report questionnaire accessed from the USGS ''Did You Feel It?'' (DYFI) earthquake web pages and may be submitted via computer or mobile phone. Respondents are asked to provide information on the location to which the report pertains. The locations may, at the respondent's option, be given imprecisely (city-name or postal Zip Code) or precisely (street address, geographic coordinates, or current location determined by the user's mobile phone). Low resolution maps of shaking based on both precise and imprecise observations are published for all earthquakes for which observations are submitted. For earthquakes felt by many respondents, the observations that are associated with more precise locations are used in the preparation of higher resolution maps of earthquake shaking.

Additional questions will be added to the DYFI survey, specifically for people who received an alert via the ShakeAlert System (the earthquake early-warning system for the West Coast of the U.S., managed by the USGS) or any earthquake early warning system globally so they can report their experiences to us quickly, in combination with their experiences of the earthquake itself from the DYFI form. This combined data set can tell us much about how the ShakeAlert system operates, when people receive alerts, how they receive them, and what they did once they received them. This is critical information for us to learn about the efficacy of earthquake early-warning systems and make improvements to the ShakeAlert system. Note that only people who receive alerts and indicate that they have will be able to answer the earthquake early-warning questions.

Title of Collection: Did You Feel It? Earthquake Questionnaire.

OMB Control Number: 1028–0048.

Form Number: None.

Type of Review: Revision of currently approved collection.

Respondents/Affected Public: individuals/households.

Total Estimated Number of Annual Respondents: 300,000.

Total Estimated Number of Annual Responses: 300,000.

Estimated Completion Time per Response: 8 minutes.

Total Estimated Number of Annual Burden Hours: 40,000.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion, after an earthquake.

Total Estimated Annual Nonhour Burden Cost 0.

An agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the PRA (44 U.S.C. 3501 *et seq*).

Shane Detweiler,

Assistant Earthquake Science Center Director, USGS.

[FR Doc. 2022–25005 Filed 11–16–22; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[2231A2100DD/AAKC001030/ A0A501010.999900]

Indian Gaming; Approval of Tribal-State Class III Gaming Compact in the State of Wisconsin

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the approval of the Third Amendment to the Sokaogon Chippewa Community and the State of Wisconsin Gaming Compact of 1991 (Amendment) providing for Class III gaming between the Sokaogon Chippewa Community (Tribe) and the State of Wisconsin (State).

DATES: The Amendment takes effect on November 17, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, *paula.hart@bia.gov,* (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary. The Amendment permits the Tribe to engage in on-reservation remote and retail event wagering consistent with the Tribe's minimum internal control standards and rules of play agreed to by the State and the Tribe. The Amendment makes technical amendments to update and correct various provisions of the compact. The Amendment is approved.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2022–25038 Filed 11–16–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[2231A2100DD/AAKC001030/ A0A501010.999900; OMB Control Number 1076–0164]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Homeliving Programs and School Closure and Consolidation

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Education (BIE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before December 19, 2022.

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 Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to Steven Mullen, Information Collection Clearance Officer, Office of Regulatory Affairs and Collaborative Action—Indian Affairs, U.S. Department of the Interior, 1001 Indian School Road NW, Suite 229, Albuquerque, New Mexico 87104; or by email to *comments@bia.gov.* Please reference OMB Control Number 1076–0164 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, please contact Steven Mullen, Information Collection Clearance Officer, *comments@bia.gov,* (202) 924–2650. 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. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on January 26, 2022 (87 FR 4041). No comments were received.

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

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

Abstract: The regulations at 25 CFR 36, Subpart G, Home-living Programs, implement section 1122 of the Native American Education Improvement Act of 2001 (Pub. L. 95–561, title XI, § 1120, as added Pub. L. 107–110, title X, § 1042, Jan. 8, 2002, 115 Stat. 2007). These regulations require the BIE to implement national standards for home-living situations in all BIE-funded residential schools. The BIE must collect information from all BIE-funded residential schools in order to assess each school's progress in meeting the national standards. Submission of this information allows the BIE to ensure that minimum academic standards for the education of Indian children and criteria for dormitory situations in Bureau-operated schools and Indian-controlled contract schools are met.

Proposed Changes to Burden

BIE proposes to increase ''Total Estimated Number of Annual Respondents'' to reflect enrollment at Tribally Controlled, Navajo, and Bureau operated schools.

Title of Collection: Homeliving Programs and School Closure and Consolidation.

OMB Control Number: 1076–0164.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Parents and guardians; Federally recognized Indian Tribes.

Total Estimated Number of Annual Respondents: 594.

Total Estimated Number of Annual Responses: 594 per year, on average.

Estimated Completion Time per Response: Varies from 15 minutes to 40 hours.

Total Estimated Number of Annual Burden Hours: 1,039 hours.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Annual or on occasion, depending on the activity.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

Steven Mullen,

Information Collection Clearance Officer, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2022–25024 Filed 11–16–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[223.LLID933000.L14400000.ET0000.241A0]

Public Land Order No. 7914; Extension of Public Land Order No. 7549; Withdrawal of National Forest System Land To Preserve the Lemhi Pass National Historic Landmark; Montana and Idaho [IDI–33690/MTM–90527]

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This Public Land Order (PLO) extends the duration of the withdrawal created by PLO No. 7549, which would otherwise expire December 26, 2022, for an additional 20-year period. PLO No. 7549 withdrew 1,328.84 acres of National Forest System lands from location and entry under the United States mining laws, but not from the general land laws or mineral leasing laws, subject to valid existing rights. PLO No. 7549 also states that an additional 176.45 acres would become subject to the terms and conditions of this withdrawal upon acquisition of the mineral estate by the United States.

DATES: This PLO takes effect on December 27, 2022.

FOR FURTHER INFORMATION CONTACT: Christine Sloand, Realty Specialist, BLM Idaho State Office, 1387 S Vinnell Way, Boise, Idaho 83709, (208) 373–3897, or *csloand@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. 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 for which the withdrawal was first made requires this extension to continue to protect the Lemhi Pass National Historic Landmark and to preserve the historic, recreational, and cultural heritage which this site represents.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), it is ordered as follows:

1. Subject to valid existing rights, PLO No. 7549 (67 FR 79141), which withdrew 1328.84 acres of National Forest System land from location or entry under the United States mining laws, but not from the general land laws or mineral leasing laws, to preserve the unique resources of Lemhi Pass National Historic Landmark, is hereby extended for an additional 20-year period.

2. An additional 176.45 acres would become subject to the terms and conditions of this withdrawal upon acquisition of the mineral estate by the United States.

3. The withdrawal extended by this Order will expire December 26, 2042, 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 further extended.

Tommy Beaudreau,

Deputy Secretary of the Interior.

[FR Doc. 2022–25070 Filed 11–16–22; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR03010000, 22XR0680A1, RX.18786000.5009000]

Notice of Intent To Prepare a Supplemental Environmental Impact Statement for December 2007 Record of Decision Entitled Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations For Lake Powell and Lake Mead

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent; overview of proposed approach; request for comments.

SUMMARY: The Secretary of the Interior has directed the Bureau of Reclamation (Reclamation) to prepare a Supplemental Environmental Impact Statement (SEIS). The Supplement is to the December 2007 Record of Decision entitled Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead (2007 Interim Guidelines). The Secretary is directing this action because the existing operating guidelines are insufficient given current hydrology and reservoir conditions and in light of plausible low runoff conditions in the Colorado River Basin over the next four years. Through this **Federal Register** notice, Reclamation is providing an overview of the purpose and need for the SEIS, as well as its anticipated approach and timeframe for decisions on revised operating guidelines for Lake Powell and Lake Mead.

DATES: This **Federal Register** notice initiates the public-scoping process for the SEIS. Reclamation requests that the public submit comments concerning the scope of the analysis, potential alternatives, and identification of relevant information, and studies on or before December 20, 2022.

Reclamation will host two public webinars to summarize the content and purpose of this **Federal Register** notice and to receive oral comments:

- Tuesday, November 29, 2022, 10:00 a.m. to 12:00 p.m. MST.
- Friday, December 2, 2022, 11:00 a.m. to 1:00 p.m. MST.

ADDRESSES: Send written comments or questions regarding the proposed SEIS to Reclamation 2007 Interim Guidelines SEIS Project Manager, Upper Colorado Basin Region, 125 South State Street, Suite 8100, Salt Lake City, Utah 84138; or by email to *CRinterimops@usbr.gov.*

- The virtual meeting held on Tuesday, November 29, 2022, may be accessed at: *https://teams.microsoft.com/dl/launcher/launcher.html?url=%2F_%23%2Fl%2Fmeetup-join%2F19%3Ameeting_MWIyNmE5MjYtMDU3Ny00M2NlLWI4MWUtOTk2NjQ0YzhjZWUz%40thread.v2%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%25220693b5ba-4b18-4d7b-9341-f32f400a5494%2522%252c%2522Oid%2522%253a%2522388b569b-9117-49f0-b6f1-cd12ff0587b0%2522%257d%26anon%3Dtrue&type=meetup-join&deeplinkId=c4bdcf7e-39d2-40e8-9fee-98e31f947360&directDl=true&msLaunch=true&enableMobilePage=true&suppressPrompt=true.*
- The virtual meeting held on Friday, December 2, 2022, may be accessed at: *https://teams.microsoft.com/l/meetup-join/19%3ameeting_ODRjNWM1MzAtNmI4Zi00MDVkLWJlYjMtMzcxOGQwYWQ3ZjQ0%40thread.v2/0?context=%7b%22Tid%22%3a%220693b5ba-4b18-4d7b-9341-f32f400a5494%22%2c%22Oid%22%3a%22388b569b-9117-49f0-b6f1-cd12ff0587b0%22%7d.*

For more information regarding the proposed SEIS and the virtual meetings, go to *https://www.usbr.gov/ColoradoRiverBasin/SEIS.html.*

FOR FURTHER INFORMATION CONTACT: Ms. Dedina Williams, Bureau of Reclamation, Lower Colorado Basin Region, at (702) 293–8010, or by email at *dfwilliams@usbr.gov;* or Ms. Marcie Bainson, Bureau of Reclamation, Upper Colorado Basin Region, at (801) 524–3604, or by email at *mbainson@usbr.gov.*

SUPPLEMENTARY INFORMATION: This document provides notice that Reclamation intends to prepare an SEIS and a modified Record of Decision for the 2007 Interim Guidelines. Reclamation is issuing this **Federal Register** notice pursuant to the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. 4321 *et seq.;* the Council on Environmental Quality's (CEQ) regulations for implementing NEPA, 43 CFR parts 1500 through 1508; and the Department of the Interior's NEPA regulations, 43 CFR part 46. The Record of Decision for the 2007 Interim Guidelines is available at 73 FR 19873 (April 11, 2008).

Background

On August 16, 2022, the Department of the Interior announced: ''Prolonged drought and low runoff conditions accelerated by climate change have led to historically low water levels in Lakes Powell and Mead. Over the last two decades, Department leaders have engaged with Colorado River Basin partners on various drought response operations. However, given that water levels continue to decline, additional action is needed to protect the System.'' Recognizing that the Colorado River Basin is facing unprecedented risks, the development of revised operating guidelines for Lake Powell and Lake Mead represents one of many Departmental efforts underway to respond to the rapidly changing conditions in the Basin in order to better protect the System. (Available at *https://www.doi.gov/pressreleases/interior-department-announces-actions-protect-colorado-river-system-sets-2023*).

In a **Federal Register** notice published on June 24, 2022 (87 FR 37884), the Bureau of Reclamation noted the dire circumstances facing the Colorado River Basin: ''The Colorado River Basin provides essential water supplies to approximately 40 million people, nearly 5.5 million acres of agricultural lands, and habitat for ecological resources across the Southwestern United States and Northwestern Mexico. The limited water supplies of the Colorado River are declining, and the Colorado River Basin is currently experiencing a prolonged period of drought and record-low runoff conditions resulting in historically low reservoir levels at Lake Powell and Lake Mead. The period from 2000 through 2022 is the driest 23-year period in more than a century and one of the driest periods in the last 1,200 years. Absent a change in hydrologic conditions, water use patterns, or both, Colorado River reservoirs will continue to decline to critically low elevations threatening essential water supplies across nine states in the United States and the Republic of Mexico (Mexico). It is foreseeable that without appropriate responsive actions and under a continuation of recent hydrologic trends, major Colorado River reservoirs could continue to decline to 'dead pool'—elevations at which water cannot be regularly released from a reservoir—in coming years.'' The June 24, 2022, **Federal Register** notice requested public input prior to initiating a scoping process on the proposed development of post-2026 Colorado River Operational Strategies for Lake Powell and Lake Mead Under Historically Low Reservoir Conditions. The SEIS announced in today's **Federal Register** notice does not interfere with, supplant, or supersede that separate post-2026 guidelines development process. Rather, this SEIS will inform and complement the development of post-2026 guidelines. Further, the dire hydrologic and climate conditions described in the June 2022 **Federal Register** notice also inform the need for the SEIS efforts announced in today's **Federal Register** notice.

In the June 2022 **Federal Register** notice, the Department anticipated the potential for the process initiated in this document: ''While previous actions, especially the DCP [in 2019], were intended to preserve Reclamation's ability to undertake post-2026 planning with a stable system and avoid crisis planning, very dry hydrology since the adoption of the DCP has resulted in Lake Powell and Lake Mead nearing critically low elevations. Should the conditions continue or worsen, we recognize that in addition to post-2026 planning under the anticipated NEPA process(es), Reclamation may likely need to also prioritize implementation of near-term actions to stabilize the decline in reservoir storage and prevent system collapse. Reclamation has not yet determined what additional actions or processes may be required to address these near-term operational risks. It is anticipated that near-term response actions and development of post-2026 operations will need to proceed on parallel timelines.'' 87 FR 37888 (June 24, 2022).

Over the past two years, the Department has undertaken a number of unprecedented actions to respond to the historic drought and low-runoff conditions in the basin that are being exacerbated by higher temperatures and the impacts of climate change. In particular, in both 2021 and 2022, additional releases from upstream reservoirs have been implemented to enhance water elevations at Lake Powell. In 2022, Reclamation implemented modifications to monthly releases from Glen Canyon Dam, and also reduced downstream annual volume releases by 480,000 acre-feet.

Furthermore, on October 20, 2022, the National Oceanic and Atmospheric Administration's Climate Prediction Center issued its U.S. Winter Outlook for the December 2022-Febuary 2023 period finding: ''The greatest chances for drier-than-average conditions are forecast in portions of California, the Southwest, the southern Rockies,'' and ''[w]idespread extreme drought continues to persist across much of the West, the Great Basin, and central-to-southern Great Plains.'' (Available at *https://www.noaa.gov/news-release/us-winter-outlook-warmer-drier-south-with-ongoing-la-nina).*

The Department currently lacks analyzed alternatives and measures that may be necessary to address such projected conditions. Recognizing the risks facing the Colorado River Basin, the Department has concluded that immediate development of additional operational alternatives and measures for Lake Powell and Lake Mead are necessary to ensure continued ''operations that are prudent or necessary for safety of dams, public health and safety, other emergency situations . . . 2007 Interim Guidelines at Section 7.D,'' published at 73 FR 19892 (April 11, 2008).

Through this **Federal Register** notice, Reclamation is initiating efforts to revise operating guidelines for the operation of Glen Canyon and Hoover Dams in 2023 and 2024 operating years in order to address the potential for continued low-runoff conditions in the Colorado River Basin. Reclamation has concluded that the potential impacts of low runoff conditions in the coming winter (2022–23) pose unacceptable risks to routine operations of Glen Canyon and Hoover Dams during the interim period (prior to Jan. 1, 2027) and, accordingly, modified operating guidelines need to be expeditiously developed. Development of modified operating guidelines will also inform potential operations in the 2025 and 2026 operating years; however, due to the critically low current reservoir conditions, and the potential for worsening drought, the Department recognizes that operational strategies for 2023–2024 may need to be further revisited for subsequent operating years. Given the potential risks to infrastructure and public health and safety, the Department will promptly identify and analyze modified operating guidelines to address current and foreseeable hydrologic conditions.

Purpose and Need

The purpose of the SEIS is to supplement the EIS completed in 2007 for the 2007 Interim Guidelines in order to modify operating guidelines for the operation of Glen Canyon and Hoover Dam to address historic drought and low runoff conditions in the Colorado River Basin. The need for the revised operating guidelines is based on the potential that continued low runoff conditions in the Colorado River Basin could lead Glen Canyon Dam to decline to critically low elevations impacting both water delivery and hydropower operations in 2023 and 2024. In order to ensure that Glen Canyon Dam continues to operate under its intended design, Reclamation may need to modify current operations and reduce Glen Canyon Dam downstream releases, thereby impacting downstream riparian areas and reservoir elevations at Lake Mead. Accordingly, in order to protect Hoover Dam operations, system integrity, and public health and safety, Reclamation also may need to modify current operations and reduce Hoover Dam downstream releases. Such revised Hoover Dam operations would, among other issues, address Section 7.B.4 of the 2007 Interim Guidelines as well as the commitments set forth in Section V.B.2 of Exhibit 1 to the Lower Basin Drought Contingency Plan Agreement (2019). Both the 2007 Interim Guidelines and the 2019 DCP contemplate the need for additional measures to protect Lake Mead elevations, with the DCP adding the commitment of participating Lower Basin DCP parties to ''individual and collective action in the Lower Basin to avoid and protect against the potential

for the elevation of Lake Mead to decline to elevations below 1,020 feet.'' As noted above, Section 7.D of the 2007 Interim Guidelines contemplates that modified operating provisions may be required if ''extraordinary circumstances arise. Such circumstances could include operations that are prudent or necessary for safety of dams, public health and safety, other emergency situations, or other unanticipated or unforeseen activities arising from actual operating experience.'' The Department finds that such circumstances exist at this time.

Preliminary Proposed Action—Overview

Reclamation anticipates proposing modifications for the 2023 and 2024 period, and potentially for subsequent years, to the following sections of the 2007 Interim Guidelines published at 73 FR 19881 (April 11, 2008):

Section 2. Determination of Lake Mead Operation During the Interim

Period Reclamation anticipates revising Section 2.D (''Shortage Conditions''), including potential modifications to Sections 2.D.1.b and 2.D.1.c to decrease the quantity of water that shall be apportioned for consumptive use in the Lower Division States (Arizona, California, and Nevada). Any modifications to these sections would be based on current and anticipated reservoir and hydrologic conditions in the Colorado River Basin, including any potential modifications to Glen Canyon Dam operations pursuant to this SEIS.

Section 6. Coordinated Operation of Lake Powell and Lake Mead During the Interim Period

Reclamation anticipates revising Sections 6.C (''Mid-Elevation Release Tier'') and 6.D (''Lower Elevation Balancing Tier'') to modify and/or reduce the quantity of water released from Glen Canyon Dam. Any modifications to these sections would be based on current and anticipated reservoir and hydrologic conditions in the Colorado River Basin, including any potential modifications to Hoover Dam operations pursuant to this SEIS.

Section 7. Implementation of Guidelines

Reclamation anticipates revising Section 7.C (''Mid-Year Review) to allow for potential determinations in a mid-year review that would allow for reduced deliveries from Lake Mead pursuant to Section 2 of the 2007 Interim Guidelines.

The foregoing potential modifications to the 2007 Interim Guidelines are presented in this **Federal Register** notice only as a preliminary overview of the Proposed Action. Reclamation will carefully review the 2007 Interim Guidelines and will formally publish a Proposed Action in its forthcoming Draft SEIS, which is anticipated to be published in Spring 2023.

Preliminary Alternatives—Overview

For purposes of the NEPA process for the SEIS, Reclamation anticipates three primary alternatives will be considered:

- No Action—The No Action Alternative will describe the continued implementation of existing agreements that control operations of Glen Canyon and Hoover Dams. These include the 2007 Interim Guidelines and agreements adopted pursuant to the 2019 Colorado River Drought Contingency Plan Authorization Act (Pub. L. 116–14) (the 2019 Drought Contingency Plan (DCP) Act). Reclamation notes that intensive efforts are underway to facilitate water conservation actions in the Basin under a number of programs, including the recent Congressional prioritization of funding through 2026 for drought mitigation in western states, with priority given to the Colorado River Basin and other basins experiencing comparable levels of long-term drought. Public Law 117–169, at § 50233 (Aug. 16, 2022). The ongoing implementation and effectiveness of these efforts will inform the assessment of existing operations and agreements.
- Framework Agreement Alternative—This alternative would be developed as an additional consensus-based set of actions that would build on the existing framework for Colorado River Operations. This Alternative would likely build on commitments and obligations developed by the Basin States, Basin Tribes, and non-governmental organizations that were included in the 2019 DCP. This alternative would facilitate implementation of Section 7.B.2 of the 2007 Interim Guidelines.
- Reservoir Operations Modification Alternative—This alternative would be developed by Reclamation as a set of actions and measures adopted pursuant to Secretarial authority under applicable federal law. This alternative would likely be developed based on the Secretary's authority under federal law to manage Colorado River infrastructure, as necessary, and would consider any inadequacies or limitations of the consensus-based framework considered in the above alternative. This alternative would consider how the Secretary's authority could complement a consensus-based alternative that may not sufficiently mitigate current and projected risks to the Colorado River System reservoirs.

This **Federal Register** notice presents the foregoing potential alternatives only as a preliminary overview of the alternatives that will be analyzed in the DEIS. For planning purposes, Reclamation's analysis will assume that additional releases pursuant to the Drought Response Operating Agreement (DROA) will be administered according to the terms approved in the DCP Act, and that Reclamation will simultaneously pursue system conservation actions in the Upper and Lower Basins. Through the scoping process, Reclamation welcomes public input on how human health and safety considerations can be more expressly integrated into Colorado River operational decision-making, both in this SEIS and other future decision-making processes. Reclamation will carefully review the appropriate range of alternatives for review and will include appropriate alternatives for consideration in its forthcoming Draft SEIS, which is anticipated to be published in Spring 2023.

Summary of Expected Impacts

The SEIS will evaluate reasonably foreseeable impacts from proposed modifications to the 2007 Interim Guidelines. Impacts are not fully known at this time; impact analysis will build upon and utilize information described in the 2007 Final EIS and subsequent relevant analyses. The analysis in the SEIS may consider potential effects on wildlife, threatened and endangered species habitat, recreation, water supplies (agricultural, municipal, environmental), water resources, air quality, cultural resources, hydropower resources, social and economic conditions, and other resources and uses. Reclamation will use an interdisciplinary approach that incorporates the expertise of specialists in the relevant resource fields.

Schedule for the Decision-Making Process

Reclamation will provide additional opportunities for public participation consistent with the NEPA process, including an anticipated 45-day comment period on the draft SEIS. The draft SEIS is anticipated to be available for public review in Spring 2023 and the final SEIS is anticipated to be available with a Record of Decision, as appropriate, in late Summer 2023. This schedule will allow decisions to become effective for 2023–24 operations. During this process, the Secretary retains all

applicable authority to operate Colorado River facilities to respond to emergency or other unforeseen conditions.

Lead and Cooperating Agencies

The Secretary is responsible for the operation of Glen Canyon Dam and Hoover Dam pursuant to applicable federal law. The Secretary is also vested with the responsibility of managing the mainstream waters of the lower Colorado River pursuant to federal law. This responsibility is carried out consistent with the body of compacts, treaties, statutes and other legal documents commonly referred to as ''the Law of the River.'' Reclamation, as the agency that is designated to act on the Secretary's behalf with respect to these matters, is the lead federal agency for the purposes of NEPA compliance for the development and implementation of the proposed SEIS interim guidelines.

During the preparation of the 2007 Interim Guidelines, five federal agencies were cooperating agencies for purposes of assisting with environmental analysis and preparation of the Final EIS. These cooperating agencies were the Bureau of Indian Affairs (BIA), the United States Fish and Wildlife Service (FWS), the National Park Service (NPS), Western Area Power Administration (Western), and the United States Section of the International Boundary and Water Commission (USIBWC). Reclamation anticipates inviting these same five agencies to serve as cooperating agencies for the purpose of this SEIS. Reclamation is committed to continue to work with the USIBWC to ensure that efforts under this SEIS are communicated and coordinated with the Republic of Mexico with the goal of continued alignment of operations and responsive actions in both the U.S. and Mexico.

Responsible Official

Consistent with the process and final determinations reached for the 2007 Interim Guidelines, the Secretary of the Interior is the deciding official for this undertaking.

Nature of Decision To Be Made

The Department anticipates the nature of the decision to be made will be revised reservoir operating guidelines, pursuant to appropriate revisions of the Record of Decision for the 2007 Interim Guidelines, for the operation of Glen Canyon and Hoover Dams in 2023 and 2024 operating years, and potentially subsequent years if necessary and appropriate, in order to address the likelihood for continued low-runoff conditions in the Colorado River Basin based on the best available scientific and technical information.

Additional Information

As noted in the June 2022 **Federal Register** notice, Reclamation anticipates initiating a NEPA process to develop the post-2026 operational strategies through a **Federal Register** notice of intent to prepare an EIS in early 2023. Nothing in today's **Federal Register** notice supersedes or displaces Reclamation's efforts in that upcoming process.

This SEIS addressing modified operating guidelines for the period prior to 2026 is necessary to address the unacceptably high risks facing the Colorado River Basin between now and the post-2026 period. Current conditions warrant the flexibility to modify operations before the post-2026 operational strategies are thoroughly identified, analyzed and ultimately adopted. In addressing operations for 2023–24, Reclamation is committed to using the best available information to develop near-term operating guidelines while longer-term approaches are developed. Reclamation anticipates using the work and analysis from this SEIS process to also inform operating guidelines for the 2025–26 period, which will also undergo any additional NEPA analysis as required. Lastly, separate from the development of the SEIS, Reclamation anticipates publishing an informational report in 2023 addressing potential methodologies to support assessments for evaporation, seepage and other system losses in the Colorado River Basin in future years. This information will assist in development of potential interim measures as well as the post-2026 operational strategies.

Public Disclosure of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time.

While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Tommy P. Beaudreau,

Deputy Secretary, Department of the Interior.

[FR Doc. 2022–25004 Filed 11–16–22; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1331]

Certain Outdoor and Semi-Outdoor Electronic Displays, Products Containing Same, and Components Thereof; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation as to a Respondent and Granting Complainant's Motion To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''the Commission'') has determined not to review an initial determination (''ID'') (Order No. 6) of the presiding administrative law judge (''ALJ''): (1) terminating the investigation as to respondent Coates Visual LLC (''Coates Visual'') of Chicago, Illinois; and (2) granting complainant's motion to amend the complaint and notice of investigation (''NOI'') in the above-captioned investigation to add respondent Coates US Inc. (''Coates US'') of Chicago, Illinois.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 23, 2022, based on a complaint filed on behalf of Manufacturing Resources International, Inc. (''Complainant'') of Alpharetta, Georgia. 87 FR 58132–33 (Sept. 23, 2022). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after

importation of certain outdoor and semi-outdoor electronic displays, products containing same, and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 8,854,595; 9,173,322; 9,629,287; 10,506,740; and 11,013,142. The complaint further alleges that a domestic industry exists. The Commission's notice of investigation named seven (7) respondents, including: Coates Visual; Coates Signco Pty Limited of Sydney, Australia; Samsung Electronics Co., Ltd. of Gyeonggi-do, Republic of Korea; Samsung SDS Co. Ltd. of Seoul, Republic of Korea; Samsung SDS America and Samsung Electronics America, Inc., both of Ridgefield Park, New Jersey; and Industrial Enclosure Corporation d/b/a Palmer Digital Group of Aurora, Illinois. The Office of Unfair Import Investigations is not participating in the investigation.

On October 21, 2022, Complainant filed an unopposed motion: (1) to terminate the investigation as to Coates Visual based on the withdrawal of the allegations in the complaint as to this respondent; and (2) for leave to amend the complaint and NOI to add respondent Coates US of Chicago, Illinois to replace Coates Visual as the correctly named respondent.

On October 24, 2022, the ALJ issued the subject ID (Order No. 6) granting Complainant's motion for partial termination of the investigation as to respondent Coates Visual and for leave to amend the complaint and NOI to add respondent Coates US. The subject ID finds that the motion for termination satisfies Commission Rule 210.21(a)(1), 19 CFR 210.21(a)(1). The subject ID also finds that Complainant has shown good cause to amend the NOI pursuant to Commission Rule 210.14(b), 19 CFR 210.14(b), because Complainant ''did not learn the identity of the [correct] respondent until after the institution of the investigation.'' *See* Order No. 6 at 2. No party petitioned for review of the subject ID.

The Commission has determined not to review the subject ID. Respondent Coates Visual is terminated from the investigation and the NOI is amended to add respondent Coates US.

The Commission vote for this determination took place on November 10, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: November 10, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–24986 Filed 11–16–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–22–050]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: November 29, 2022 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. Nos. 731–TA–1299–1300 and 1302 (Review) (Circular Welded Carbon-Quality Steel Pipe from Oman, Pakistan, and the United Arab Emirates). The Commission currently is schedule to complete and file its determinations and views of the Commission on December 14, 2022.
5. Outstanding action jackets: none.

CONTACT PERSON FOR MORE INFORMATION: William Bishop, Supervisory Hearings and Information Officer, 202–205–2595.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: November 14, 2022.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2022–25183 Filed 11–15–22; 4:15 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–22–049]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: November 28, 2022 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. Nos. 701–TA–683 and 731–TA–1594–1596 (Preliminary) (Paper File Folders from China, India, and Vietnam). The Commission currently is scheduled to complete and file its determinations on November 28, 2022; views of the Commission currently are scheduled to be completed and filed on December 5, 2022.
5. Outstanding action jackets: none.

CONTACT PERSON FOR MORE INFORMATION: William Bishop, Supervisory Hearings and Information Officer, 202–205–2595.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: November 14, 2022.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2022–25182 Filed 11–15–22; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested

AGENCY: Bureau of Justice Statistics, Office of Justice Programs, Department of Justice.

ACTION: 60 Day notice.

SUMMARY: The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics is submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: The Department of Justice encourages public comment and will accept input until January 16, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public

burden or associated response time, suggestions, or additional information, please contact the Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531; telephone (202) 307–0765 or send an email to *askbjs@usdoj.gov.* Please include ''STANDARD APPLICATION PROCESS'' in the subject line.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Request for access.

2. *The Title of the Form/Collection:* Data Security Requirements for Accessing Confidential Data.

3. *The agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* There is no form number associated with this information collection. The applicable component within the Department of Justice is the Bureau of Justice Statistics (BJS), in the Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* The Foundations for Evidence-Based Policymaking Act of 2018 mandates that the OMB establish a Standard Application Process (SAP) for requesting access to certain confidential data assets for statistical purposes, including evidence-building The SAP is to be a process through which agencies, the Congressional Budget Office, State, local, and Tribal governments, researchers, and other individuals, as appropriate, may apply to access confidential data assets held by a federal statistical agency or unit for the purposes of developing evidence. With the Interagency Council on Statistical Policy (ICSP) as advisors, the entities upon whom this requirement is levied are working with the SAP Project Management Office (PMO) and with OMB to implement the SAP. The SAP Portal is to be a single web-based common application for requesting access to confidential data assets from federal statistical agencies and units. On behalf of BJS and the other federal statistical agencies and units, the National Center for Science and Engineering Statistics (NCSES) submitted a **Federal Register** Notice in September 2022 announcing plans to collect information through the SAP Portal (87 FR 53793).

Once an application for confidential data is approved through the SAP Portal, BJS will collect information to meet its data security requirements when providing access to restricted use (confidential) microdata for the purpose of evidence building. This collection will occur outside of the SAP Portal. BJS's data security agreements and other paperwork along with the corresponding security protocols allow the agency to maintain careful controls on confidentiality and privacy, as required by law. If an application requesting access to an BJS-owned confidential data asset is approved, BJS will contact the applicant(s) to initiate the process of collecting the following information to fulfill its data security requirements:

- *Restricted data use agreement*—This document is an agreement between BJS's official archive (currently the National Archive of Criminal Justice Data [NACJD]), on behalf of BJS, and the user(s) who is approved to access BJS's confidential data assets exclusively for statistical purposes, including evidence-building, in accordance with the terms and conditions stated in the agreement and all applicable federal laws and regulations. An applicant must submit the appropriate data security plan information to describe how they will protect the data from misuse and unauthorized access. The agreement describes the penalties associated with the misuse or unauthorized access of the data. The agreement requires signature from the applicant(s) and any other representative who has the authority to enter into a legal agreement with NACJD, as applicable.
- *Privacy Certificate*—Office of Justice Programs regulations at 28 CFR part 22 require that a Privacy Certificate be submitted as part of any application for a project in which information identifiable to a private person will be collected, analyzed, or otherwise used for research or statistical purposes. The Privacy Certificate describes the specific technical, administrative, and physical controls and procedures that will be used to protect data confidentiality and safeguard the data from misuse or unauthorized access. The Privacy Certificate is an applicant's certification to comply with BJS's confidentiality requirements. All individuals who will have access to the confidential BJS data are required to sign a Privacy Certificate to affirm their understanding of and agreement to comply with BJS's confidentiality requirements.
- *Data security plan*—This document describes the data access modality requested (physical enclave, virtual enclave, or secure download) and the specific data security measures and technical, physical, and administrative controls that will be followed to protect data from unauthorized disclosure and misuse.
- *Confidentiality pledge*—This document describes the applicant's responsibilities related to accessing restricted data and confidentiality protections the applicant(s) must uphold, including adhering to applicable federal laws and regulations. The assurance requires signature from the applicant(s) and certifies their understanding of and agreement to fulfill the terms in the data use agreement and data security plan.
- *Institutional Review Board (IRB) documentation*—Users of BJS restricted data must comply with Department of Justice regulations at 28 CFR part 46 (Protection of Human Subjects), including ensuring that adequate protections are in place to protect the confidentiality of information identifiable to a private person. Applicants must submit the appropriate documentation to demonstrate that an IRB has approved or exempted the proposed project using BJS restricted data in accordance with the requirements in 28 CFR part 46.
- *Certification of training*—Users of BJS restricted data will be required to complete relevant data security, confidentiality, and privacy training, as appropriate, and provide written certification of completion.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The amount of time to complete the agreements and other paperwork that comprise BJS's security requirements will vary based on the confidential data assets requested. To obtain access to BJS confidential data assets, it is estimated that the average

time to complete and submit BJS's data security agreements, IRB application, and other paperwork is 3 hours (180 minutes). This estimate does not include the time needed to complete and submit an application within the SAP Portal or time waiting to receive a decision from an IRB determination after submitting an application. All efforts related to SAP Portal applications occur prior to and separate from BJS's effort to collect information related to data security requirements.

6. *An estimate of the total public burden (in hours) associated with the collection:* The expected number of applications in the SAP Portal that receive a positive determination from BJS in a given year may vary. Overall, per year, BJS estimates it will collect data security information for 55 application submissions that received a positive determination within the SAP Portal. BJS estimates that the total burden for the collection of information for data security requirements over the course of the three-year OMB clearance will be about 495 hours and, as a result, an average annual burden of 165 hours.

If additional information is required contact: Robert Houser, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 3E.206, Washington, DC 20530.

Dated: November 14, 2022.

Robert Houser,

Department Clearance Officer for PRA, Policy and Planning Staff, Office of the Chief Information Officer, U.S. Department of Justice.

[FR Doc. 2022–25036 Filed 11–16–22; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Work Opportunity Tax Credit

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension with revisions for the authority to conduct the information collection request (ICR) titled, ''Work Opportunity Tax Credit (WOTC).'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by January 16, 2023

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting The National WOTC Team by telephone at 202–693–3980 (this is not a toll-free number), TTY 202–693–8064 (this is not a toll-free number), or by email at *Ask.WOTC@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Workforce Investment, Attn: National WOTC Team, 200 Constitution Avenue NW, Suite C–4510, Washington, DC, 20210; or by email: *Ask.WOTC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: LaToria Strickland, Office of Workforce Investment, by telephone at 202–693–2811 (this is not a toll-free number) or by email at *Strickland.LaToria.M@dol.gov.*

Authority: 44 U.S.C. 3506(c)(2)(A).

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

This ICR collects WOTC program information, including activities conducted by state workforce agencies to review and process employers' certification requests. The WOTC is a federal tax credit available to employers for hiring individuals from certain targeted groups who have consistently faced significant barriers to employment. The WOTC program is authorized under §§ 51 and 3111(e) of the Internal Revenue Code of 1986 (Code), as amended, and the Small Business Job Protection Act of 1996, (Pub. L. 104–188), including Title 26 U.S.C. The WOTC is authorized until December 31, 2025, under the Consolidated Appropriations Act, 2021 (Pub. L. 116–260), Division EE, Title 1, Sec. 113. OMB Control No. 1205–0371 authorizes this information collection. This submission includes seven WOTC processing and administrative forms, as follows:

(1) ETA Form 9061, Revised March 2021—*Individual Characteristics Form (ICF)* and ETA Form 9061, *Spanish version ICF,* Revised March 2021*;*

(2) ETA Form 9062, Revised March 2021—*Conditional Certification;*

(3) ETA Form 9175, Revised March 2021—*Self-Attestation Form (SAF) for Qualified Long-Term Unemployment Recipient (LTUR);*

(4) ETA Form 9063, Revised March 2021—*Employer Certification;*

(5) ETA Form 9058, Revised March 2021—*Certification Workload and Characteristics of Certified Individuals;*

(6) ETA Form 9065, Revised March 2021—*Agency Declaration of Verification Results Worksheet (ADVR);* and

(7) ETA Form 9198, *Employer Representative Declaration Form.*

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 it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0371. Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (*e.g.,* permitting electronic submission of responses).

Agency: DOL–ETA.

Type of Review: Revision.

Title of Collection: Work Opportunity Tax Credit (WOTC).

Form(s): ETA 9061, *Individual Characteristics Form* (ICF); ETA 9061, Spanish version of ICF; ETA 9062, *Conditional Certification;* ETA 9175, *Self-Attestation Form (SAF) for Qualified Long-Term Unemployment Recipient (LTUR);* ETA 9063, *Employer Certification;* ETA 9058, *Certification Workload and Characteristics of Certified Individuals;* ETA 9065, *Agency Declaration of Verification Results Worksheet (ADVR);* and ETA Form 9198, *Employer Representative Declaration Form.*

OMB Control Number: 1205–0371.

Affected Public: State Workforce Agencies (SWAs), Private Sector, Individuals or Households and 501(c) Tax-Exempt organizations hiring certain qualified veterans.

Estimated Number of Respondents: 8,742,593.[1]

Frequency: Varies.

Total Estimated Annual Responses: 18,604,708.[2]

Estimated Average Time per Response: Varies.

Estimated Total Annual Burden Hours: 10,205,4167.

Total Estimated Annual Other Cost Burden: $0.00.

Brent Parton,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2022–25037 Filed 11–16–22; 8:45 am]

BILLING CODE 4510–FN–P

[1] The estimated number for total respondents for Fiscal Year 2021 is derived by adding the SWAs' total workload (2,081,474 certifications issued; 4,042,234 denials issued; and 2,618,832 pending applications) with the total number of state grantees (53).

[2] The estimated number for total annual responses for FY 2021 is derived by combining the unduplicated totals for processing forms completed by employers/jobseekers (9,418,722); SWA reporting forms (424); total determinations issued by the SWAs (6,123,708); and processing of Employer Representative Declarations, ETA Form 9198 (3,061,854).

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 22–090]

Name of Information Collection: Identity Management System (IdMAX) for Personal Identity Validation (PIV) for Routine and Intermittent Access to NASA Facilities, Sites, and Information Systems

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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.

DATES: Comments are due by January 17, 2023.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 60 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.*

Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Bill Edwards-Bodmer, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, 757–864–3292, or email *b.edwards-bodmer@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Homeland Security Presidential Directive 12 (HSPD–12) established a mandatory requirement for a Government-wide identify verification standard. In compliance with HSPD–12 and the National Institute of Standards and Technology (NIST) Federal Information Processing Standard (FIPS) 201: Personal Identity Verification of Federal Employees and Contractors, and OMB Policy memorandum M–05–24 Implementation of Homeland Security Presidential Directive 12, NASA must collect information from members of the public to: (1) validate identity and (2) issue secure and reliable federal credentials to enable access to NASA facilities/sites and NASA information systems. Information collected is consistent with background investigation data to include but not limited to name, date of birth, citizenship, social security number (SSN), address, employment history, biometric identifiers (*e.g.,* fingerprints), signature, digital photograph.

NASA collects information from U.S. Citizens requiring access 30 or more days in a calendar year. NASA also collects information from foreign nationals regardless of their affiliation time. NASA collects, stores, and secures information from individuals identified above in the NASA Identify Management System (IdMAX) in a manner consistent with the Constitution and applicable laws, including the Privacy Act (5 U.S.C. 552a.).

Information is collected via a combination of electronic and paper processes and stored in the NASA Identify Account Exchange (IdMAX) System.

II. Methods of Collection

Electronic (90%) and paper (10%).

III. Data

Title: Identity Management System (IdMAX) for Personal Identity Validation (PIV) for Routine and Intermittent Access to NASA Facilities, Sites, and Information Systems.

OMB Number: 2700–0158.

Type of Review: Extension without change of a currently approved information collection.

Affected Public: Individuals.

Estimated Annual Number of Activities: 52,000.

Estimated Number of Respondents per Activity: 1.

Annual Responses: 52,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 8,667 hours.

Estimated Total Annual Cost: $800,000.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) 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 automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB

approval of this information collection. They will also become a matter of public record.

Cheryl Parker,

Federal Register Liaison Officer.

[FR Doc. 2022–25009 Filed 11–16–22; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 22–092]

Requirement for NASA Recipients of Financial Assistance Awards To Obtain a Quotation From Small and/or Minority Businesses, Women's Business Enterprises and Labor Surplus Area Firms

AGENCY: National Aeronautics and Space Administration.

ACTION: Final notice of a new NASA term and condition.

SUMMARY: NASA has published, in final form in its *Grant and Cooperative Agreement Manual* (GCAM), a new term and condition regarding requirements for NASA recipients of financial assistance awards to obtain quotation from a small and/or minority business, women's business enterprise, or labor surplus area firm.

FOR FURTHER INFORMATION CONTACT: For any questions, comments, or concerns regarding this term and condition, please contact Christiane S. Diallo, email: *Christiane.diallo@nasa.gov,* telephone (202) 358–5179.

SUPPLEMENTARY INFORMATION:

Background

On January 25, 2021, President Biden issued Executive Order (E.O.) 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,* outlining a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. Given that advancing equity requires a systematic approach to embedding fairness in the decision-making process, the E.O. instructs agencies to recognize and work to redress inequities in their policies and programs that serve as barriers to equal opportunity.

In response to E.O. 13985, NASA has taken a few actions, including implementing a new term and condition, that ensure entities funded by NASA are compliant with the procurement standards in the uniform guidance 2 CFR 200.321, *Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.*

Public Comments Discussion

NASA published a request for public comment in the **Federal Register** at 87 FR 10257 on February 23, 2022, on proposed implementation of a new term and condition that requires recipients of NASA financial assistance to obtain a quotation from a small and/or minority business, women's business enterprise, or labor surplus area firm when the acquisition of goods or services exceeds the simplified acquisition threshold. NASA received 36 comments from individual citizens, large and small businesses, colleges and universities, and other non-profit organizations. All comments were carefully reviewed and considered prior to finalizing the term and condition.

NASA received five comments in support of the term and condition where commenters commended NASA for their effort to diversify, promote equality and social responsibility associated with NASA, while inspiring future generations to pursue their passions in Science, Technology, Engineering and Math research. *Response:* NASA recognizes and supports the importance of diversity in its policies and programs and continues to work to identify and overcome barriers that hinder equitable, inclusive access by individuals or communities to the resources and opportunities that make all of NASA's work possible.

NASA received six comments/questions, including one duplicate, regarding applicability and waivers for businesses who may not be able to meet this new requirement. *Response:* The new term and condition applies to ALL NASA grant and cooperative agreement award recipients, regardless of the business types. Furthermore, NASA will not extend waivers for this requirement. Recipients are required to maintain documentation on file indicating why it is impossible to obtain a quote from a small/minority owned business, women's business enterprise, or labor surplus area firm. NASA received two comments/questions regarding partnership and contracting with NASA. *Response:* The NASA Office of Small Business programs (*https://www.nasa.gov/osbp*) provides resource information on how to do business with NASA. Also, NASA's notice of funding opportunities are accessible on the NASA Solicitation and Proposal Integrated Review and Evaluation System (NSPIRES) (*https://nspires.nasaprs.com/external/*) and *www.grants.gov*. NASA received 15 comments from commenters who are opposed to the implementation of the term and condition, citing that this new requirement would place an administrative burden on NASA grant recipients and an unfair advantage to certain business owners. *Response:* NASA's proposed term and condition aligns with 2 CFR 200.321, Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms, which requires non-federal entities to take all necessary steps to ensure the use of minority businesses, women's business enterprises, and labor surplus area firms. Furthermore, 2 CFR 200.318(i), General procurement standards, requires non-Federal entities ''to maintain records sufficient to detail the history of their procurements. The records include but are not limited to the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price''. NASA received four comments with proposed recommendations for ensuring that the new term and condition is effectively implemented. *Response:* NASA will consider the proposed recommendations as it develops its advanced monitoring plan, which is intended to provide an oversight of NASA grants as well as ensure recipients' compliance with NASA grant policy requirements. NASA received four comments from commenters expressing views outside of the proposed term and condition. *Response:* These comments are outside the scope of the **Federal Register** Notice and do not relate to the proposed term and condition.

The full text of the new term and condition is provided below:

Requirement To Obtain a Quotation From Small and/or Minority Businesses, Women's Business Enterprises or Labor Surplus Area Firms

Pursuant to the requirements in 2 CFR 200.321, Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms, grant and cooperative agreement recipients shall, to the extent practicable, obtain at least one quotation in response to a recipient-issued Request for Quotation (RFQ) from a small and/or minority business, women's business enterprise or labor surplus area firms when the acquisition of goods or services exceeds the simplified acquisition threshold (SAT) as defined in the Federal Acquisition Regulation (FAR) part 2.101, Definitions (currently the SAT is $250,000). In the

event that recipients are unable to obtain at least one quote from a small and/or minority business women's business enterprise or labor surplus area firm, a written justification indicating why this was not possible must be maintained in the recipient's records.

End of Term and Condition Implementation

NASA has implemented the new term and condition through revision of the NASA GCAM, which became effective on October 31, 2022, and is accessible at *https://www.nasa.gov/centers/nssc/grants.* The new term and condition will be applied to all new NASA awards and funding amendments to existing awards made on or after the effective date.

Cheryl Parker,

Federal Register Liaison Officer.

[FR Doc. 2022–25055 Filed 11–16–22; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by December 19, 2022. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314 or *ACApermits@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Andrew Titmus, ACA Permit Officer, at the above address, 703–292–4479.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 670, as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2023–020

1. *Applicant:* Lyndsey Lewis, Quark Expeditions, Seattle, WA 98121. *permits@quarkexpeditions.com*

Activity for Which Permit Is Requested

Waste Management. The applicant seeks an Antarctic Conservation Permit for waste management activities associated with the operation of tour vessels in the Antarctic Peninsula region. Activities include helicopter flights and helicopter based shore activities at select locations, short overnight stays (camping) at select locations, and the use of remotely piloted aircrafts (RPAs) in Antarctica. For helicopter operations, the applicant would bring ashore cooking fuel and batteries to be used in emergency situations only. All materials brought shore during helicopter-based activities would be removed from the continent following each activity and measures would be taken to minimize environmental impact in the event of a release. Helicopters would only be refueled aboard the operator's vessel and measures will be in place to prevent accidental discharge. For short overnight stays (camping), the applicant seeks permission for no more than 60 campers and expedition staff to camp overnight at select locations for a maximum of 10 hours ashore. Camping would be away from vegetated sites and at least 150m from wildlife concentrations or lakes, protected areas, historical sites, and scientific stations. Tents would be pitched on snow, ice, or bare smooth rock, at least 15m from the high-water line. No food, other than emergency rations, would be brought onshore and all wastes, including human waste, would be collected and returned to the ship for proper disposal. For remotely piloted aircraft systems (RPAS) operation, the applicant proposes to operate small, battery-operated RPAS consisting, in part, of a quadcopter equipped with cameras to collect commercial and educational footage of the Antarctic. The quadcopter would not be flown over concentrations of birds or mammals, or over Antarctic Specially Protected Areas or Historic Sites and Monuments. The RPAS would only be operated by pilots with extensive experience, who are pre-approved by the Expedition Leader. Several measures would be taken to prevent against loss of the quadcopter including painting them a highly visible color; only flying when the wind is less than 25 knots; flying for only 15 minutes at a time to preserve battery life, a flotation device if operated over water, and an ''auto go home'' feature in case of loss of control link or low battery; having an observer on the lookout for wildlife, people, and other hazards; and ensuring that the separation between the operator and quadcopter does not exceed an operational range of 500 meters.

Location

Andvord Bay, Argentine Islands, Damoy Point/Dorian Bay, Danco Island, Errera Channel, Horseshoe Island, Hovgaard Island, Leith Cove, Lefevre-Utile Point, The Naze, Orne Harbor, Paradise Bay, Pleneau Island, Portal Point, Prospect Point, Ronge Island, Skontorp Cove, Stony Point, Antarctic Peninsula region.

Dates of Permitted Activities

November 1, 2022–March 31, 2027.

Permit Application: 2023–021

2. *Applicant:* John Dennis, Albatros Expeditions, 4770 Biscayne Blvd. PHR, Miami, FL 33137

Activity for Which Permit Is Requested

Waste Management. The applicant seeks an Antarctic Conservation Act permit for waste management activities associated with the use of Remotely piloted aircrafts (RPAs) and all-terrain vehicles (ATVs) in Antarctica. RPAs will be flown by experienced, pre-approved pilots for educational, commercial, or marketing purposes. Aircrafts will not be flown over any concentrations of wildlife, or any Antarctic Specially Protected or Specially Managed Areas or Historic Sites and Monuments without appropriate authorization. Operators will maintain visual line of sight with the aircraft during all flight operations, and measures will be in place to prevent loss of aircraft during operations. Observers will be present to observe for any wildlife or other potential hazards. ATVs will be used to support onshore activities and will be refueled once daily. Refueling of ATVs will be done by experienced staff and precautions will be taken to prevent any accidental release of fuel. Supplies will be on hand to assist in cleanup of any fuel spilled during operations. The applicant seeks a waste management permit to cover

any accidental release that may result from the use of RPAs or ATVs.

Location

Antarctic Peninsula region.

Dates of Permitted Activities

November 1, 2022–March 31, 2027.

Permit Application: 2023–022

3. *Applicant:* Deirdre Dirkman, Vantage Travel, 90 Canal St., Boston, MA 02114

Activity for Which Permit Is Requested

Waste Management. The applicant seeks an Antarctic Conservation Permit for waste management activities associated with use of remotely piloted aircrafts (RPAs) in Antarctica. Aircrafts will be launched from land or by boat and will be used for commercial, marketing, or educational purposes only. RPAs will not be flown over any concentrations of wildlife, Antarctic Specially Protected or Managed Areas or Historic Sites and Monuments without appropriate authorization. Aircraft are only to be flown by experienced, pre-approved pilots in fair weather conditions and in the presence of an observer, who will always maintain visual line of sight with the aircraft during operation. Measures are in place to prevent loss of the aircraft.

Location

Antarctic Peninsula region, Ross Sea region.

Dates of Permitted Activities

December 20, 2022–March 31, 2027.

Permit Application: 2023–023

4. *Applicant:* David Sagrista, Atlas Ocean Voyages, 1 E Broward Blvd. Suite 800, Fort Lauderdale, FL 33301

Activity for Which Permit Is Requested

Waste Management. The applicant seeks an Antarctic Conservation Act permit for waste management activities associated with the use of Remotely piloted aircrafts (RPAs) in Antarctica. RPAs will be flown by experienced, pre-approved pilots for educational, commercial, or marketing purposes. RPAs will only be flown in fair-weather conditions with wind speeds less than 7m/s. Aircrafts will not be flown over any concentrations of wildlife, or any Antarctic Specially Protected or Managed Areas. Operators and observers will maintain visual line of sight with the aircraft during all flight operations, and measures will be in place to prevent loss of aircraft during operations. The applicant seeks a waste management permit to cover any accidental release that may result from the use of RPAs.

Location

Antarctic Peninsula region.

Dates of Permitted Activities

December 1, 2022–March 31, 2027.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2022–25032 Filed 11–16–22; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC 2022–0063]

Performance-Based Containment Leak Test Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft regulatory guide (DG), DG–1391, ''Performance-Based Containment Leak Test Program''. This DG is proposed Revision 1 to regulatory guide (RG) 1.163 of the same name. The proposed revision provides guidance on an acceptable performance-based leak-test program, leakage-rate test methods, procedures, and analyses that may be used to comply with NRC regulations.

DATES: Submit comments by December 19, 2022. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0063. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Brian Lee, Office of Nuclear Reactor Regulation, telephone: 301–415–2916, email: *Brian.Lee@nrc.gov,* and Kyle Song, Office of Nuclear Regulatory Research, telephone: 301–415–3612, email: *Kyle.Song@nrc.gov.* Both are staff members of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0063 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0063.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2022–0063 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission.

The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Additional Information

The NRC is issuing for public comment a DG in the NRC's ''Regulatory Guide'' series. This series was developed to describe methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, to explain techniques that the staff uses in evaluating specific issues or postulated events, and to describe information that the staff needs in its review of applications for permits and licenses.

The DG, entitled ''Performance-Based Containment Leak Test Program,'' is temporarily identified by its task number, DG–1391 (ADAMS Accession No. ML22006A317).

This revision of the guide (Revision 1) addresses new guidance for implementing Option B ''Performance-Based Requirements'' of Appendix J, ''Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors,'' of part 50 of title 10 of the *Code of Federal Regulations* (10 CFR). Specifically, extending Type A test intervals up to 15 years, extending Type C test intervals up to 75 months, and an update to ANSI/ANS–56.8–2020 for acceptable industry standards on technical methods and techniques for performing Types A, B, and C tests. This proposed revised guide contains information specific for a leakage rate testing program for both older plants and newer reactors licensed under both 10 CFR parts 50 and 52.

The staff is also issuing for public comment a draft regulatory analysis (ADAMS Accession No. ML22007A009). The staff developed the regulatory analysis to assess the value of revising RG 1.163 as well as alternative courses of action.

III. Backfitting, Forward Fitting, and Issue Finality

Issuance of DG–1391, if finalized, would not constitute backfitting as defined in 10 CFR 50.109, ''Backfitting,'' and as described in NRC Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests''; would not constitute forward fitting as that term is defined and described in MD 8.4; or affect the issue finality of any approval issued under 10 CFR part 52, ''Licenses, certifications, and approvals for nuclear power reactors.'' As explained in DG–1391, applicants and licensees would not be required to comply with the positions set forth in DG–1391.

IV. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html.* Suggestions will be considered in future updates and enhancements to the ''Regulatory Guide'' series.

Dated: November 10, 2022.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2022–24998 Filed 11–16–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–0001; NRC–2021–0122]

GE-Hitachi Nuclear Energy Americas, LLC; Morris Operation Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering a renewal for twenty years of special nuclear materials (SNM) License SNM–2500 for the possession, transfer, and storage of radioactive material at the Morris Operation independent spent fuel storage installation (ISFSI) in Grundy County, Illinois. The license is held by GE-Hitachi Nuclear Energy Americas, LLC, and, if renewed, would expire on May 31, 2042.

DATES: The environmental assessment (EA) and finding of no significant impact (FONSI) referenced in this document is available on November 17, 2022.

ADDRESSES: Please refer to Docket ID NRC–2021–0122 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0122. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Christine Pineda, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6789, email: *Christine.Pineda@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering a renewal of License SNM–2500, issued to GE-Hitachi Nuclear Energy Americas, LLC (GE-Hitachi), for operation of the Morris Operation ISFSI in Grundy County,

Illinois. Therefore, as required by section 51.21 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Criteria for and identification of licensing and regulatory actions requiring environmental assessments,'' the NRC performed an EA. Based on the results of the EA, the NRC has determined not to prepare an environmental impact statement (EIS) for the renewal and is issuing a FONSI. The NRC is also conducting a safety evaluation of the proposed license renewal.

II. Environmental Assessment

Description of and Need for the Proposed Action

The proposed license renewal would allow GE-Hitachi to continue operations at the Morris Operation ISFSI. As proposed, GE-Hitachi would continue to store spent fuel in a wet (water) storage facility consisting of a cask-loading basin and two spent fuel storage basins. In accordance with its license, GE-Hitachi cannot receive additional spent fuel or replace any spent fuel currently in inventory at the ISFSI without prior NRC approval. Continued storage of the spent fuel and continued operation of the ISFSI is necessary because Congress has not yet established a permanent national repository, and no facility is yet available for monitored retrievable storage.

The proposed action is in accordance with GE-Hitachi's application dated June 30, 2020, as supplemented on February 26, 2021, March 19, 2021, March 24, 2021, January 27, 2022, and May 12, 2022.

Environmental Impacts of the Proposed Action

Approval of the proposed action is not expected to result in changes to current ISFSI operations. Routine operation of the ISFSI is largely passive; activities include continuation of existing monitoring and maintenance activities for the wet storage basins, which are inside a building. The proposed action would not result in any changes in water use or in the types, characteristics, or quantities of radiological or nonradiological air effluents or wastes. GE-Hitachi would continue to operate onsite sanitary wastewater lagoons in compliance with its state-issued permit and would manage the radioactive wastewater system and solid radioactive wastes generated from ISFSI operations in accordance with NRC regulations. No wastewater would be discharged from the property. As a result of these continued ISFSI activities, no significant radiological or non-radiological environmental impacts are expected. Public and occupational dose estimates associated with the continued normal operation and maintenance of the ISFSI would continue to be at levels that are as low as reasonably achievable and within the limits of 10 CFR 20.1101 and 20.1201, respectively, as well as 10 CFR 72.104. The NRC staff also determined that the proposed action does not have the potential to cause effects on historic properties, assuming such historic properties were present. Accordingly, under 36 CFR 800.3(a)(1), no consultation is required under Section 106 of the National Historic Preservation Act.

Environmental Impacts of the Alternatives to the Proposed Action

As alternatives to the proposed action, the staff considered denial of the proposed action (*i.e.,* the ''no-action'' alternative) and the shipment of spent fuel to an offsite facility. Under the no-action alternative, GE-Hitachi would continue to maintain the spent fuel under NRC license at the ISFSI. Ultimately, GE-Hitachi would need to remove the spent fuel, transport it to another ISFSI, and decommission the Morris Operation ISFSI. Until that time, storage at the ISFSI would continue and the potential environmental impacts would be the same as those assessed for the proposed action. The NRC determined that shipment of the spent fuel to a commercial reprocessing facility, a Federal repository, or an interim storage facility is not a reasonable alternative to renewing the license because these facilities are not available in the United States as of the date of the EA.

Agencies and Persons Consulted

The NRC staff consulted with the Illinois Emergency Management Agency, the Illinois Department of Natural Resources, and the Illinois Environmental Protection Agency regarding the environmental impact of the proposed action. These agencies had no comments on the NRC's assessment and conclusions in the EA.

The NRC staff contacted the Illinois State Historic Preservation Office (SHPO) to inform it of the proposed action, and the Illinois SHPO indicated its review of this project was not necessary. The NRC staff also notified 16 Federally recognized Indian Tribes of the proposed action.

III. Finding of No Significant Impact

Based on the EA, the NRC staff has determined that, pursuant to 10 CFR 51.31, preparation of an EIS is not required for the proposed action, and pursuant to 10 CFR 51.32, a FONSI is appropriate.

IV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document description	ADAMS accession No.
Environmental Assessment for Proposed License Renewal	ML22270A269.
GE-Hitachi's Renewal Application, dated June 30, 2020	ML20182A699 (Package).
Response to Request for Supplemental Information, dated February 26, 2021	ML21057A119 (Package).
Response to Request for Clarification, dated March 19, 2021	ML21085A859.
Submittal of Updated Consolidated Safety Analysis Report, dated March 24, 2021	ML21083A200 (Package).
Response to Request for Additional Information, dated January 27, 2022	ML22027A516.
Response to Request for Clarification, dated May 12, 2022	ML22132A072.

Dated: November 10, 2022.

For the Nuclear Regulatory Commission.

Jessie M. Quintero,

Chief, Environmental Review Materials Branch, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2022–24993 Filed 11–16–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0069]

Information Collection: Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material.''

DATES: Submit comments by December 19, 2022. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David C. Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0069 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0069.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession ML22136A264. The supporting statement and burden spreadsheet are available in ADAMS under Accession No. ML22291A090 and ML22136A213.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''10 CFR Part 37, Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on August 10, 2022, 87 FR 48697.

1. *The title of the information collection:* 10 CFR Part 37, ''Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material''.

2. *OMB approval number:* 3150–0214.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* NRC Form 755, ''Advance Notification to the NRC of Shipments of Category 1 Quantities of Radioactive Material''.

5. *How often the collection is required or requested:* One time for initial compliance notifications and fingerprints for the reviewing officials; and as needed for implementation notifications, event notifications, notifications of shipments of radioactive material, and fingerprinting of new employees.

6. *Who will be required or asked to respond:* Licensees that are authorized to possess and use category 1 or category 2 quantities of radioactive material.

7. *The estimated number of annual responses:* 101,479 responses (4,704 Reporting + 1,400 Recordkeeping + 95,375 Third-Party Disclosure).

8. *The estimated number of annual respondents:* 5,600 respondents (1,140 Agreement State Licensees + 260 NRC licensees + 4,200 individuals making personal history disclosures under 37.23(d)).

9. *The estimated number of hours needed annually to comply with the information collection requirement or*

request: 74,043 hours (1,557 reporting + 23,989 recordkeeping + 48,497 third-party disclosure).

10. *Abstract:* Part 37 of title 10 of the *Code of Federal Regulations* (10 CFR), contains security requirements for the use of category 1 and category 2 quantities of radioactive material. Licensees are required to: (1) Develop procedures for the implementation of the security provisions; (2) develop a security plan that describes how security is being implemented; (3) implement security measures for the protection of the radioactive material; (4) conduct training on the procedures and security plan; (5) conduct background investigations for those individuals permitted unescorted access to category 1 or category 2 quantities of radioactive material; (6) coordinate with Local Law Enforcement Agencies (LLEAs) so the LLEAs would be better prepared to respond in an emergency; and (7) conduct coordination activities before shipping category 2 radioactive material, and preplanning and coordination activities before shipping category 1 radioactive material. Licensees are required to promptly report any attempted or actual theft or diversion of the radioactive material. Licensees are required to keep copies of the security plan, procedures, background investigation records, training records, and documentation associated with implementation of the security program. The NRC uses the information required by 10 CFR part 37 to fulfill its responsibilities to respond to, investigate, and correct situations that have the potential to adversely affect public health and safety or the common defense and security.

Dated: November 10, 2022.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2022–24996 Filed 11–16–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–184; NRC–2022–0194]

National Institute of Standards and Technology; National Bureau of Standards Test Reactor

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC, the Commission) is considering issuance of an amendment to Renewed Facility Operating License No. TR–5, issued to the U.S. Department of Commerce, National Institute of Standards and Technology (NIST), for operation of the National Bureau of Standards test reactor (NBSR). The proposed amendment would revise the NBSR Safety Analysis Report (SAR) to allow reactor operation with the debris that remains in the reactor primary coolant system from the February 3, 2021, fuel damage event and after the subsequent cleaning operations. The proposed amendment would not authorize the restart of the NBSR.

DATES: Submit comments by December 19, 2022. Requests for a hearing or petitions for leave to intervene must be filed by January 17, 2023.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0194. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Patrick Boyle, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3936; email: *Patrick.Boyle@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0194 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0194.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The license amendment request dated October 19, 2022, is available in ADAMS under Accession No. ML22293B808.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2022–0194 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Introduction

The NRC is considering issuance of an amendment to Renewed Facility Operating License No. TR–5, issued to

NIST, for operation of the NBSR, located in Montgomery County, MD.

The proposed license amendment would revise the NBSR SAR to allow reactor operation with the debris that remains in the reactor primary coolant system from the February 3, 2021, fuel damage event and after the subsequent cleaning operations. NIST stated that its calculations determined that the maximum possible quantity of debris in the system was initially 66 grams and that not all of this debris had been removed via the cleaning operations of retrieval and filtering. To operate with the remaining debris in the system, NIST proposed changes to Chapter 5, ''Reactor Coolant Systems,'' and Chapter 11, ''Radiation Protection and Waste Management,'' of the SAR. Specifically, Section 5.2.2.4.4 would be added to the SAR to address the impact of the remaining debris on the primary system pumps, valves, piping, heat exchangers, and instrumentation and Section 11.1.1.4.3.1 would be added to the SAR to address the potential impact of small amounts of debris remaining in the reactor on the fission product monitor and other effluent monitors. The proposed license amendment would not authorize the restart of the NBSR.

Before any issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

None of the accidents analyzed in the FSAR would be more than minimally affected by the presence of fuel particles in the primary system, as (a) the mass and size of fuel material is too insignificant to cause any reactivity effects in the reactor, cause flow blockage effects in the system, or limit mechanical devices (*i.e.* shim arms) if it were to be dislodged and (b) the presence of this material has no effect on normal operating parameters. Only two accidents analyzed in Chapter 13 of the [SAR] show results of release of radioactivity: the loss of coolant accident (LOCA) and the maximum hypothetical accident (MHA). The presence of fission products in the primary system has no effect on the consequences of any of the other accidents analyzed.

The MHA considers melting of an entire 8-cycle fuel element. The addition of-at most-a few grams of fuel would be insignificant in comparison. Both the MHA and LOCA accidents result in a total dose of less than 6.5 mrem at the site boundary. By contrast, it is estimated that the presence of the largest piece of remaining fuel material being lodged in the core (which is too large to be carried into the core by normal primary flow velocities) would result in a site boundary dose being at most 0.13 mrem/day, which also conservatively assumes the reactor continues to operate. Thus, there is no more than a minimal increase in the consequences of accidents previously analyzed.

Also, once a LOCA occurs it makes no significant difference if the fission products are laid out on the floor of the process room (submerged in the heavily tritiated primary water) or held in the plumbing. The dose effects of the fission products are insignificant compared to the dose effects of the heavy water that is exposed via the LOCA.

Calculations have shown that that debris larger than 0.093 [inches] will not be transported into the core with the liquid velocity range present in the NBSR inlet and outlet plena leading to the core. Smaller particles have been largely removed by filtration. Thus, remaining debris in the primary system is unlikely to be dislodged into the core.

Therefore, the proposed [SAR] amendment allowing operation with debris in the primary system will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Because of the limited amount and size of material present in the primary system and the limited primary flow velocity, there is no credible scenario whereby the release of material present in the primary system would cause significant flow blockage, mechanical interference, heating, or reactivity effects. Any introduction of the small amount of material into the core would fall into the realm of (and be easily bounded by) the maximum hypothetical accident, which assumes melting of an entire fuel element. No other changes to reactor parameters or operations are being proposed. The proposed amendment to the SAR will not change the operations, process variables or reactor structures, systems, or components.

Therefore, the proposed amendment for operation with small amounts of debris from the February 3, 2021, event will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed license amendment is to modify the NBSR SAR to allow operations with a small amount of debris from the February 3, 2021, incident in the primary system. Calculations have shown that that debris larger than 0.093 [inches] will not be transported into the core with the liquid velocity range present in the NBSR inlet and outlet plena leading to the core. Smaller particles have been largely removed by filtration. Thus, because of the limited amount and size of material present in the primary system and the limited primary flow velocity, there is no credible scenario whereby the release of material present in the primary system would cause significant flow blockage, mechanical interference, heating, or reactivity effects, and is insufficient to cause a significant reduction in any margin of safety. Therefore, the proposed amendment of the SAR in allowing this operation does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves a no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in prevention of resumption of reactor operation. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that

the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult 10 CFR 2.309. If a petition is filed, the presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

If a hearing is requested and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration, which will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (*https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053*) and on the NRC's public website at *https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate.*

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the ''Guidance for Electronic Submissions to the NRC'' (ADAMS Accession No. ML13031A056) and on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9:00 a.m. and 6:00 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as

previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated October 19, 2022.

Attorney for licensee: Henry N. Wixon, Chief of Counsel, National Institute of Standards and Technology, 100 Bureau Drive, Stop 1052, Gaithersburg, MD 20899–1052.

NRC Branch Chief: Joshua Borromeo.

Dated: November 10, 2022.

For the Nuclear Regulatory Commission.

Patrick Boyle,

Project Manager, Non-Power Production and Utilization Facility Licensing Branch, Division of Advanced Reactors and Non-Power Production and Utilization Facilities, Office of Nuclear Reactor Regulation.

[FR Doc. 2022–24985 Filed 11–16–22; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Request for Information; Sustainability of Microgravity R&D During and Beyond ISS Transition

AGENCY: Office of Science and Technology Policy (OSTP).

ACTION: Notice of Request for Information.

SUMMARY: The White House Office of Science and Technology Policy (OSTP) requests input to help inform the development of a National Strategy for Microgravity Research and Development (R&D) to ensure sustainability of space-based research during and beyond microgravity platform transition—from the International Space Station (ISS) to future commercial platforms. This particular request seeks information regarding the future vision of a robust research ecosystem in low-earth orbit (LEO) and the role of the U.S. government in enabling that future.

DATES: Interested persons and organizations are invited to submit comments on or before 5:00 p.m. ET, December 2, 2022 to be considered.

ADDRESSES: Due to time constraints, mailed paper submissions will not be accepted, and electronic submissions received after the deadline may not be taken into consideration. You may submit comments by email:

- *Email: microgravity@ostp.eop.gov,* include *Microgravity RFI* in the subject line of the message.

Instructions: Response to this RFI is voluntary. Email submissions should be machine-readable [PDF, Word] and should not be copy-protected. Respondents need not reply to all questions listed. Each individual or institution is requested to submit only one response, in English. Electronic responses must be provided as attachments to an email. It is recommended that attachments with file sizes exceeding 25MB be compressed (*i.e.,* zipped) to ensure message delivery. Please identify your answers by responding to a specific question or topic if possible. Respondents may answer as many or as few questions as they wish. Comments of seven pages or fewer (2,500 words) are requested; longer responses will not be considered. Responses should include the name of the person(s) or organization(s) filing the response.

Information obtained from this RFI may be used by the Government on a non-attribution basis for planning and strategy development. OSTP will not respond to individual submissions. A response to this RFI will not be viewed as a binding commitment to develop or pursue the project or ideas discussed. This RFI is not accepting applications for financial assistance or financial incentives.

Responses containing references, studies, research, and other empirical data that are not widely published should include copies of or electronic links to the referenced materials. Responses containing profanity, vulgarity, threats, or other inappropriate language or content will not be considered.

Comments submitted in response to this notice are subject to the Freedom of Information Act (FOIA). Responses to this RFI may be posted without change online. OSTP therefore requests that no proprietary information, copyrighted information, or personally identifiable information be submitted in response to this RFI. Please note that the United States Government will not pay for response preparation, or for the use of any information contained in a response.

FOR FURTHER INFORMATION CONTACT: Ezinne Uzo-Okoro; tel: 202–456–4444.

SUPPLEMENTARY INFORMATION: Pursuant to 42 U.S.C. 6617, OSTP is soliciting public input through an RFI to obtain feedback from a wide variety of stakeholders, including individuals, industry, academia, research laboratories, nonprofits, and think tanks. OSTP is specifically interested in public input to inform the development and release of a national strategy to ensure sustainability of space-based research in the decades to come. For the purpose of this RFI, microgravity R&D refers to any research or experimental development activities in LEO that leverage the unique environment of space, including altered gravity, thermal extremes, radiation, micrometeoroids, and the vacuum environment. OSTP seeks response to any or all of the following questions:

1. What should be the United States' vision for the future of microgravity research?

2. What should be the long-term microgravity research goals for U.S. presence in LEO?

3. What are the top critical research, development, or operational needs required to ensure a smooth transition between the International Space Station and future commercial LEO microgravity platforms and realize the ideal future of microgravity research?

4. What would be the most effective role of the U.S. government to ensure sustained LEO microgravity R&D following the retirement of the ISS?

5. Should the U.S. government continue to sponsor a national lab in LEO after ISS transition? If so, what would be the best model(s) for a LEO national lab?

Dated: November 10, 2022.

Rachel Wallace,

Deputy General Counsel.

[FR Doc. 2022–24999 Filed 11–16–22; 8:45 am]

BILLING CODE 3270–F1–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17644 and #17645; Florida Disaster Number FL–00178]

Presidential Declaration Amendment of a Major Disaster for the State of Florida

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 7.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Florida (FEMA–4673–DR), dated 09/29/2022.

Incident: Hurricane Ian.

Incident Period: 09/23/2022 through 11/04/2022.

DATES: Issued on 11/10/2022.

Physical Loan Application Deadline Date: 11/28/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 06/29/2023.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Florida, dated 09/29/2022, is hereby amended to establish the incident period for this disaster as beginning 09/23/2022 and continuing through 11/04/2022.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2022–25065 Filed 11–16–22; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

Notice of Updated NAICS Codes for Use in the Women Owned Small Business Federal Contract Program

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: The U.S. Small Business Administration (SBA) is updating the North American Industry Classification System (NAICS) codes authorized for use in the Women-Owned Small Business Federal Contracting Program (WOSB Program). This update is being made to reflect the U.S. Office of Management and Budget's (OMB) NAICS revision for 2022, identified as NAICS 2022. These changes would impact 85 of the 2017 NAICS codes eligible for use under the WOSB Program.

DATES: The designations of industries contained in this notice apply to all solicitations issued on or after October 1, 2022.

FOR FURTHER INFORMATION CONTACT: Roman Ivey, Program Analyst, Office of Government Contracting and Business Development, *roman.ivey@sba.gov,* (202) 401–1420.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 8(m) of the Small Business Act, 15 U.S.C. 637(m), SBA is responsible for implementing and administering the WOSB Program. The purpose of the WOSB Program is to ensure that women-owned small businesses (WOSBs) have an equal opportunity to participate in federal contracting and to help attain the Federal Government's goal of awarding five percent of its prime contract dollars to WOSBs. The WOSB Program authorizes Federal contracting officers to restrict competition for a contract to WOSBs if (1) There is a reasonable expectation that at least two WOSBs will submit offers that meet the requirements of the acquisition at a fair and reasonable price, and (2) The acquisition is for a good or service assigned a North American Industry Classification System (NAICS) code in which SBA has determined that WOSBs are ''substantially underrepresented.'' The WOSB Program also authorizes contracting officers to award a sole-source contract assigned a WOSB Program-eligible NAICS code, provided that only one WOSB can be identified that can perform the contract at a fair and reasonable price.

Economically disadvantaged women-owned small businesses (EDWOSBs) can likewise receive set-asides and sole-source contracts similar to those described above for WOSBs. Federal agencies may reserve contract opportunities for EDWOSB set-asides and sole-source awards in industries where SBA has determined that WOSBs are ''underrepresented.''

The Small Business Reauthorization Act of 2000, Public Law 106–554, 1(a)(9) [title VIII section 811], required the SBA Administrator to conduct an initial study to identify those industries in which small business concerns owned and controlled by women are underrepresented in Federal contracting, in order to designate those industries as eligible for set-asides and sole-source contracts under the WOSB Program. 15 U.S.C. 637(m)(4). Subsequently, Congress amended the Small Business Act to require SBA to conduct a new study every five years and to submit a report to Congress reflecting the results of each new study. Public Law 113–291, section 825(c) (December 19, 2014). SBA recently conducted a new study and published the results—including the new list of 2017 NAICS codes eligible for use under the WOSB Program—in a **Federal Register** notice. 87 FR 15468 (March 18, 2022).

On December 21, 2021, the U.S. Office of Management and Budget (OMB) published its most recent update to the NAICS industry groups, NAICS 2022, ''Notice of NAICS 2022 Final Decisions; Update of Statistical Policy Directive No. 8, North American Industry Classification System: Classification of Establishments; and Elimination of Statistical Policy Directive No. 9, Standard Industrial Classification of Enterprises.'' (Notice of NAICS 2022) in the **Federal Register**. 86 FR 72277. The Notice of NAICS 2022 stated that Federal statistical establishment data published for years beginning on or after January 1, 2022, should be published using NAICS 2022. Accordingly, SBA published a final rule adopting of the new NAICS 2022 for its size standards. 87 FR 59240 (September 29, 2022).

In order to align the WOSB Program with the Notice of NAICS 2022 and SBA's adoption of NAICS 2022 for its size standards, SBA is issuing this notice to amend the NAICS codes eligible for use under the WOSB Program.

II. Changes in Eligible NAICS Codes

NAICS 2022 created 111 new industries by reclassifying, combining, or splitting 156 NAICS 2017 industries or their parts. In addition, NAICS 2022 renamed some NAICS industry titles. After review and comparison of the NAICS 2017 and NAICS 2022 industry groups, SBA has determined that the changes affect 85 of the 2017 NAICS codes designated as eligible for the WOSB Program in the March 18, 2022, **Federal Register** notice. The 2022 NAICS changes impact 72 NAICS codes designated as eligible for WOSB set-asides and sole-source awards and 13 NAICS codes designated as eligible for EDWOSB set-asides and sole-source awards.

Following is a breakdown of the number and type of impact the new 2022 NAICS codes have on industries eligible for the WOSB Program:

- 65 2017 NAICS codes are combined to form 28 new 2022 NAICS codes.
- One 2017 NAICS code are split into two 2022 NAICS codes.
- Nine 2017 NAICS codes are given a new 2022 NAICS code.
- Nine 2017 NAICS codes are given a new 2022 NAICS code title (the NAICS code itself will not change).
- One 2017 NAICS code is given a new 2022 NAICS code and a new 2022 NAICS code title.

As a result, the total number of NAICS codes eligible under the WOSB program decreases from 759 NAICS codes (2017) to 733 NAICS codes (2022).

Table 1, WOSB NAICS Code Changes from NAICS 2017 to NAICS 2022, summarizes the 6-digit WOSB- and EDWOSB-eligible NAICS codes that are being updated as a result of implementing NAICS 2022.

TABLE 1—WOSB NAICS CODE CHANGES FROM NAICS 2017 TO NAICS 2022

2017 NAICS code	2017 Description	2022 NAICS code	2022 NAICS description	WOSB/EDWOSB eligibility
212324	Kaolin and Ball Clay Mining	212323	Kaolin, Clay, and Ceramic and Refractory Minerals Mining.	EDWOSB
212325	Clay and Ceramic and Refractory Minerals Mining.	212323	Kaolin, Clay, and Ceramic and Refractory Minerals Mining.	EDWOSB
212391	Potash, Soda, and Borate Mineral Mining.	212390	Other Nonmetallic Mineral Mining and Quarrying	EDWOSB
212392	Phosphate Rock Mining	212390	Other Nonmetallic Mineral Mining and Quarrying	EDWOSB
212393	Other Chemical and Fertilizer Mineral Mining.	212390	Other Nonmetallic Mineral Mining and Quarrying	EDWOSB
212399	All Other Nonmetallic Mineral Mining.	212390	Other Nonmetallic Mineral Mining and Quarrying	EDWOSB
311221	Wet Corn Milling	311221	Wet Corn Milling and Starch Manufacturing	WOSB
315110	Hosiery and Sock Mills	315120	Apparel Knitting Mills	WOSB
315190	Other Apparel Knitting Mills	315120	Apparel Knitting Mills	WOSB
315220	Men's and Boys' Cut and Sew Apparel Manufacturing.	315250	Cut and Sew Apparel Manufacturing (except Contractors).	WOSB
315240	Women's, Girls', and Infants' Cut and Sew Apparel Manufacturing.	315250	Cut and Sew Apparel Manufacturing (except Contractors).	WOSB
315280	Other Cut and Sew Apparel Manufacturing.	315250	Cut and Sew Apparel Manufacturing (except Contractors).	WOSB
316992	Women's Handbag and Purse Manufacturing.	316990	Other Leather and Allied Product Manufacturing	WOSB
316998	All Other Leather Good and Allied Product Manufacturing.	316990	Other Leather and Allied Product Manufacturing	WOSB
321213	Engineered Wood Member (except Truss) Manufacturing.	321215	Engineered Wood Member Manufacturing	WOSB
321214	Truss Manufacturing	321215	Engineered Wood Member Manufacturing	WOSB
322121	Paper (except Newsprint) Mills	322120	Paper Mills	WOSB
322122	Newsprint Mills	322120	Paper Mills	WOSB
325314	Fertilizer (Mixing Only) Manufacturing.	325314	Fertilizer (Mixing Only) Manufacturing	WOSB
325314	Fertilizer (Mixing Only) Manufacturing.	325315	Compost Manufacturing	WOSB
325992	Photographic Film, Paper, Plate, and Chemical Manufacturing.	325992	Photographic Film, Paper, Plate, Chemical, and Copy Toner Manufacturing.	WOSB
333244	Printing Machinery and Equipment Manufacturing.	333248	All Other Industrial Machinery Manufacturing	EDWOSB
333249	Other Industrial Machinery Manufacturing.	333248	All Other Industrial Machinery Manufacturing	EDWOSB
333314	Optical Instrument and Lens Manufacturing.	333310	Commercial and Service Industry Machinery Manufacturing.	WOSB
333316	Photographic and Photocopying Equipment Manufacturing.	333310	Commercial and Service Industry Machinery Manufacturing.	WOSB
333318	Other Commercial and Service Industry Machinery Manufacturing.	333310	Commercial and Service Industry Machinery Manufacturing.	WOSB
333997	Scale and Balance Manufacturing	333998	All Other Miscellaneous General Purpose Machinery Manufacturing.	WOSB
333999	All Other Miscellaneous General Purpose Machinery Manufacturing.	333998	All Other Miscellaneous General Purpose Machinery Manufacturing.	WOSB
334613	Blank Magnetic and Optical Recording Media Manufacturing.	334610	Manufacturing and Reproducing Magnetic and Optical Media.	WOSB
334614	Software and Other Prerecorded Compact Disc, Tape, and Record Reproducing.	334610	Manufacturing and Reproducing Magnetic and Optical Media.	WOSB
335110	Electric Lamp Bulb and Part Manufacturing.	335139	Electric Lamp Bulb and Other Lighting Equipment Manufacturing.	EDWOSB
335121	Residential Electric Lighting Fixture Manufacturing.	335131	Residential Electric Lighting Fixture Manufacturing	EDWOSB
335122	Commercial, Industrial, and Institutional Electric Lighting Fixture Manufacturing.	335132	Commercial, Industrial, and Institutional Electric Lighting Fixture Manufacturing.	EDWOSB
335129	Other Lighting Equipment Manufacturing.	335139	Electric Lamp Bulb and Other Lighting Equipment Manufacturing.	EDWOSB
335911	Storage Battery Manufacturing	335910	Battery Manufacturing	WOSB
335912	Primary Battery Manufacturing	335910	Battery Manufacturing	WOSB
336111	Automobile Manufacturing	336110	Automobile and Light Duty Motor Vehicle Manufacturing.	WOSB

TABLE 1—WOSB NAICS CODE CHANGES FROM NAICS 2017 TO NAICS 2022—Continued

2017 NAICS code	2017 Description	2022 NAICS code	2022 NAICS description	WOSB/EDWOSB eligibility
336112	Light Truck and Utility Vehicle Manufacturing.	336110	Automobile and Light Duty Motor Vehicle Manufacturing.	WOSB
337124	Metal Household Furniture Manufacturing.	337126	Household Furniture (except Wood and Upholstered) Manufacturing.	WOSB
337125	Household Furniture (except Wood and Metal) Manufacturing.	337126	Household Furniture (except Wood and Upholstered) Manufacturing.	WOSB
485310	Taxi Service	485310	Taxi and Ridesharing Services	WOSB
511110	Newspaper Publishers	513110	Newspaper Publishers	WOSB
511120	Periodical Publishers	513120	Periodical Publishers	WOSB
511130	Book Publishers	513130	Book Publishers	WOSB
511140	Directory and Mailing List Publishers.	513140	Directory and Mailing List Publishers	WOSB
511191	Greeting Card Publishers	513191	Greeting Card Publishers	WOSB
511199	All Other Publishers	513199	All Other Publishers	WOSB
511210	Software Publishers	513210	Software Publishers	WOSB
515111	Radio Networks	516210	Media Streaming Distribution Services, Social Networks, and Other Media Networks and Content Providers.	WOSB
515112	Radio Stations	516110	Radio Broadcasting Stations	WOSB
515120	Television Broadcasting	516120	Television Broadcasting Stations	WOSB
515120	Television Broadcasting	516210	Media Streaming Distribution Services, Social Networks, and Other Media Networks and Content Providers.	WOSB
515210	Cable and Other Subscription Programming.	516210	Media Streaming Distribution Services, Social Networks, and Other Media Networks and Content Providers.	WOSB
517311	Wired Telecommunications Carriers.	517111	Wired Telecommunications Carriers	WOSB
517312	Wireless Telecommunications Carriers (except Satellite).	517112	Wireless Telecommunications Carriers (except Satellite).	WOSB
517312	Wireless Telecommunications Carriers (except Satellite).	517122	Agents for Wireless Telecommunications Services	WOSB
517911	Telecommunications Resellers	517121	Telecommunications Resellers	WOSB
517911	Telecommunications Resellers	517122	Agents for Wireless Telecommunications Services	WOSB
517919	All Other Telecommunications	517810	All Other Telecommunications	WOSB
518210	Data Processing, Hosting, and Related Services.	518210	Computing Infrastructure Providers, Data Processing, Web Hosting, and Related Services.	WOSB
519110	News Syndicates	516210	Media Streaming Distribution Services, Social Networks, and Other Media Networks and Content Providers.	WOSB
519120	Libraries and Archives	519210	Libraries and Archives	WOSB
519130	Internet Publishing and Broadcasting and Web Search Portals.	513110	Newspaper Publishers	WOSB
519130	Internet Publishing and Broadcasting and Web Search Portals.	513120	Periodical Publishers	WOSB
519130	Internet Publishing and Broadcasting and Web Search Portals.	513130	Book Publishers	WOSB
519130	Internet Publishing and Broadcasting and Web Search Portals.	513140	Directory and Mailing List Publishers	WOSB
519130	Internet Publishing and Broadcasting and Web Search Portals.	513191	Greeting Card Publishers	WOSB
519130	Internet Publishing and Broadcasting and Web Search Portals.	513199	All Other Publishers	WOSB
519130	Internet Publishing and Broadcasting and Web Search Portals.	516210	Media Streaming Distribution Services, Social Networks, and Other Media Networks and Content Providers.	WOSB
519130	Internet Publishing and Broadcasting and Web Search Portals.	519290	Web Search Portals and All Other Information Services.	WOSB
519190	All Other Information Services	519290	Web Search Portals and All Other Information Services.	WOSB
523110	Investment Banking and Securities Dealing.	523150	Investment Banking and Securities Intermediation	WOSB
523120	Securities Brokerage	523150	Investment Banking and Securities Intermediation	WOSB
523130	Commodity Contracts Dealing	523160	Commodity Contracts Intermediation	WOSB
523140	Commodity Contracts Brokerage	523160	Commodity Contracts Intermediation	WOSB
523920	Portfolio Management	523940	Portfolio Management and Investment Advice	WOSB
523930	Investment Advice	523940	Portfolio Management and Investment Advice	WOSB
524292	Third Party Administration of Insurance and Pension Funds.	524292	Pharmacy Benefit Management and Other Third Party Administration of Insurance and Pension Funds.	WOSB
541380	Testing Laboratories	541380	Testing Laboratories and Services	WOSB

TABLE 1—WOSB NAICS CODE CHANGES FROM NAICS 2017 TO NAICS 2022—Continued

2017 NAICS code	2017 Description	2022 NAICS code	2022 NAICS description	WOSB/EDWOSB eligibility
541850	Outdoor Advertising	541850	Indoor and Outdoor Display Advertising	WOSB
561611	Investigation Services	561611	Investigation and Personal Background Check Services.	WOSB
624410	Child Day Care Services	624410	Child Care Services	EDWOSB
811211	Consumer Electronics Repair and Maintenance.	811210	Electronic and Precision Equipment Repair and Maintenance.	WOSB
811212	Computer and Office Machine Repair and Maintenance.	811210	Electronic and Precision Equipment Repair and Maintenance.	WOSB
811213	Communication Equipment Repair and Maintenance.	811210	Electronic and Precision Equipment Repair and Maintenance.	WOSB
811219	Other Electronic and Precision Equipment Repair and Maintenance.	811210	Electronic and Precision Equipment Repair and Maintenance.	WOSB

Table 2, 2022 NAICS Codes in Which WOSBs are Underrepresented (EDWOSB set-aside/sole-source qualified), lists the 2022 NAICS codes available for EDWOSB set-aside and sole-source procurement under the WOSB Program.

TABLE 2—2022 NAICS CODES IN WHICH WOSBS ARE UNDERREPRESENTED

[EDWOSB set-aside/sole-source qualified]

NAICS code	NAICS U.S. industry title
111411	Mushroom Production.
111419	Other Food Crops Grown Under Cover.
111421	Nursery and Tree Production.
111422	Floriculture Production.
112310	Chicken Egg Production.
112320	Broilers and Other Meat Type Chicken Production.
112330	Turkey Production.
112340	Poultry Hatcheries.
112390	Other Poultry Production.
115310	Support Activities for Forestry.
212311	Dimension Stone Mining and Quarrying.
212312	Crushed and Broken Limestone Mining and Quarrying.
212313	Crushed and Broken Granite Mining and Quarrying.
212319	Other Crushed and Broken Stone Mining and Quarrying.
212321	Construction Sand and Gravel Mining.
212322	Industrial Sand Mining.
212323	Kaolin, Clay, and Ceramic and Refractory Minerals Mining.
212390	Other Nonmetallic Mineral Mining and Quarrying.
238310	Drywall and Insulation Contractors.
238320	Painting and Wall Covering Contractors.
238330	Flooring Contractors.
238340	Tile and Terrazzo Contractors.
238350	Finish Carpentry Contractors.
238390	Other Building Finishing Contractors.
238910	Site Preparation Contractors.
238990	All Other Specialty Trade Contractors.
311111	Dog and Cat Food Manufacturing.
311119	Other Animal Food Manufacturing.
311611	Animal (except Poultry) Slaughtering.
311612	Meat Processed from Carcasses.
311613	Rendering and Meat Byproduct Processing.
311615	Poultry Processing.
314110	Carpet and Rug Mills.
314120	Curtain and Linen Mills.
321113	Sawmills.
321114	Wood Preservation.
327410	Lime Manufacturing.
327420	Gypsum Product Manufacturing.
331210	Iron and Steel Pipe and Tube Manufacturing from Purchased Steel.
331221	Rolled Steel Shape Manufacturing.
331222	Steel Wire Drawing.
332613	Spring Manufacturing.
332618	Other Fabricated Wire Product Manufacturing.
332710	Machine Shops.
332721	Precision Turned Product Manufacturing.
332722	Bolt, Nut, Screw, Rivet, and Washer Manufacturing.

TABLE 2—2022 NAICS CODES IN WHICH WOSBS ARE UNDERREPRESENTED—Continued

[EDWOSB set-aside/sole-source qualified]

NAICS code	NAICS U.S. industry title
332811	Metal Heat Treating.
332812	Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers.
332813	Electroplating, Plating, Polishing, Anodizing, and Coloring.
333241	Food Product Machinery Manufacturing.
333242	Semiconductor Machinery Manufacturing.
333243	Sawmill, Woodworking, and Paper Machinery Manufacturing.
333248	All Other Industrial Machinery Manufacturing.
334310	Audio and Video Equipment Manufacturing.
335131	Residential Electric Lighting Fixture Manufacturing.
335132	Commercial, Industrial, and Institutional Electric Lighting Fixture Manufacturing.
335139	Electric Lamp Bulb and Other Lighting Equipment Manufacturing.
335311	Power, Distribution, and Specialty Transformer Manufacturing.
335312	Motor and Generator Manufacturing.
335313	Switchgear and Switchboard Apparatus Manufacturing.
335314	Relay and Industrial Control Manufacturing.
337910	Mattress Manufacturing.
337920	Blind and Shade Manufacturing.
485510	Charter Bus Industry.
488210	Support Activities for Rail Transportation.
512110	Motion Picture and Video Production.
512120	Motion Picture and Video Distribution.
512131	Motion Picture Theaters (except Drive-Ins).
512132	Drive-In Motion Picture Theaters.
512191	Teleproduction and Other Postproduction Services.
512199	Other Motion Picture and Video Industries.
561710	Exterminating and Pest Control Services.
561720	Janitorial Services.
561730	Landscaping Services.
561740	Carpet and Upholstery Cleaning Services.
561790	Other Services to Buildings and Dwellings.
562111	Solid Waste Collection.
562112	Hazardous Waste Collection.
562119	Other Waste Collection.
621310	Offices of Chiropractors.
621320	Offices of Optometrists.
621330	Offices of Mental Health Practitioners (except Physicians).
621340	Offices of Physical, Occupational and Speech Therapists, and Audiologists.
621391	Offices of Podiatrists.
621399	Offices of All Other Miscellaneous Health Practitioners.
624410	Child Care Services.
712110	Museums.
712120	Historical Sites.
712130	Zoos and Botanical Gardens.
712190	Nature Parks and Other Similar Institutions.
721110	Hotels (except Casino Hotels) and Motels.
721120	Casino Hotels.
721191	Bed-and-Breakfast Inns.
721199	All Other Traveler Accommodation.
721211	RV (Recreational Vehicle) Parks and Campgrounds.
721214	Recreational and Vacation Camps (except Campgrounds).
811411	Home and Garden Equipment Repair and Maintenance.
811412	Appliance Repair and Maintenance.
811420	Reupholstery and Furniture Repair.
811430	Footwear and Leather Goods Repair.
811490	Other Personal and Household Goods Repair and Maintenance.
812111	Barber Shops.
812112	Beauty Salons.
812113	Nail Salons.
812191	Diet and Weight Reducing Centers.
812199	Other Personal Care Services.
813110	Religious Organizations.

Table 3, 2022 NAICS Codes in Which WOSBs are Substantially Underrepresented (WOSB set-aside/sole-source qualified), lists the 2022 NAICS codes available for WOSB set-aside and sole-source procurement under the WOSB Program.

TABLE 3—2022 NAICS CODES IN WHICH WOSBS ARE SUBSTANTIALLY UNDERREPRESENTED

[WOSB set-aside/sole-source qualified]

NAICS code	NAICS U.S. industry title
111110	Soybean Farming.
111120	Oilseed (except Soybean) Farming.
111130	Dry Pea and Bean Farming.
111140	Wheat Farming.
111150	Corn Farming.
111160	Rice Farming.
111191	Oilseed and Grain Combination Farming.
111199	All Other Grain Farming.
111910	Tobacco Farming.
111920	Cotton Farming.
111930	Sugarcane Farming.
111940	Hay Farming.
111991	Sugar Beet Farming.
111992	Peanut Farming.
111998	All Other Miscellaneous Crop Farming.
112210	Hog and Pig Farming.
112910	Apiculture.
112920	Horses and Other Equine Production.
112930	Fur-Bearing Animal and Rabbit Production.
112990	All Other Animal Production.
113210	Forest Nurseries and Gathering of Forest Products.
114210	Hunting and Trapping.
115111	Cotton Ginning.
115112	Soil Preparation, Planting, and Cultivating.
115113	Crop Harvesting, Primarily by Machine.
115114	Postharvest Crop Activities (except Cotton Ginning).
115115	Farm Labor Contractors and Crew Leaders.
115116	Farm Management Services.
115210	Support Activities for Animal Production.
211120	Crude Petroleum Extraction.
211130	Natural Gas Extraction.
213111	Drilling Oil and Gas Wells.
213112	Support Activities for Oil and Gas Operations.
213113	Support Activities for Coal Mining.
213114	Support Activities for Metal Mining.
213115	Support Activities for Nonmetallic Minerals (except Fuels) Mining.
221111	Hydroelectric Power Generation.
221112	Fossil Fuel Electric Power Generation.
221113	Nuclear Electric Power Generation.
221114	Solar Electric Power Generation.
221115	Wind Electric Power Generation.
221116	Geothermal Electric Power Generation.
221117	Biomass Electric Power Generation.
221118	Other Electric Power Generation.
221121	Electric Bulk Power Transmission and Control.
221122	Electric Power Distribution.
221210	Natural Gas Distribution.
221310	Water Supply and Irrigation Systems.
221320	Sewage Treatment Facilities.
221330	Steam and Air-Conditioning Supply.
236115	New Single-Family Housing Construction (except For-Sale Builders).
236116	New Multifamily Housing Construction (except For-Sale Builders).
236117	New Housing For-Sale Builders.
236118	Residential Remodelers.
236210	Industrial Building Construction.
236220	Commercial and Institutional Building Construction.
237110	Water and Sewer Line and Related Structures Construction.
237120	Oil and Gas Pipeline and Related Structures Construction.
237130	Power and Communication Line and Related Structures Construction.
237310	Highway, Street, and Bridge Construction.
237990	Other Heavy and Civil Engineering Construction.
311211	Flour Milling.
311212	Rice Milling.
311213	Malt Manufacturing.
311221	Wet Corn Milling and Starch Manufacturing.
311224	Soybean and Other Oilseed Processing.
311225	Fats and Oils Refining and Blending.
311230	Breakfast Cereal Manufacturing.
311313	Beet Sugar Manufacturing.
311314	Cane Sugar Manufacturing.
311340	Nonchocolate Confectionery Manufacturing.

TABLE 3—2022 NAICS CODES IN WHICH WOSBS ARE SUBSTANTIALLY UNDERREPRESENTED—Continued

[WOSB set-aside/sole-source qualified]

NAICS code	NAICS U.S. industry title
311351	Chocolate and Confectionery Manufacturing from Cacao Beans.
311352	Confectionery Manufacturing from Purchased Chocolate.
311411	Frozen Fruit, Juice, and Vegetable Manufacturing.
311412	Frozen Specialty Food Manufacturing.
311421	Fruit and Vegetable Canning.
311422	Specialty Canning.
311423	Dried and Dehydrated Food Manufacturing.
311511	Fluid Milk Manufacturing.
311512	Creamery Butter Manufacturing.
311513	Cheese Manufacturing.
311514	Dry, Condensed, and Evaporated Dairy Product Manufacturing.
311520	Ice Cream and Frozen Dessert Manufacturing.
311710	Seafood Product Preparation and Packaging.
311811	Retail Bakeries.
311812	Commercial Bakeries.
311813	Frozen Cakes, Pies, and Other Pastries Manufacturing.
311821	Cookie and Cracker Manufacturing.
311824	Dry Pasta, Dough, and Flour Mixes Manufacturing from Purchased Flour.
311830	Tortilla Manufacturing.
311911	Roasted Nuts and Peanut Butter Manufacturing.
311919	Other Snack Food Manufacturing.
311920	Coffee and Tea Manufacturing.
311930	Flavoring Syrup and Concentrate Manufacturing.
311941	Mayonnaise, Dressing, and Other Prepared Sauce Manufacturing.
311942	Spice and Extract Manufacturing.
311991	Perishable Prepared Food Manufacturing.
311999	All Other Miscellaneous Food Manufacturing.
312111	Soft Drink Manufacturing.
312112	Bottled Water Manufacturing.
312113	Ice Manufacturing.
312120	Breweries.
312130	Wineries.
312140	Distilleries.
313110	Fiber, Yarn, and Thread Mills.
313210	Broadwoven Fabric Mills.
313220	Narrow Fabric Mills and Schiffli Machine Embroidery.
313230	Nonwoven Fabric Mills.
313240	Knit Fabric Mills.
313310	Textile and Fabric Finishing Mills.
313320	Fabric Coating Mills.
314910	Textile Bag and Canvas Mills.
314994	Rope, Cordage, Twine, Tire Cord, and Tire Fabric Mills.
314999	All Other Miscellaneous Textile Product Mills.
315120	Apparel Knitting Mills.
315210	Cut and Sew Apparel Contractors.
315250	Cut and Sew Apparel Manufacturing (except Contractors).
315990	Apparel Accessories and Other Apparel Manufacturing.
316110	Leather and Hide Tanning and Finishing.
316210	Footwear Manufacturing.
316990	Other Leather and Allied Product Manufacturing.
321211	Hardwood Veneer and Plywood Manufacturing.
321212	Softwood Veneer and Plywood Manufacturing.
321215	Engineered Wood Member Manufacturing.
321219	Reconstituted Wood Product Manufacturing.
321911	Wood Window and Door Manufacturing.
321912	Cut Stock, Resawing Lumber, and Planing.
321918	Other Millwork (including Flooring).
321920	Wood Container and Pallet Manufacturing.
321991	Manufactured Home (Mobile Home) Manufacturing.
321992	Prefabricated Wood Building Manufacturing.
321999	All Other Miscellaneous Wood Product Manufacturing.
322110	Pulp Mills.
322120	Paper Mills.
322130	Paperboard Mills.
322211	Corrugated and Solid Fiber Box Manufacturing.
322212	Folding Paperboard Box Manufacturing.
322219	Other Paperboard Container Manufacturing.
322220	Paper Bag and Coated and Treated Paper Manufacturing.
322230	Stationery Product Manufacturing.
322291	Sanitary Paper Product Manufacturing.
322299	All Other Converted Paper Product Manufacturing.

TABLE 3—2022 NAICS CODES IN WHICH WOSBS ARE SUBSTANTIALLY UNDERREPRESENTED—Continued

[WOSB set-aside/sole-source qualified]

NAICS code	NAICS U.S. industry title
323111	Commercial Printing (except Screen and Books).
323113	Commercial Screen Printing.
323117	Books Printing.
323120	Support Activities for Printing.
324110	Petroleum Refineries.
324121	Asphalt Paving Mixture and Block Manufacturing.
324122	Asphalt Shingle and Coating Materials Manufacturing.
324191	Petroleum Lubricating Oil and Grease Manufacturing.
324199	All Other Petroleum and Coal Products Manufacturing.
325110	Petrochemical Manufacturing.
325120	Industrial Gas Manufacturing.
325130	Synthetic Dye and Pigment Manufacturing.
325180	Other Basic Inorganic Chemical Manufacturing.
325193	Ethyl Alcohol Manufacturing.
325194	Cyclic Crude, Intermediate, and Gum and Wood Chemical Manufacturing.
325199	All Other Basic Organic Chemical Manufacturing.
325211	Plastics Material and Resin Manufacturing.
325212	Synthetic Rubber Manufacturing.
325220	Artificial and Synthetic Fibers and Filaments Manufacturing.
325311	Nitrogenous Fertilizer Manufacturing.
325312	Phosphatic Fertilizer Manufacturing.
325314	Fertilizer (Mixing Only) Manufacturing.
325315	Compost Manufacturing.
325320	Pesticide and Other Agricultural Chemical Manufacturing.
325411	Medicinal and Botanical Manufacturing.
325412	Pharmaceutical Preparation Manufacturing.
325413	In-Vitro Diagnostic Substance Manufacturing.
325414	Biological Product (except Diagnostic) Manufacturing.
325510	Paint and Coating Manufacturing.
325520	Adhesive Manufacturing.
325611	Soap and Other Detergent Manufacturing.
325612	Polish and Other Sanitation Good Manufacturing.
325613	Surface Active Agent Manufacturing.
325620	Toilet Preparation Manufacturing.
325910	Printing Ink Manufacturing.
325920	Explosives Manufacturing.
325991	Custom Compounding of Purchased Resins.
325992	Photographic Film, Paper, Plate, Chemical, and Copy Toner Manufacturing.
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing.
326211	Tire Manufacturing (except Retreading).
326212	Tire Retreading.
326220	Rubber and Plastics Hoses and Belting Manufacturing.
326291	Rubber Product Manufacturing for Mechanical Use.
326299	All Other Rubber Product Manufacturing.
327110	Pottery, Ceramics, and Plumbing Fixture Manufacturing.
327120	Clay Building Material and Refractories Manufacturing.
327211	Flat Glass Manufacturing.
327212	Other Pressed and Blown Glass and Glassware Manufacturing.
327213	Glass Container Manufacturing.
327215	Glass Product Manufacturing Made of Purchased Glass.
327310	Cement Manufacturing.
327320	Ready-Mix Concrete Manufacturing.
327331	Concrete Block and Brick Manufacturing.
327332	Concrete Pipe Manufacturing.
327390	Other Concrete Product Manufacturing.
327910	Abrasive Product Manufacturing.
327991	Cut Stone and Stone Product Manufacturing.
327992	Ground or Treated Mineral and Earth Manufacturing.
327993	Mineral Wool Manufacturing.
327999	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing.
331110	Iron and Steel Mills and Ferroalloy Manufacturing.
331313	Alumina Refining and Primary Aluminum Production.
331314	Secondary Smelting and Alloying of Aluminum.
331315	Aluminum Sheet, Plate, and Foil Manufacturing.
331318	Other Aluminum Rolling, Drawing, and Extruding.
331410	Nonferrous Metal (except Aluminum) Smelting and Refining.
331420	Copper Rolling, Drawing, Extruding, and Alloying.
331491	Nonferrous Metal (except Copper and Aluminum) Rolling, Drawing, and Extruding.
331492	Secondary Smelting, Refining, and Alloying of Nonferrous Metal (except Copper and Aluminum).
331511	Iron Foundries.
331512	Steel Investment Foundries.

TABLE 3—2022 NAICS CODES IN WHICH WOSBS ARE SUBSTANTIALLY UNDERREPRESENTED—Continued

[WOSB set-aside/sole-source qualified]

NAICS code	NAICS U.S. industry title
331513	Steel Foundries (except Investment).
331523	Nonferrous Metal Die-Casting Foundries.
331524	Aluminum Foundries (except Die-Casting).
331529	Other Nonferrous Metal Foundries (except Die-Casting).
332111	Iron and Steel Forging.
332112	Nonferrous Forging.
332114	Custom Roll Forming.
332117	Powder Metallurgy Part Manufacturing.
332119	Metal Crown, Closure, and Other Metal Stamping (except Automotive).
332215	Metal Kitchen Cookware, Utensil, Cutlery, and Flatware (except Precious) Manufacturing.
332216	Saw Blade and Handtool Manufacturing.
332311	Prefabricated Metal Building and Component Manufacturing.
332312	Fabricated Structural Metal Manufacturing.
332313	Plate Work Manufacturing.
332321	Metal Window and Door Manufacturing.
332322	Sheet Metal Work Manufacturing.
332323	Ornamental and Architectural Metal Work Manufacturing.
332410	Power Boiler and Heat Exchanger Manufacturing.
332420	Metal Tank (Heavy Gauge) Manufacturing.
332431	Metal Can Manufacturing.
332439	Other Metal Container Manufacturing.
332510	Hardware Manufacturing.
332911	Industrial Valve Manufacturing.
332912	Fluid Power Valve and Hose Fitting Manufacturing.
332913	Plumbing Fixture Fitting and Trim Manufacturing.
332919	Other Metal Valve and Pipe Fitting Manufacturing.
332991	Ball and Roller Bearing Manufacturing.
332992	Small Arms Ammunition Manufacturing.
332993	Ammunition (except Small Arms) Manufacturing.
332994	Small Arms, Ordnance, and Ordnance Accessories Manufacturing.
332996	Fabricated Pipe and Pipe Fitting Manufacturing.
332999	All Other Miscellaneous Fabricated Metal Product Manufacturing.
333111	Farm Machinery and Equipment Manufacturing.
333112	Lawn and Garden Tractor and Home Lawn and Garden Equipment Manufacturing.
333120	Construction Machinery Manufacturing.
333131	Mining Machinery and Equipment Manufacturing.
333132	Oil and Gas Field Machinery and Equipment Manufacturing.
333310	Commercial and Service Industry Machinery Manufacturing.
333413	Industrial and Commercial Fan and Blower and Air Purification Equipment Manufacturing.
333414	Heating Equipment (except Warm Air Furnaces) Manufacturing.
333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.
333511	Industrial Mold Manufacturing.
333514	Special Die and Tool, Die Set, Jig, and Fixture Manufacturing.
333515	Cutting Tool and Machine Tool Accessory Manufacturing.
333517	Machine Tool Manufacturing.
333519	Rolling Mill and Other Metalworking Machinery Manufacturing.
333611	Turbine and Turbine Generator Set Units Manufacturing.
333612	Speed Changer, Industrial High-Speed Drive, and Gear Manufacturing.
333613	Mechanical Power Transmission Equipment Manufacturing.
333618	Other Engine Equipment Manufacturing.
333912	Air and Gas Compressor Manufacturing.
333914	Measuring, Dispensing, and Other Pumping Equipment Manufacturing.
333921	Elevator and Moving Stairway Manufacturing.
333922	Conveyor and Conveying Equipment Manufacturing.
333923	Overhead Traveling Crane, Hoist, and Monorail System Manufacturing.
333924	Industrial Truck, Tractor, Trailer, and Stacker Machinery Manufacturing.
333991	Power-Driven Handtool Manufacturing.
333992	Welding and Soldering Equipment Manufacturing.
333993	Packaging Machinery Manufacturing.
333994	Industrial Process Furnace and Oven Manufacturing.
333995	Fluid Power Cylinder and Actuator Manufacturing.
333996	Fluid Power Pump and Motor Manufacturing.
333998	All Other Miscellaneous General Purpose Machinery Manufacturing.
334111	Electronic Computer Manufacturing.
334112	Computer Storage Device Manufacturing.
334118	Computer Terminal and Other Computer Peripheral Equipment Manufacturing.
334210	Telephone Apparatus Manufacturing.
334220	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.
334290	Other Communications Equipment Manufacturing.
334412	Bare Printed Circuit Board Manufacturing.
334413	Semiconductor and Related Device Manufacturing.

TABLE 3—2022 NAICS CODES IN WHICH WOSBS ARE SUBSTANTIALLY UNDERREPRESENTED—Continued

[WOSB set-aside/sole-source qualified]

NAICS code	NAICS U.S. industry title
334416	Capacitor, Resistor, Coil, Transformer, and Other Inductor Manufacturing.
334417	Electronic Connector Manufacturing.
334418	Printed Circuit Assembly (Electronic Assembly) Manufacturing.
334419	Other Electronic Component Manufacturing.
334510	Electromedical and Electrotherapeutic Apparatus Manufacturing.
334511	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing.
334512	Automatic Environmental Control Manufacturing for Residential, Commercial, and Appliance Use.
334513	Instruments and Related Products Manufacturing for Measuring, Displaying, and Controlling Industrial Process Variables.
334514	Totalizing Fluid Meter and Counting Device Manufacturing.
334515	Instrument Manufacturing for Measuring and Testing Electricity and Electrical Signals.
334516	Analytical Laboratory Instrument Manufacturing.
334517	Irradiation Apparatus Manufacturing.
334519	Other Measuring and Controlling Device Manufacturing.
334610	Manufacturing and Reproducing Magnetic and Optical Media.
335910	Battery Manufacturing.
335921	Fiber Optic Cable Manufacturing.
335929	Other Communication and Energy Wire Manufacturing.
335931	Current-Carrying Wiring Device Manufacturing.
335932	Noncurrent-Carrying Wiring Device Manufacturing.
335991	Carbon and Graphite Product Manufacturing.
335999	All Other Miscellaneous Electrical Equipment and Component Manufacturing.
336110	Automobile and Light Duty Motor Vehicle Manufacturing.
336120	Heavy Duty Truck Manufacturing.
336211	Motor Vehicle Body Manufacturing.
336212	Truck Trailer Manufacturing.
336213	Motor Home Manufacturing.
336214	Travel Trailer and Camper Manufacturing.
336310	Motor Vehicle Gasoline Engine and Engine Parts Manufacturing.
336320	Motor Vehicle Electrical and Electronic Equipment Manufacturing.
336330	Motor Vehicle Steering and Suspension Components (except Spring) Manufacturing.
336340	Motor Vehicle Brake System Manufacturing.
336350	Motor Vehicle Transmission and Power Train Parts Manufacturing.
336360	Motor Vehicle Seating and Interior Trim Manufacturing.
336370	Motor Vehicle Metal Stamping.
336390	Other Motor Vehicle Parts Manufacturing.
336411	Aircraft Manufacturing.
336412	Aircraft Engine and Engine Parts Manufacturing.
336413	Other Aircraft Parts and Auxiliary Equipment Manufacturing.
336414	Guided Missile and Space Vehicle Manufacturing.
336415	Guided Missile and Space Vehicle Propulsion Unit and Propulsion Unit Parts Manufacturing.
336419	Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing.
336611	Ship Building and Repairing.
336612	Boat Building.
336991	Motorcycle, Bicycle, and Parts Manufacturing.
336992	Military Armored Vehicle, Tank, and Tank Component Manufacturing.
336999	All Other Transportation Equipment Manufacturing.
337110	Wood Kitchen Cabinet and Countertop Manufacturing.
337121	Upholstered Household Furniture Manufacturing.
337122	Nonupholstered Wood Household Furniture Manufacturing.
337126	Household Furniture (except Wood and Upholstered) Manufacturing.
337127	Institutional Furniture Manufacturing.
337211	Wood Office Furniture Manufacturing.
337212	Custom Architectural Woodwork and Millwork Manufacturing.
337214	Office Furniture (except Wood) Manufacturing.
337215	Showcase, Partition, Shelving, and Locker Manufacturing.
339112	Surgical and Medical Instrument Manufacturing.
339113	Surgical Appliance and Supplies Manufacturing.
339114	Dental Equipment and Supplies Manufacturing.
339115	Ophthalmic Goods Manufacturing.
339116	Dental Laboratories.
339910	Jewelry and Silverware Manufacturing.
339920	Sporting and Athletic Goods Manufacturing.
339930	Doll, Toy, and Game Manufacturing.
339940	Office Supplies (except Paper) Manufacturing.
339950	Sign Manufacturing.
339991	Gasket, Packing, and Sealing Device Manufacturing.
339992	Musical Instrument Manufacturing.
339993	Fastener, Button, Needle, and Pin Manufacturing.
339994	Broom, Brush, and Mop Manufacturing.
339995	Burial Casket Manufacturing.
339999	All Other Miscellaneous Manufacturing.

TABLE 3—2022 NAICS CODES IN WHICH WOSBS ARE SUBSTANTIALLY UNDERREPRESENTED—Continued

[WOSB set-aside/sole-source qualified]

NAICS code	NAICS U.S. industry title
481111	Scheduled Passenger Air Transportation.
481112	Scheduled Freight Air Transportation.
481211	Nonscheduled Chartered Passenger Air Transportation.
481212	Nonscheduled Chartered Freight Air Transportation.
481219	Other Nonscheduled Air Transportation.
483111	Deep Sea Freight Transportation.
483112	Deep Sea Passenger Transportation.
483113	Coastal and Great Lakes Freight Transportation.
483114	Coastal and Great Lakes Passenger Transportation.
483211	Inland Water Freight Transportation.
483212	Inland Water Passenger Transportation.
484110	General Freight Trucking, Local.
484121	General Freight Trucking, Long-Distance, Truckload.
484122	General Freight Trucking, Long-Distance, Less Than Truckload.
484210	Used Household and Office Goods Moving.
484220	Specialized Freight (except Used Goods) Trucking, Local.
484230	Specialized Freight (except Used Goods) Trucking, Long-Distance.
485111	Mixed Mode Transit Systems.
485112	Commuter Rail Systems.
485113	Bus and Other Motor Vehicle Transit Systems.
485119	Other Urban Transit Systems.
485210	Interurban and Rural Bus Transportation.
485310	Taxi and Ridesharing Services.
485320	Limousine Service.
485991	Special Needs Transportation.
485999	All Other Transit and Ground Passenger Transportation.
488111	Air Traffic Control.
488119	Other Airport Operations.
488190	Other Support Activities for Air Transportation.
488310	Port and Harbor Operations.
488320	Marine Cargo Handling.
488330	Navigational Services to Shipping.
488390	Other Support Activities for Water Transportation.
488410	Motor Vehicle Towing.
488490	Other Support Activities for Road Transportation.
488510	Freight Transportation Arrangement.
488991	Packing and Crating.
488999	All Other Support Activities for Transportation.
491110	Postal Service.
492110	Couriers and Express Delivery Services.
492210	Local Messengers and Local Delivery.
493110	General Warehousing and Storage.
493120	Refrigerated Warehousing and Storage.
493130	Farm Product Warehousing and Storage.
493190	Other Warehousing and Storage.
512230	Music Publishers.
512240	Sound Recording Studios.
512250	Record Production and Distribution.
512290	Other Sound Recording Industries.
513110	Newspaper Publishers.
513120	Periodical Publishers.
513130	Book Publishers.
513140	Directory and Mailing List Publishers.
513191	Greeting Card Publishers.
513199	All Other Publishers.
513210	Software Publishers.
516110	Radio Broadcasting Stations.
516120	Television Broadcasting Stations.
516210	Media Streaming Distribution Services, Social Networks, and Other Media Networks and Content Providers.
517111	Wired Telecommunications Carriers.
517112	Wireless Telecommunications Carriers (except Satellite).
517121	Telecommunications Resellers.
517122	Agents for Wireless Telecommunications Services.
517410	Satellite Telecommunications.
517810	All Other Telecommunications.
518210	Computing Infrastructure Providers, Data Processing, Web Hosting, and Related Services.
519210	Libraries and Archives.
519290	Web Search Portals and All Other Information Services.
522310	Mortgage and Nonmortgage Loan Brokers.
522320	Financial Transactions Processing, Reserve, and Clearinghouse Activities.
522390	Other Activities Related to Credit Intermediation.

TABLE 3—2022 NAICS CODES IN WHICH WOSBS ARE SUBSTANTIALLY UNDERREPRESENTED—Continued

[WOSB set-aside/sole-source qualified]

NAICS code	NAICS U.S. industry title
523150	Investment Banking and Securities Intermediation.
523160	Commodity Contracts Intermediation.
523910	Miscellaneous Intermediation.
523940	Portfolio Management and Investment Advice.
523991	Trust, Fiduciary, and Custody Activities.
523999	Miscellaneous Financial Investment Activities.
524113	Direct Life Insurance Carriers.
524114	Direct Health and Medical Insurance Carriers.
524126	Direct Property and Casualty Insurance Carriers.
524127	Direct Title Insurance Carriers.
524128	Other Direct Insurance (except Life, Health, and Medical) Carriers.
524130	Reinsurance Carriers.
524210	Insurance Agencies and Brokerages.
524291	Claims Adjusting.
524292	Pharmacy Benefit Management and Other Third Party Administration of Insurance and Pension Funds.
524298	All Other Insurance Related Activities.
525110	Pension Funds.
525120	Health and Welfare Funds.
525190	Other Insurance Funds.
531210	Offices of Real Estate Agents and Brokers.
531311	Residential Property Managers.
531312	Nonresidential Property Managers.
531320	Offices of Real Estate Appraisers.
531390	Other Activities Related to Real Estate.
532111	Passenger Car Rental.
532112	Passenger Car Leasing.
532120	Truck, Utility Trailer, and RV (Recreational Vehicle) Rental and Leasing.
532210	Consumer Electronics and Appliances Rental.
532281	Formal Wear and Costume Rental.
532282	Video Tape and Disc Rental.
532283	Home Health Equipment Rental.
532284	Recreational Goods Rental.
532289	All Other Consumer Goods Rental.
532310	General Rental Centers.
532411	Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing.
532412	Construction, Mining, and Forestry Machinery and Equipment Rental and Leasing.
532420	Office Machinery and Equipment Rental and Leasing.
532490	Other Commercial and Industrial Machinery and Equipment Rental and Leasing.
541110	Offices of Lawyers.
541120	Offices of Notaries.
541191	Title Abstract and Settlement Offices.
541199	All Other Legal Services.
541211	Offices of Certified Public Accountants.
541213	Tax Preparation Services.
541214	Payroll Services.
541219	Other Accounting Services.
541310	Architectural Services.
541320	Landscape Architectural Services.
541330	Engineering Services.
541340	Drafting Services.
541350	Building Inspection Services.
541360	Geophysical Surveying and Mapping Services.
541370	Surveying and Mapping (except Geophysical) Services.
541380	Testing Laboratories and Services.
541511	Custom Computer Programming Services.
541512	Computer Systems Design Services.
541513	Computer Facilities Management Services.
541519	Other Computer Related Services.
541611	Administrative Management and General Management Consulting Services.
541612	Human Resources Consulting Services.
541613	Marketing Consulting Services.
541614	Process, Physical Distribution, and Logistics Consulting Services.
541618	Other Management Consulting Services.
541620	Environmental Consulting Services.
541690	Other Scientific and Technical Consulting Services.
541713	Research and Development in Nanotechnology.
541714	Research and Development in Biotechnology (except Nanobiotechnology).
541715	Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology).
541720	Research and Development in the Social Sciences and Humanities.
541810	Advertising Agencies.
541820	Public Relations Agencies.

TABLE 3—2022 NAICS CODES IN WHICH WOSBS ARE SUBSTANTIALLY UNDERREPRESENTED—Continued

[WOSB set-aside/sole-source qualified]

NAICS code	NAICS U.S. industry title
541830	Media Buying Agencies.
541840	Media Representatives.
541850	Indoor and Outdoor Display Advertising.
541860	Direct Mail Advertising.
541870	Advertising Material Distribution Services.
541890	Other Services Related to Advertising.
541910	Marketing Research and Public Opinion Polling.
541921	Photography Studios, Portrait.
541922	Commercial Photography.
541930	Translation and Interpretation Services.
541940	Veterinary Services.
541990	All Other Professional, Scientific, and Technical Services.
561110	Office Administrative Services.
561210	Facilities Support Services.
561311	Employment Placement Agencies.
561312	Executive Search Services.
561320	Temporary Help Services.
561330	Professional Employer Organizations.
561410	Document Preparation Services.
561421	Telephone Answering Services.
561422	Telemarketing Bureaus and Other Contact Centers.
561431	Private Mail Centers.
561439	Other Business Service Centers (including Copy Shops).
561440	Collection Agencies.
561450	Credit Bureaus.
561491	Repossession Services.
561492	Court Reporting and Stenotype Services.
561499	All Other Business Support Services.
561510	Travel Agencies.
561520	Tour Operators.
561591	Convention and Visitors Bureaus.
561599	All Other Travel Arrangement and Reservation Services.
561611	Investigation and Personal Background Check Services.
561612	Security Guards and Patrol Services.
561613	Armored Car Services.
561621	Security Systems Services (except Locksmiths).
561622	Locksmiths.
561910	Packaging and Labeling Services.
561920	Convention and Trade Show Organizers.
561990	All Other Support Services.
562910	Remediation Services.
562920	Materials Recovery Facilities.
562991	Septic Tank and Related Services.
562998	All Other Miscellaneous Waste Management Services.
611110	Elementary and Secondary Schools.
611210	Junior Colleges.
611310	Colleges, Universities, and Professional Schools.
611410	Business and Secretarial Schools.
611420	Computer Training.
611430	Professional and Management Development Training.
611511	Cosmetology and Barber Schools.
611512	Flight Training.
611513	Apprenticeship Training.
611519	Other Technical and Trade Schools.
611710	Educational Support Services.
621111	Offices of Physicians (except Mental Health Specialists).
621112	Offices of Physicians, Mental Health Specialists.
621410	Family Planning Centers.
621420	Outpatient Mental Health and Substance Abuse Centers.
621491	HMO Medical Centers.
621492	Kidney Dialysis Centers.
621493	Freestanding Ambulatory Surgical and Emergency Centers.
621498	All Other Outpatient Care Centers.
621511	Medical Laboratories.
621512	Diagnostic Imaging Centers.
621610	Home Health Care Services.
621910	Ambulance Services.
621991	Blood and Organ Banks.
621999	All Other Miscellaneous Ambulatory Health Care Services.
622110	General Medical and Surgical Hospitals.
623110	Nursing Care Facilities (Skilled Nursing Facilities).

TABLE 3—2022 NAICS CODES IN WHICH WOSBS ARE SUBSTANTIALLY UNDERREPRESENTED—Continued

[WOSB set-aside/sole-source qualified]

NAICS code	NAICS U.S. industry title
623210	Residential Intellectual and Developmental Disability Facilities.
623220	Residential Mental Health and Substance Abuse Facilities.
623990	Other Residential Care Facilities.
624110	Child and Youth Services.
624120	Services for the Elderly and Persons with Disabilities.
624190	Other Individual and Family Services.
624210	Community Food Services.
624221	Temporary Shelters.
624229	Other Community Housing Services.
624230	Emergency and Other Relief Services.
624310	Vocational Rehabilitation Services.
711211	Sports Teams and Clubs.
711212	Racetracks.
711219	Other Spectator Sports.
711310	Promoters of Performing Arts, Sports, and Similar Events with Facilities.
711320	Promoters of Performing Arts, Sports, and Similar Events without Facilities.
711410	Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures.
711510	Independent Artists, Writers, and Performers.
713110	Amusement and Theme Parks.
713120	Amusement Arcades.
713910	Golf Courses and Country Clubs.
713920	Skiing Facilities.
713930	Marinas.
713940	Fitness and Recreational Sports Centers.
713950	Bowling Centers.
713990	All Other Amusement and Recreation Industries.
722310	Food Service Contractors.
722320	Caterers.
722330	Mobile Food Services.
722511	Full-Service Restaurants.
722513	Limited-Service Restaurants.
722514	Cafeterias, Grill Buffets, and Buffets.
722515	Snack and Nonalcoholic Beverage Bars.
811210	Electronic and Precision Equipment Repair and Maintenance.
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance.
812210	Funeral Homes and Funeral Services.
812220	Cemeteries and Crematories.
812310	Coin-Operated Laundries and Drycleaners.
812320	Drycleaning and Laundry Services (except Coin-Operated).
812331	Linen Supply.
812332	Industrial Launderers.
812910	Pet Care (except Veterinary) Services.
812921	Photofinishing Laboratories (except One-Hour).
812922	One-Hour Photofinishing.
812930	Parking Lots and Garages.
812990	All Other Personal Services.
813211	Grantmaking Foundations.
813212	Voluntary Health Organizations.
813219	Other Grantmaking and Giving Services.
813311	Human Rights Organizations.
813312	Environment, Conservation and Wildlife Organizations.
813319	Other Social Advocacy Organizations.
813410	Civic and Social Organizations.
813910	Business Associations.
813920	Professional Organizations.
813930	Labor Unions and Similar Labor Organizations.
813940	Political Organizations.
813990	Other Similar Organizations (except Business, Professional, Labor, and Political Organizations).

SBA will post the lists of 2022 NAICS codes set forth in this notice on the WOSB Program's website, *www.sba.gov/wosb.*

Beatrice Hidalgo,

Associate Administrator, Government Contracting and Business Development.

[FR Doc. 2022–25013 Filed 11–16–22; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17667 and #17668; Florida Disaster Number FL–00180]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Florida

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 7.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Florida (FEMA–4673–DR), dated 10/03/2022.

Incident: Hurricane Ian.

Incident Period: 09/23/2022 through 11/04/2022.

DATES: Issued on 11/10/2022.

Physical Loan Application Deadline Date: 12/02/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 07/03/2023.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Florida, dated 10/03/2022, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Martin.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2022–25067 Filed 11–16–22; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17667 and #17668; Florida Disaster Number FL–00180]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Florida

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 6.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Florida (FEMA–4673–DR), dated 10/03/2022.

Incident: Hurricane Ian.

Incident Period: 09/23/2022 through 11/04/2022.

DATES: Issued on 11/10/2022.

Physical Loan Application Deadline Date: 12/02/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 07/03/2023.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Florida, dated 10/03/2022, is hereby amended to establish the incident period for this disaster as beginning 09/23/2022 and continuing through 11/04/2022.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2022–25066 Filed 11–16–22; 8:45 am]

BILLING CODE 8026–09–P

STATE JUSTICE INSTITUTE

SJI Board of Directors Meeting, Notice

AGENCY: State Justice Institute.

ACTION: Notice of meeting.

SUMMARY: The purpose of this meeting is to consider grant applications for the 1st quarter of FY 2023, and other business.

DATES: The SJI Board of Directors will be meeting on Monday, December 5, 2022 at 2:30 p.m. AST.

ADDRESSES: Supreme Court of Puerto Rico, 8 Ave. de la Constitucion, San Juan, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Jonathan Mattiello, Executive Director, State Justice Institute, 12700 Fair Lakes Circle, Suite 340, Fairfax, VA 22033, 703–660–4979, *contact@sji.gov.*

(Authority: 42 U.S.C. 10702(f))

Jonathan D. Mattiello,

Executive Director.

[FR Doc. 2022–25061 Filed 11–16–22; 8:45 am]

BILLING CODE 6820–SC–P

SURFACE TRANSPORTATION BOARD

60-Day Notice of Intent To Seek Extension of Approval of Collection: Statutory Authority To Preserve Rail Service

AGENCY: Surface Transportation Board.

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 Surface Transportation Board (Board) gives notice of its intent to request from the Office of Management and Budget (OMB) approval without change of the existing collection, Preservation of Rail Service, OMB Control No. 2140–0022, as described below.

DATES: Comments on this information collection should be submitted by January 13, 2023.

ADDRESSES: Direct all comments to Chris Oehrle, PRA Officer, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001, or to *PRA@stb.gov.* When submitting comments, please refer to ''Paperwork Reduction Act Comments, Statutory Authority to Preserve Rail Service.'' For further information regarding this collection, contact Mike Higgins at (866) 254–1792 (toll-free) or 202–245–0238, or by emailing *rcpa@stb.gov.* Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Comments are requested concerning each collection as to (1) whether the particular collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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, when appropriate. Submitted comments will be included and summarized in the Board's request for OMB approval.

Subjects: In this notice, the Board is requesting comments on the extension of the following information collection:

Description of Collection

Title: Preservation of Rail Service.

OMB Control Number: 2140–0022.

STB Form Number: None.

Type of Review: Extension without change.

Respondents: Affected shippers, communities, or other interested persons seeking to preserve rail service over rail lines that are proposed or identified for abandonment, and railroads that are required to provide information to the offeror or applicant: Approximately 25.

Frequency: On occasion, as follows:

TABLE—NUMBER OF YEARLY RESPONSES

Type of filing	Estimated annual average number of filings (2019–2021)
Offer of Financial Assistance (and related filings)	1
Request for Public Use Condition	1
Feeder Line Application	1
Trail Use Request (with extensions)	17

Total Burden Hours (annually including all respondents): 205 hours (total of estimated hours per response × number of responses for each type of filing).

TABLE—ESTIMATED TOTAL BURDEN HOURS

Type of filing	Estimated annual average number of filings (2019–2021)	Number of hours per response	Total estimated burden hours
Offer of Financial Assistance (and related filings)	1	46	46
Request for Public Use Condition	1	4	4
Feeder Line Application	1	70	70
Trail Use Request (with extensions)	17	5	85
Total burden hours			205

Total ''Non-hour Burden'' Cost: None identified. Filings may be submitted electronically to the Board.

Needs and Uses: The Surface Transportation Board is, by statute, responsible for the economic regulation of common carrier freight railroads and certain other carriers operating in the United States. Under the laws the Board administers, persons seeking to preserve rail service may file pleadings before the Board to acquire or subsidize a rail line for continued service, or to impose a trail use or public use condition.

When a line is proposed for abandonment, affected shippers, communities, or other interested persons may seek to preserve rail service by filing with the Board: an offer of financial assistance (OFA) to subsidize or purchase a rail line for which a railroad is seeking abandonment (49 U.S.C. 10904), including a request for the Board to set terms and conditions of the financial assistance; a request for a public use condition (section 10905); or a trail use request (16 U.S.C. 1247(d)). Similarly, when a line is placed on a system diagram map identifying it as an anticipated or potential candidate for abandonment, affected shippers, communities, or other interested persons may seek to preserve rail service by filing with the Board a feeder line application to purchase the identified rail line (§ 10907). Additionally, the railroad owning the rail line subject to abandonment must, in some circumstances, provide information to the applicant or offeror.

As to trail use, the STB will issue a CITU or NITU to a prospective trail sponsor who seeks an interim trail use agreement with the rail carrier of the rail line that is being abandoned. The CITU/NITU permits parties to negotiate for an interim trail use agreement. The parties may also agree to an extension of the negotiating period. If parties reach an agreement, then they must jointly notify the Board of that fact and of any modification or vacancy of the agreement. There is a one-year period for any initial interim trail use negotiating period (with potential extensions).

The Board makes this submission because, under the PRA, a federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under 44 U.S.C. 3506(c)(2)(A), federal agencies are required to provide, prior to an agency's submitting a collection to OMB for approval, a 60-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: November 14, 2022.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2022–25073 Filed 11–16–22; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 531 (Sub-No 3X)]

Pioneer Valley Railroad Company, Inc.—Abandonment Exemption—in Hampshire County, Mass.

Pioneer Valley Railroad Company, Inc. (PVRR), has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon approximately 4.25 miles of rail line from the northern terminus at Coleman Road (approximate milepost 69.70 in PVRR's original track chart) to the southern terminus at Brickyard Road, near its intersection with Valley Road (approximate milepost 73.95 in PVRR's original track chart), in the Town of Southampton, Hampshire County, Mass. (the Line). The Line traverses U.S. Postal Service Zip Code 01073.

PVRR has certified that: (1) no local traffic has moved over the Line for over two years; (2) there is no overhead traffic on the Line; (3) no formal complaint filed by a user of rail service

on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court, or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(b) and 1105.8(c) (notice of environmental and historic reports), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received,[1] this exemption will be effective on December 17, 2022, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues must be filed by November 25, 2022.[2] Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2) and interim trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 28, 2022.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 7, 2022.

All pleadings, referring to Docket No. AB 531 (Sub-No. 3X), must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on PVRR's representative, Michael S. Schneider, Doherty, Wallace, Pillsbury, & Murphy, P.C., One Monarch Place, 1414 Main Street, Floor 19, Springfield, MA 01144.

If the verified notice contains false or misleading information, the exemption is void ab initio.

PVRR has filed a combined environmental and historic report that addresses the potential effects, if any, of the abandonment on the environment and historic resources. OEA will issue a Draft Environmental Assessment (Draft EA) by November 22, 2022. The Draft EA will be available to interested persons on the Board's website, by writing to OEA, or by calling OEA at (202) 245–0294. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339. Comments on environmental or historic preservation matters must be filed within 15 days after the Draft EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), PVRR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by PVRR's filing of a notice of consummation by November 17, 2023, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available at *www.stb.gov.*

Decided: November 14, 2022.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Brendetta Jones,

Clearance Clerk.

[FR Doc. 2022–25068 Filed 11–16–22; 8:45 am]

BILLING CODE 4915–01–P

[1] Persons interested in submitting an OFA must first file a formal expression of intent to file an offer, indicating the type of financial assistance they wish to provide (*i.e.,* subsidy or purchase) and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(2)(i).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0037]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from nine individuals for an exemption from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions would enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: Comments must be received on or before December 19, 2022.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2022–0037 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number, FMCSA–2022–0037, 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, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 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–2022–0037), 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/docket?D=FMCSA-2022-0037.* 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. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

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–2022–0037, 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 in Room W12–140 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 (FDMS)), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

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 statute also allows 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 nine individuals listed in this notice have requested an exemption from the hearing requirement in 49 CFR 391.41(b)(11). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding hearing found in § 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 3, 1971).

On February 1, 2013, FMCSA announced in a Notice of Final Disposition titled, ''Qualification of Drivers; Application for Exemptions; National Association of the Deaf,'' (78 FR 7479), its decision to grant requests from 40 individuals for exemptions from the Agency's physical qualification standard concerning hearing for interstate CMV drivers. Since that time the Agency has published additional notices granting requests from hard of hearing and deaf individuals for exemptions from the Agency's physical qualification standard concerning hearing for interstate CMV drivers.

III. Qualifications of Applicants

Vanessa Bonilla

Vanessa Bonilla, 30, holds a class C driver's license in Texas.

Saranne Fewel

Saranne Fewel, 35, holds a class D driver's license in California.

James Harris

James Harris, 62, holds a class E driver's license in Florida.

Jared Healan

Jared Healan, 36, holds a class R driver's license in Colorado.

Brandon Hester

Brandon Hester, 37, holds a class C driver's license in Texas.

Dustin Jackson

Dustin Jackson, 46, holds a class D driver's license in New Jersey.

Sondra McCoy

Sondra McCoy, 46, holds a class C driver's license in North Carolina.

Sarah Nickell

Sarah Nickell, 43, holds a driver's license in Indiana.

Joshua Osborn

Joshua Osborn, 42, holds a class CM1 driver's license in California.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–25035 Filed 11–16–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Requesting Comments on Form 1098–F

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 1098–F (Fines, Penalties, and Other Amounts).

DATES: Written comments should be received on or before January 16, 2023 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. 1545–1276 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Jon Callahan, (737) 800–7639, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *jon.r.callahan@irs.gov.*

SUPPLEMENTARY INFORMATION: The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Form 1098–F—Fines, Penalties, and Other Amounts.

OMB Number: 1545–2284.

Form Number: 1098–F.

Abstract: Public Law 115–97, Tax Cuts and Jobs Act of 2017 (TCJA), amended Internal Revenue Code (IRC) section 162(f) regarding allowable deductions of fines, penalties, and other amounts paid to, or at the direction of, a government or governmental entity in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law. The TCJA also added IRC section 6050X, requiring the official of any government or entity described in IRC section 162(f)(5) to file an information return with respect to certain fines, penalties, and other amounts paid. Treasury Decision (TD) 9946 contains final regulations providing guidance on IRC sections 162(f) and 6050X. Treasury Regulations section 1.6050X–1 provides guidance on the information reporting requirements of IRC section 6050X and names Form 1098–F as the return to report the information. Form 1098–F is used to report the amounts paid as required by IRC section 6050X to the IRS and provide a statement to the payer.

Current Actions: The form and instructions have been revised to reflect the rules under the final regulations for IRC section 6050X. There is no change in burden due to the revisions. However, the number of responses has increased due to better estimates.

Type of Review: Revision of a currently approved collection.

Affected Public: Federal government, State, Local, or Tribal Government.

Estimated Number of Responses: 137,500.

Estimated Time per Respondent: 7 minutes.

Estimated Total Annual Burden Hours: 16,500.

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: November 14, 2022.

Jon R. Callahan,

Tax Analyst.

[FR Doc. 2022–25074 Filed 11–16–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Meeting of the Treasury Advisory Committee on Racial Equity

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: The Department of the Treasury (''Department'' or ''Treasury'') is hosting the first meeting of the Treasury Advisory Committee on Racial Equity (''TACRE'' or ''Committee''). The Committee is composed of 25 members who will provide information, advice, and recommendations to the Department of the Treasury on matters relating to the advancement of racial equity. This notification provides the date, time, and location of the first meeting and the process for participating and providing comments.

DATES: December 5, 2022, at 10 a.m.–3 p.m. Eastern Time.

FOR FURTHER INFORMATION CONTACT: Snider Page, Designated Federal Official, Department of the Treasury, by emailing *TACRE@Treasury.gov* or by calling (202) 622–0341 (this is not a toll-free number). For persons who are deaf, hard of hearing, have a speech disability or difficulty speaking may dial 7–1–1 to access telecommunications relay services.

Check: https://home.treasury.gov/about/offices/equity-hub/TACRE for any updates to the December 5th meeting.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. App., as amended), the Department has established the Treasury Advisory Committee on Racial Equity. The Department has determined that establishing this Committee was necessary and in the public interest in order to carry out the provisions of Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Throughout the Federal Government.*

Background

Objectives and Duties

The purpose of the Committee is to provide advice and recommendations to Secretary of the Treasury Janet L. Yellen and Deputy Secretary Wally Adeyemo on efforts to advance racial equity in the economy and address acute disparities for communities of color. The Committee will identify, monitor, and review aspects of the domestic economy that have directly and indirectly resulted in unfavorable conditions for communities of color. The Committee plans to address topics including but not limited to: financial inclusion, access to capital, housing stability, federal supplies diversity, and economic development. The duties of the Committee shall be solely advisory and shall extend only to the submission of advice and recommendations to the Offices of the Secretary and Deputy Secretary, which shall be non-binding to the Department. No determination of fact or policy shall be made by the Committee.

The agenda for the meeting includes opening remarks from the Secretary, Chair and Vice-Chair of TACRE, an overview of racial equity priorities, presentations on IRS Service Modernization, the Inflation Reduction Act and the TACRE bylaws and roles. These will be followed by a discussion on the committee's structure and operation and potentially a vote on forming subcommittee(s). Meeting times and topics are subject to change.

First Periodic Meeting: In accordance with section 10(a)(2) of the FACA and implementing regulations at 41 CFR 102–3.150, Snider Page, the Designated Federal Officer of TACRE, has ordered publication of this notice to inform the public that the TACRE will convene its first periodic meeting on Monday, December 5, 2022, from 10 a.m.–3 p.m. Eastern Time, at the Department of the Treasury, 1500 Pennsylvania Ave. NW, Washington, DC 20220.

Process for Submitting Public Comments: Members of the public wishing to comment on the business of the TACRE are invited to submit written comments by emailing *TACRE@Treasury.gov*. Comments are requested no later than 15 calendar days before the public meeting in order to be considered by the Committee.

In general, the Department will post all comments received on its website *https://home.treasury.gov/about/offices/equity-hub/TACRE* without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. The Department will also make these comments available for public inspection and copying in the Department of the Treasury's Library, 720 Madison Place NW, Room 1020, Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622–2000. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Process for Attending In-Person: Treasury is a secure facility, that requires all visitors to get cleared by security prior to arrival at the building. In addition, all visitors will be required to undergo COVID screening. The COVID screening will be a self-administered test provided by Treasury and visitors will have to wait for a negative result before proceeding to the meeting. Anyone testing positive will need to immediately leave the building. Please register for the Public Meeting by visiting: *https://events.treasury.gov/s/event-template/a2mt0000001LvKsAAK/treasury-advisory-committee-on-racial-equity-tacre-meeting.* The registration process will require submission of personally identifiable information, such as, full name, email address, date of birth, social security number, citizenship, residence, and if you have recently traveled outside of the United States.

Due to the limited size of the meeting room, public attendance will be limited to the first 20 people that complete the registration process. Members of the public will need to bring a government issued identification that matches the information provided during the registration process and present that to Security, for entry into the building. Please plan on arriving 30–45 minutes prior to the meeting to allow time for security and COVID screening. The meeting will break for lunch and members of the public can either wait in the meeting room or go to the café in Treasury until the meeting resumes. If you require reasonable accommodation, please contact the Departmental Offices Reasonable Accommodations Coordinator at *ReasonableAccommodationRequests@treasury.gov.* If requesting a sign language interpreter, please make sure your request to the Reasonable Accommodations Coordinator is made at least five (5) days prior to the event if at all possible.

Dated: November 10, 2022.

Snider Page,

Acting Director, Office of Civil Rights and Equal Employment Opportunity and Designated Federal Officer.

[FR Doc. 2022–24995 Filed 11–16–22; 8:45 am]

BILLING CODE 4810–AK–P

FEDERAL REGISTER

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Part II

Department of Energy

10 CFR Part 430
Energy Conservation Program: Energy Conservation Standards for Portable Electric Spas; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2022–BT–STD–0025]

RIN 1904–AF36

Energy Conservation Program: Energy Conservation Standards for Portable Electric Spas

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

ACTION: Notification of data availability and request for comment.

SUMMARY: In this notice of data availability (''NODA''), the U.S. Department of Energy (''DOE'') is publishing data and certain preliminary analytical results related to DOE's evaluation of potential energy conservation standards for portable electric spas (''PESs''). DOE requests comments, data, and information regarding the data and analysis.

DATES: Written comments and information will be accepted on or before, January 17, 2023.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov,* under docket number EERE–2022–BT–STD–0025. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2022–BT–STD–0025, by any of the following methods:

Email: PortableElecSpas2022STD0025@ee.doe.gov. Include the docket number EERE–2022–BT–STD–0025 in the subject line of the message.

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

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

No telefacsimiles (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on this process, see section IV of this document.

To inform interested parties and to facilitate this rulemaking process, DOE has prepared preliminary analytical data, which is available on the rulemaking docket at: *www.regulations.gov/docket/EERE-2022-BT-STD-0025.*

Docket: The docket for this activity, which includes **Federal Register** notices, comments, public meeting transcripts, 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, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *www.regulations.gov/docket/EERE-2022-BT-STD-0025.* The docket web page contains instructions on how to access all documents, including public comments in the docket. See section IV.A of this document for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9870. Email *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Kristin Koernig, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–3593. Email: *Kristin.koernig@hq.doe.gov.*

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

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I. Introduction

A. Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which, in addition to identifying particular consumer products and commercial equipment as covered under the statute, permits the Secretary of Energy to classify additional types of consumer products as covered products. (42 U.S.C. 6292(a)(20)) In a notice of final determination of coverage (''NOFD'') published in the **Federal Register** on September 2, 2022 (''September 2022 NOFD''), DOE classified PESs as a covered product pursuant to 42 U.S.C. 6292(b)(1) after determining that classifying PESs as a covered product is necessary or appropriate to carry out the purposes of EPCA and that average annual household energy use for PESs is likely to exceed 100 kilowatt-hours per year. 87 FR 54123.

The relevant purposes of EPCA include:

(1) To conserve energy supplies through energy conservation programs, and, where necessary, the regulation of certain energy uses; and

(2) To provide for improved energy efficiency of motor vehicles, major appliances, and certain other consumer products. (42 U.S.C. 6201(4) and (5))

First, DOE determined that the coverage of PESs is both necessary and appropriate to carry out the purposes of EPCA on the basis of market data, the existence of technology options for improving energy efficiency of PESs, and supporting argument of commenters in response to the notice of proposed determination of coverage. 87 FR 54123, 54125–54126.

DOE then determined that estimated household energy use was likely to exceed 100 kWh/year based on market data and certification data reported to the California Energy Commission's (''CEC'') Modernized Appliance Efficiency Database System (''MAEDbS'').[3] In the September 2022 NOFD, DOE had estimated average energy consumption of 1,699 kWh per year per household, which matched estimates submitted by commenters in response to the notice of proposed determination of coverage. *Id.* at 87 FR 54126–54127.

Having determined that classifying PESs as a covered product was necessary or appropriate to carry out the purposes of EPCA and that average annual household energy use for PESs was likely to exceed 100 kilowatt-hours per year, DOE classified PESs as a covered product. *Id.* at 87 FR 54127.

Additionally, in the September 2022 NOFD, DOE established a definition of the term ''portable electric spa,'' which was ''a factory-built electric spa or hot tub, supplied with equipment for heating and circulating water at the time of sale or sold separately for subsequent attachment.'' *Id.* at 87 FR 54125; *see also* 10 CFR 430.2.

As PESs are now a covered product, EPCA allows DOE to prescribe an energy conservation standard for any type (or class) of covered products of a type specified in 42 U.S.C. 6292(a)(20) if the requirements of 42 U.S.C. 6295(o) and (p) are met and the Secretary determines that—

(A) the average per household energy use within the United States by products of such type (or class) exceeded 150 kilowatt-hours (or its Btu equivalent) for any 12-month period ending before such determination;

(B) the aggregate household energy use within the United States by products of such type (or class) exceeded 4,200,000,000 kilowatt-hours (or its Btu equivalent) for any such 12-month period;

(C) substantial improvement in the energy efficiency of products of such type (or class) is technologically feasible; and

(D) the application of a labeling rule under 42 U.S.C. 6294 to such type (or class) is not likely to be sufficient to induce manufacturers to produce, and consumers and other persons to purchase, covered products of such type (or class) which achieve the maximum energy efficiency which is technologically feasible and economically justified. (42 U.S.C. 6295(l)(1))

EPCA further provides that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notification of determination that standards for the product do not need to be amended, or a notice of proposed rulemaking (''NOPR'') including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1)) Not later than three years after issuance of a final determination not to amend standards, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(3)(B))

Under EPCA, any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that DOE determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

DOE is publishing this NODA to collect data and information to inform its decision to establish energy conservation standards for PESs consistent with its obligations under EPCA.

B. Rulemaking Process

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including PESs. As noted, EPCA requires that any new or amended energy conservation standard prescribed by the Secretary of Energy (''Secretary'') be designed to achieve the maximum improvement in energy efficiency (or water efficiency for certain products specified by EPCA) that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3))

The significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking.[4] For example, some covered products and equipment have most of their energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products or equipment with relatively constant demand. In evaluating the significance of energy savings, DOE considers differences in primary energy and full-fuel cycle

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

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

[3] CEC Modernized Appliance Efficiency Database System. Available at *cacertappliances.energy.ca.gov*. (last accessed October 26, 2022).

[4] Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment, 86 FR 70892, 70901 (Dec. 13, 2021).

(''FFC'') effects for different covered products and equipment when determining whether energy savings are significant. Primary energy and FFC effects include the energy consumed in electricity production (depending on load shape), in distribution and transmission, and in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus present a more complete picture of the impacts of energy conservation standards. Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis, taking into account the significance of cumulative FFC national energy savings, the cumulative FFC emissions reductions, and the need to confront the global climate crisis, among other factors.

To determine whether a standard is economically justified, EPCA requires that DOE determine whether the benefits of the standard exceed its burdens by considering, to the greatest extent practicable, the following seven factors:

1. The economic impact of the standard on the manufacturers and consumers of the products subject to the standard;

2. The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard;

3. The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;

4. Any lessening of the utility or the performance of the products likely to result from the standard;

5. The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

6. The need for national energy and water conservation; and

7. Other factors the Secretary considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

DOE fulfills these and other applicable requirements by conducting a series of analyses throughout the rulemaking process. Table I.1 shows the individual analyses that are performed to satisfy each of the requirements within EPCA.

TABLE I.1—EPCA REQUIREMENTS AND CORRESPONDING DOE ANALYSIS

EPCA requirement	Corresponding DOE analysis
Significant Energy Savings	• Shipments Analysis. • National Impact Analysis. • Energy Analysis.
Technological Feasibility	• Market and Technology Assessment. • Screening Analysis. • Engineering Analysis.
Economic Justification:	
Economic impact on manufacturers and consumers	• Manufacturer Impact Analysis. • Life-Cycle Cost and Payback Period Analysis. • Life-Cycle Cost Subgroup Analysis. • Shipments Analysis.
Lifetime operating cost savings compared to increased cost for the product.	• Markups for Product Price Analysis. • Energy Analysis. • Life-Cycle Cost and Payback Period Analysis.
Total projected energy savings	• Shipments Analysis. • National Impact Analysis.
Impact on utility or performance	• Screening Analysis. • Engineering Analysis.
Impact of any lessening of competition	• Manufacturer Impact Analysis.
Need for national energy and water conservation	• Shipments Analysis. • National Impact Analysis.
Other factors the Secretary considers relevant	• Employment Impact Analysis. • Utility Impact Analysis. • Emissions Analysis. • Monetization of Emission Reductions Benefits.[5] • Regulatory Impact Analysis.

Further, EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

EPCA also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those

[5] On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. In the absence of further intervening court orders, DOE will revert to its approach prior to the injunction and present monetized benefits where appropriate and permissible by law.

generally available in the United States. (42 U.S.C. 6295(o)(4))

Additionally, EPCA specifies requirements when promulgating an energy conservation standard for a covered product that has two or more subcategories. DOE must specify a different standard level for a type or class of product that has the same function or intended use, if DOE determines that products within such group: (A) consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE deems appropriate. (*Id.*) Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

Finally, pursuant to the amendments contained in the Energy Independence and Security Act of 2007 (''EISA 2007''), Public Law 110–140, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B))

Before proposing a standard, DOE typically seeks public input on the analytical framework, models, and tools that DOE intends to use to evaluate standards for the product at issue and the results of preliminary analyses DOE performed for the product. See section IV.B of this document for a list of analysis and data on which DOE seeks comment.

DOE is examining whether to establish energy conservation standards for PESs pursuant to its obligations under EPCA. This notification announces the availability of preliminary analytical results and data.

C. Deviation From Appendix A

In accordance with section 3(a) of 10 CFR part 430, subpart C, appendix A (''appendix A''), DOE notes that it is deviating from the provision in appendix A regarding the pre-NOPR stage for an energy conservation standard rulemaking. Section 6(d)(2) of appendix A specifies that the length of the public comment period for a pre-NOPR will vary depending upon the circumstances of the particular rulemaking, but will not be less than 75 calendar days. For this NODA, DOE is providing a 60-day comment period, which DOE deems appropriate given the publication of three antecedent notices relating to PESs, two of which, themselves, offered opportunity for comment related to PESs and all of which would be understood by interested parties as a signal that DOE would be evaluating potential energy conservation standards. Those three antecedent notices were the proposed determination of portable electric spas as a covered consumer product (87 FR 8745 (Feb. 16, 2022)), the final determination of portable electric spas as a covered consumer product (87 FR 54123 (Sept. 2, 2022)), and the proposed rulemaking for the test procedure for portable electric spas (87 FR 63356 (Oct. 18, 2022)), respectively. Further, a 60-day comment period will allow DOE to review comments received in response to this NODA and use them to inform the analysis of the product considered in evaluating potential energy conservation standards.

II. Background

A. Current Process

DOE has not previously conducted an energy conservation standards rulemaking for PESs. As described in section I.A of this NODA, DOE previously determined that PESs met the criteria for classification as a covered product pursuant to EPCA and classified PESs as a covered product. 87 FR 54123.

Following this determination of coverage, DOE published a NOPR proposing a test procedure for PESs in the **Federal Register** on October 18, 2022. 87 FR 63356. In that NOPR, DOE proposed to incorporate by reference an industry test method published by the Pool and Hot Tub Alliance (''PHTA'') [6] in partnership with the International Code Council (''ICC'') and approved by the American National Standards Institute (''ANSI''), ANSI/APSP/ICC–14 2019, ''American National Standard for Portable Electric Spa Energy Efficiency'' (''APSP–14 2019'') with certain exceptions and additions. 87 FR 63356, 63361–63369. The proposed test method produces a measure of the energy consumption of PESs (*i.e.,* the normalized average standby power) that represents the average power consumed by the spa, normalized to a standard temperature difference between the ambient air and the water in the spa, while the cover is on and the product is operating in its default operation mode. *Id.* at 87 FR 63361.

Comments received to date as part of the coverage determination rulemaking have helped DOE identify and resolve issues related to the NODA.

III. Summary of the Analyses Performed by DOE

For the product covered in this NODA, DOE conducted in-depth technical analyses in the following areas: (1) engineering; (2) markups to determine product price; (3) energy use; (4) life cycle cost (''LCC'') and payback period (''PBP''); and (5) national impacts. The preliminary analytical results that present the methodology and results of each of these analyses that are not included in the body of this notice are available at: *www.regulations.gov/docket/EERE-2022-BT-STD-0025.* Specifically, DOE is making available the following data and analysis:

(1) Approved and Archived Portable Electric Spas exported from the CEC's Meads. Data as of August 8, 2022.

(2) DOE's testing results for a simple inflatable portable electric spa. Testing followed methods specified in APSP–14 2019 and attempted to isolate the effects of various test conditions and design options.

(3) Reference table for DOE's proposed efficiency levels for non-inflatable and inflatable portable electric spas, including particular changes in specifications and the estimated effects on energy consumption and costs thereof.

DOE also conducted, and has included in this NODA, several other analyses that either support the major analyses or are preliminary analyses that will be expanded if DOE determines that a NOPR is warranted to propose new energy conservation standards. These analyses include: (1) the market and technology assessment; (2) the screening analysis, which contributes to the engineering analysis; and (3) the shipments analysis, which contributes to the LCC and PBP analysis and the national impact analysis (''NIA''). In addition to these analyses, DOE has begun preliminary work on the

[6] The PHTA is a result of a 2019 merger between the Association of Pool and Spa Professionals (''APSP'') and the National Swimming Pool Foundation (''NSPF''). The reference to APSP has been retained in the ANSI designation of ANSI/APSP/ICC–14 2019.

manufacturer impact analysis and has identified the methods to be used for the consumer subgroup analysis, the emissions analysis, the employment impact analysis, the regulatory impact analysis, and the utility impact analysis. DOE will expand on these analyses in the NOPR should one be issued.

A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the products concerned, including general characteristics of the products, the industry structure, manufacturers, market characteristics, and technologies used in the products. This activity includes both quantitative and qualitative assessments, based primarily on publicly available information. The subjects addressed in the market and technology assessment include: (1) a determination of the scope of the rulemaking and product classes; (2) manufacturers and industry structure; (3) existing efficiency programs; (4) shipments information; (5) market and industry trends; and (6) technologies or design options that could improve the energy efficiency of the product.

1. Product Description

DOE referred to PES product literature and to its communications with spa manufacturers to inform its understanding of the technology and the different types of products within the industry. Relevant product literature includes APSP–14 2019, the current industry test procedure and energy conservation standards, materials related to state rulemakings, academic papers, and marketing materials.[7] In particular, DOE also made significant use of the following sources: the final staff report for CEC's 2018 Appliance Efficiency Rulemaking for Spas, ''Analysis of Efficiency Standards and Marking for Spas;'' [8] the Codes and Standards Enhancement (''CASE'') Initiative submission from California investor-owned utilities in support of CEC's 2012 rulemaking for spas, ''Analysis of Standards Proposal for Portable Electric Spas;'' [9] a 2018 graduate thesis from California State University, Sacramento, ''Improving Energy Efficiency of Portable Electric Spas by Improving Its Thermal Conductivity Properties;'' [10] and a 2012 graduate thesis from California Polytechnic State University, San Luis Obispo, ''Measurement and Analysis of the Standby Power of Twenty-Seven Portable Electric Spas.'' [11] PES manufacturers were contacted via the PHTA.

APSP–14 2019 defines a spa as ''a product intended for the immersion of persons in temperature-controlled water circulated in a closed system'' and a portable electric spa as ''a factory-built electric spa or hot tub, supplied with equipment for heating and circulating water at the time of sale or sold separately for subsequent attachment.'' DOE adopted this definition of ''portable electric spa'' without modification in the September 2022 NOFD. 87 FR 54123, 54125.

Integral heating and circulation equipment are features that distinguish PESs from similar products in inflatable or above-ground pools and therapy bathtubs or permanent residential spas, respectively. Beyond these characteristic features, PESs often also include chemical systems for water sanitation as well as features such as additional lighting, audio systems, and internet connectivity for more precise and accessible spa monitoring.

DOE requests comment on the previous description of the target technology and the scope of this product, including whether any modifications or additions are necessary to characterize this product.

2. Potential Product Classes

DOE must specify a different standard level for a type or class of product that has the same function or intended use if DOE determines that products within such group: consume a different kind of energy from that consumed by other covered products within such type (or class); or have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE deems appropriate. (*Id.*) Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

DOE observed several distinguishable categories of products in the PES market that provide consumers with unique utility that could necessitate a different standard level for energy consumption.

a. Inflatable Spas

Inflatable spas are characterized by collapsible and storable bodies. They are usually made of a flexible polyvinyl chloride (''PVC'') plastic tub, which is filled with air during use and which connects to a control unit external to the tub but still integral to the product as distributed in commerce. Inflatable spas are often used seasonally and, during seasons when inflatable spas are not in use, they are often deflated and put in storage. Correspondence with inflatable spa manufacturers indicated that inflatable spas provide unique utility as a result of their low price relative to other portable electric spas and their ability to be collapsed and moved more easily than other spas. Inflatable spas often have maximum water temperatures settings greater than 100 °F, and the PVC construction that allows them to be less expensive and collapsible also decrease their ability to retain heat. This characteristic generally makes the power demand of inflatable spas higher than that of other portable electric spas. As a result, DOE tentatively concludes that inflatable spas are not able to be subject to the same energy consumption limits as other spas.

b. Exercise Spas

Exercise spas are characterized by their large size and ability to generate a water flow strong enough to allow for physical activity such as swimming in place. Exercise spas are usually composed of a rectangular rigid synthetic plastic cabinet topped with a rigid vacuum-formed acrylic shell. The cavity between the cabinet and acrylic shell houses components such as pumps and heaters and also allows for dense insulating materials to help the spa retain heat. Exercise spas provide unique utility in their capacity to facilitate physical activity inside the spa for a person as large as the 99th Percentile Man as specified in ANSI/APSP/ICC–16.[12] Exercise spas may have maximum water temperatures settings above or below 100 °F. According to manufacturers, consumers tend to set the water temperature of exercise spas to less than 100 °F when using exercise

[7] APSP–14 2019 is available at: *webstore.ansi.org/standards/apsp/ansiapspicc142019.*

[8] California Energy Commission. ''Final Staff Report—Analysis of Efficiency Standards and Marking for Spas.'' February 2, 2018.

[9] Codes and Standards Enhancement (CASE) Initiative. ''Analysis of Standards Proposal for Portable Electric Spas.'' May 15, 2014.

[10] Ramos, Nestor. ''Improving Energy Efficiency of Portable Electric Spas by Improving Its Thermal Conductivity Properties.'' Spring, 2018.

[11] Hamill, Andrew. ''Measurement and Analysis of the Standby Power of Twenty-Seven Portable Electric Spas.'' September, 2012.

[12] ANSI/APSP/ICC–16 is available at *https://webstore.ansi.org/standards/apsp/ansiapspicc162017PA2021.*

spas for physical activity. And exercise spas' capacity to house dense insulation makes them able to retain heat and reduce energy consumption more than inflatable spas.

c. Standard Spas

Standard spas are neither collapsible nor designed for use in recreational physical activities. Like exercise spas, they are typically composed of rigid plastic cabinets affixed to an acrylic shell. However, they may also be constructed of other rigid materials. DOE is aware of some standard spas whose exteriors are made entirely of rotationally molded plastic. Standard spas are not designed to generate a water flow strong enough to allow for swimming in place and are usually not large enough to allow for a person to swim in place. Standard spas offer unique utility in comparison to inflatable spas in that they typically have more and higher performance jet pumps, as well as the capacity for more additional features such as lights, water features, or stereo systems. Standard spas usually have maximum water temperature settings of above 100 °F. Like exercise spas, the rigid and relatively large space between the perimeter of the spa and the spa shell allows for dense insulation, which makes standard spas able to reduce energy consumption more than inflatable spas.

d. Combination Spas

Combination spas are single contiguous spas consisting of distinct exercise spa and standard spa sections, each of which has an independent control for the setting of water temperature. Combination spas provide unique utility in their capacity to provide distinct reservoirs intended for physical activity and also therapy and leisure. Like standard and exercise spas, combination spas are able to house dense insulation, increasing their ability to retain heat and to lower their energy consumption.

DOE's descriptions of these potential product classes were largely informed by the current industry standard, APSP–14 2019. In this NODA, standard spas, exercise spas, and combination spas are sometimes collectively referred to as ''non-inflatable'' spas or ''hard-sided'' spas. And in this NODA, inflatable spas are often treated separately because their construction is associated with limited technology options and higher energy consumption. Exercise spas, standard spas, and combination spas, however, are often treated similarly as non-inflatable spas.

DOE requests comment on whether the distinction between categories of PESs, as described in section III.A.2 of this NODA, is significant enough to warrant the establishment of different product classes for each type.

3. Manufactures and Industry Structure

The PES market is largely split between inflatable spas, standard spas, and exercise and combination spas, with each type catering to different consumer segments that do not significantly overlap. Similarly, there is no significant overlap between the manufacturers of inflatable spas and non-inflatable spas, although one manufacturer will often make all of the standard, exercise, and combination spas. The inflatable spa market is concentrated in a small number of manufacturers characterized by large production volumes, vertical integration, and manufacturing plants located outside of the United States. The market for non-inflatable spas, however, is more fragmented among manufacturers who purchase most spa components and whose manufacturing plants are located in North America. Manufacturers of both inflatable and non-inflatable spas often produce models under multiple brands. In particular, manufacturers of non-inflatable spas may also offer different brands, and even product lines within a brand, at multiple price points. Features that tend to correlate to the price point of a spa include the number and strength of therapy jets, the quality of cabinet materials, and the presence of additional features, such as lighting or stereo systems.

DOE requests comment on the above description of the PES manufacturers and the PES industry structure and whether any other details are necessary for characterizing the industry or for determining whether energy conservation standards for PESs might be justified.

4. Other Regulatory Programs

As part of its analysis, DOE surveyed existing regulatory programs concerning the energy consumption of PESs. These regulatory programs include both programs that enforce mandatory limits in their respective jurisdictions and voluntary programs. The first such mandatory program was CEC's mandatory Title 20 regulations concerning PESs, which were adopted in 2004. Over the next decade, four other states adopted mandatory standards, in some cases following CEC's regulations and, in other cases, creating their own, such as Arizona's Title 44 adopted in 2009. In 2014, PHTA created the first iteration of a voluntary industry standard in APSP–14 2014, which measures and sets limits for the energy required to maintain the set temperature and circulate water while the spa is not in use, known as ''standby power.''

The most recent development in test procedures and energy conservation standards for PESs was the publication of APSP–14 2019 in 2019. This revised version of the APSP–14 (*i.e.,* APSP–14 2019) was created in collaboration with CEC and was promptly adopted as California's new standard. The 2019 version revised some test methods and lowered the maximum allowable standby power for exercise and combination spas from those in APSP–14 2014. APSP–14 2019 also included standby power limits for inflatable spas for the first time. As of July 2022, nine states have adopted APSP–14 2019, three states have adopted the previous version APSP–14 2014, and Arizona and Connecticut follow Arizona's 2009 Title 44 provisions and California's 2006 Title 20 provisions, respectively.

DOE is also aware of standards in the European Union and Canada. The European Union standard, CSN EN 17125, covers a wider range of products and concerns safety requirements and test methods for energy consumption.[13] CSN EN 17125 specifies labeling requirements for energy consumption but does not specify a maximum limit for the energy consumption of PESs. A Canadian national standard, *Energy Performance of Hot Tubs and Spas,* reaffirmed in 2021, (''CSA C374:11''), provides both a test method and energy performance requirements for PESs.[14] CSA C374:11 cites CEC's Title 20, and its test procedure and energy conservation standards are similar to those in APSP–14 2019.

DOE requests information on any voluntary or mandatory test procedure and energy conservation standards for PESs that are not mentioned in section III.A.4 of this NODA.

5. Technology Options for Improving Efficiency

DOE reviewed product literature and conducted manufacturer interviews to survey the technologies that could lower the normalized average standby power of a PES and are currently available for use in the portable electric spa market. To identify the most relevant technology

[13] CSN EN 17125 is available at: *https://www.en-standard.eu/csn-en-17125-domestic-spas-whirlpool-spas-hot-tubs-safety-requirements-and-test-methods/.*

[14] CSA C374:11 (R2021) is available at: *https://www.csagroup.org/store/product/2703317/.*

options, DOE researched the components of PESs that consume energy and the design characteristics that affect energy consumption. DOE's research and data submitted by manufacturers suggest that the most substantial energy uses of a portable electric spa in standby mode are the energy use associated with maintaining the water temperature and circulating the water. As a result, DOE's analysis considered technology options that focus on these two systems. Because their designs are quite different, inflatable spas and non-inflatable spas have different instances of applicable technology options, although the engineering motivations behind the types of technology options are similar. DOE's research did not identify reasons that technology options would differ between standard spas, exercise, and combination spas. Accordingly, the same technology options are considered for each spa variety.

DOE seeks comment generally on the descriptions of relevant energy-saving technology options as described in section III.A.5 of this document, including whether any options require revised or additional details to characterize each option's effects on a PES's energy consumption.

a. Insulation

To minimize heat losses, PESs require insulating materials between the hot spa water and cool ambient air. This NODA uses the unmodified term ''insulation'' to refer to the insulation in the walls and floor of the spa, as opposed to any insulating materials in the cover. In non-inflatable spas, this material is often a polyurethane spray foam, which is applied to the bottom of the spa shell. Foam can also be applied in sheets inside the perimeter of the spa cabinet. Foam insulation can be any selected thickness, with the maximum amount of foam known as ''full-foam'' insulation, which entirely fills the space between the spa shell and the cabinet. Even in full-foam applications, however, foam or other insulating materials cannot totally encapsulate a spa's pumps or heating element. The most typical foam used has a density of 0.5 pounds per cubic foot. Both thicker and denser insulation increase, up to a point, the total R-value of the insulation, which then reduces the energy consumption of spas. However, the marginal effectiveness of thicker or denser insulation in the walls and floor, as measured in R-value, decreases progressively. Although in practice foam may be added in arbitrary increments, the efficiency analysis in section III.C.1 considers two specific levels of additional insulation. The first corresponds to R–6 added in the spa's wall sections to prevent heat loss from the water outward to the ambient air and to R–3.5 added in the floor section to prevent heat loss from the water downward to the ground. The second corresponds to R–6 added in the wall sections. The efficiency analysis also considers a design option in which two inches of 0.5 pound per cubic foot of foam is replaced with 2 pound per cubic foot of foam.

Inflatable spas are typically only insulated by air pockets, their PVC material, and flexible foam integrated into their covers and, especially, into attachable ''jackets.'' To maintain its collapsible and storable characteristics, however, many other methods of adding foam or other insulating materials to non-inflatable spas are not applicable. In response to mandatory energy consumption limits in some jurisdictions, some inflatable spa manufacturers developed a ''jacket,'' which has foam integrated into it and surrounds the inflated spa. During correspondence with DOE, inflatable manufacturers reported that such a jacket or a similar design is necessary for reducing the energy consumption below maximum levels as specified by the most recent industry and CEC standards.

DOE seeks comment regarding use of additional or improved insulation as a technology option for PESs and, in particular, what would limit adding further insulation to a PES.

b. Cover

Heat loss, which drives PES energy consumption, can also occur through the top face of a spa, in addition to through the walls and floor. Covers prevent this heat loss by acting as an insulator against conductive heat transfer and also as a convection and vapor barrier to maintain high humidity levels above the water surface, thus preventing evaporative cooling. In non-inflatable spas, spa covers are typically made of rigid polystyrene foam panels wrapped in moisture barriers and protective vinyl sheaths. Most covers on non-inflatable spas have a central hinge, which allows consumers to remove and otherwise handle them more easily. The hinge is typically created by joining two pieces of rigid foam with a patch of vinyl. To allow for easy folding, there is typically a space of one to two inches between the two sections. This design is known as a ''dual-hinged'' design because either half may be lifted first. Like insulation in the body of non-inflatable spas, the main method for increasing the thermal resistance of a cover is to increase its thickness or density. Also, like insulation in the body of an inflatable spa, the marginal effectiveness of additional cover thickness or density decreases as the thickness or density increase. Product literature and online retail data suggest that the ranges of cover thicknesses and densities available are two inches to six inches and one pound per cubic foot to two pounds per cubic foot, respectively.

Inflatable spa covers consist of thin flexible foam material that is about one-half inch thick and surrounded by a flexible PVC tarp. In lieu of additional foam that would reduce the cover's ability to collapse or to be stored, some inflatable spa manufacturers distribute spas with inflatable inserts, which end users may place in a pouch on the bottom of the cover. These inserts reduce the heat loss through the top face of the spa by adding additional insulating pockets of air between the water and ambient air and by improving the seal of the cover.

DOE seeks comment regarding use of improved covers as a technology option for PESs and, in particular, what would limit further energy performance increases of PES covers.

c. Sealing

A particularly important aspect of the performance of a spa cover is that it largely depends on the extent to which the cover is able to create an airtight seal between the area above the spa's water and the area surrounding the spa. Inadequate seals allow air to exchange between each area, resulting in heat losses through evaporation and convection. Areas through which air typically escapes are around the edge of the cover, where the cover meets the flange created by the top of the spa shell, and the central double-hinging area of the cover, if the cover does have a hinge. A common method of addressing the seal around the edge of the cover is by ensuring both the spa flange and the bottom of the cover are as flat as possible. To address air leaks through a hinge in the cover, manufacturers might insert a separate piece of foam to fill the gap between each half of the cover created by the hinge. This ''hinge seal'' is also composed of rigid foam sheathed in a protective material, such as vinyl, and is connected to the stretch of material connecting each section of the spa cover. The hinge seal is not connected to each section, however, allowing for easy folding. Manufacturers might also opt for a ''single-hinged'' folding design, in which there is no space gap between vertical edges of each spa cover sections. Instead, the edges of each

section of the cover are angled, with one overlapping the other. This design eliminates the gap between sections. With this design, only the section of the cover resting on top of the other at the hinge can be lifted first. Covers can typically be buckled into position, but manufacturers and product literature suggest that, when fastened, these buckles do not to a large extent affect the seal but are mostly intended for safety. Correspondence with manufacturers has also suggested that the cover cannot be perfectly sealed. Because pressure will build as a result of thermal expansion and contraction of interior air and water, as well as from the potential addition of air through jets, some amount of air will be forced to escape through even very fortified spa covers.

Manufacturers have indicated to DOE that similar sealing strategies addressing air from leaking out of the spa cabinet could also reduce a spa's normalized average standby power. However, DOE did not identify evidence of air leakage through spa regions other than the cover. Accordingly, no technology options or technologies were analyzed that explicitly address the sealing of other areas than the cover of the spa.

DOE seeks comment regarding use of improved sealing as a technology option for PESs, regarding whether air leakage is significant at PES locations other than the cover, and regarding what would limit further sealing improvements energy performance increases of PES covers.

d. Radiant Barrier

The insulation and sealing methods described previously reduce conductive and convective heat losses, respectively. Energy can also leave the spa through radiative heat transfer. This type of heat transfer can be reduced by the application of a radiant barrier that reflects radiation back toward the center of the spa. Commonly available radiant barriers are composite ''thermal blankets'' made of a thin insulating material, such as bubble wrap, with reflective foil on both of its sides. DOE is aware of several manufacturers who use such a material or similar ones as a method of reducing their spas' heat losses. Correspondence with manufacturers and DOE's own research indicates that radiant barriers require an air gap between them and the radiating heat source to be effective. Like insulation, the marginal effectiveness of radiant barriers decreases as the spa reduces its heat losses via other methods.

DOE seeks comment on the description of radiant barriers and data on the relative effects of radiant barriers when paired with different amounts of insulation and different thicknesses of adjacent air gaps.

e. Insulated Ground Cover

To reduce heat conducted from the bottom of a spa to the ground, it is possible to install spas on top of a layer of insulating material. While non-inflatable spas are not typically distributed with such layers, an example of this application is in the current industry test procedure, APSP–14 2019, which allows for spas to be placed on top of two inches of polyisocyanurate sheathed with at least half an inch of plywood during testing. Inflatable spas, however, are often distributed with thin foam mats meant to be placed underneath the spas. These mats are typically to protect them from debris which might puncture the spas' PVC material. DOE has also observed similar, thicker ground covers available for purchase, which are marketed on the basis of their insulating capacities in addition to protective capacities. These thicker ground covers reduce the conductive heat transfer through the bottom of the spa to the ground. Based on their expected effectiveness and availability on the market, DOE considered insulated ground covers as a viable technology option for inflatable PESs.

For this NODA, DOE did not explicitly model the addition of an insulated ground cover as a technology option for non-inflatable PESs because it remains unclear how DOE's proposed test procedure for PESs may affect manufacturers' installation instructions (*e.g.,* to use an insulated ground cover) and consequently typical PES installation configurations. Additionally, existing performance data for PESs does not typically disclose presence of an insulated ground cover. Due to this uncertainty and the fact that such an addition into DOE's model would change the effects of other design options, DOE employed the more conservative approach of not modeling insulated ground covers as a technology option for non-inflatable PESs in this NODA. However, DOE may do so in the future as indicated by comment or data. In contrast to the approach taken for non-inflatable PESs, DOE did include insulated ground covers as a technology option for inflatable spas because of the abundance of currently available products marketed as insulating ground covers for that spa type.

DOE requests comment regarding whether insulated ground covers warrant inclusion in the set of technology options for non-inflatable PESs, including whether non-inflatable PESs are typically installed on top of insulated ground covers and whether that installation would be likely to change in view of the proposed DOE test procedure (*see* 87 FR 63356).

f. Dedicated Circulation Pump

Most non-inflatable spas use two-speed jet pumps for powering therapy jets and for water circulation. These jet pumps operate at high speed when powering therapy jets and low speed when used only for circulation purposes. The overall efficiency of a pump depends on several factors, including the hydraulic efficiency of the impeller and casing, the geometry of the plumbing system, and the electrical efficiency of the pump's motor. However, it is possible to simplify the comparison of the efficiencies of two differently sized pumps operating at the same motor speed. In general, when a pump operates at a motor speed significantly lower than its maximum motor speed on a given plumbing system, it will be less efficient than a smaller pump operating at its maximum motor speed on that same plumbing system. Consequently, a pump configuration more efficient than a single two-speed pump is two single-speed pumps, including a higher horsepower pump sized for operating therapy jets and a lower horsepower pump sized for filtration purposes. DOE is aware that pump inefficiencies may manifest as waste heat, which, if absorbed by the spa water, would reduce the load on the heating element and ultimately may mitigate the effects of a relatively inefficient pump and pump motor. The extent to which this waste heat is captured is still being investigated. Although in practice two-speed pumps and dedicated circulation pumps vary in power consumption, and the amount of waste heat will depend on how a given pump motor dissipates heat and on a spa's insulation, the efficiency analysis in section III.C.1 considers just two estimated values for water circulation: one associated with using the low-speed setting of a two-speed pump, and one associated with using a one-speed dedicated circulation pump. DOE did not evaluate dedicated circulation pumps as a technology option for inflatable spas because inflatable spas typically use a one-speed dedicated circulation pump and a separate air blower for massage jets.

DOE seeks comment and data on the degree to which two-speed pump inefficiencies manifest as waste heat and to which that waste heat is absorbed by the spa's water.

g. Heat Pump

DOE is aware of the existence of heat pumps marketed for use with PESs. Heat pumps would require less power as a heat source than the electric resistance heaters typically used in the PES industry. DOE is aware of at least one manufacturer of heat pump models marketed for use with spas explicitly.[15] However, heat pumps designed for use with portable electric spas appear otherwise absent in the market. DOE is unaware of portable electric spas that are equipped with heat pumps by their manufacturers.

For the one spa-compatible heat pumps supplier that DOE identified, models list coefficients of performance [16] that range from 3.16 to 6.2, though at lower output temperatures than those typical of PESs. In general, heat pump performance declines as a function of increase of the thermal gradient across which they operate. However, DOE did not obtain data to extrapolate those values to higher temperatures. In general, heat pump performance declines as a function of increase of the thermal gradient across which they operate. Additionally, DOE did not obtain data regarding how heat pumps would affect installation cost if non-integral units required separate mounting, plumbing, and electrical connection.

Accordingly, for this NODA, heat pumps were not included in the set of design options modeled in the engineering analysis due to lack of sufficient data and limited availability. If warranted, DOE may model the addition of a heat pump as a technology option in future analysis.

DOE requests comment regarding whether heat pumps would be likely to reduce energy consumption in PESs and, if so, quantified estimates of the effects of heat pump integration on both energy consumption and manufacturer production cost.

DOE requests comment regarding the availability of heat pumps compatible with PESs.

[15] Arctic Heat Pumps. Arctic Titanium Heat Pump for Swimming Pools and Spas—015ZA/B. Available at *www.arcticheatpumps.com/arctic-titanium-heat-pump-for-swimming-pools-and-spas-heats-chills-11-700-btu-dc-inverter.html.* (last accessed August 5, 2022) The 2022–08–05 material from this website is available in docket 2022–BT–STD–0025 at *www.regulations.gov.*

[16] Coefficient of performance (''COP'') is a figure characterizing the relative performance of heat pumps. It represents the ratio of heat transferred to the input energy required to transfer it. A higher COP indicates less energy consumed to per unit of heat delivered.

B. Screening Analysis

DOE uses the following five screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

Technological feasibility. Technologies that are not incorporated in commercial products or in working prototypes will not be considered further.

Practicability to manufacture, install, and service. If it is determined that mass production and reliable installation and servicing of a technology in commercial products could not be achieved on the scale necessary to serve the relevant market at the time of the projected compliance date of the standard, then that technology will not be considered further.

Impacts on product utility or product availability. If it is determined that a technology would have a significant adverse impact on the utility of the product for significant subgroups of consumers or would result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, that technology will not be considered further.

Adverse impacts on health or safety. If it is determined that a technology would have significant adverse impacts on health or safety, that technology will not be considered further.

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 due to the potential for monopolistic concerns.

10 CFR part 430, subpart C, appendix A, sections 6(b)(3) and 7(b).

If DOE determines that a technology, or a combination of technologies, fails to meet one or more of the listed five criteria, it will be excluded from further consideration in the engineering analysis.

In the case of PESs, DOE has tentatively determined that no technology options identified in section III.A.5 met the criteria for screening. Accordingly, all technology options identified in section III.A.5 were considered during the engineering analysis, with the exception of heat pumps and insulated ground covers (for non-inflatable spas only), which are not explicitly analyzed as design options for reasons discussed in section III.A.5 of this NODA.

C. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the efficiency and cost of PESs. There are two elements to consider in the engineering analysis: the selection of efficiency levels to analyze (*i.e.,* the ''efficiency analysis'') and the determination of PESs cost at each efficiency level (*i.e.,* the ''cost analysis''). In determining the performance of higher-efficiency PESs, DOE considered technologies and design option combinations not eliminated by the screening analysis. For each product class of PES, DOE estimated the manufacturer production cost (''MPC'') for the baseline as well as higher efficiency levels. The output of the engineering analysis is a set of cost-efficiency ''curves'' that are used in downstream analyses (*i.e.,* the LCC and PBP analyses and the NIA).

DOE converts the MPC to the manufacturer selling price (''MSP'') by applying a manufacturer markup. The MSP is the price the manufacturer charges its first customer, when selling into the PES distribution channels. The manufacturer markup accounts for manufacturer non-production costs and profit margin. DOE developed the manufacturer markup by examining publicly available financial information for manufacturers of the covered product.

1. Efficiency Analysis

DOE selected efficiency levels to analyze by identifying baseline units for non-inflatable and inflatable spas, evaluating the effects of efficiency design options on those units, and extrapolating the results to spas of other sizes. The baseline unit is intended to be representative of the most consumptive spas available in the market. For non-inflatable spas, DOE identified ''Spa J'' from the 2012 study ''Measurement and Analysis of the Standby Power of Twenty-Seven Portable Electric Spas'' as the baseline unit.[17] For inflatable spas, DOE acquired a sample unit and measured its performance without the additional features that make it compliant with CEC energy conservation standards (and, by extension, with APSP–14 2019). The results of those tests were considered to be representative of the most consumptive inflatable spas on the market.

DOE seeks comment on its selection of the baseline unit, including whether any other units on the market would

[17] Hamill, Andrew. ''Measurement and Analysis of the Standby Power of Twenty-Seven Portable Electric Spas.'' September, 2012.

better represent the most consumptive spas available for purchase.

The non-inflatable spa baseline unit was identified on the basis of its fill volume and normalized average standby power. However, no information was available regarding its features and, in particular, its insulation characteristics. To predict the effects of technologies and design option combinations on the non-inflatable baseline unit, it was necessary to estimate insulation levels of the model's spa cabinet. To do this estimate, a simplified model of the energy consumption of PESs was created, which accepts spa specifications, including fill volume, linear dimensions, and insulation type, and predicts the normalized average standby losses of a spa. Predictions were made for a subset of spas in MAEDbS on which DOE collected additional data through brochures and other marketing materials, and predictions were then compared to values reported in MAEDbS. By establishing a relationship between the amount of insulation and normalized average standby power, it was possible to estimate the amount of insulation in the non-inflatable baseline unit, Spa J. Additionally, Spa J was reported to be tested with a cover better than other covers observed to be available on the market. Using the energy consumption model, the normalized average standby power was approximated for Spa J if it had been fitted with a cover of a lower R-value. The energy consumption model is described in more detail below.

DOE's research and correspondence with manufacturers indicate that the drivers of PESs' energy consumption in standby mode are: (1) heat losses, and (2) the energy demands of filtration. In addition to the energy consumption of the filtration system, there are small power demands, such as that of a spa's controls unit, that are also modeled as constant with size. In DOE's analysis, the energy consumption of the filtration system and other wattage inputs, which are constant with size and do not contribute to water heating, are collectively referred to as ''non-heat losses.'' In the energy consumption model, these non-heat losses were modeled as constant with size and were discretized into two potential values for non-inflatable spas—a larger value for spas that use the low-speed setting of high-hp pumps for filtration, and a smaller value for spas that use a better-sized dedicated circulation pump for filtration purposes. Only one value for non-heat losses was estimated for inflatable spas, which typically already use dedicated circulation pumps for filtration and separate air blowers for massage jets. The estimated values for non-heat losses are summarized in the table below. The ''High HP 2-Speed Pump'' column represents the non-heat losses associated with a high horsepower two-speed pump for non-inflatable spas and the single speed pump typical for inflatable spas, while the ''Dedicated Circulation Pump'' column represents non-heat losses associated with dedicated circulation pump upgrades.

TABLE III.1—ESTIMATED NON-HEAT LOSSES OF PESS

Spa type	Non-heat losses	
	High HP 2-speed pump	Dedicated circulation pump
Standard Spa	40 Watts	20 Watts.
Exercise Spa	40 Watts	20 Watts.
Combination Spa	40 Watts	20 Watts.
Inflatable Spa	n/a	27.25 Watts.

DOE requests comment on the range of filtration system power demands in PESs as described in Table III.1. DOE also requests comment on any correlation between power demand and whether a spa uses a high horsepower two-speed pump or a lower horsepower dedicated circulation pump.

To calculate a spa's heat loss in standby mode, DOE assumed that a spa's normalized average standby power loss is approximately equal to the instantaneous heat loss of a spa held at thermal equilibrium, with spa water temperature and ambient air temperature held at the values respectively specified by DOE's proposed test procedure. It is noteworthy that doing so ignores temperature fluctuations characteristic of PESs' heating cycles.

DOE accounted for heat losses due to one-dimensional conductive heat transfer through the walls, floor, and cover of the spa, as well as heat losses due to convection at the outer wall and due to radiation. Spas were modelled as thermal circuits consisting of walls, floor, and cover in parallel with each other. The total thermal resistance of the walls and floor of the spa depends in part on their respective thicknesses and, consequently, the shape of the spa shell. Therefore, a simplified shell configuration consisting of basic upright seats on every side (*i.e.,* no lounge seats) was considered. As a result of this assumption, walls were divided into lower-insulation top wall and higher-insulation bottom wall sections, and the floor was divided into lower-insulation center and higher-insulation perimeter sections. In particular, the following simplifications were made regarding the distance from the spa shell to the spa cabinet:

TABLE III.2—MEASUREMENTS OF SIMPLIFIED MODEL OF NON-INFLATABLE SPA SHELL

Section of spa	Description	Maximum insulation thickness
Top of Wall	The horizontal distance from the spa cabinet to the seat backs.	6 inches.
Bottom of Wall	The horizontal distance from the spa cabinet to the wall of the foot well.	18 inches.
Center of floor	The vertical distance from the base of the spa to the bottom of the foot well.	3 inches.
Perimeter of floor.	The vertical distance from the base of the spa to the bottom of the seat.	15 inches.

In addition to conductive heat transfer, heat losses due to radiation and convection were estimated. Losses due to radiation were approximated using the average percent difference between the average standby losses of spa models units with and without reflective layers in their insulation. DOE identified those unit pairs and their differences in standby energy consumption using MAEDbS. DOE also conducted independent testing on one inflatable spa and one non-inflatable spa, measuring the energy consumption before and after each was retrofitted with a reflective radiant barrier. To estimate the effects of air convection on the outside surfaces of the spa, DOE selected a convective heat transfer coefficient characteristic of airflow at the rate specified in DOE's proposed test procedure and applied it in series with the spa walls, floor, and cover. Although air leaks are known to affect the heat losses of a spa, DOE did not obtain data sufficient to characterize the magnitude of their effect. Accordingly, DOE's energy model does not estimate the effect of air leaks explicitly. Instead, losses due to air leaks are treated as included in the losses through bridge sections, as described as follows.

DOE requests comment on its assumption of a standard shell shape as described in Table III.2, especially whether it is representative and whether DOE should consider certain shapes that result in maximum or minimum amounts of insulation.

DOE requests data and comment on the effectiveness of radiant barriers in reducing the normalized average standby power of PESs and on what factors make radiant barriers more or less effective.

DOE requests data and comment on the extent to which spas lose heat through air convection out of unsealed regions of the spa and on the factors that affect heat losses due to sealing.

DOE requests comment on the best way to quantify varying degrees of cover seal, including perimeter seal against the spa flange and hinge seal through the center of the cover.

The PES energy consumption model system described previously overlooks several complicating factors. Specifically, the typical spa's cabinet holds plumbing, heating equipment, and other components that not only displace insulation, but also bring hot water closer to the outside of the spa and even generate their own waste heat, which escapes the spa or enters the water at unknown proportions. At the same time, the foam itself is subject to voids and other variations. Rather than attempting to find an analytical solution that considers factors such as the number of jets and amount of piping, the physical size of internal components, or the distance of each from the outside of the spa, DOE used a simplified model that considers the heat loss through these ''thermal bridges'' as the amount of heat loss that could not be predicted by the one-dimensional model described above. DOE used this assumption to reformulate the thermal circuit of a spa as consisting of one-part thermal bridge section and one-part insulated section, which is subdivided into walls, floor, and cover, as described previously. Bridge sections were modeled as smaller but responsible for a disproportionate amount of heat flux. Specifically, the proportion of areas were estimated to be 90 percent insulated area to 10 percent bridge area. As a result, it was possible to calculate an average R-value for bridge sections in a spa. Using the average R-value for bridge sections and the modeled area ratios of insulated area to bridge area, the energy consumption model calculated total energy use with a median 0.9 percent error and an average of −4.38 percent error.

DOE requests comment on the method of analyzing thermal bridges as a single section of low R-value on the spa. Additionally, DOE requests information about techniques and models which are used in industry to predict spa performance.

DOE requests comment and data on the discrepancy between heat loss through the wall where the components are housed and through other walls.

DOE requests comment on any strategies for considering the effects of hot water traveling through plumbing on a spa's heat loss.

The R-value of a typical spa's bridge section was important to infer insulation thickness of Spa J, the chosen baseline unit for non-inflatable spas. Although Spa J's ''equivalent insulation thickness'' was calculated using the measured heat loss rate, this value cannot be used to represent the spa's insulation thickness because it does not consider bridge sections of relatively low thermal resistance. Consequently, it would underestimate the amount of insulation in Spa J and overestimate both the space available for additional insulation and ultimately the amount by which it would be possible to lower heat losses. Using the average R-value for bridge sections, DOE found what may be a more representative insulation equivalent resistance, which is then able to be decomposed into individual walls, cover, and floor equivalent resistances.

With estimated insulation characteristics for its baseline non-inflatable spa, it was possible to calculate the expected effects of additional insulation on the baseline spa's normalized average standby power consumption. DOE used these calculations to evaluate additional insulation in the walls of the spa, the floor, and the cover. These calculations, along with data from DOE's testing a non-inflatable spa and from the 2012 Hamill study, were used to establish proposed efficiency levels for non-inflatable spas. DOE selected efficiency levels in the order of increasing dollar to implement per expected watt savings using costs described below in the cost analysis.

DOE was also able to conduct its own testing on an inflatable spa baseline unit. Because DOE's energy consumption model relies to a large extent on R-values, and as DOE found less data on the R-value of inflatable spa materials, the effects of most inflatable design options were related to test data rather than calculations. For design options utilizing additional insulation and for which DOE did not have test data, a model similar to the one described previously was used. And efficiency levels for inflatable spas were chosen in the order of increasing dollar to implement per expected watt savings, similar to non-inflatable spas.

After the normalized standby power consumption was calculated for the baseline non-inflatable and inflatable spas, the standby power of spas with other volumes was extrapolated using a scaling relationship. DOE used the relationship defined in APSP–14 2019 standards levels, which vary energy consumption proportionally to the volume of the spa raised to the two-thirds power. Several manufacturers recounted during correspondence with DOE that a constant term was added to the scaling relationship to account for energy demands unrelated to size during the most recent revision of APSP–14 2019. Consequently, DOE chose to again break total standby power losses into heat losses and non-heat losses, and to scale only heat losses proportionally to volume raised to the two-thirds power, while holding non-heat losses constant at different fill volumes.

DOE requests comment describing its appropriation of the scaling relationship defined in APSP–14 2019 and whether there are any other traits with which DOE might vary energy consumption.

The efficiency analysis above was informed by data acquired by testing to the current industry standard test procedure, APSP–14 2019. However, DOE has proposed a test procedure for PESs, which made it necessary to

convert initial results into those which might be expected if spas were to be tested under that proposed test procedure. In particular, this conversion accounted for a higher temperature gradient between spa water and ambient air temperatures during testing, and for the removal of the foam and plywood foundation allowed by APSP–14 2019.[18] To account for the change in temperature gradient, original values were multiplied by a re-normalization factor of 1.243, the ratio of the proposed temperature difference of 46 °F to the industry standard of 37 °F. DOE removed R–13 of insulation from the floor section of the spa in its model to account for the loss of two inches of polyisocyanurate foam underneath the spa. While the converted values will be used for downstream analyses, DOE is also releasing the values before conversion so that manufacturers may consider them in the context of existing data.

DOE requests comment on whether there are other factors DOE should consider in converting normalized average standby power values to reflect the proposed test procedure.

2. Cost Analysis

DOE gathered data through manufacturer interviews, sample unit teardowns, and publicly available retail data to estimate the costs of both whole baseline units and of incremental design options. When necessary, profit margins for inflatables and non-inflatable spa manufacturers, as well as certain distributors, were estimated to convert MPC to MSP to final sale price.

DOE requests comment and data on typical markups from MPC to MSP and from MSP to final sale price.

Once the costs of baseline units and individual design options were estimated, DOE investigated a scaling function that could relate the price of a spa to its fill volume. As a first approximation, DOE estimated that the cost of a spa would be directly proportional to its fill-volume to the two-thirds power. DOE analyzed a small sample of retail data and found that, for units otherwise equal in qualities and features, such a relationship appears to slightly overestimate the cost of smaller spas and underestimate the cost of larger spas.

DOE requests comment and data characterizing the relationship between MPC and the size of a PES and whether there are better methods for approximating the effects of size changes on MPC than the one described previously.

DOE requests comment and data characterizing to what degree sales margins vary with spa size.

3. Engineering Results

The initial results of the efficiency analysis contained the estimated energy consumption of PESs at each efficiency level, as would be measured according to the current industry test procedure, APSP–14. These initial results are not used in the energy use analysis or other downstream analyses because they do not reflect DOE's proposed test procedure. However, as manufacturers are most likely to have data as measured with the current industry standard test procedure, the initial results of the efficiency analysis are summarized in the tables which follow. In the sets of efficiency levels for both non-inflatable and inflatable spas, Efficiency Level 1 is equivalent to the maximum consumption limit set by APSP–14 2019.

TABLE III.3—ENERGY CONSUMPTION FOR NON-INFLATABLE SPAS USING INDUSTRY TP

Efficiency level	Energy consumption using industry TP (watts)	Energy consumption of a 334-gal unit (watts)
0 (Baseline)	$40 + 6.88 * Vol^{2/3}$	371
1	$40 + 3.75 * Vol^{2/3}$	220
2	$40 + 2.92 * Vol^{2/3}$	180
3	$40 + 2.74 * Vol^{2/3}$	172
4	$40 + 2.74 * Vol^{2/3}$	152
5	$40 + 2.63 * Vol^{2/3}$	146
6	$40 + 2.38 * Vol^{2/3}$	135
7	$40 + 1.88 * Vol^{2/3}$	111
8 (Max-Tech)	$40 + 1.80 * Vol^{2/3}$	107

TABLE III.4—ENERGY CONSUMPTION FOR INFLATABLE SPAS USING INDUSTRY TP

Efficiency level	Energy consumption using industry TP (watts)	Estimated energy consumption of a 200-gal unit (watts)
0 (Baseline)	$9.20 * Vol^{2/3}$	315
1	$7.00 * Vol^{2/3}$	239
2	$4.78 * Vol^{2/3}$	164
3(Max-Tech)	$4.73 * Vol^{2/3}$	162

DOE requests comment on the efficiency levels described in tables Table III.3 and Table III.4, including whether any do not align with expected effects design options associated with them, as described in Table III.7 and Table III.8.

As discussed previously in this document, on October 18, 2022, DOE proposed a test procedure for measuring the energy consumption of PESs. 87 FR 63356. DOE's proposed test procedure aligns with the current industry test procedure in many regards, including in its use of normalized average standby power as a metric for the energy consumption of PESs. However, DOE's proposed test procedure includes changes to the specified ambient air temperature and to the amount of insulation allowed under the spa during

[18] Appendix A of APSP–14 states the following: The floor may be insulated with 2in. (51mm) thick R–13 polyisocyanurate with radiant barrier on both sides.

testing. These changes can be expected to increase the measured normalized average standby power of all PESs. Section III.C.1 discusses DOE's method of converting standby power values measured under the industry test procedure to the values expected if the standby power values for the same spas were measured under DOE's proposed test procedure. The converted and final results are summarized in the tables below. These values are used in the analyses described in later sections of this document.

The tables below also summarize the expected percent change in energy consumption on each efficiency level as a result of DOE's proposed test procedure. The increased temperature gradient is not expected to affect any efficiency levels differently. However, the effect of removing additional insulation from underneath the spa will depend on the amount of foam present in the base section of the spa and on the presence of other design options. As a result, the percent change is not constant across efficiency levels. The change in normalized average standby power at a given efficiency level due to DOE's proposed test procedure is expected to remain constant for spas of all volumes at that efficiency level.

TABLE III.5—ENERGY CONSUMPTION FOR NON-INFLATABLE SPA USING PROPOSED TP

Efficiency level	Energy consumption using proposed TP (watts)	Energy consumption of a 334-gal unit (watts)	% Increase from industry TP (%)
0	$40 + 9.55 * Vol^{2/3}$	500	35
1	$40 + 5.37 * Vol^{2/3}$	299	36
2	$40 + 4.34 * Vol^{2/3}$	249	38
3	$40 + 4.12 * Vol^{2/3}$	238	38
4	$40 + 4.02 * Vol^{2/3}$	213	40
5	$40 + 3.88 * Vol^{2/3}$	207	42
6	$40 + 3.04 * Vol^{2/3}$	167	24
7	$40 + 2.73 * Vol^{2/3}$	152	37
8	$40 + 2.63 * Vol^{2/3}$	147	37

TABLE III.6—ENERGY CONSUMPTION FOR INFLATABLE SPA USING PROPOSED TP

Efficiency level	Energy consumption using proposed TP (watts)	Energy consumption of a 200-gal unit (watts)	% Increase from industry TP (%)
0	$14.39 * Vol^{2/3}$	492	56
1	$12.03 * Vol^{2/3}$	411	72
2	$7.50 * Vol^{2/3}$	257	57
3	$7.44 * Vol^{2/3}$	254	57

DOE requests comment on the expected effects of DOE's proposed test procedure, as described in Table III.5 and Table III.6, including on whether its effects on normalized average standby power would be greater than or less than DOE's estimates.

Efficiency levels for PESs were established by estimating the effects of adding each design option to a representative unit at the previous efficiency level. The design option, which presented the lowest cost in dollars per watt expected to be saved, was selected as characteristic of the next efficiency level. Although potential standards at different efficiency levels will not prescribe specific design options, this approach resulted in the possibility of characterizing each efficiency level by the addition of a specific design option. DOE's estimates of the cost to manufacture each design option, as well as the baseline spa, are described in section III.C.2 of this NODA. The characteristic design options and their estimated costs on 334-gallon non-inflatable spas and a 200-gallon inflatable spa are summarized in the tables III.7 and III.8.

TABLE III.7—CHARACTERISTIC DESIGN OPTIONS FOR NON-INFLATABLE EFFICIENCY LEVELS

Efficiency level	Characteristic design option added from previous EL	Total MPC for 334-gal unit	Marginal MPC for 334-gal unit
0	The baseline spa, Spa J, was estimated to have R–10 worth of insulation in the walls and floor and an R–14 cover.	$3,120	$0
1	Additional R–6 in the wall sections and R–3.5 in the floor section	3,186	66
2	Additional R–6 in the wall sections	3,252	66
3	Additional inch of cover thickness (equivalent to an additional R–4)	3,280	28
4	Switch from two-speed pump to dedicated jet and circulation pumps	3,405	125
5	Additional inch of cover thickness (equivalent to an additional R–4)	3,433	28
6	Replace two inches of 0.5lb foam with 2lb foam insulation	3,607	174
7	Add radiant barrier around perimeter of spa	3,697	90
8	Increase cover density from 1lb foam to 2lb foam	3,767	70

TABLE III.8—CHARACTERISTIC DESIGN OPTIONS FOR INFLATABLE SPA EFFICIENCY LEVELS

Efficiency level	Characteristic design option added from previous EL	Total MPC on 200-gal unit	Marginal MPC on 200-gal unit
0	None	$122	$0
1	Flexible foam jacket and inflatable cover insert	165	43
2	Additional reflective blanket around spa	297	132
3	½ inch thick foam ground cover	329	32

DOE requests comment and data regarding the design options and associated estimated costs described in tables Table III.7 and Table III.8 of this NODA.

Section III.C.2 also discusses the conversion of MPC to MSP using manufacturer markups, and the scaling relationship used to extrapolate from the price of the baseline unit to units of other sizes. In particular, the price of a spa was modeled as growing proportionally to the fill volume to the two thirds power. The manufacturer markups used and the ultimate MSP scaling relationships are described in Tables III.9 and III.10.

TABLE III.9—MANUFACTURER MARKUPS BY MANUFACTURER TYPE

Manufacturer types	Estimated manufacturer markup
Inflatable Spa Manufacturer	1.17
Non-Inflatable Spa Manufacturer	1.43

TABLE III.10—PORTABLE ELECTRIC SPA MSP BY VOLUME

Efficiency level	MSP for non-inflatable spas ($)	MSP for inflatable spas ($)
0	92.69 * $Vol^{2/3}$	4.07 * $Vol^{2/3}$
1	94.64 * $Vol^{2/3}$	5.50 * $Vol^{2/3}$
2	98.54 * $Vol^{2/3}$	9.92 * $Vol^{2/3}$
3	103.27 * $Vol^{2/3}$	10.98 * $Vol^{2/3}$
4	111.72 * $Vol^{2/3}$	n/a
5	120.99 * $Vol^{2/3}$	n/a
6	136.22 * $Vol^{2/3}$	n/a
7	154.10 * $Vol^{2/3}$	n/a
8	174.05 * $Vol^{2/3}$	n/a

Those estimates describe a relationship between the marginal cost and the marginal efficiency of a PES as the PES is made progressively more efficient. The relationship is the basis of analyses described in sections D, E, F, G, and H of this NODA.

D. Markups Analysis

The markups analysis develops appropriate markups (*e.g.,* retailer markups, distributor markups, contractor markups) in the distribution chain and sales taxes to convert the MSP estimates derived in the engineering analysis to consumer prices, which are then used in the LCC and PBP analyses and in the manufacturer impact analysis. At each step in the distribution channel, companies mark up the price of the product to cover business costs and profit margin.

1. Distribution Channels

For this NODA, DOE has identified separate distribution channels into groups for hard-sided (standard, exercise, and combination) and inflatable spas. DOE based the market shares on confidential manufacturer interviews conducted under non-disclosure agreements. For PESs, the main parties in the distribution chains are shown in Table III.11.

TABLE III.11—DISTRIBUTION CHANNELS

Index	Distribution channel agents	Market share (%)	
		Hard-sided spas	Inflatable spas
1	Manufacturer → Wholesaler → Spa Product Contractor → Consumer	5	
2	Manufacturer → Spa Product Retailer → Consumer	60	
3	Manufacturer → Big Box Retailer → Consumer	20	50
4	Manufacturer → Big Box Internet Retailer → Consumer	10	50
5	Manufacturer → Consumer (direct sale)	5	

2. Markups

Baseline markups are applied to the price of products with baseline efficiency, while incremental markups are applied to the difference in price between baseline and higher-efficiency models (the incremental cost increase). The incremental markup is typically less than the baseline markup and is designed to maintain similar per-unit

operating profit before and after new or amended standards.[19]

For this NODA, DOE did not develop PES-specific baseline and incremental markups for each actor in the distribution chain. Instead, based on supply chain similarities, DOE used the markups analysis developed for its Pool Heater energy conservation standard as a proxy.[20] If DOE decides to pursue minimum efficiency standards for PESs, DOE will examine the PES supply chain in detail.

DOE applied the following baseline and incremental markups for each step of the distribution channels listed in Table III.11, which are shown in Table III.12.

TABLE III.12—AGENT SPECIFIC MARKUPS

Agent	Baseline markup	Incremental markup
Wholesaler	1.41	1.15
Spa Product Retailer	1.76	1.22
Big Box Retailer	1.31	1.07
Big Box Internet Retailer	1.31	1.07
Consumer (direct sale)	1.70	1.22
Spa Product Contractor	1.40	1.21

DOE requests information on the existence of any distribution channels other than the distribution channels listed in Table III.11 of this document. Further, DOE requests comment on whether the same distribution channels are applicable to installations of new and replacement PESs.

DOE requests information on the fraction of shipments that are distributed through the channels shown in Table III.11 of this document.

3. Sales Taxes

The sales tax represents state and local sales taxes that are applied to the consumer product price. The sales tax is a multiplicative factor that increases the consumer product price.

DOE derived state and local taxes from data provided by the Sales Tax Clearinghouse.[21] DOE derived population-weighted average tax values for each Census Region, as shown in Table III.13.[22]

TABLE III.13—AVERAGE SALES TAX RATES BY CENSUS REGION

Census region	Description	Sales tax rate (%)
1	Northeast	6.90
2	Midwest	7.10
3	South	7.36
4	West	7.53
Population-weighted average		7.28

4. Summary of Markups

Table III.14 summarizes the markups at each stage in the distribution channel and provides the average sales tax to arrive at overall markups for the potential product classes considered in this analysis.

TABLE III.14—SUMMARY OF MARKUPS

Equipment class	Baseline markup	Incremental markups
Standard	1.75	1.27
Exercise	1.75	1.27
Combination	1.75	1.27
Inflatable	1.41	1.15

E. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of PESs during stand-by operation at different efficiencies in representative U.S. single-family homes and to assess the energy savings potential of increased PES efficiency. The energy use analysis estimated the range of energy use of PESs in the field (*i.e.,* as they are actually used by consumers). The energy use analysis provided the basis for other analyses DOE performed,

[19] Because the projected price of standards-compliant products is typically higher than the price of baseline products, using the same markup for the incremental cost and the baseline cost would result in higher per-unit operating profit. While such an outcome is possible, DOE maintains that it is unlikely that standards would lead to a sustainable increase in profitability in the long run in markets that are reasonable competitive.

[20] Please see chapter 6 of the Technical Support Document: Energy Efficiency Program for Consumer Products and Commercial and Industrial Equipment: Consumer Pool Heaters. DOE. 2022. Available at *https://www.regulations.gov/document/EERE-2021-BT-STD-0020-0005.*

[21] Sales Tax Clearinghouse Inc. State Sales Tax Rates Along with Combined Average City and County Rates. July 2021. Available at *https://thestc.com/STrates.stm* (Last accessed July 1, 2021.)

[22] *See: https://www2.census.gov/geo/pdfs/maps-data/maps/reference/us_regdiv.pdf.*

particularly assessments of the energy savings and the savings in consumer operating costs that could result from adoption of new standards.

The energy use analysis uses the energy use models developed in the engineering analysis. The engineering analysis calculated the rate of heat loss from the spa as a function of the difference between the spa operating temperature and the ambient temperature. For this analysis, DOE developed distributions of binned hourly ambient temperature data using the dry-bulb temperature from the Typical Meteorological Year 3 (''TMY3'') [23] weather data as a function of climate zone, as described in section III.E.3 of this document. The annual energy use (''AEU'') in kilowatt hours per year (kWh/yr) for each climate zone, *z,* for all spas, other than combination spas, is expressed as:

$$AEU_z = \sum_j w_{z,j} \left(\left(Sys_{non-heat} + Sys_{heat} \times Vol^{\frac{2}{3}} \right) \times \frac{T_{op} - T_{amb\,j}}{T_{opTP} - T_{ambTP}} \right) \times npy_z$$

For combination spas, where there are two independently heated pools of water:

$$AEU_z = \sum_j w_{z,j} \left(\left[Sys_{non-heat} + \left(Sys_{heat} \times Vol^{\frac{2}{3}} \right) \times \frac{T_{op} - T_{amb\,j}}{T_{opTP} - T_{ambTP}} \right]_{StandardSpa} + \left[\left(Sys_{heat} \times Vol^{\frac{2}{3}} \right) \times \frac{T_{op} - T_{amb\,j}}{T_{opTP} - T_{ambTP}} \right]_{ExerciseSpa} \right) \times npy_z$$

Where:

AEU_z = the annual energy use, in kWh, of the spa installed in climate zone *z;* if there are any hours where T_{amb} exceeds T_{op}, AEU is set equal to zero,

j = a bin index representing the ambient temperature at which the spa is operating,

$w_{z,j}$ = the probability of the monthly ambient temperature for climate zone *z,*

$Sys_{non\text{-}heat}$ = the energy use of non-heat producing systems, *i.e.,* water pumps, controls, etc., which does not scale with spa water volume,

z = climate zone,

Sys_{heat} = a coefficient representing heating system energy use, which scales with spa water volume,

Vol = the spa's water volume,

T_{op} = the spa's operating temperature (87 for exercise spas, and the exercise portion of combination spas, 102 for all other products) (°F),

T_{opTP} = the spa's operating temperature as defined in the test procedure (102 °F),

$T_{amb\,j}$ = the ambient temperature (°F),

T_{ambTP} = the national average ambient temperature, as defined in the test procedure (56 °F), and

npy_z = number of months of operation per year for PESs installed in climate zone *z.*

DOE seeks comment on its energy use model. Specifically, DOE seeks comment on the energy use model for combination spas, where the $Sys_{non\text{-}heat}$ variable is normalized with volume of water portioned to the standard spa pool.

1. Consumer Sample

DOE conducts its analysis in support of a potential new minimum energy conservation standard at the national level. This means that DOE must distribute consumers of PES products throughout the nation to capture variability of key inputs of PES operation. Specifically, for the annual energy use estimate, DOE had concern regarding distributing the population of PES installations across different regions to capture variability in outdoor (ambient) temperatures, which impact PES stand-by energy consumption. This distribution of installations is referred to as the ''Consumer Sample.''

For this NODA, DOE used the statistical household data available in the Energy Information Administration. Residential Energy Consumption Survey: 2015 (''RECS'').[24] [25] DOE used the data from RECS of households with a hot tub (*RECBATH=1, FUELTUB=5, and TYPEHUQ=[2, 3]*) to define the national spatial sample of PES installations over analysis regions defined by the intersection of census regions *r* and climate zones *z.* The climate zones are those defined in the RECS microdata. The percent distribution of consumers over census region/climate zone is provided in Table III.15.

[23] The TMY data sets hold hourly values of solar radiation and meteorological elements for a 1-year period. Their intended use is for computer simulations of solar energy conversion systems and building systems to facilitate performance comparisons of different system types, configurations, and locations in the United States and its territories. Because the values represent typical rather than extreme conditions, they are not suited for designing systems to meet the worst-case conditions occurring at a location.

[24] U.S. Department of Energy—Energy Information Administration. Residential Energy Consumption Survey: 2015 RECS Survey Data. 2015. Available at *https://www.eia.gov/consumption/residential/data/2015/.* (Last accessed August 5, 2021.)

[25] At the time of drafting, the Residential Energy Consumption Survey has released a new version based on 2020 inputs as a preliminary analysis. If DOE elects to pursue new minimum efficiency standards for PESs, DOE will update the consumer sample to the 2020 version of RECS.

TABLE III.15—REGION AND CLIMATE ZONE PROBABILITIES OF HOT TUB INSTALLATIONS

Census region (*r*)	Climate zone (*z*)					
	Cold/very cold	Hot-dry/ mixed-dry	Hot-humid	Marine	Mixed-humid	Total
1	18.0	0.0	0.0	0.0	2.1	20.1
2	16.5	0.0	0.0	0.0	6.4	22.9
3	1.1	0.0	9.8	0.0	14.5	25.4
4	8.8	9.0	0.7	13.1	0.0	31.6
Total	44.5	9.0	10.5	13.1	22.9	100.0

2. Typical Annual Operating Hours (*npy*)

A key input to the energy use analysis is the number of annual operating hours of the product. Available data indicated that PESs operate in stand-by mode for the majority of hours that they are on. During the process of updating PES standards for California in 2018, CEC reported a duty cycle between 5,040 hours per year for inflatable spas (which are intended for seasonal use) and 8,760 hours per year for standard, exercise, and combination spas.[26] DOE notes that these estimates may be typical for California, but are not represented in the existing data in RECS.

The RECS data include a field (*MONTUB*) quantifying the number of months per year that the hot tub is considered in use. For this analysis, DOE considered the term ''in use'' to mean plugged-in and running. RECS does not specify which months the spa is in use, only the quantity of months. Therefore, for this NODA, DOE interpreted these data as that the spas in RECS will be operating during the warmest months of the year, as shown in Table III.16. For inflatable PES, DOE made the modeling assumption that they would be in operation up to a maximum of warmest 6 months of the year.

TABLE III.16—MAPPING OF RECS MONTHS OF OPERATION TO CALENDAR MONTHS

	Months of operation (*npy*)											
	1	2	3	4	5	6	7	8	9	10	11	12
Jan												1
Feb											1	1
Mar									1	1	1	1
Apr							1	1	1	1	1	1
May					1	1	1	1	1	1	1	1
Jun			1	1	1	1	1	1	1	1	1	1
Jul	1	1	1	1	1	1	1	1	1	1	1	1
Aug		1	1	1	1	1	1	1	1	1	1	1
Sep				1	1	1	1	1	1	1	1	1
Oct						1	1	1	1	1	1	1
Nov								1	1	1	1	1
Dec										1	1	1
Hours/year	744	1,488	2,208	2,928	3,672	4,416	5,136	5,856	6,600	7,344	8,016	8,760

DOE used RECS data to estimate the probability that a spa would be in use *npy* months per year as a function of climate zone. Given the sparsity of RECS data and to estimate the probabilities, DOE first binned the recorded value of *MONTUB* into 4 bins: 1 to 3 months per year, 4 to 6 months per year, 7 to 9 months per year, and 10 to 12 months per year. Then DOE calculated the percent of RECS households falling in each bin for each climate zone. Finally, DOE used the modelling assumption that the 3 values in each bin are equally probable. The resulting distribution of the expected number of months per year (*npy*) are shown in Table III.17. Once the number of months of operation is known, the hours of operation are calculated as if the spa is in operation over the full month.

TABLE III.17—ASSIGNMENT OF CLIMATE ZONE (*z*) BY MONTHS OF OPERATION (*npy*) FOR HARD-SIDED SPAS

Months per year (*npy*)	Cold/very cold	Hot-dry/ mixed-dry	Hot-humid	Marine	Mixed-humid
1	0.07	0.06	0.09	0.06	0.04
2	0.07	0.06	0.09	0.06	0.04
3	0.07	0.06	0.09	0.06	0.04
4	0.07	0.06	0.09	0.06	0.04
5	0.06	0.06	0.05	0.05	0.06
6	0.06	0.06	0.05	0.05	0.06
7	0.06	0.06	0.05	0.05	0.06
8	0.06	0.06	0.05	0.05	0.06
9	0.12	0.13	0.11	0.14	0.15

[26] Final Staff Report, Analysis of Efficiency Standards and Marking for Spas, 2018 Appliance Efficiency Rulemaking for Spas Docket Number 18–AAER–02 TN 222413. See: pg. 35, Available at *https://efiling.energy.ca.gov/GetDocument.aspx?tn=222413&DocumentContentId=31256.*

TABLE III.17—ASSIGNMENT OF CLIMATE ZONE (*z*) BY MONTHS OF OPERATION (*npy*) FOR HARD-SIDED SPAS—Continued

Months per year (*npy*)	Cold/very cold	Hot-dry/ mixed-dry	Hot-humid	Marine	Mixed-humid
10	0.12	0.13	0.11	0.14	0.15
11	0.12	0.13	0.11	0.14	0.15
12	0.12	0.13	0.11	0.14	0.15

TABLE III.18—ASSIGNMENT OF CLIMATE ZONE (*z*) BY MONTHS OF OPERATION (*npy*) FOR INFLATABLE SPAS

Months per year (*npy*)	Cold/very cold	Hot-dry/ mixed-dry	Hot-humid	Marine	Mixed-humid
1	0.17	0.16	0.19	0.17	0.13
2	0.17	0.16	0.19	0.17	0.13
3	0.17	0.16	0.19	0.17	0.13
4	0.17	0.16	0.19	0.17	0.13
5	0.16	0.18	0.12	0.15	0.23
6	0.16	0.18	0.12	0.15	0.23

DOE requests comment on its approach to estimating annual operating hours. Additionally, DOE requests comment on its modeling assumption that PES would be operated during the warmest months of the year.

3. Ambient Temperature (T_{amb})

For the purposes of the NODA, DOE has made the modeling assumption that all PESs are installed outdoors and their energy use will be a function of the ambient temperature of the PESs' location. Losses to the external environment depend both on how many months per year the spa operates, and the distribution of ambient temperatures for those months in the given climate zone. To establish representative hourly temperatures for each of the PESs' installations as a function of climate zone (z), DOE calculated the probability distribution of temperatures, binned into 5 °F segments, denoted *j,* based on TMY3 data. For this NODA, DOE averaged over one TMY3 weather station for each state within a climate zone to determine a single hourly temperature series for each zone, *z.* For each value of *npy,* DOE binned the temperature time series for the appropriate months to create a distribution. The distribution was normalized by the total number of hours for that selection of months. The result is a distribution *w(z,j,npy),* which defines the percent of hours allocated to each bin j for climate zone *z,* with *npy* months of operation.[27]

An example of the probability distribution of ambient temperatures for PESs operating for 1 and 7 months a year installed in census region 2 (Midwest), which covers climate zones: cold/very cold and mixed-humid, are shown in Table III.19.

TABLE III.19—EXAMPLE AMBIENT TEMPERATURE PROBABILITIES FOR CENSUS REGION 2 (MIDWEST), WHERE PESS ARE OPERATED FOR 1 AND 7 MONTHS PER YEAR

Months of operation *npy*	Temperature bin °F (*j*)	Probability (*w*)	
		Cold/very cold (*z*)	Mixed-humid (*z*)
1	62.5	0.095	.....
1	67.5	0.223	0.067
1	72.5	0.219	0.266
1	77.5	0.249	0.215
1	82.5	0.172	0.196
1	87.5	0.042	0.179
1	92.5	.....	0.077
Total	.....	1.000	1.00
7	32.5	0.003	.....
7	37.5	0.033	0.001
7	42.5	0.052	0.022
7	47.5	0.084	0.049
7	52.5	0.102	0.071
7	57.5	0.117	0.123
7	62.5	0.155	0.135
7	67.5	0.165	0.156
7	72.5	0.134	0.168
7	77.5	0.102	0.116
7	82.5	0.046	0.099
7	87.5	0.008	0.048
7	92.5	.....	0.012

[27] For the treatment of TMY3 data and mapping weather stations to regions, climate zones and states please see Appendix 7C or the Technical Support Document: Energy Efficiency Program for Consumer Products and Commercial and Industrial Equipment: Consumer Furnaces. U.S. Department of Energy. 2022. Available at *https://www.regulations.gov/document/EERE-2014-BT-STD-0031-0320.*

TABLE III.19—EXAMPLE AMBIENT TEMPERATURE PROBABILITIES FOR CENSUS REGION 2 (MIDWEST), WHERE PESS ARE OPERATED FOR 1 AND 7 MONTHS PER YEAR—Continued

Months of operation *npy*	Temperature bin °F (*j*)	Probability (*w*)	
		Cold/very cold (*z*)	Mixed-humid (*z*)
Total	.....	1.000	1.00

Representative values of the distribution are provided in Table III.19 for one month of operation and for seven months of operation per year. In general, the smaller the *npy,* the more usage is concentrated in warmer months.

DOE requests comment on its approach to determining regional ambient temperatures.

4. Operating Water Temperature (T_{op})

An input to the energy use analysis is the typical stand-by mode operating temperature of the spa. DOE understands that the typical operating temperature for any given spa would be determined by the personal preference of the consumer. Further, DOE understands that all potential product classes of PESs can be operated over a range of temperatures, with a recommended safe operating maximum temperature of 104 °F.[28] DOE recognizes that this maximum temperature would not apply to exercise spas not capable of maintaining a minimum water temperature of 100 °F. DOE was unable to find a credible source to create a lower bound, minimum stand-by operating temperature. In a guidance document to dutyholders of spas, the Health and Safety Executive determined a typical operating range of 30–40 °C (86–104 °F).[29]

For any future potential energy conservation standards for PESs, DOE tentatively concludes that the typical stand-by mode operating temperatures aligns with the minimum operating temperatures stated in APSP–14 2019, and that these temperatures are representative of the average. These values are shown in Table III.20.

TABLE III.20—TYPICAL OPERATING WATER TEMPERATURE (°F) BY SPA POTENTIAL PRODUCT CLASS DEFINED IN APSP–14 2019

Temp. °F	Product class	Requirement	Reference
102 ±2 ..	exercise spas or the exercise portion of a combination spa.	capable of maintaining a minimum water temperature of 100 °F.	5.6.1.1
87 ±2	exercise spas or the exercise portion of a combination spa.	is not capable of maintaining a minimum water temperature of 100 °F.	5.6.1.2
102 ±2 ..	standard spas, the standard spa portion of a combination spa, or inflatable spas.	.....	5.6.1.3

For spas capable of maintaining a minimum water temperature of 100 °F, DOE assumed for modelling a single point temperature of 102 °F. For spas not capable of maintaining a minimum water temperature of 100 °F, DOE assumed for modelling a single point temperature of 87 °F. DOE split the fraction of exercise, and the exercise portion of combination spas, where 30 percent of installations would operate at 87 °F and the remaining 70 percent of installations would operate at 102 °F. DOE made the modeling assumption that the spa would be maintained at this temperature for the operating hours that the spa is in stand-by mode. However, in the field, DOE expects that spas will be operated over a range of temperatures to meet the comfort of the consumer.

DOE requests data or comment on the typical operating temperature for exercise spas *not* capable of maintaining a minimum temperature of 100 °F. And DOE requests data or comment on the distribution of typical operating temperature for exercise spas *not* capable of maintaining a minimum temperature of 100 °F.

DOE requests data or comment on the distribution of typical operating temperature for spas capable of maintaining a minimum temperature of 100 °F. And DOE requests data or comment on the distribution of typical operating temperature for exercise spas capable of maintaining a minimum temperature of 100 °F.

5. Annual Energy Use Results

TABLE III.21—AVERAGE ANNUAL ENERGY USE BY POTENTIAL PRODUCT CLASS (KWH/YEAR)

Efficiency level	Spa type			
	Combination	Exercise	Inflatable	Standard
0	8,978	6,869	988	2,570
1	5,118	3,937	816	1,542
2	4,182	3,219	511	1,283
3	3,978	3,063	507	1,228
4	3,783	2,902	N/A	1,101
5	3,654	2,803	N/A	1,066
6	2,894	2,223	N/A	860

[28] U.S. Consumer Product Safety Commission, CPSC Warns of Hot Tub Temperatures, December 31, 1979. Available at *www.cpsc.gov/Newsroom/News-Releases/1980/CPSC-Warns-Of-Hot-Tub-Temperatures* (Last accessed: January 14, 2022.)

[29] The Control of Legionella and Other Infectious Agents in Spa-Pool Systems, Health and Safety Executive, 2017. Available at *www.hse.gov.uk/pubns/priced/hsg282.pdf.*

TABLE III.21—AVERAGE ANNUAL ENERGY USE BY POTENTIAL PRODUCT CLASS (KWH/YEAR)—Continued

Efficiency level	Spa type			
	Combination	Exercise	Inflatable	Standard
7	2,605	2,002	N/A	781
8	2,512	1,931	N/A	756

F. Life-Cycle Cost and Payback Period Analyses

DOE conducted LCC and PBP analyses to evaluate the economic impacts on individual consumers defined in the consumer sample (see section III.E.1) of potential energy conservation standards for PESs. The effect of potential energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost. In this NODA, DOE used the following two metrics to measure consumer impacts:

- The LCC is the total consumer expense of an appliance or product over the life of that product, consisting of total installed cost (manufacturer selling price, distribution chain markups, sales tax, and installation costs) plus operating costs (expenses for energy use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product.
- The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost at higher efficiency levels by the change in annual operating cost for the year that amended or new standards are assumed to take effect.

For any given efficiency level, DOE measures the change in LCC relative to the LCC in the no-new-standards case, which reflects the estimated efficiency distribution of PESs in the absence of new or amended energy conservation standards. In contrast, the PBP for a given efficiency level is measured relative to the baseline product.

For each considered efficiency level in each potential product class, DOE calculated the LCC and PBP for a nationally representative set of housing units. As stated previously, DOE developed household samples from the 2015 RECS. For each sample household, DOE determined the energy consumption for the PESs and the appropriate electricity price. By developing a representative sample of households, the analysis captured the variability in energy consumption and energy prices associated with the use of PESs.

Inputs to the calculation of total installed cost include the cost of the product—which includes MPCs, manufacturer markups, retailer and distributor markups, and sales taxes—and installation costs. Inputs to the calculation of operating expenses include annual energy consumption, energy prices and price projections, repair and maintenance costs, product lifetimes, and discount rates. DOE created distributions of values for product lifetime, discount rates, and sales taxes, with probabilities attached to each value to account for their uncertainty and variability.

The computer model DOE uses to calculate the LCC and PBP relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations randomly sample input values from the probability distributions and PES's user samples. For this NODA the Monte Carlo approach was implemented in a computer simulation. The model calculated the LCC and PBP for products at each efficiency level for 10,000 housing units per simulation run. The analytical results include a distribution of 10,000 data points showing the range of LCC savings for a given efficiency level relative to the no-new-standards case efficiency distribution. In performing an iteration of the Monte Carlo simulation for a given consumer, product efficiency is chosen based on its probability. If the chosen product efficiency is greater than or equal to the efficiency of the standard level under consideration, the LCC and PBP calculation reveals that a consumer is not impacted by the standard level. By accounting for consumers who already purchase more-efficient products, DOE avoids overstating the potential benefits from increasing product efficiency.

DOE calculated the LCC and PBP for all consumers of PESs as if each were to purchase a new product in the expected year of required compliance with new standards. Any new standards would apply to PESs manufactured 5 years after the date on which any new standard is published. (42 U.S.C. 6295(l)(2)) For purposes of its analysis, DOE used 2029 as the first year of compliance with any new standards for PESs.

Table III.22 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The subsections that follow provide further discussion on the approach and data.

TABLE III.22—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *

Inputs	Source/method
Product Cost	Derived by multiplying MPCs by manufacturer and retailer markups and sales tax, as appropriate.
Installation Costs	Assumed no change with efficiency level and not considered in the NODA.
Annual Energy Use	The total annual energy use multiplied by the hours per year. Average number of hours based on RECS 2015. Variability: Based on the Census region, and Climate Zone.
Energy Prices	Electricity: Determined as per LBNL–2001169.[30]
Energy Price Trends	Based on *AEO2022* price projections.
Repair and Maintenance Costs	Assumed not to change with efficiency level.
Product Lifetime	Average: 10.5 years for hard-sided spas, 3.0 for inflatable spas.

[30] Coughlin, K., Beraki, B. *Residential Electricity Prices A Review of Data Sources and Estimation Methods.* Energy Analysis and Environmental Impacts Division Lawrence Berkeley National Laboratory Energy Efficiency Standards Group. 2018. Available at *https://eta-publications.lbl.gov/sites/default/files/lbnl-2001169.pdf.*

TABLE III.22—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *—Continued

Inputs	Source/method
Discount Rates	Approach involves identifying all possible debt or asset classes that might be used to purchase the considered appliances or might be affected indirectly. Primary data source was the Federal Reserve Board's Survey of Consumer Finances.
Compliance Date	2029.

1. Inputs to the Life-Cycle Cost Model

The LCC is the total consumer expense during the life of an appliance, including purchase expense and operating costs (including energy expenditures). DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product. DOE defines LCC by the following equation:

$$LCC = TIC + \sum_{t=1}^{N} \frac{OC_t}{(1+r)^t}$$

Where:

LCC = life-cycle cost in dollars,
TIC = total installed cost in dollars,
Σ = sum over product lifetime, from year *1* to year *N,*
N = lifetime of appliance in years,
OC_t = operating cost in dollars in year t,
r = discount rate, and
t = year for which operating cost is being determined.

DOE expresses dollar values in 2021$ for the LCC.

a. Inputs to Total Installed Cost

Product Costs

To calculate consumer product costs, DOE multiplied the MSPs developed in the engineering analysis by the markups described previously (along with sales taxes). DOE used different markups for baseline products and higher-efficiency products because DOE applies an incremental markup to the increase in MSP associated with higher-efficiency products.

Future Product Costs

Examination of historical price data for certain appliances and equipment that have had energy conservation standards indicates that the assumption of constant real prices and costs may overestimate long-term trends in appliance and equipment prices in many cases. Economic literature and historical data suggest that the real costs of these products may, in fact, trend downward over time according to ''learning'' or ''experience'' curves. Desroches *et al.* (2013) summarizes the data and literature currently available that is relevant to price projections for selected appliances and equipment.[31] The extensive literature on the ''learning'' or ''experience'' curve phenomenon is typically based on observations in the manufacturing sector.[32] In the experience curve method, the real cost of production is related to the cumulative production or ''experience'' with a manufactured product. This experience is usually measured in terms of cumulative production. Thus, as experience (production) accumulates, the cost of producing the next unit decreases.

If DOE proceeds with new efficiency standards for PESs, DOE may derive the learning rate parameter for all PESs from the historical Producer Price Index (''PPI'') data for ''326191—Plastics Plumbing Fixture Manufacturing'' for the time period between 1993 and 2021 from the Bureau of Labor Statistics (''BLS'').[33] [34] If DOE determines that new efficiency standards for PESs are warranted, DOE will inflation-adjust the price indices calculation by dividing the PPI series by the implicit Gross Domestic Product price deflator for the same years.

DOE requests comment on its proposed methodology to project future equipment prices.

DOE requests information or data related to the past trends in production costs of PESs. Additionally, DOE requests data or information related to the cost of PES production over time.

Installation Costs

As noted, inputs to the calculation of total install cost include the installation costs. Installation cost includes labor, overhead, and any miscellaneous materials and parts needed to install the product. As part of its Title 20 regulatory activities for PESs, CEC examined potentially available technologies that can be employed to improve the efficiency of PESs. CEC's report includes several technology options but states that improved insulation (in terms of improved insulation coverage, type, and quantity) within the tub walls and of the tub cover offer the greatest opportunity for improved efficiency. The report also mentions further attainable efficiency improvements through, but not limited to, improved spa cover design and improved pump and motor system design within in the spa itself.[35] DOE tentatively finds that none of these technologies would impact the quantity of labor, overhead, or materials needed to install a PES if DOE were to adopt new energy efficiency standards. Based on these findings, DOE tentatively concludes that installation costs should not be included in any future life-cycle cost analysis.

DOE requests comment on its decision to exclude installation costs from any future efficiency standard calculation.

DOE requests data and details on the installation costs of PESs, and whether those costs vary by product type or any other factor affecting their efficiency.

b. Inputs to Operating Costs

Annual Energy Consumption

For each sampled household, DOE determined the energy consumption for a PES at different efficiency levels using the approach described previously in section III.E of this document.

Electricity Prices

Using data from EEI Typical Bills and Average Rates reports, DOE derived annual electricity prices in 2021 for all the census regions in *RECS.*[36] [37] DOE calculated electricity prices using the

[31] Desroches, Louis-Benoit, et al., ''Incorporating Experience Curves in Appliance Standards Analysis'', Energy Policy 52 (2013): 402–416.

[32] In addition to Desroches (2013), see Weiss, M., Junginger, H.M., Patel, M.K., Blok, K., (2010a). A Review of Experience Curve Analyses for Energy Demand Technologies. Technological Forecasting & Social Change. 77:411–428.

[33] This U.S. industry consists of establishments primarily engaged in manufacturing plastics or fiberglass plumbing fixtures. Examples of products made by these establishments are plastics or fiberglass bathtubs, *hot tubs,* portable toilets, and shower stalls. See *www.naics.com/naics-code-description/?code=326191*

[34] Product series ID: NDU3261913261911, see more information at *www.bls.gov/ppi.*

[35] Final Staff Report, Analysis of Efficiency Standards and Marking for Spas, 2018 Appliance Efficiency Rulemaking for Spas Docket Number 18–AAER–02 TN 222413. Available at *efiling.energy.ca.gov/GetDocument.aspx?tn=222413&DocumentContentId=31256.*

[36] Edison Electric Institute, Typical Bills and Average Rates Report, Winter 2021, 2021.

[37] Edison Electric Institute, Typical Bills and Average Rates Report, Summer 2021, 2021.

methodology described in Coughlin and Beraki (2018), where for each purchase sampled, DOE assigned the average and marginal electricity price for the census region in which the PES is located.[38] Because marginal electricity price captures more accurately the incremental costs or savings associated with a change in energy use relative to the consumer's bill in the reference case, it may provide a better representation of incremental change in consumer costs than average electricity prices. Therefore, DOE used average electricity prices to characterize the baseline energy level and marginal electricity prices to characterize the incremental change in energy costs associated with the other energy levels considered. The regional average and marginal electricity prices are shown in Table III.23.

TABLE III.23—REGIONAL AVERAGE AND MARGINAL ELECTRICITY PRICES

[$/kWh, 2021$]

Census region	Geographic area	Average $/kWh	Marginal $/kWh
1	Northeast	0.1834	0.1687
2	Midwest	0.1380	0.1240
3	South	0.1164	0.0994
4	West	0.1959	0.2145

Future Electricity Price Trends

To arrive at prices in future years, DOE will multiply the 2021 electricity prices by the forecast of annual average price changes for each census division from the most recent Energy Information Administration's Annual Energy Outlook (''AEO'').[39] To estimate price trends after 2050, DOE maintained prices constant at 2050 levels.

DOE requests comment on its use of AEO to project electricity prices into the future.

Maintenance and Repair Costs

As noted, inputs to the calculation of operating expenses include repair and maintenance costs, among other factors. For this NODA, DOE made the modeling assumption that maintenance costs would not change with increased product stand-by efficiency. DOE understands that PES maintenance broadly falls into two categories: (1) maintaining water quality, and (2) the care and upkeep of the PES itself. DOE does not foresee a difference in costs to consumers in maintaining water quality under a new potential efficiency standard to stand-by power. Further, DOE understands the maintenance to the PES itself to be cleaning activities (*i.e.,* cleaning of the filters, spa interior, spa exterior, and cover).[40] Based on these understandings, DOE does not consider that these cleaning activities would cost the consumer more under a new potential energy conservation standard.

However, DOE notes that the costs to repair more efficient PES mechanical systems and insulation may be greater in the case of a potential new energy conservation standard.

DOE requests feedback and specific data on whether maintenance costs differ in comparison to the baseline maintenance costs for any of the specific efficiency improving technology options applicable to PESs.

DOE requests comment on the typical repairs to PESs and how they may differ in the case of a potential new energy conservation standard.

2. Product Lifetime

The product lifetime is the age at which a product is retired from service. Rather than use a single average value for the lifetime of PESs, DOE developed lifetime distributions to characterize the age, in years, when hard- and inflatable PESs will be retired from service. To model PES lifetimes, DOE assumed that the probability function for the annual survival of PESs would take the form of a Weibull distribution. A Weibull distribution is a probability distribution commonly used to measure failure rates.[41] [42]

a. Hard-Sided Spas

DOE examined historical hard-sided spa installation data from PK Data, Inc. (''PK Data'') for the years from 2015 through 2020 and fit a Weibull distribution to these data with minimum and maximum lifetimes of 1 year and 30 years, respectively. This Weibull distribution yielded an average lifetime of 9.3 years.

b. Inflatable Spas

DOE did not have equivalent data from which to estimate lifetimes for inflatable spas. As a result, DOE used the average lifetime on the design life from the CEC CASE report on PESs.[43] To estimate the lifetime of inflatable spas, DOE fit a Weibull function based on the modeling assumptions of an average and maximum lifetimes of 3.0 and 5.0 years, respectively.

[38] Coughlin, K., Beraki, B. Residential Electricity Prices A Review of Data Sources and Estimation Methods. Energy Analysis and Environmental Impacts Division Lawrence Berkeley National Laboratory Energy Efficiency Standards Group. 2018. Available at *https://eta-publications.lbl.gov/sites/default/files/lbnl-2001169.pdf.*

[39] *See www.eia.gov/outlooks/aeo.*

[40] *See https://staging-na01-jacuzzi.demandware.net/on/demandware.static/-/Library-Sites-jacuzzi-shared-content/default/v44de813235d8b46eb8c84da693ec1bed8e8ec186/pdf-documents/Jacuzzi_Swim_Spa_Collection_Owners_Manual_English.pdf.*

[41] For reference on the Weibull distribution, see sections 1.3.6.6.8 and 8.4.1.3 of the NIST/SEMATECH e-Handbook of Statistical Methods. Available at *www.itl.nist.gov/div898/handbook/.*

[42] For an example methodology of how DOE approaches its survival calculation, see section 8.3.4 of chapter 8 of the Technical Support Document: Energy Efficiency Program For Consumer Products and Commercial and Industrial Equipment: Consumer Furnaces. DOE. 2022. Available at *https://www.regulations.gov/document/EERE-2014-BT-STD-0031-0320.*

[43] California Energy Commission. ''Final Staff Report—Analysis of Efficiency Standards and Marking for Spas.'' February 2, 2018.

TABLE III.24—LIFETIME PARAMETERS

	Value			Weibull parameters	
	Minimum (*years*)	Average (*years*)	Maximum (*years*)	Alpha (scale)	Beta (shape)
Hard-Sided Spas	1	9.3	30	9.91	1.85
Inflatable Spas	1	3.0	5	3.20	7.00

DOE requests comment on its lifetime analysis.

3. Rebound Effect

DOE considered the possibility that some consumers may use a higher-efficiency PES more than a baseline one, thereby negating some or all the energy savings from the more-efficient product. Such a change in consumer behavior when operating costs decline is known as a (direct) rebound effect. Because the heating and pumping systems operation in ''stand-by mode'' also function when the PES is operated in ''active mode,'' an increase in PES usage due to a rebound effect would not impact any potential energy savings in a new standards case. For this reason, DOE tentatively finds that the rebound effect should not apply to PES stand-by power.

DOE requests comment on its reasoning to not apply a rebound effect to PES stand-by power energy use.

4. Energy Efficiency Distribution in the No-New-Standards Case

To accurately estimate the share of consumers that would be affected by a potential energy conservation standard at a particular efficiency level, DOE's LCC analysis considers the projected distribution (market shares) of product efficiencies under the no-new-standards case (*i.e.,* the case without amended or new energy conservation standards).

To establish the fraction of PES purchases that exceed baseline equipment in terms of energy efficiency in the absence of potential new standards, DOE examined information provided by PHTA and U.S. Census data.

The information provided by the PHTA shows the adoption of state level minimum efficiency requirements for PESs. These state level programs are related to different editions of APSP–14 2019, and this variation in state-level adoption creates a fractured regulatory environment where different states have different minimum energy efficiency requirements.

For this NODA, DOE has made the simplified modeling assumption that all spas sold in states with an existing standard would adhere to APSP–14 2019 and will be considered above the baseline in 2029. Further, DOE notes that the RECS 2015 data does not have state-level information from which to derive the relative spa owning probability for each state, and, for the purposes of estimating the efficiency distribution in the no-new standards case, DOE used state populations published in the 2021 Census.[44] DOE acknowledges that this modeling assumption may overrepresent the state of national efficiency adoption to the detriment of national energy savings as states with less stringent standards are modeled with greater minimum efficiency levels. However, this potential overrepresentation may be balanced by those consumers in non-regulated states purchasing more efficient products. These populations are shown in Table III.25 and are held constant over time.

Using the projected distribution of efficiencies for PESs, DOE randomly assigned a product efficiency to each household drawn from the consumer sample. If a consumer is assigned a product efficiency that is greater than or equal to the efficiency under consideration, the consumer would not be affected by a standard at that efficiency level.

TABLE III.25—PESS MINIMUM EFFICIENCY STANDARDS BY STATE

State	Standard	Population
Arizona	AZ Title 44	7,276,316
California	APSP 14–2019	39,237,836
Connecticut	CA Title 20 (2006)	3,605,597
District of Columbia	APSP 14–2019	670,050
Massachusetts	APSP 14–2019	6,984,723
New Jersey	APSP 14–2019	9,267,130
Oregon	APSP 14–2019	4,246,155
Pennsylvania	APSP 14–2019	12,964,056
Rhode Island	APSP 14–2019	1,095,610
Colorado	APSP 14–2014	5,812,069
Maryland	APSP 14–2019	6,165,129
Nevada	APSP 14–2019	3,143,991
Vermont	APSP 14–2014	645,570
Washington	APSP 14–2014	7,738,692
Total Population Covered by Standards		108,852,924
U.S. Population		331,893,745
Fraction above Baseline		32.8%
Fraction at Baseline		67.2%

[44] Annual Estimates of the Resident Population for the United States, Regions, States, District of Columbia, and Puerto Rico: April 1, 2020 to July 1, 2021 (NST–EST2021–POP). U.S. Census Bureau, Population Division. December 2021.

TABLE III.26—DISTRIBUTION OF EFFICIENCIES IN THE NO-NEW STANDARDS CASE (%)

Type	Efficiency level								
	0	1	2	3	4	5	6	7	8
All Spas	67.2	32.8	0	0	0	0	0	0	0

5. Discount Rates

In the calculation of LCC, DOE applies discount rates appropriate to households to estimate the present value of future operating cost savings in the year of compliance. DOE estimated a distribution of discount rates for PESs based on the opportunity cost of consumer funds.

DOE applies weighted average discount rates calculated from consumer debt and asset data, rather than marginal or implicit discount rates.[45] The LCC analysis estimates net present value over the lifetime of the product. As a result, the appropriate discount rate will reflect the general opportunity cost of household funds, taking this time scale into account. Given the long-time horizon modeled in the LCC analysis, the application of a marginal interest rate associated with an initial source of funds is inaccurate. Regardless of the method of purchase, consumers are expected to continue to rebalance their debt and asset holdings over the LCC analysis period, based on the restrictions consumers face in their debt payment requirements and the relative size of the interest rates available on debts and assets. DOE estimates the aggregate impact of this rebalancing using the historical distribution of debts and assets.

To establish residential discount rates for the LCC analysis, DOE identified all relevant household debt or asset classes to approximate a consumer's opportunity cost of funds related to appliance energy cost savings. Then DOE estimated the average percentage shares of the various types of debt and equity by household income group using data from the Federal Reserve Board's Survey of Consumer Finances (''SCF'') for 1995, 1998, 2001, 2004, 2007, 2010, 2013, 2016, and 2019.[46] Using the SCF and other sources, DOE developed a distribution of rates for each type of debt and asset by income group to represent the rates that may apply in the year in which new energy conservation standards would take effect. DOE assigned each sample household a specific discount rate drawn from one of the distributions. The average rate across all types of household debt and equity and income groups were then mapped to RECS income bins for the fraction of homes with portable electric spas.[47]

TABLE III.27—MAPPING OF SCF INCOME GROUPS TO RECS 2015 INCOME BIN

RECS income bins	1	2	3	4	5	6
1	100.0%					
2	2.9%	86.6%	10.6%			
3			100.0%			
4			15.4%	84.6%		
5				100.0%		
6				13.4%	86.6%	
7					88.4%	11.6%
8						100.0

TABLE III.28—AVERAGE REAL EFFECTIVE DISCOUNT RATES

SCF income group	Discount rate (%)
1	4.76
2	4.99
3	4.54
4	3.84
5	3.47
6	3.23
Overall Average	*4.29*

Source: Board of Governors of the Federal Reserve System, Survey of Consumer Finances (1995–2019).

[45] The implicit discount rate is inferred from a consumer purchase decision between two otherwise identical goods with different first cost and operating cost. It is the interest rate that equates the increment of first cost to the difference in net present value of lifetime operating cost, incorporating the influence of several factors: transaction costs; risk premiums and response to uncertainty; time preferences; and interest rates at which a consumer is able to borrow or lend. The implicit discount rate is not appropriate for the LCC analysis because it reflects a range of factors that influence consumer purchase decisions, rather than the opportunity cost of the funds that are used in purchases.

[46] Note that two older versions of the SCF are also available (1989 and 1992); these surveys are not used in this analysis because they do not provide all of the necessary types of data (*e.g.,* credit card interest rates, etc.). DOE has tentatively determined that the time span covered by the eight surveys included is sufficiently representative of recent debt and equity shares and interest rates.

[47] A detailed discussion of DOE discount rate methodology for residential consumers can be found in the Technical Support Document: Energy Efficiency Program for Consumer Products and Commercial and Industrial Equipment: Consumer Furnaces. DOE, 2022, in chapters 8, and appendix 8H. Available at *https://www.regulations.gov/document/EERE-2014-BT-STD-0031-0320.*

6. Payback Period Analysis

The PBP is the amount of time it takes the consumer to recover the additional installed cost of more-efficient products, compared to baseline products, through energy cost savings. PBP are expressed in years. PBP that exceed the life of the product mean that the increased total installed cost is not recovered in reduced operating expenses. The equation for PBP is:

$$PBP = \frac{\Delta IC}{\Delta OC}$$

Where:

PBP = payback period in years,

ΔIC = difference in the total installed cost between the more efficient product (efficiency levels 1, 2, 3, etc.) and the baseline product, and

ΔOC = difference in first-year annual operating costs between the more efficient product and the baseline product.

The data inputs to PBP are the total installed cost of the product to the consumer for each efficiency level and the annual (first year) operating costs for each efficiency level. As for the LCC, the inputs to the total installed cost are the product price and installation cost. The inputs to the operating costs are the annual energy and annual maintenance costs. The PBP uses the same inputs as does the LCC analysis, except that electricity price trends are not required. Because the PBP is a simple payback, the required electricity cost is only for the year in which a potential new energy conservation standard would take effect—in this case, 2029.

7. Consumer Results

TABLE III.29—STANDARD SPAS: AVERAGE LCC AND PBP RESULTS

Efficiency level	Average costs (2021$)				Simple payback period (years)	Average lifetime (years)
	Installed cost	First year's operating cost	Lifetime operating cost	LCC		
0	8,507	352	2,648	11,644	.....	8.8
1	8,594	246	1,849	10,937	0.8	8.8
2	8,852	207	1,555	10,918	2.4	8.8
3	9,165	198	1,491	11,188	4.5	8.8
4	9,725	179	1,345	11,638	7.8	8.8
5	10,338	174	1,305	12,251	11.9	8.8
6	11,347	142	1,068	13,088	16.5	8.8
7	12,530	130	978	14,258	23.9	8.8
8	13,851	126	949	15,636	34.6	8.8

TABLE III.30—STANDARD SPAS: AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTION

Efficiency level	% Consumers with net cost	Average savings—impacted consumers (2021$)
1	6.4	1,056
2	35.2	726
3	51.2	456
4	65.9	6
5	77.0	−607
6	84.6	−1,444
7	91.4	−2,614
8	96.1	−3,992

TABLE III.31—EXERCISE SPAS: AVERAGE LCC AND PBP RESULTS

Efficiency level	Average costs (2021$)				Simple payback period (years)	Average lifetime (years)
	Installed cost	First year's operating cost	Lifetime operating cost	LCC		
0	26,791	930	6,937	35,077	.....	8.8
1	27,063	631	4,715	33,144	0.9	8.8
2	27,876	521	3,892	33,187	2.7	8.8
3	28,862	497	3,715	34,060	5.1	8.8
4	30,624	472	3,530	35,751	9.4	8.8
5	32,556	457	3,417	37,696	14.6	8.8
6	35,731	368	2,756	40,415	20.2	8.8
7	39,459	335	2,504	44,132	29.7	8.8
8	43,618	324	2,423	48,479	44.0	8.8

TABLE III.32—EXERCISE SPAS: AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTION

Efficiency level	% Consumers with net cost	Average savings—impacted consumers (2021$)
1	7.9	2,889
2	39.5	1,889
3	55.8	1,017
4	72.1	−674
5	82.1	−2,619
6	88.5	−5,338
7	94.2	−9,055
8	97.5	−13,403

TABLE III.33—COMBINATION SPAS: AVERAGE LCC AND PBP RESULTS

Efficiency level	Average costs (2021$)				Simple payback period (years)	Average lifetime (years)
	Installed cost	First year's operating cost	Lifetime operating cost	LCC		
0	34,175	1,218	9,093	44,965	.....	8.8
1	34,523	823	6,143	42,387	0.9	8.8
2	35,560	678	5,064	42,412	2.7	8.8
3	36,818	647	4,831	43,519	4.9	8.8
4	39,065	617	4,609	45,690	9.1	8.8
5	41,531	597	4,460	48,167	14.1	8.8
6	45,581	481	3,592	51,611	19.5	8.8
7	50,336	437	3,262	56,345	28.6	8.8
8	55,642	422	3,155	61,888	42.2	8.8

TABLE III.34—COMBINATION SPAS: AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTION

Efficiency level	% Consumers with net cost	Average savings—impacted consumers (2021$)
1	7.5	3,835
2	38.4	2,553
3	54.2	1,446
4	70.6	−724
5	81.0	−3,201
6	88.2	−6,646
7	94.1	−11,379
8	97.4	−16,923

TABLE III.35—INFLATABLE SPAS: AVERAGE LCC AND PBP RESULTS

Efficiency level	Average costs (2021$)				Simple payback period (years)	Average lifetime (years)
	Installed cost	First year's operating cost	Lifetime operating cost	LCC		
0	244	147	424	780	.....	3.0
1	287	130	375	778	2.8	3.0
2	549	83	238	924	5.5	3.0
3	858	82	237	1,256	13.0	3.0

TABLE III.36—INFLATABLE SPAS: AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTION: COMBINATION SPAS

Efficiency level	% Consumers with net cost	Average savings—impacted consumers (2021$)
1	38.7	3
2	84.6	−143
3	99.6	−475

G. Shipments Analysis

DOE uses projections of annual product shipments to calculate the national impacts of potential amended or new energy conservation standards on energy use, NPV, and future manufacturer cash flows.[48] The shipments model takes an accounting approach in tracking market shares of each potential product class and the vintage of units in the stock. Stock accounting uses product shipments as inputs to estimate the age distribution of in-service product stocks for all years. The age distribution of in-service product stocks is a key input to calculations of both the NES and NPV because operating costs for any year depend on the age distribution of the stock.

1. Approach to Shipments and Stock Models

DOE developed a national stock model to estimate annual shipments of products under potential energy efficiency standards. The model considers market segments as distinct inputs to projected shipments. DOE considered new home installations and replacements in existing households as the primary market segments for PESs.

DOE's shipments model takes a stock accounting approach, tracking the vintage of units in the existing stock and expected housing stock trends. The stock accounting uses product shipments, a retirement function, and initial in-service product stock as inputs to develop an estimate of the age distribution of in-service product stock for all years. The age distribution of in-service product stock is a key input to calculations of both the NES and NPV because the operating costs for any year depend on the age distribution of the stock. The dependence of operating cost on the product age distribution occurs under a standards-case scenario that produces increasing efficiency over time, whereby older, less efficient units may have higher operating costs, while younger, more-efficient units have lower operating costs.

2. Initial Stock Estimates

a. Hard-Sided Spas Stock

DOE used industry data from PK Data to estimate the initial stock for hard-sided spas.[49] The PK Data were compiled from manufacturer data and other sources, including dealers, retailers, and consumers, and provide an estimated installation base for these spas. However, these data did not specify the fraction of installations that are standard, exercise, or combination spas. For this NODA, DOE has made the modeling assumptions that the fraction of the market for standard, exercise, and combination spas will follow the model count in MAEDbS.[50] The stock breakdown based on the data received by DOE from PK Data and the weights from MAEDbS are shown in Table III.37.

TABLE III.37—PK DATA AND DOE STOCK ESTIMATES OF HARD-SIDED SPAS

[Units, 2020]

	All spas PK data	Standard	Exercise	Combination
Fraction (%)	100	85	12	3
Units (2020)	5,454,117	4,635,999	654,494	163,624

DOE requests comment on its stock ratios for hard-sided spas. Additionally, DOE seeks input on the market shares of standard, exercise, and combination spas.

b. Inflatable Spas Stock

Inflatable spas (inflatable spas) are a relatively new product to the spa industry. As such, DOE was unable to find comprehensive, publicly available information to indicate either their shipments or existing stock. The CEC's ''2018 Appliance Efficiency Rulemaking for Spas, Final Staff Report'' projected California's stock of inflatable spas in 2020 to be 20,101 units. When this value is scaled by population, it produces a national stock estimate of 170,025 units, or approximately 3 percent of the stock of hard-sided Spas. For this NODA, DOE has made the modeling assumption that stock of inflatable spas in 2020 was 170,025 units.

[48] DOE uses data on manufacturer shipments as a proxy for national sales, as aggregate data on sales are lacking. In general, one would expect a close correspondence between shipments and sales.

[49] P.K. Data Inc. 2022 Hot Tube Market Data: Custom Compilation for Lawrence Berkeley National Laboratory (through 2021). 2022. Alpharetta, GA. (Last accessed April 12, 2022.) Available at *https://www.pkdata.com/reports-store.html#/*.

[50] California Energy Commission's Modernized Appliance Efficiency Database System. Available at *https://cacertappliances.energy.ca.gov/Login.aspx*.

TABLE III.38—ESTIMATED TOTAL PES STOCKS, AND MARKET WEIGHT, 2020 (UNITS)

Potential product class	Potential product class weight, *M*	Units
Standard	82.5	4,635,999
Exercise	11.7	654,494
Combination	2.9	163,624
Inflatable	2.9	170,025

DOE seeks comment on its 2020 stock estimates for all spa types.

3. Product Saturations

PES stocks are distributed nationally according to the number of single-family houses by census region, *r*, and climate zone, *z*, derived from RECS. These regional distributions are considered static over the analysis period. PES saturations are expressed as:

$$Stock_i = \frac{Stock_i}{Stock_t} \times Stock_t,$$

$$S_i = \frac{Stock_i}{H_i}$$

Where:

$Stock_t$ = the total PES stock in 2022, *i.e.,* 5,624,142 units,
i = an index indicating the location (*r, z*) of the spa,
S = the saturation (count) of spas per single-family household, and
H = total single-family households.

4. Determining Annual Spa Shipments

a. Initial Shipments

Initial shipments for each potential product class of PESs are derived from the stock estimates in section III.G.2, as:

$$Ship_s = \frac{(SH) \times M}{L_{avg}}$$

Where:

$Ship_s$ = total PES shipments for each product class,
M = PES market weight (see Table III.38), and
L_{avg} = the average potential product class's lifetime.

b. New Spa Shipments

To estimate shipments of new purchases, DOE used projections of total housing stock from *AEO2022* coupled with the estimated PES saturation. In other words, to project the shipments for new purchases for any given year, DOE multiplied the regional stock housing projections by the estimated saturation of PES. New shipments in each year are determined as:

$Ship_n\ (y) = N(y)\mathrm{S}(y)$

Where:

$Ship_n$ = new shipments,
y = year of analysis, and
N = new housing starts.

c. Spa Replacements

Over time, some units will be retired and removed from stock, thereby triggering the shipment of a replacement unit. Depending on the vintage, a certain percentage of each type of unit will fail and need to be replaced. To determine when a unit fails, DOE used a Weibull survival function based on a product lifetime distribution with an average lifetime of 9.3 years and 3.5 years for hard-sided, and inflatable spas, respectively. For a more complete discussion of lifetimes, refer to section III.F.2. Shipments for replacements are defined as:

$$Ship_r(y) = \sum_{y-L_{max}}^{y-1} p_r Ship_s$$

Where:

$Ship_r$ = shipments for replacement,
L_{max} = product maximum lifetime, and
p_r = a product's retirement probability.

d. Demolitions

Demolitions refer to the destruction of in-service spas that are not replaced with new equipment. For this NODA, DOE defined the demolition rate as follows. For each location (*r, z*), and analysis year, *y.*

$E = T - N$

$$\sigma = \frac{E(y-1) - E(y) + N(y)}{E(y) + N(y)}$$

Where:

σ = the demolition rate, and
E = existing single-family house count, derived from RECS.

e. Product Lifetimes

The methodology used to determine the distribution of PESs' lifetimes is discussed in section III.F.2.

f. Future Portable Electric Spa Shipments

To project future shipments, DOE typically uses new housing starts projections from AEO as market drivers for products sold to the residential sector. For this NODA, DOE used the Single-Family Households trend from *AEO2022* to drive future spa shipments.[51]

DOE requests comment on its proposed use of future residential construction to project future shipments of PESs.

g. Calculating Shipments and Stock

DOE calculates the total in-service stock of products by integrating historical shipments data starting from a specified year. The start year depends on the historical data available for each product, which for this NODA is based on data from PK Data in 2020. As units are added to the in-service stock, some older units retire and exit the stock. In this NODA, for each year in the analysis period from 2029 through 2058, DOE calculated the shipments and stock as:

$Stock(y) = Stock(y-1)\ (1-\sigma) + Ship_n(y),$ and

$Ship_s(y) = Ship_n(y) + Ship_r(y) + \sigma Stock(y-1).$

As the last unit shipped during the analysis period will survive beyond 2056, their presence was be accounted for as:

$Stock(y) = Stock(y-1) - Ship_r(y),$

5. Impacts of Increased Product Costs on Shipments

Because DOE's projections of shipments and national impacts from potential energy conservation standards consider a 30-year period, DOE needed to consider how price elasticity evolves in the years after a new standard takes effect in this NODA. Price elasticity is a factor that reflects the percent change in quantity purchased of a product

[51] U.S. Department of Energy—Energy Information Administration. Annual Energy Outlook 2022. 2022. Washington, DC. (Last accessed July 10, 2022.) See: Table 4. Residential Sector Key Indicators and Consumption—Case: Reference case Available at *https://www.eia.gov/outlooks/aeo/data/browser/#/?id=4-AEO2022&cases=ref2022&sourcekey=0.*

given a 1 percent change in price. DOE conducted a literature review and an analysis of appliance price and efficiency data to estimate the effects on product shipments from increases in product purchase price and product energy efficiency.

Existing studies of appliance markets suggest that the demand for durable goods, such as appliances, is price-inelastic. Other information in the literature suggests that appliances are a normal good, such that rising incomes increase the demand for appliances, and that consumer behavior reflects relatively high implicit discount rates when comparing appliance prices and appliance operating costs.

DOE considered the price elasticity developed above to be a short-term value but was unable to identify sources specific to PESs that would be sufficient to model differences in short- and long-term price elasticities. Therefore, to estimate how the price elasticity changes through time, DOE relied on a study pertaining to automobiles.[52] This study shows that the price elasticity of demand for automobiles changes in the years following a change in purchase price, a trend also observed in appliances and other durables.[53] [54] As time passes from the change in purchase price, the price elasticity becomes more inelastic until it reaches a terminal value around the tenth year after the price change. Table III.39 shows the relative change over time in the price elasticity of demand for automobiles. As shown in the table, DOE developed a time series of price elasticity for residential appliances based on the relative change over time in the price elasticity of demand for automobiles. For years not shown in the table, DOE performed a linear interpolation to obtain the price elasticity.[55]

TABLE III.39—CHANGE IN RELATIVE PRICE ELASTICITY FOLLOWING A CHANGE IN PURCHASE PRICE

	Years following price change					
	1	2	3	5	10	20
Change in elasticity relative to first year	1.00	0.78	0.63	0.46	0.35	0.33
Price elasticity	−0.45	−0.35	−0.28	−0.21	−0.16	−0.15

6. Results for 30-years of Shipment (2029–2058)

TABLE III.40—PES SHIPMENTS FOR SELECT YEARS IN THE ABSENCE OF POTENTIAL NEW STANDARDS (EL 0), (UNITS)

Year	Spa type			
	Standard	Exercise	Combination	Inflatable
2029	558,863	78,898	19,725	50,809
2030	562,920	79,471	19,868	51,194
2035	580,511	81,954	20,489	53,077
2040	598,725	84,526	21,131	54,708
2045	615,313	86,868	21,717	56,357
2050	631,547	89,160	22,290	57,934
2055	648,129	91,501	22,875	59,488
2058	657,934	92,885	23,221	60,416

TABLE III.41—PES AFFECTED STOCK FOR SELECT YEARS IN THE ABSENCE OF POTENTIAL NEW STANDARDS (EL 0), (UNITS)

Year	Spa type			
	Standard	Exercise	Combination	Inflatable
2027	558,863	78,898	19,725	50,809
2030	1,113,813	157,244	39,311	101,988
2035	3,474,943	490,580	122,645	184,055
2040	4,828,630	681,689	170,422	190,031
2045	5,420,218	765,207	191,302	195,793
2050	5,684,921	802,577	200,644	201,380
2055	5,858,365	827,063	206,766	206,848
2060	4,697,420	663,165	165,791	90,521
2065	2,075,344	292,990	73,247	0
2070	660,865	93,299	23,325	0
2075	150,756	21,283	5,321	0
2080	24,229	3,421	855	0

[52] Saul H. Hymans, Gardner Ackley, and F. Thomas Juster. Consumer durable spending: Explanation and prediction. Brookings Papers on Economic Activity, 1970(2):173–206, 1970. (Last accessed August 28, 2021.) Available at *https://www.jstor.org/stable/2534239.*

[53] Philip Parker and Ramya Neelamegham. Price elasticity dynamics over the product life cycle: A study of consumer durables. Marketing Letters, 8(2):205–216, April 1997. (Last accessed August 28, 2021.) Available at *https://link.springer.com/article/10.1023%2FA%3A1007962520455.*

[54] DOE relies on Hymens *et al.* (1970) for efficiency scaling factors because it provides the greatest detail out of all the available studies on price elasticity over time.

[55] For an example methodology of how DOE approaches its product price elasticity calculation, please see section 9.4 of chapter 9 of the Technical Support Document: Energy Efficiency Program for Consumer Products and Commercial and Industrial Equipment: Room Air Conditioners. DOE. 2022. Available at *https://www.regulations.gov/document/EERE-2014-BT-STD-0059-0030.*

TABLE III.41—PES AFFECTED STOCK FOR SELECT YEARS IN THE ABSENCE OF POTENTIAL NEW STANDARDS (EL 0), (UNITS)—Continued

Year	Spa type			
	Standard	Exercise	Combination	Inflatable
2085	2,259	319	80	0
2090	0	0	0	0

H. National Impact Analysis

The NIA assesses the NES and the NPV from a national perspective of total consumer costs and savings that would be expected to result from new or amended standards at specific efficiency levels.[56] (''Consumer'' in this context refers to consumers of the product being regulated.) DOE calculates the NES and NPV for the potential standard levels considered based on projections of annual product shipments, along with the annual energy consumption and total installed cost data from the energy use and LCC analyses. For the present analysis, DOE projected the energy savings, operating cost savings, product costs, and NPV of consumer benefits over the lifetime of PESs sold from 2029 through 2058.

DOE evaluates the effects of potential new standards by comparing a case without such standards with standards-case projections. The no-new-standards case characterizes energy use and consumer costs for each potential product class in the absence of new or amended energy conservation standards. For this projection, DOE considers historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. DOE compares the no-new-standards case with projections characterizing the market for each potential product class if DOE adopted new or amended standards at specific energy efficiency levels (*i.e.,* the ELs or standards cases) for that class. For the standards cases, DOE considers how a given standard would likely affect the market shares of products with efficiencies greater than the standard.

Table III.42 summarizes the inputs and methods DOE used for the NIA analysis for the NODA. Discussion of these inputs and methods follows the table.

TABLE III.42—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

Inputs	Method
Shipments	Annual shipments from shipments model.
Modeled Compliance Date of Standard	2029.
Efficiency Trends	No-new-standards case. Standards cases.
Annual Energy Consumption per Unit	Annual average values are a function of energy use at each EL.
Total Installed Cost per Unit	Annual average values are a function of cost at each EL.
Annual Energy Cost per Unit	Annual weighted-average values as a function of the annual energy consumption per unit and energy prices.
Repair and Maintenance Cost per Unit	Annual values do not change with efficiency level.
Energy Prices	*AEO2022* projections (to 2050), constant 2050 prices thereafter.
Energy Site-to-Primary and FFC Conversion	A time-series conversion factor based on *AEO2022.*
Discount Rate	3 percent and 7 percent.
Present Year	2022.

1. Products Efficiency Trends

A key component of the NIA is the trend in energy efficiency projected for the no-new-standards case and each of the standards cases. Section III.F.4 of this document describes how DOE developed an energy efficiency distribution for the no-new-standards case (which yields a shipment-weighted average efficiency) for each of the considered potential product classes for the year of anticipated compliance with an amended or new standard.

For the standards cases, DOE used a ''roll-up'' scenario to establish the shipment-weighted efficiency for the year that standards are assumed to become effective (2029). In this scenario, the market shares of products in the no-new-standards case that do not meet the standard under consideration would ''roll up'' to meet the new standard level, and the market share of products above the standard would remain unchanged.

For this NODA, DOE's modeling assumed that the distribution of product efficiencies will remain constant over time.

DOE requests comment on its modeling assumption that PES efficiency will remaining constant over time in the absence of potential new standards.

2. National Energy Savings

The NES analysis involves a comparison of national energy consumption of the considered products between each potential standards case (EL) and the case with no new or amended energy conservation standards. DOE calculated the national energy consumption by multiplying the number of units (stock) of each product (by vintage or age) by the unit energy consumption (also by vintage). DOE calculated annual NES based on the difference in national energy consumption for the no-new-standards case and for each higher efficiency standard case. DOE estimated energy consumption and savings based on site energy and converted the electricity consumption and savings to primary energy (*i.e.,* the energy consumed by power plants to generate site electricity) using annual conversion factors derived from *AEO2022.* Cumulative energy

[56] The NIA accounts for impacts in the 50 states and Washington D.C.

savings are the sum of the NES for each year over the timeframe of the analysis.

The following equation shows that DOE calculated annual NES as the difference between two projections: a no-new-standards case (without new standards) and a standards case. Positive values of NES represent energy savings (that is, they show that national annual energy consumption (''AEC'') under a standards case is less than in the no-new-standards).

$$NES_y = AEC_{Base} - AEC_{STD}$$

Where:

NES = annual national energy savings (quads),
AEC = annual national energy consumption each year in quadrillion Btus (quads) summed over vintages of the product stock, and
y = year in the forecast.

Cumulative energy savings are the sum of annual NES from products shipped between the years 2029 through 2058.

DOE calculated the national annual site energy consumption by multiplying the number or stock of the product (by vintage) by its unit annual energy consumption (AEC; also, by vintage). National annual energy consumption is calculated using the following equation.

$$AEC_y = \Sigma\ STOCK_V \times UEC_V$$

Where:

AEC = annual national energy consumption each year in quadrillion Btus (quads), summed over vintages of the product stock, $STOCK_V$,
$STOCK_V$ = stock of product (millions of units) of vintage *V* that survive in the year for which DOE calculated annual energy consumption,
UEC_V = annual energy consumption of PESs in kilowatt-hours (kWh),
V = year in which the product was purchased as a new unit, and
y = year in the forecast.

The stock of a product depends on annual shipments and the lifetime of the product. DOE projected product shipments under the no-new-standards case and standards cases. To avoid including savings attributable to shipments displaced (units not purchased) because of standards, DOE used the projected standards-case shipments and, in turn, the standards-case stock, to calculate the national AEC for the no-new-standards.

a. Site-to-Power-Plant Energy Conversion Factors

In determining annual NES, DOE initially considered the AEC at a residence (for electricity, the energy, expressed in kWh, consumed by a household). DOE then calculated primary (source) energy use from site energy consumption by applying a conversion factor to account for losses associated with the generation, transmission, and distribution of electricity. The site-to-source conversion factor is a multiplicative factor used to convert site energy consumption into primary, or source, energy consumption, expressed in quadrillion Btus (quads).

DOE used annual site-to-power-plant conversion factors based on the version of the national energy modeling system (''NEMS'') [57] that corresponds to *AEO2022* [58] The factors are marginal values, which represent the response of the national power system to incremental changes in consumption. For electricity, the conversion factors change over time in response to projected changes in generation sources (the types of power plants projected to provide electricity). There is not a specific end-use for PES in NEMS. As such, DOE applied the refrigeration end-use as a proxy, as the load profile of the equipment would be similar—equipment that when plugged-in and running does not respond to the cyclical dynamics of the electricity grid.

b. Full-Fuel Cycle Multipliers

In 2011, DOE announced its intention to use FFC measures of energy use and greenhouse gas and other emissions in the NIA and emissions analyses included in future energy conservation standards rulemakings in response to the recommendations of a committee on ''Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards'' appointed by the National Academy of Sciences. 76 FR 51281 (Aug. 18, 2011). After evaluating the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in which DOE explained its determination that EIA's NEMS is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (Aug. 17, 2012). NEMS is a public domain, multi-sector, partial equilibrium model of the U.S. energy sector [59] that EIA uses to prepare its AEO. The FFC factors incorporate losses in production, and delivery in the case of natural gas, (including fugitive emissions) and additional energy used to produce and deliver the various fuels used by power plants. The approach used for deriving FFC measures of energy use and emissions can be found in other DOE analysis.[60]

3. Net Present Value Analysis

The inputs for determining the NPV of the total costs and benefits experienced by consumers are (1) total annual installed cost, (2) total annual operating costs (energy costs and repair and maintenance costs), and (3) a discount factor to calculate the present value of costs and savings. DOE calculates net savings each year as the difference between the no-new-standards case and each standards case in terms of total savings in operating costs versus total increases in installed costs. DOE calculates operating cost savings over the lifetime of each product shipped during the projection period.

The NPV is the value in the present of a time-series of costs and savings. The NPV is described by the equation:

$$NPV = PVS - PVC$$

Where:

PVS = present value of operating cost savings, and
PVC = present value of increased total installed costs (including purchase price and installation costs).

DOE determined the PVS and PVC according to the following expressions.

$$PVS = \Sigma\ OCS_y \times DF_y$$
$$PVC = \Sigma\ TIC^y \times DF^y$$

Where:

OCS = total annual savings in operating costs each year summed over vintages of the product stock, $STOCK_V$,
DF = discount factor in each year,
TIC = total annual increases in installed cost each year summed over vintages of the product stock, $STOCK_V$ and
y = year in the forecast.

DOE calculated the total annual consumer savings in operating costs by multiplying the number or stock of the product (by vintage) by its per-unit operating cost savings (also by vintage). DOE calculated the total annual increases in consumer product price by multiplying the number or shipments of the product (by vintage) by its per-unit

[57] For more information on NEMS, refer to the U.S. Department of Energy, Energy Information Administration documentation. A useful summary is *National Energy Modeling System: An Overview 2000,* DOE/EIA–0581(2000), March 2000. EIA approves use of the name NEMS to describe only an official version of the model with no modification to code or data. Energy Information Administration. Annual Energy Outlook 2022 with Projections to 2050. 2022. Washington, DC (Last accessed July 20, 2022.) Available at *https://www.eia.gov/outlooks/aeo/.*

[58] *See www.eia.gov/outlooks/aeo.*

[59] For more information on NEMS, refer to *The National Energy Modeling System: An Overview 2009,* DOE/EIA–0581(2009), October 2009. Available at *www.eia.gov/analysis/pdfpages/0581(2009)index.php* (last accessed September 2022).

[60] An example methodology of deriving FFC measures can be found in the Technical Support Document: Energy Efficiency Program for Consumer Products and Commercial and Industrial Equipment: Commercial Water Heating Equipment, 2022, appendix 10D. Available at *https://www.regulations.gov/document/EERE-2021-BT-STD-0027-0001.*

increase in consumer cost (also by vintage). Total annual operating cost savings and total annual product price increases are calculated by the following equations.

$$OCS_y = \Sigma\ STOCK_y \times UOCS_v$$
$$TIC_y = \Sigma\ SHIP_y \times UTIC_y$$

Where:

OCS_y = operating cost savings per unit in year y,
$STOCK_V$ = stock of products of vintage V that survive in the year for which DOE calculated annual energy consumption,
$UOCS_V$ = annual operating cost savings per unit of vintage V,
V = year in which the product was purchased as a new unit,
TIC_y = total increase in installed product cost in year y,
$SHIP_y$ = shipments of the product in year y, and
$UTIC_y$ = annual per-unit increase in installed product cost in year y.

The operating cost savings are energy cost savings, which are calculated using the estimated energy savings in each year and the projected price of the appropriate form of energy. To estimate energy prices in future years, DOE multiplied the average regional energy prices by the projection of annual national-average residential energy price changes in the Reference Case from *AEO2022*, which has an end year of 2050. To estimate price trends after 2050, DOE maintained electricity prices constant at 2050 levels.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. For this NODA, DOE estimated the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE used these discount rates in accordance with guidance provided by the Office of Management and Budget (''OMB'') to Federal agencies on the development of regulatory analysis.[61] The discount rates for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to reflect a consumer's perspective. The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the ''social rate of time preference,'' which is the rate at which society discounts future consumption flows to their present value.

The operating cost savings are energy cost savings, which are calculated using the estimated energy savings in each year, and the projected price of the appropriate form of energy. To estimate energy prices in future years, DOE multiplied the average regional energy prices by the projection of annual national-average residential energy price changes in the Reference Case from *AEO2022*, which has an end year of 2050.

4. Candidate Standards Levels

In general, DOE typically evaluates potential new or amended standards for products and equipment by grouping individual efficiency levels for each class into candidate standard levels (''CSLs''). Use of CSLs allows DOE to identify and consider manufacturer cost interactions between the product classes and market cross elasticity from consumer purchasing decisions that may change when different standard levels are set, to the extent that there are such interactions.

In the analysis conducted for this NODA, DOE analyzed the benefits and burdens of up to eight CSLs for PESs. DOE developed CSLs that combine efficiency levels for each analyzed product class. These CSLs were developed by directly mapping specific efficiency levels for each of the PES product classes analyzed by DOE. For this NODA, CSL 1 represents PES efficiency at APSP–14 2019. And the remaining CSLs represent the increase in efficiency determined by each efficiency level in the engineering analysis. DOE notes that for inflatable spas DOE did not examine efficiency levels greater than EL 3, and mapped EL 3 to the CSLs greater than 3.

Table III.43 presents the CSLs and the corresponding efficiency levels that DOE has identified for potential new energy conservation standards for PESs.

TABLE III.43—CANDIDATE STANDARD LEVELS FOR PESS

Candidate standard level	Spa type			
	Combination	Exercise	Inflatable	Standard
1	EL 1	EL 1	EL 1	EL 1
2	EL 2	EL 2	EL 2	EL 2
3	EL 3	EL 3	EL 3	EL 3
4	EL 4	EL 4	EL 3	EL 4
5	EL 5	EL 5	EL 3	EL 5
6	EL 6	EL 6	EL 3	EL 6
7	EL 7	EL 7	EL 3	EL 7
8	EL 8	EL 8	EL 3	EL 8

5. Results for 30-years of Shipments (2029–2058)

TABLE III.44—CUMULATIVE FULL-FUEL CYCLE NATIONAL ENERGY SAVINGS (QUADS)

Candidate standard level	Spa type			
	Combination	Exercise	Inflatable	Standard
1	0.11	0.35	0.01	0.86
2	0.14	0.43	0.02	1.09
3	0.15	0.46	0.03	1.14
4	0.16	0.48	0.03	1.26
5	0.16	0.50	0.03	1.31

[61] United States Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. Section E. Available at *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf* (last accessed Aug 8, 2022).

TABLE III.44—CUMULATIVE FULL-FUEL CYCLE NATIONAL ENERGY SAVINGS (QUADS)—Continued

Candidate standard level	Spa type			
	Combination	Exercise	Inflatable	Standard
6	0.19	0.57	0.03	1.48
7	0.20	0.60	0.03	1.56
8	0.20	0.61	0.03	1.59

TABLE III.45—CUMULATIVE CONSUMER NET PRESENT (BILLION, 2021$)

Candidate standard level	Spa type			
	Combination	Exercise	Inflatable	Standard
3% Discount Rate				
1	0.078	0.235	0.007	0.598
2	0.074	0.221	0.015	0.592
3	0.047	0.134	0.006	0.407
4	−0.007	−0.033	0.006	0.089
5	−0.068	−0.226	0.006	−0.333
6	−0.158	−0.507	0.006	−0.941
7	−0.277	−0.883	0.006	−1.769
8	−0.416	−1.318	0.006	−2.739
7% Discount Rate				
1	0.037	0.112	0.003	0.285
2	0.034	0.102	0.007	0.275
3	0.020	0.056	0.001	0.177
4	−0.008	−0.031	0.001	0.009
5	−0.040	−0.131	0.001	−0.211
6	−0.087	−0.279	0.001	−0.532
7	−0.149	−0.474	0.001	−0.962
8	−0.221	−0.700	0.001	−1.465

IV. Publication Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding this NODA no later than the date provided in the **DATES** section at the beginning of this NODA. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No

telefacsimiles (''faxes'') will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

B. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this NODA, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

Issue 1: DOE requests comment on the previously description of the target technology and the scope of this product, including whether any modifications or additions are necessary to characterize this product.

Issue 2: DOE requests comment on whether the distinction between categories of PESs, as described in section III.A.2 of this NODA, is significant enough to warrant the establishment of different product classes for each type.

Issue 3: DOE requests comment on the above description of the PES manufacturers and the PES industry structure and whether any other details are necessary for characterizing the industry or for determining whether energy conservation standards for PESs might be justified.

Issue 4: DOE requests information on any voluntary or mandatory test procedure and energy conservation standards for PESs that are not mentioned in section III.A.4 of this NODA.

Issue 5: DOE seeks comment generally on the descriptions of relevant energy-saving technology options as described in section III.A.5 of this document, including whether any options require revised or additional details to characterize each option's effects on a PES's energy consumption.

Issue 6: DOE seeks comment regarding use of additional or improved insulation as a technology option for PESs, and in particular what would limit adding further insulation to a PES.

Issue 7: DOE seeks comment regarding use of improved covers as a technology option for PESs, and in particular what would limit further energy performance increases of PES covers.

Issue 8: DOE seeks comment regarding use of improved sealing as a technology option for PESs, regarding whether air leakage is significant at PES locations other than the cover, and regarding what would limit further sealing improvements energy performance increases of PES covers.

Issue 9: DOE seeks comment on the description of radiant barriers and data on the relative effects of radiant barriers when paired with different amounts of insulation and different thicknesses of adjacent air gaps.

Issue 10: DOE requests comment regarding whether insulated ground covers warrant inclusion in the set of technology options for non-inflatable PESs.

Issue 11: DOE seeks comment and data on the degree to which two-speed pump inefficiencies manifest as waste heat and to which that waste heat is absorbed by the portable electric spa's water.

Issue 12: DOE requests comment regarding whether heat pumps would be likely to reduce energy consumption in PESs and, if so, quantified estimates of the effects of heat pump integration on both energy consumption and manufacturer production cost.

Issue 13: DOE requests comment regarding the availability of heat pumps compatible with PESs.

Issue 14: DOE seeks comment on its selection of baseline units, including whether any other units on the market would better represent the most consumptive spas available for purchase.

Issue 15: DOE requests comment on the range of filtration system power demands in PESs as described in Table III.1. DOE also requests comment on any correlation between power demand and whether a spa uses a high horsepower two-speed pump or a lower horsepower dedicated circulation pump.

Issue 16: DOE requests comment on its assumption of a standard shell shape as described in Table III.2, especially whether it is representative and whether DOE should consider certain shapes that result in maximum or minimum amounts of insulation.

Issue 17: DOE requests data and comment on the effectiveness of radiant barriers in reducing the normalized average standby power of PES and on what factors make radiant barriers more or less effective.

Issue 18: DOE requests data and comment on the extent to which spas lose heat through air convection out of unsealed regions of the spa and on the factors that affect heat losses due to sealing.

Issue 19: DOE requests comment on the best way to quantify varying degrees of cover seal, including perimeter seal against the spa flange and hinge seal through the center of the cover.

Issue 20: DOE requests comment on the method of analyzing thermal bridges as a single section of low R-value on the spa. Additionally, DOE requests information about techniques and models which are used in industry to predict spa performance.

Issue 21: DOE requests comment and data on the discrepancy between heat loss through the wall where the components are housed and through other walls.

Issue 22: DOE requests comment on any strategies for considering the effects of hot water traveling through plumbing on a spa's heat loss.

Issue 23: DOE requests comment describing its appropriation of the scaling relationship defined in APSP–14 2019 and whether there are any other traits with which DOE might vary energy consumption.

Issue 24: DOE requests comment on whether there are other factors DOE should consider in converting normalized average standby power values to reflect the proposed test procedure.

Issue 25: DOE requests comment and data on typical markups from MPC to MSP and from MSP to final sale price.

Issue 26: DOE requests comment and data characterizing the relationship between MPC and the size of a PES and whether there are better methods for

approximating the effects of size changes on MPC than the one described previously.

Issue 27: DOE requests comment and data characterizing to what degree sales margins vary with spa size.

Issue 28: DOE requests comment on the efficiency levels described in tables Table III.3 and Table III.4, including whether any do not align with expected effects design options associated with them, as described below in Table III.7 and Table III.8.

Issue 29: DOE requests comment on the expected effects of DOE's proposed test procedure, as described in Table III.5 and Table III.6, including on whether its effects on normalized average standby power would be greater than or less than DOE's estimates.

Issue 30: DOE requests comment and data regarding the design options and associated estimated costs described in tables Table III.7 and Table III.8 of this NODA.

Issue 31: DOE requests information on the existence of any distribution channels other than the distribution channels listed in Table III.11 of this document. Further, DOE requests comment on whether the same distribution channels are applicable to installations of new and replacement PES.

Issue 32: DOE requests information on the fraction of shipments that are distributed through the channels shown in Table III.11 of this document.

Issue 33: DOE seeks comment on its energy use model. Specifically, DOE seeks comment on the energy use model for combination spas, where the Sysnon-heat variable is normalized with volume of water portioned to the standard spa pool.

Issue 34: DOE requests comment on its approach to estimating annual operating hours. Additionally, DOE requests comments on its modeling assumption that PES would be operated during the warmest months of the year.

Issue 35: DOE requests comment on its approach to determining regional ambient temperatures.

Issue 36: DOE requests data or comment on the typical operating temperature for exercise spas not capable of maintaining a minimum temperature of 100 °F. And DOE requests data or comment on the distribution of typical operating temperature for exercise spas not capable of maintaining a minimum temperature of 100 °F.

Issue 37: DOE requests data or comment on the distribution of typical operating temperature for spas capable of maintaining a minimum temperature of 100 °F. And DOE requests data or comment on the distribution of typical operating temperature for exercise spas capable of maintaining a minimum temperature of 100 °F.

Issue 38: DOE requests comment on its proposed methodology to project future equipment prices.

Issue 39: DOE request information or data related to the past trends in production costs of PESs. Additionally, DOE request data or information related to the cost of PES production over time.

Issue 40: DOE requests comment on its decision to exclude installation costs from any future efficiency standard calculation.

Issue 41: DOE requests data and details on the installation costs of PESs, and whether those costs vary by product type or any other factor affecting their efficiency.

Issue 42: DOE requests comment on its use of AEO to project electricity prices into the future.

Issue 43: DOE requests feedback and specific data on whether maintenance costs differ in comparison to the baseline maintenance costs for any of the specific efficiency improving technology options applicable to PESs.

Issue 44: DOE requests comment on the typical repairs to PESs and how they may differ in the case of a potential new energy conservation standard.

Issue 45: DOE requests comment on its lifetime analysis.

Issue 46: DOE requests comment on its reasoning and assumption to not apply a rebound effect to PES stand-by power energy use.

Issue 47: DOE requests comment on its stock ratios for hard-sided spas. Additionally, DOE seeks input on the market shares of standard, exercise, and combination spas.

Issue 48: DOE seeks comment on its assumed 2020 stock estimates for all spa types.

Issue 49: DOE requests comment on its proposed use of future residential construction to project future shipments of PESs.

Issue 50: DOE requests comment on its modeling assumption that PES efficiency will remaining constant over time in the absence of potential new standards.

Issue 51: Additionally, DOE welcomes comments on other issues relevant to the conduct of this rulemaking that may not specifically be identified in this document.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notification of data availability and request for comment.

Signing Authority

This document of the Department of Energy was signed on October 31, 2022, by Francisco Alejandro Moreno, Acting 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 November 2, 2022.

Treena V. Garrett,

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

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Part III

Small Business Administration

13 CFR Parts 121, 124, and 127
Small Business Size Standards: Adjustment of Monetary-Based Size Standards, Disadvantage Thresholds, and 8(a) Eligibility Thresholds for Inflation; Final Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 124, and 127

RIN 3245–AH93

Small Business Size Standards: Adjustment of Monetary-Based Size Standards, Disadvantage Thresholds, and 8(a) Eligibility Thresholds for Inflation

AGENCY: U.S. Small Business Administration.

ACTION: Final rule and interim final rule with request for comments.

SUMMARY: This rulemaking finalizes, without change, the U.S. Small Business Administration's (SBA or Agency) 2019 interim final rule (RIN 3245–AH17) that adjusted monetary-based industry size standards (*i.e.,* receipts- and assets-based) for inflation that occurred since 2014. This rulemaking also includes three interim final actions. First, SBA adds an additional 13.65 percent inflation increase to the monetary small business size standards, which have been recently adjusted as part of the second five-year review of size standards pursuant to the Small Business Jobs Act of 2010 (Jobs Act). This concurrent additional adjustment accounts for the inflation that has occurred since 2019 that has not been adequately addressed by the Agency's previous adjustments to its small business size standards under the Jobs Act. Second, this rulemaking adjusts three program-specific monetary size standards to account for inflation: the size standards for sales or leases of government property, the size standards for stockpile purchases, and alternative size standard based on tangible net worth and net income for the Small Business Investment Company (SBIC) program. Third, SBA adjusts for inflation the economic disadvantage thresholds applicable to the 8(a) Business Development and Economically Disadvantaged Women-Owned Small Business (EDWOSB) programs, and the dollar limit for combined total 8(a) contracts.

DATES:

Effective date: This rule is effective on December 19, 2022.

Comment date: Comments on the interim final provisions of this rule must be received on or before January 17, 2023.

FOR FURTHER INFORMATION CONTACT: Khem Sharma, Ph.D., Chief, Office of Size Standards, (202) 205–6618 or *sizestandards@sba.gov.* This phone number can 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:

I. Background

As explained in the SBA's ''Size Standards Methodology'' white paper available at *https://www.sba.gov/size,* SBA reviews small business size standards and makes necessary adjustments to them for three reasons: (i) changes in industry structure and Federal market conditions, (ii) inflation, and (iii) revision to the North American Industry Classification System (NAICS). In 2019, SBA published an interim final rule (IFR) adjusting for inflation all monetary-based industry size standards (84 FR 34261; July 18, 2019) (''July 2019 IFR''). Certain provisions of this rulemaking finalize, without change, the SBA's July 2019 IFR that adjusted monetary-based industry and certain program-specific size standards (*i.e.,* receipts- and assets-based) for inflation that occurred since the previous inflation adjustment in 2014 (79 FR 33647; June 12, 2014).

After the inflation adjustment in the July 2019 IFR, SBA completed the second five-year rolling review of all monetary-based industry size standards, as required by section 1344 of the Jobs Act (Pub. L. 111–240, 124 Stat. 2504 (September 27, 2010)). The second five-year review of size standards coincided with the ongoing COVID–19 pandemic. In response to the pandemic and its impact on small businesses as well as the overall economy, SBA adopted the same policy it adopted in the first five-year review of size standards (completed in 2016) of only increasing size standards when the evaluation of the industry structure and Federal market conditions warranted an increase, and to maintain the current size standards for the industries where the analytical results suggested a reduction in size standard, or a retention of the applicable size standards at their current levels.

SBA is required to assess the impact of inflation on its monetary-based size standards *at least* once every five years (67 FR 3041; January 23, 2002) and 13 CFR 121.102(c)). In this rule, SBA is assessing the impact of the current general price increases on size standards before the normal five-year review for inflation is due, which would be 2024. Because of the important policy objective of maintaining the value of size standards in inflation-adjusted terms, this rulemaking contains interim final provisions further adjusting the size standards adopted in the recently completed second five-year comprehensive size standards review by an additional 13.65 percent, as discussed below.

The interim final provisions of this regulatory action provide assurances to the public that the Agency is monitoring inflation to determine whether to adjust size standards within a reasonable period since its last inflation adjustment and comprehensive size standards review as mandated by the Jobs Act. The inflation adjustments in this rule are separate from revisions to size standards made during the second five-year rolling reviews of size standards under the Jobs Act. The SBA's five-year size standards rolling reviews under the Jobs Act primarily focus on industry structure (*i.e.,* average firm size, startup costs and entry barriers, industry concentration, and distribution of firms by business size) and Federal contracting trends (*i.e.,* small business share of Federal contract dollars relative to small business share of total industry's receipts) for industries with significant contracting activities. In other words, SBA does not account for inflation as a factor in the five-year reviews of size standards under the Jobs Act. The 13.65 percent additional increase ensures that the recently reviewed monetary size standards under the Jobs Act are up-to-date for accurately determining small business status, and restores the eligibility of businesses that may have lost their small business status due solely to price level increases rather than from increases in business activity. Given the current developments in the U.S. economy, SBA will continue to monitor the inflation and other economic indicators and their impacts on size standards.

The monetary-based small business size standards adjusted for inflation in this rule include receipts-based size standards for 496 industries and nine subindustries (*i.e.,* ''exceptions'' in the SBA Table of Size Standards), as well as assets-based size standards for four industries.

Additionally, the interim final provisions of this rulemaking adjust three program-specific receipts-based size standards. These include the size standards for sales or leases of government property, the size standards for stockpile purchases, and the alternative size standard based on tangible net worth and net income for the Small Business Investment Company (SBIC) program.

Besides adjustment of industry and program-based monetary based size standards described above, the interim final provisions of this rule also adjust

other monetary thresholds primarily used in the 8(a) Business Development program (8(a) BD) and the Economically Disadvantaged Women-Owned Small Business (EDWOSB) program to determine eligibility of applicants and current participants as economically disadvantaged business concerns. These monetary thresholds have not previously been adjusted for inflation. This adjustment will permit small businesses to retain eligibility as economically disadvantaged business concerns for the 8(a) BD program and the EDWOSB, despite an increase in inflation. Several businesses may have lost small business eligibility for Federal assistance under SBA's monetary-based industry size standards or under these SBA programs, simply because of inflation-led revenue growth that has occurred since the recently finalized second five-year comprehensive review of size standards. This rule aims to reinstate those firms' small business eligibility for Federal assistance.

Updating size standards based on inflation—in addition to updating size standards based on the latest industry and Federal contracting data under the five-year rolling review—not only satisfies the Jobs Act's mandate that SBA review all size standards every five years, but also is consistent with Executive Order 13563 on improving regulation and regulatory review. This also fulfills the SBA's regulatory requirement to review size standards for inflation at least one time every five years.

II. SBA's Inflation Adjustment Methodology

Adjustment to Industry Size Standards [1]

For the additional inflation adjustment of monetary size standards in this interim final rule, SBA has used the inflation adjustment methodology it describes in its ''Size Standards Methodology'' white paper, available at *www.sba.gov/size.* SBA applied the same methodology in its previous inflation adjustments, including the latest inflation adjustment in 2019. This methodology can be described in terms of the following steps:

1. Selecting an inflation measure.
2. Selecting the base and end periods.
3. Calculating the inflation rate.
4. Adjusting the monetary based size standards.

1. Selecting an Inflation Measure

SBA establishes small business size standards to determine the eligibility of businesses for a wide variety of SBA's and other Federal programs. Many businesses participating in those programs are engaged in multiple industries and are producing a wide range of goods and services. Therefore, it is important that the Agency use a broad measure of inflation to adjust its size standards. SBA's preferred measure of inflation has consistently been the chain-type price index for the U.S. Gross Domestic Product (GDP price index), published by the U.S. Department of Commerce, Bureau of Economic Analysis (BEA) on a quarterly basis as part of its National Income and Product Accounts (NIPA), available at *www.bea.gov.*[2]

2. Selecting the Base and End Periods

For this inflation adjustment, SBA selected the fourth quarter of 2018 as the base period because it was the end period for the 2019 inflation adjustment. SBA selected the second quarter of 2022 as the end period because it was the latest quarter for which GDP price index data were available when this rule was developed.

3. Calculating the Rate of Inflation

The GDP price index for the base period (*i.e.,* 4th quarter of 2018) was 111.191 and, according to the BEA GDP advance estimate released on July 28, 2022 (the latest available when this rule was prepared), the GDP price index for the end period (*i.e.,* 2nd quarter of 2022) was 126.367. Accordingly, inflation increased 13.65 percent from the fourth quarter of 2018 to the first quarter of 2022 $(((126.367 \div 111.191) - 1) \times 100$ percent = 13.65 percent).

Making Adjustments to Size Standards

Adjustment to receipts-based industry size standards: All receipts-based size standards were adjusted by multiplying their current levels by 1.1365 and rounding the results to the nearest $500,000 (except for the agricultural industries for which the results were rounded to the nearest $250,000).

Table 1, Receipts-Based Size Standards Adjusted for Inflation (NAICS 2022), shows all receipts-based size standards by six-digit NAICS 2022 industries. The third column shows the size standards adopted based on the second five-year rolling review under the Jobs Act, and the fourth column shows the unrounded size standards based on the additional 13.65 percent inflation adjustment. Calculated values for NAICS codes under Subsectors 111 (Crop Production) and 112 (Animal Production and Aquaculture), except NAICS 112112 (Cattle Feedlots) and 112310 (Chicken Egg Production), were rounded to the nearest $250,000. The rest of the industries (including NAICS 112112 and 112310) were rounded to the nearest $500,000. The rounded inflation-adjusted size standards are shown in the fifth column.

TABLE 1—RECEIPTS-BASED SIZE STANDARDS ADJUSTED FOR INFLATION

[NAICS 2022]

NAICS 2022 code	NAICS 2022 industry title	Current size standards ($ million)	Inflation-adjusted size standards (unrounded) ($ million)	Inflation-adjusted size standards (rounded) ($ million)
111110	Soybean Farming	2.0	2.27	2.25

[1] On September 29, 2022, SBA published a final rule to adopt the Office of Management and Budget (OMB) North American Industry Classification System revision for 2022, identified as NAICS 2022, for its size standards, effective October 1, 2022 (87 FR 59240). The OMB NAICS 2022 revision created 111 new industries with employee- and monetary-based size standards by reclassifying, combining, or splitting 156 NAICS 2017 industries or their parts. The NAICS 2022 revision created 71 new industries with monetary-based size standards involving 93 NAICS 2017 unique industries and their parts. SBA's size standards for those 71 new industries resulted in an increase in size standards for 12 industries and 27 parts of two industries under NAICS 2017, decrease in size standards for 53 parts of two industries, change in one size standard from average annual receipts to employees, and no change in size standards for 77 industries and 6 parts of 3 industries. In this rule, SBA is using NAICS 2022 as the basis of industry definitions for adjusting monetary-based industry size standards for inflation.

[2] As part of the 2014 inflation adjustment (79 FR 33647 (June 12, 2014)), SBA reviewed various measures of inflation published by the Federal Government, including the GDP price index, consumer price index (CPI), producer price index (PPI), personal consumption expenditures (PCE) price index, and unit labor cost. Based on that review, SBA determined that the GDP price index is the most appropriate measure of inflation for purposes of adjusting size standards for inflation. Historically, SBA has used the GDP price index for adjusting size standards for inflation.

TABLE 1—RECEIPTS-BASED SIZE STANDARDS ADJUSTED FOR INFLATION—Continued

[NAICS 2022]

NAICS 2022 code	NAICS 2022 industry title	Current size standards ($ million)	Inflation-adjusted size standards (unrounded) ($ million)	Inflation-adjusted size standards (rounded) ($ million)
111120	Oilseed (except Soybean) Farming	2.0	2.27	2.25
111130	Dry Pea and Bean Farming	2.5	2.84	2.75
111140	Wheat Farming	2.0	2.27	2.25
111150	Corn Farming	2.25	2.56	2.5
111160	Rice Farming	2.25	2.56	2.5
111191	Oilseed and Grain Combination Farming	2.0	2.27	2.25
111199	All Other Grain Farming	2.0	2.27	2.25
111211	Potato Farming	3.75	4.26	4.25
111219	Other Vegetable (except Potato) and Melon Farming	3.25	3.69	3.75
111310	Orange Groves	3.5	3.98	4.0
111320	Citrus (except Orange) Groves	3.75	4.26	4.25
111331	Apple Orchards	4.0	4.55	4.5
111332	Grape Vineyards	3.5	3.98	4.0
111333	Strawberry Farming	4.75	5.40	5.5
111334	Berry (except Strawberry) Farming	3.25	3.69	3.75
111335	Tree Nut Farming	3.25	3.69	3.75
111336	Fruit and Tree Nut Combination Farming	4.5	5.11	5.0
111339	Other Noncitrus Fruit Farming	3.0	3.41	3.5
111411	Mushroom Production	4.0	4.55	4.5
111419	Other Food Crops Grown Under Cover	4.0	4.55	4.5
111421	Nursery and Tree Production	2.75	3.13	3.25
111422	Floriculture Production	3.25	3.69	3.75
111910	Tobacco Farming	2.25	2.56	2.5
111920	Cotton Farming	2.75	3.13	3.25
111930	Sugarcane Farming	4.5	5.11	5.0
111940	Hay Farming	2.25	2.56	2.5
111991	Sugar Beet Farming	2.25	2.56	2.5
111992	Peanut Farming	2.25	2.56	2.5
111998	All Other Miscellaneous Crop Farming	2.25	2.56	2.5
112111	Beef Cattle Ranching and Farming	2.25	2.56	2.5
112112	Cattle Feedlots	19.5	22.16	22.0
112120	Dairy Cattle and Milk Production	3.25	3.69	3.75
112210	Hog and Pig Farming	3.5	3.98	4.0
112310	Chicken Egg Production	16.5	18.75	19.0
112320	Broilers and Other Meat Type Chicken Production	3.0	3.41	3.5
112330	Turkey Production	3.25	3.69	3.75
112340	Poultry Hatcheries	3.5	3.98	4.0
112390	Other Poultry Production	3.25	3.69	3.75
112410	Sheep Farming	3.0	3.41	3.5
112420	Goat Farming	2.25	2.56	2.5
112511	Finfish Farming and Fish Hatcheries	3.25	3.69	3.75
112512	Shellfish Farming	3.25	3.69	3.75
112519	Other Aquaculture	3.25	3.69	3.75
112910	Apiculture	2.75	3.13	3.25
112920	Horses and Other Equine Production	2.5	2.84	2.75
112930	Fur-Bearing Animal and Rabbit Production	3.25	3.69	3.75
112990	All Other Animal Production	2.5	2.84	2.75
113110	Timber Tract Operations	16.5	18.75	19.0
113210	Forest Nurseries and Gathering of Forest Products	18.0	20.46	20.5
114111	Finfish Fishing	22.0	25.0	25.0
114112	Shellfish Fishing	12.5	14.21	14.0
114119	Other Marine Fishing	10.0	11.36	11.5
114210	Hunting and Trapping	7.5	8.52	8.5
115111	Cotton Ginning	14.0	15.91	16.0
115112	Soil Preparation, Planting, and Cultivating	8.5	9.66	9.5
115113	Crop Harvesting, Primarily by Machine	12.0	13.64	13.5
115114	Postharvest Crop Activities (except Cotton Ginning)	30.0	34.09	34.0
115115	Farm Labor Contractors and Crew Leaders	16.5	18.75	19.0
115116	Farm Management Services	13.5	15.34	15.5
115210	Support Activities for Animal Production	9.5	10.80	11.0
115310	Support Activities for Forestry	10.0	11.36	11.5
115310 (Exception 1)	Forest Fire Suppression	30.0	34.09	34.0
115310 (Exception 2)	Fuels Management Services	30.0	34.09	34.0
213112	Support Activities for Oil and Gas Operations	41.5	47.16	47.0
213113	Support Activities for Coal Mining	24.0	27.28	27.5
213114	Support Activities for Metal Mining	36.0	40.91	41.0
213115	Support Activities for Nonmetallic Minerals (except Fuels)	18.0	20.46	20.5

TABLE 1—RECEIPTS-BASED SIZE STANDARDS ADJUSTED FOR INFLATION—Continued

[NAICS 2022]

NAICS 2022 code	NAICS 2022 industry title	Current size standards ($ million)	Inflation-adjusted size standards (unrounded) ($ million)	Inflation-adjusted size standards (rounded) ($ million)
221310	Water Supply and Irrigation Systems	36.0	40.91	41.0
221320	Sewage Treatment Facilities	31.0	35.23	35.0
221330	Steam and Air-Conditioning Supply	26.5	30.12	30.0
236115	New Single-family Housing Construction (Except For-Sale Builders).	39.5	44.89	45.0
236116	New Multifamily Housing Construction (except For-Sale Builders).	39.5	44.89	45.0
236117	New Housing For-Sale Builders	39.5	44.89	45.0
236118	Residential Remodelers	39.5	44.89	45.0
236210	Industrial Building Construction	39.5	44.89	45.0
236220	Commercial and Institutional Building Construction	39.5	44.89	45.0
237110	Water and Sewer Line and Related Structures Construction	39.5	44.89	45.0
237120	Oil and Gas Pipeline and Related Structures Construction	39.5	44.89	45.0
237130	Power and Communication Line and Related Structures Construction.	39.5	44.89	45.0
237210	Land Subdivision	30.0	34.09	34.0
237310	Highway, Street, and Bridge Construction	39.5	44.89	45.0
237990	Other Heavy and Civil Engineering Construction	39.5	44.89	45.0
237990 (Exception)	Dredging and Surface Cleanup Activities	32.5	36.94	37.0
238110	Poured Concrete Foundation and Structure Contractors	16.5	18.75	19.0
238120	Structural Steel and Precast Concrete Contractors	16.5	18.75	19.0
238130	Framing Contractors	16.5	18.75	19.0
238140	Masonry Contractors	16.5	18.75	19.0
238150	Glass and Glazing Contractors	16.5	18.75	19.0
238160	Roofing Contractors	16.5	18.75	19.0
238170	Siding Contractors	16.5	18.75	19.0
238190	Other Foundation, Structure, and Building Exterior Contractors.	16.5	18.75	19.0
238210	Electrical Contractors and Other Wiring Installation Contractors.	16.5	18.75	19.0
238220	Plumbing, Heating, and Air Conditioning Contractors	16.5	18.75	19.0
238290	Other Building Equipment Contractors	19.5	22.16	22.0
238310	Drywall and Insulation Contractors	16.5	18.75	19.0
238320	Painting and Wall Covering Contractors	16.5	18.75	19.0
238330	Flooring Contractors	16.5	18.75	19.0
238340	Tile and Terrazzo Contractors	16.5	18.75	19.0
238350	Finish Carpentry Contractors	16.5	18.75	19.0
238390	Other Building Finishing Contractors	16.5	18.75	19.0
238910	Site Preparation Contractors	16.5	18.75	19.0
238990	All Other Specialty Trade Contractors	16.5	18.75	19.0
238990 (Exception)	Building and Property Specialty Trade Services	16.5	18.75	19.0
441120	Used Car Dealers	27.0	30.69	30.5
441210	Recreational Vehicle Dealers	35.0	39.78	40.0
441222	Boat Dealers	35.0	39.78	40.0
441227	Motorcycle, ATV, and All Other Motor Vehicle Dealers	35.0	39.78	40.0
441330	Automotive Parts and Accessories Retailers	25.0	28.41	28.5
441340	Tire Dealers	22.5	25.57	25.5
444110	Home Centers	41.5	47.16	47.0
444120	Paint and Wallpaper Retailers	30.0	34.09	34.0
444140	Hardware Retailers	14.5	16.48	16.5
444180	Other Building Material Dealers	22.0	25.0	25.0
444230	Outdoor Power Equipment Retailers	8.5	9.66	9.5
444240	Nursery, Garden Center, and Farm Supply Retailers	19.0	21.59	21.5
445110	Supermarkets and Other Grocery Retailers (except Convenience Retailers).	35.0	39.78	40.0
445131	Convenience Retailers	32.0	36.37	36.5
445132	Vending Machine Operators	18.5	21.02	21.0
445230	Fruit and Vegetable Retailers	8.0	9.09	9.0
445240	Meat Retailers	8.0	9.09	9.0
445250	Fish and Seafood Retailers	8.0	9.09	9.0
445291	Baked Goods Retailers	14.0	15.91	16.0
445292	Confectionery and Nut Retailers	17.0	19.32	19.5
445298	All Other Specialty Food Retailers	9.0	10.23	10.0
445320	Beer, Wine, and Liquor Retailers	9.0	10.23	10.0
449110	Furniture Retailers	22.0	25.0	25.0
449121	Floor Covering Retailers	8.0	9.09	9.0
449122	Window Treatment Retailers	10.0	11.36	11.5

TABLE 1—RECEIPTS-BASED SIZE STANDARDS ADJUSTED FOR INFLATION—Continued

[NAICS 2022]

NAICS 2022 code	NAICS 2022 industry title	Current size standards ($ million)	Inflation-adjusted size standards (unrounded) ($ million)	Inflation-adjusted size standards (rounded) ($ million)
449129	All Other Home Furnishings Retailers	29.5	33.53	33.5
449210	Electronics and Appliance Retailers	35.0	39.78	40.0
455110	Department Stores	35.0	39.78	40.0
455211	Warehouse Clubs and Supercenters	41.5	47.16	47.0
455219	All Other General Merchandise Retailers	35.0	39.78	40.0
456110	Pharmacies and Drug Retailers	33.0	37.50	37.5
456120	Cosmetics, Beauty Supplies, and Perfume Retailers	30.0	34.09	34.0
456130	Optical Goods Retailers	26.0	29.55	29.5
456191	Food (Health) Supplement Retailers	20.0	22.73	22.5
456199	All Other Health and Personal Care Retailers	8.5	9.66	9.5
457110	Gasoline Stations with Convenience Stores	32.0	36.37	36.5
457120	Other Gasoline Stations	29.5	33.53	33.5
458110	Clothing and Clothing Accessories Retailers	41.5	47.16	47.0
458210	Shoe Retailers	30.0	34.09	34.0
458310	Jewelry Retailers	18.0	20.46	20.5
458320	Luggage and Leather Goods Retailers	33.5	38.07	38.0
459110	Sporting Goods Retailers	23.5	26.71	26.5
459120	Hobby, Toy, and Game Retailers	31.0	35.23	35.0
459130	Sewing, Needlework, and Piece Goods Retailers	30.0	34.09	34.0
459140	Musical Instrument and Supplies Retailers	20.0	22.73	22.5
459210	Book Retailers and News Dealers	31.5	35.80	36.0
459310	Florists	8.0	9.09	9.0
459410	Office Supplies and Stationery Retailers	35.0	39.78	40.0
459420	Gift, Novelty, and Souvenir Retailers	12.0	13.64	13.5
459510	Used Merchandise Retailers	12.5	14.21	14.0
459910	Pet and Pet Supplies Retailers	28.0	31.82	32.0
459920	Art Dealers	14.5	16.48	16.5
459930	Manufactured (Mobile) Home Dealers	16.5	18.75	19.0
459991	Tobacco, Electronic Cigarette, and Other Smoking Supplies Retailers.	10.0	11.36	11.5
459999	All Other Miscellaneous Retailers	10.0	11.36	11.5
481219	Other Nonscheduled Air Transportation	22.0	25.0	25.0
484110	General Freight Trucking, Local	30.0	34.09	34.0
484121	General Freight Trucking, Long Distance, Truckload	30.0	34.09	34.0
484122	General Freight Trucking, Long Distance, Less Than Truckload.	38.0	43.19	43.0
484210	Used Household and Office Goods Moving	30.0	34.09	34.0
484220	Specialized Freight (except Used Goods) Trucking, Local	30.0	34.09	34.0
484230	Specialized Freight (except Used Goods) Trucking, Long Distance.	30.0	34.09	34.0
485111	Mixed Mode Transit Systems	25.5	28.98	29.0
485112	Commuter Rail Systems	41.5	47.16	47.0
485113	Bus and Other Motor Vehicle Transit Systems	28.5	32.39	32.5
485119	Other Urban Transit Systems	33.0	37.50	37.5
485210	Interurban and Rural Bus Transportation	28.0	31.82	32.0
485310	Taxi and Ridesharing Services	16.5	18.75	19.0
485320	Limousine Service	16.5	18.75	19.0
485410	School and Employee Bus Transportation	26.5	30.12	30.0
485510	Charter Bus Industry	16.5	18.75	19.0
485991	Special Needs Transportation	16.5	18.75	19.0
485999	All Other Transit and Ground Passenger Transportation	16.5	18.75	19.0
486210	Pipeline Transportation of Natural Gas	36.5	41.48	41.5
486990	All Other Pipeline Transportation	40.5	46.03	46.0
487110	Scenic and Sightseeing Transportation, Land	18.0	20.46	20.5
487210	Scenic and Sightseeing Transportation, Water	12.5	14.21	14.0
487990	Scenic and Sightseeing Transportation, Other	22.0	25.0	25.0
488111	Air Traffic Control	35.0	39.78	40.0
488119	Other Airport Operations	35.0	39.78	40.0
488190	Other Support Activities for Air Transportation	35.0	39.78	40.0
488210	Support Activities for Rail Transportation	30.0	34.09	34.0
488310	Port and Harbor Operations	41.5	47.16	47.0
488320	Marine Cargo Handling	41.5	47.16	47.0
488330	Navigational Services to Shipping	41.5	47.16	47.0
488390	Other Support Activities for Water Transportation	41.5	47.16	47.0
488410	Motor Vehicle Towing	8.0	9.09	9.0
488490	Other Support Activities for Road Transportation	16.0	18.18	18.0
488510	Freight Transportation Arrangement	17.5	19.89	20.0

TABLE 1—RECEIPTS-BASED SIZE STANDARDS ADJUSTED FOR INFLATION—Continued

[NAICS 2022]

NAICS 2022 code	NAICS 2022 industry title	Current size standards ($ million)	Inflation-adjusted size standards (unrounded) ($ million)	Inflation-adjusted size standards (rounded) ($ million)
488510 (Exception)	Non Vessel Owning Common Carriers and Household Goods Forwarders.	30.0	34.09	34.0
488991	Packing and Crating	30.0	34.09	34.0
488999	All Other Support Activities for Transportation	22.0	25.0	25.0
491110	Postal Service	8.0	9.09	9.0
492210	Local Messengers and Local Delivery	30.0	34.09	34.0
493110	General Warehousing and Storage	30.0	34.09	34.0
493120	Refrigerated Warehousing and Storage	32.0	36.37	36.5
493130	Farm Product Warehousing and Storage	30.0	34.09	34.0
493190	Other Warehousing and Storage	32.0	36.37	36.5
512110	Motion Picture and Video Production	35.0	39.78	40.0
512120	Motion Picture and Video Distribution	34.5	39.21	39.0
512131	Motion Picture Theaters (except Drive Ins)	41.5	47.16	47.0
512132	Drive In Motion Picture Theaters	11.0	12.50	12.5
512191	Teleproduction and Other Postproduction Services	34.5	39.21	39.0
512199	Other Motion Picture and Video Industries	25.0	28.41	28.5
512240	Sound Recording Studios	9.5	10.80	11.0
512290	Other Sound Recording Industries	20.0	22.73	22.5
513210	Software Publishers	41.5	47.16	47.0
516110	Radio Broadcasting Stations	41.5	47.16	47.0
516120	Television Broadcasting Stations	41.5	47.16	47.0
516210	Media Streaming Distribution Services, Social Networks, and Other Media Networks and Content Providers.	41.5	47.16	47.0
517410	Satellite Telecommunications	38.5	43.75	44.0
517810	All Other Telecommunications	35.0	39.78	40.0
518210	Computing Infrastructure Providers, Data Processing, Web Hosting, and Related Services.	35.0	39.78	40.0
519210	Libraries and Archives	18.5	21.02	21.0
522220	Sales Financing	41.5	47.16	47.0
522291	Consumer Lending	41.5	47.16	47.0
522292	Real Estate Credit	41.5	47.16	47.0
522299	International, Secondary Market, and All Other Nondepository Credit Intermediation.	41.5	47.16	47.0
522310	Mortgage and Nonmortgage Loan Brokers	13.0	14.77	15.0
522320	Financial Transactions Processing, Reserve, and Clearinghouse Activities.	41.5	47.16	47.0
522390	Other Activities Related to Credit Intermediation	25.0	28.41	28.5
523150	Investment Banking and Securities Intermediation	41.5	47.16	47.0
523160	Commodity Contracts Intermediation	41.5	47.16	47.0
523210	Securities and Commodity Exchanges	41.5	47.16	47.0
523910	Miscellaneous Intermediation	41.5	47.16	47.0
523940	Portfolio Management and Investment Advice	41.5	47.16	47.0
523991	Trust, Fiduciary and Custody Activities	41.5	47.16	47.0
523999	Miscellaneous Financial Investment Activities	41.5	47.16	47.0
524113	Direct Life Insurance Carriers	41.5	47.16	47.0
524114	Direct Health and Medical Insurance Carriers	41.5	47.16	47.0
524127	Direct Title Insurance Carriers	41.5	47.16	47.0
524128	Other Direct Insurance (except Life, Health and Medical) Carriers.	41.5	47.16	47.0
524130	Reinsurance Carriers	41.5	47.16	47.0
524210	Insurance Agencies and Brokerages	13.0	14.77	15.0
524291	Claims Adjusting	22.0	25.0	25.0
524292	Pharmacy Benefit Management and Other Third Party Administration of Insurance and Pension Funds.	40.0	45.46	45.5
524298	All Other Insurance Related Activities	27.0	30.69	30.5
525110	Pension Funds	35.0	39.78	40.0
525120	Health and Welfare Funds	35.0	39.78	40.0
525190	Other Insurance Funds	35.0	39.78	40.0
525910	Open End Investment Funds	35.0	39.78	40.0
525920	Trusts, Estates, and Agency Accounts	35.0	39.78	40.0
525990	Other Financial Vehicles	35.0	39.78	40.0
531110	Lessors of Residential Buildings and Dwellings	30.0	34.09	34.0
531120	Lessors of Nonresidential Buildings (except Miniwarehouses).	30.0	34.09	34.0
531130	Lessors of Miniwarehouses and Self Storage Units	30.0	34.09	34.0
531190	Lessors of Other Real Estate Property	30.0	34.09	34.0
531210	Offices of Real Estate Agents and Brokers	13.0	14.77	15.0

TABLE 1—RECEIPTS-BASED SIZE STANDARDS ADJUSTED FOR INFLATION—Continued

[NAICS 2022]

NAICS 2022 code	NAICS 2022 industry title	Current size standards ($ million)	Inflation-adjusted size standards (unrounded) ($ million)	Inflation-adjusted size standards (rounded) ($ million)
531311	Residential Property Managers	11.0	12.50	12.5
531312	Nonresidential Property Managers	17.0	19.32	19.5
531320	Offices of Real Estate Appraisers	8.5	9.66	9.5
531390	Other Activities Related to Real Estate	17.0	19.32	19.5
532111	Passenger Car Rental	41.5	47.16	47.0
532112	Passenger Car Leasing	41.5	47.16	47.0
532120	Truck, Utility Trailer, and RV (Recreational Vehicle) Rental and Leasing.	41.5	47.16	47.0
532210	Consumer Electronics and Appliances Rental	41.5	47.16	47.0
532281	Formal Wear and Costume Rental	22.0	25.0	25.0
532282	Video Tape and Disc Rental	31.0	35.23	35.0
532283	Home Health Equipment Rental	36.0	40.91	41.0
532284	Recreational Goods Rental	8.0	9.09	9.0
532289	All Other Consumer Goods Rental	11.0	12.50	12.5
532310	General Rental Centers	8.0	9.09	9.0
532411	Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing.	40.0	45.46	45.5
532412	Construction, Mining and Forestry Machinery and Equipment Rental and Leasing.	35.0	39.78	40.0
532420	Office Machinery and Equipment Rental and Leasing	35.0	39.78	40.0
532490	Other Commercial and Industrial Machinery and Equipment Rental and Leasing.	35.0	39.78	40.0
533110	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works).	41.5	47.16	47.0
541110	Offices of Lawyers	13.5	15.34	15.5
541191	Title Abstract and Settlement Offices	17.0	19.32	19.5
541199	All Other Legal Services	18.0	20.46	20.5
541211	Offices of Certified Public Accountants	23.5	26.71	26.5
541213	Tax Preparation Services	22.0	25.0	25.0
541214	Payroll Services	34.5	39.21	39.0
541219	Other Accounting Services	22.0	25.0	25.0
541310	Architectural Services	11.0	12.50	12.5
541320	Landscape Architectural Services	8.0	9.09	9.0
541330	Engineering Services	22.5	25.57	25.5
541330 (Exception 1)	Military and Aerospace Equipment and Military Weapons	41.5	47.16	47.0
541330 (Exception 2)	Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992.	41.5	47.16	47.0
541330 (Exception 3)	Marine Engineering and Naval Architecture	41.5	47.16	47.0
541340	Drafting Services	8.0	9.09	9.0
541350	Building Inspection Services	10.0	11.36	11.5
541360	Geophysical Surveying and Mapping Services	25.0	28.41	28.5
541370	Surveying and Mapping (except Geophysical) Services	16.5	18.75	19.0
541380	Testing Laboratories and Services	16.5	18.75	19.0
541410	Interior Design Services	8.0	9.09	9.0
541420	Industrial Design Services	15.0	17.05	17.0
541430	Graphic Design Services	8.0	9.09	9.0
541490	Other Specialized Design Services	12.0	13.64	13.5
541511	Custom Computer Programming Services	30.0	34.09	34.0
541512	Computer Systems Design Services	30.0	34.09	34.0
541513	Computer Facilities Management Services	32.5	36.94	37.0
541519	Other Computer Related Services	30.0	34.09	34.0
541611	Administrative Management and General Management Consulting Services.	21.5	24.43	24.5
541612	Human Resources Consulting Services	25.5	28.98	29.0
541613	Marketing Consulting Services	16.5	18.75	19.0
541614	Process, Physical Distribution and Logistics Consulting Services.	17.5	19.89	20.0
541618	Other Management Consulting Services	16.5	18.75	19.0
541620	Environmental Consulting Services	16.5	18.75	19.0
541690	Other Scientific and Technical Consulting Services	16.5	18.75	19.0
541720	Research and Development in the Social Sciences and Humanities.	24.5	27.84	28.0
541810	Advertising Agencies	22.5	25.57	25.5
541820	Public Relations Agencies	16.5	18.75	19.0
541830	Media Buying Agencies	28.5	32.39	32.5
541840	Media Representatives	18.5	21.02	21.0
541850	Indoor and Outdoor Display Advertising	30.5	34.66	34.5

TABLE 1—RECEIPTS-BASED SIZE STANDARDS ADJUSTED FOR INFLATION—Continued

[NAICS 2022]

NAICS 2022 code	NAICS 2022 industry title	Current size standards ($ million)	Inflation-adjusted size standards (unrounded) ($ million)	Inflation-adjusted size standards (rounded) ($ million)
541860	Direct Mail Advertising	19.5	22.16	22.0
541870	Advertising Material Distribution Services	25.0	28.41	28.5
541890	Other Services Related to Advertising	16.5	18.75	19.0
541910	Marketing Research and Public Opinion Polling	20.0	22.73	22.5
541921	Photography Studios, Portrait	14.0	15.91	16.0
541922	Commercial Photography	8.0	9.09	9.0
541930	Translation and Interpretation Services	20.0	22.73	22.5
541940	Veterinary Services	9.0	10.23	10.0
541990	All Other Professional, Scientific and Technical Services	17.0	19.32	19.5
551111	Offices of Bank Holding Companies	34.0	38.64	38.5
551112	Offices of Other Holding Companies	40.0	45.46	45.5
561110	Office Administrative Services	11.0	12.50	12.5
561210	Facilities Support Services	41.5	47.16	47.0
561311	Employment Placement Agencies	30.0	34.09	34.0
561312	Executive Search Services	30.0	34.09	34.0
561320	Temporary Help Services	30.0	34.09	34.0
561330	Professional Employer Organizations	36.5	41.48	41.5
561410	Document Preparation Services	16.5	18.75	19.0
561421	Telephone Answering Services	16.5	18.75	19.0
561422	Telemarketing Bureaus and Other contact Centers	22.5	25.57	25.5
561431	Private Mail Centers	16.5	18.75	19.0
561439	Other Business Service Centers (including Copy Shops)	23.5	26.71	26.5
561440	Collection Agencies	17.0	19.32	19.5
561450	Credit Bureaus	36.0	40.91	41.0
561491	Repossession Services	16.5	18.75	19.0
561492	Court Reporting and Stenotype Services	16.5	18.75	19.0
561499	All Other Business Support Services	19.0	21.59	21.5
561510	Travel Agencies	22.0	25.0	25.0
561520	Tour Operators	22.0	25.0	25.0
561591	Convention and Visitors Bureaus	22.0	25.0	25.0
561599	All Other Travel Arrangement and Reservation Services	28.5	32.39	32.5
561611	Investigation and Personal Background Check Services	22.0	25.0	25.0
561612	Security Guards and Patrol Services	25.5	28.98	29.0
561613	Armored Car Services	38.0	43.19	43.0
561621	Security Systems Services (except Locksmiths)	22.0	25.0	25.0
561622	Locksmiths	22.0	25.0	25.0
561710	Exterminating and Pest Control Services	15.5	17.62	17.5
561720	Janitorial Services	19.5	22.16	22.0
561730	Landscaping Services	8.5	9.66	9.5
561740	Carpet and Upholstery Cleaning Services	7.5	8.52	8.5
561790	Other Services to Buildings and Dwellings	8.0	9.09	9.0
561910	Packaging and Labeling Services	17.0	19.32	19.5
561920	Convention and Trade Show Organizers	17.5	19.89	20.0
561990	All Other Support Services	14.5	16.48	16.5
562111	Solid Waste Collection	41.5	47.16	47.0
562112	Hazardous Waste Collection	41.5	47.16	47.0
562119	Other Waste Collection	41.5	47.16	47.0
562211	Hazardous Waste Treatment and Disposal	41.5	47.16	47.0
562212	Solid Waste Landfill	41.5	47.16	47.0
562213	Solid Waste Combustors and Incinerators	41.5	47.16	47.0
562219	Other Nonhazardous Waste Treatment and Disposal	41.5	47.16	47.0
562910	Remediation Services	22.0	25.0	25.0
562920	Materials Recovery Facilities	22.0	25.0	25.0
562991	Septic Tank and Related Services	8.0	9.09	9.0
562998	All Other Miscellaneous Waste Management Services	14.5	16.48	16.5
611110	Elementary and Secondary Schools	17.5	19.89	20.0
611210	Junior Colleges	28.5	32.39	32.5
611310	Colleges, Universities and Professional Schools	30.5	34.66	34.5
611410	Business and Secretarial Schools	18.0	20.46	20.5
611420	Computer Training	14.0	15.91	16.0
611430	Professional and Management Development Training	13.0	14.77	15.0
611511	Cosmetology and Barber Schools	11.5	13.07	13.0
611512	Flight Training	30.0	34.09	34.0
611513	Apprenticeship Training	10.0	11.36	11.5
611519	Other Technical and Trade Schools	18.5	21.02	21.0
611519 (Exception)	Job Corps Centers	41.5	47.16	47.0
611610	Fine Arts Schools	8.0	9.09	9.0

TABLE 1—RECEIPTS-BASED SIZE STANDARDS ADJUSTED FOR INFLATION—Continued

[NAICS 2022]

NAICS 2022 code	NAICS 2022 industry title	Current size standards ($ million)	Inflation-adjusted size standards (unrounded) ($ million)	Inflation-adjusted size standards (rounded) ($ million)
611620	Sports and Recreation Instruction	8.0	9.09	9.0
611630	Language Schools	18.0	20.46	20.5
611691	Exam Preparation and Tutoring	11.0	12.50	12.5
611692	Automobile Driving Schools	9.0	10.23	10.0
611699	All Other Miscellaneous Schools and Instruction	14.5	16.48	16.5
611710	Educational Support Services	21.0	23.87	24.0
621111	Offices of Physicians (except Mental Health Specialists)	14.0	15.91	16.0
621112	Offices of Physicians, Mental Health Specialists	12.0	13.64	13.5
621210	Offices of Dentists	8.0	9.09	9.0
621310	Offices of Chiropractors	8.0	9.09	9.0
621320	Offices of Optometrists	8.0	9.09	9.0
621330	Offices of Mental Health Practitioners (except Physicians)	8.0	9.09	9.0
621340	Offices of Physical, Occupational and Speech Therapists and Audiologists.	11.0	12.50	12.5
621391	Offices of Podiatrists	8.0	9.09	9.0
621399	Offices of All Other Miscellaneous Health Practitioners	9.0	10.23	10.0
621410	Family Planning Centers	16.5	18.75	19.0
621420	Outpatient Mental Health and Substance Abuse Centers	16.5	18.75	19.0
621491	HMO Medical Centers	39.0	44.32	44.5
621492	Kidney Dialysis Centers	41.5	47.16	47.0
621493	Freestanding Ambulatory Surgical and Emergency Centers	16.5	18.75	19.0
621498	All Other Outpatient Care Centers	22.5	25.57	25.5
621511	Medical Laboratories	36.5	41.48	41.5
621512	Diagnostic Imaging Centers	16.5	18.75	19.0
621610	Home Health Care Services	16.5	18.75	19.0
621910	Ambulance Services	20.0	22.73	22.5
621991	Blood and Organ Banks	35.0	39.78	40.0
621999	All Other Miscellaneous Ambulatory Health Care Services	18.0	20.46	20.5
622110	General Medical and Surgical Hospitals	41.5	47.16	47.0
622210	Psychiatric and Substance Abuse Hospitals	41.5	47.16	47.0
622310	Specialty (except Psychiatric and Substance Abuse) Hospitals.	41.5	47.16	47.0
623110	Nursing Care Facilities (Skilled Nursing Facilities)	30.0	34.09	34.0
623210	Residential Intellectual and Developmental Disability Facilities.	16.5	18.75	19.0
623220	Residential Mental Health and Substance Abuse Facilities	16.5	18.75	19.0
623311	Continuing Care Retirement Communities	30.0	34.09	34.0
623312	Assisted Living Facilities for the Elderly	20.5	23.30	23.5
623990	Other Residential Care Facilities	14.0	15.91	16.0
624110	Child and Youth Services	13.5	15.34	15.5
624120	Services for the Elderly and Persons with Disabilities	13.0	14.77	15.0
624190	Other Individual and Family Services	14.0	15.91	16.0
624210	Community Food Services	17.0	19.32	19.5
624221	Temporary Shelters	12.0	13.64	13.5
624229	Other Community Housing Services	16.5	18.75	19.0
624230	Emergency and Other Relief Services	36.5	41.48	41.5
624310	Vocational Rehabilitation Services	13.0	14.77	15.0
624410	Child Care Services	8.5	9.66	9.5
711110	Theater Companies and Dinner Theaters	22.0	25.0	25.0
711120	Dance Companies	16.0	18.18	18.0
711130	Musical Groups and Artists	13.0	14.77	15.0
711190	Other Performing Arts Companies	30.0	34.09	34.0
711211	Sports Teams and Clubs	41.5	47.16	47.0
711212	Race Tracks	41.5	47.16	47.0
711219	Other Spectator Sports	14.5	16.48	16.5
711310	Promoters of Performing Arts, Sports and Similar Events with Facilities.	35.0	39.78	40.0
711320	Promoters of Performing Arts, Sports and Similar Events without Facilities.	19.5	22.16	22.0
711410	Agents and Managers for Artists, Athletes, Entertainers and Other Public Figures.	15.5	17.62	17.5
711510	Independent Artists, Writers, and Performers	8.0	9.09	9.0
712110	Museums	30.0	34.09	34.0
712120	Historical Sites	11.5	13.07	13.0
712130	Zoos and Botanical Gardens	30.0	34.09	34.0
712190	Nature Parks and Other Similar Institutions	17.0	19.32	19.5
713110	Amusement and Theme Parks	41.5	47.16	47.0

TABLE 1—RECEIPTS-BASED SIZE STANDARDS ADJUSTED FOR INFLATION—Continued

[NAICS 2022]

NAICS 2022 code	NAICS 2022 industry title	Current size standards ($ million)	Inflation-adjusted size standards (unrounded) ($ million)	Inflation-adjusted size standards (rounded) ($ million)
713120	Amusement Arcades	8.0	9.09	9.0
713210	Casinos (except Casino Hotels)	30.0	34.09	34.0
713290	Other Gambling Industries	35.0	39.78	40.0
713910	Golf Courses and Country Clubs	16.5	18.75	19.0
713920	Skiing Facilities	31.0	35.23	35.0
713930	Marinas	9.5	10.80	11.0
713940	Fitness and Recreational Sports Centers	15.5	17.62	17.5
713950	Bowling Centers	11.0	12.50	12.5
713990	All Other Amusement and Recreation Industries	8.0	9.09	9.0
721110	Hotels (except Casino Hotels) and Motels	35.0	39.78	40.0
721120	Casino Hotels	35.0	39.78	40.0
721191	Bed and Breakfast Inns	8.0	9.09	9.0
721199	All Other Traveler Accommodation	8.0	9.09	9.0
721211	RV (Recreational Vehicle) Parks and Campgrounds	9.0	10.23	10.0
721214	Recreational and Vacation Camps (except Campgrounds)	8.0	9.09	9.0
721310	Rooming and Boarding Houses, Dormitories, and Workers' Camps.	12.5	14.21	14.0
722310	Food Service Contractors	41.5	47.16	47.0
722320	Caterers	8.0	9.09	9.0
722330	Mobile Food Services	8.0	9.09	9.0
722410	Drinking Places (Alcoholic Beverages)	8.0	9.09	9.0
722511	Full-Service Restaurants	10.0	11.36	11.5
722513	Limited-Service Restaurants	12.0	13.64	13.5
722514	Cafeterias, Grill Buffets, and Buffets	30.0	34.09	34.0
722515	Snack and Nonalcoholic Beverage Bars	20.0	22.73	22.5
811111	General Automotive Repair	8.0	9.09	9.0
811114	Specialized Automotive Repair	8.0	9.09	9.0
811121	Automotive Body, Paint and Interior Repair and Maintenance.	8.0	9.09	9.0
811122	Automotive Glass Replacement Shops	15.5	17.62	17.5
811191	Automotive Oil Change and Lubrication Shops	9.5	10.80	11.0
811192	Car Washes	8.0	9.09	9.0
811198	All Other Automotive Repair and Maintenance	9.0	10.23	10.0
811210	Electronic and Precision Equipment Repair and Maintenance.	30.0	34.09	34.0
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance.	11.0	12.50	12.5
811411	Home and Garden Equipment Repair and Maintenance	8.0	9.09	9.0
811412	Appliance Repair and Maintenance	16.5	18.75	19.0
811420	Reupholstery and Furniture Repair	8.0	9.09	9.0
811430	Footwear and Leather Goods Repair	8.0	9.09	9.0
811490	Other Personal and Household Goods Repair and Maintenance.	8.0	9.09	9.0
812111	Barber Shops	8.5	9.66	9.5
812112	Beauty Salons	8.5	9.66	9.5
812113	Nail Salons	8.0	9.09	9.0
812191	Diet and Weight Reducing Centers	24.0	27.28	27.5
812199	Other Personal Care Services	8.0	9.09	9.0
812210	Funeral Homes and Funeral Services	11.0	12.50	12.5
812220	Cemeteries and Crematories	22.0	25.0	25.0
812310	Coin Operated Laundries and Drycleaners	11.5	13.07	13.0
812320	Drycleaning and Laundry Services (except Coin Operated)	7.0	7.96	8.0
812331	Linen Supply	35.0	39.78	40.0
812332	Industrial Launderers	41.5	47.16	47.0
812910	Pet Care (except Veterinary) Services	8.0	9.09	9.0
812921	Photofinishing Laboratories (except One Hour)	26.0	29.55	29.5
812922	One Hour Photofinishing	16.5	18.75	19.0
812930	Parking Lots and Garages	41.5	47.16	47.0
812990	All Other Personal Services	13.0	14.77	15.0
813110	Religious Organizations	11.5	13.07	13.0
813211	Grantmaking Foundations	35.0	39.78	40.0
813212	Voluntary Health Organizations	30.0	34.09	34.0
813219	Other Grantmaking and Giving Services	41.5	47.16	47.0
813311	Human Rights Organizations	30.0	34.09	34.0
813312	Environment, Conservation and Wildlife Organizations	17.0	19.32	19.5
813319	Other Social Advocacy Organizations	16.0	18.18	18.0
813410	Civic and Social Organizations	8.5	9.66	9.5

TABLE 1—RECEIPTS-BASED SIZE STANDARDS ADJUSTED FOR INFLATION—Continued

[NAICS 2022]

NAICS 2022 code	NAICS 2022 industry title	Current size standards ($ million)	Inflation-adjusted size standards (unrounded) ($ million)	Inflation-adjusted size standards (rounded) ($ million)
813910	Business Associations	13.5	15.34	15.5
813920	Professional Organizations	20.5	23.30	23.5
813930	Labor Unions and Similar Labor Organizations	14.5	16.48	16.5
813940	Political Organizations	12.5	14.21	14.0
813990	Other Similar Organizations (except Business, Professional, Labor, and Political Organizations).	12.0	13.64	13.5

Adjustment to the assets-based size standards:

Currently, five industries in NAICS Sector 52, Finance and Insurance, have the size standard of $750 million in average assets. Following the inflation adjustment methodology described above, the assets-based size standard was adjusted by multiplying the current value of $750 million by 1.1365. The result was $852.4 million, which SBA rounded to $850 million. Table 2, Inflation Adjustment to Assets-Based Size Standards, shows the four industries with assets-based standards.

TABLE 2—INFLATION ADJUSTMENTS TO ASSETS-BASED SIZE STANDARDS

NAICS 2022 code	NAICS 2022 industry title	Current assets-based size standard ($ million)	Inflation-adjusted assets-based size standard (unrounded) ($ million	Inflation-adjusted assets-based size standard (rounded) ($ million)
522110	Commercial Banking	$750.0	$852.4	$850.0
522130	Credit Unions	750.0	852.4	850.0
522180	Savings Institution and Other Depository Credit Intermediation.	750.0	852.4	850.0
522210	Credit Card Issuing	750.0	852.4	850.0

Adjustment to Program-Based Size Standards

Most SBA and other Federal programs apply size standards established for industries, as defined by the NAICS. SBA has also established a few size standards on a program basis rather than on an industry basis. These include the size standards for sales or leases of government property, the size standards for stockpile purchases, and the alternative size standard based on tangible net worth and net income for the Small Business Investment Company (SBIC) program. Size standards for sales or leases of government property and stockpile purchases were adjusted for inflation in the same manner as the industry-based monetary size standards. These results are presented in Table 3, Inflation Adjustment to Program-Based Size Standards, which shows the program-based size standards and their corresponding inflation-adjusted values. The alternative size standard for the SBIC program was not adjusted in the 2019 inflation adjustment but it was adjusted in the 2014 inflation adjustment. Thus, the base period for adjusting the SBIC alternative size standard is the fourth quarter of 2013, the end period for the 2014 inflation adjustment of that size standard. The end period is the second quarter of 2022. As shown in Table 3, the inflation between the base period and end period for the adjustment of SBIC alternative size standard is 23.22 percent. Thus, following the inflation adjustment methodology described above, the SBIC alternative size standard was adjusted by multiplying the current tangible net worth value of $19.5 million and net income value of $6.5 million by 1.2063. The results were $24.029 million in tangible net worth and $8.010 million in net income, which were rounded to $24 million and $8 million, respectively. These results are shown in Table 3, below. The size standard for ''smaller enterprises'' under the SBIC program is set by statute (*see* 13 CFR 107.710(a)) and, therefore, it is not adjusted.

TABLE 3—INFLATION ADJUSTMENT TO PROGRAM-BASED SIZE STANDARDS

Threshold name and value (CFR citation)		Base period and GDP price index		End period and GDP price index		Inflation (%)	Adjusted threshold (not rounded)	Adjusted threshold (rounded) [1]
Name	Value	Base period	GDP price index	End period	GDP price index			
Sales or leases of government property (13 CFR 121.502).	$8,000,000	Fourth quarter of 2018.	111.191	Second Quarter of 2022.	126.367	13.65	$9,091,886	$9,000,000
Stockpile purchases (13 CFR 121.512).	$67,500,000	Fourth quarter of 2018.	111.191	Second Quarter of 2022.	126.367	13.65	$76,712,796	$76,500,000
SBIC alternative size threshold:								

TABLE 3—INFLATION ADJUSTMENT TO PROGRAM-BASED SIZE STANDARDS—Continued

Threshold name and value (CFR citation)		Base period and GDP price index		End period and GDP price index		Inflation (%)	Adjusted threshold (not rounded)	Adjusted threshold (rounded) [1]
Name	Value	Base period	GDP price index	End period	GDP price index			
Net worth (13 CFR 121.301(c)).	$19,500,000	Fourth quarter of 2013.	102.550	Second quarter of 2022.	126.367	23.22	$24,028,830	$24,000,000
Net income (13 CFR 121.301(c)).	$6,500,000	Fourth quarter of 2013.	102.550	Second quarter of 2022.	126.367	23.22	$8,009,610	$8,000,000

[1] If value < 1,000,000, then it was rounded to the nearest 50,000.
If value >= 1,000,000, then it was rounded to the nearest 500,000.

Special Considerations

Size Standard for Leasing of Building Space to the Federal Government by Owners—Footnote 9: The size standard found in Footnote 9 to 13 CFR 121.201 (Leasing of Building Space to the Federal Government by Owners) was also adjusted for inflation. The current size standard of $41.5 million was multiplied by 1.1365 to obtain an adjusted size standard of $47 million after rounding. This size standard exception applies to all four industries in NAICS Industry Group 5311, Lessors of Real Estate.

Alternative Size Standard for 7(a) and 504 Loan Programs: Effective September 27, 2010, the Jobs Act established a new temporary alternative size standard of tangible net worth of not more than $15 million and net income of not more than $5 million for SBA's 7(a) and 504 Loan Programs. On September 29, 2010, SBA issued Notice 5000–1175 advising lenders and the public that, effective September 27, 2010, the new statutory alternative size standard will apply for its 7(a) and 504 Loan Programs, thereby replacing the existing alternative size standard set forth in 13 CFR 121.301(b)(2). The Jobs Act also provided that the new temporary alternative size standard would remain in effect for the 7(a) and CDC/504 Loan Programs until the SBA's Administrator has established a different size standard through rulemaking. For this reason, in this rule, SBA is not adjusting the new alternative size standard for its 7(a) and 504 Loan programs for inflation. SBA will issue a different rule to establish a permanent alternative size standard for those programs.

Adjustment of Certain Procurement Thresholds for Inflation

Besides adjustment of industry-based and certain program-based monetary based size standards described above, in this rule, SBA is also adjusting certain monetary thresholds in its regulations that are otherwise not adjusted for inflation under FAR 1.109. These thresholds primarily are those used in the 8(a) Business Development (8(a) BD) and economically disadvantaged women-owned small business (EDWOSB) programs to determine economic disadvantage. Others are used to maintain eligibility for the 8(a) BD program. This action will permit small businesses to retain eligibility as economically disadvantaged and eligible for the 8(a) BD program and the EDWOSB program, despite an increase in inflation.

Economic Disadvantage for 8(a) Business Development

Net worth: Under the current regulations, the net worth of an individual claiming economic disadvantage must be less than $750,000 (13 CFR 124.104(c)(2)). This was implemented in 2020 (85 FR 27650 (May 11, 2020)), when SBA adopted a common definition for an economically disadvantaged individual under the 8(a) BD program as well as under the EDWOSB program. Inflation, as measured by change in the GDP price index, since then has increased 11.86 percent. These results are presented in Table 4, Inflation Adjustments of Certain Procurement Thresholds, below. The adjustment of $750,000 by that amount would translate to $838,942, rounded to $850,000.

Aggregate Gross Income (AGI): Currently, SBA presumes that an individual is not economically disadvantaged if his or her adjusted gross income (AGI) averaged over the three preceding years exceeds $350,000 (13 CFR 124.104(c)(3)(i)). This was implemented in 2020 (85 FR 27650 (May 11, 2020)). Inflation, as measured by change in the GDP price index, since then has increased 11.86 percent (see Table 4 below). The adjustment of $350,000 by that amount would translate to $391,506, which is rounded to $400,000.

Total assets: Currently, an individual is generally not considered economically disadvantaged if the fair market value of all his or her assets (including his or her primary residence and the value of the applicant/Participant firm) exceeds $6,000,000 (13 CFR 124.104(c)(4)). This was implemented in 2020 (85 FR 27650 (May 11, 2020)). Inflation, as measured by change in the GDP price index, since then has increased 11.86 percent (see Table 4 below). The adjustment of $6,000,000 by that amount would translate to $6,711,534, which is rounded to $6,500,000.

Economic Disadvantage Thresholds for EDWOSB Program

Net worth: In order to be considered economically disadvantaged, the woman's personal net worth must be less than $750,000, excluding her ownership interest in the concern and her equity interest in her primary personal residence (13 CFR 127.203(b)(1)). SBA implemented this threshold in 2020, when the final rule implementing the WOSB and EDWOSB certification program was published (85 FR 27650 (May 11, 2020)). Inflation, as measured by change in the GDP price index, since then has increased 11.86 percent. Adjusting $750,000 with that amount translates to $850,000 (rounded). These results are provided in Table 4, below.

Income: When considering a woman's personal income, if the adjusted gross yearly income averaged over the three years preceding the certification exceeds $350,000, SBA will presume that she is not economically disadvantaged (13 CFR 127.203(c)(3)(i)). This threshold was implemented in 2020 (85 FR 27650 (May 11, 2020)). Inflation, as measured by change in the GDP price index, since then has increased 11.86 percent. Adjusting $350,000 with that amount translates to $400,000 (rounded). These results are shown in Table 4, below.

Total Assets: A woman will generally not be considered economically disadvantaged if the fair market value of all her assets (including her primary residence and the value of the business concern) exceeds $6,000,000 (13 CFR 127.203(c)(4)). This threshold was implemented in 2020 (85 FR 27650 (May 11, 2020)). Inflation, as measured by change in the GDP price index, since then has increased 11.86 percent. Adjusting $6,000,000 with that amount translates to $6,500,000 (rounded). These results are shown in Table 4.

Dollar Limits for Total 8(a) Contracts

8(a) BD participants (other than one owned by an Indian Tribe, ANC, NHO, or CDC) may not receive sole source 8(a) contract awards where the participant has received a combined total of competitive and sole source 8(a) contracts in excess of $100,000,000 during its participation in the 8(a) BD program (13 CFR 124.519). This threshold was implemented in 1998 (63 FR 35739 (June 30, 1998)). This has never been adjusted for inflation. Inflation, as measured by change in the GDP price index, since then has increased 68.33 percent (see table below). Adjusting $100,000,000 with that amount translated to $168,500,000 (rounded). These results are provided in Table 4, below.

TABLE 4—INFLATION ADJUSTMENTS OF CERTAIN PROCUREMENT THRESHOLDS

Threshold name and value (CFR citation)		**Federal Register** citation (date)	Base period and GDP price index		End period and GDP price index		Inflation (%)	Adjusted threshold (not rounded)	Adjusted threshold (rounded) [1]
Name	Value		Base period	GDP price index	End period	GDP price index			
8(a) Business Development Economic Disadvantage Thresholds:									
Net worth (13 CFR 124.104(c)(2)).	$750,000	85 FR 27650 (May 11, 2020).	Second quarter of 2020.	112.97	Second quarter of 2022.	126.367	11.86	$838,942	$850,000
Income (AGI) (13 CFR 124.104(c)(3)).	350,000	85 FR 27650 (May 11, 2020).	Second quarter of 2020.	112.97	Second quarter of 2022.	126.367	11.86	391,506	400,000
Total assets (13 CFR 124.104(c)(4)).	6,000,000	85 FR 27650 (May 11, 2020).	Second quarter of 2020.	112.97	Second quarter of 2022.	126.367	11.86	6,711,534	6,500,000
EDWOSB Thresholds:									
Net worth (13 (CFR 127.203(b)(1)).	750,000	85 FR 27650 (May 11, 2020).	Second quarter of 2020.	112.97	Second quarter of 2022.	126.367	11.86	838,942	850,000
Income (13 (CFR 127.203(c)(3) (i)).	350,000	85 FR 27650 (May 11, 2020).	Second quarter of 2020.	112.97	Second quarter of 2022.	126.367	11.86	391,506	400,000
Total assets (13 CFR 127.203(c)(4)).	6,000,000	85 FR 27650 (May 11, 2020).	Second quarter of 2020.	112.97	Second quarter of 2022.	126.367	11.86	6,711,534	6,500,000
Dollar Limits for Sole Source 8(a) (13 CFR 124.519).	100,000,000	63 FR 35739 (Jun. 30, 1998).	Second Quarter 1998.	75.07	Second quarter of 2022.	126.367	68.33	168,332,223	168,500,000

[1] If value <1,000,000, then it is rounded to the nearest 50,000.
If value >=1,000,000, then it is rounded to the nearest 500,000.

III. Summary and Discussion of Public Comments on the July 18, 2019, IFR

As discussed above, in this rule, SBA is finalizing the changes to size standards contained in the July 2019 IFR. As such, SBA's adoption of the changes contained in the July 2019 IFR do not supersede the changes recently adopted by SBA as part of the second five-year review of size standards under the Jobs Act, nor do they supersede the adoption of size standards contained in this IFR which adjust SBA's monetary-based size standards for inflation that has occurred since the issuance of the July 2019 IFR. The instant rulemaking comprises a concurrent interim final rule further adjusting its current monetary-based size standards by 13.65 percent for additional inflation that has occurred since issuing the July 2019 IFR.

This final rulemaking finalizes, without change, SBA's July 2019 IFR that adjusted monetary-based industry size standards for inflation that occurred since 2014. The July 2019 IFR requested comments from the public on SBA's methodology of using the GDP price index for adjusting size standards and suggestions for alternative measures of inflation, on whether SBA should adjust employee-based size standards for labor productivity growth and technical changes similar to adjusting monetary-based size standards for inflation, and on changes to program-specific size standards. Below is a discussion of those comments and SBA's responses.

SBA received 11 comments on the July 2019 IFR, of which seven supported SBA's inflation-adjusted changes to size standards, two opposed the changes, and two discussed issues outside the scope of the IFR or did not state a clear position. All comments are available at the Federal Rulemaking Portal, *www.regulations.gov,* and are summarized and discussed by topic below.

Comment on the Effective Date of the July 2019 IFR

One commenter argued that the August 19, 2019, effective date adopted in the July 2019 IFR, which would fall in the middle of the fourth quarter of fiscal year 2019, would negatively impact procurement actions and recommended postponing the effective date until October 1, 2019, to minimize the disruptions. The commenter added that the procurement actions about to be issued based on market research conducted under the old size standards will also be impacted. Finally, the commenter contended that contractors would overwhelm the System for Award Management (SAM) system as they attempt to update their status in order to bid on previously unavailable actions, which will degrade the ability of the contracting officers to review the small business status of bidders in SAM before making an award.

SBA Response

SBA disagrees with the commenter that the effective date of the IFR will negatively impact procurement actions. SBA believes that the effective date for the IFR, which is 30 days from the date of publication in the **Federal Register**, provides businesses and contracting professionals adequate time to adjust to the changes contained in the rule without causing significant disruptions to the procurement process. SBA has a long history of effectuating size standards on dates other than the beginning of a new fiscal year with few comments opposing the effective dates

proposed by SBA. This history includes numerous inflation adjustments to size standards as far back as February 1984 where the effective dates for the adopted changes do not fall on the start of a new fiscal year (49 FR 5025 (February 9, 1984)).[3] Typically, as is the case with the July 2019 IFR, SBA's changes to size standards become effective 30 days after publication of the corresponding final or interim final rule.

Moreover, the procedures for incorporating SBA's changes to size standards into ongoing procurement actions are codified under small business size regulations and are generally well-understood by contracting officers. When contracting officers plan their procurements, they explore the possibility of setting aside their solicitations for small business programs based upon the number of small businesses, at that time, able to submit an acceptable proposal or bid. However, in accordance with 48 CFR 19.102(c), it is the contracting officer's decision whether to amend a solicitation to incorporate the new size standards if SBA amends the size standard and it becomes effective before the due date for receipt of initial offers. In the nearly three years since SBA published the interim final rule with the August 2019 effective date, SBA has not received comments that the timing of the size standards changes has caused significant disruptions to contracting activity or a substantial increase in the number of firms accessing SAM to update their size status, thereby curtailing the ability of contracting officers to use SAM. Thus, SBA believes that its August 19, 2019, effective date is appropriate and therefore, SBA is not adopting the changes suggested by the commenter.

Comments on the Impacts of Increased Labor Costs

Two commenters petitioned SBA to give more consideration to the impact of increased labor costs when determining the level of inflation for a given industry, either by using a different measure of inflation which better reflects increases to labor costs or by reviewing factors other than inflation that may capture the impact of increased labor costs more directly. One commenter, expressing overall support for the rule, believed that the majority of firms serving the Federal Government would welcome the adjustment of size standards to reflect the impacts of inflation but questioned whether the inflation measure applied to the rule accurately reflects the day-to-day realities of business conditions. The commenter recommended either using a different inflation measure or blending many existing measures to come up with an inflation factor which accurately reflects the actual changes in the labor costs, which according to the commenter, have increased by 12 percent to 15 percent over the last five years. Another commenter maintained that SBA should consider the availability of personnel with top secret clearances in certain NAICS codes that provide services to the Federal Government that require high-level clearances for administrative, professional and management personnel. The commenter added that salaries and benefits of these personnel are increasing at a rate much greater than inflation and this factor should be considered in addition to inflation when evaluating size standards for those NAICS codes.

SBA Response

SBA establishes small business size standards to determine eligibility of businesses for a wide variety of SBA's and other Federal programs. The majority of businesses participating in those programs are engaged in multiple industries producing a wide range of goods and services. Therefore, it is important that SBA use a broad measure of inflation to adjust its size standards. SBA's preferred measure of inflation has consistently been the chain-type price index for the U.S. Gross Domestic Product (GDP price index), published by the Bureau of Economic Analysis (BEA) within the U.S. Department of Commerce on a quarterly basis as part of its National Income and Product Accounts (NIPA).

In the July 2019 IFR as well as the 2014 IFR (79 FR 33647 (June 12, 2014)), besides the GDP price index, SBA reviewed several alternative inflation measures published by the Federal Government (including the consumer price index, the personal consumption expenditures price index, the producer price index, and the employment cost index) for their appropriateness to use for adjusting SBA's size standards. Among all these indexes, SBA determined that the GDP price index is the most comprehensive measure to capture movements in the general price level in the economy and consequently the most appropriate measure of inflation for adjusting SBA's size standards. Thus, as in the previous inflation adjustments, SBA decided to use the GDP price index to adjust monetary-based size standards for the July 2019 inflation adjustment.

Comments on SBA's Chosen Measure of Inflation

One commenter maintained that inflation adjustment should be considered if the results of the calculations result in revenue thresholds that show trends in the industry prices after removing the effect of general inflation. The commenter stated that GDP price index is a proven measure of inflation, but SBA should continue to review whether this is the correct measure to use in today's economy, possibly even more frequently than five-year intervals. The commenter noted that SBA should always verify results to ensure that there are no biases or improper use of algorithms in determining inflation adjustment and that SBA should approve the proposal as it is beneficial to small business entities.

SBA Response

SBA agrees with the commenter that it is necessary for SBA to continually assess whether its selected measure of inflation is the most appropriate measure for adjusting its size standards. As described in SBA's response to the previous comment, SBA establishes small business size standards to determine eligibility of businesses for a wide variety of SBA's and other Federal programs where the majority of businesses participating in those programs are engaged in multiple industries producing a wide range of goods and services. Therefore, SBA uses the GDP price index to adjust its size standards because it is an appropriately broad measure of inflation that reflects the characteristics of the firms to which it pertains.

Moreover, SBA agrees with the commenter that SBA should continually assess the timing of its adjustments to size standards and consider adjustments even more frequently than five-year intervals based on the prevailing economic situation conditions. Accordingly, SBA is issuing this IFR to adjust monetary-based size standards for

[3] See also SBA's Interim Final Rule: Small Business Size Standards; Inflation Adjustment to Monetary Based Size Standards ((79 FR 33647 (June 12, 2014)) (SBA Final Rule (81 FR 3949 (January 25, 2016))); SBA Final Rule: Small Business Size Standards; Inflation Adjustment to Size Standards (73 FR 41237 (July 18, 2008)); SBA Interim Final Rule: Small Business Size Standards; Inflation Adjustment to Size Standards; Business Loan Program; Disaster Assistance Loan Program (70 FR 72577 (December 6, 2005)); SBA Final Rule: Small Business Size Standards; Inflation Adjustment to Size Standards (67 FR 65285 (October 24, 2002)); SBA Interim Final Rule: Small Business Size Standards; Inflation Adjustment to Size Standards (67 FR 3041 (January 23, 2002)); SBA Final Rule: Small Business Size Standards; Inflation Adjustment to Size Standards (59 FR 616513 (April 7, 1994))

inflation that has occurred since the July 2019 IFR.

As stated above, in the July 2019 IFR as well as the 2014 IFR (79 FR 33647 (June 12, 2014)), besides the GDP price index, SBA reviewed several alternative inflation measures published by the Federal Government (including the consumer price index, the personal consumption expenditures price index, the producer price index, and the employment cost index) for their appropriateness to use for adjusting SBA's size standards. Among all these indexes, SBA determined that the GDP price index is the most comprehensive measure to capture movements in the general price level in the economy and consequently the most appropriate measure of inflation for adjusting SBA's size standards. Thus, as in the previous inflation adjustments, SBA decided to use the GDP price index to adjust monetary-based size standards for the August 2019 inflation adjustment.

Comments on the Size Standard for NAICS 562910 (Remediation Services)

SBA received one comment from a Service-Disabled Veteran Owned Small Business (SDVOSB) concern, operating under NAICS 562910 (Remediation Services). The commenter petitioned SBA to make certain changes to footnote 14 to the SBA's Table of Size Standards, applicable to the Environmental Remediation Services (ERS) exception to NAICS 562910 (Remediation Services), to make it easier for small firms to compete under the ERS exception's 750-employee size standard. The commenter expressed that, in an effort to work with larger businesses, contracting officers may be overusing the ERS exception, classifying procurements under the 750-employee size standard applicable to the exception rather than the $22 million size standard applicable to the general NAICS 562910, even when it may be more appropriate for contracting officers to classify a given solicitation under the general NAICS. Thus, the commenter petitioned SBA to revise footnote 14 by making the requirements more restrictive so that contracting officers have less discretion to forgo classifying solicitations under the general NAICS 562910 in favor of using the exception.

SBA Response

SBA's regulations require contracting officers to designate the proper NAICS code for a solicitation based on the principal purpose of the product or service being acquired (13 CFR 121.402(b)). SBA's regulations at 13 CFR 121.1101 allow affected parties to appeal with the SBA's Office of Hearings and Appeals (OHA) a NAICS code designation made by a contracting officer. SBA encourages impacted firms to follow the procedures outlined in SBA's regulations when they believe that a contracting officer has categorized a solicitation under an improper NAICS code. Moreover, in this final rule, SBA is finalizing the changes to the July 2019 IFR which adjusted SBA's monetary-based size standards for inflation. Thus, SBA considers changes to industry definitions as outside the scope of this rule.

Comments on the Size Standard for NAICS 541330 (Engineering Services)

SBA received a comment from an engineering firm supporting the SBA's adjustment of its size standards for inflation, specifically an increase in the size standard for Engineering Services to $16.5 million. The commenter maintained that the transition from ''small'' to ''other than small'' status requires significant investments in IT processes and equipment, and business capabilities to be able to compete with much larger firms. The commenter added that adjusting size standards for inflation allows firms necessary time to implement such processes and build capabilities before exceeding the size standard. SBA received another comment that favored the inflationary adjustments to the size standards but expressed concerns that the general inflation measure that SBA applied does not sufficiently capture the recent business trends and Government buying patterns in NAICS Industry 541330 (Engineering Services) and NAICS Industry Group 5415 (Computer Systems Design and Related Services). The commenter maintained that the growing complexity of services in NAICS 5415, recent bundling of these services by the Federal Government, and use of these NAICS codes for new cybersecurity services are not adequately captured by the adjustment for inflation alone. The commenter recommended conducting a full review of IT/computer/cybersecurity industry and contracts that have been awarded under this industry to ensure that size standards are appropriate. The commenter believed that more appropriate size standards for industries under NAICS 5415 should be in the $50 million range. Another area of concern the commenter expressed related to increasing complexity of engineering services provided to military under general NAICS 541330 and each of the three exceptions and to the number of small businesses needed to maintain the healthy defense industrial base. The commenter recommended conducting a thorough review of NAICS 541330 and how this NAICS code is being used by the Government to purchase engineering services to establish a more appropriate size standard, which could be two or three times more than the current size standard.

SBA Response

SBA agrees with the comment that the adjustments to size standards for inflation will help small businesses by expanding access to SBA programs, thereby allowing small firms within Engineering Services to continue building capabilities and experience before exceeding the size standard. SBA believes that adjusting size standards for inflation is an important tool in ensuring that small businesses can successfully compete for Federal contracting opportunities.

SBA does not agree with comments suggesting that SBA should choose different inflation measures for select industries or use industry-specific methodologies to evaluate size standards for changes due to inflation. As explained previously in this final rule, SBA establishes small business size standards to determine eligibility of businesses for a wide variety of SBA's and other Federal programs. The majority of businesses participating in those programs are engaged in multiple industries producing a wide range of goods and services. Therefore, it is important that SBA use a broad, comprehensive measure of inflation to adjust its size standards.

Moreover, SBA does not agree with comments that SBA should conduct a full review of NAICS 541330, or the IT/computer/cybersecurity industry using industry specific factors as part of this regulatory action. In this final rule, SBA is finalizing the changes to the July 2019 IFR, which adjusted SBA's monetary-based size standards for inflation. Thus, SBA considers the evaluation of size standards for specific industries based on industry-specific factors other than inflation as outside the scope of this rule. SBA considers industry-specific characteristics and other non-inflation related factors as part of review of size standards under the Jobs Act.

As discussed earlier in this rule, SBA recently published a series of five final rules, after an appropriate notice and comment period, evaluating all monetary-based size standards (receipts-based and assets-based) and employee-based size standards under Wholesale Trade and Retail Trade as part of SBA's second five-year size standards review

as mandated by the Jobs Act.[4] Revisions to monetary-based size standards in those five final rules were in addition to inflationary adjustments to size standards adopted in the July 2019 IFR.

SBA believes that its five-year comprehensive review of size standards under the Jobs Act is the most appropriate regulatory venue to evaluate and address industry specific economic characteristics and recent Federal contracting trends that may support a size standard different from SBA's current size standard. As part of its review of size standards, SBA must ensure that small business definitions vary from industry to industry to reflect industry differences as required by the Small Business Act (15 U.S.C. 632(a)) (Act). To that end, as part of the comprehensive review of size standards, SBA evaluates characteristics of industry structure at the six-digit NAICS level, such as average firm size, startup costs and entry barriers, industry concentration, and distribution of firms by business size. SBA also evaluates Federal contracting trends (*i.e.,* small business share of Federal contract dollars relative to small business share of total industry's receipts) for industries with significant contracting activities (*i.e.,* industries averaging $20 million or more in Federal contracts annually). Based on its analysis of the above industry and Federal contracting factors, and after considering all comments submitted to SBA during the proposed rule stage, on March 31, 2022, SBA adopted an increase to the size standard for NAICS 541330 from $16.5 million to $22.5 million (87 FR 18665 (March 31, 2022)). Similarly, using the same methodology, as part of the second five-year comprehensive review of size standards, SBA evaluated the size standards for all industries with a receipt-based size standard in the IT/computer/cybersecurity industries. Thus, while SBA is not including a comprehensive review of industry factors in this final rule, SBA believes that it has satisfied the petitions of commenters to consider industry-specific factors for NAICS 541330 and the IT/computer/cybersecurity industries (*i.e.,* industries within NAICS Industry Group 5415) as part of the second five-year review of size standards under the Jobs Act.

Other Comments

Other comments to SBA's July 2019 IFR mostly expressed broad support for SBA's changes to size standards. One comment supporting SBA's action stated that adjusting size standards for inflation will make the size standards more accurate and beneficial to all stakeholders. The commenter added that adjusting size standards for inflation will enable SBA to assist all small businesses by allowing them to qualify for SBA's loans and other benefits which will spur economic growth, increase tax revenues, and promote job growth. Another commenter supported the SBA's decision to adjust monetary-based size standards for inflation because it will help small businesses continue to receive government contracting assistance. The commenter added that this is particularly helpful for businesses in industries that require high levels of capital investments as it will provide small businesses with more time to pursue and win Federal opportunities to support such investments. The commenter stated that this will also increase the availability of qualified small businesses for the Federal agencies to choose from to meet their small business contracting needs. One commenter supported the regulation but expressed reservations about whether the regulatory change will be implemented equally across all states or localities. The commenter also thought that allowing more businesses to qualify as small is a good idea, but argued that the intent is more taxation rather than helping small businesses. SBA also received a comment that opposed the rule on the grounds that it is capricious and based on opinion. The commenter petitioned SBA to not implement the rule, but did not provide sufficient reasoning or evidence for why SBA should rescind the changes contained in the IFR.

SBA Response

SBA agrees with commenters supporting the rule that there are a myriad of benefits of adopting the changes to size standards adopted in the July 2019 IFR. The most significant benefits were described in the regulatory impact analysis section of the July 2019 IFR. The primary benefits include: (1) Some businesses that are above the current size standards may gain small business status under the higher, inflation-adjusted size standards, thereby enabling them to participate in Federal small business assistance programs; (2) Growing small businesses that are close to exceeding the current size standards will be able to retain their small business status under the higher size standards, thereby enabling them to continue their participation in the programs; and (3) Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs.

SBA estimated that the changes adopted in the July 2019 IFR enabled approximately 89,730 firms in industries and subindustries with receipts-based size standards and about 160 firms in industries with assets-based size standards, above SBA's size standards at the time, to gain small business status and become eligible for SBA programs, resulting in between $700 million and $750 million in additional small business Federal contract dollars. SBA disagrees with the comment suggesting that the primary purpose of SBA's inflation adjustment to size standards is to expand the Federal Government's tax base. SBA also disagrees with the notion that SBA's inflation adjustments to size standards are arbitrary and capricious. As explained in the July 2019 IFR, SBA is required to assess the impact of inflation on its monetary-based size standards at least once every five years (*see* SBA Interim Final Rule: Small Business Size Standards: Inflation Adjustment to Monetary Based Size Standards (67 FR 3041; January 23, 2002) and 13 CFR 121.102(c)). Although the provision does not mandate that SBA actually adjust size standards for inflation every five years, it does provide assurances to the public that the Agency is monitoring inflation to determine whether or not to adjust size standards within a reasonable period of time since its last inflation adjustment. Thus, SBA believes that the changes to size standards adopted in the July 2019 IFR are reasonable and satisfy the requirements of 13 CFR 121.102(c).

Conclusion

With due consideration of all public comments as discussed above, SBA is adopting the increases in all industry-specific monetary size standards for inflation, as published in the July 2019 IFR. SBA is also adopting the increases in two program specific size standards, namely the Sales of Government Property from $62.5 million to $67.5

[4] See Small Business Size Standards: Agriculture, Forestry, Fishing and Hunting; Mining, Quarrying, and Oil and Gas Extraction; Utilities; Construction (87 FR 18607; March 31, 2022), Small Business Size Standards: Transportation and Warehousing; Information; Finance and Insurance; Real Estate and Rental and Leasing (87 FR 18627; March 31, 2022), Small Business Size Standards: Professional, Scientific and Technical Services; Management of Companies and Enterprises; Administrative and Support and Waste Management and Remediation Services (87 FR 18665; March 31, 2022), Small Business Size Standards: Education Services; Health Care and Social Assistance; Arts, Entertainment and Recreation; Accommodation and Food Services; Other Services (87 FR 18646; March 31, 2022), and Small Business Size Standards: Wholesale Trade and Retail Trade (87 FR 35869; June 14, 2022).

million, and Stockpile Purchases from $7.5 million to $8 million, which are being further increased through the present interim final rule to $76.5 million and $9 million, respectively. SBA is also adopting the increase to the size standard found in Footnote 9 to 13 CFR 121.201 (Leasing of Building Space to the Federal Government by Owners) from $38.5 million to $41.5 million, which is being further increased to $47 million in this interim final rule. This size standard exception applies to all four industries in NAICS Industry Group 5311, Lessors of Real Estate.

Accordingly, SBA is issuing this final rule to adopt, without change, the interim final rule published on July 18, 2019 (84 FR 34261). SBA's adoption of the changes contained in the 2019 IFR are procedural and do not supersede the changes recently adopted by SBA as part of the second five-year review of size standards under the Jobs Act, nor do they supersede the adoption of size standards contained in this IFR which adjust SBA's monetary-based size standards for inflation that has occurred since the issuance of the July 2019 IFR.

IV. Justification for Updating Size Standards for Inflation as an Interim Final Rule

In general, to revise or update size standards, SBA publishes a proposed rule for public comment before issuing a final rule, in accordance with the Administrative Procedure Act (APA), 5 U.S.C. 553, and SBA regulations, 13 CFR 101.108. The APA provides an exception to this standard rulemaking process, however, in situations where an agency finds good cause to adopt a rule without prior public participation. (*See* 5 U.S.C. 553(b)(3)(B)). The good cause requirement is satisfied when prior public participation is impracticable, unnecessary, or contrary to the public interest. Under those conditions, an agency may publish an interim final rule without first soliciting public comment. In applying the good cause exception to the standard rulemaking process, Congress recognized that special circumstances might arise justifying issuance of a rule without prior public participation.

As stated above, the last time SBA made inflation adjustments to size standards was 2019. Since then, inflation, as measured by the GDP price index, has increased 13.65 percent,[5] which has caused size standards to decrease in real terms thereby causing businesses to lose their small business status. Inflation is running at the highest level since the early 1980s. For example, according to the U.S. Bureau of Labor Statistics, the Consumer Price Index for All Urban Consumers (CPI–U), before seasonal adjustment, increased 8.3 percent over the last 12 months ending in August 2022.[6] Similarly, the Producer Price Index (PPI) for final demand, on a seasonally unadjusted basis, increased 8.7 percent for the 12 months ending in August 2022.[7] According to the GDP second estimate from the Bureau of Economic Analysis, the GDP price index increased 7.5 percent in the second quarter of 2022 from the second quarter of 2021.[8] Similarly, the price index for personal consumption expenditures (PCE) increased 6.5 percent in the second quarter of 2022 from the second quarter of 2021.

Therefore, this rule is necessary to make those businesses eligible for Federal assistance immediately. A number of businesses may have lost small business eligibility for Federal assistance under SBA's monetary-based size standards simply as a result of the inflation that has occurred since the previous inflation adjustment in 2019. Any delay in the adoption of inflation-adjusted size standards could cause significant harm to those businesses and others that are about to exceed current size standards simply due to inflation-driven revenue growth. Immediate implementation of this rule would enable more businesses to qualify under SBA's monetary-based size standards, which would enable them to apply for Federal small business assistance and thereby create jobs.

The standard notice and comment rulemaking could delay the implementation of this rule by at least 8 months to 12 months. Such a delay would be contrary to the public interest as it would delay the eligibility of those businesses for Federal small business assistance, perhaps forcing some of them to cease operations before a final rule could be promulgated under the standard rulemaking process. Furthermore, the inflation adjustment will become outdated by the time the final rule is published under notice and comment rulemaking.

For the above reasons, SBA finds that good cause exists to publish this rule as an interim final rule. SBA's rationale for preparing this action as an interim final rule and giving it immediate effect is consistent with the Agency's statutory obligation to protect the interests of small businesses, thereby enabling them to maintain competitiveness and strengthen the overall economy. Small Business Act, 15 U.S.C. 631(a). SBA had also implemented inflation adjustments to size standards through an interim final rule in 2002 (67 FR 3041), 2005 (70 FR 72577), and 2014 (79 FR 33647) without any controversies.

By publishing these adjustments as interim final, SBA is not excluding public participation in the rulemaking process. SBA is soliciting comments from interested parties on the interim final provisions of this rulemaking and on a number of issues, including SBA's methodology for inflation adjustment and alternative measures of inflation. SBA will evaluate all comments and revise, if necessary, this rule, and publish a final rule at a later date.

Request for Comments

SBA seeks comments on this rule, specifically on the following issues:

1. SBA welcomes comments from interested parties on SBA's size standards methodology for inflation adjustment to its size standards. Specifically, SBA seeks comment on whether the GDP price index is an appropriate measure of inflation for adjusting size standards. The Agency invites suggestions, along with supporting data and analysis, if a different measure of inflation would be more appropriate.

2. SBA also invites comments on whether it should adjust employee-based industry size standards for labor productivity growth and technological advancements, similar to adjusting monetary-based industry size standards for inflation.

3. SBA also invites comments on any other aspects of this rulemaking, including the changes to program-based and assets-based size standards, and economic disadvantage thresholds in its regulations that apply to 8(a) BD and EDWOSB programs.

V. Compliance With Executive Order 12866, the Congressional Review Act (5 U.S.C. 801–808), the Regulatory Flexibility Act (5 U.S.C. 601–612), Executive Orders 13563, 12988, and 13132, and the Paperwork Reduction Act (44 U.S.C., Ch. 35)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that the interim final provisions of this rule are not a ''significant regulatory action'' for

[5] For comparison, when SBA implemented the July 2019 IFR inflation adjustment, the GDP price index had increased 8.37 percent over the previous five-year period.

[6] *https://www.bls.gov/news.release/cpi.nr0.htm,* September 13, 2022.

[7] *https://www.bls.gov/news.release/ppi.nr0.htm,* September 14, 2022.

[8] *https://www.bea.gov/news/2022/gross-domestic-product-second-estimate-and-corporate-profits-preliminary-second-quarter,* August 25, 2022.

purposes of Executive Order 12866. OMB previously determined that the July 2019 IFR was also not a ''significant regulatory action'' for purposes of Executive Order 12866, and maintains that the final rule provisions are also ''not significant''. However, in order to help explain the need for this rule and its potential benefits and costs, SBA has provided below a Cost Benefit Analysis of this rule.

Cost Benefit Analysis

1. What is the need for the regulatory action?

SBA's statutory mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To assist the intended beneficiaries of these programs effectively, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) (Act) delegates to the SBA Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary from industry to industry to reflect industry differences. SBA is required to assess the impact of inflation on its monetary-based size standards at least once every five years (67 FR 3041 (January 23, 2002) and 13 CFR 121.102(c)). Inflation, as measured by the change in GDP price index, has increased 13.65 percent from the previous inflation adjustment of size standards in 2019.[9] Inflation has caused monetary based size standards to decrease in real terms, thereby forcing businesses to lose small business status and eligibility for Federal assistance.

In addition, SBA intends to adjust economic disadvantage thresholds in its regulations that are otherwise not adjusted for inflation under FAR 1.109. These thresholds primarily are those used in the 8(a) Business Development and economically disadvantaged women-owned small business (EDWOSB) programs to determine economic disadvantage. This action will permit small businesses to retain eligibility as economically disadvantaged and eligible for the 8(a) BD and EDWOSB programs, despite an increase in inflation.

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

The size standards adopted by SBA in this rulemaking would enable businesses that have exceeded industry size standards or their economic disadvantage thresholds simply due to inflation-driven revenue growth to regain or maintain eligibility for Federal small business assistance programs. The changes would also help businesses about to exceed their size standards or to exceed their economic disadvantage thresholds to retain small business eligibility for Federal programs for a longer period. These programs include SBA's business loan programs, economic injury disaster loan (EIDL) program, and Federal procurement programs intended for small businesses. Federal procurement programs provide targeted opportunities for small businesses under SBA's contracting and business development programs, such as 8(a) Business Development (8(a) BD) program, small businesses located in Historically Underutilized Business Zones (HUBZone) program, women-owned small businesses (WOSB) program, economically disadvantaged women-owned small businesses (EDWOSB) program, and service-disabled veteran-owned small businesses (SDVOSB) program. Federal agencies may also use SBA's size standards for a variety of other regulatory and program purposes. These programs assist small businesses to become more knowledgeable, stable, and competitive.

The Baseline

For purposes of this regulatory action, the baseline represents maintaining the ''status quo,'' *i.e.,* making no changes to the current size standards. Using the number of small businesses and levels of small business benefits (such as set-aside contracts, SBA's loans, disaster assistance, etc.) they receive under the current size standards as a baseline, one can examine the potential benefits, costs, and transfer impacts of changes to size standards on small businesses and on the overall economy.

Based on the 2017 Economic Census data and the 2022 NAICS adopted by SBA, of a total of 7,460,728 firms in the 505 impacted industries with receipts-based size standards, 98.1 percent are considered small under the current, recently adopted receipts-based size standards based on the second five-year review of size standards under the Jobs Act and the adoption of the 2022 NAICS structure.

Similarly, based on the data from Federal Procurement Data System—Next Generation (FPDS–NG) for fiscal years 2018–2020, 76,323 unique firms in 441 industries received at least one Federal contract during that period, of which 81.9 percent were found to be small under the current and recently adopted receipts-based size standards based on the second five-year review of size standards under the Jobs Act.[10] Of about $231.4 billion in total average annual contract dollars awarded to businesses in the impacted industries with receipt-based size standards during that period, 34.3 percent went to small businesses.[11] Of about $79.4 billion in total small business contract dollars awarded in those industries during that period, 72.9 percent were awarded through various set-aside programs and 27.1 percent were awarded through non-set aside contracts. Table 5, Baseline of Industries with Receipts-Based Size Standards Adjusted for Inflation, provides these baseline results.

TABLE 5—BASELINE OF INDUSTRIES WITH RECEIPTS-BASED SIZE STANDARDS ADJUSTED FOR INFLATION

Impact variable	Value
Number of industries impacted by adjustment to receipts-based size standards	505
Total firms in impacted industries (2017 Economic Census)	7,460,728
Total small firms in impacted industries under current receipts-based size standards (2017 Economic Census)	7,319,914
Small firms as % of total firms (2017 Economic Census)	98.1
Total contract dollars ($ million) (FPDS–NG—fiscal years 2018–2020) to impacted industries	$231,427
Total small business contract dollars under current size standards ($ million) (FPDS–NG—fiscal years 2018–2020)	$79,380
Small business dollars as % of total dollars (FPDS–NG fiscal years 2018–2020)	34.3
Total number of unique firms getting contracts in impacted industries (FPDS–NG fiscal years 2018–2020))	76,157

[9] As stated in the SBA's Inflation Adjustment Methodology section above, the GDP price index for the base period (*i.e.,* 4th quarter of 2018) was 111.191 and the GDP price index for the end period (*i.e.,* 2nd quarter of 2022) was 126.367. Accordingly, inflation increased 131.65 percent from the fourth quarter of 2018 to the first quarter of 2022 $(((126.367123.705 \div 111.191) - 1) \times 100$ percent = 13.65 percent).

[10] This analysis excludes 64 industries with receipts-based size standards under NAICS Sector 44–45 (Retail Trade) that does not apply for Federal contracting.

[11] The analysis includes only firms that can be small under the SBA criteria.

TABLE 5—BASELINE OF INDUSTRIES WITH RECEIPTS-BASED SIZE STANDARDS ADJUSTED FOR INFLATION—Continued

Impact variable	Value
Total number of unique small firms getting small business contracts (FPDS–NG fiscal years 2018–2020))	62,539
Small business firms as % of total firms (FPDS–NG fiscal years 2018–2020)	81.9
Annual no. of 7(a) and CDC/504 loans (fiscal years 2018–2020)	50,092
Amount of 7(a) and CDC/504 loans ($ million) (fiscal years 2018–2020)	$23,909
Annual no. of EIDL loans (fiscal years 2018–2020) [1]	4,550
Amount of EIDL loans ($ million) (fiscal years 2018–2020) [1]	$166

[1] Excludes COVID–19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

Based on the SBA's internal data on its loan programs for fiscal years 2018–2020, small businesses in those industries received, on an annual basis, a total of 50,092 7(a) and Certified Development Company (CDC)/504 loans in that period, totaling about $23.9 billion, of which 82.7 percent was issued through the 7(a) loan guarantee program and 17.3 percent was issued through the CDC/504 program. During fiscal years 2018–2020, small businesses in those industries also received 4,550 loans through the SBA's EIDL program, totaling about $166 million on an annual basis.[12]

Increases to Size Standards

As stated above, SBA's additional inflation adjustment to receipts-based size standards have resulted in an increase to the size standards for 505 industries and subindustries. Below are descriptions of the benefits, costs, and transfer impacts of the adopted size standards contained in this IFR.

Benefits of Increases to Size Standards

The benefits of adopting the inflation-adjusted size standards will accrue to three groups in the following ways: (1) Some businesses that are currently above their current size standards may gain small business status, thereby becoming eligible to participate in Federal small business assistance programs, including SBA's 7(a) loan program, CDC/504 loan program, EIDL program, Surety Bond Guarantee program, and Federal procurement and business development programs intended for small businesses; (2) Growing small businesses that are close to exceeding the current size standards for their receipts-based industries may retain their small business status for a longer period, and can continue participating in the above programs; and (3) Federal Government agencies will have a larger pool of small businesses from which to draw to fulfill their small business procurement requirements.

The most significant benefit to businesses from increases to size standards is gaining or extending eligibility for Federal small business assistance programs. As stated above, these include SBA's 7(a) loan program, CDC/504 loan program, EIDL program, Surety Bond Guarantee program, and Federal procurement business development programs intended for small businesses. Federal procurement and business development programs provide targeted, set-aside opportunities for small businesses. These include the 8(a) BD program, HUBZone program, the WOSB program, EDWOSB program, and SDVOSB program.

In industries with the receipts-based size standards, based on the 2017 Economic Census data, SBA estimates that 17,713 additional businesses would gain small business status under the inflation-adjusted size standards. That represents about 0.2 percent of the total number of small businesses in the affected industries under the current size standards. This would result in an increase to the small business share of total receipts in those 505 industries/subindustries from 29.0 percent to 30.0 percent. Table 6, Impacts of Receipts-Based Size Standards Adjusted for Inflation, provides impacts of increasing size standards for the 505 industries/subindustries with receipts-based size standards.

TABLE 6—IMPACTS OF RECEIPTS-BASED SIZE STANDARDS ADJUSTED FOR INFLATION

Impact variable	Value
Number of industries with increases to receipts-based size standards	485
Total current small businesses in industries with increases to receipts-based size standards (2017 Economic Census)	73,19,914
Additional firms qualifying as small under inflation-adjusted receipts-based size standards (2017 Economic Census)	17,713
of additional firms qualifying as small relative to current small businesses in industries with increases to size standards (2017 Economic Census)	0.24
Number of current unique small firms getting small business contracts in industries with increases to size standards (FPDS–NG fiscal years 2018–2020) [1]	62,539
Additional small business firms getting small business status (FPDS–NG fiscal years 2018–2020) [1]	586
increase to small businesses relative to current unique small firms getting small business contracts in industries with increases to size standards (FPDS–NG fiscal years 2018–2020)	0.94
Total small business contract dollars under current standards in industries with increases to size standards ($ million) (FPDS–NG fiscal years 2018–2020)	$79,380
Estimated additional small business dollars available to newly-qualified small firms (using avg. dollars obligated to small businesses) ($ million) (FPDS–NG fiscal years 2018–2020) [2]	$1,313
increase to small business dollars relative to total small business contract dollars under current standards in industries with increases to size standards	1.65

[12] The analysis of the disaster loan data excludes physical disaster loans that are available to anyone regardless of size, disaster loans issued to nonprofit entities, and EIDLs issued under the COVID–19 relief program. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances. Thus, the disaster loan analysis presented here pertains to the regular EIDL loans only. SBA estimates impacts of size standards changes on EIDL loans by calculating the ratio of businesses getting EIDL loans to total small businesses (based on the 2017 Economic Census data) and multiplying it by the number of impacted small firms. Due to data limitations, for FY 2019–20, some loans with both physical and EIDL loan components could not be broken into the physical and EIDL loan amounts. In such cases, SBA applied the ratio of EIDL amount to total (physical loan + EIDL) amount using FY 2016–18 data to the FY 2019–20 data to obtain the amount attributable to the EIDL loans.

TABLE 6—IMPACTS OF RECEIPTS-BASED SIZE STANDARDS ADJUSTED FOR INFLATION—Continued

Impact variable	Value
Estimated number of 7(a) and CDC/504 loans to newly-qualified small firms	7
Estimated 7(a) and CDC/504 loan amounts to newly-qualified small firms ($ million)	$4.08
increase to 7(a) and CDC/504 loan amount relative to the total amount of 7(a) and CDC/504 loans in industries with increases to size standards	0.02
Estimated number of EIDL loans to newly qualified small firms [3]	1
Estimated EIDL loan amount to newly qualified small firms ($ million) [3]	0.002
increase to EIDL loan amount relative to the total amount of disaster loans in industries with increases to size standards [3]	0.001

[1] Total impact represents total unique number of firms impacted to avoid double counting as some firms are participating in more than one industry.
[2] Additional dollars are calculated multiplying average small business dollars obligated per DUNS times change in number of firms. Numbers of firms are calculated using the SBA current size standard, not the contracting officer's size designation.
[3] Excludes COVID–19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

As shown in Table 6, based on the FPDS–NG data for fiscal years 2018–2020, SBA estimates that 586 firms that are currently active in Federal contracting in those industries would gain small business status under the higher inflation-adjusted receipts-based size standards. Based on the same data, SBA estimates that those newly-qualified small businesses under the higher inflation-adjusted size standards could receive Federal small business contracts totaling about $1.3 billion annually. That represents a 1.65 percent increase to Federal small business dollars from the baseline. Additionally, due to the adjustment of assets-based size standards in four industries, SBA estimates that about 170 additional firms will gain small business status in those industries, increasing the small business share of total assets in those industries from 5.4 percent to 5.9 percent.

The added competition from more businesses qualifying as small can result in lower prices to certain Federal Government procurements set aside or reserved for small businesses, but SBA cannot quantify this impact precisely. Costs could also be higher when full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences. However, with agencies likely setting aside more contracts for small businesses in response to the availability of a larger pool of small businesses under the higher size standards, HUBZone firms might receive more set-aside contracts and fewer full and open contracts, thereby resulting in some cost savings to agencies. SBA cannot estimate such costs savings as it is impossible to determine the number and value of unrestricted contracts to be otherwise awarded to HUBZone firms will be awarded as set-asides. However, such cost savings are likely to be relatively small as only a small fraction of full and open contracts are awarded to HUBZone businesses.

Under SBA's 7(a) and CDC/504 loan programs, with more businesses qualifying as small under the higher size standards, SBA will be able to guarantee more loans to small businesses. However, SBA expects the impact on loans to be minimal since applicants to SBA's financial assistance programs are typically much smaller than the industry size standard and most businesses that currently participate in the program would continue to remain eligible for assistance even after this rule is adopted. Moreover, SBA does not anticipate that the increases to size standards will have a significant impact on the distribution of firms receiving loans by size of firm. Since SBA's size standards changes primarily impact firms at the higher margin of size standards, SBA estimates the impact on its financial assistance programs by estimating the number of loans and the amount of loans to firms larger than ten percent below their size thresholds. SBA believes that expanding access to SBA's financial assistance programs will help all small businesses to adapt to changes in business environment, recover from disasters more quickly, and grow successfully, while having no impact on the ability of smaller small firms to access financial services from SBA.

Based on its internal data for fiscal years 2018–2020 and the amount of loans to firms larger than ten percent below their size thresholds, SBA estimates that about seven additional 7(a) and CDC/504 loans, totaling approximately $4.1 million, could be made to the newly-defined small businesses under the higher inflation-adjusted size standards. That represents a 0.02 percent increase to the loan amount compared to the baseline (see Table 6). The actual impact might be even smaller as the newly-qualified firms under the higher inflation-adjusted size standards could have qualified anyway under the tangible net worth and net income based alternative size standard that applies to the SBA's 7(a) and CDC/504 programs.

Newly-defined small businesses will also benefit from SBA's EIDL program, which, like SBA's 7(a) and CDC/504 loan program, typically provides loans to businesses that are much smaller than the industry size standard. Since this program is contingent on the occurrence and severity of a disaster, SBA cannot make a precise estimate of the future EIDL benefit. However, based on its internal disaster loan program data for fiscal years 2018–2020 and the amount of loans to firms greater than ten percent below their size thresholds, SBA estimates that, on an annual basis, one additional EIDL loan, totaling approximately $2,000 could be made to the newly-defined small businesses under the higher inflation-adjusted size standards.

Additionally, the newly-defined small businesses under the higher inflation-adjusted size standards would also benefit through reduced fees, less paperwork, and fewer compliance requirements that are available to small businesses through the Federal Government programs, but SBA has no data to quantify this impact.

Benefits of Increases to Disadvantage Thresholds, 8(a) Eligibility Thresholds, and Dollar Thresholds for 8(a) Sole Source Contracts for Inflation

The increases in the economic disadvantage (ED) eligibility thresholds through inflation adjustment support gaining eligibility of the new applicants which would otherwise be not approved and maintaining eligibility of the existing participants in the 8(a) BD and EDWOSB programs. The new applicants affected by inflation impacting the value of their net worth (NW), adjusted gross income (AGI) and total assets (TA) will be approved into these programs. The

changes would also help current SBA ED participants who are about to exceed their NW, AGI, or TA thresholds to retain ED eligibility for Federal programs for a longer period.

Internal data on applicants to the 8(a) BD program from fiscal years 2019 to 2021 shows that since the ED thresholds were increased for new applicants in mid-2020 (see Table 7, Increases in ED Thresholds Adopted on July 15, 2020), the number of approvals increased by 3.2 percent, and the number of denials for economic-disadvantage reasons decreased by 36.8 percent. Same data also shows that since 2019, the applicants' average NW increased by 50 percent, the average AGI by about 20 percent, and the average total assets by 40 percent. The inflation adjustment to the ED thresholds will permit to mitigate the impact of the current high inflation rate on the new applicants to the SBA ED programs, maintaining their eligibility opportunities. Also, the inflation adjustment of the ED thresholds will help to preserve the real value of the current thresholds, and the positive impact that the changes pursued by SBA since 2020 have had on these programs. In this sense, inflation adjustment of the ED thresholds complements the inflation adjustment of the monetary-based size standards proposed in this IFR.

TABLE 7—INCREASES ED THRESHOLDS ADOPTED ON JULY 15, 2020

ED thresholds	Previous thresholds	Current thresholds	Percentage change (%)
Net worth (W)	$250,000	$750,000	200
Aggregated gross income (AGI)	250,000	350,000	40
Total assets (TA)	4,000,000	6,000,000	50

The number of 8(a) firms totaling more than $100 million in total cumulative dollar obligations (*i.e.,* total of sole source and competitive 8(a) awards) has been consistently increasing from less than ten firms during 2011–2012 to about 130–140 firms during 2020–2021. Of these 130–140 firms exceeding the $100 million threshold, about 87–90 firms totaled between $100 million and $168.5 million in cumulative contract awards and would become eligible for sole source 8(a) contracts again.

Costs of Increases to Size Standards and Economic Disadvantage and 8(a) Sole Source Thresholds

Aside from taking time to register in the System for Award Management (SAM) to be eligible to participate in Federal contracting and update the SAM profile annually, small businesses incur no direct costs to gain or retain their small business status under the inflation adjusted size standards. All businesses willing to do business with the Federal Government must register in SAM and update their SAM profiles annually, regardless of their size status. SBA believes that a vast majority of businesses that are willing to participate in Federal contracting are already registered in SAM and update their SAM profiles annually. It is important to point out that most business entities that are already registered in SAM will not be required to update their SAM profiles. However, it will be incumbent on registrants to review, and update as necessary, their profiles to ensure that they have the correct NAICS codes. SAM requires that registered companies review and update their profiles annually, and therefore, businesses will need to pay particular attention to the changes to determine if they might affect them. They will also have to verify, and update, if necessary, their Representations and Certifications in SAM. More importantly, this rule does not establish the new size standards for the very first time; rather it intends to modify the existing size standards by adjusting them for the inflation that has occurred since the last inflation adjustment in 2019.

To the extent that the newly-defined small firms under the higher inflation-adjusted size standards could become active in Federal procurement programs, this may entail some additional administrative costs to the Federal Government because of more businesses qualifying for Federal small business programs. For example, there will be more firms seeking SBA's loans, more firms eligible for enrollment in the SBA's Dynamic Small Business Search (DSBS) database or in *certify.sba.gov,* more firms seeking certifications as 8(a) BD or HUBZone firms, or qualifying for WOSB, EDWOSB, and SDVOSB status, and more firms applying for SBA's 8(a) BD mentor-protégé program. SBA expects the costs of additional applicants to the SBA programs as a result of changes to size standards in this final rule to be minimal because necessary administrative mechanisms for processing additional applications are already in place.

Among those newly-defined small businesses seeking SBA's loans, there could be some additional costs associated with verification of their small business status. However, small business lenders have an option of using the tangible net worth and net income-based alternative size standard instead of using the industry-based size standards to establish eligibility for SBA's loans. For these reasons, SBA believes that these added administrative costs will be minor because necessary mechanisms are already in place to handle these added requirements.

Additionally, some Federal contracts may possibly have higher costs. With a greater number of businesses defined as small due to the inflation adjustment, Federal agencies may choose to set aside more contracts for competition among small businesses only instead of using a full and open competition. One may surmise that this might result in a higher number of small business size protests and additional processing costs to agencies. However, the SBA's historical data on size protests shows that the number of size protests actually decreased after an increase in number businesses qualifying as small as a result of size standards revisions as part of the first five-year review of size standards. Specifically, on an annual basis, the number of size protests dropped from about 600 during fiscal years 2011–2013 (review of most receipts-based size standards was completed by the end of FY 2013) to about 500 during fiscal years 2018–2020. That represents a 17 percent decline.

Moreover, the movement of contracts from unrestricted competition to small business set-aside contracts might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers under the proposed size standards. However, any additional costs associated with fewer bidders are expected to be minor since, by law, procurements may be set aside for small

businesses under the 8(a)/BD, HUBZone, WOSB, EDWOSB, or SDVOSB programs only if awards are expected to be made at fair and reasonable prices.

Costs may also be higher when full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences. However, with agencies likely setting aside more contracts for small businesses in response to the availability of a larger pool of small businesses under the higher inflation-adjusted size standards, HUBZone firms might receive fewer full and open contracts, thereby resulting in some cost savings to agencies. However, such cost savings are likely to be minimal as only a small fraction of unrestricted contracts are awarded to HUBZone businesses.

An increase in the number of new applicants to the SBA economic disadvantage programs and an increase in the number of participants eligible for 8(a) sole source awards has similar costs for the programs and for the new applicants and current participants, as discussed in the previous paragraphs. The increase in the number of participants in the programs will not affect the SBA costs of providing services to these business concerns, because the administrative structure is already in place.

For the above reasons, SBA estimates that these added administrative costs associated with this rule will be *de minimis* because necessary mechanisms are already in place to handle these added requirements.

Transfer Impacts of Increases to Size Standards

The inflation-adjusted size standards adopted in this rule may result in some redistribution of Federal contracts between the newly-qualified small businesses and large businesses and between the newly-qualified small businesses and small businesses under the current size standards. However, it would have no impact on the overall economic activity since total Federal contract dollars available for businesses to compete for will not change with changes to size standards. While SBA cannot quantify with certainty the actual outcome of the gains and losses from the redistribution of contracts among different groups of businesses, it can identify several probable impacts in qualitative terms. With the availability of a larger pool of small businesses under the higher inflation-adjusted size standards, some unrestricted Federal contracts that would otherwise be awarded to large businesses may be set aside for small businesses. As a result, large businesses may lose some Federal contracting opportunities. Similarly, some small businesses under the current size standards may obtain fewer set-aside contracts due to the increased competition from larger businesses qualifying as small under the inflation-adjusted size standards. This impact may be offset by a greater number of procurements being set aside for small businesses because of more businesses qualifying as small under the inflation-adjusted size standards. With larger businesses qualifying as small under the higher inflation-adjusted size standards, smaller small businesses could face some disadvantage in competing for set-aside contracts against their larger counterparts. However, SBA cannot quantify these impacts.

Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act or CRA, 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. SBA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the CRA cannot take effect until 60 days after it is published in the **Federal Register**. OMB's Office of Information and Regulatory Affairs has determined that the final rule provisions and interim rule provisions are not a ''major rule'' as defined by 5 U.S.C. 804(2).

Regulatory Flexibility Act

According to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, when an agency issues a rulemaking, it must prepare a regulatory flexibility analysis to address the impact of the rule on small entities. Accordingly, below, the Agency provides final regulatory flexibility analysis of the final rule provisions and initial regulatory flexibility analysis of the interim provisions of this rulemaking.

Regulatory Flexibility Analysis—Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), the final rule provisions of this rulemaking may have a significant impact on a substantial number of small businesses in the industries and subindustries with monetary-based size standards. As described in the July 2019 IFR, the final rule provisions of this rulemaking may affect small businesses in those industries seeking Federal contracts, loans under SBA's 7(a), 504 and EIDL programs, and assistance under other Federal small business programs.

SBA prepared an initial regulatory flexibility analysis (IRFA) for the July 2019 IFR. A copy of the IRFA can be found at 84 FR 34267 (July 18, 2019). Immediately below, SBA sets forth a final regulatory flexibility analysis (FRFA) of the final provisions of this rulemaking addressing the following questions: (1) What are the need for and objective of the rule?; (2) What are significant issues raised by the public comments in response to the initial regulatory flexibility analysis, assessment of the agency of such issues, and any changes made in the proposed rule as a result of such comments?; (3) What's the agency's response to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule and description of any change made to the proposed rule in the final rule as a result of the comments?; (4) What are SBA's description and estimate of the number of small businesses to which the rule will apply?; (5) What are the projected reporting, record keeping, and other compliance requirements of the rule?; (6) What are the relevant Federal Government rules that may duplicate, overlap, or conflict with the rule?; and (7) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small businesses?

1. What are the need for and objective of the rule?

As discussed in the supplemental information above, the revision to the monetary-based size standards for inflation more appropriately defines small businesses. The Final rule provisions of this rulemaking finalizes SBA's July 2019 IFR that adjusted monetary-based industry size standards for inflation that occurred since the previous inflation adjustment in 2014. The inflation adjustment of size standards for inflation restores small business eligibility in real terms to businesses that have grown above the existing size standard due to inflation-led revenue growth rather than due to increased business activity.

Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) gives SBA the authority to establish and change size standards. Within its administrative discretion, SBA implemented a policy in its regulations to review the effect of inflation on size standards at least once every five years (13 CFR 121.102(c)) and

make any changes as appropriate. A review of the latest data indicated that inflation has increased a sufficient amount since the 2014 inflation adjustment to warrant another inflation adjustment to the monetary-based size standards. Adjusting size standards for inflation is also consistent with a statutory requirement under the Jobs Act to review all size standards and make necessary adjustments to reflect current market conditions every five years.

2. What are significant issues raised by the public comments in response to the initial regulatory flexibility analysis, assessment of the agency of such issues, and any changes made in the proposed rule as a result of such comments?

SBA did not receive any public comments to the initial regulatory flexibility analysis it provided in the July 2019 IFR.

3. What's the agency's response to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule and description of any change made to the proposed rule in the final rule as a result of the comments?

SBA did not receive any comments from the Chief Counsel for Advocacy of the Small Business Administration in response to the July 2019 IFR.

4. What are SBA's description and estimate of the number of small businesses to which the rule will apply?

As discussed in the July 2019 IFR, based on the 2012 Economic Census tabulations, about 89,730 additional firms became small because of this adjustment to the receipts-based size standards of 518 industries and eight subindustries. That represented 1.3 percent of the total number of firms that were small under the monetary-based size standards prior to inflation adjustment. This resulted in an increase in the small business share of total industry receipts in those industries and subindustries from 29.0 percent under the current size standards to 29.7 percent under the inflation-adjusted size standards. Due to the adjustment of assets-based size standards in five industries, about 160 additional firms gained small business status in those industries. That increased the small business share of total assets in those industries from 5.7 percent to 6.0 percent. The size standards adopted in the final provisions of this rulemaking would enable businesses that have exceeded the size standards for their industries to regain small business status. It would also help currently small businesses retain their small business status for a longer period.

5. What are the projected reporting, record keeping and other compliance requirements of the rule?

The inflation adjustment to size standards imposes no additional reporting or record keeping requirements on small businesses. However, qualifying for Federal procurement and a number of other programs requires that businesses register in the System of Award Management (SAM) database and certify in SAM that they are small at least once annually (FAR 52.204–13). For existing contracts, small business contractors are required to update their SAM registration, as necessary, to ensure that they reflect the Contractor's current status (FAR 52.219–28). Businesses are also required to verify that their SAM registration is current, accurate, and complete with the submission of an offer for every new contract (FAR 52.204–7 and 52.204–8). Therefore, any newly eligible small businesses opting to participate in those programs would have had to comply with SAM requirements. However, SBA estimates that there are no additional costs associated with SAM registration or certification. While changing size standards alters the access to SBA's programs that assist small businesses, it does not impose a regulatory burden because such actions on the part of SBA neither regulate nor control business behavior.

6. What are the relevant Federal rules, which may duplicate, overlap, or conflict with the rule?

Under section 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute to do otherwise. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988; November 24, 1995). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The Regulatory Flexibility Act authorizes an agency to establish an alternative small business definition for Regulatory Flexibility Analysis purposes, after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)).

7. What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no practical alternative exists to the systems of numerical size standards.

SBA's only other consideration was whether to adopt the size standards presented in the July 2019 IFR with no further increase for the inflation. However, SBA believes that the 8.37 percent inflation that has occurred since the previous inflation adjustment in 2014 (and the 40.26 percent inflation increase that has occurred since 2000, when the current $750,000 agricultural size standard was established by statute) sufficiently affected the real value of the size standards to warrant applying an increase at that time.

Regulatory Flexibility Analysis—Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), the interim provisions of this rulemaking may have a significant impact on a substantial number of small businesses in the industries and subindustries with monetary-based size standards. As described above, this rule may affect small businesses in those industries seeking Federal contracts, loans under SBA's 7(a), 504 and EIDL programs, and assistance under other Federal small business programs.

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of the interim final provisions this rulemaking addressing the following questions: (1) What are the need for and objective of the rule?; (2) What are SBA's description and estimate of the number of small businesses to which the rule will apply?; (3) What are the projected reporting, record keeping, and other compliance requirements of the rule?; (4) What are the relevant Federal Government rules that may duplicate, overlap, or conflict with the rule?; and (5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small businesses?

1. What are the need for and objective of the rule?

As discussed in the supplemental information above, the revision to the monetary-based size standards for inflation more appropriately defines small businesses. This rule finalizes SBA's 2019 interim final rule that adjusted monetary-based industry size

standards as a procedural step, and adds a 13.65 percent increase over the adopted monetary small business size standards in addition to the adjustments made as part of the second five-year review of size standards under the Jobs Act.

Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) gives SBA the authority to establish and change size standards. Within its administrative discretion, SBA implemented a policy in its regulations to review the effect of inflation on size standards at least once every five years (13 CFR 121.102(c)) and make any changes as appropriate. A review of the latest data indicated that inflation has increased a sufficient amount since the 2019 adjustment to warrant another inflation adjustment to the monetary-based size standards. Adjusting size standards for inflation is also consistent with a statutory requirement under the Jobs Act to review all size standards and make necessary adjustments to reflect current market conditions every five (5) years.

Additionally, for the first time, SBA is adjusting for inflation the economic disadvantage thresholds for the 8(a) Business development and the Economic Disadvantage Women Owned Business programs that are not covered under FAR 1.109. This action supports the economic policy SBA adopted on July 15, 2020, to increase the monetary value of these economic thresholds, maintaining their value.

2. What are SBA's description and estimate of the number of small businesses to which the rule will apply?

Based on the 2017 Economic Census tabulations, SBA estimates that about 17,713 additional firms would become small because of adjustment to receipts-based size standards of 494 industries and nine subindustries (or ''exceptions''). That represents about 0.2 percent of total firms that were small under the baseline for all monetary based size standards. SBA estimated that the changes resulted in an increase in the small business share of total industry receipts in those industries and subindustries from 29.0 percent to 30.0 percent. Due to the adjustment of assets-based size standards in five industries, SBA estimates that about 170 additional firms will gain small business status in those industries, increasing the small business share of total assets in those industries from 5.4 percent to 5.9 percent. The size standards adopted in this rule would enable businesses that have exceeded the size standards for their industries to regain small business status. It would also help small businesses to retain their small business status for a longer period.

The increases in the economic disadvantage (ED) eligibility thresholds through inflation adjustment support gaining eligibility of the new applicants which would otherwise be not approved and maintaining eligibility of the existing participants in the 8(a) BD and EDWOSB programs. However, there is lack of the necessary data to estimate the actual number of 8(a) BD and EDWOSB firms impacted by the adjustments to the ED thresholds. As a result of adjusting the 8(a) sole source threshold, about 87–90 firms totaling between $100 million and $168.5 million in cumulative contract awards would become eligible for sole source 8(a) contracts again.

3. What are the projected reporting, record keeping and other compliance requirements of the rule?

The inflation adjustment to size standards imposes no additional reporting or record keeping requirements on small businesses. However, qualifying for Federal procurement and a number of other programs requires that businesses register in the System of Award Management (SAM) database and certify in SAM that they are small at least once annually (FAR 52.204–13). For existing contracts, small business contractors are required to update their SAM registration, as necessary, to ensure that they reflect the Contractor's current status (FAR 52.219–28). Businesses are also required to verify that their SAM registration is current, accurate, and complete with the submission of an offer for every new contract (FAR 52.204–7 and 52.204–8). Therefore, any newly eligible small businesses opting to participate in those programs would have had to comply with SAM requirements. However, SBA estimates that there are no additional costs associated with SAM registration or certification. While changing size standards alters the access to SBA's programs that assist small businesses, it does not impose a regulatory burden because such actions on the part of SBA neither regulate nor control business behavior.

4. What are the relevant Federal rules, which may duplicate, overlap, or conflict with the rule?

Under section 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute to do otherwise. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988 (November 24, 1995)). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The Regulatory Flexibility Act authorizes an agency to establish an alternative small business definition for Regulatory Flexibility Analysis purposes, after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)).

5. What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no practical alternative exists to the systems of numerical size standards.

SBA's only other consideration was whether to adopt the size standards presented in the interim final rule with no further increase for the inflation. However, SBA believes that the 13.65 percent inflation that has occurred since the previous inflation adjustment in July 2019 sufficiently affects the real value of the size standards to warrant applying an increase at this time. Similarly, SBA considers that the higher inflation can adversely impact the intention of increasing the ED thresholds adopted by the 8(a) BD and the EDWOSB programs on July 15, 2020.

Executive Order 13563

E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. A description of the need for this regulatory action and benefits and costs associated with this action including possible distributional impacts that relate to Executive Order 13563 is included above in the Benefit-Cost Analysis under Executive Order 12866 and in the July 2019 IFR which adopted the adjustment to size standards effective August 18, 2019. Additionally, section 6 of E.O. 13563 calls for retrospective analyses of existing rules.

Additionally, SBA issued a revised ''Size Standards Methodology'' white paper and published a notice in the April 27, 2018, issue of the **Federal Register** (83 FR 18468) to advise the

public that the document is available for public review and comments. The ''Size Standards Methodology'' white paper explains how SBA establishes, reviews, and modifies its receipts-based and employee-based small business size standards. The white paper also describes how SBA adjusts size standards for inflation and updates its table of size standards to NAICS revisions. On April 11, 2019, SBA published a **Federal Register** notification (84 FR 14587) advising the public that the Agency had issued a revised final ''Size Standards Methodology'' white paper.

Executive Order 12988

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

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that the final provisions and the interim final provisions of this rulemaking will not have substantial, direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, SBA has determined that this interim final rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rulemaking will not impose any new reporting or record keeping requirements.

List of Subjects

13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 124

Administrative practice and procedure, Government procurement, Government property, Small businesses.

13 CFR Part 127

Government contracts, Reporting and recordkeeping requirements, Small businesses.

■ For the reasons set forth in the preamble, SBA adopts as final the interim rule published July 18, 2019, at 84 FR 34261, and amends 13 CFR parts 121, 124, and 127.

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(a)(36), 662, and 694a(9); 15 U.S.C. 9012.

■ 2. In § 121.201, amend the table ''Small Business Size Standards by NAICS Industry'' by revising:
■ a. Subsectors 111 and 112;
■ b. Under subsector 113, the entries for ''113110'' and ''113210'';
■ c. Subsectors 114 and 115;
■ d. Under Subsection 213, the entries for ''213112'' through ''213115'';
■ e. Under subsector 221, the entries for ''221310'', ''221320'', and ''221330'';
■ f. Subsectors 236 through 238;
■ g. Under subsector 441, the entries for ''441120'', ''441210'', ''441222'', ''441227'', ''441330'', and ''441340'';
■ h. Subsectors 444, 445, 449, 455, and 456;
■ i. Under subsector 457, the entries for ''457110'' and ''457120'';
■ j. Subsectors 458 and 459;
■ k. Under subsector 481, the entry for ''481219'';
■ l. Subsectors 484 and 485;
■ m. Under subsector 486, the entries for ''486210'' and ''486990'';
■ n. Subsectors 487, 488, and 491;
■ o. Under subsector 492, the entry for ''492210'';
■ p. Subsector 493;
■ q. Under subsector 512, the entries for ''512110'', ''512120'', ''512131'', ''512132'', ''512191'', ''512199'', ''512240'', and ''512290'';
■ r. Under subsector 513, the entry for ''513210'';
■ s. Subsector 516;
■ t. Under subsector 517, the entries for ''517410'' and ''517810'';
■ u. Under subsector 518, the entry for ''518210'';
■ v. Under subsector 519, the entry for ''519210'';
■ w. Subsectors 522 and 523;
■ x. Under subsector 524, the entries for ''524113'', ''524114'', ''524127'', ''524128'', ''524130'', ''524210'', ''524291'', ''524292'', and ''524298'';
■ y. Subsectors 525 and 531 through 533;
■ z. Under subsector 541, the entries for ''541110'', ''541191'', ''541199'', ''541211'', ''541213'', ''541214'', ''541219'', ''541310'', ''541320'', ''541330'', ''541330 (Exception 1)'', ''541330 (Exception 2)'', ''541330 (Exception 3)'', ''541340'', ''541350'', ''541360'', ''541370'', ''541380'', ''541410'', ''541420'', ''541430'', ''541490'', ''541511'' through ''541513'', ''541519'', ''541611'' through ''541614'', ''541618'', ''541620'', ''541690'', ''541720'', ''541810'', ''541820'', ''541830'', ''541840'', ''541850'', ''541860'', ''541870'', ''541890'', ''541910'', ''541921'', ''541922'', ''541930'', ''541940'', and ''541990'';
■ aa. Subsectors 551 and 561;
■ bb. Under subsector 562, the entries for ''562111'', ''562112'', ''562119'', ''562211'' through ''562213'', ''562219'', ''562910'', ''562920'', ''562991'', and ''562998''; and
■ cc. Subsectors 611, 621 through 624, 711 through 713, 721, 722, and 811 through 813; and
■ dd. Revising footnote 9 at the end of the table.

The revisions read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
	Sector 11—Agriculture, Forestry, Fishing and Hunting **Subsector 111—Crop Production**		
111110	Soybean Farming	$2.25	
111120	Oilseed (except Soybean) Farming	$2.25	
111130	Dry Pea and Bean Farming	$2.75	
111140	Wheat Farming	$2.25	
111150	Corn Farming	$2.5	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
111160	Rice Farming	$2.5	
111191	Oilseed and Grain Combination Farming	$2.25	
111199	All Other Grain Farming	$2.25	
111211	Potato Farming	$4.25	
111219	Other Vegetable (except Potato) and Melon Farming	$3.75	
111310	Orange Groves	$4.0	
111320	Citrus (except Orange) Groves	$4.25	
111331	Apple Orchards	$4.5	
111332	Grape Vineyards	$4.0	
111333	Strawberry Farming	$5.5	
111334	Berry (except Strawberry) Farming	$3.75	
111335	Tree Nut Farming	$3.75	
111336	Fruit and Tree Nut Combination Farming	$5.0	
111339	Other Noncitrus Fruit Farming	$3.5	
111411	Mushroom Production	$4.5	
111419	Other Food Crops Grown Under Cover	$4.5	
111421	Nursery and Tree Production	$3.25	
111422	Floriculture Production	$3.75	
111910	Tobacco Farming	$2.5	
111920	Cotton Farming	$3.25	
111930	Sugarcane Farming	$5.0	
111940	Hay Farming	$2.5	
111991	Sugar Beet Farming	$2.5	
111992	Peanut Farming	$2.5	
111998	All Other Miscellaneous Crop Farming	$2.5	
	Subsector 112—Animal Production and Aquaculture		
112111	Beef Cattle Ranching and Farming	$2.5	
112112	Cattle Feedlots	$22.0	
112120	Dairy Cattle and Milk Production	$3.75	
112210	Hog and Pig Farming	$4.0	
112310	Chicken Egg Production	$19.0	
112320	Broilers and Other Meat Type Chicken Production	$3.5	
112330	Turkey Production	$3.75	
112340	Poultry Hatcheries	$4.0	
112390	Other Poultry Production	$3.75	
112410	Sheep Farming	$3.5	
112420	Goat Farming	$2.5	
112511	Finfish Farming and Fish Hatcheries	$3.75	
112512	Shellfish Farming	$3.75	
112519	Other Aquaculture	$3.75	
112910	Apiculture	$3.25	
112920	Horse and Other Equine Production	$2.75	
112930	Fur-Bearing Animal and Rabbit Production	$3.75	
112990	All Other Animal Production	$2.75	
	Subsector 113—Forestry and Logging		
113110	Timber Tract Operations	$19.0	
113210	Forest Nurseries and Gathering of Forest Products	$20.5	
*	* * * * * *	*	
	Subsector 114—Fishing, Hunting and Trapping		
114111	Finfish Fishing	$25.0	
114112	Shellfish Fishing	$14.0	
114119	Other Marine Fishing	$11.5	
114210	Hunting and Trapping	$8.5	
	Subsector 115—Support Activities for Agriculture and Forestry		
115111	Cotton Ginning	$16.0	
115112	Soil Preparation, Planting, and Cultivating	$9.5	
115113	Crop Harvesting, Primarily by Machine	$13.5	
115114	Postharvest Crop Activities (except Cotton Ginning)	$34.0	
115115	Farm Labor Contractors and Crew Leaders	$19.0	
115116	Farm Management Services	$15.5	
115210	Support Activities for Animal Production	$11.0	
115310	Support Activities for Forestry	$11.5	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
115310 (Exception 1)	Forest Fire Suppression [1]	$34.0 [1]	
115310 (Exception 2)	Fuels Management Services [1]	$34.0 [1]	
	Sector 21—Mining, Quarrying, and Oil and Gas Extraction		
*	* * * * *	*	*
	Subsector 213—Support Activities for Mining		
*	* * * * *	*	*
213112	Support Activities for Oil and Gas Operations	$47.0	
213113	Support Activities for Coal Mining	$27.5	
213114	Support Activities for Metal Mining	$41.0	
213115	Support Activities for Nonmetallic Minerals (except Fuels)	$20.5	
	Sector 22—Utilities **Subsector 221—Utilities**		
*	* * * * *	*	*
221310	Water Supply and Irrigation Systems	$41.0	
221320	Sewage Treatment Facilities	$35.0	
221330	Steam and Air-Conditioning Supply	$30.0	
	Sector 23—Construction **Subsector 236—Construction of Buildings**		
236115	New Single-family Housing Construction (Except For-Sale Builders)	$45.0	
236116	New Multifamily Housing Construction (except For-Sale Builders)	$45.0	
236117	New Housing For-Sale Builders	$45.0	
236118	Residential Remodelers	$45.0	
236210	Industrial Building Construction	$45.0	
236220	Commercial and Institutional Building Construction	$45.0	
	Subsector 237—Heavy and Civil Engineering Construction		
237110	Water and Sewer Line and Related Structures Construction	$45.0	
237120	Oil and Gas Pipeline and Related Structures Construction	$45.0	
237130	Power and Communication Line and Related Structures Construction	$45.0	
237210	Land Subdivision	$34.0	
237310	Highway, Street, and Bridge Construction	$45.0	
237990	Other Heavy and Civil Engineering Construction	$45.0	
237900 (Exception)	Dredging and Surface Cleanup Activities [2]	$37.0 [2]	
	Subsector 238—Specialty Trade Contractors		
238110	Poured Concrete Foundation and Structure Contractors	$19.0	
238120	Structural Steel and Precast Concrete Contractors	$19.0	
238130	Framing Contractors	$19.0	
238140	Masonry Contractors	$19.0	
238150	Glass and Glazing Contractors	$19.0	
238160	Roofing Contractors	$19.0	
238170	Siding Contractors	$19.0	
238190	Other Foundation, Structure, and Building Exterior Contractors	$19.0	
238210	Electrical Contractors and Other Wiring Installation Contractors	$19.0	
238220	Plumbing, Heating, and Air-Conditioning Contractors	$19.0	
238290	Other Building Equipment Contractors	$22.0	
238310	Drywall and Insulation Contractors	$19.0	
238320	Painting and Wall Covering Contractors	$19.0	
238330	Flooring Contractors	$19.0	
238340	Tile and Terrazzo Contractors	$19.0	
238350	Finish Carpentry Contractors	$19.0	
238390	Other Building Finishing Contractors	$19.0	
238910	Site Preparation Contractors	$19.0	
238990	All Other Specialty Trade Contractors	$19.0	
238990 (Exception)	Building and Property Specialty Trade Services [13]	$19.0 [13]	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	*	*	*
Sector 44—45—Retail Trade			
*	*	*	*
Subsector 441—Motor Vehicle and Parts Dealers			
*	*	*	*
441120	Used Car Dealers	$30.5	
441210	Recreational Vehicle Dealers	$40.0	
441222	Boat Dealers	$40.0	
441227	Motorcycle, ATV, and All Other Motor Vehicle Dealers	$40.0	
441330	Automotive Parts and Accessories Retailers	$28.5	
441340	Tire Dealers	$25.5	
Subsector 444—Building Material and Garden Equipment and Supplies Dealers			
444110	Home Centers	$47.0	
444120	Paint and Wallpaper Retailers	$34.0	
444140	Hardware Retailers	$16.5	
444180	Other Building Material Dealers	$25.0	
444230	Outdoor Power Equipment Retailers	$9.5	
444240	Nursery, Garden Center, and Farm Supply Retailers	$21.5	
Subsector 445—Food and Beverage Stores			
445110	Supermarkets and Other Grocery Retailers (except Convenience Retailers)	$40.0	
445131	Convenience Retailers	$36.5	
445132	Vending Machine Operators	$21.0	
445230	Fruit and Vegetable Retailers	$9.0	
445240	Meat Retailers	$9.0	
445250	Fish and Seafood Retailers	$9.0	
445291	Baked Goods Retailers	$16.0	
445292	Confectionery and Nut Retailers	$19.5	
445298	All Other Specialty Food Retailers	$10.0	
445320	Beer, Wine, and Liquor Retailers	$10.0	
Subsector 449—Furniture, Home Furnishings, Electronics, and Appliance Retailers			
449110	Furniture Retailers	$25.0	
449121	Floor Covering Retailers	$9.0	
449122	Window Treatment Retailers	$11.5	
449129	All Other Home Furnishings Retailers	$33.5	
449210	Electronics and Appliance Retailers	$40.0	
Subsector 455—General Merchandise Retailers			
455110	Department Stores	$40.0	
455211	Warehouse Clubs and Supercenters	$47.0	
455219	All Other General Merchandise Retailers	$40.0	
Subsector 456—Health and Personal Care Retailers			
456110	Pharmacies and Drug Retailers	$37.5	
456120	Cosmetics, Beauty Supplies, and Perfume Retailers	$34.0	
456130	Optical Goods Retailers	$29.5	
456191	Food (Health) Supplement Retailers	$22.5	
456199	All Other Health and Personal Care Retailers	$9.5	
Subsector 457—Gasoline Stations and Fuel Dealers			
457110	Gasoline Stations with Convenience Stores	$36.5	
457120	Other Gasoline Stations	$33.5	
Subsector 458—Clothing, Clothing Accessories, Shoe, and Jewelry Retailers			
458110	Clothing and Clothing Accessories Retailers	$47.0	
458210	Shoe Retailers	$34.0	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
458310	Jewelry Retailers	$20.5	
458320	Luggage and Leather Goods Retailers	$38.0	
	Subsector 459—Sporting Goods, Hobby, Musical Instrument, Book, and Miscellaneous Retailers		
459110	Sporting Goods Retailers	$26.5	
459120	Hobby, Toy, and Game Retailers	$35.0	
459130	Sewing, Needlework, and Piece Goods Retailers	$34.0	
459140	Musical Instrument and Supplies Retailers	$22.5	
459210	Book Retailers and News Dealers	$36.0	
459310	Florists	$9.0	
459410	Office Supplies and Stationery Retailers	$40.0	
459420	Gift, Novelty, and Souvenir Retailers	$13.5	
459510	Used Merchandise Retailers	$14.0	
459910	Pet and Pet Supplies Retailers	$32.0	
459920	Art Dealers	$16.5	
459930	Manufactured (Mobile) Home Dealers	$19.0	
459991	Tobacco, Electronic Cigarette, and Other Smoking Supplies Retailers	$11.5	
459999	All Other Miscellaneous Retailers	$11.5	
	Sector 48–49—Transportation and Warehousing **Subsector 481—Air Transportation**		
*	* * * * * *	*	
481219	Other Nonscheduled Air Transportation	$25.0	
*	* * * * * *	*	
	Subsector 484—Truck Transportation		
484110	General Freight Trucking, Local	$34.0	
484121	General Freight Trucking, Long-Distance, Truckload	$34.0	
484122	General Freight Trucking, Long-Distance, Less Than Truckload	$43.0	
484210	Used Household and Office Goods Moving	$34.0	
484220	Specialized Freight (except Used Goods) Trucking, Local	$34.0	
484230	Specialized Freight (except Used Goods) Trucking, Long-Distance	$34.0	
	Subsector 485—Transit and Ground Passenger Transportation		
485111	Mixed Mode Transit Systems	$29.0	
485112	Commuter Rail Systems	$47.0	
485113	Bus and Other Motor Vehicle Transit Systems	$32.5	
485119	Other Urban Transit Systems	$37.5	
485210	Interurban and Rural Bus Transportation	$32.0	
485310	Taxi and Ridesharing Services	$19.0	
485320	Limousine Service	$19.0	
485410	School and Employee Bus Transportation	$30.0	
485510	Charter Bus Industry	$19.0	
485991	Special Needs Transportation	$19.0	
485999	All Other Transit and Ground Passenger Transportation	$19.0	
	Subsector 486—Pipeline Transportation		
*	* * * * * *	*	
486210	Pipeline Transportation of Natural Gas	$41.5	
*	* * * * * *	*	
486990	All Other Pipeline Transportation	$46.0	
	Subsector 487—Scenic and Sightseeing Transportation		
487110	Scenic and Sightseeing Transportation, Land	$20.5	
487210	Scenic and Sightseeing Transportation, Water	$14.0	
487990	Scenic and Sightseeing Transportation, Other	$25.0	
	Subsector 488—Support Activities for Transportation		
488111	Air Traffic Control	$40.0	
488119	Other Airport Operations	$40.0	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
488190	Other Support Activities for Air Transportation	$40.0	
488210	Support Activities for Rail Transportation	$34.0	
488310	Port and Harbor Operations	$47.0	
488320	Marine Cargo Handling	$47.0	
488330	Navigational Services to Shipping	$47.0	
488390	Other Support Activities for Water Transportation	$47.0	
488410	Motor Vehicle Towing	$9.0	
488490	Other Support Activities for Road Transportation	$18.0	
488510	Freight Transportation Arrangement [10]	$20.0 [10]	
488510 (Exception)	Non-Vessel Owning Common Carriers and Household Goods Forwarders	$34.0	
488991	Packing and Crating	$34.0	
488999	All Other Support Activities for Transportation	$25.0	
	Subsector 491—Postal Service		
491110	Postal Service	$9.0	
	Subsector 492—Couriers and Messengers		
*	* * * * *	*	*
492210	Local Messengers and Local Delivery	$34.0	
	Subsector 493—Warehousing and Storage		
493110	General Warehousing and Storage	$34.0	
493120	Refrigerated Warehousing and Storage	$36.5	
493130	Farm Product Warehousing and Storage	$34.0	
493190	Other Warehousing and Storage	$36.5	
	Sector 51—Information **Subsector 512—Motion Picture and Sound Recording Industries**		
512110	Motion Picture and Video Production	$40.0	
512120	Motion Picture and Video Distribution	$39.0	
512131	Motion Picture Theaters (except Drive-Ins)	$47.0	
512132	Drive-In Motion Picture Theaters	$12.5	
512191	Teleproduction and Other Postproduction Services	$39.0	
512199	Other Motion Picture and Video Industries	$28.5	
*	* * * * *	*	*
512240	Sound Recording Studios	$11.0	
*	* * * * *	*	*
512290	Other Sound Recording Industries	$22.5	
	Subsector 513—Publishing Industries		
*	* * * * *	*	*
513210	Software Publishers [15]	$47.0 [15]	
	Subsector 516—Broadcasting and Content Providers		
516110	Radio Broadcasting Stations	$47.0	
516120	Television Broadcasting Stations	$47.0	
516210	Media Streaming Distribution Services, Social Networks, and Other Media Networks and Content Providers.	$47.0	
	Subsector 517—Telecommunications		
*	* * * * *	*	*
517410	Satellite Telecommunications	$44.0	
517810	All Other Telecommunications	$40.0	
	Subsector 518—Computing Infrastructure Providers, Data Processing, Web Hosting, and Related Services		
518210	Computing Infrastructure Providers, Data Processing, Web Hosting, and Related Services.	$40.0	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
Subsector 519—Web Search Portals, Libraries, Archives, and Other Information Services			
519210	Libraries and Archives	$21.0	
*	* * * * *	*	*
Sector 52—Finance and Insurance Subsector 522—Credit Intermediation and Related Activities			
522110	Commercial Banking [8]	$850 million in assets [8].	
522130	Credit Unions [8]	$850 million in assets [8].	
522180	Savings Institutions and Other Depository Credit Intermediation [8]	$850 million in assets [8].	
522210	Credit Card Issuing [8]	$850 million in assets [8].	
522220	Sales Financing	$47.0	
522291	Consumer Lending	$47.0	
522292	Real Estate Credit	$47.0	
522299	International, Secondary Market, and All Other Nondepository Credit Intermediation.	$47.0	
522310	Mortgage and Nonmortgage Loan Brokers	$15.0	
522320	Financial Transactions Processing, Reserve, and Clearinghouse Activities	$47.0	
522390	Other Activities Related to Credit Intermediation	$28.5	
Subsector 523—Securities, Commodity Contracts, and Other Financial Investments and Related Activities			
523150	Investment Banking and Securities Intermediation	$47.0	
523160	Commodity Contracts Intermediation	$41.5	
523210	Securities and Commodity Exchanges	$47.0	
523910	Miscellaneous Intermediation	$47.0	
523940	Portfolio Management and Investment Advice	$47.0	
523991	Trust, Fiduciary and Custody Activities	$47.0	
523999	Miscellaneous Financial Investment Activities	$47.0	
Subsector 524—Insurance Carriers and Related Activities			
524113	Direct Life Insurance Carriers	$47.0	
524114	Direct Health and Medical Insurance Carriers	$47.0	
*	* * * * *	*	*
524127	Direct Title Insurance Carriers	$47.0	
524128	Other Direct Insurance (except Life, Health and Medical) Carriers	$47.0	
524130	Reinsurance Carriers	$47.0	
524210	Insurance Agencies and Brokerages	$15.0	
524291	Claims Adjusting	$25.0	
524292	Pharmacy Benefit Management and Other Third Party Administration of Insurance and Pension Funds.	$45.5	
524298	All Other Insurance Related Activities	$30.5	
Subsector 525—Funds, Trusts and Other Financial Vehicles			
525110	Pension Funds	$40.0	
525120	Health and Welfare Funds	$40.0	
525190	Other Insurance Funds	$40.0	
525910	Open-End Investment Funds	$40.0	
525920	Trusts, Estates, and Agency Accounts	$40.0	
525990	Other Financial Vehicles	$40.0	
Sector 53—Real Estate and Rental and Leasing Subsector 531—Real Estate			
531110	Lessors of Residential Buildings and Dwellings [9]	$34.0 [9]	
531120	Lessors of Nonresidential Buildings (except Miniwarehouses) [9]	$34.0 [9]	
531130	Lessors of Miniwarehouses and Self-Storage Units [9]	$34.0 [9]	
531190	Lessors of Other Real Estate Property [9]	$34.0 [9]	
531210	Offices of Real Estate Agents and Brokers [10]	$15.0 [10]	
531311	Residential Property Managers	$12.5	
531312	Nonresidential Property Managers	$19.5	
531320	Offices of Real Estate Appraisers	$9.5	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
531390	Other Activities Related to Real Estate	$19.5	
	Subsector 532—Rental and Leasing Services		
532111	Passenger Car Rental	$47.0	
532112	Passenger Car Leasing	$47.0	
532120	Truck, Utility Trailer, and RV (Recreational Vehicle) Rental and Leasing	$47.0	
532210	Consumer Electronics and Appliances Rental	$47.0	
532281	Formal Wear and Costume Rental	$25.0	
532282	Video Tape and Disc Rental	$35.0	
532283	Home Health Equipment Rental	$41.0	
532284	Recreational Goods Rental	$9.0	
532289	All Other Consumer Goods Rental	$12.5	
532310	General Rental Centers	$9.0	
532411	Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing.	$45.5	
532412	Construction, Mining and Forestry Machinery and Equipment Rental and Leasing.	$40.0	
532420	Office Machinery and Equipment Rental and Leasing	$40.0	
532490	Other Commercial and Industrial Machinery and Equipment Rental and Leasing.	$40.0	
	Subsector 533—Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)		
533110	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	$47.0	
	Sector 54—Professional, Scientific and Technical Services **Subsector 541—Professional, Scientific and Technical Services**		
541110	Offices of Lawyers	$15.5	
541191	Title Abstract and Settlement Offices	$19.5	
541199	All Other Legal Services	$20.5	
541211	Offices of Certified Public Accountants	$26.5	
541213	Tax Preparation Services	$25.0	
541214	Payroll Services	$39.0	
541219	Other Accounting Services	$25.0	
541310	Architectural Services	$12.5	
541320	Landscape Architectural Services	$9.0	
541330	Engineering Services	$25.5	
541330 (Exception 1)	Military and Aerospace Equipment and Military Weapons	$47.0	
541330 (Exception 2)	Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992.	$47.0	
541330 (Exception 3)	Marine Engineering and Naval Architecture	$47.0	
541340	Drafting Services	$9.0	
541350	Building Inspection Services	$11.5	
541360	Geophysical Surveying and Mapping Services	$28.5	
541370	Surveying and Mapping (except Geophysical) Services	$19.0	
541380	Testing Laboratories and Services	$19.0	
541410	Interior Design Services	$9.0	
541420	Industrial Design Services	$17.0	
541430	Graphic Design Services	$9.0	
541490	Other Specialized Design Services	$13.5	
541511	Custom Computer Programming Services	$34.0	
541512	Computer Systems Design Services	$34.0	
541513	Computer Facilities Management Services	$37.0	
541519	Other Computer Related Services	$34.0	
*	* * * * * * *		
541611	Administrative Management and General Management Consulting Services	$24.5	
541612	Human Resources Consulting Services	$29.0	
541613	Marketing Consulting Services	$19.0	
541614	Process, Physical Distribution and Logistics Consulting Services	$20.0	
541618	Other Management Consulting Services	$19.0	
541620	Environmental Consulting Services	$19.0	
541690	Other Scientific and Technical Consulting Services	$19.0	
*	* * * * * * *		
541720	Research and Development in the Social Sciences and Humanities	$28.0	
541810	Advertising Agencies [10]	$25.5 [10]	
541820	Public Relations Agencies	$19.0	
541830	Media Buying Agencies	$32.5	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
541840	Media Representatives	$21.0	
541850	Indoor and Outdoor Display Advertising	$34.5	
541860	Direct Mail Advertising	$22.0	
541870	Advertising Material Distribution Services	$28.5	
541890	Other Services Related to Advertising	$19.0	
541910	Marketing Research and Public Opinion Polling	$22.5	
541921	Photography Studios, Portrait	$16.0	
541922	Commercial Photography	$9.0	
541930	Translation and Interpretation Services	$22.5	
541940	Veterinary Services	$10.0	
541990	All Other Professional, Scientific and Technical Services	$19.5	
	Sector 55—Management of Companies and Enterprises		
	Subsector 551—Management of Companies and Enterprises		
551111	Offices of Bank Holding Companies	$38.5	
551112	Offices of Other Holding Companies	$45.5	
	Sector 56—Administrative and Support, Waste Management and Remediation Services		
	Subsector 561—Administrative and Support Services		
561110	Office Administrative Services	$12.5	
561210	Facilities Support Services [12]	$47.0 [12]	
561311	Employment Placement Agencies	$34.0	
561312	Executive Search Services	$34.0	
561320	Temporary Help Services	$34.0	
561330	Professional Employer Organizations	$41.5	
561410	Document Preparation Services	$19.0	
561421	Telephone Answering Services	$19.0	
561422	Telemarketing Bureaus and Other Contact Centers	$25.5	
561431	Private Mail Centers	$19.0	
561439	Other Business Service Centers (including Copy Shops)	$26.5	
561440	Collection Agencies	$19.5	
561450	Credit Bureaus	$41.0	
561491	Repossession Services	$19.0	
561492	Court Reporting and Stenotype Services	$19.0	
561499	All Other Business Support Services	$21.5	
561510	Travel Agencies [10]	$25.0 [10]	
561520	Tour Operators [10]	$25.0 [10]	
561591	Convention and Visitors Bureaus	$25.0	
561599	All Other Travel Arrangement and Reservation Services	$32.5	
561611	Investigation and Personal Background Check Services	$25.0	
561612	Security Guards and Patrol Services	$29.0	
561613	Armored Car Services	$43.0	
561621	Security Systems Services (except Locksmiths)	$25.0	
561622	Locksmiths	$25.0	
561710	Exterminating and Pest Control Services	$17.5	
561720	Janitorial Services	$22.0	
561730	Landscaping Services	$9.5	
561740	Carpet and Upholstery Cleaning Services	$8.5	
561790	Other Services to Buildings and Dwellings	$9.0	
561910	Packaging and Labeling Services	$19.5	
561920	Convention and Trade Show Organizers [10]	$20.0 [10]	
561990	All Other Support Services	$16.5	
	Subsector 562—Waste Management and Remediation Services		
562111	Solid Waste Collection	$47.0	
562112	Hazardous Waste Collection	$47.0	
562119	Other Waste Collection	$47.0	
562211	Hazardous Waste Treatment and Disposal	$47.0	
562212	Solid Waste Landfill	$47.0	
562213	Solid Waste Combustors and Incinerators	$47.0	
562219	Other Nonhazardous Waste Treatment and Disposal	$47.0	
562910	Remediation Services	$25.0	
*	* * * * * * *		
562920	Materials Recovery Facilities	$25.0	
562991	Septic Tank and Related Services	$9.0	
562998	All Other Miscellaneous Waste Management Services	$16.5	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
	Sector 61—Educational Services **Subsector 611—Educational Services**		
611110	Elementary and Secondary Schools	$20.0	
611210	Junior Colleges	$32.5	
611310	Colleges, Universities and Professional Schools	$34.5	
611410	Business and Secretarial Schools	$20.5	
611420	Computer Training	$16.0	
611430	Professional and Management Development Training	$15.0	
611511	Cosmetology and Barber Schools	$13.0	
611512	Flight Training	$34.0	
611513	Apprenticeship Training	$11.5	
611519	Other Technical and Trade Schools	$21.0	
611519 (Exception)	Job Corps Centers[16]	$47.0[16]	
611610	Fine Arts Schools	$9.0	
611620	Sports and Recreation Instruction	$9.0	
611630	Language Schools	$20.5	
611691	Exam Preparation and Tutoring	$12.5	
611692	Automobile Driving Schools	$10.0	
611699	All Other Miscellaneous Schools and Instruction	$16.5	
611710	Educational Support Services	$24.0	
	Sector 62—Health Care and Social Assistance **Subsector 621—Ambulatory Health Care Services**		
621111	Offices of Physicians (except Mental Health Specialists)	$16.0	
621112	Offices of Physicians, Mental Health Specialists	$13.5	
621210	Offices of Dentists	$9.0	
621310	Offices of Chiropractors	$9.0	
621320	Offices of Optometrists	$9.0	
621330	Offices of Mental Health Practitioners (except Physicians)	$9.0	
621340	Offices of Physical, Occupational and Speech Therapists and Audiologists	$12.5	
621391	Offices of Podiatrists	$9.0	
621399	Offices of All Other Miscellaneous Health Practitioners	$10.0	
621410	Family Planning Centers	$19.0	
621420	Outpatient Mental Health and Substance Abuse Centers	$19.0	
621491	HMO Medical Centers	$44.5	
621492	Kidney Dialysis Centers	$47.0	
621493	Freestanding Ambulatory Surgical and Emergency Centers	$19.0	
621498	All Other Outpatient Care Centers	$25.5	
621511	Medical Laboratories	$41.5	
621512	Diagnostic Imaging Centers	$19.0	
621610	Home Health Care Services	$19.0	
621910	Ambulance Services	$22.5	
621991	Blood and Organ Banks	$40.0	
621999	All Other Miscellaneous Ambulatory Health Care Services	$20.5	
	Subsector 622—Hospitals		
622110	General Medical and Surgical Hospitals	$47.0	
622210	Psychiatric and Substance Abuse Hospitals	$47.0	
622310	Specialty (except Psychiatric and Substance Abuse) Hospitals	$47.0	
	Subsector 623—Nursing and Residential Care Facilities		
623110	Nursing Care Facilities (Skilled Nursing Facilities)	$34.0	
623210	Residential Intellectual and Developmental Disability Facilities	$19.0	
623220	Residential Mental Health and Substance Abuse Facilities	$19.0	
623311	Continuing Care Retirement Communities	$34.0	
623312	Assisted Living Facilities for the Elderly	$23.5	
623990	Other Residential Care Facilities	$16.0	
	Subsector 624—Social Assistance		
624110	Child and Youth Services	$15.5	
624120	Services for the Elderly and Persons with Disabilities	$15.0	
624190	Other Individual and Family Services	$16.0	
624210	Community Food Services	$19.5	
624221	Temporary Shelters	$13.5	
624229	Other Community Housing Services	$19.0	
624230	Emergency and Other Relief Services	$41.5	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
624310	Vocational Rehabilitation Services	$15.0	
624410	Child Care Services	$9.5	
	Sector 71—Arts, Entertainment and Recreation **Subsector 711—Performing Arts, Spectator Sports and Related Industries**		
711110	Theater Companies and Dinner Theaters	$25.0	
711120	Dance Companies	$18.0	
711130	Musical Groups and Artists	$15.0	
711190	Other Performing Arts Companies	$34.0	
711211	Sports Teams and Clubs	$47.0	
711212	Racetracks	$47.0	
711219	Other Spectator Sports	$16.5	
711310	Promoters of Performing Arts, Sports and Similar Events with Facilities	$40.0	
711320	Promoters of Performing Arts, Sports and Similar Events without Facilities	$22.0	
711410	Agents and Managers for Artists, Athletes, Entertainers and Other Public Figures.	$17.5	
711510	Independent Artists, Writers, and Performers	$9.0	
	Subsector 712—Museums, Historical Sites and Similar Institutions		
712110	Museums	$34.0	
712120	Historical Sites	$13.0	
712130	Zoos and Botanical Gardens	$34.0	
712190	Nature Parks and Other Similar Institutions	$19.5	
	Subsector 713—Amusement, Gambling and Recreation Industries		
713110	Amusement and Theme Parks	$47.0	
713120	Amusement Arcades	$9.0	
713210	Casinos (except Casino Hotels)	$34.0	
713290	Other Gambling Industries	$40.0	
713910	Golf Courses and Country Clubs	$19.0	
713920	Skiing Facilities	$35.0	
713930	Marinas	$11.0	
713940	Fitness and Recreational Sports Centers	$17.5	
713950	Bowling Centers	$12.5	
713990	All Other Amusement and Recreation Industries	$9.0	
	Sector 72—Accommodation and Food Services **Subsector 721—Accommodation**		
721110	Hotels (except Casino Hotels) and Motels	$40.0	
721120	Casino Hotels	$40.0	
721191	Bed-and-Breakfast Inns	$9.0	
721199	All Other Traveler Accommodation	$9.0	
721211	RV (Recreational Vehicle) Parks and Campgrounds	$10.0	
721214	Recreational and Vacation Camps (except Campgrounds)	$9.0	
721310	Rooming and Boarding Houses, Dormitories, and Workers' Camps	$14.0	
	Subsector 722—Food Services and Drinking Places		
722310	Food Service Contractors	$47.0	
722320	Caterers	$9.0	
722330	Mobile Food Services	$9.0	
722410	Drinking Places (Alcoholic Beverages)	$9.0	
722511	Full-Service Restaurants	$11.5	
722513	Limited-Service Restaurants	$13.5	
722514	Cafeterias, Grill Buffets, and Buffets	$34.0	
722515	Snack and Nonalcoholic Beverage Bars	$22.5	
	Sector 81—Other Services (Except Public Administration) **Subsector 811—Repair and Maintenance**		
811111	General Automotive Repair	$9.0	
811114	Specialized Automotive Repair	$9.0	
811121	Automotive Body, Paint and Interior Repair and Maintenance	$9.0	
811122	Automotive Glass Replacement Shops	$17.5	
811191	Automotive Oil Change and Lubrication Shops	$11.0	
811192	Car Washes	$9.0	
811198	All Other Automotive Repair and Maintenance	$10.0	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
811210	Electronic and Precision Equipment Repair and Maintenance	$34.0	
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance.	$12.5	
811411	Home and Garden Equipment Repair and Maintenance	$9.0	
811412	Appliance Repair and Maintenance	$19.0	
811420	Reupholstery and Furniture Repair	$9.0	
811430	Footwear and Leather Goods Repair	$9.0	
811490	Other Personal and Household Goods Repair and Maintenance	$9.0	
	Subsector 812—Personal and Laundry Services		
812111	Barber Shops	$9.5	
812112	Beauty Salons	$9.5	
812113	Nail Salons	$9.0	
812191	Diet and Weight Reducing Centers	$27.5	
812199	Other Personal Care Services	$9.0	
812210	Funeral Homes and Funeral Services	$12.5	
812220	Cemeteries and Crematories	$25.0	
812310	Coin-Operated Laundries and Drycleaners	$13.0	
812320	Drycleaning and Laundry Services (except Coin-Operated)	$8.0	
812331	Linen Supply	$40.0	
812332	Industrial Launderers	$47.0	
812910	Pet Care (except Veterinary) Services	$9.0	
812921	Photofinishing Laboratories (except One-Hour)	$29.5	
812922	One-Hour Photofinishing	$19.0	
812930	Parking Lots and Garages	$47.0	
812990	All Other Personal Services	$15.0	
	Subsector 813—Religious, Grantmaking, Civic, Professional and Similar Organizations		
813110	Religious Organizations	$13.0	
813211	Grantmaking Foundations	$40.0	
813212	Voluntary Health Organizations	$34.0	
813219	Other Grantmaking and Giving Services	$47.0	
813311	Human Rights Organizations	$34.0	
813312	Environment, Conservation and Wildlife Organizations	$19.5	
813319	Other Social Advocacy Organizations	$18.0	
813410	Civic and Social Organizations	$9.5	
813910	Business Associations	$15.5	
813920	Professional Organizations	$23.5	
813930	Labor Unions and Similar Labor Organizations	$16.5	
813940	Political Organizations	$14.0	
813990	Other Similar Organizations (except Business, Professional, Labor, and Political Organizations).	$13.5	

* * * * * * *

Footnotes

* * * * * * *

1. *NAICS code 115310 (Support Activities for Forestry)*—Forest Fire Suppression and Fuels Management Services are two components of Support Activities for Forestry. Forest Fire Suppression includes establishments which provide services to fight forest fires. These firms usually have fire-fighting crews and equipment. Fuels Management Services firms provide services to clear land of hazardous materials that would fuel forest fires. The treatments used by these firms may include prescribed fire, mechanical removal, establishing fuel breaks, thinning, pruning, and piling.

2. *NAICS code 237990*—Dredging: To be considered small for purposes of Government procurement, a firm must perform at least 40 percent of the volume dredged with its own equipment or equipment owned by another small dredging concern.

* * * * * * *

8. *NAICS Codes 522110, 522130, 522180, and 522210*—A financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year. ''Assets'' for the purposes of this size standard means the assets defined according to the Federal Financial Institutions Examination Council 041 call report form for NAICS codes 522110, 522180, and 522210 and the National Credit Union Administration 5300 call report form for NAICS code 522130.

9. *NAICS codes 531110, 531120, 531130, and 531190*—Leasing of Building Space to the Federal Government by Owners: For Government procurement, a size standard of $47 million in gross receipts applies to the owners of building space leased to the Federal Government. The standard does not apply to an agent.

10. *NAICS codes 488510 (excluding the exception) 531210, 541810, 561510, 561520, and 561920*—As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenues.

* * * * * * *

12. *NAICS code 561210*—Facilities Support Services:

(a) If one or more activities of Facilities Support Services as defined in paragraph (b) (below in this footnote) can be identified with a specific industry and that industry accounts for 50 percent or more of the value of an entire procurement, then the proper classification of the procurement is that of the specific industry, not Facilities Support Services.

(b) ''Facilities Support Services'' requires the performance of three or more separate activities in the areas of services or specialty trade contractors industries. If services are performed, these service activities must each be in a separate NAICS industry. If the procurement requires the use of specialty trade contractors (plumbing, painting, plastering, carpentry, etc.), all such specialty trade contractors activities are considered a single activity and classified as ''Building and Property Specialty Trade Services.'' Since ''Building and Property Specialty Trade Services'' is only one activity, two additional activities of separate NAICS industries are required for a procurement to be classified as ''Facilities Support Services.''

13. *NAICS code 238990*—Building and Property Specialty Trade Services: If a procurement requires the use of multiple specialty trade contractors (*i.e.,* plumbing, painting, plastering, carpentry, etc.), and no specialty trade accounts for 50 percent or more of the value of the procurement, all such specialty trade contractors activities are considered a single activity and classified as Building and Property Specialty Trade Services.

* * * * * * *

15. *NAICS code 513210*—For purposes of Government procurement, the purchase of software subject to potential waiver of the nonmanufacturer rule pursuant to § 121.1203(d) should be classified under this NAICS code.

16. *NAICS code 611519*—Job Corps Centers. For classifying a Federal procurement, the purpose of the solicitation must be for the management and operation of a U.S. Department of Labor Job Corps Center. The activities involved include admissions activities, life skills training, educational activities, comprehensive career preparation activities, career development activities, career transition activities, as well as the management and support functions and services needed to operate and maintain the facility. For SBA assistance as a small business concern, other than for Federal Government procurements, a concern must be primarily engaged in providing the services to operate and maintain Federal Job Corps Centers.

* * * * * * *

■ 3. Amend § 121.301 by revising the first sentence of paragraph (c)(2) to read as follows:

§ 121.301 What size standards are applicable to financial assistance programs?

* * * * *

(c) * * *

(2) Including its affiliates, tangible net worth not in excess of $24 million, and average net income after Federal income taxes (excluding any carry-over losses) for the preceding two completed fiscal years not in excess of $8 million. * * * * * * * * *

§ 121.502 [Amended]

■ 4. Amend § 121.502 in paragraph (a)(2) by removing the number ''$8 million'' and adding in its place the number ''$9 million''.

§ 121.512 [Amended]

■ 5. Amend § 121.512 in paragraph (b) by removing the number ''$67.5 million'' and adding in its place the number ''$76.5 million''.

PART 124—8(a) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS

■ 6. The authority citation for part 124 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d), 644, 42 U.S.C. 9815; and Pub. L. 99–661, 100 Stat. 3816; Sec. 1207, Pub. L. 100–656, 102 Stat. 3853; Pub. L. 101–37, 103 Stat. 70; Pub. L. 101–574, 104 Stat. 2814; Sec. 8021, Pub. L. 108–87, 117 Stat. 1054; and Sec. 330, Pub. L. 116–260.

§ 124.104 [Amended]

■ 7. Amend § 124.104:

■ a. In paragraph (c)(2) introductory text by removing the number ''$750,000'' and adding in its place the number ''$850,000'';

■ b. In paragraph (c)(3)(i) by removing the number ''$350,000'' and adding in its place the number ''$400,000''; and

■ c. In paragraph (c)(4) by removing the number ''$6 million'' and adding in its place the number ''$6.5 million''.

§ 124.519 [Amended]

■ 8. Amend § 124.519 in paragraph (a) by removing the number ''$100,000,000'' and adding in its place the number ''$168,500,000''.

PART 127—WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACT PROGRAM

■ 9. The authority citation for part 127 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 637(m), 644 and 657r.

§ 127.203 [Amended]

■ 10. Amend § 127.203:

■ a. In paragraph (b)(1) by removing the number ''$750,000'' and adding in its place the number ''$850,000'';

■ b. In paragraph (c)(3)(i) by removing the number ''$350,000'' and adding in its place the number ''$400,000''; and

■ c. In paragraph (c)(4) by removing the number ''$6 million'' and adding in its place the number ''$6.5 million''.

Isabella Casillas Guzman,

Administrator.

[FR Doc. 2022–24595 Filed 11–16–22; 8:45 am]

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